



CDSS

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REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

October 27, 2010

ALL COUNTY LETTER NO. 10-47

TO: ALL COUNTY WELFARE DIRECTORS
 ALL CHIEF PROBATION OFFICERS
 ALL CDSS ADOPTION DISTRICT OFFICES
 LICENSED PUBLIC AND PRIVATE ADOPTION AGENCIES
 ALL CHILD WELFARE SERVICES PROGRAM MANAGERS
 ADOPTION SERVICE PROVIDERS
 TITLE IV-E AGREEMENT TRIBES

SUBJECT: IMPLEMENTATION OF TRIBAL CUSTOMARY ADOPTION -
 ASSEMBLY BILL 1325 (CHAPTER 287, STATUTES OF 2009)

REFERENCE: ASSEMBLY BILL 1325 (CHAPTER 287, STATUTES OF 2009);
 ALL COUNTY LETTER NO. 10-17; ALL COUNTY INFORMATION
 NOTICE I-86-08; AND CALIFORNIA CODE OF REGULATIONS FOR
 ADOPTION PROGRAMS (TITLE 22, DIVISION 2) AND CHILD
 WELFARE SERVICES (DIVISION 31).

In March 2010, the California Department of Social Services (CDSS) published All County Letter (ACL) No. 10-17 to provide introductory information regarding the passage of Assembly Bill (AB) 1325 (Chapter 287, Statutes of 2009) and the basic guidelines of tribal customary adoption (TCA) which became effective **July 1, 2010**. Prior to reading this ACL, please review ACL 10-17 located on the CDSS website at: <http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acl/2010/10-17.pdf>.

The purpose of this ACL is to provide comprehensive information and direction to counties, adoption agencies, tribes and other individuals/organizations responsible for the statewide implementation of TCA. Additionally, this ACL will serve to administer the provisions of AB 1325 and should be used to implement TCA until regulations have

been adopted.¹ Currently, regulations at Title 22, Division 2 of the California Code of Regulations (CCR) and Division 31 of the Manuals of Policies and Procedures (MPP) are being reviewed for modifications to include TCA. Since TCA is considered an agency adoption, until Title 22 and Division 31 are updated, current regulations should be used to administer child welfare and adoption services. This ACL will incorporate the current regulations as well as provide the additional requisite elements for implementing TCA.

Following the passage of AB 1325, a workgroup comprised of representatives from counties, state adoption district offices (DO), private adoption agencies and tribes convened to discuss the requisite tenets necessary to implement TCA. As a result, many participants submitted questions to CDSS which addressed statutes, regulations, policy and procedures regarding the provision of TCA services. To provide the most efficient guidance, this ACL is organized via topic using a question and answer format which will include the following topics:

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¹ The relevant provisions of Section 26 of AB 1325 (Chapter 287, Statutes of 2009) reads, "...the Department of Social Services may implement and administer the applicable provisions of this act through all-county letters or similar instruction from the director until such time as the regulations are adopted."

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1.0 Tribal Customary Adoption

1.1 What is it? How is it different from a conventional adoption?

Tribal customary adoption is considered an agency adoption. However, TCA is an adoption which may occur for an Indian child who is a dependent of the California court, under the customs, laws or traditions of an Indian child's tribe, but where termination of parental rights (TPR) is not required. While tribal customary adoption is unique, it is intended to be a seamless integration into the current process of conventional adoption. From the disposition of a dependency case, to the date the TCA is finalized, agencies should be able to utilize many of their current conventional adoption procedures to facilitate a TCA.

The key differences between TCA and a conventional adoption are:

1. TCA allows a dependent Indian child to be adopted utilizing the state court without TPR. The current TPR procedures and corresponding forms and documents such as the AD 4333 are not required to finalize a TCA;
2. The plan of TCA cannot be recommended, selected, facilitated or finalized without the consultation (involvement) of the Indian child's tribe. Only the tribe can select TCA as an option for the Indian child; and
3. Per Family Code section 8600.5, TCA is excluded from Part Two of the Family Code, "Adoption of Unmarried Minors." The primary procedures and standards applicable to TCA are contained in Welfare and Institutions Code (W&IC) section 366.24.

1.2 To whom does TCA apply?

TCA is only available as a permanency option for those dependents that are Indian children under the Indian Child Welfare Act (ICWA). Further, it is only applicable where the Indian child's tribe has elected TCA as the permanent plan. TCA is not applicable to independent or intercountry adoption, an Indian child

who is a probation ward or has been voluntarily relinquished to an agency by his or her parents.

1.3 When does the TCA become effective? When does it end? Is this a pilot?

AB 1325, which adds TCA to state law, became operative on **July 1, 2010**, and sunsets on January 1, 2014. Although this statute includes a three year end date and report to the Legislature on its outcomes, TCA is not a pilot.

1.4 Does TCA apply to dependent Indian children who became dependents prior to the implementation of TCA (July 1, 2010)?

Yes. As long as the dependency case is still open and parental rights have not been terminated, TCA may be a permanency option for any dependent Indian child, regardless of the date the Indian child became a dependent.

1.5 At what stage in the case does TCA become relevant?

Once a federally recognized tribe has responded to an ICWA notice affirming that the child is a member or eligible for membership in the tribe, TCA will become a permanency option for a court dependent Indian child. Per W&IC section 358.1, this may begin as early as the dispositional stage of a dependency case. Aligned with the state's existing concurrent planning policies, when applicable, at any point following the disposition of the dependency case, the Indian child's tribe may elect for TCA to be included as an alternative permanent plan to family reunification.

Please note: As specified in W&IC section 361.31 (ICWA standards), the agency shall use the placement preference requirements when selecting prospective adoptive parents for an ICWA child.

1.6 What are the stages of a TCA?

- a. Dispositional hearing – Per W&IC section 358.1, the social worker in consultation with the Indian child's tribe reports to the court if TCA is an appropriate permanent plan.
- b. Recommend permanent plan of TCA - Per W&IC section 361.5, if reunification services are not offered or terminated and a permanency hearing pursuant to W&IC section 366.26 is ordered, the social worker or adoption worker, in consultation with the child's tribe, shall indicate in the report to the court that the tribe has selected TCA as the permanent plan.

- c. Early concurrent permanency planning – If reunification services are offered and the Indian child’s tribe selected TCA as the alternate permanent plan for the dependent Indian child, the social worker or adoption worker works with the child, child’s tribe and prospective TCA adoptive family to facilitate the alternative permanent plan of TCA. These services may include, but are not limited to:
1. Assessing the child’s likelihood of being adopted and including the assessment in the review hearing reports pursuant to W&IC sections 360(A), 366.21, 366.22, and 366.25.
 2. Conducting a TCA Home study as a tribal designee pursuant to W&IC section 366.24.
 3. Performing criminal/child abuse and neglect checks pursuant to W&IC section 366.24.
- d. Establish permanent plan of TCA – Once a hearing is set pursuant to W&IC Section 366.26 and the Indian child’s tribe recommends TCA, the court will review the report as specified in W&IC sections 361.5, 366.21, 366.22 or 366.25 and other evidence and order, **without TPR**, the plan of TCA. The report must include an assessment regarding the Indian child’s likelihood of being adopted in the court report for every review hearing. This report should also include if TCA would or would not be detrimental to the Indian child and whether the Indian child should be returned home to the Indian parent or Indian custodian.
- e. Case referred to Indian child’s tribe – Once TCA is ordered as the permanent plan, the case is referred to the tribe to conduct their part of the W&IC section 366.24 process, and the W&IC 366.26 hearing is continued for 120 days. The court can grant a continuance, but no more than an additional 60 days. This process includes:
1. **TCA home study (refer to section five of this ACL for more information on the TCA home study)** is completed (if not previously completed) by the Indian child’s tribe or tribal designee and either approved or denied by the Indian child’s tribe;
 2. **Review of criminal/child abuse and neglect background (refer to section seven of this ACL for more information on review of criminal/child abuse and neglect background)** are completed (if not previously completed) by the tribal designee, public adoption agency

otherwise authorized to perform adoption specific checks when tribe is unable to, or Indian child's tribe (if authorized to conduct them). Subsequently, the adoptive applicant's record is cleared or considered detrimental to the adoptive placement of the child. Additionally, their record may be denied pursuant to the federal Adam Walsh Child Protection and Safety Act of 2006 (Adam Walsh Act);

