



## Judicial Council of California · Administrative Office of the Courts

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 14, 2012

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**Title**

Judicial Branch Report to the Legislature:  
Tribal Customary Adoption

**Agenda Item Type**

Action Required

**Effective Date**

December 14, 2012

**Rules, Forms, Standards, or Statutes Affected**

None

**Date of Report**

November 28, 2012

**Recommended by**

Required by Statute - Welfare and Institutions  
Code Section 366.24(f)

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### Executive Summary

Assembly Bill 1325 (Cook; Stats. 2009, ch.287) (AB 1325), which became effective July 1, 2010, was tribally initiated legislation which added a new permanency option for Indian children who are dependents of the California courts. This new permanency option known as tribal customary adoption (TCA) allows these children, with the involvement of their tribe, to be adopted by and through the laws, customs and traditions of their tribe without requiring termination of the parental rights of the Indian child's biological parents. The legislation was intended to provide a culturally appropriate permanency option for Indian children who are dependents of the California courts, but still provide those children with the permanency and other benefits of a conventional adoption.

Section 12 of Assembly Bill 1325 (Codified as Welfare and Institutions Code section 366.24(f)) required the Judicial Council to "...study California's tribal customary adoption provisions and their effects on children, birth parents, adoptive parents, Indian custodians, tribes, and the court, and shall report all of its findings to the Legislature on or before January 1, 2013." AB 1325 originally provided that the tribal customary adoption provisions would remain in effect until

January 1, 2014 unless a later enacted statute deleted or extended that date.<sup>1</sup> This sunset date was removed by SB 1013 (Stats. 2012, ch. 35) as signed by the Governor on June 27, 2012. Although the sunset was lifted, the requirement for the Judicial Council to provide a report to the legislature was not removed. AOC staff have conducted research as required by the statute and the attached report sets out the findings of that research.

### **Recommendation**

Approve the report for submission to the Legislature.

### **Previous Council Action**

Assembly Bill 1325 required the Judicial Council to adopt rules of court and necessary forms required to implement tribal customary adoption as a permanent plan for dependent Indian children. The necessary rules and forms revisions were approved by the Judicial Council on April 30, 2010 and became effective July 1, 2010. These changes essentially wove the requirements of tribal customary adoption throughout the rules and forms which govern placement and permanency planning hearings in dependency cases and adoptions. The report to the Judicial Council concerning the proposal which included these changes was entitled Juvenile Law: Tribal Customary Adoption and was approved by the Judicial Council on April 30, 2010 as Item A-6. That report can be found at <http://www.courts.ca.gov/documents/20100423itema6.pdf>.

### **Rationale for Recommendation**

The legislative report is required by statute to be submitted by the Judicial Council.

### **Comments, Alternatives Considered, and Policy Implications**

Not applicable.

### **Implementation Requirements, Costs, and Operational Impacts**

The rules and forms necessary to implement tribal customary adoption were adopted by the Judicial Council effective July 1, 2010. AOC staff are available to provide training and technical assistance to courts and other system participants as needed. There are no further costs anticipated.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

### **Attachments**

1. Judicial Branch Report to the Legislature: Tribal Customary Adoption.

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<sup>1</sup> See for example WIC section 358.1 (k) as enacted by AB 1325.

# Judicial Branch Report to the Legislature: Tribal Customary Adoption

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A REPORT TO THE CALIFORNIA  
LEGISLATURE

JANUARY 2013



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OF THE COURTS

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# **Tribal Customary Adoption: Evaluation of Assembly Bill 1325**

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A REPORT TO THE CALIFORNIA LEGISLATURE

JANUARY 2013



ADMINISTRATIVE OFFICE  
OF THE COURTS

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JUDICIAL AND COURT OPERATIONS  
SERVICES DIVISION

CENTER FOR FAMILIES, CHILDREN & THE COURTS

This report has been prepared and submitted to the California Legislature under Assembly Bill 1325 (Stats. 2009, ch. 287).

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## Executive Summary

Assembly Bill 1325 (Cook; Stats. 2009, ch. 287), which became effective July 1, 2010, was tribally initiated legislation that added a new permanency option for Indian children who are dependents of the California courts. This new permanency option, tribal customary adoption (TCA), allows these children, with the involvement of their tribes, to be adopted by and through the laws, customs, and traditions of the tribe without requiring termination of the parental rights of the biological parents. The bill intends to offer a culturally appropriate permanency option for Indian children who are dependents of the California courts, while still providing those children with all the benefits associated with other state court adoption procedures.

## Overview

Before Assembly Bill 1325, the permanency options for dependent “Indian children”<sup>1</sup> unable to reunify with their parents were limited to adoption under state law (i.e., requiring termination of parental rights), legal guardianship, or permanent placement with a fit and willing relative.<sup>2</sup> Federal and state law establish a preference for permanent plans of adoption for all dependent children who are unable to reunify with their parents.<sup>3</sup> Many Indian tribes in California objected to adoptions that require termination of parental rights, however, which they “associated with oppressive policies used historically against tribes and Indian people—for example, forced removal of Indian children and Indian boarding schools.”<sup>4</sup> The purpose of the bill was described as follows:

The motivation for AB 1325 was borne out of the tension between tribal cultural norms and existing state law, which does not include a culturally appropriate means of achieving permanency for dependent Indian children.<sup>5</sup>

AB 1325 was sponsored by the Soboba Band of Luiseno Indians and supported by the California State Association of Counties, the California County Child Welfare Directors Association, and more than 50 California tribes and agencies serving American Indians in California.<sup>6</sup> In addition to the substantive and procedural aspects discussed below, AB 1325 required the Judicial Council to create the rules and forms necessary to implement TCA and to provide a report to the Legislature:

(f) The Judicial Council shall adopt rules of court and necessary forms required to implement tribal customary adoption as a permanent plan for dependent Indian children. The Judicial Council shall study California's tribal customary adoption provisions and their effects on children, birth parents, adoptive parents, Indian custodians, tribes, and the court,

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<sup>1</sup> As that term is defined in 25 U.S.C. § 1903(4) and Welf. & Inst. Code, § 224.1(a).

<sup>2</sup> Welf. & Inst. Code, § 366.26.

<sup>3</sup> *Ibid.* and 42 U.S.C. § 675(5)(E).

<sup>4</sup> Assembly Bill 1325 Bill Analysis for Senate Human Services Committee (Sen. Carol Liu, Chair), June 23, 2009, p. 12, [www.leginfo.ca.gov/pub/09-10/bill/asm/ab\\_1301-1350/ab\\_1325\\_cfa\\_20090619\\_163123\\_sen\\_comm.html](http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1301-1350/ab_1325_cfa_20090619_163123_sen_comm.html).

