

<b>DSS Policy and Procedure Guide</b>	
Division 03: Child Welfare	Chapter 05: Placement
<b>Item 019: Tribally Approved Foster Homes</b>	
Suggested changes send to: <a href="#">DSS PSOA</a> mailbox	Issued: <b>September 27, 2016</b>
References: All County Information Notice (ACIN) <a href="#">I-43-04</a> , ACIN <a href="#">I-86-08</a> ; All County Letter (ACL) <a href="#">14-10</a>	<b>Revisions in Red</b>
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### **Preamble**

Child Welfare Policy and Procedure Guides are meant to be used as tools to relay best practice and staff expectations. It is understood that specific case scenarios may not always align themselves with the stated practices and that at all times what is of paramount importance is the Safety and Well-being of the children we are charged to protect.

### **Background Information**

Congress passed the Indian Child Welfare Act ([ICWA](#)) in 1978 to protect the best interests of Native American children and to promote the stability and security of Native American tribes and families by establishing specific standards that must be met before a Native American child may be removed from their family or placed in an adoptive or foster care placement. In 2006, California passed [SB 678](#), which enhanced the various provisions of the [ICWA](#) and put them into state law.

**[25 U.S. Code § 1915](#)** specifies the placement preferences for Native American children who will be placed in foster care or a pre-adoptive placement. Unless the Court has made a judicial finding of “good cause to the contrary” or the child’s tribe establishes a different order of preference by resolution, the order of placement preference shall be as follows:

- A member of the Native American child’s extended family. This includes trying to facilitate a rapid placement of the child with a relative and/or mentor.
- A foster home licensed, approved, or specified by the child’s tribe.
- A Native American foster home licensed or approved by an authorized non-Native American licensing authority.
- An institution for children approved by a Native American tribe or operated by a Native American organization which has a program suitable to meet the child’s needs.

It is important to remember that each tribe is considered a sovereign nation, as they exercise power over people, property, and events within their tribe. Therefore, when collaborating with Tribal Designees, it can be likened to collaborating with Heads of State.

## Policy

All Foster Family homes are required to meet the Welfare & Institutions (W&I) health and safety standards to become licensed or approved. The California Department of Social Services (CDSS) All County Information Notice (ACIN) [I-86-08](#) clarifies the application of the ICWA of 1978 codified at 25 U.S.C. Section 1901 et seq. and the use of tribally approved homes as placement options.

Tribally approved homes are not subject to state licensing approval standards. Tribes have the independent authority to establish their own socially and culturally appropriate standards and approve foster homes pursuant to the ICWA, at [25 U.S.C. § 1931], which provides that tribally approved homes are deemed equivalent to a home approved by a state licensing agency. However, the adults residing in the home are required to go through the same criminal and Child Welfare background checks as other resource families, including California Law Enforcement Telecommunications System (CLETS), DOJ, [Megan's Law](#), CWS/CMS review, and a Fresno County Sheriff's Clearance.

When an Indian child is involved in a dependency or delinquency action, where the child is at risk of entering foster care, county Social Workers (SW) and Probation Officers should consider use of a tribally approved home.

Licensing/Home Approval requirements [Title 22, Division 6, Chapter 9.5, Section 89387](#) (e.g., the size of the home, whether more than two children are sharing a bedroom, etc.) cannot be used as rationale for not placing an Indian child in a tribally approved home. The SWs assigned to the Home Approval Unit (HAU) will complete relative and non-relative extended family background evaluations when the tribe does not have Department of Justice (DOJ) Tribal Access.

## Purpose

To provide information and clarification as to the home approval background evaluations of tribally approved homes as placement options for Indian children under county jurisdiction.

## Definitions

**Tribally-Designated Home:** The home is not approved or licensed by the tribe, but rather specified by the tribe as a home for possible placement for the child. The county must approve the home as a relative/non-relative extended family member home, and complete all standard forms ([SOC 815, 817, 818](#)) or license the home. This can apply to federally and non-federally recognized tribes.

**Tribally-Approved Home:** A *federally recognized tribe* has identified a resource family and the tribe has approved the home for placement of an Indian child. If the tribe does not have DOJ Tribal Access, the county must complete the criminal background clearances, page three of the SOC 815, and file in the case folder. When placement is made, the HAU SW will provide a copy of the SOC 815 to Eligibility. (Refer to [PPG 03-05-017](#) regarding this process.) If the tribe is a non-federally recognized tribe, they do not have the authority to approve a resource family for placement; however, the tribe can designate a family (see above).

