

The California Department of Social Services (CDSS)
Tribal Consultation Policy (TCP)
Approved by CDSS Executive Leadership, Effective June 6, 2017

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1. PURPOSE:

The mission of the CDSS is to serve, aid and protect needy and vulnerable children and adults in ways that strengthen and preserve families, encourage personal responsibility and foster independence. The CDSS provides administration and oversight of programs that affect nearly three million of California's most vulnerable residents and is charged with implementation of federal legislation impacting Tribes and Indians, such as the Indian Child Welfare Act (ICWA), 25 U.S.C. §1901, et seq., codified into California law through Senate Bill (SB) 678. The purpose of this policy is to guide consultations between the CDSS and sovereign federally recognized Tribes in California on policies and procedures that affect Tribes and Indians in California, in recognition of statutory mandates and Federal and State Executive Directives to establish a formal government-to-government Tribal Consultation Policy (TCP).

2. SCOPE:

This policy applies to all Divisions of the CDSS and shall serve as a guide for Tribes to participate in Department and Division policy development to the greatest extent practicable and permitted by law.

3. PHILOSOPHY:

This Policy is based on the following foundations:

- a. Values and Principles: This Policy anticipates a deliberate inclusive participatory process that aims to create effective collaboration and collective informed decision-making. All parties in the process should promote respect, shared responsibility and an open and free exchange of information. Meaningful consultation begins at the earliest possible phases of a project or program planning and continues through each phase of development and implementation. This policy is anticipated to promote positive, achievable, durable outcomes and is to be conducted in a timely, respectful, and meaningful manner using open communication.
- b. Tribal Sovereignty: This Policy is not intended to waive or diminish any Tribal governmental rights, including treaty rights, sovereign immunities, or jurisdiction. Tribes exercise inherent sovereign powers over their members and territory with distinct governing systems. The CDSS recognizes that Tribal cultures are unique, with their own distinct history and traditions. The CDSS understands that Tribes are interested in CDSS policies or programs that may affect the Tribe, their members and the Native American population in California.
- c. Except to the extent already established by law, this Policy is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the CDSS or any CDSS representative. The CDSS does not waive any applicable privilege that it may hold, such as the CDSS' deliberative process privilege, including but not limited to the CDSS' confidential recommendations to the Administration on proposed legislation or budget proposals. This policy is not intended to create, and does not create, any rights or benefits, whether substantive or procedural, or enforceable at law or in equity, against the State of California or its agencies, departments, entities, officers, agents, or employees.

4. POLITICAL/LEGAL FOUNDATIONS:

1. President Clinton's Executive Order 13175, November 6, 2000;
2. President Bush's Presidential Memorandum, Government-to-Government Relationship with Tribal Governments, September 23, 2004;
3. United States (U.S.) Health and Human Services Tribal Consultation Policy (established in 2005, and amended in 2010);

4. SB 678, codification of ICWA into California law; 2006;
5. President Obama's Executive Memorandum "Tribal Consultation," November 5, 2009;
6. 42 U.S.C. 622, State Plans for Child Welfare Services require Tribal Consultation, 2009; and
7. California Gubernatorial Executive Order B-10-11, September 19, 2011, and subsequent development of the California Health and Human Services (CHHS) Tribal Consultation Policy

5. DEFINITIONS:

- a. Collaboration: Working together in a meaningful effort to create a positive outcome. Collaboration occurs with authorized representatives from each party who effectuate the policy objectives determined in the consultation described under the Process and Procedure section.
- b. Consultation: A formal process of government-to-government communication which emphasizes trust, respect, and shared responsibility. It is an equitable, open and free exchange of information and opinion among parties, with the goal of leading to mutual understanding, comprehension, and informed decision-making.
- c. Federally Recognized Tribe: Native American Tribe with whom the Federal Government maintains an official government-to-government relationship usually established by a federal treaty, statute, executive order, court order, or a federal administrative action. The Bureau of Indian Affairs maintains and regularly publishes the list of federally recognized Indian Tribes in the Federal Register.
- d. Indian Organizations: A group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians who serve and advocate concerns and issues impacting tribes and Indians in California. The CDSS does not participate in government-to-government consultation with these entities. The CDSS may communicate with these groups. While this interaction and collaboration with Indian organizations is important, it does not constitute Tribal consultation except pursuant to and within the express terms of a tribal resolution or letter from the Chairperson designating an organization as a Tribal Designee to represent the tribe in its consultation with CDSS.