<sup>5</sup> *id.* at p. 7.

<sup>6</sup> *id.* at pp. 6 and 12–13; and the TCA History page on the California Tribal Customary Adoption website at [www.caltca.org/index.php/tca-history](http://www.caltca.org/index.php/tca-history).

and shall report all of its findings to the Legislature on or before January 1, 2013. The report shall include, but not be limited to, the following:

- (1) The number of families served and the number of completed tribal customary adoptions.
- (2) The length of time it takes to complete a tribal customary adoption.
- (3) The challenges faced by social workers, court, and tribes in completing tribal customary adoptions.
- (4) The benefits or detriments to Indian children from a tribal customary adoption.<sup>7</sup>

AB 1325 provided that the tribal customary adoption provisions would remain in effect until January 1, 2014,<sup>8</sup> but that sunset date was subsequently removed by Senate Bill 1013 (Stats. 2012, ch. 35) as signed by the Governor on June 27, 2012. Although the sunset expiration was lifted, the requirement remained that the Judicial Council provide a report to the Legislature.

## **Methodology Overview**

In answering the quantitative questions posed by the Legislature, the Administrative Office of the Courts (AOC) looked at data from the statewide Child Welfare Services/Case Management System (CWS/CMS) maintained by the California Department of Social Services (CDSS), as well as answers to surveys completed by child welfare professionals<sup>9</sup> around the state. AOC staff sought information to answer the qualitative questions through a combination of court case file reviews, the surveys completed by child welfare professionals, and telephone focus groups with child welfare professionals who had been involved in tribal customary adoption cases. The methodology is discussed in more detail below.

## **Key Findings**

Tracking child welfare cases that involve Indian children is difficult. AOC staff do not know whether we have identified all cases eligible for TCA, let alone all cases where TCA was (or should have been) considered as an option but not pursued. Case tracking depends on information entered and coded in the CWS/CMS. Because TCA is so new, it seems that some counties may not have been aware of the procedures for coding and tracking these cases. It also seems that different counties were not always using the coding system in the same way. Through the surveys of child welfare professionals and the telephone focus groups, AOC staff became aware of a number of TCA cases that were not coded in the CWS/CMS and looked at those cases for this report. It is possible, however, that there were others that were not identified.

The research identified fifteen finalized tribal customary adoptions involving eighteen children between July 1, 2010 and August 31, 2011. Of these, seven were already in permanent placement

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<sup>7</sup> Welf. & Inst. Code, § 366.24(f).

<sup>8</sup> Welf. & Inst. Code, § 358.1(k), for example, as enacted by AB 1325.

<sup>9</sup> The categories of child welfare professionals included social workers, county counsel, attorneys representing minors in dependency cases, attorneys representing parents in dependency cases, attorneys representing care givers/prospective adoptive parents in dependency cases and attorneys or advocates for tribes in dependency cases.

prior to July 1, 2010 when TCA became a permanency option for Indian children. The permanent plans for these children prior to TCA were either legal guardianship or long-term foster care. The advent of TCA allowed these children and families to move from guardianship into this new permanency option with the advantages of adoption. Similarly, county counsel in counties where tribes routinely object to termination of parental rights said that they believed that most, if not all, of their tribal customary adoption cases would have resulted in legal guardianship as the permanent plan for the children, had tribal customary adoption not been an available option.<sup>10</sup>

Not all tribes are comfortable with TCA. Many tribes object to any form of adoption, so the requirement in the law that child welfare workers continue to raise tribal customary adoption as a permanency option throughout the life of the case, even when a tribe has clearly stated that it does not want to pursue tribal customary adoption, has created friction in some counties. However, survey respondents from other counties state that they have been able to find ways to comply with the requirement while being sensitive to the expressed wishes of the tribe.

Some (but not all) system participants reported confusion, frustrations, and delays in implementing their first tribal customary adoptions due primarily to lack of knowledge and experience.

As discussed below in the section, Challenges in Completing a Tribal Customary Adoption, questions linger about how the tribal customary adoption process fits with other aspects of the child welfare and adoption system.

Despite the challenges faced in early implementation of TCA, most of those involved in these cases expressed the view that this additional permanency option in cases involving Indian children is a benefit and had a positive impact on their cases.

## **Chapter 1: Overview**

### **Overview of AB 1325**

AB 1325 establishes a process to allow Indian children in the California child welfare system to enjoy the permanence offered by adoption without first terminating the parental rights of the child's birth parents.<sup>11</sup> The process requires the participation of the child's tribe. If a California superior court, in accordance with state law, finds that the child cannot successfully reunify with his or her parents, then if the child's tribe agrees, the superior court may order tribal customary

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<sup>10</sup> Since 2006, Welfare and Institutions Code section 366.26(c)(B)(vi) has provided that, with respect to Indian children, that the court may find as a compelling reason not to terminate parental rights and free a child for adoption, that such termination would substantially interfere with the child's connection to the tribal community or the child's tribal membership rights or that the child's tribe has identified guardianship, long-term foster care with a fit and willing relative, or another planned permanent living arrangement for the child.

<sup>11</sup> Assembly Committee on Judiciary, AB 2736 Bill Analysis Hearing (Cook and Beall), April 29, 2008, p. 1, [www.leginfo.ca.gov/pub/07-08/bill/asm/ab\\_2701-2750/ab\\_2736\\_cfa\\_20080428\\_102800\\_asm\\_comm.html](http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_2701-2750/ab_2736_cfa_20080428_102800_asm_comm.html).

adoption as the child's permanent plan. If tribal customary adoption is selected as the child's permanent plan, then the state court proceedings are held in abeyance while the child's tribe develops and issues the tribal customary adoption order (TCAO),<sup>12</sup> which is then submitted to the superior court. The superior court decides whether or not to afford full faith and credit to the TCAO issued by the tribe. If the superior court affords the TCAO full faith and credit, the parental rights of the birth parents are modified in accordance with the TCAO rather than being terminated. The child may then be placed for adoption without termination of parental rights. When the adoption is finalized by the superior court, the TCAO is attached to and incorporated by reference into the adoption order issued by the superior court, and the dependency action is dismissed.

Before AB 1325, the Legislature had acted to address the specific circumstances of Indian children in the child welfare system. One such legislative initiative was SB 678 (Ducheny; Stats. 2006, ch. 838), which the Legislature adopted in 2006 to incorporate several provisions of the federal Indian Child Welfare Act (25 U.S.C. §§1901–1963), or ICWA, into California law. One key aspect of SB 678 was the creation of two exceptions for termination of parental rights in dependency cases involving Indian children where the court could otherwise order termination. Under SB 678, the court could decide not to terminate parental rights over an Indian child if it found that termination would be detrimental to the Indian child because 1) termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights or 2) the child's tribe has identified guardianship, long-term foster care with a fit and willing relative, or another planned permanent living arrangement for the child.<sup>13</sup> When AB 1325 was passed, TCA added yet another permanent plan option which could be identified and form the basis for a finding that termination of parental rights was not the best interests of an Indian child.

