

**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.

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- (1) The content of Family Code Section 8808 is located at Section 35079(b)(5).

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- (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).

<b>35095</b>	<b>GENERAL PREREQUISITES TO CONSENT (Continued)</b>	<b>35095</b>
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- (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.

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- 1. Family Code Section 8814.5(a)(2), in pertinent part, states:

"... Within 10 working days of a request made after the department, the delegated county adoption agency, or the court has received a copy of the petition for the adoption and the names and addresses of the persons to be interviewed, the department, the delegated county adoption agency or the court shall interview, at the department or agency office, any birth parent requesting to be interviewed."

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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.

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1. Family Code Section 8609 states:  
  
    "(a) Any person who, or organization that, without holding a valid and unrevoked license to place children for adoption issued by the department, advertises in any periodical or newspaper, by radio, or other public medium, that he, she, or it will place children for adoption, or accept, supply, provide or obtain children for adoption, or that causes any advertisement to be published in or by any public medium soliciting, requesting, or asking for any child or children for adoption is guilty of a misdemeanor.  
  
    (b) Any person other than a birth parent, or any organization, association, or corporation that, without holding a valid and unrevoked license to place children for adoption issued by the department, places any child for adoption is guilty of a misdemeanor."
  
2. The content of Family Code Section 8801 is located at Section 35094.3(a)(7)(A).
  
3. The content of Family Code Section 8801.3 is located at Section 35094.3(b)(1).

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- (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.

**35095**            **GENERAL PREREQUISITES TO CONSENT** (Continued)                      **35095**

- (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**                      **35095.1**  
**CHILD IS NOT SUBJECT TO THE ICWA**

- (a) Reserved

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- (a) Refer to Section 35095.2 for the Statement of Understanding for the parent whose child is subject to the ICWA.

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- (b) The Statement of Understanding shall contain statements which summarize the following:
- (1) For the parent who gave physical custody of the child to the adoptive parents but who did not place the child for independent adoption:
- (A) The parent wants to give his child permanently to the petitioners for adoption.
- (B) The parent has chosen the petitioners to be adoptive parents based on the parent's personal knowledge pursuant to Family Code Section 8801.

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**HANDBOOK BEGINS HERE**

1. The content of Family Code Section 8801 is located at Section 35094.3(a)(7)(A).

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- (C) The parent has the right to seek legal counsel to assist in the Independent Adoption process, and the petitioners may be required to pay the cost, up to \$500, of such legal counsel, unless a higher fee is agreed to by the parties.

<b>35095.1</b>	<b>STATEMENT OF UNDERSTANDING FOR THE PARENT WHOSE CHILD IS NOT SUBJECT TO THE ICWA (Continued)</b>	<b>35095.1</b>
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- (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 agency will make a referral to the appropriate resource.
- (F) 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.
- (G) 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.
- (H) The consent 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 consent to adoption and wishes to revoke the consent to adoption, the parent must sign and deliver to the department or delegated county adoption agency a written statement revoking the consent and requesting that the child be returned. Such action may not be taken after the 90th day after signing the consent 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.
- (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.

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

- (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

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**HANDBOOK BEGINS HERE**

- (i) A partial quotation of Family Code Section 9204 is located at Section 35049(b)(4)(A).

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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







<b>35095.1</b>	<b>STATEMENT OF UNDERSTANDING FOR THE PARENT WHOSE CHILD IS NOT SUBJECT TO THE ICWA (Continued)</b>	<b>35095.1</b>
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- (4) For the alleged natural father:
  - (A) He has carefully considered the reasons for consenting to the adoption of the child by the petitioners.
  - (B) 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.
  - (C) The statements required by subsections 35095.1(b)(1)(C) and (D).
  - (D) 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.
  - (E) 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.
  - (F) 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.
  - (G) The statements required by subsections 35095.1(b)(1)(H), (I), (J), (K), (L), (M), (N), (O), (P), (Q), (R) and (S).
  - (H) The Statement of Understanding for alleged natural father of a child not subject to the provisions of the ICWA is the AD 887B.