3. **Tribal Customary Adoption Order (TCAO) (refer to section eight of this ACL for more information on TCAO)** - The TCAO is completed and filed within 20 days of the continued W&IC section 366.26 hearing by the Indian child's tribe with the court; and
 - i. The child, birth parent, or Indian custodian and the prospective tribal customary adoptive parents and their counsel, if applicable, may present evidence to the Tribe regarding the TCAO and the child's best interest.
4. **Addendum to the continued W&IC section 366.26 report (refer to section nine of this ACL for more information regarding this addendum)** is completed by the Indian child's social worker or adoption worker and submitted to the court within seven days of the continued W&IC section 366.26 hearing.
- f. Continued W&IC section 366.26 hearing – Once the TCAO is filed by the Indian child's tribe and the addendum to the W&IC section 366.26 report is received by the court, the court affords full faith and credit to the TCAO; the court orders the finalization hearing be set upon the filing of the adoption petition. If the court does not receive the TCAO within the allotted time, the court has the discretion to order a new permanent plan.
- g. Tribal customary adoptive placement and placement agreement (refer to section 11 of this ACL for more information on adoptive placement) – Pursuant to W&IC section 366.24(c)(8), once the court affords full faith and credit to the TCAO and the Indian child's tribe approves the adoptive applicant's TCA home study and the applicant's criminal and child abuse and neglect checks are cleared, the Indian child is eligible for tribal customary adoptive placement. The public adoption agency that has placement and care responsibility of the Indian child is responsible for ensuring the process is completed. This process is analogous to the conventional adoption process which determines the placement agreement between the public adoption agency and the adoptive parent(s).

- h. Adoption assistance agreement (**refer to section 13 of this ACL for more information on AAP**) - Pursuant to W&IC section 16120, similar to the conventional adoption process, once the tribal customary adoptive placement paperwork is signed the public adoption agency that has placement and care responsibility of the Indian child is responsible for facilitating this agreement between the public adoption agency and the adoptive parent(s).
- i. Adoption petition - Once the TCA home study is approved, the TCAO is afforded full faith and credit, and all the necessary documents are signed, the prospective adoptive parent(s) desiring to adopt the Indian child must file an adoption petition with the court presiding over the adoption. A copy of this petition will continue to be sent to CDSS.
- j. Supervision of Adoptive Placement (**refer to section 12 of this ACL for more information on supervision**) – Once adoptive placement of the Indian child has been made, pursuant to W&IC section 366.24(c)(8), the public agency that has placement and care responsibility of the Indian child will be responsible for ensuring the supervision of the adoptive placement.
- k. Finalization (**refer to section 15 of this ACL for more information on finalizing a TCA**) - Once the adoption petition is filed with the court, and a finalization hearing is set, the public adoption agency that has placement and care responsibility of the Indian child is responsible for ensuring a final report regarding the proposed TCA is submitted to the court.

1.7 If the tribe has questions the social worker or adoption worker cannot answer, to where should the worker refer the tribe?

Tribes may find information on the Tribal Successful Transition for Adult Readiness (STAR) website located at <http://theacademy.sdsu.edu/TribalSTAR/index.htm> or contact the sponsors of AB 1325. Their information is as follows:

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Director of Social Services
Soboba Tribal Social Services
(951) 487-0283

Kimberly Cluff, Attorney
Forman & Associates
4340 Redwood Hwy Ste F228
San Rafael, CA 94903
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2.0 Consultation with the Indian Child's Tribe

2.1 What does this mean?

Consultation means more than the agency making decisions and “checking in” with the Indian child’s tribe to approve them. It is an ongoing partnership with the tribe that requires their inclusion and, on many occasions, approval on decisions made regarding the TCA process. The Indian child’s tribe is a necessary part of the TCA process for a dependent Indian child for two main reasons: A TCA cannot commence unless the child’s tribe selects TCA as the permanent plan; and only the tribe can provide information regarding its tribal customs, traditions or laws.

2.2 When should the agency begin consulting the tribe?

The partnership between the agency and the child’s tribe is expected to begin as soon as the child is declared an ICWA eligible child and the concurrent planning process commences. As part of the concurrent planning process, the social worker must inform the tribe that TCA is a permanency option. When that option is selected by the tribe, the tribe may inform the agency either in a verbal or written format. Either way, the agency is responsible for including that information into all necessary reports to the court, the foster care and adoption case record and the case notes section in the Child Welfare Services/Case Management System (CWS/CMS). **(Refer to section 19 of this ACL for more information on inputting information into CWS/CMS).**

2.3 How should the agency consult with the tribe?

Consultation with the Indian child’s tribe includes, but is not limited to:

- Verbal and written communication;
 - Via telephone, regular or electronic mail, or facsimile
- In person meetings;
- Team Decision Making (TDM) Meetings; or
- Family Group Decision Making (FGDM) Meetings.

Please note: All information received, provided to or discussed with the Indian child’s tribe should be documented in the foster care and adoption case record.

2.4 What type of information should the agency discuss with the tribe?

The agency shall obtain all information from the child's tribe, that the tribe considers relevant and any information which will assist the agency in clarifying particular issues for the child or adoptive applicant(s). Examples may include, but are not limited to the following:

- Tribal Customs;
- Laws;
- Traditions;
- Ceremonies/Events;
- Geography; or
- Significant history.

Please note: Each tribe maintains the authority and discretion to determine what information it will share regarding its tribal customs, laws, traditions or significant history to the agency.

2.5 What does consulting with tribe include?

Consultation with the tribe may vary at any of the different stages of a dependency action but should include the same basic elements of communication and collaboration. In a dependency case, once a tribe has confirmed the Indian child is its child, the social worker must inform the tribe that TCA is available to the child as a permanency option. At any point in the dependency case, even as early as the dispositional hearing, the tribe may communicate its election of TCA. It is expected that the tribe and other affected individuals will have many questions regarding the TCA process and the social worker should be responsive. Interaction with the tribe's representative will be required throughout. Where the tribe has formally intervened in the action the tribe's representative would be identified in the tribe's "Notice of Designation of Tribal Representative" (ICWA - 40). Where the tribe has not formally intervened, it may be advisable to request a formal designation of a representative for purposes of the TCA process from the Tribe's chairperson in order to facilitate the consultation process.

If the agency with placement and care responsibility is informed **prior to the dispositional hearing** of the tribe's election of TCA, the agency is responsible for discussing the case with the tribe through its representative and obtaining information needed for the report to the court on the appropriateness of TCA as a plan for the child if reunification is unsuccessful.

