

SUBCHAPTER 4 PROCEDURES FOR INDEPENDENT ADOPTIONS

Article 3 Prerequisites To Consent

35095 GENERAL PREREQUISITES TO CONSENT 35095

- (a) The agency shall interview the birth parent as required by Family Code Section 8808.
- (b) Prior to accepting a consent to adoption or a waiver of right to revoke consent, the agency shall:
 - (1) Obtain information from the birth parents regarding the child's background, the birth parents' reasons for choosing adoption for the child, and the birth parents' attitude toward the adoption.
 - (A) Request the birth parents to provide medical and family background information on the AD 67 and the AD 67A.
 - (B) Take the consent to adoption in accordance with Section 35375 if the child who is the subject of the consent to adoption comes within the provisions of the ICWA.
 - (C) Document in the adoption case record and court report the name of any report, document, or information described in Section 35000(m)(2) that the agency was unable to obtain and the reasons that the information is not included.
 - 1. The agency shall identify on the AD 512A the name of any report, document, or information described in Section 35000(m)(2) that was not obtained and the reason(s) that the information is not included.
 - (2) Obtain written authorization from the birth parent for the release of medical information.
 - (3) Obtain written authorization from the birth parent for the petitioners to obtain medical care and/or treatment for the child.
 - (4) Verify the marriages and dissolutions of marriage of the birth mother as required by Section 35023(b)(5).
 - (5) Interview the petitioners unless:
 - (A) The birth parent has requested that he or she be interviewed within 10 working days as provided in Family Code Section 8814.5; and
 - (B) The agency's schedule precludes interviewing the petitioners prior to the interview with the birth parent.

35095	GENERAL PREREQUISITES TO CONSENT (Continued)	35095
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- (6) Determine that the birth parent voluntarily chose to place the child with the petitioners for the purpose of adoption pursuant to Family Code Section 8801.
 - (A) The agency shall document in the court report whether the birth parent voluntarily selected the petitioners and placed the child pursuant to Family Code Section 8801 which is located at Section 35094.3(a)(7)(A).
 - (B) If the agency determines that the birth parent has not demonstrated substantially correct knowledge of all elements of personal knowledge regarding the petitioners, a consent to the adoption cannot be taken since an independent adoptive placement as defined in law has not occurred.
 - (C) The agency representative shall advise the birth parent when the placement does not satisfy the statutory definition of an "adoptive placement".
 - (D) The agency shall immediately report to the court if the adoptive placement is not made in accordance with Family Code Sections 8609, 8801 or 8801.3.
 - (7) Determine whether the child and the adoptive family can benefit from adoption.
 - (8) Provide the parent with an explanation of information contained within the Statement of Understanding form prescribed by the Department.
 - (9) Obtain the birth parent's signature on the Statement of Understanding form after the parent has:
 - (A) Affirmed his or her understanding of the consent process by reading and initialing each explanatory statement on the Statement of Understanding form.
 - (10) Sign the Statement of Understanding form certifying that the parent's signature has been properly witnessed.
 - (11) The Statement of Understanding for the parent whose child is not subject to the Indian Child Welfare Act (ICWA) is Section 35095.1 and the Statement of Understanding for the parent whose child is subject to the ICWA is Section 35095.2.
- (c) The agency is not required to repeat any of the duties mandated by Section 35095(b)(1), (2), (3), (8), (9), (10), or (11) if the duties have been performed by an adoption service provider and the agency has received documentation of the outcome of the adoption service provider's work.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code; Sections 8608(a) and 8621, Family Code. Reference: Sections 8608, 8609, 8801, 8801.3, 8801.7, 8806, 8807, 8808, 8814, 8814.5 and 8817, Family Code.