AB 1325 amended a number of sections of the Welfare and Institutions Code<sup>14</sup> which govern the content of social studies submitted by social workers to the courts for certain hearings. Section 358.1<sup>15</sup> as amended requires social workers to include in each social study or evaluation a discussion of *inter alia*:

(j) For an Indian child, in consultation with the Indian child's tribe, whether tribal customary adoption is an appropriate permanent plan for the child if reunification is unsuccessful.

Changes to sections 361.5(g)(1)(G), 366.21(i)(1), and 366.22(a) and (c) similarly require that the assessment, prepared by the agency whenever the court orders a hearing under section 366.26,

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<sup>12</sup> The content of the TCAO is discussed in more detail below.

<sup>13</sup> Assembly Committee on the Judiciary, AB 2736 Bill Analysis Hearing, April 29, 2008, p.8, [www.leginfo.ca.gov/pub/07-08/bill/asm/ab\\_2701-2750/ab\\_2736\\_cfa\\_20080428\\_102800\\_asm\\_comm.html](http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_2701-2750/ab_2736_cfa_20080428_102800_asm_comm.html).

<sup>14</sup> All further statutory citations in this report come from the Welfare and Institutions Code unless stated otherwise.

<sup>15</sup> Specifically, Welf. & Inst. Code, § 358.1(j).

include analysis related to tribal customary adoption when the proceeding involves an Indian child.

The main implementation provisions appear in sections 366.24 and 366.26. Section 366.24 sets out how the adoptive home study for a TCA will be conducted, who may conduct the study, and what information must be included. It mandates criminal background checks and a check of child abuse registries and precludes any adoptive placement if these checks disclose that any adult in the home has felony convictions related to child abuse or neglect, spousal abuse, crimes against a child, including child pornography, or a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault and battery, or a felony conviction that occurred within the last five years for physical assault, battery, or a drug-related offense.<sup>16</sup>

It also sets out the superior court procedures in cases where TCA is selected as the permanent plan for an Indian child, the interaction between the superior court and the child's tribe, as well as the minimum features and content required in a TCAO.<sup>17</sup>

### **Impetus for the Legislation**

The legislation was initiated and sponsored by the Soboba Band of Luiseno Indians and supported by a number of tribes and tribal agencies throughout the state as well as by the California State Association of Counties and the California County Child Welfare Directors Association. The legislative analyses prepared for the various Senate committees that reviewed the bill describe the impetus for the legislation.

First, these analyses note that for many tribal communities,

According to the author, the termination of parental rights which is currently a prerequisite to adoption of a child is “totally contrary to many tribes' cultural beliefs and it is, in fact, associated with some of the most oppressive policies historically used against tribes and Indian people...” By contrast, historically and traditionally, most tribes have practiced adoption by custom and ceremony.<sup>18</sup>

Tribal communities' objections to termination of parental rights created conflict because federal and state laws place a strong preference on adoption as a permanent plan where a dependent child cannot reunify with his or her parents:

From the tribal perspective, concepts of identity and belonging are central to the idea of permanency and are considered paramount in decisions regarding the placement of Indian children. Thus, within tribal communities, child welfare decisions often are based on the concept of community permanency. When family reunification is not an option, the tribal

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<sup>16</sup> The complete text of section 366.24 is attached as Appendix A.

<sup>17</sup> Assembly Bill 1325 (Cook; Stats. 2009, ch. 287), section 12.

<sup>18</sup> Assembly Committee on Human Services, AB 1325 Bill Analysis Hearing, April 14, 2009, p. 6, [www.leginfo.ca.gov/pub/09-10/bill/asm/ab\\_1301-1350/ab\\_1325\\_cfa\\_20090413\\_111557\\_asm\\_comm.html](http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1301-1350/ab_1325_cfa_20090413_111557_asm_comm.html).

perspective places emphasis on permanency alternatives that help the child stay connected to his or her extended family, clan, and tribe.

In contrast, within mainstream society, greater emphasis is often placed on certain types of permanency, such as adoption with full termination of parental rights. Many tribal communities, however, do not agree with terminating a parent's rights and may instead utilize customary adoption practices. In a customary adoption, the child is taken by a family or community member but still has the opportunity to have a relationship with his or her biological parents and extended family.<sup>19</sup>

The legislation was intended to reconcile requirements under state and federal law that mandate adoption as the most preferred permanent plan for a dependent minor who is unable to reunify with the birth parents, with the cultural values of tribal communities:

... tribal customary adoptions allow a person or persons to adopt a child while still maintaining the birth parents' parental rights. Maintaining a connection with the birth parent is a way that tribes can find permanency for a child while continuing to honor tribal values and beliefs. Extended lineages and tribal family systems form the basis for all tribes. Maintaining the birth parent/child connection, even when the child is permanently placed with another family, protects the child's connection to their extended family and their lineage.<sup>20</sup>

The goal of the legislation was to provide an option that was culturally sensitive to the needs of tribes but with all the benefits of a "state" adoption for children, adoptive families, and counties:

... the sponsor states that non-adoption outcomes are a disincentive for counties because of federal and state laws. The sponsor explains that counties do not receive the same reimbursement from the State and Federal governments for guardianships as they do for adoptions and, even though these placements are permanent, counties are unable to report them to the State and Federal governments as completed cases. Additionally, funding for guardianship placements is very limited. While there are Kinship Guardianship Assistance Payment Program (Kin GAP) funds available to guardians, the amounts are significantly less than those available to adoptive parents through the Adoption Assistance Program (AAP). The AAP can help with the cost of therapy, out-of-home placement, and wrap-around services to minimize the effects of the disruption in the child's life. Kin GAP lacks the comparable ability to provide for the needs of these children and their families.<sup>21</sup>

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<sup>19</sup> Senate Judiciary Committee, AB 2736 Bill Analysis Hearing, June 24, 2008, pp. 7–8, [www.leginfo.ca.gov/pub/07-08/bill/asm/ab\\_2701-2750/ab\\_2736\\_cfa\\_20080626\\_115809\\_sen\\_comm.html](http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_2701-2750/ab_2736_cfa_20080626_115809_sen_comm.html).

<sup>20</sup> Assembly Committee on Appropriations, AB 2736 Bill Analysis Hearing, May 14, 2008, p.2, [www.leginfo.ca.gov/pub/07-08/bill/asm/ab\\_2701-2750/ab\\_2736\\_cfa\\_20080513\\_155322\\_asm\\_comm.html](http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_2701-2750/ab_2736_cfa_20080513_155322_asm_comm.html), p..

