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| <p>California Department of Justice CALIFORNIA JUSTICE INFORMATION SERVICES DIVISION Joe Dominic, Chief/CIO</p>  | <h1>INFORMATION BULLETIN</h1> | |
| <p><i>Subject:</i> Criminal Background Check Authority for Approval of Tribal Homes for Foster/Adoptive Placement</p> | <p><i>No.</i> 21-02-CJIS</p> <p><i>Date:</i> 07-06-2021</p> | <p><i>Contact for information:</i> Department of Justice orquestions@doj.ca.gov</p> |

TO: ALL APPLICANT AGENCIES

The Department of Justice (DOJ) is releasing this information bulletin to explicate the statutory authority for county child welfare agencies and the Department of Social Services (DSS) (collectively, counties) to request state and federal criminal background checks on behalf of a federally recognized tribe or tribal agency evaluating a home for foster/adoptive placement of an Indian child in those circumstances when a tribe has elected not to conduct its own criminal background check during a tribal home approval process.

Background

Under Health and Safety Code (HSC) section 1522, counties must obtain a criminal record clearance or exemption before placing any child in a foster home (see HSC § 1522, subd. (a) ["It is the intent of the Legislature . . . to require the fingerprints of those individuals whose contact with community care clients {e.g., foster children} may pose a risk to the clients' health and safety. An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from the DSS before the individual's initial presence in a community care facility or certified family home."]).

A tribally approved home is equivalent to a state-licensed or county-licensed home, but it is not subject to state licensing approval standards (Welfare & Institutions Code (WIC), § 224.1, subd. (r); *id.* § 10553.12, subd. (f)). Importantly, "[b]ackground check requirements for foster care or adoptive placement as required by Section 1522 and 1522.1 of the Health and Safety Code shall apply to a tribally approved home" (WIC § 224.1, subd. (r)).

In 2014, the California Legislature enacted Senate Bill (SB) 1460, which conforms California law to the federal Indian Child Welfare Act and authorizes a federally recognized tribe to approve a home for foster/adoptive placement of an Indian child and to obtain summary criminal history information from the DOJ for the purpose of approving a tribal home.

SB 1460 provided that federally recognized tribes may approve homes for placement of foster children and that tribal agencies – meaning entities “*designated* by a federally recognized tribe as authorized to approve homes consistent” with the Act – may request from DOJ federal and state level summary criminal history information regarding prospective foster parents (WIC § 10553.12, subds. (a), (c), (d), emphasis added; see also Penal Code (PC), § 11105.08, subd. (a), (g)). SB 1460 did not expressly address circumstances where a federally recognized tribe or tribal agency elects not to perform the criminal history search permitted under the statute.

Conducting Criminal Background Checks

Federally recognized tribes that decide to approve a home for foster/adoptive placement of an Indian child have three (3) options for running criminal background checks of a tribal home.

Option 1

Pursuant to PC section 11105.08, they may conduct the criminal background check themselves.

Option 2

Pursuant to PC section 11105.08, the federally recognized tribe may designate another entity to conduct the criminal background check. If a federally recognized tribe chooses to designate a county to conduct the criminal background check under PC section 11105.08, either the tribe or the county must submit a request to the DOJ at oriquestions@doj.ca.gov, if the county has not already been approved to submit criminal record background checks under PC section 11105.08. The request must include the following information:

- County Name
- ORI Number
- Request to add applicant type: TRIBAL HOME PC 11105.08
- Name of federally recognized tribe
- Contact information for the tribe including the contact name, email, and phone number
- If the county is submitting the request on behalf of the tribe, the tribal contact must be copied on the email.
- Optional: The county may also include a request for a separate mail code if the county has a separate unit processing background checks for prospective tribal homes.

The DOJ will review the request to ensure all necessary information has been provided. Once the DOJ completes its review, the county will receive a confirmation email from the DOJ, with a copy to the tribal contact, informing them that the new applicant type is available for use. The live scan operator will then be able to choose "**TRIBAL HOME PC 11105.08**" from the drop-down menu for the county.

Option 3

In accordance with HSC sections 1522 and 1522.1, the DSS or county may conduct the criminal background check for the tribal home, as they did prior to the passage of SB 1460.

The enactment of PC section 11105.08 did not relieve counties of their responsibility to comply with HSC sections 1522 and 1522.1, rather, it identified an additional group (federally recognized tribes) with authorization to conduct criminal background checks for tribal homes. Should tribes have a need for approval of a home for foster/adoptive placement of an Indian child, counties should continue to assist in conducting the criminal background check as required. In these circumstances, counties conducting the criminal background check for tribal home placement may do so using the applicant type "**RESRCE FAM PER 16519.5 WI**," or as otherwise directed by the DSS. The "**RESRCE FAM PER 16519.5 WI**" applicant type is the county's authority to run background checks before placing

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any child in a foster/adoptive home, as required by HSC section 1522 and WIC section 16519.5.

For questions about this bulletin, contact the DOJ at oriquestions@doj.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Dominic", with a long horizontal flourish extending to the right.

JOE DOMINIC, Chief/CIO
California Justice Information Services Division

For ROB BONTA
Attorney General