35095.1 STATEMENT OF UNDERSTANDING FOR THE PARENT WHOSE CHILD IS NOT SUBJECT TO THE ICWA (Continued) 35095.1

2. When the consent becomes irrevocable, custody of the child may be regained by the birth parent only if the prospective adoptive parents agree to withdraw their petition for adoption or the court denies the petition.
- (I) The parent remains legally responsible for the child until the adoption is granted by the court. The agency will notify the parent if the child is not adopted by the petitioners to determine the parent's further plans for the child. The parent must keep the agency informed of his or her address.
- (J) The parent has received enough information about the petitioners and about the child's adjustment in the petitioners' family and wishes to proceed with signing the consent to adoption.
- (K) After the court grants the adoption, the parent will no longer be the child's legal parent, which means:
1. The parent will no longer be responsible for the care of the child.
 2. The petitioners will be the legal parents of the child and will be legally responsible for caring for the child.
 3. The parent will no longer have any right to the custody, services or earnings of the child.
- (L) The agency is required to give the parent all known information about the status of the child's adoption including the approximate date the adoption was completed and if the adoption was not completed or was vacated, for any reason, whether adoptive placement of the child is again being considered.
- (M) Adoption terminates any inheritance from the parents or blood relatives to the child unless they make specific provision for the child by will or by trust; the child legally inherits from his or her adoptive family.
- (N) After the child has been legally adopted, the parent cannot reclaim the child.
- (O) The agency cannot release any identifying information about the parent unless:
1. The welfare of the child requires the release of information to certain agencies as specified in law relating to the adoption petition, or
 2. The adult adoptee and birth parent both sign written consents to arrange contact between these persons in accordance with Family Code Section 9204, or

35095.1	STATEMENT OF UNDERSTANDING FOR THE PARENT WHOSE CHILD IS NOT SUBJECT TO THE ICWA (Continued)	35095.1
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3. The adoptee who has reached the age of 21 has requested the identity of his or her birth parent and his or her most current address as indicated in the agency's records if the birth parent has indicated consent to the disclosure in writing in accordance with Family Code Section 9203, or
 4. The birth parent of an adopted person who has reached the age of 21 has requested the adopted name of the adoptee and most current address as shown in the agency's records if the adult adoptee has indicated consent to the disclosure in writing in accordance with Family Code Section 9203, or
 5. The adoptive parent of an adopted person under 21 years of age has requested the identity of the birth parent and his or her most current address as shown in the agency's records if there is a finding by the agency a necessity or other extraordinary circumstance justifies the disclosure in accordance with Family Code Section 9203.
- (P) The parent will be able, at any time, to add information about him or herself to the agency's adoption record.
- (Q) The law permits the court to release identifying information from the court adoption file after considering the reasons for the request.
- (R) Within five years of the granting of the adoption in court the parent shall have the right to petition the court to set aside the adoption if the consent is obtained through fraud or duress.
- (S) The parent has considered the reasons for consenting to or not consenting to the adoption of the child and has decided that to consent to adoption of the child by the petitioners is in the best interest of the child.
- (T) The Statement of Understanding for the parent who gave physical custody of the child not subject to the provisions of the ICWA but who did not place the child for adoption as provided by Sections 35094.2 and 35094.3 is the AD 887.
- (2) For the parent who intends to place the child for independent adoption as provided by Sections 35094.2 and 35094.3:
- (A) The parent wants to give his or her child permanently to the prospective adoptive parents for adoption.

35095.1	STATEMENT OF UNDERSTANDING FOR THE PARENT WHOSE CHILD IS NOT SUBJECT TO THE ICWA (Continued)	35095.1
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- (B) The parent has chosen the prospective adoptive parents to be adoptive parents based on the parent's personal knowledge pursuant to Family Code Section 8801.
- (C) The parent has the right to seek legal counsel to assist in the Independent Adoption process, and the prospective adoptive parents may be required to pay the cost, up to \$500, of such legal counsel, unless a higher fee is agreed to by the parties.
- (D) The parent may talk about the plan to place the child for adoption with other professionals and with family and friends.
- (E) The parent knows there are other services to assist with finance, employment, education, housing, temporary child care and health matters if uncertain about consenting to the adoption.
 - 1. The adoption service provider will make a referral to the appropriate resource.
- (F) The parent has a right to a minimum of three separate counseling sessions with an adoption service provider or a licensed psychotherapist which, at the birth parent's request, shall be paid for by the prospective adoptive parent.
- (G) If the parent does not wish to place the child for adoption, the parent should not sign the Independent Adoption Placement Agreement.
- (H) The agreement will automatically become an irrevocable consent to adoption on the 91st day after it is signed or when the parent signs a waiver of the right to revoke consent, whichever occurs first.
 - 1. If the parent changes his or her mind after signing the adoption placement agreement and wishes to revoke the agreement, the parent must sign and deliver to the department or delegated county adoption agency a written statement revoking the agreement and requesting that the child be returned. Such action may not be taken after the 90th day after signing the agreement or after signing a waiver of the right to revoke consent, whichever occurs first.
 - 2. When the consent becomes irrevocable, custody of the child may be regained by the birth parent only if the prospective adoptive parents agree to withdraw their petition for adoption or the court denies the petition.