<sup>21</sup> Assembly Committee on Human Services, AB 2736 Bill Analysis Hearing, April 15, 2008, pp. 4–6. [www.leginfo.ca.gov/pub/07-08/bill/asm/ab\\_2701-2750/ab\\_2736\\_cfa\\_20080414\\_093238\\_asm\\_comm.html](http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_2701-2750/ab_2736_cfa_20080414_093238_asm_comm.html).

## **Implementation**

Following passage of AB 1325, the Judicial Council amended a number of rules of court and forms to implement tribal customary adoption in compliance with the requirement in section 366.24(f). These changes essentially wove the requirements of tribal customary adoption throughout the rules and forms which govern placement and permanency planning hearings in dependency cases and adoptions. The Judicial Council report on the proposal that introduced these changes, *Juvenile Law: Tribal Customary Adoption*, was approved by the council on April 30, 2010, as Item A-6 (report online at [www.courts.ca.gov/documents/20100423itema6.pdf](http://www.courts.ca.gov/documents/20100423itema6.pdf).)

The California Department of Social Services (CDSS) issued two All County Letters to explaining tribal customary adoption and its requirements to social service agencies. The first of these was All County Letter No. 10-17 dated March 24, 2010. That All County Letter can be found at [www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acl/2010/10-17.pdf](http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acl/2010/10-17.pdf). The second of these was All County Letter No. 10-47, dated October 27, 2010, which can be found at [www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acl/2010/10-47.pdf](http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acl/2010/10-47.pdf).

## **Chapter 2: Methodology**

Tracking tribal customary adoption cases has proven challenging. In anticipation of this report, CDSS modified its CWS/CMS to include a special project code intended to help identify TCA cases. However, when AOC staff spoke with child welfare agency staff in several counties they reported that they were not aware of the special project's code. Child welfare departments had different interpretations from county to county as to when they should apply the special project's code—some took it to mean the code should be used anytime an Indian child was in foster care placement and TCA was available and under consideration as a permanency option, others only when a tribe expressed a wish to pursue TCA, and still others only after TCA had been selected and finalized as a child's permanent plan.

Further, owing to the confidential nature of the information in the CWS/CMS and the strict federal and state regulations that govern access to it, CDSS could offer no identifying information for those cases flagged in the CWS/CMS with the special project code. CDSS could provide overall aggregate numbers for TCA cases but could not name the counties where cases were located nor the social workers or other professionals involved in them. The AOC received two data runs from CDSS. The first run, dated May 9, 2011, listed 11 children whose cases had been flagged with the special project code. The second, dated May 18, 2012, showed open case information from July 1, 2010, through December 31, 2011, with 31 cases flagged. While this information was useful in determining the number of TCA cases, did not enable us to identify the challenges (if any) faced by child welfare professionals and other system participants in implementing TCA. From the data, the AOC was able to look at length of time to permanency, but few other factors that would assist in determining the benefits or detriments to Indian children of choosing tribal customary adoption as a permanency option.



To answer both the quantitative and qualitative questions posed by the Legislature, the AOC drew on a combination of data and information from CWS/CMS, surveys of child welfare professionals, file reviews, and focus groups.

In October 2011, the AOC sent an e-mail questionnaire (attached as appendix B) to more than 130 tribal advocates, more than 600 attorneys representing parents and minors in dependency proceedings, child welfare directors, and county counsel across the state, as well as all participants in the Statewide Indian Child Welfare Working Group.<sup>22</sup> The AOC received 43 substantive responses. The low response rate and low number mean that we must be cautious about drawing too many general conclusions.

The AOC also convened eight focus group conference calls, two each for tribal advocates, county social workers, minors' attorneys, parents' attorneys and county counsel. There were eight participants in total on these calls. The AOC emailed the presiding juvenile court judges in each of the counties identified by questionnaire respondents and focus group participants as having tribal customary adoption cases and requested permission to conduct file reviews and also requested comments from those judicial officers involved in tribal customary adoption cases.

The AOC requested permission to conduct file reviews from the juvenile court presiding judges in all 15 counties identified as hosting TCA cases. AOC staff attorneys received permission to conduct file reviews in 11 counties, where they reviewed a total of 36 cases. AOC staff were unable to conduct file reviews in 4 counties that represented at least 7 cases.

In light of concerns about the confidential nature of child welfare proceedings and the potential emotional and psychological sensitivity of parties directly involved in child welfare proceedings to the results of those proceedings, the AOC did not conduct any interviews directly with children, birth parents, adoptive parents or other individuals party to the dependency or adoption proceedings. Instead the AOC relied upon information received from tribal advocates, social workers, minors' and parents' attorneys, county counsel and judicial officers to assess the impact of tribal customary adoption.

## **Chapter 3: Findings**

### **Number of Tribal Customary Adoptions**

In addition to the data runs from CDSS, the AOC used the questionnaire and interviews to seek information from child welfare professionals, including county social workers, attorneys, county counsel and tribal representatives. To the extent possible, the AOC cross-referenced the responses to these sources against the data runs from CDSS. From all of these sources, the AOC

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<sup>22</sup> The Statewide Indian Child Welfare Working Group, convened by CDSS, includes tribal advocates and representatives, county child welfare representatives, county counsel, state representatives, and others. Currently more than 200 individuals participate in this group. You can find more information about the Statewide ICWA Working Group at [www.childsworld.ca.gov/PG2073.htm](http://www.childsworld.ca.gov/PG2073.htm).

identified 39 cases<sup>23</sup> involving 42 children for whom tribal customary adoption was at least considered as a permanency option.<sup>24</sup>

Of those 39 cases, 15 cases (involving 18 children) have resulted in finalized tribal customary adoptions, and another 5 cases are pending TCA finalization. Some permanency option or case resolution other than TCA concluded another 16 cases: 10 where the chosen plan was guardianship, 3 subject to state adoptions that included the standard termination of parental rights of the biological parents, and 3 where jurisdiction was transferred to tribal court after termination of reunification services but before selection of a permanent plan.

Two cases were appealed, with one decision having now been rendered and reported (*In re. H.R.* (2012) 208 Cal.App.4th 751).

The AOC was unable to determine the outcome or current status of 1 case.