- e. Indians: American Indians and Alaska Natives (AI/AN), also referred to as Native Americans, refers to any descendant of a tribe indigenous to the United States.
- f. Significant actions: “Significant actions” refer to policies or program activities that have Tribal implications, and (2) have substantial direct effects (a) on one or more Indian Tribe(s), or (b) on the relationship between the State Government and Indian Tribes, or (c) on the distribution of power and responsibilities between the State Government and Indian Tribes, or (3) has an effect on Indians in California.
- g. To the Extent Practicable and Permitted by Law: Refers to situations where the opportunity for consultation is limited because of constraints of time, budget, legal authority, or other situations beyond the control of the parties.
- h. Tribal Representative or Tribal Designee: The elected Tribal Chairperson or his/her designee by resolution or letter. The CDSS will use the contact list of Tribal Chairpersons maintained by the Governor’s Tribal Advisor and available on its website.
- i. Tribal Liaison: One or more staff designated by the CDSS to carry out responsibilities defined in Section 7 of this policy.

6. ESTABLISHMENT OF TRIBAL/STATE WORKGROUPS AND/OR TASKFORCES:

The need to develop or revise a policy and/or program that requires subject matter expertise may be identified by the CDSS or by a Tribe or Tribes. This provision allows for the establishment of workgroups or taskforces approved through tribal consultation that can advise, develop recommendations and/or provide expertise on particular technical, legal, regulatory or policy issues. This consultation policy is not intended to preclude collaborative relationships between the CDSS and Indian Tribes or Indian organizations outside of the processes described in this policy. The CDSS stakeholder engagement activities serve as forums to bring together state, county, tribal and American Indian community resources to help identify and address opportunities and key areas of concern that affect the wellbeing of Indians and Tribes in California. The feedback and recommendations received through such activities inform the parties on issues relevant to American Indians and Tribes and support the CDSS’ formal consultation with federally recognized Tribes in California.

7. TRIBAL LIAISON:

The Director shall designate a Departmental Tribal Liaison to act as the Director's representative in matters pertaining to this Policy. The Tribal Liaison shall be at the executive level and may be the Director or a designated representative of the CDSS executive team, and shall be responsible for ensuring that the CDSS programs are engaging with Tribes consistent with this Policy. A Tribal Liaison who is a designated representative of the CDSS executive team may from time to time delegate Liaison responsibilities internal to the CDSS' functions to designated CDSS staff. The Tribal Liaison shall periodically update the Director and CHHS Secretary on tribal consultation efforts and the implementation of this Policy. Updating may include the scope of consultation efforts and their effectiveness, and the topics on which Tribes were consulted.

8. AREAS FOR CONSULTATION:

It is the CDSS policy that, to the extent practicable and permitted by law, consultation with Indian Tribes shall occur before any significant action is taken.

9. CDSS BUDGET FORMULATION:

Tribes can submit to the CDSS any concerns and requests regarding budget formulation, however, state confidentiality requirements associated with the budget development process may exclude the CDSS from consulting on budget items that will affect Tribes.

10. PROCESS AND PROCEDURE:

a. Outreach

The CDSS shall consult with Tribes and make relevant information available at the earliest possible time, and allow a reasonable opportunity for Tribes to respond and substantively engage in planning, program, regulatory, or other processes.

The CDSS shall maintain a tribal affairs webpage on its website that will include the following:

- The name and contact information of the Department's Tribal Liaison.
- The Department's current Tribal Consultation Policy.

Instructions for how to subscribe to department list servers, when available, for various programs and topics that may be of interest to Tribes and other American Indians.

b. Initiating Consultation

A significant action may be identified by CDSS and/or an Indian Tribe(s). Tribes may initiate consultation with the CDSS by contacting the Tribal Liaison, and in the absence, thereof, the Director. The Tribal Liaison may be reached via email at Tribal.Consultation@dss.ca.gov. The CDSS may initiate consultation by reaching out to tribes using the list of Tribal Chairpersons maintained by the Governor's Tribal Advisor and available on its website. To facilitate the Tribal Liaison's oversight responsibilities and reporting responsibility as specified in Section 7, a Notice of the CDSS/Tribal Consultation shall be completed when a consultation is initiated and forwarded to the Liaison within 14 days.

c. Consultations

Consultation mechanisms include but are not limited to one or more of the following:

- Mailings
- E-mail
- Teleconference
- Face-to-face meetings between the CDSS and Indian Tribes
- Roundtables
- The CDSS Tribal Consultation Summit
- Other regular or special CDSS consultation sessions
- Tribally approved and constituted workgroups or taskforces

Efforts shall be made by the parties to define and document the complexity, time constraints, and implications of the issues upon which consultation occurs.