If informed during the **concurrent planning process** (e.g. during review hearings held pursuant to W&IC sections 361.5, 366.21.366.25), the agency is responsible for communicating with the tribe through its representative, to obtain any relevant information needed to update the court regarding the likelihood the child will be adopted and if TCA continues to be the appropriate permanent plan for the child. During this stage it is possible that the **TCA home study process**, required by W&IC 366.24, will be commenced by the tribe and the tribe will communicate an interest in seeking designation of an agency to do its TCA home study. If the tribe is interested in designating an agency, the tribe is responsible for providing a written request to that agency asking the agency to be a designee. Throughout this process collaboration will be important between the different entities involved in the TCA home study process.

If reunification services are not offered or have been terminated and the W&IC section 366.26 hearing is set to order a permanent plan for the child, the agency with placement and care responsibility is responsible for completing a written assessment of the child's suitability for adoption and including TCA information in the report to the court. This will require requesting, if not yet received, written statement from the tribe of its decision to pursue TCA for that child that including whether the tribe will be conducting its own TCA home study or procuring a tribal designee. Once the statement is received, the agency is responsible for consulting with the child's tribe to obtain information to complete the written assessment of the child. **For information on the written assessment of the child, refer to section four this ACL.**

Once the case is **formally referred to the procedures required by W&IC section 366.24**, the agency will be responsible for assisting in ensuring the criminal record and child abuse background checks are conducted. If there is a designee, the designee will be responsible for the background check. If there is no designee, then the responsibility remains with the agency with placement and care responsibility of the child.

At the **adoptive placement and finalization stage**, the agency must consult with the tribe while facilitating and supervising the adoptive placement and finalization.

2.6 What if the child has more than one tribe to which it is associated?

If an Indian child is a member of more than one tribe or is eligible for membership in more than one tribe, it is preferable that the tribes determine among themselves which is the tribe that will serve as the primary tribe in the Indian child's case. Generally where it is confirmed in writing that a child is a member

(e.g. enrolled) in one of the tribes, we will accept that tribe as the child's tribe. However, where it is not clear, and if the tribes cannot reach an accord on the issue, then pursuant to W&IC section 224.1(d) the state court judge has the authority to determine which tribe has the most significant contacts with the child and will serve as the child's tribe in the proceeding. Once the primary tribe is established they become the Indian child's tribe responsible for recommending TCA as the permanency plan for the Indian child.

Please note: Until a primary tribe is established, the agency is responsible for consulting with all tribes associated with the Indian child to obtain information regarding the Indian child's case.

2.7 What about dependency cases involving a child from an out of state tribe?

As with any ICWA eligible child from an out of state tribe, communication becomes more challenging. Regardless, in all cases the tribe should be informed of, and provided information about, California's option of a TCA for the child.

3.0 Dependency Process

3.1 How is TCA included in the dependency process?

TCA is included as an additional permanency option for a dependent Indian child. This plan may be recommended by the Indian child's tribe at any point in the dependency process (as early as the dispositional hearing). When reunification services are offered, and the tribe recommends TCA, it will serve as the Indian child's concurrent permanent plan until reunification services are no longer offered. Once TCA becomes the concurrent plan, the agency, with placement and care responsibility of the Indian child, must consult with the Indian child's tribe to facilitate TCA.

TCA is intended to be seamlessly integrated into the current dependency process. There are minimal modifications to the current assessment, case planning and service delivery process for a dependent Indian child with a permanent plan of TCA. These modifications include, but are not limited to:

1. Consultation with the Indian child's tribe is required.
2. TPR is not required for adoptive placement to occur.
3. No voluntary or involuntary relinquishment paperwork or forms required.

4. Consent from Indian parent is not needed to recommend TCA at the W&IC section 366.26 hearing.
5. Since TPR is not required in a TCA, adoption finalization hearings will no longer be delayed for the time period currently allotted for birth parents to appeal a termination of their parental rights.
6. Post-adoption contact agreements are not applicable to TCA. Post adoption contact between the birth parents or Indian custodians and the child will be addressed in the TCAO. If applicable, the TCAO could also address contact between the Indian child and the child's siblings.

3.2 Does an Indian parent or Indian custodian have to consent to the TCA?

No. Prior consent to a permanent plan of TCA of an Indian child is not required of an Indian parent or Indian custodian whose parental relationship to the child will be modified by the TCA. (See W&IC section 366.24(11))

3.3 Does a child age 12 or older need to consent to the TCA?

No. The consent of a child age 12 or older is not required for a TCA. However, while the consent of the child age 12 or older is not required for a TCA, the wishes of a child are still an important and appropriate factor for the court to consider when determining whether TCA is the appropriate permanent plan for an Indian child. (See W&IC section 361.31(e))

3.4 Does a tribe need to formally intervene in a case in order for TCA to be considered as a placement option?

No. TCA is a permanency option for any "Indian Child" (as defined in ICWA) whose tribe wants to pursue TCA as a permanency option. Under ICWA, and the state laws implementing ICWA, an Indian child's tribe does not need to formally intervene in a case in order to be entitled to make representations to the agency and the court as to the appropriate permanent plan for that child. (See the California Rules of Court, Rule 5.534 (i)(2)).

3.5 How does TCA affect the judicial process?

For modifications in the judicial process, see the Judicial Council's modified rules of court located on the Judicial Council's website located at:

http://www.courtinfo.ca.gov/rules/documents/pdfFiles/title_5.pdf

3.6 Does a tribe have to choose TCA as the permanent plan for a dependent Indian child?

No. TCA is an optional plan. A tribe is not required to choose TCA as the permanent plan. All permanency options are available to tribes and the exceptions to TPR in the W&IC section 366.26(c)(1)(B)(vi) still apply. If TCA is not chosen, the agency with placement and care responsibility of the child would carry out the alternative permanent plan using the current standards and procedures regulating that process.

3.7 If the state court granted a permanent plan of legal guardianship for a dependent Indian child and TPR did not occur, can TCA become the new permanent plan?

Yes. Pursuant to W&IC section 366.3(c), if following the establishment of a legal guardianship for a dependent Indian child, the county, in consultation with the Indian child's tribe, becomes aware of changed circumstances that indicate TCA may be an appropriate plan for the child, the court may vacate its previous order dismissing dependency jurisdiction over the child and order that a new hearing be set to determine whether TCA or continued legal guardianship is the most appropriate plan for the child.

3.8 If a dependent Indian child has a plan of "conventional" adoption and TPR has occurred, but the adoption has not been finalized, can the tribe recommend the permanent plan be changed to TCA?

It depends. A TCA does not apply to a case where TPR has occurred. Pursuant to W&IC section 366.26 (i)(2), the state court would have the discretion to reinstate parental rights and order a new hearing to determine if TCA is the most appropriate permanent plan for the child. The agency would need to work closely with the tribe to ensure this information was submitted in the W&IC section 366.26 report.

3.9 Is a social worker required to recommend TPR for a dependent Indian child who has been in foster care 15 of the most recent 22 months?

No. Pursuant to W&IC section 16508.1(b)(7), a social worker is not required to recommend TPR if TCA has been recommended.

3.10 Is testimony of a qualified witness required for a TCA to be ordered as the permanent plan for an Indian child?

No. The testimony of a qualified witness, currently required by W&IC section 224.1, is not required for a TCA to be ordered (at the W&IC section 366.26 hearing), because the termination of parental rights is not required for a TCA. However, this testimony is still required when the dependency case of the Indian child is initiated.

3.11 Does TCA add any noticing requirements?

Pursuant to W&IC section 294(f)(6), TCA is added as a permanency option when noticing parents regarding a selection and implementation hearing as specified in W&IC section 366.26. Current noticing standards for this hearing will be applied for a TCA.