35095.2 STATEMENT OF UNDERSTANDING FOR THE PARENT WHOSE CHILD IS SUBJECT TO THE ICWA (Continued) 35095.2

- (G) The parent may talk about the plan to place the child with other professionals and with family and friends.
- (H) The parent knows there are other services to assist with finance, employment, education, housing, temporary child care and health matters if uncertain about consenting to the adoption.
1. The agency will make a referral to the appropriate resource.
- (I) If the parent does not wish to consent to the adoption, the parent may sign a AD 20 or write a letter to the adoption agency, and the adoption agency will report to the court that the parent does not want the child adopted by the petitioners.
- (J) If the parent does not sign the consent to adoption, the parent may request that the child be returned. If the petitioners do not return the child, the parent may ask the court for the return of the child. The parent will probably need legal help to do so.
- (K) If the parent should change his or her mind about the adoption after signing the consent to adoption, the parent may withdraw the consent before the adoption is granted by the court and the child will be returned to the parent.
- (L) The parent remains legally responsible for the child until the adoption is granted by the court. The agency will notify the parent if the child is not adopted by the petitioners to determine the parent's further plans for the child. The parent must keep the agency informed of his or her address.
- (M) The parent has received enough information about the petitioners and about the child's adjustment in the petitioners' family and wishes to proceed with signing the consent to adoption.
- (N) After the court grants the adoption the parent will no longer be the child's legal parent, which means:
1. The parent will no longer be responsible for the care of the child.
 2. The petitioners will be the legal parents and will be legally responsible for caring for the child.
 3. The parent will no longer have any right to the custody, services or earnings of the child.

35095.2 STATEMENT OF UNDERSTANDING FOR THE PARENT WHOSE CHILD IS SUBJECT TO THE ICWA (Continued) 35095.2

1. The adoption of an Indian child terminates inheritance from the biological parents or blood relatives to the child; however, any rights or benefits the child has or may be eligible for as a result of his or her status as an Indian are unaffected. See Subchapter 8.
- (V) After the child has been legally adopted, the parent cannot reclaim the child.
- (W) The agency cannot release any identifying information about the parent unless:
1. The welfare of the child requires the release of information to certain agencies as specified in law relating to the adoption petition, or
 2. The adult adoptee and birth parent both sign written consents to arrange contact between these persons in accordance with Family Code Section 9204, or
 3. The adoptee who has reached the age of 21 has requested the identity of his or her birth parent and his or her most current address as indicated in the agency's records if the birth parent has indicated consent to the disclosure in writing in accordance with Family Code Section 9203, or
 4. The birth parent of an adopted person who has reached the age of 21 has requested the adopted name of the adoptee and most current address as shown in the agency's records if the adult adoptee has indicated consent to the disclosure in writing in accordance with Family Code Section 9203, or
 5. The adoptive parent of an adopted person under 21 years of age has requested the identity of the birth parent and his or her most current address as shown in the agency's records if there is a finding by the agency a necessity or other extraordinary circumstance justifies the disclosure in accordance with Family Code Section 9203.
- (X) Information regarding the adoption may be released as follows:
1. The adopted child who has reached age 18 may request and receive from the court which granted the adoption information regarding the tribal affiliation of the birth parent and any other information necessary to protect any rights the adopted child may have with regard to his or her tribal relationship.