### **Time to Complete a Tribal Customary Adoption**

Of the 15 finalized TCA cases identified, the AOC was able to review the court case files for 10. In the cases reviewed, it took an average of 9.7 months from the court's order of TCA as a permanent plan until the TCA was finalized and the dependency dismissed, the range in finalization time was from a low of 3 months to a high of 17 months. At the shorter end of the spectrum were cases where children had been in long-term foster care or legal guardianship placement prior to TCA becoming available as a permanency option; these cases were "reactivated" to move to a TCA in lieu of the other permanent plan. The cases on the long end of the spectrum, typically, were ones in which it was the first tribal customary adoption being completed by both the county and the tribe. In these cases (as detailed under "Challenges Faced in Tribal Customary Adoptions," below), parties tended to report uncertainties and lack of information about how the TCA process worked.

The AOC also analyzed data from CDSS, including data on 18 cases for which there was both a tribal customary special project code start date and a TCA special project code end date. Note that the end date could signify either that the case finalized as a tribal customary adoption, or that tribal customary adoption was rejected and the case finalized in some other way. The average time from a TCA start date to end date was 8.1 months, from a low of 2 months to a high of 15.

The CDSS data also included information on all "ICWA-eligible"<sup>25</sup> children in adoption placements in open cases between July 1, 2010 and December 31, 2011. The AOC analyzed

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<sup>23</sup> It is difficult to be certain that we have correctly identified the outcomes in all cases because we found a number of instances where the CDSS data showed parental rights as terminated but our file review confirmed the case's disposition as a TCA with parental rights modified rather than terminated.

<sup>24</sup> Some courts open a separate case for each child in a sibling group, while other courts count a matter involving multiple siblings as a single case.

<sup>25</sup> The "ICWA-eligible" code is used in the CDSS data to identify those cases in which a specific finding has been made that the child is eligible under the Indian Child Welfare Act.

these cases to compare the total length of time to permanency in other state adoption cases involving Indian children against that in the identified TCA cases. The CDSS data show these cases took an average of 13.1 months from the date of termination of parental rights to finalization of the adoption, with the longest taking 39 months and the shortest only 2 months. The AOC had no other information on these cases to assess whether there were any particular characteristics associated with the outer ends of the spectrum.

Caution should be used in drawing a comparison between the special project's initiation date and the termination of parental rights date. In TCA cases, parental rights are not terminated, but are instead modified when the superior court accords full faith and credit to the TCAO submitted by the child's tribe. Accordingly, the date the TCAO developed by the tribe is accorded full faith and credit by the superior court would correspond to the date of termination of parental rights. Unfortunately, this is not a data element that was captured or included in the CWS/CMS data the AOC received on tribal customary adoption cases. Further, because TCA was new as of January 2010, the longest possible time it could have been a permanency option for case data captured in December 2011 was 18 months. At this point, it is impossible to know how long the TCA cases in progress will take to finalize.

Six cases appeared both on data runs for the TCA special project code and for ICWA-eligible children in adoption placements. Comparing the information on these cases in the two data sets, the AOC determined that the special project's start date, (i.e., the date TCA was identified as a permanency option and the special project code entered in CWS/CMS) was invariably earlier than the date listed for termination of parental rights. In the six cases that appeared on both data runs, the TCA initiation date averaged six months earlier than the date listed for TPR.

Although the sample size is very small, available data suggest it takes less time to complete a TCA (9.7 months, on average) from its identification as a permanency option to finalization than it does to complete a conventional adoption in an ICWA case (13.1 months on average) from termination of parental rights to finalization of the adoption. If we had used the TPR date as the start date on both sets of cases rather than using the TCA initiation date as the start date on the tribal customary adoption cases, the difference would have been even greater.

The questionnaire for child welfare professionals asked whether, in the respondent's opinion, TCA had increased or decreased the number of hearings required; the length of hearings required; and the total length of time to permanency. As to number of hearings, the responses split almost evenly among those who felt the TCA option in their cases increased the number of hearings, decreased the number of hearings, and had no impact. The questionnaire also asked whether TCA had increased or decreased the length of hearings required. Again, the responses were almost evenly split between those that felt it had increased the length of hearings, those that felt it had decreased the length of hearings and those that felt it had had no impact. There was similarly an even split in response to the question of whether tribal customary adoption had increased or decreased length of time to permanency. Thus, there does not appear to be a clear-

cut answer from child welfare professionals on the impact of tribal customary adoption on the timing of their cases.

### **Challenges in Completing a Tribal Customary Adoption**

Information about the challenges of completing a TCA came primarily from the responses to the questionnaire sent to child welfare professionals as well as focus group calls, calls for technical assistance and discussions with child welfare professionals throughout the state. The questionnaire specifically asked, “Were there any particular challenges in implementing TCA?” Several respondents reported that there were no specific challenges. A higher number reported that there were challenges related to the newness of the process and a lack of knowledge and information on the part of those involved. Several respondents reported that there were challenges with timing and timeliness, and several reported that there were problems getting the criminal background checks completed so that the tribes could complete the home studies.

In focus group calls, child welfare professionals in some counties reported problems with county social workers raising the option of TCA with caregivers before the tribe had decided whether they were interested in tribal customary adoption in the case. Because a tribal customary adoption cannot be completed without the participation of the child’s tribe, this caused unnecessary tension between the tribe and the caregivers.

Tribal representatives commented that in some cases, tribes and families were being pressured into tribal customary adoption in inactive cases with established guardianships. Tribes reported that these were not priority cases for them and social services unilateral action seeking to alter the permanent plan to tribal customary adoption caused problems for the tribe.

Some county social workers reported that TCA increased the total time to permanency when compared to a state adoption.

Attorneys for several parents reported that parents in some TCA cases were not afforded the same kind of procedural and constitutional protections nor had the same standards applied as they would have had in a state adoption that included termination of parental rights. Although, through modification of parental rights under a TCA, parents can permanently lose virtually all of the substantive rights related to legal parentage, these attorneys reported that the same evidentiary standard was not being applied because there was an assumption that tribal customary adoption would provide for a continuing relationship with the child. This was so even though any ongoing relationship between the child and parent was left to the discretion of the tribe and the adoptive parents.

One social worker reported difficulty accessing Private Adoption Assistance Reimbursement Program (PAARP) funds for home studies completed by a private foster family agency, because to access the benefits, the social worker needed to enter a code for termination of parental rights.

One county counsel indicated that some tribes oppose any form of adoption, including tribal customary adoption. California law requires the child welfare agency to discuss TCA as a permanency option in every case where an Indian child cannot reunify. Further, the law requires that the agency raise the issue with the Indian child's tribe prior to each hearing from disposition leading to the finalization of a permanent plan. The county counsel reports that the requirement to continue to raise the option of tribal customary adoption has caused some tension when the tribe has rejected the proposal of tribal customary adoption on a number of occasions and explained that the tribe is opposed to any form of adoption as a matter of principle.