3.12 Does TCA add or amend the process for any hearings required in a dependency case?

No. TCA did not create a new hearing. However, the statute governing TCA requires the W&IC section 366.26 hearing be continued to afford the tribe time to complete the TCAO and file it with the court. After the filing of the TCAO and the social worker's addendum report, the court will have time to review the TCA and determine if full faith and credit should be afforded to the tribe's TCAO.

3.13 Does TCA require additional court reports or is any information required to be included in existing court reports?

Yes. The social worker must provide the tribe with information regarding TCA at every step throughout the case as part of concurrent planning. This must be documented in the court report, the foster care and adoption case record, and/ or in the case notes section of CWS/CMS. Once TCA is recommended, the agency must continue to provide a report to the court at each hearing thereafter as relevant to the individual case: prior to the dispositional hearing (W&IC section 358.1), the hearing to determine child welfare services (W&IC section 361.5), all status review hearings (W&IC sections 366.21, 366.22, 366.25, and 366.3), and the hearing to select a permanent plan for the child (W&IC section 366.26). Refer to those sections and W&IC section 366.24 for information required to be included in each court report.

TCA requires the social worker to prepare the addendum to the continued 366.26 report. At a W&IC section 366.26 hearing when the court orders TCA as the

permanent plan, it is continued and referred to the tribe to complete and file the TCAO. Prior to the continued W&IC section 366.26 hearing, the child's agency is now required to submit an addendum to the continued 366.26 report.

4.0 Written Assessment of the Child's Suitability for TCA

4.1 Does TCA affect the current regulatory standards for assessing a child's suitability for a conventional adoption?

Yes. Currently, prior to the initial W&IC Section 366.26 hearing, a report including a written assessment of the child's suitability for adoption must be submitted. The required standards for this assessment are located in Title 22, Division 2, CCR sections 35127.1-35127.3. TCA includes and excludes certain requirements specified in those sections. Modifications for this assessment include the following:

Additions to current standards

1. A written assessment of the child's suitability for adoption, as specified in Title 22, Division 2, CCR section 35127.1 (a), should include:
 - a. The Indian child's relationship to/with the Indian child's tribe.
2. Identifying information, as specified in Title 22, Division 2, CCR section 35127.1(b)(1) should include:
 - a. The Indian child's tribal membership or tribal affiliation; and
 - b. Any siblings with tribal membership or tribal affiliation.
3. A review of the amount of and nature of any contact between the Indian child and his or her birth parents or other members of his or her extended family since the time of placement in out-of-home care, as specified in Title 22, Division 2, CCR section 35127.1(b)(3) should include:
 - a. Family defined consistent with the tribe's culture when reviewing whether the child would benefit from contact with members of his or her extended family once the TCA is finalized.
4. Consistent with the stated religious and or cultural background preference from the birth parent, as specified in Title 22, Division 2, CCR section 35127.1(b)(6), this assessment should include:

- a. A stated religious or cultural background preference indicated by the tribe or tribes and the Indian child, unless the Indian child's age or physical, emotional or other conditions precludes his or her meaningful response.
5. Documents the agency shall obtain, as specified in Title 22, Division 2, CCR section 35127.2(a)(1), should include:
 - a. A written statement from the Indian child's tribe intention to pursue TCA for the Indian child.
 1. This statement should include whether the tribe or the tribe's designee will conduct the home study.
 6. Services for children accepted for adoption planning, as specified in Title 22, Division 2, CCR section 35127.3(a), should include:
 - a. Collaboration with the Indian child's tribe to provide these services.

Exclusions of current standards

1. An analysis of the likelihood that the child will be adopted, as specified in Title 22, Division 2, CCR section 35127.1(a)(8), should exclude:
 - a. If parental rights are terminated.
2. An assessment of the need for a psychological evaluation, as specified in Title 22, Division 2, CCR section 35127.1(b)(9)(A)(2), should exclude the list of abnormal and symptomatic illnesses used to determine if a child's behavior warrants this evaluation. The agency is expected to consult with the child's tribe and base the need of psychological evaluation on the child's behavior relative to the prevailing cultural and social standard of the child's tribe.

5.0 TCA Home Study

5.1 What is it? How is it different than a conventional adoption home study?

Similar to a conventional adoption home study, a TCA home study is an evaluation of the background, safety and health information of the adoptive applicant's home, including the biological, psychological and social factors of the adoptive applicant and an assessment of the commitment, capability and

suitability of the applicant to meet the child's needs. A TCA home study completed by a designee may be a full, abbreviated, or updated home study.

The key differences between a TCA and a conventional adoption home study are:

1. A TCA home study may be conducted by the Indian child's tribe or the tribe's designee.
2. A TCA home study must be completed by the designee in consultation with the Indian child's tribe using the tribe's prevailing social and cultural standard.

When the tribe conducts its own home study

5.2 What standards are the tribes required to use when conducting the home study?

Tribes must complete the TCA home study using the prevailing social and cultural standard of the child's tribe. Pursuant to W&IC section 366.24(c)(1)(B), the home study shall include an evaluation of the background, safety and health information of the adoptive home, including biological, psychological and social factors of the prospective adoptive parent(s) and assessment of the commitment, capability and suitability of the prospective parent(s) to meet the child's needs.

5.3 Does the agency with placement and care responsibility need a copy of the TCA home study if it is completed by the tribe?

Yes. The agency needs a copy of the approved or denied TCA home study from the tribe, **whether completed by the tribe or the tribal designee**, to be able to submit to the court all pertinent information addressing the TCA in the continued W&IC section 366.26 hearing report. The applicant would need to sign a release of information form allowing another entity, other than the one completing the TCA home study, to view it.

The agency should request a copy of the approved home study from the tribe. Where a tribe has formally intervened, the request should be sent to the tribal representative as identified in the "Notice of Designation of Tribal Representative and Notice of Intervention" (ICWA-40). Where the tribe has not formally intervened, and if a formal representative with authority to respond on behalf of the tribe has not already been identified by the tribe, the request should be sent to the Tribal Chair.

If the TCA home study is not received by the allotted time provided for the agency to submit the addendum to the continued W&IC section 366.26 report to the court (seven days), the agency must include that information in this addendum report and inform the court that it cannot recommend approval of the applicant until it has time to review the TCA home study.

When a tribe designates an agency to conduct the home study

5.4 What are the additional requisite elements of a full, abbreviated and updated home study TCA home study?

In addition to the information required for a conventional adoption as specified in Title 22, Division 2, CCR sections 35179 - 35183.1, when a TCA is completed by a designee, it must be done in consultation with the Indian child's tribe using the tribe's prevailing social and cultural standard. The information currently required to provide to, and obtain from, the adoptive applicant and information used to base a determination to approve or deny an adoptive applicant for TCA must include:

1. A designation of the agency by the child's tribe before accepting an application to adopt and begin the TCA home study;
2. On the adoption application, an indication that the home study is for the purposes of a TCA;
3. Identifying information about the applicant's tribal membership or affiliation, if applicable;
4. Determination of the applicant's commitment and capability to meet the needs of an Indian child which shall include the willingness to learn and incorporate the prevailing social and cultural standards of the Indian child's tribe into family life;
5. The applicant's understanding of the TCA process, including, but not limited to: the explanation of the agency as a designee, consultation with the Indian child's tribe; and the written approval process;
6. The applicants understanding of the concept of a TCAO, including, but not limited to the modification of the child's relationship to the adoptive parents and the birth parents and Indian custodian; and

7. The applicant's cultural competence of the child's tribe, especially customs, traditions and laws relevant to the child's development.