**Tribal Approval:** A written confirmation provided to the county that the placement home has been approved by the tribal council, or designee. Depending on the tribal practice, this may include a tribal council resolution or letter from the tribe identifying the prospective foster or adoptive parents and confirming that the tribe has approved the home.

**Tribal Foster Home Applicant (TFHA):** The resource family identified by the tribe. The applicant can be from either a tribally-designated or tribally-approved home; from a federally recognized or non-federally recognized tribe.

**Indian Child:** For the purposes of the ICWA, a Native American child, or “Indian child”, is defined as “any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.” (**25 U.S. Code § 1903**) In the spirit of the law, the Department of Social Services (DSS) goes beyond the ICWA provisions to include any child whose family identifies as Native American.

Note: According to California law, if a youth chooses to become a Non-Minor Dependent (NMD), as an adult the NMD determines whether or not to maintain the distinction of being an “Indian child.” [**Welfare and Institutions Code (WIC) 224.1(b)**]

**Parent:** “Parent means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established” (alleged fathers). (**25 U.S. Code § 1903**)

**Indian Custodian:** “Indian custodian means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child.” (**25 U.S. Code § 1903**)

Note: An Indian Custodian may be used as an option for safety plans or placement. SWs can collaborate with the parent and/or tribe in finding an Indian Custodian.

**Indian Tribe:** “Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians *recognized* as eligible for the services provided to Indians by the Secretary” of the Interior (federal government) “because of their status as Indians, including any Alaska Native village” composed of twenty-five or more Alaskan Natives as of 1970. (**25 U.S. Code § 1903**) In the spirit of the law, DSS goes beyond the ICWA provisions to include any non-federally recognized tribes.

Indian Child Custody Proceeding: “Indian child custody proceeding” according to ICWA means and includes any Juvenile Dependency Court hearing “where the parent or Indian custodian cannot have the child returned upon demand”, results in “termination” of parental rights, or the “permanent placement of an Indian child for adoption”. “Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.” (**25 U.S. Code § 1903**)

Active Efforts: Active efforts are distinguished from reasonable efforts in that DSS staff must consider the prevailing social and cultural conditions and way of life of the child’s tribe. Active efforts are also to be tailored to the specific needs of the family as well as the unique cultural considerations specific to the child’s tribe. All available resources are to be used, including engaging the extended family, the child’s tribe, and Native American social services. A rule of thumb is that “active efforts” is to engage the family while “reasonable efforts” simply offers referrals to the family, and leaves it to them to seek out assistance. Active efforts may also mean ensuring that siblings are placed together and utilizing family finding. Examples of active efforts can be found in the 2015 BIA Guidelines. [**25 U.S. Code § 1912(d)**, **ACIN I-40-10**, **WIC 361.7(b)**, **California Judges Bench guide**]

Expert Witness: An expert witness testifies as to whether continued custody of a child by the parent or “Indian custodian” is likely to cause the child serious emotional or physical damage. Per Federal Law **25 U.S. Code § 1912(e)**, “*no foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child*”. Expert witnesses typically testify at the Disposition hearing and any time DSS recommends termination of parental rights.

Tribal Customary Adoption (TCA): Adoption for a Native American child where the parental rights are altered rather than terminated. TCA is another option as a concurrent/permanent plan for a Native American child. However, it is the decision of the child’s tribe (as opposed to DSS) to select TCA in order for this to be a valid concurrent/permanent plan. If selected, the tribe also decides on the modified relationship between the Native American child and their parent(s) or custodian(s). (**ACL 10-47**) Although initially scheduled to end on January 1, 2014, **SB 1013** repealed the sunset date.

## **Procedure**

### Primary SW Responsibilities

The primary SW is responsible to collaborate with the tribe when formulating their placement decision/recommendations. Placement of an Indian child shall be in the least restrictive setting, which most appropriately meets the child’s needs. [W&I 361.31 (g)] Placement must be made in accordance with the ICWA designated preferences, unless the court finds there is good cause to deviate from the order **placement preference**. [W&I 361.31(b), CWS Manual Div 31, section 31-520] **Efforts to comply with the placement preference shall be documented in the CWS/CMS**

contact narratives, and any deviations to the order shall be fully explained in CWS/CMS and any Court reports.

The primary SW will submit a [CWS 0037](#), *Application for Assessment of Relative/NREFM Home*, or the tribal designee will submit a Tribal Counsel/Equivalent referral form, for a TFHA. The referral form will be submitted to the [DSS Home Approval](#) mailbox. The subject line should indicate “Tribal Foster Home Applicant”. Along with the [CWS 0037](#), the primary SW should indicate if the tribe will be completing the background checks, or if the tribe needs the Department of Social Services (DSS) to complete them.