Tribal representatives reported that TCA, as codified within California law, was not reflective of some tribes' customs and traditions, and these tribes did not want to pursue this option.

In some of the files reviewed, tribal customary adoption was not always raised at an early stage in the proceedings, nor identified as a permanency option, as contemplated by section 358.1. Also in some of the files reviewed, specific findings and orders around tribal customary adoption as a potential permanent plan were not consistently made. As discussed earlier, we were not able to review social worker files, which might have revealed that discussions did occur early in these cases between social workers and tribal representatives concerning tribal customary adoption, and that it was among the permanency options considered by the court. In these cases, if there was a failure to raise tribal customary adoption at the earliest stage or to consider it as a permanency option, it did not appear to cause any delays in finalizing a permanent plan.

Tribal representatives in one case reported some confusion in integrating tribal customary adoption with other child welfare provisions. Specifically, section 366.24 requires each TCAO issued by a tribe to contain provisions related to postadoption contact between the child and the birth parents. Should the issue still be referred to mediation concerning post adoption contact when the matter has already been dealt with in the TCAO?

### **Benefits or Detriments to Indian Children From Tribal Customary Adoption**

Information to answer this question was obtained primarily from questionnaires completed by child welfare professionals, as well as through focus group calls and other discussions with system participants. In response to the question about whether the option of tribal customary adoption had positively or negatively affected their cases, most respondents stated that it had positively affected the outcome of the case. The few negative comments generally related to the length of time it took to complete the adoption.

The AOC also received comments on this during our focus group calls. Again, most respondents indicated that tribal customary adoption had had a positive impact on their cases. Many felt that without the option, their cases would have resulted in legal guardianships. A permanent plan of tribal customary adoption was seen as more beneficial to both children and county agencies.

Generally, respondents stated that birth parents were happy about having the option of TCA, which they saw as providing them with an option of some kind of ongoing participation in the

child's life. Commentators reported that birth parents were generally less likely to contest a termination of services and permanent plan of tribal customary adoption as they were to fight a state adoption with full termination of parental rights (TPR).

One of the initial rationales for the legislation, as presented by the sponsors of AB 1325, the Soboba Band of Luiseno Indians, was that it provided Indian children and their tribal customary adoptive parents with the federal benefits and funding available under the Adoptive Assistance Program (AAP) but without requiring termination of parental rights. Appendixes C and D were charts prepared by the Soboba Band of Luiseno Indians and reviewed by CDSS comparing tribal customary adoption to other permanency options. Researchers were unable to confirm whether or not all adoption assistance program (AAP) resources and funding were being provided to families who had completed tribal customary adoptions. However, the Child Welfare Policy Manual published by the federal Administration for Families and Children does state that:

... there are situations in which adoptions are legal without a TPR. Specifically, in some Tribes adoption is legal without a TPR or a relinquishment from the biological parent(s), and there is at least one State that allows relatives who have cared for a related child for a period of time to adopt without first obtaining a TPR.

After consideration, we believe that our earlier policy is an unduly narrow interpretation of the statute. Consequently, if a child can be adopted in accordance with State or Tribal law without a TPR or relinquishment, the requirement of section 473 (c)(1) of the Act will be satisfied, so long as the State or Tribe has documented the valid reason why the child cannot or should not be returned to the home of his or her parents.<sup>26</sup>

It appears, therefore, that children and families adopting under tribal customary adoption should be eligible for AAP assistance.

File reviews, particularly of those cases moved from a permanent plan of legal guardianship or long-term foster care to tribal customary adoption, confirmed that parties viewed assistance as a benefit to both the child and their caregivers. Tribal customary adoption is not subject to modification by a Welfare and Institutions Code section 388 petition in the same way as a plan of legal guardianship or long-term foster care.

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<sup>26</sup> Children's Bureau, U.S. Dept. of Health & Human Services, "8.2B.11 TITLE IV-E, Adoption Assistance Program, Eligibility, Special Needs," [www.acf.hhs.gov/cwpm/programs/cb/laws\\_policies/laws/cwpm/policy\\_dsp.jsp?citID=49](http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=49) (as of Oct. 30, 2012).

Discussed in more detail below are some of the conditions found in the tribal customary adoption orders that the AOC reviewed. Virtually all of these orders contained provisions:

- stating that the child maintained his or her rights of inheritance from and through their birth parents, and specifically retained the right to inherit trust assets under tribal and federal law;
- related to the child maintaining the right to a variety of services through the tribe, tribal agencies and/or the Indian Health Service;
- related to the child's ongoing connection with the tribe and participation in cultural and community events; and
- allowing for some ongoing contact and visitation with birth parents and extended family members.

It is too soon to assess the long term impact of these provisions, but certainly many system participants stated that the provisions are potentially beneficial to the children involved.

System participants also remarked that whether tribal customary adoption is a benefit or a detriment to other system participants—and particularly birth parents and caregivers or adoptive parents—depends on what alternative permanent plan it is compared it to. Most respondents who represented birth parents expressed the view that TCA was more beneficial to their clients than the alternative of state adoption with termination of parental rights, because it left open the potential for future contact and relationship between the birth parents and the child. However, in those cases where respondents believed that a state adoption would have been warranted on the facts of the case and that either reunification services should have been continued or the children should have been returned to the birth parents, respondents expressed concern that the option of tribal customary adoption might have resulted in a lessening of protections for their clients. The AOC is aware of at least one such case currently under appeal.

One respondent also stated that she believed that caregivers would be less interested in adopting a child if it had to be through a tribal customary adoption rather than a state adoption because "... [a]doptive families do not like the uncertainty of the tribe intervening and dictating what happens post-adoption." Other than this one survey response, the AOC did not receive any information supporting the proposition that caretaker withdrew from children rather than complete a tribal customary adoption. In most of the cases which were identified, children had been in placement with the caregivers for a substantial period of time. In some cases, the child was in a placement with a relative who did not want to participate in termination of parental rights. In other cases, where the caretaker might have agreed to a state adoption, the Indian child's tribe opposed termination of parental rights and thus the adoption itself. In a number of cases, the child's tribe was seeking to remove the child from the existing placement. File reviews and focus group discussions confirm that caretakers in a number of cases might have preferred a non-tribal state adoption. The exact nature of the required ongoing visits with the birth family and participation in tribal and cultural events does seem to have been a subject of concern and negotiation. The AOC reviewed several files in which the tribe had initially sought a requirement

of specific visits and participation in tribal cultural events. The final tribal customary adoption orders, however, required only “best efforts” or “reasonable efforts”.

The main drawback of tribal customary adoption identified by respondents to the AOC’s questionnaire and focus group calls was the length of time it took to complete a tribal customary adoption.