5.5 What are the additional eligibility requirements for a designated agency completing an abbreviated or updated TCA home study?

For an abbreviated TCA home study – In addition to the eligibility requirements to conduct an abbreviated conventional home study as specified in Title 22, Division 2, CCR section 35183, if the adoptive applicant has completed a tribal customary, conventional agency, independent, or intercountry adoption within the last five years, that applicant may be eligible to receive an abbreviated TCA home study.

For updating a TCA home study – There are no additional requirements for updating a TCA home study.

5.6 What happens to a conventional home study completed prior to the implementation of TCA (July 1, 2010), where the adoption has not been finalized and the applicant becomes interested in TCA?

Where the tribe has selected TCA, when the applicant has completed a full conventional adoption home study as specified by Title 22, Division 2, CCR section 35181 and the applicant is interested in pursuing an adoption of a dependent Indian child who is eligible for tribal customary adoption, the designated agency should update the assessment by incorporating all requisite elements of an updated TCA home study (see section 5.2)

5.7 Home Study Approval: Who has ultimate authority to decide approval of the TCA home study?

When an agency is designated to complete the TCA home study, the agency shall make a recommendation to the tribe regarding approval or disapproval of the adoptive applicant's TCA home study. The tribe has discretion to issue final approval or disapproval of the home study except however, that no home study shall be approved by the tribe where the applicant's criminal record and child abuse report has not been cleared pursuant to the W&IC section 366.24(c) (Adam Walsh Act).

5.8 What if the designated agency and the tribe disagree over a prospective adoptive family?

The tribe has the ultimate authority to approve or deny an adoptive applicant for TCA. If the agency's recommendation does not correspond to the tribe's decision, the agency, tribe and any other pertinent individuals should discuss the recommendation and issues of the applicant's case.

If the agency recommends approval of an applicant and the tribe disagrees, TCA with that applicant can no longer be the permanent plan, as the tribe cannot be forced to do a TCA. However, if the agency recommends denial and the tribe approves the applicant, the tribe may continue the preparation of a TCAO. When this occurs, if the agency believes the child would be at risk if placed with this applicant, the agency should include the facts that led to the agency not recommending approval of the applicant in the addendum to the continued W&IC section 366.26 report.

Please note: The TCA process does not prevent a mandated reporter from reporting any suspected child abuse or neglect or an agency with placement care and responsibility from investigating a report of child abuse or neglect.

5.9 Is an adoptive applicant still eligible to request a grievance review hearing if their TCA home study is denied?

Designated Agency

When a designated agency recommends a denial of an adoptive applicant's TCA home study, regardless of the tribe's final decision, the adoptive applicant will retain the right to request a grievance review hearing as specified in Title 22, Division 2, CCR section 35215.

Indian Child's Tribe

When a tribe denies a TCA home study completed by a designated agency, the tribe may, pursuant to its own laws or customs provide a grievance procedure similar to or above and beyond the one the agency must provide, but is not required.

6.0 Tribal Designee

6.1 What entities can be designated by Indian child's tribe?

The Indian child's tribe's designee may include a licensed county adoption agency, CDSS when it is acting as an adoption agency, or a California licensed adoption agency. Tribal designees **do not include** agencies the tribe may use when the tribe conducts its own home study.

6.2 How is an entity designated by the Indian child's tribe?

It is the tribe's decision to determine whether it will conduct the TCA home study itself or seek a designee. If the tribe chooses to seek a designee, it is responsible for providing the agency with a written request for that agency to be the designee and conduct the assessment of the TCA adoptive applicant. The request should come from a tribal representative with authority to make a request on behalf of the tribe. Where the tribe has formally intervened in the action, the tribe's representative would be identified in the tribe's "Notice of Designation of Tribal Representative and Notice of Intervention" (ICWA - 40). Where the Tribe has not formally intervened it may be advisable to request a formal designation of a representative for purposes of the TCA process from the Tribe's Chairperson.

6.3 What are the responsibilities of the tribal designees?

Tribal designees will be responsible for the following:

1. Working with the Indian child's tribe;
2. Completing the TCA home study using the prevailing social and cultural standards of the child's tribe. This includes, but is not limited to: accepting the adoption application and providing all required information to the applicant;
3. Recommending approval or denial of the adoptive applicant to the tribe;
4. Conducting California (CA) Department of Justice (DOJ) and Federal Bureau of Investigations (FBI) criminal background checks; and
5. Conducting Child Abuse Central Index (CACI) and out-of-state child abuse and neglect registry checks.

Additional responsibilities may include, but not be limited to:

1. Supervision of the adoptive placement;
2. Termination of the adoptive placement;
3. Completing the final court report; or
4. The immediate filing of the final court report.

6.4 Is an agency obligated to be a designee?

No.

6.5 What are the benefits of being designated to complete the TCA home study?

Facilitating a tribal customary adoption for a dependent Indian child supports the child's well-being, timeliness to permanence and placement stability. A designee will be afforded the opportunity to promote these objectives which are vital to some of California's most vulnerable children, who have either been abused or neglected at one time in their lives.

7.0 Review of Criminal and Child Abuse and Neglect Background

7.1 Who is responsible for completing the criminal background and child abuse and neglect checks?

When a TCA home study is initiated, the agency with placement and care responsibility over the child will have the ultimate responsibility to ensure any necessary checks of the adoptive applicant's criminal background and child abuse and neglect report history are completed. Pursuant to W&IC section 366.24(c)(3), no final approval by the tribe to the adoption may be granted without these checks.

If the tribe chooses a designee to conduct the home study, the designee shall perform a state and federal criminal background check and a check of CACI pursuant to section 1522.1 of the Health and Safety Code through DOJ on the prospective adoptive parents and any persons over 18 years of age residing in the household.

Any tribal designee must be an entity authorized to request a search of CACI and, if necessary, a check of any other state's child abuse and neglect registry and authorized to request a search for state or federal level criminal offender records information through DOJ.

If the tribe conducts its own home study, the public agency otherwise authorized to obtain criminal background and child abuse and neglect report information for the purpose of adoption shall perform the state and federal criminal background and child abuse and neglect report history check. If the public agency approves or denies the applicant's criminal background clearance,

they are responsible for informing the child's tribe, conducting the home study, of this decision in writing.

Pursuant to W&IC section 366.24(c), if the public agency denies the applicant a criminal background clearance, that applicant may make a written request to that public agency for a copy of his or her state or federal level criminal offender record information search response.

7.2 Is the child's tribe authorized to conduct its own background checks?

It depends. If the tribe has entered into a Title IV-E agreement with CDSS, currently only the Karuk and Yurok tribes, it would be authorized to conduct its own adoption specific background checks. Aside from the Karuk and Yurok, all other tribes would not have access to the CA DOJ criminal offender and/or child abuse index information. The background check will therefore have to be done by an entity with legal authority to access the CA DOJ information. If a designee is doing the home study, because the statute limits designees to entities with CA DOJ access, the designee will be able to do the checks. If the tribe does its own home study, the TCA statute requires the entity with placement and care responsibility do the background checks.

7.3 What standard will be applicable for the background checks in a TCA?

The standard currently used for prospective adoptive parents should be used for TCA. This means that a full state and FBI criminal background check as well as the CACI and out-of-state child abuse and neglect registries, if necessary, should be checked. This also means that a home study where the applicant, or an adult residing in the applicant's home, has a conviction located in Health & Safety Code section 1522(g)(1)(A)(i), 1522(g)(1)(B), or for physical assault, battery, or a drug-related offense within the last five years, cannot be approved.