35095.2	STATEMENT OF UNDERSTANDING FOR THE PARENT WHOSE CHILD IS SUBJECT TO THE ICWA (Continued)	35095.2
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2. The court granting the adoption will release to the Secretary of the Interior information concerning the adoption and the child, the adoptive parents, the birth parents, and the agency having information concerning the adoptive placement. The parent who desires anonymity must file an affidavit requesting anonymity with the court. The ICWA requires the Secretary of the Interior to ensure that confidentiality will be maintained; however, tribes do not always maintain confidentiality if they know of the adoption.

 3. At the request of the adopted child over age 18, the adoptive parents or the Indian tribe, the Secretary of the Interior will release the information provided by the court to the extent necessary to enroll the adopted person in the tribe or to determine any rights or benefits associated with tribal membership. If the parent submitted an affidavit to the court requesting anonymity, the Secretary will certify, where information warrants, that the child is entitled to enrollment rather than release the information.

 4. Upon request of the Bureau of Indian Affairs or an adopted child who has reached age 18, the department will make a copy of all documents pertaining to the degree of Indian blood and tribal enrollment available to the requestor.
- (Y) The parent will be able, at any time, to add information about him or herself to the agency's adoption records.
- (Z) The law permits the court to release identifying information from the court adoption file after considering the reasons for the request.
- (AA) Within five years of the granting of the adoption in court the parent shall have the right to petition the court to set aside the adoption if the consent is obtained through fraud or duress.
- (BB) The parent may petition the court to invalidate any action terminating parental rights if termination procedures did not comply with the ICWA.
- (CC) The parent has considered the reasons for consenting to or not consenting to the adoption of the child and has decided that to consent to adoption of the child by the petitioners is in the best interest of the child.
- (DD) The Statement of Understanding for the parent who gave physical custody of the child subject to the provisions of the ICWA is the AD 900.

35095.2	STATEMENT OF UNDERSTANDING FOR THE PARENT WHOSE CHILD IS SUBJECT TO THE ICWA (Continued)	35095.2
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- (2) For the parent who intends to place the Indian child for independent adoption as provided by Sections 35094.1 and 35094.2:
 - (A) The parent wants to give his child permanently to the prospective adoptive parents for adoption.
 - (B) The parent has chosen the prospective adoptive parents to be adoptive parents based on the parent's personal knowledge pursuant to Family Code Section 8801.
 - (C) That because the child has been determined to be an Indian child the requirements of the Indian Child Welfare Act (ICWA) will apply to the signing of the adoption placement agreement and the adoption of the child.
 - (D) According to the ICWA, the best place for the child to live if he cannot be with the parent would be with a member of his extended family. The next choice would be other members of the child's tribe. The third choice would be with another Indian family. If the parent does not wish to follow any of these placement choices, he or she must tell the court. The court will make the final decision as to whether this placement preference order will be changed.
 - (E) The adoption placement agreement shall be signed before a judge of the Superior Court in California, or before a court of competent jurisdiction if signed outside the state.
 - (F) The parent has the right to seek legal counsel to assist in the Independent Adoption process, and the prospective adoptive parents may be required to pay the cost, up to \$500, of such legal counsel, unless a higher fee is agreed to by the parties.
 - (G) The parent may talk about the plan to place the child for adoption with other professionals and with family and friends.
 - (H) The parent knows there are other services to assist with finance, employment, education, housing, temporary child care, and health matters if uncertain about consenting to the adoption.
 - 1. The adoption service provider will make a referral to the appropriate resource.
 - (I) The parent has a right to a minimum of three separate counseling sessions with an adoption service provider or a licensed psychotherapist which, at the parent's request, will be paid for by the prospective adoptive parent.