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 Sections 3010, 7540, 7541, 7601, 7602, 7610, 7611, 7612, 7630, 7631, 7632, 7633, 7634, 7660, 7661, 7662, 7663, 7664, 7665, 8600, 8601, 8604, 8605, 8606, 8608, 8616, 8617, 8618, 8800, 8801, 8801.3, 8801.5, 8804, 8808, 8813, 8814, 8814.5, 8815, 8817, 8818, 9100, 9200, 9201, 9202, 9203, 9204, 9205, and 9206 Family Code.



<b>35095.2</b>	<b>STATEMENT OF UNDERSTANDING FOR THE PARENT WHOSE CHILD IS SUBJECT TO THE ICWA (Continued)</b>	<b>35095.2</b>
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- (E) The consent to adoption 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 petitioners 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 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.

<b>35095.2</b>	<b>STATEMENT OF UNDERSTANDING FOR THE PARENT WHOSE CHILD IS SUBJECT TO THE ICWA (Continued)</b>	<b>35095.2</b>
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- (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.
  
- (O) The parent will be notified if any other parent asks to take back his or her consent and of any court proceedings because he/she is asking to take back the consent.
  - 1. The parent is responsible for keeping his or her name and address current with the agency so that notice can be given.
  
- (P) If there is court action to terminate parental rights, the agency shall notify the child's tribe and the tribe may intervene in the proceedings.
  
- (Q) Upon petition of either parent or the child's tribe, court proceedings to terminate parental rights will be transferred to the jurisdiction of the tribal court, provided:
  - 1. The child's tribe has a court with jurisdiction to hear child custody proceedings,
  - 2. The California court finds no good cause not to transfer the proceeding to the Indian tribe,
  - 3. No other parent objects, and
  - 4. The tribe does not decline the transfer.
  
- (R) The adoption agency will take the necessary steps to obtain a Certificate of Degree of Indian Blood for the child and may enroll the child in his or her tribe or register his or her for any Bureau of Indian Affairs benefits that he or she may be able to get.
  
- (S) 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.

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

- (T) The agency shall notify the parent if the adoption petition is withdrawn, dismissed, or denied or if the adoption is set aside.
  - 1. The parent is responsible for keeping his or her name and address current with the agency so that notice can be given.
- (U) 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.
  - 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

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**HANDBOOK BEGINS HERE**

- (i) A partial quotation of Family Code Section 9204 is located at Section 35049(b)(4)(A).

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**HANDBOOK ENDS HERE**

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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

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

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.

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**HANDBOOK BEGINS HERE**

- (i) The relevant content of Family Code Section 9203 is located at Section 35053(b)(1).

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(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.
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.

<b>35095.2</b>	<b>STATEMENT OF UNDERSTANDING FOR THE PARENT WHOSE CHILD IS SUBJECT TO THE ICWA (Continued)</b>	<b>35095.2</b>
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- 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.
  
- (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.

<b>35095.2</b>	<b>STATEMENT OF UNDERSTANDING FOR THE PARENT WHOSE CHILD IS SUBJECT TO THE ICWA (Continued)</b>	<b>35095.2</b>
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- (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.
- (J) If the parent does not wish to place the child for adoption, the parent should not sign the Independent Adoption Placement Agreement.
- (K) If the parent should change his or her mind about the adoption after signing the adoption placement agreement, the parent may withdraw the placement agreement 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.