### **Conditions in the Tribal Customary Adoption Order**

Welfare and Institutions Code section 366.24(c)(10) requires that the tribal customary adoption order issued by the tribe:

Include, but not be limited to, a description of (A) the modification of the legal relationship of the birth parents or Indian custodian and the child, including contact, if any, between the child and the birth parents or Indian custodian, responsibilities of the birth parents or Indian custodian, and the rights of inheritance of the child and (B) the child’s legal relationship with the tribe. The order shall not include any child support obligation from the birth parents or Indian custodian. There shall be a conclusive presumption that any parental rights or obligations not specified by the tribal customary adoption order shall vest in the tribal customary adoptive parents.

Several samples of “generic” tribal customary adoption orders were drafted by the sponsors of AB 1325 and are attached as Appendixes E and F. These samples are fairly representative of the TCAOs that were reviewed in actual case files. Summaries of the nature and content of the TCAOs are provided.

None of the tribal customary adoption orders reviewed reserve or afford any legal rights to the birth parents. All of the orders say that the birth parents may visit the child, but most also say that such visitation shall be at the discretion of the adoptive parents, who may suspend or discontinue the visits if they believe they are no longer in the best interests of the child.

Several of the orders say that both the tribe and the adoptive parents will be involved in decisions concerning ongoing contact or visitation between the birth parents and the child.

Several also require the birth parents to provide test results prior to any visitation to prove that they are free of drugs and alcohol, and several also set conditions on the maximum number and duration of such visits, require that such visits be supervised, and that the birth parents pay for the supervision. Other orders set up very detailed provisions for the birth parents to request visits, require that such visits be supervised, or provide that if the birth parents miss two consecutive visits that they shall lose all rights to visitation.

All of the orders relieve the birth parents of their legal and financial obligations to the child, while providing that the child shall maintain rights of inheritance from the birth parents under



federal and tribal law (and sometimes state law, too). Some specifically reference the continued right to inherit trust property.

All of the orders say something about the tribal customary adoptive parents maintaining contact and connections between the child and the tribe and require that the adoptive parents shall make “best efforts” to maintain these contacts. The exact terms differ; some orders are quite specific about the number and nature of tribal events that the child should attend—particularly in those cases where the adoptive parents are not tribal members—while others are more general in their terms.

Most orders contain some reference to the child’s ongoing right to receive services from the tribe, or from Indian health services. Some of the orders also say that the tribe will provide support and assistance to the child and adoptive parents in meeting the requirements of maintaining the cultural connection between the child and the tribe.

Many of the orders contain clauses that express the tribal views on the relationship between children and the tribe. The following are examples of some representative terms from a tribal customary adoption order:

[M]inor must grow and develop with a sound, solid, and organic connection to [his or her] cultural and racial identity...

[Tribe] ...has inherent sovereign right to make decisions regarding the best interests of its children including who should provide care, custody and control of its children...

...the Tribe does not believe in or adhere to Termination of Parental Rights and finds that the state law construct of Termination of Parental Rights is inconsistent with Tribal Customs and traditions...

...the Tribe does support the process of joining individuals and relatives into family relationships and expanding family resources...

In several cases where the adoptive parents were elderly or single, the tribal customary adoptive order contained a specific provision for successor care planning. Under these orders, the tribal customary adoptive parent agrees to appoint in his or her will a specific person as the child’s caregiver. Another provision of the will must agree that if the successor caregiver is unable or unwilling to serve in that capacity when the time comes, the tribal customary adoptive order provides that the tribe will designate a successor.

### **Questions outstanding**

In the course of this research, child welfare professionals raised a number of questions about tribal customary adoption procedures and implementation for which there do not yet seem to be clear answers. These questions include:

- When a new birth certificate is issued following a TCA, will it list all four parents by default if nothing is said to the contrary in either the adoption order or TCAO?

- When do a birth parent’s appellate rights accrue if they want to contest the plan of TCA? Are their appellate rights the same as if there had been a termination of parental rights?
- When do substitute caregivers become “prospective adoptive parents” within the meaning of the Welfare and Institutions Code?

#### **Chapter 4: Conclusion**

Despite the relatively small number of tribal customary adoption cases completed to date, we can conclude from the sample identified in this report that some children who would have otherwise remained in less permanent plans of long-term foster care or legal guardianship were successfully adopted and had their juvenile court cases dismissed through TCA. Available statistics further suggest that it takes less time to complete a TCA than a standard state court adoption in an ICWA case that includes termination of parental rights.

Child welfare professionals report that tribal customary adoption offers a more permanent and more advantageous resolution for both children and their adoptive families. Despite a learning curve marked by some challenges and confusion in these first years of implementation, most child welfare professionals involved in these cases believed that having TCA available as an additional permanency option for Indian children was a benefit that positively influenced their outcomes.

## Appendix A

### Welfare and Institutions Code section 366.24

#### § 366.24. Tribal customary adoptions

(a) For purposes of this section, “tribal customary adoption” means adoption by and through the tribal custom, traditions, or law of an Indian child's tribe. Termination of parental rights is not required to effect the tribal customary adoption.

(b) Whenever an assessment is ordered pursuant to Section 361.5, 366.21, 366.22, 366.25, or 366.26 for Indian children, the assessment shall address the option of tribal customary adoption.

(c) For purposes of Section 366.26, in the case of tribal customary adoptions, all of the following apply:

(1) The child's tribe or the tribe's designee shall conduct a tribal customary adoptive home study prior to final approval of the tribal customary adoptive placement.

(A) If a tribal designee is conducting the home study, the designee shall do so in consultation with the Indian child's tribe. The designee may include a county adoption agency, the State Department of Social Services when it is acting as an adoption agency, or a California-licensed adoption agency. Any tribal designee must be an entity that is authorized to request a search of the Child Abuse Central Index and, if necessary, a check of any other state's child abuse and neglect registry, and must be an entity that is authorized to request a search for state and federal level criminal offender records information through the Department of Justice.

(B) The standard for the evaluation of the prospective adoptive parents' home shall be the prevailing social and cultural standard of the child's tribe. The home study shall include an evaluation of the background, safety, and health information of the adoptive home, including the biological, psychological, and social factors of the prospective adoptive parent or parents, and an assessment of the commitment, capability, and suitability of the prospective adoptive parent or parents to meet the child's needs.

(2) In all cases, an in-state check of the Child Abuse Central Index and, if necessary, a check of any other state's child abuse and neglect registry shall be conducted. If the tribe chooses a designee to conduct the home study, the designee shall perform a check of the Child Abuse Central Index pursuant to Section 1522.1 of the Health and Safety Code as it applies to prospective adoptive parents and persons over 18 years of age residing in their household. If the tribe conducts its own home study, the agency that has the placement and care responsibility of the child shall perform the check.