8.0 The TCAO

8.1 What is TCAO?

The TCAO is an order completed by the Indian child's tribe that will represent the legal framework of the modified relationships of the child. It will establish the legal relationship, responsibilities and privileges between the Indian child and the adoptive family and the modified legal relationship between the Indian child and the birth parents after TCA is finalized.

Please note: The child's tribe is responsible for preparing the TCAO and is not required to disclose the tribal customs or ceremonies used during this process.

Pursuant to W&IC section 366.24(c)(10), the TCAO is required to address the following issues:

1. The modification of the legal relationship of the birth parents or Indian custodian and the child after TCA is finalized;
2. Contact between the birth parents or Indian custodians and the child;
3. Responsibilities of the birth parents or Indian custodians;
4. The child's legal relationship with the tribe; and
5. The rights of inheritance of the child.

Additionally, the tribe will be able to specify anything else it deems appropriate per its laws and customs except that the order shall not include any orders pertaining to the child support obligation of the birth parents or Indian custodian. There shall be a conclusive presumption that any parental rights or obligations not specified in the TCAO shall vest with the tribal customary adoptive parents. (See W&IC section 366.24(10))

8.2 Is the agency responsible for facilitating the TCAO?

No. The agency with placement and care responsibility for the Indian child or a tribal designee is not involved in completing the TCAO. The Indian child's tribe is responsible for facilitating the TCAO and is not required to disclose the tribal customs or ceremonies used during this process. To support effective case management, the agency may request updates of the completion of the TCAO from the tribe.

Once the W&IC section 366.26 hearing is continued, the dependency case is referred to the tribe to complete the TCAO. Pursuant to W&IC section 366.26(c)(6), the tribe has 120 days from the initial W&IC section 366.26 hearing to file the TCAO with the court. The court has the discretion to grant an additional continuance to the tribe for filing a TCAO up to, but no more than 60 days.

Note: If the tribe does not file the TCAO within the time allotted, the court has the discretion to make new orders to determine the best permanent plan for the child. This permanent plan could include any permanency plan options available

to a dependent child. In that case, the agency would use the current standards and procedures governing the permanency planning process.

8.3 Will the agency need a copy of the TCAO?

Yes. The agency should request a copy from the tribe. The public information required in the TCAO addressing the legal relationships of the child is pertinent to the case. This information should be documented in the case file and case notes in CWS/CMS.

Where a tribe has formally intervened, the request should be sent to the tribal representative as identified in the "Notice of Designation of Tribal Representative and Notice of Intervention" (ICWA-40). Where the tribe has not formally intervened, and if a formal representative with authority to respond on behalf of the tribe has not already been identified by the tribe, the request should be sent to the Tribal Chairperson.

8.4 Since the rights of the birth parents are not terminated, will they still have legal rights to the child?

The tribe is responsible for modifying the parental rights and obligations and specifying them in the TCAO.

8.5 What if rights of the birth parents are not specified in the TCAO?

Where any rights are not specified in the TCAO, the rights and obligations will presume to be with the tribal customary adoptive parents.

8.6 What will happen to the child support obligations of the birth parents?

Although the birth parents rights are not terminated in a TCA, they are modified by the tribe and through the TCAO. Pursuant to W&IC Section 366.24(c)(10), the TCAO is **not** to include child support obligations from the birth parents or Indian custodian. If the birth parent had an existing child support case prior to the TCAO, their case may remain open and arrears owed may still be enforced by the Local Child Support Agency (LCSA)². For more information regarding child support, contact the California Department of Child Supportive Services.

² Information regarding child support's applicability to TCA can be found at:
<http://www.childsup.ca.gov/Portals/0/resources/docs/policy/eblast/2010/eblast10-03.pdf>

8.7 If there is a problem with visitation or other aspects of the TCAO is there a way to address the issues?

Yes, there is. Pursuant to W&IC section 366.26(i)(2), the parties must show evidence of good faith efforts to resolve the dispute prior to seeking judicial relief. They may use either tribal or other dispute resolution services to address the problem, but failure to comply with the TCAO does not undo the TCA. The parties may return to court to address the issues if the dispute resolution fails.

9.0 Addendum to the Selection and Implementation (W&IC section 366.26) Hearing Court Report

9.1 What is the “addendum selection and implementation hearing (W&IC section 366.26) court report”?

This addendum provides the agency the opportunity to express its opinion about the prospective tribal customary adoption including providing a recommendation to the court on whether it is or is not in support of the adoption. It is an additional section in the **continued W&IC section 366.26** report and should address the following:

1. Continued suitability of TCA being the appropriate plan for the child;
2. The recommendation for the approval or denial of the prospective tribal customary adoptive applicant(s). This is contingent on the completion of the home study. If the home study is not complete, the agency is responsible for including that information in this report. The agency is not expected to recommend an approval of an applicant when the home study is not complete or the agency has not reviewed the home study when completed by the Indian child’s tribe;
3. The results of the full state and federal level adoption specific background checks;
4. Any pertinent information gathered during the W&IC Section 366.24 process, including the TCAO;
5. Any updates regarding TCA the agency deems necessary to report to the court; and

6. Any concerns the agency may have with the TCAO.
The agency will be responsible for modifying this report to include this section.

9.2 Who is responsible for writing the “addendum to the selection and implementation hearing court report”?

This report is written by the agency with placement and care responsibility of the child and submitted to the court no less than seven (7) days prior to the continued W&IC 366.26 hearing.

10.0 Full Faith and Credit

10.1 What does full faith and credit mean?

Full faith and credit is a legal concept regarding when and how different sovereigns recognize and enforce each other’s court orders. For full faith and credit to tribal proceedings and records in California, see W&IC, Section 224.5.

10.2 How is full faith and credit used in a TCA?

At the continued W&IC 366.26 hearing, the state court may afford full faith and credit to the tribe’s TCAO. This means the state court would enforce the tribe’s TCAO and the Indian child would be eligible for adoptive placement and ultimate finalization. This **does not** mean the state court has finalized a TCA because a TCA adoption finalization hearing must still be held.

10.3 What occurs after full faith and credit is given by the dependency court?

After the state court affords full faith and credit to the TCAO, the following occurs:

1. The Indian child becomes eligible for adoptive placement.
2. The tribal customary adoptive placement agreement is executed and signed.
3. The AAP agreement is executed and signed.
4. Supervision of tribal customary adoptive placement begins.
5. The TCA prospective adoptive parents file the petition for adoption (TCA).
6. Once the petition is filed, the court sets a hearing to finalize the adoption.

7. The court issues a final decree of adoption.
8. The court orders dependency terminated.

10.4 Why would a court not afford full faith and credit to the tribe's TCAO?

If an order from the Indian child's tribe (sovereign #1) violates a generally accepted public policy of California (sovereign #2), then the state court of California may not enforce the tribe's order. Other reasons may include: fraud, the entity issuing the order had no authority to do so, due process not provided or the order offends a strongly held public policy.

10.5 What happens if full faith and credit is not given by the dependency court?

The tribe and other parties must address the issue. If the issues cannot be resolved and the plan of TCA may no longer be the appropriate permanent plan for the Indian child, the state court has the discretion to order a hearing to determine the most appropriate permanent plan for the Indian child.

11.0 Tribal Customary Adoptive Placement

11.1 When does tribal customary adoptive placement occur?

A tribal customary adoptive placement occurs after the dependency court has afforded full faith and credit to the TCAO. Unlike the conventional adoption process, it can be initiated without the termination of parental rights. A system change request is being created in CWS/CMS to allow this change, although this change will not be immediate.