<b>35095.2</b>	<b>STATEMENT OF UNDERSTANDING FOR THE PARENT WHOSE CHILD IS SUBJECT TO THE ICWA (Continued)</b>	<b>35095.2</b>
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- (M) The parent has received enough information about the prospective adoptive parents and wishes to proceed with signing the adoption placement agreement.
  - (N) The statements required by subsections 35095.1(b)(1)(N) through (BB).
  - (O) The parent has considered the reasons for placing or not placing the child for adoption and has decided that to place the child for adoption with the petitioners is in the best interest of the child.
  - (P) The Statement of Understanding for the parent who placed the child subject to the provisions of the ICWA for adoption as provided by Sections 35094.2 and 35094.3 is the AD 927.
- (3) For the parent who did not give physical custody of the child to the adopting parents:
- (A) The parent has carefully considered the reasons for consenting to the adoption of the child by the petitioners.
  - (B) The statements required by subsections 35095.2(b)(1)(C) through (I).
  - (C) If the parent does not sign the consent to adoption the parent may request the right to physical custody of the child in court. The parent probably will need an attorney to help him or her do this.
  - (D) The statements required by subsections 35095.2(b)(1)(K), (L), (N), (M), (O), (P), (Q), (R), (S), (T), (U), (V), (W), (X), (Y), (Z), (AA), (BB) and (CC).
  - (E) The Statement of Understanding for the legal parent who did not give physical custody of the child subject to the provisions of the ICWA is the AD 900A.
- (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).

<b>35095.2</b>	<b>STATEMENT OF UNDERSTANDING FOR THE PARENT WHOSE CHILD IS SUBJECT TO THE ICWA (Continued)</b>	<b>35095.2</b>
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- (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.







**SUBCHAPTER 4 PROCEDURES FOR INDEPENDENT ADOPTIONS****Article 3.1 Freeing a Child for Adoption****35108 FREEING A CHILD FOR ADOPTION****35108**

(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 parent who places his or her child for adoption shall sign an adoption placement agreement.

**HANDBOOK BEGINS HERE**

- (1) The adoption placement agreement is the AD 924.
- (2) The definition of "place for adoption" is located at Section 35000(p)(10).
- (3) Under Family Code Section 8814.5, the adoption placement agreement becomes an irrevocable consent 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**

(c) The parent shall sign a consent when the prospective adoptive parent is a relative as described at Family Code Section 8802(a)(1)(A).

**HANDBOOK BEGINS HERE**

- (1) Family Code Section 8802(a)(1)(A) states:

"Any of the following persons who desire to adopt a child may, for that purpose, file a petition in the county in which the petitioner resides:

"A grandparent, aunt, uncle, first cousin, or sibling."

**HANDBOOK CONTINUES**

**HANDBOOK CONTINUES**

- (2) The parent's consent is taken in lieu of an adoption placement agreement.
  - (A) The consent to adoption by parent(s) in California is the AD 1A.
  - (B) The consent to adoption by parent(s) outside California is the AD 1C.
  - (C) The consent to adoption by parent(s) outside California in the armed forces is the AD 1F.
- (3) 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.

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**HANDBOOK ENDS HERE**

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- (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 CONTINUES**

"(b) The notice of motion for blood tests under this section may be filed not later than two years from the child's date of birth by the husband, or for the purposes of establishing paternity by the presumed father or the child through or by the child's guardian ad litem. As used in this subdivision, 'presumed father' has the meaning given in Sections 7611 and 7612.

"(c) The notice of motion for blood tests under this section may be filed by the mother of the child not later than two years from the child's date of birth if the child's biological father has filed an affidavit with the court acknowledging paternity of the child.

"(d) The notice of motion for blood tests pursuant to this section shall be supported by a declaration under oath submitted by the moving party stating the factual basis for placing the issue of paternity before the court.

"(e) Subdivision (a) does not apply in any of the following cases:

"(1) A case which reached final judgment of paternity on or before September 30, 1980.

"(2) A case coming within Section 7613.

"(3) A case in which the wife, with the consent of the husband, conceived by means of a surgical procedure."

**(C)** Family Code Section 7576 states:

The following provisions shall apply for voluntary declarations signed on or before December 31, 1996.