35095.2 **STATEMENT OF UNDERSTANDING FOR THE PARENT WHOSE CHILD IS SUBJECT TO THE ICWA** (Continued) **35095.2**

- (4) For the alleged natural father:
 - (A) He has carefully considered the reasons for consenting to the adoption of the child by the petitioner.
 - (B) The statements required by subsections 35095.2(b)(1)(C), (D) and (E).
 - (C) He has been told why he is considered to be the alleged natural father of the child and he can deny paternity, waive his rights to further notice of the adoption proceedings, sign a consent to adoption or file a petition to establish the father and child relationship.
 - (D) The statements required by subsections 35095.2(b)(1)(F) and (G).
 - (E) He can take court action to establish the father and child relationship and request the right to physical custody of the child.
 - 1. He has the right to seek legal counsel to assist in establishing the father and child relationship and in obtaining the right to physical custody of the child and the adoption agency can refer him to public legal assistance in the community.
 - (F) He understands that if he does not sign the Statement of Understanding and consent to adoption, the petitioners can petition the court to terminate his parental rights.
 - 1. He has the right to look for a lawyer to help him argue against this; and
 - 2. The adoption agency can refer him to public legal help in his community.
 - (G) If he is successful in establishing the father and child relationship and obtaining the right to physical custody of the child he may obtain other services to assist with finance, employment, education, housing, temporary child care and health matters.
 - 1. The agency will make a referral to the appropriate resource.
 - (H) The statements required by subsections 35095.2(b)(1)(K), (L), (M), (N), (O), (P), (Q), (R), (S), (T), (U), (V), (W), (X), (Y), (Z), (AA), (BB) and (CC).
 - (I) The Statement of Understanding for the alleged natural father of a child subject to the provisions of the ICWA is the AD 900B.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code; and Sections 8621 and 9202, Family Code. Reference: Sections 1798.24(r), and 1798.24(s), Civil Code; Sections 6408 and 6408.5, Probate Code; and 25 USC Sections 1901, 1902, 1903, 1911, 1912, 1913, 1914, 1915, 1916, and 1917; Sections 3010, 7540, 7541, 7601, 7602, 7610, 7611, 7612, 7660, 7661, 7662, 7663, 7664, 7665, 8600, 8601, 8604, 8605, 8606, 8608, 8616, 8617, 8618, 8619, 8800, 8801, 8801.3, 8801.5, 8804, 8808, 8813, 8814, 8815, 8817, 8818, 9100, 9200, 9201, 9202, 9203, 9204, 9205, and 9206, Family Code.

35097 DETERMINATION OF PARENT'S ABILITY TO UNDERSTAND CONTENT, NATURE AND EFFECT OF CONSENT 35097

- (a) The agency shall determine that the consenting parent has the ability to understand the nature, content, and effect of signing a consent to adoption.
 - (1) If the agency determines that the parent may not have the ability to understand the content, nature, and effect of signing a consent to adoption, the agency shall refer the parent to a licensed physician or to a licensed clinical psychologist for an evaluation of the parent's ability to so understand.
 - (A) The agency shall accept the consent to adoption only after the evaluation establishes that the parent has the ability to understand the nature, content, and effect of signing a consent to adoption.

NOTE: Authority cited: Section 8621, Family Code; and Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 8806 and 8807, Family Code.

35099 ACCEPTING MOTHER'S CONSENT TO ADOPTION OF NEWBORN 35099

- (a) (Reserved)

HANDBOOK BEGINS HERE

- (a) Refer to Subchapter 8 for additional procedures for the child subject to the provisions of the ICWA.

HANDBOOK ENDS HERE

- (b) The agency shall accept the mother's consent to the adoption of a newborn only after she has been medically discharged from the hospital.
 - (1) In those cases in which the birth mother is hospitalized more than five days after the birth of the child, the agency shall accept the mother's consent only after obtaining a written statement from the attending physician that the birth mother is competent to consent to the adoption of the child.

NOTE: Authority cited: Section 8621, Family Code; and Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 8806 and 8814, Family Code; and 25 USC 1901 et seq.

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HANDBOOK CONTINUES

- (2) The consent becomes irrevocable on the 91st day after it is signed unless the parent waives the right to revoke the consent before the 90 days expire. However, parental rights to the child are not terminated until the court issues an order for adoption or termination of parental rights.
 - (A) The first day of the 90-day period is the day the consent is signed.

