

## **The Reuniting Immigrant Families Act Encouraging Agency/Consulate MOUs**

California's Reuniting Immigrant Families Act ("SB 1064" or "the Act"), enacted September 30, 2012, is the nation's first law addressing the reunification barriers faced by many immigrant families in the child welfare system. This fact sheet provides information on the provision of SB 1064 encouraging the development of Memoranda of Understanding ("MOUs") between the child welfare agency and foreign consulates.

### **Language of the Act**

SB 1064 requires DSS to provide guidance to county agencies on creating MOUs with foreign consulates to help facilitate information-sharing and cooperation regarding children in the California child welfare system.<sup>1</sup> These MOUs would be relevant in juvenile court cases in which a parent has been detained by the U.S. Department of Homeland Security or has been deported to his or her country of origin.

The Act directs that such MOUs include, at minimum, procedures for:

- Contacting the foreign consulate at the beginning of a juvenile court case;
- Accessing documentation for the child;
- Locating a detained parent;
- Facilitating family reunification after the parent has been deported;
- Aiding the safe transfer of a child to the parent's country of origin;
- Allowing reports from the foreign child welfare authorities documenting the parent's living situation; and
- Allowing reports from the foreign child welfare authorities documenting the parent's participation in service plans in the country of origin that comply with county case plan requirements.<sup>2</sup>

### **All-County Letter No. 14-21**

The State Department of Social Services issued an All-County Letter regarding SB 1064 in March 2014. In addition to describing the Act's requirements for measures to be included in any MOUs developed between a county child welfare agency and a foreign consulate, the All-County Letter provides a link to sample MOUs currently in place:

[www.childsworld.ca.gov/PG3466.htm](http://www.childsworld.ca.gov/PG3466.htm).

<sup>1</sup> Cal. Welf. & Inst. § 10609.95(a).

<sup>2</sup> Cal. Welf. & Inst. § 10609.95(b).



## The Vienna Convention on Consular Relations

Notification to the consulate of a foreign national parent's arrest or detention is required under the Vienna Convention on Consular Relations ("VCCR").<sup>3</sup> But the terms of the VCCR also trigger consular notification in cases involving *minors*. Specifically, it requires prompt consular notification when "appointment of a guardian or trustee appears to be in the interests of a minor" who is a foreign national.<sup>4</sup>

In addition to being required under the VCCR when the state has taken custody of a non-U.S. citizen child, notification and involvement of the consulate can lead to helpful collaboration in dependency cases. For example, consulate representatives could help locate a child's parents or relatives in the U.S. or abroad, identify service providers and programs in the parent's country of origin, work with U.S. immigration officials to secure a temporary parole to the U.S. of a parent for participation in state dependency court proceedings or to meet Case Plan requirements, and bridge language and other communication barriers with the family.

As a result, the child welfare agency should:

- Determine how to notify a consulate when a foreign national parent has been arrested and issued an immigration hold or detained;
- Determine how to notify a consulate when a non-U.S. citizen child, dual citizen child, or U.S. citizen child of foreign nationals is removed from his or her home and taken into state custody;
- Safeguard confidential information protected by federal, state, or local law or rules;
- Consider whether to develop MOUs with foreign consulates to facilitate the notification process, adhering to SB 1064 requirements;<sup>5</sup> and
- Make notification decisions on a case-by-case basis, and in consultation with the parent or child. Sharing an individual's information with the consulate may be harmful to a person with an asylum claim of persecution by the foreign government.

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<sup>3</sup> Vienna Convention on Consular Relations, 21 U.S.T. 77, Art. 36, ratified by the United States Dec. 24, 1969. The Vienna Convention defines the roles and duties of consular offices and related requirements for countries hosting those offices, including consular notification and access when foreign nationals are involved in certain civil and criminal legal proceedings.

If the parent is a Mexican national, also applicable is the Consular Convention Between the United States of America and the United Mexican States, 57 Stat. 800, entered into force July 1, 1943.

<sup>4</sup> Vienna Convention at Art. 37(b). See also Art. 5(h). Because a U.S. citizen child may have dual citizenship in another country and those children's parents are likely foreign nationals, consular notification when a U.S. citizen child is taken into state custody is good practice, though not required under the Vienna Convention based on the child's removal alone.

<sup>5</sup> Several counties already have agreements with Mexican consulates. See [http://cssr.berkeley.edu/ucb\\_childwelfare/lpac/Resources.aspx?topic=3&subTopic=20](http://cssr.berkeley.edu/ucb_childwelfare/lpac/Resources.aspx?topic=3&subTopic=20) for existing policies and forms.