(a) Except as provided in subdivision (d), the child of a woman and a man executing a declaration of paternity under this chapter is conclusively presumed to be the man's child. The presumption under this section has the same force and effect as the presumption under Section 7540.

(b) A voluntary declaration of paternity shall be recognized as the basis for the establishment of an order for child custody or support.

(c) In any action to rebut the presumption created by this section, a voluntary declaration of paternity shall be admissible as evidence to determine paternity of the child named in the voluntary declaration of paternity.

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**HANDBOOK CONTINUES**

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(B) Family Code Section 7611 states:

"A man is presumed to be the natural father of a child if he meets the conditions provided in Chapter 1 (commencing with Section 7540) or Chapter 3 (commencing with Section 7570) of Part 2 or in any of the following subdivisions:

"(a) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a judgment of separation is entered by a court.

"(b) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be, declared invalid, and either of the following is true:

"(1) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce.

"(2) If the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation.

"(c) After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although he attempted marriage is or could be declared invalid, and either of the following is true:

"(1) With his consent, he is named as the child's father on the child's birth certificate.

"(2) He is obligated to support the child under a written voluntary promise or by court order.

"(d) He receives the child into his home and openly holds out the child as his natural child.

"(e) If the child was born and resides in a nation with which the United States engages in an Orderly Departure Program or successor program, he acknowledges that he is the child's father in a declaration under penalty of perjury, as specified in Section 2015.5 of the Code of Civil Procedure. This subdivision shall remain in effect only until January 1, 1997 and on that date shall become inoperative."

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**HANDBOOK ENDS HERE**

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**CALIFORNIA-DSS MANUAL-AD**

**35108 FREEING A CHILD FOR ADOPTION (Continued) 35108**

- (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.

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**HANDBOOK BEGINS HERE**

- (1) Family Code Section 7820 states:

"A proceeding may be brought under this part for the purpose of having a child under the age of 18 years declared free from the custody and control of either or both parents if the child comes within any of the descriptions set out in this chapter."

- (2) Family Code Section 8604(b) states:

"If one birth parent has been awarded custody by judicial order, or has custody by agreement of both parents, and the other birth parent for a period of one year willfully fails to communicate with and to pay for the care, support and education of the child when able to do so, then the birth parent having sole custody may consent to the adoption, but only after the birth parent not having custody has been served with a copy of a citation in the manner provided by law for the service of a summons in a civil action that requires the birth parent not having custody to appear at the time and place set for the appearance in court under Section 8718, 8823, 8913, or 9007."

- (3) Family Code Section 8606 states:

"Notwithstanding Sections 8604 and 8605, the consent of a birth parent is not necessary in the following cases:

"(a) Where the birth parent has been judicially deprived of the custody and control of the child (1) by a court order declaring the child to be free from the custody and control of either or both birth parents pursuant to Part 4 (commencing with Section 7800) of Division 12 of this code, or Section 366.25 or 366.26 of the Welfare and Institutions Code, or (2) by a similar order of a court of another jurisdiction, pursuant to a law of that jurisdiction authorizing the order.

(b) Where the birth parent has, in a judicial proceeding in another jurisdiction, voluntarily surrendered the right to the custody and control of the child pursuant to a law of that jurisdiction providing for the surrender.

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**HANDBOOK CONTINUES**

**35108 FREEING A CHILD FOR ADOPTION** (Continued)**35108****HANDBOOK CONTINUES**

"(c) Where the birth parent has deserted the child without provision for identification of the child.

"(d) Where the birth parent has relinquished the child for adoption as provided in Section 8700.

"(e) Where the birth parent has relinquished the child for adoption to a licensed or authorized child-placing agency in another jurisdiction pursuant to the law of that jurisdiction."

**HANDBOOK ENDS HERE**

(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.