HANDBOOK ENDS HERE

- (d) The agency shall ask the birth mother to identify any possible fathers of the child and to provide information regarding their whereabouts.
 - (1) The agency shall attempt to contact all identified fathers and interview them.
 - (A) The agency shall obtain information about an identified father's family background, social history, and any medical information regarding his hereditary and genetic diseases or disabilities, if any, and shall complete the AD 67.
- (e) The child's presumed father may sign either the adoption placement agreement if he and the birth mother are placing the child for adoption or a consent form if he is not placing the child for adoption but agrees to the adoptive placement.

HANDBOOK BEGINS HERE

- (1) In addition to the consents listed under Section 35108(c)(2), the presumed father who denies he is the natural father may also sign one of the following consents:
 - (A) The AD 165.
 - (B) The AD 166.
 - (C) The AD 4336.
- (2) The adoption placement agreement and the consent become irrevocable on the 91st day after either is signed unless the parent waives the right to revoke the consent before the 90 days expire. However, parental rights to the child are not terminated until the court issues an order for adoption or a termination of parental rights.
 - (A) The first day of the 90-day period is the day the consent is signed.

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35108 FREEING A CHILD FOR ADOPTION (Continued) 35108

- (3) A man who completes a voluntary declaration of paternity pursuant to Family Code Sections 7573 and 7574 or is identified on the child's birth certificate after January 1, 1997 is considered to be a presumed father and his parental rights to the child shall be terminated as those of a presumed father.
- (4) A conclusively presumed father is defined at Family Code Section 7540, 7541, and 7576.
- (5) A man is rebuttably presumed to be the natural father of the child if he meets the criteria at Family Code Section 7577 or any of the criteria of Family Code Section 7611.
- (f) If the child's presumed father does not sign an adoption placement agreement or a consent form, the agency shall request the petitioners or their attorney to make arrangements to have his parental rights terminated.
- (g) If the birth mother is unable to identify the child's alleged natural father or determine his whereabouts, the agency shall request the petitioners or their attorney to make arrangements to terminate the parental rights of the alleged natural father pursuant to Family Code Section 7662.
- (h) The agency shall request the petitioners or their attorney to serve a written notice on any identified alleged natural father, alleging him to be the father of a child to be adopted and informing him that he may:
 - (1) Before the birth of the child,
 - (A) Waive further notice of the adoption proceeding by signing an AD 590, or
 - (B) Deny paternity by signing an AD 588.
 - (2) After the birth of the child,
 - (A) Waive further notice of the adoption proceeding by signing an AD 590, or
 - (B) Deny paternity by signing an AD 588, or
 - (C) Consent to the adoption by signing an AD 594, or
 - (D) Refuse to consent to the adoption by signing an AD 20B, or

35111 PROCEDURES FOR ACCEPTING OUT-OF-STATE CONSENTS NOT INITIATED BY THE AGENCY (Continued) 35111

- (3) When the child is not subject to the Indian Child Welfare Act, the following consent documents shall be used for taking the out-of-state consent of:
 - (A) A mother or presumed father not denying paternity: AD 1C.
 - (B) A mother or presumed father not denying paternity and in the armed forces: AD 1F.
 - (C) A presumed father denying paternity: AD 166.
 - (D) An alleged father not denying paternity in the armed forces: AD 842.
 - (E) An alleged father not denying paternity: AD 594.
 - (F) An alleged father denying paternity: AD 588.
 - (G) An alleged father waiving right to further notice: AD 590.
- (4) When the child is subject to the Indian Child Welfare Act, the following consent documents shall be used for taking the out-of-state consent of:
 - (A) A mother or presumed father not denying paternity: AD 859.
 - (B) A presumed father denying paternity: AD 860.
 - (C) An alleged father not denying paternity: AD 861.
- (5) The parent has signed the Statement of Understanding form after having:
 - (A) Affirmed his or her understanding of the consent process by reading and initialing each explanatory statement on the Statement of Understanding form.
- (6) The signature on the Statement of Understanding form has been notarized.
- (7) The Statement of Understanding for the parent whose child is not subject to the Indian Child Welfare Act (ICWA) is Section 35095.1 and the Statement of Understanding for the parent whose child is subject to the ICWA is Section 35095.2.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code and Section 8621, Family Code. Reference: Section 8814, Family Code; and 25 USC 1901 et seq.