11.2 What will be included in the tribal customary adoptive placement?

Until emergency regulations are modified to include TCA into the agency adoption process, refer to the following: Title 22, Division 2, CCR sections 35195 – 35207.1 to guide the practice of tribal customary adoptive placement:

Section 35195 - Child's Medical and Psychological Information

Section 35197 - Adoptive Placement Requirements

Section 35201 - Adoptive Placement Agreement

Section 35207 - Termination of Adoptive Placement

Section 35207.1 - Reporting Suspected Child Abuse

Similar to the conventional adoptive placement process found in Title 22, Division 2, CCR section 35195, pursuant to W&IC section 366.24(9) the following information is required to complete the tribal customary adoptive placement:

1. A written report, using form **AD 512**, on the Indian child's medical, and if available, the medical background on the child's biological parents, given to the prospective tribal customary adoptive parents and an acknowledgement they have received it.
 - a. The report on the Indian child's background must contain all known diagnostic information, including the following:
 - i. Current medical reports on the Indian child;
 - ii. Psychological evaluations;
 - iii. Scholastic information; and
 - iv. Developmental history.

11.3 When can the tribal customary adoptive placement agreement be signed?

Similar to the conventional adoption process, an adoptive placement agreement can be prepared and executed during the tribal customary adoptive placement process, after full faith and credit has been afforded to the TCAO and the home study has been completed and approved by the tribe.

11.4 Since the Indian child will essentially have two sets of legal parents, will the birth certificate need to include both names?

No, two sets of parents will not appear on the birth certificate. Subject to the terms of the tribally issued TCAO, TCA parents will be afforded the same opportunity as any current adoptive parent to maintain the Indian child's original birth certificate or have it amended.

Agencies should continue to use form VS-44. Regulations governing form VS-44 is located in Title 22, Division 2, CCR section 35211(d)(9).

11.5 Can a tribal customary adoptive placement be terminated?

Yes. Similar to a conventional adoptive placement, if an agency, in consultation with the child's tribe, has any reason to remove the child, the placement may be terminated. Please refer to Title 22, Division 2, CCR section 35207 to guide termination of a tribal customary adoptive placement.

12.0 Supervision of Tribal Customary Adoptive Placement

12.1 What will be included in the supervision of a tribal customary adoptive placement?

Pursuant to W&IC section 366.24(c)(8)(A) and (B), the agency with care and placement responsibility shall be responsible for ensuring the supervision of the tribal customary adoptive placement. Until emergency regulations are modified to include TCA into the agency adoption process, refer to the following Title 22, Division 2, CCR section 35203, to guide the practice of supervising a tribal customary adoptive placement:

Please note: Supervision of tribal customary adoptive placement is subject to compliance with federal Public Law 109-288 in regards to monthly case worker visits as long as the child is a court dependent and under the care and supervision of the county child welfare agency.

13.0 Adoption Assistance Program (AAP) Benefits

13.1 Will the child be eligible for Adoption Assistance Program?

Yes, pursuant to W&IC section 16120, access to AAP benefits are made available when a dependent Indian child is the subject of an order of the tribal customary adoption.

13.2 How will non-recurring expenses be handled in a TCA case?

The current process of using and tracking non-recurring expenses for conventional adoptions will be used for TCA.

14.0 Private Adoption Assistance Reimbursement Program (PAARP)

14.1 Will a designated licensed private adoption agency be able to claim PAARP?

Yes. Since TCA involves an Indian child who is a dependent of the court, effective July 1, 2010, licensed private adoption agencies can claim PAARP reimbursement for tribal customary adoptions. The same process and forms used for a conventional adoption of a child in foster care are used to complete the claiming process. AD PAARP Form 4348 has been modified to include TCA.

14.2 If a tribe conducts its own home study and chooses a tribal agency that is not licensed as a California adoption agency, is that tribal agency eligible to claim PAARP?

No. Pursuant to W&IC section 16122, only licensed private adoption agencies may claim PAARP. More information on PAARP is located on the internet at: <http://www.childsworld.ca.gov/PG1885.htm>.

15.0 Finalization

15.1 What duties are required of the agency with placement and care responsibility of the child for finalization?

Pursuant to W&IC section 366.24(c)(12), after the prospective adoptive parent(s) desiring to adopt the child has filed the adoption petition, the agency that has placement, care and responsibility for the child is responsible for ensuring a full and final report of the facts of the proposed tribal customary adoption is submitted to the court. The report must include the documents and information required in section 35211(d) of Title 22, Division 2 CCR regulations with the exception of:

- Documentation that the child is legally freed to finalize an adoption.

15.2 What happens to the rights of the biological parents?

The rights of the parents are modified during the TCAO process by the Indian child's tribe.

15.3 What are the rights of the adoptive parents?

Subject only to the terms of the TCAO, Tribal customary adoptive parents will be afforded the same rights and privileges, and are subject to all the duties of any other adoptive parent consistent with the TCAO.

16.0 Disclosure and Confidentiality

16.1 What disclosure and confidentiality standards will apply to a TCA?

TCA will apply where a tribe has acknowledged a child as a member or eligible for membership as defined by ICWA. Where the tribe has formally intervened in the matter, it will be entitled to more information pertaining to the case.

When the case is referred to the tribe for development of the TCAO, there will be a need to continue to collaborate with the tribe on the information relevant to the Indian child's case and in particular with respect to information on the prospective adoptive family.

Further, a designee doing the TCA home study will need to collaborate with the tribe because it will be required to conduct the home study "in consultation with" the tribe. Sharing of information will be necessary if not inevitable. The primary limitation would be in connection with sharing criminal record or child abuse registry information. The statute, however, provides that if the subject of the background check gives consent, then background check information can be released to the tribe.

Statute further specifies disclosure provisions applicable to children that are the subject of a TCA at W&IC section 366.24(d). In sum they are afforded the same protections as any other child that has been adopted.

17.0 Set Aside

17.1 What is a set aside?

Once an adoption is finalized, if a child shows evidence of a developmental disability or mental illness as a result of conditions existing before the adoption, to the extent that the child cannot be adopted and of which condition the adoptive parent had no knowledge or notice before the adoption was finalized, the adoptive family may file a (set aside) petition pursuant to W&IC section 366.26(e)(3) setting forth those facts with the juvenile court that granted the adoption petition in an attempt to set aside or dissolve the existing adoption order.

17.2 Will a TCA be able to be set aside?

Yes. Pursuant to W&IC section 366.26(e)(3), a finalized TCA will be able to be set aside within five years of the date of finalization.

17.3 Do the same standards currently used to set aside a conventional adoption apply to a TCA?

Most of the same standards currently used to set aside a conventional adoption apply to a TCA with the following exception:

1. As part of the investigative set aside report, the Adoption Worker conducting the investigation needs to consult with the child's tribe to develop a plan for the child. This recommended plan will be part of the report to the court.

18.0 ICPC

18.1 Can a tribal child from an out of state tribe be the subject of a TCA?

Yes. If the child is a California dependent, and the tribe elects a permanent plan of TCA, that tribe does not have to be a California tribe.