**HANDBOOK BEGINS HERE**

(1) Family Code Section 7662 states:

"If a mother relinquishes for or consents to, or proposes to relinquish for or consent to, the adoption of a child who does not have (1) a presumed father under Section 7611 or (2) a father as to whom the child is a legitimate child under the law of this state or under the law of another jurisdiction, or if a child otherwise becomes the subject of an adoption proceeding and the alleged father, if any, has not in writing, denied paternity, waived his right to notice, or voluntarily relinquished for or consented to the adoption, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having custody of the child, shall file a petition to terminate the parental rights of the father, unless either of the following occurs:

"(a) The father's relationship to the child has been previously terminated or determined not to exist by a court.

**HANDBOOK CONTINUES**

35108 **FREEING A CHILD FOR ADOPTION** (Continued)

35108

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**HANDBOOK CONTINUES**

"(b) The father has been served as prescribed in Section 7666 with a written notice alleging that he is or could be the natural father of the child to be adopted or placed for adoption and has failed to bring an action for the purpose of declaring the existence of the father and child relationship pursuant to subdivision (c) of Section 7630 within 30 days of service of the notice or the birth of the child, whichever is later."

(2) Family Code Section 7666 states:

"(a) Except as provided in subdivision (b), notice of the proceeding shall be given to every person identified as the natural father or a possible natural father in accordance with the Code of Civil Procedure for the service of process in a civil action in this state, except that publication or posting of the notice of the proceeding is not required. Proof of giving the notice shall be filed with the court before the petition is heard.

"(b) If a person identified as the natural father or possible natural father cannot be located or his whereabouts is unknown or cannot be ascertained, the court may issue an order dispensing with notice to that person."

(A) If the alleged natural father has been served with notice and fails to take any action, he loses the right to contest the adoption. However, his parental rights to the child are not terminated, and he may be determined by a court to be the child's father and to have child support and other obligations toward the child. His parental rights to the child remain until the court issues the decree of adoption or a separate action to terminate his parental rights is taken.

(3) Family Code Section 7665 states:

"If, after the inquiry, the court is unable to identify the natural father or any possible natural father and no person has appeared claiming to be the natural father and claiming custodial rights, the court shall enter an order terminating the unknown natural father's parental rights with reference to the child."

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**HANDBOOK ENDS HERE**

**35108 FREEING A CHILD FOR ADOPTION** (Continued)**35108**

- (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
    - (E) Complete Item 1 on the JV-505, or

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**HANDBOOK BEGINS HERE**

1. The JV-505 form is a denial of paternity if Item 1 on the form has been completed and the alleged natural father has signed the form.
2. By signing any of the forms in Section 35108(h)(1) through (h)(2)(D), the alleged natural father loses the right to contest the adoption. However, his parental rights to the child are not terminated, and he may be determined by a court to be the child's father and to have child support and other obligations toward the child. His parental rights to the child remain until the court issues the decree of adoption or a separate action to terminate his parental rights is taken.

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**HANDBOOK ENDS HERE**

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- (F) File a petition to establish his paternity of the child.

**HANDBOOK BEGINS HERE**

1. Family Code Section 7664(b) states:

"If the natural father or a man representing himself to be the natural father claims parental rights, the court shall determine if he is the father. The court shall then determine if it is in the best interest of the child that the father retain his parental rights, or that an adoption of the child be allowed to proceed. The court, in making that determination, may consider all relevant evidence, including the efforts made by the father to obtain custody, the age and prior placement of the child, and the effects of a change of placement on the child. If the court finds that it is in the best interest of the child that the father should be allowed to retain his parental rights, it shall order that his consent is necessary for an adoption. If the court finds that the man claiming parental rights is not the father, or that if he is the father it is in the child's best interest that an adoption be allowed to proceed, it shall order that the parent's consent is not required for an adoption. This finding terminates all parental rights and responsibilities with respect to the child. Section 3041 does not apply to a proceeding under this chapter.

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- (i) The agency shall state in its report to the court whether all legal relationships that exist between the child and his or her parents have been properly addressed.