35113	PROCEDURES FOR ACCEPTING OUT-OF-STATE CONSENTS WHICH ARE INITIATED BY THE AGENCY (Continued)	35113
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HANDBOOK CONTINUES

- (E) If the request for service is refused or unreasonably delayed, the out-of-state agency should be requested to provide the names of qualified agencies or practitioners to which the adoptive family may be referred for services.

HANDBOOK ENDS HERE

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code and Section 8621, Family Code. Reference: Section 10553(e), Welfare and Institutions Code; Sections 8806 and 8814, Family Code; and 25 USC 1901 et seq.

35115	COPY OF SIGNED CONSENT TO PARENT AND/OR ATTORNEY OF RECORD	35115
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- (a) The agency shall give the consenting parent a copy of the completed and signed consent to adoption.
- (1) The agency representative shall send within seven days a copy of the signed consent to adoption to the attorney of record in the adoption action.
- (A) The copy of the signed consent shall be sent to the petitioners if they are not represented by legal counsel.

NOTE: Authority cited: Section 8621, Family Code; and Sections 10553 and 10554, Welfare and Institutions Code. Reference: Section 10553(e), Welfare and Institutions Code; and Sections 8806 and 8814, Family Code.

35117	INFORMATION TO THE CONSENTING PARENT REGARDING THE STATUS OF THE CHILD'S ADOPTION	35117
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- (a) At the time of signing the consent to adoption, the agency shall advise the consenting parent, verbally and in writing, of the provisions of Family Code Section 8813.

NOTE: Authority cited: Section 8621, Family Code; and Sections 10553 and 10554, Welfare and Institutions Code. Reference: Section 8813, Family Code.

35119	RESERVED	35119
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35121 ADDITIONAL REQUIREMENTS FOR ACCEPTING CONSENT 35121

- (a) At the time of accepting the consent to adoption, the agency shall:
- (1) Inform the birth parent of the child's adjustment with the petitioners and of the suitability of the petitioners to be adoptive parents to the child.
 - (2) Inform the birth parents that the law provides for identifying information to be released to adoptees and birth parents when certain conditions are met.
 - (3) Provide the birth parents with a copy of the Adoptions Information Act Statement pursuant to Family Code Section 8818.

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- (A) Form AD 908 is for the birth parents.
- (B) Form AD 4310 is for the prospective adoptive parents.

HANDBOOK ENDS HERE

- (4) In the event the adoption is not finalized, legal responsibility for the child remains with the birth parents and they must either resume care of the child or make an alternative plan such as choosing other adoptive parents or electing to relinquish the child to a licensed adoption agency.
 - (A) If the agency is unable to locate the birth parent, the agency shall accept the commitment of the child under Family Code Section 8805.

NOTE: Authority cited: Section 8621, Family Code; and Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 8805, 8813, and 8818, Family Code.

35122	REVOCAION OF CONSENT AND WAIVER OF RIGHT TO REVOKE CONSENT	35122
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- (a) Revocation of a consent to adoption, including an adoption placement agreement, and waiver of the right to revoke consent are governed by Family Code Sections 8801.7, 8814.5, and 8815.
- (b) The following additional procedures shall be followed if the birth parent wishes to revoke consent:
 - (1) The written statement to revoke consent may be made on the AD 928 form or by any other written statement.
 - (2) If requested, the agency shall assist the birth mother or presumed father in obtaining the return of the child if such assistance is not being given by an adoption service provider.
 - (3) The agency shall inform the alleged natural father who revokes his consent that he must take court action to establish the father and child relationship before seeking return of the child and that he has the right to seek legal counsel.
- (c) The following additional procedures shall be followed if the birth parent wishes to waive his or her right to revoke consent:
 - (1) The interview(s) with the birth parent shall include the material required by Section 35095.
 - (2) The waiver of the right to revoke consent shall be made on the AD 929.
 - (3) A birth parent who did not place the child for adoption as described in Section 35094.2 and who signs a consent to adoption may sign a waiver of right to revoke consent at the same time he or she signs the consent to adoption.
 - (4) A parent of an Indian child may not waive his or her right to revoke consent.