The CDSS will communicate and collaborate with Tribes in a manner that is timely and respectful. Internal processes and timelines will be clearly identified; relevant staff will be available to explain processes and timelines, as needed.

d. Timely Notice

The CDSS recognizes that Tribes may be located in diverse or remote regions throughout California thereby necessitating the need for clear and adequate notice prior to consultation or meetings that may require travel by tribal representatives. Contact with Tribes shall be initiated as early and as promptly as possible to provide ample time for Tribes to have substantive input. Tribal requests for additional time to prepare for or attend a consultation session or in-person meeting will be honored whenever possible.

e. Tribal Consultation Summit

The CDSS will periodically consult with the Governor's Tribal Advisor to determine whether to hold a Tribal Consultation Summit meeting with Tribal leaders to provide general updates on CDSS activities even if there are no currently pending matters that are in the consultation process. The Governor's Tribal Advisor shall be consulted to secure guidance on the purpose, process for planning and running of the Summit. The CDSS will have participants at the Summit who have decision-making authority.

11. PARTIES TO CONSULTATION:

The government-to-government relationship between the state and federally recognized Indian Tribes dictates that the principle focus for CDSS consultation is Indian Tribes, individually or collectively. Tribal representatives of all federally recognized Tribes within California will be invited to the Summit. The results of these meetings are intended to help guide the CDSS on policy and program development.

12. CONFLICT RESOLUTION:

Tribes and the CDSS may not always agree. A Tribe may invoke the conflict resolution process by filing a written Notice of Conflict Impasse with the Tribal Liaison. Any Notice of Conflict Impasse shall be filed no later than 60 days after the impasse is identified. Thereafter, the Tribal Liaison shall offer mediation with the Governor's Tribal Advisor. The goal will be to accomplish the following:

1. Clarify all aspects of the issue(s) over which there is disagreement;
2. Explore the alternative position(s) available;
3. Clarify the reasons over positions taken; and

4. Attempt to reach a consensus that does not conflict with goals already established via the consultation process or that conflict with the CDSS' responsibilities and duties as dictated by federal or state laws and regulations.

Nothing in this policy is intended to prevent a Tribe from seeking otherwise available options for having alternative positions and options evaluated on issues over which there is dispute.

13. PERFORMANCE, TRANSPARENCY, EVALUATION AND REPORTING:

The CDSS Tribal Consultation Records shall be posted on the CDSS' Tribal Affairs website. Additionally, reports shall be produced following each consultation and, when a Summit has occurred, after each Summit, and will include a description of the issue(s) that were the subject of consultation, specific recommendations and any follow-up. The CDSS shall solicit Tribal Reports on satisfaction with the consultations and Summits, what Tribes felt was meaningful, and what could be improved in future meetings. A Tribe may submit a report at the consultation or Summit, or no more than 60 days of its conclusion. Tribal feedback will be included in dissemination of meeting content, with identities and all other confidential information protected upon request. The Summit reports shall be posted on the CDSS' tribal affairs website.

14. ADOPTION, AMENDMENTS AND REVISIONS

This Tribal Consultation Policy shall become effective upon approval by the CDSS executive leadership, and the date of said approval shall be noted in the Title of the document. Any parties to consultation may propose, in writing or during the Summit, amendments to this Tribal Consultation Policy. Proposed amendments shall be considered and adopted by the CDSS executive leadership after consultation and full consideration in light of the spirit and provisions of this policy. The CDSS retains the right to not agree to amendments that would impede the duties and obligations for which it is responsible under laws and regulations applicable to its work. In addition to this process, the CDSS and Tribal representatives formally shall review and, if necessary, revise the Tribal Consultation Policy a minimum of once every five years.