If the referral is being generated in order to assess an applicant as an Approved Tribal Foster Home and is not specific to a child, the type of referral needs to be indicated on the referral form as “ICWA Home Assessment”. All child specific entries would then be left blank.

#### HAU SW Responsibilities

Determine whether the referral is regarding a TFHA.

If this is a TFHA from a tribally-approved home, the HAU SW will consult with the tribe to determine whether or not the tribe will be completing the background checks on the adults in the home in accordance with Penal Code [11105.08](#) and Welfare and Institutions Code (WIC) [10553.12](#). If the tribe does complete the background checks, they will advise DSS whether or not it is legally safe to place the child in the home. The tribe and DSS will work together in obtaining a release of information from the TFHA.

If the tribe is not able to complete the background checks, the HAU SW will refer the TFHA for a Live Scan and evaluate the background clearances of all adults living in the tribal home in accordance with [Title 22, Division 6, Chapter 9.5, Article 3, Section 89219](#), as well as complete the [criminal record exemption](#) process as needed. The HAU SW will complete page three of the SOC 815 form and file it into the HAU case folder. They will ensure confidentiality of all background information.

**Note: Tribally-designated homes must have the background clearances done by DSS.**

Background checks to be completed by the HAU SW include CLETS, DOJ, [Megan’s Law](#), CWS/CMS review, and a Fresno County Sheriff’s Clearance.

The HAU SW will communicate their progress to the primary SW as needed.

The HAU SW will collaborate with the tribal designee when deemed appropriate and in accordance with confidentiality laws. The Department staff cannot share criminal background clearance information without the appropriate release of information by the potential TFHA care provider.

### Live Scan Operator (LSO)/HAU Office Assistant (OA) Responsibilities

The LSO and HAU OA shall maintain confidentiality of all TFHA information, especially criminal history information. The LSO and/or HAU OA shall work in collaboration with the HAU, SW and tribal designee in their efforts to arrange live scans and background checks for identified tribal care providers.

- Upon receipt of a [CWS 0037](#) form or equivalent tribal referral form requesting a criminal background clearance of the identified TFHA, the HAU OA shall schedule the applicant's live scan appointment, unless otherwise arranged by the tribal representative/designee. The HAU LSO/OA shall ensure confidentiality of all information during this process.
- HAU OA will not initiate the background clearances of the identified tribal care provider until acknowledgment by the LSO of receipt of a signed "Request for Live Scan Service" form BCII 8016 from the applicant.
- The results of the criminal background clearance shall be distributed to the assigned HAU SW. All criminal background clearances shall remain confidential and shall not be shared with the tribal designee or between co-applicants, **unless the TFHA has signed a Release of Information.**

### Tribal Designee Responsibilities

The tribal designee shall work in collaboration with Child Welfare staff to meet the needs of Indian children.

Submit a [CWS 0037](#) form or equivalent tribal referral form requesting a criminal background check, **when the tribe is unable to complete the background check themselves.**

The tribe is responsible to approve the home and will submit only the required sections of the SOC 815 confirming that the home has been approved. Finally, the tribe will submit a tribal **council**/equivalent letter approving the home, on tribal letterhead.

### HAU Supervising Office Assistant (SOA) Responsibilities

The HAU SOA will ensure the following requirements are met:

- All case folders associated with a TFHA are to be kept in a singular location for easy access.
- Foster Parent Resources (FPR) shall be notified of all status changes regarding tribally approved homes. The communication should model our current Licensed Foster Home procedures.

### When the Tribe and Assigned SW Disagree Regarding Placement

**While Licensing regulations such as how many children sleep in a bedroom, etc. do not apply to tribally approved homes, the tribally approved home still must be safe for the child/youth.**

Therefore, if possible, the Tribal Designee and assigned SW should try to look over the home together. If the assigned SW believes that “the placement would not be a safe one, the county placement worker should discuss the concern with the tribe and allow for possible correction of the issue of concern.” ([ACIN I-86-08](#)) Depending on the severity of the concern, the assigned SW may need to make other placement arrangements for the child/youth until the correction is made.

If disagreement about the placement continues, a teaming meeting should be scheduled, making sure to invite the Tribal Designee. While every effort should be made to collaborate with the tribe, placement decisions rest with DSS. ([ACIN I-86-08](#)) However, the tribe and/or DSS can take the matter before the Court to make the final decision.