NOTE: Authority cited: Section 8621, Family Code; Sections 10553 and 10554, Welfare and Institutions Code; and Section 1530, Health and Safety Code. Reference: Section 1183, Civil Code; Sections 7540, 7541, 7570, 7571, 7573, 7574, 7576, 7577, 7601, 7602, 7610, 7613, 7630, 7631, 7633, 7650, 7660, 7661, 7662, 7663, 7664, 7665, 7666, 7802, 7820 et seq., 8604, 8605, 8606, 8617, 8619, 8808, 8809, 8814. and 8819, Family Code; and 25 U.S.C. 1901 et seq.

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<b>35111</b>	<b>PROCEDURES FOR ACCEPTING OUT-OF-STATE CONSENTS NOT INITIATED BY THE AGENCY (Continued)</b>	<b>35111</b>
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- (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.



<b>35113</b>	<b>PROCEDURES FOR ACCEPTING OUT-OF-STATE CONSENTS WHICH ARE INITIATED BY THE AGENCY</b> (Continued)	<b>35113</b>
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**HANDBOOK BEGINS HERE**

- (A) The consent forms are located at Section 35111(b)(3) and 35111(b)(4).
- (B) Requests for out-of-state agency services from states which are not members of the Interstate Compact on the Placement of Children should be sent to the state department of the other state unless the American Public Welfare Association (APWA) Directory specifies otherwise.
- (C) Requests for service from petitioners living in other countries should be made to the American Branch of the International Social Service (ISS). If ISS is not available, or other agency service is not available, the Department should be asked for assistance.
- (D) The requests to the out-of-state agency should include a clear statement of the services requested including the determination of residence and the reports expected in accordance with California regulations. The out-of-state agency should be requested to determine how the family intends to meet the requirement for a court appearance needed for completion of the adoption unless there has been a prior appearance.
- (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**

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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.



35119	RESERVED	35119
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35121	ADDITIONAL REQUIREMENTS FOR ACCEPTING CONSENT	35121
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- (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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**HANDBOOK BEGINS HERE**

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

1. Family Code Section 8818 states:

"(a) The department shall adopt a statement to be presented to the birth parents at the time the consent to adoption is signed and to prospective adoptive parents at the time of the home study. The statement shall, in a clear and concise manner and in words calculated to ensure the confidence of the birth parents in the integrity of the adoption process, communicate to the birth parent of a child who is the subject of an adoption petition all of the following facts:

"(1) It is in the child's best interest that the birth parents keep the department informed of any health problems that the parent develops that could affect the child.

"(2) It is extremely important that the birth parent keep an address current with the department in order to permit a response to inquiries concerning medical or social history.

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**HANDBOOK CONTINUES**

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**HANDBOOK CONTINUES**

"(3) Section 9203 of the Family Code authorizes a person who has been adopted and who attains the age of 21 years to request the department to disclose the name and address of the adoptee's birth parents. Consequently, it is of the utmost importance that the birth parent indicate whether to allow this disclosure by checking the appropriate box provided on the form.

"(4) The birth parent may change the decision whether to permit disclosure of the birth parent's name and address, at any time, by sending a notarized letter to that effect, by certified mail, return receipt requested, to the department.

"(5) The consent will be filed in the office of the county clerk of the county in which the adoption takes place. The file is not open to inspection by any persons other than the parties to the adoption proceeding, their attorneys, and the department, except upon order of a judge of the superior court.