NOTE: Authority cited: Section 8621, Family Code. Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 7630, 8801.7, 8808, 8814, 8814.5, 8815, Family Code; 25 USC 1913.

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SUBCHAPTER 4 PROCEDURES FOR INDEPENDENT ADOPTIONS**Article 5 Finalization of Adoption****35123 COMPLETING THE COURT REPORT AND FILING 35123**

- (a) The agency shall file the court report on an adoption petition within 180 days of the filing of the adoption petition unless an extension of time has been granted by the court.
- (1) The court report shall contain a summary of the facts disclosed by the study, an evaluation of such facts, and a recommendation as to the granting of the petition.
- (A) The information which is included in the report shall be current and shall be substantiated in the case record.
- (B) The court report shall include conclusions regarding the impact of any available record of the petitioner's criminal or violent behavior on his or her ability to provide appropriate parenting and a stable and safe home environment for the child.
1. The agency shall use the most current criminal record information in its preparation of the court report.
- (b) The agency shall file its court report immediately when there is a serious question regarding:
- (1) The suitability of the petitioners.
- (2) The care which the child is receiving.
- (3) The availability of the consent to adoption.
- (c) The agency shall document in the court report the basis for its concerns regarding the suitability of the petitioners or the care provided the child.
- (d) The agency shall include in the court report, as appropriate, a request to the court for direction regarding the situation giving rise to the agency's concern.
- (e) If the agency's court report includes a recommendation to deny the adoption petition, the agency shall follow the procedures outlined at Section 35125.
- (1) The agency shall appear at the hearing to represent the child pursuant to Family Code Section 8822.
- (f) The agency shall immediately file a court report when there is a serious question whether the placement of the child for purposes of adoption was made in accordance with provisions of Family Code Section 8801.3.

35123 **COMPLETING THE COURT REPORT AND FILING** **35123**
(Continued)

(g) The agency shall give the petitioners or their attorney a copy of the court report at the time it is filed.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code; and Section 8621, Family Code. Reference: Sections 8801.3, 8807, and 8811, Family Code.

SUBCHAPTER 4 PROCEDURES FOR INDEPENDENT ADOPTIONS

Article 6 Procedures in Denials and Commitments

35125	PLANNING FOR THE CHILD WHEN CONSENT IS WITHDRAWN, THE PETITION IS WITHDRAWN OR DISMISSED, OR THE AGENCY RECOMMENDS REMOVAL OF THE CHILD	35125
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- (a) (Reserved)

HANDBOOK BEGINS HERE

- (a) Refer to Subchapter 8 for additional procedures for the child subject to the provisions of the ICWA.

HANDBOOK ENDS HERE

- (b) The agency shall be responsible for reporting to the court and recommending a suitable plan for the care and custody of the child in accordance with Family Code Section 8815 when:
- (1) Prior to the entry of a final decree of adoption the birth parent indicates orally or in writing that he or she wishes to withdraw his or her consent.
 - (2) The petitioners' desire to withdraw or to secure dismissal of the adoption petition in accordance with Family Code Section 8804.
 - (3) The agency has determined that the best interests of the child would not be served through continued placement with the petitioners and has recommended removal of the child from the home of the petitioners.
 - (A) If the agency has a serious question concerning the care provided to the child or reasonably suspects the petitioners have endangered the physical or mental health of the child by abuse or neglect, the agency shall follow the procedures outlined at Section 35125.1.

NOTE: Authority cited: Section 8621, Family Code; and Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 8804, 8805, and 8815, Family Code; and 25 USC 1901 et seq.

35126	DENIAL OR DISMISSAL OF ADOPTION PETITION (Continued)	35126
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- (B) The agency's responsibility for the child shall be the same as for any other child accepted for assessment and adoptive planning.
- (C) Temporary and permanent plans developed by the agency shall require prior approval by the department.
- (D) Commitment of the child to the agency shall continue until the court terminates the commitment order.

NOTE: Authority cited: Section 8621, Family Code; and Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 8804, 8805, 8815, and 8918, Family Code; Section 1500, Health and Safety Code; Section 11166, Penal Code; and 25 USC 1901 et seq.

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