18.2 Does ICPC apply to TCA?

Yes. The TCA statutes do not alter ICPC obligations that apply if a California dependent child is placed with prospective adoptive parents residing out of state. The sending agency would have to consider and comply with the ICPC protocols and may be working with both the receiving state and the tribe to complete the ICPC requirements. See ACL 08-26 for additional information on the ICPC home study process, including the requirements of the federal Safe and Timely Interstate Placement of Foster Children Act. Because most out-of-state courts do not provide a process for finalizing an adoption without termination of parental rights, agencies will have to work to finalize the adoption in California or in the other state, as appropriate depending on the circumstances of the particular case. For questions on ICPC requirements you may contact the Out-of-State Placement Policy Unit at 916-651-8100 or ICPC@dss.ca.gov.

19.0 Data Reporting on TCA

The AB1325 requires the completion of a study and a report to the Legislature by January 1, 2013. The report must include the following information:

1. The number of families served and the number of completed tribal customary adoptions.
2. The length of time it takes to complete a completed tribal customary adoption.
3. The challenges faced by social workers, courts and tribes in completing a TCA.
4. The benefits or detriments to Indian children from a tribal customary adoption.

Being able to track an ICWA eligible child who may be the subject of a completed tribal customary adoption will provide valuable information as to the safety,

permanency and well-being of these children. Additionally, there is a need to gather as much data as possible on these cases to see in what ways the law was successful, to identify barriers that social workers, families, tribes and judges, etc. encountered, and to be able to write the report and make recommendations on whether or not tribal customary adoptions should continue beyond the January 1, 2014, sunset date, or should continue with modifications, etc.

19.1 How can information regarding TCA be entered into CWS/CMS?

The TCA Special Projects Code shall be selected on the Special Project tab of a case in CWS/CMS to indicate a child is being considered for tribal customary adoption. Any case in which TCA is considered as a permanency option (regardless of whether or not TCA was actually selected as the permanency plan), must be identified with this TCA Special Projects Code in CWS/CMS. The Special Projects Code should be selected at the time TCA is considered. Once a case is identified with the TCA special projects code, the code should remain selected regardless of the case/permanency outcome. The Special Projects Code will assist in tracking cases for data collection to include in the study and report to Legislature, as aforementioned.

In order to identify a case in which TCA has been considered, use the following steps in CWS/CMS:

Step 1: In the Case Folder of the CWS/CMS, go to the, "Special Projects" tab. Select the Special Projects page tab and then the (+) button in the grid to enter a new Special Project for the focus child. Click the down (+) button to display the available list of Special Projects.

Step 2: Select the following code:

"S-Tribal Customary Adoption"

The child is in out-of-home care, and reunification services have been ordered. The child has been determined to be ICWA eligible and tribal customary adoption is an option to be discussed with the tribe as a concurrent plan option should reunification be unsuccessful.

19.2 To enter adoptive placement information in CWS/CMS, a TPR date is currently required. Since TCA does not require TPR, which date do I enter to allow CWS/CMS to complete adoptive placement?

Until further notice directing you otherwise, enter the date the court afforded full faith and credit to the TCAO and note that in the case notes.

19.3 Since the case plan of TCA is not currently available, which case plan should be selected?

Until further notice directing you otherwise, select ADOPTION or ADOPTION WITH SIBLING(S).

20.0 Forms

20.1 What Judicial Council forms have been modified to include TCA?

The Judicial Council of California modified the following mandatory dependency and adoption forms to include TCA in the dependency and adoption process. They are located on the Judicial Council's website at:

<http://www.courtinfo.ca.gov/forms/>

1. JV – 300: Notice of Hearing on Selection of a Permanent Plan
2. JV – 320: Orders Under W&IC §§ 366.24, 366.26, 727.3, 727.31
3. JV – 321: Request for Prospective Adoptive Parent Designation
4. JV – 327: Prospective Adoptive Parent Designation Order
5. ADOPT – 050: How to Adopt a Child in California
6. ADOPT – 200: Adoption Request
7. ADOPT – 210: Adoption Agreement
8. ADOPT – 215: Adoption Order
9. ADOPT – 220: Adoption of Indian Child

The Judicial Council of California is in the process of modifying the following optional dependency forms to include TCA in the dependency process. Once approved they will be located on the Judicial Council's website at:

<http://www.courtinfo.ca.gov/forms/>

1. JV – 405: Continuance-Detention Hearing
2. JV – 406: Continuance-General
3. JV – 410: Findings and Orders After Detention Hearing (W&IC § 319)
4. JV – 412: Findings and Orders After Jurisdictional Hearing (W&IC § 356)
5. JV – 415: Findings and Orders After Dispositional Hearing (W&IC § 361et Seq.)
6. JV – 420: Dispositional Attachment: Removal From Custodial Parent-Placement with Previously Noncustodial Parent (W&IC §§ 361, 361.2)

7. JV – 421: Dispositional Attachment: Removal From Custodial Parent-Placement with Non-parent (W&IC §§ 361, 361.2)
8. JV – 425: Findings and Orders After In-Home Status Review Hearing (W&IC § 364)
9. JV – 426: Findings and Orders After In-Home Status Review Hearing-Child Placed with Previously Non-custodial Parent (W&IC §§364,366.21)
10. JV – 430: Findings and Orders After Six-Month Pre-permanency Hearing (W&IC § 366.21(e))
11. JV – 432: Six-Month Pre-permanency Attachment: Reunification Services Continued (W&IC § 366.21(e))
12. JV – 435: Findings and Orders After 12-Month Permanency Hearing (W&IC § 366.21 (f))
13. JV – 437: Twelve-Month Permanency Attachment: Reunification Services Continued (W&IC § 366.21 (f))
14. JV – 440: Findings and Orders After Eighteen-Month Permanency Hearing (W&IC §366.22)
15. JV – 445: Findings and Orders After Post-permanency Hearing-Parental Rights Terminated; Permanent Plan of Adoption (W&IC §366.3 (f))
16. JV – 446: Findings and Orders After Post-permanency Hearing—Permanent Plan Other Than Adoption (W&IC §366.3)

20.2 What CDSS forms have been modified to include TCA?

The CDSS modified the following adoption forms to include TCA in the adoption process. They are located on the CDSS website at:

<http://www.cdss.ca.gov/cdssweb/PG164.htm>.

1. AD 558: Notice of Placement (Adoptive)
2. AD 580: Notice of Removal of Child from Adoptive Home
3. AD 824: Adoption Petition - Consent and Joinder
4. AD 907: Adoptive Placement Agreement
5. AD 4348: PAARP

The CDSS is in the process of modifying the following adoption form to include TCA in the adoption process. Once approved, it will be located on the CDSS website at: <http://www.cdss.ca.gov/cdssweb/PG164.htm>.

1. AAP 4: Eligibility Certification – Adoption Assistance Program

20.3 My agency uses additional forms located on the CDSS website other than the ones listed. Are there any additional CDSS forms necessary to implement TCA that have not been modified?

Due to limited resources, many adoption forms currently located on the CDSS website were not modified. Most of the forms are templates that incorporate requested information required by statutes or regulations. Although the agency is required to retrieve certain information, the form itself may not be mandatory. Therefore, counties, DOs and adoption agencies will be responsible for modifying their own adoption forms to include TCA and ensure the required information is being documented. If this legislation is extended past 2014, CDSS will reassess its resources to determine if additional forms can be modified.

Should you have any questions regarding this letter you may contact me at (916) 657-2614 or the Permanency Policy Bureau at (916) 657-1858. Any questions regarding input to CWS/CMS should be directed to the County Single Point of Contact (SPOC). The SPOCs needing assistance should contact their System Support Consultant at the CWS/CMS Project.

Sincerely,

Original Document Signed By:

GREGORY E. ROSE
Deputy Director
Children and Family Services Division