"(b) The department shall adopt a form to be signed by the birth parents at the time the consent to adoption is signed, which shall provide as follows:

"Section 9203 of the Family Code authorizes a person who has been adopted and who attains the age of 21 years to make a request to the State Department of Social Services, or the licensed adoption agency that joined in the adoption petition, for the name and address of the adoptee's birth parents. Indicate by checking one of the boxes below whether or not you wish your name and address to be disclosed:

YES

NO

UNCERTAIN AT THIS TIME; WILL NOTIFY AGENCY AT LATER DATE"

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**HANDBOOK ENDS HERE**

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**HANDBOOK CONTINUES**

"(2) Sign a waiver of the right to revoke consent on a form prescribed by the department in the presence of a representative of the department or delegated county adoption agency. If neither a representative of the department nor a representative of a delegated county adoption agency is reasonably available, the waiver of the right to revoke consent may be signed in the presence of a judicial officer of a court of record if the birth parent is represented by independent legal counsel. 'Reasonably available' means that a representative from either the department or the delegated county adoption agency is available to accept the signing of the waiver within 10 days and is within 100 miles of the location of the birth mother.

"The waiver of the right to revoke consent may not be signed until an interview has been completed by the department or delegated county adoption agency unless the waiver of the right to revoke consent is signed in the presence of a judicial officer of a court of record as specified in this section. Within 10 working days of a request made after the department, the delegated county adoption agency, or the court has received a copy of the petition for the adoption and the names and addresses of the persons to be interviewed, the department, the delegated county adoption agency or the court shall interview, at the department or agency office or the court, any birth parent requesting to be interviewed. However, the interview, and the witnessing of the signing of a waiver of the right to revoke consent of a birth parent residing outside of California or located outside of California for an extended period of time unrelated to the adoption may be conducted in the state where the birth parent is located, by any of the following:

"(A) A representative of a public adoption agency in that state.

"(B) A judicial officer in that state where the birth parent is represented by independent legal counsel.

"(C) An adoption service provider.

"(3) Allow the consent to become a permanent consent on the 91st day after signing.

"(b) The consent may not be revoked after a waiver of the right to revoke consent has been signed or after 90 days beginning on the date the consent was signed, whichever occurs first."

(2) Family Code Section 8815, in pertinent part, states:

"(a) Once the revocable consent to adoption has become permanent as provided in Section 8814.5, the consent to the adoption by the prospective adoptive parents may not be withdrawn.

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**HANDBOOK CONTINUES**

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35122

**REVOCATION OF CONSENT AND WAIVER OF RIGHT TO  
REVOKE CONSENT (Continued)**

35122

**HANDBOOK CONTINUES**

"(b) Before the time when the revocable consent becomes permanent as provided in Section 8814.5, the birth parent or parents may request return of the child. In such a case the child shall immediately be returned to the birth parent or parents so requesting.

"(c) If the person or persons with whom the child has been placed have concerns that the birth parent or parents requesting return of the child are unfit or present a danger of harm to the child, that person's or those persons' only option is to report their concerns to the investigating adoption agency and the appropriate child welfare agency. These concerns shall not be a basis for failure to immediately return the child..."

- (3) Family Code Section 8801.7(b), in pertinent part, states:

"(b) ... If the birth parent wishes to revoke the consent, the adoption service provider shall assist the birth parent in obtaining the return of the child."

**HANDBOOK ENDS HERE**

- (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.

<b>35122</b>	<b>REVOCATION OF CONSENT AND WAIVER OF RIGHT TO REVOKE CONSENT (Continued)</b>	<b>35122</b>
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- (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.

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**HANDBOOK BEGINS HERE**

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- (A) Family Code Section 8807(b) states:

"In a case where the investigation establishes that there is a serious question concerning the suitability of the petitioners or the care provided the child or the availability of the consent to adoption, the report shall be filed immediately."

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**HANDBOOK ENDS HERE**

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- (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.

35123

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

35123

- (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.

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**HANDBOOK BEGINS HERE**

- (2) Family Code Section 8822, in pertinent part, states:
- "(a) If the findings of the department or delegated county adoption agency are that the home of the petitioners is not suitable for the child or that the required consents are not available and the department or agency recommends that the petition be denied, or if the petitioners desire to withdraw the petition and the department or agency recommends that the petition be denied, the clerk upon receipt of the report of the department or agency shall immediately refer it to the court for review.
- "(b) Upon receipt of the report, the court shall set a date for a hearing of the petition and shall give reasonable notice of the hearing to the department or delegated county adoption agency, the petitioners, and the birth parents by certified mail, return receipt requested to the address of each as shown in the proceeding.
- "(c) The department or delegated county adoption agency shall appear to represent the child."

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**HANDBOOK ENDS HERE**

- (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.

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**HANDBOOK BEGINS HERE**

- (1) The content of Family Code Section 8801.3 is located at Section 35094.3(b)(1).

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**HANDBOOK ENDS HERE**

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<b>Regulations</b>	<b>ADOPTIONS PROGRAM REGULATIONS PROCEDURES FOR INDEPENDENT ADOPTIONS</b>	<b>35123.1</b>
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<b>35123</b>	<b>COMPLETING THE COURT REPORT AND FILING (Continued)</b>	<b>35123</b>
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(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.

<b>35123.1</b>	<b>REPORTING SUSPECTED CHILD ABUSE</b>	<b>35123.1</b>
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Renumbered to Section 35125.1 by Manual Letter No. AD-99-01, effective 5/3/99.

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**SUBCHAPTER 4 PROCEDURES FOR INDEPENDENT ADOPTIONS****Article 6 Procedures in Denials and Commitments****35125 PLANNING FOR THE CHILD WHEN CONSENT IS WITHDRAWN, 35125  
THE PETITION IS WITHDRAWN OR DISMISSED, OR THE  
AGENCY RECOMMENDS REMOVAL OF THE CHILD**

(a) (Reserved)

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**HANDBOOK BEGINS HERE**

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

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**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.

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**HANDBOOK BEGINS HERE**

(A) Family Code Section 8815, in pertinent part, states:

"(a) Once the revocable consent to adoption has become permanent as provided in Section 8814.5, the consent to the adoption by the prospective adoptive parents may not be withdrawn.

"(b) Before the time when the revocable consent becomes permanent as provided in Section 8814.5, the birth parent or parents may request return of the child. In such a case the child shall immediately be returned to the birth parent or parents so requesting.

"(c) If the person or persons with whom the child has been placed have concerns that the birth parent or parents requesting return of the child are unfit or present a danger of harm to the child, that person's or those persons' only option is to report their concerns to the investigating adoption agency and the appropriate child welfare agency. These concerns shall not be a basis for failure to immediately return the child..."

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**HANDBOOK ENDS HERE**







<b>35126</b>	<b>DENIAL OR DISMISSAL OF ADOPTION PETITION (Continued)</b>	<b>35126</b>
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- (A) Refer the petitioners to the appropriate agency for foster care licensure as required by Health and Safety Code Section 1500 et seq.
- (B) Discuss with the petitioners and the birth parents the possibility and desirability of securing legal guardianship of the child.
- (2) If the agency believes that return of the child to the parent would place the child in danger of cruelty, neglect, abuse, or depravity, the agency shall make a referral to the county child welfare unit as required by Penal Code Section 11166.
- (3) In cases in which the agency recommends that the child be committed to the agency, the agency shall recommend to the court a plan for committing the child to the agency.
  - (A) The agency shall develop a plan and report to the court as soon as it is determined that commitment to the agency will be recommended.
  - (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.

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**HANDBOOK BEGINS HERE**

- (E) Welfare and Institutions Code Section 16106 states:

"The state shall reimburse each county for the cost of care of any child placed under the custody of a county department pursuant to Section 8805 or 8918 of the Family Code. County claims for reimbursement of expenses incurred pursuant to Section 8805 or 8918 of the Family Code shall be filed with the department at the time and in the manner specified by the department, and the claims shall be subject to audit by the department. Whenever a claim covering a prior fiscal year is found to have been in error, adjustment may be made on a current claim without the necessity of applying adjustment to the appropriation for the prior fiscal year."

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**HANDBOOK ENDS HERE**

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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