(3)(A) In all cases prior to final approval of the tribal customary adoptive placement, a state and federal criminal background check through the Department of Justice shall be conducted on the prospective tribal customary adoptive parents and on persons over 18 years of age residing in their household.

(B) If the tribe chooses a designee to conduct the home study, the designee shall perform the state and federal criminal background check required pursuant to subparagraph (A) through the Department of Justice prior to final approval of the adoptive placement.

(C) If the tribe conducts its own home study, the public adoption agency that is otherwise authorized to obtain criminal background information for the purpose of adoption shall perform the state and federal criminal background check required pursuant to subparagraph (A) through the Department of Justice prior to final approval of the adoptive placement.

(D) An individual who is the subject of a background check conducted pursuant to this paragraph may be provided by the entity performing the background check with a copy of his or her state or federal level criminal offender record information search response as provided to that entity by the Department of Justice if the entity has denied a criminal background clearance based on this information and the individual makes a written request to the entity for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in his or her written request. The entity shall retain a copy of the individual's written request and the response and date provided.

(4) If federal or state law provides that tribes may conduct all required background checks for prospective adoptive parents, the tribally administered background checks shall satisfy the requirements of this section, so long as the standards for the background checks are the same as those applied to all other prospective adoptive parents in the State of California.

(5) Under no circumstances shall final approval be granted for an adoptive placement in any home if the prospective adoptive parent or any adult living in the prospective tribal customary adoptive home has any of the following:

(A) A felony conviction for child abuse or neglect, spousal abuse, crimes against a child, including child pornography, or a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault and battery. For purposes of this subdivision, crimes involving violence means those violent crimes contained in clause (i) of subparagraph (A) and subparagraph (B), or paragraph (1) of, subdivision (g) of Section 1522 of the Health and Safety Code.

(B) A felony conviction that occurred within the last five years for physical assault, battery, or a drug-related offense.

(6) If the tribe identifies tribal customary adoption as the permanent placement plan for the Indian child, the court may continue the selection and implementation hearing governed by

Section 366.26 for a period not to exceed 120 days to permit the tribe to complete the process for tribal customary adoption and file with the court a tribal customary adoption order evidencing that a tribal customary adoption has been completed. The tribe shall file with the court the tribal customary adoption order no less than 20 days prior to the date set by the court for the continued selection and implementation hearing. The department shall file with the court the addendum selection and implementation hearing court report no less than seven days prior to the date set by the court for the continued selection and implementation hearing. The court shall have discretion to grant an additional continuance to the tribe for filing a tribal customary adoption order up to, but not exceeding, 60 days. If the child's tribe does not file the tribal customary adoption order within the designated time period, the court shall make new findings and orders pursuant to subdivision (b) of Section 366.26 and this subdivision to determine the best permanent plan for the child.

(7) The child, birth parents, or Indian custodian and the tribal customary adoptive parents and their counsel, if applicable, may present evidence to the tribe regarding the tribal customary adoption and the child's best interest.

(8) Upon the court affording full faith and credit to the tribal customary adoption order and the tribe's approval of the home study, the child shall be eligible for tribal customary adoptive placement. The agency that has placement and care responsibility of the child shall be authorized to make a tribal customary adoptive placement and sign a tribal customary adoptive placement agreement and, thereafter, shall sign the adoption assistance agreement pursuant to subdivision (g) of Section 16120. The prospective adoptive parent or parents desiring to adopt the child may then file the petition for adoption. The agency shall supervise the adoptive placement for a period of six months unless either of the following circumstances exists:

(A) The child to be adopted is a foster child of the prospective adoptive parents whose foster care placement has been supervised by an agency before the signing of the adoptive placement agreement in which case the supervisory period may be shortened by one month for each full month that the child has been in foster care with the family.

(B) The child to be adopted is placed with a relative with whom he or she has an established relationship.

(9) All licensed public adoption agencies shall cooperate with and assist the department in devising a plan that will effectuate the effective and discreet transmission to tribal customary adoptees or prospective tribal customary adoptive parents of pertinent medical information reported to the department or the licensed public adoption agency, upon the request of the person reporting the medical information.

(A) A licensed public adoption agency may not place a child for tribal customary adoption unless a written report on the child's medical background and, if available, the medical background on the child's biological parents, so far as ascertainable, has been submitted to the prospective tribal customary adoptive parents and they have acknowledged in writing the receipt of the report.

(B) The report on the child's background shall contain all known diagnostic information, including current medical reports on the child, psychological evaluations, and scholastic information, as well as all known information regarding the child's developmental history.

(10) The tribal customary adoption order shall include, but not be limited to, a description of (A) the modification of the legal relationship of the birth parents or Indian custodian and the child, including contact, if any, between the child and the birth parents or Indian custodian, responsibilities of the birth parents or Indian custodian, and the rights of inheritance of the child and (B) the child's legal relationship with the tribe. The order shall not include any child support obligation from the birth parents or Indian custodian. There shall be a conclusive presumption that any parental rights or obligations not specified in the tribal customary adoption order shall vest in the tribal customary adoptive parents.

(11) Prior consent to a permanent plan of tribal customary adoption of an Indian child shall not be required of an Indian parent or Indian custodian whose parental relationship to the child will be modified by the tribal customary adoption.

(12) After the prospective adoptive parent or parents desiring to adopt the child have filed the adoption petition, the agency that has placement, care, and responsibility for the child shall submit to the court, a full and final report of the facts of the proposed tribal customary adoption. The requisite elements of the final court report shall be those specified for court reports in the department's regulations governing agency adoptions.

(13) Notwithstanding any other provision of law, after the tribal customary adoption order has been issued and afforded full faith and credit by the state court, supervision of the adoptive placement has been completed, and the state court has issued a final decree of adoption, the tribal customary adoptive parents shall have all of the rights and privileges afforded to, and are subject to all the duties of, any other adoptive parent or parents pursuant to the laws of this state.

(14) Consistent with Section 366.3, after the tribal customary adoption has been afforded full faith and credit and a final adoption decree has been issued, the court shall terminate its jurisdiction over the Indian child.

(15) Nothing in this section is intended to prevent the transfer of those proceedings to a tribal court where transfer is otherwise permitted under applicable law.

(d) The following disclosure provisions shall apply to tribal customary adoptions:

(1) The petition, agreement, order, report to the court from any investigating agency, and any power of attorney filed in a tribal customary adoption proceeding is not open to inspection by any person other than the parties to the proceeding and their attorneys and the department, except upon the written authority of the judge of the juvenile court. A judge may not authorize anyone to inspect the petition, agreement, order, report to the court from any investigating agency, and any power of attorney except in exceptional circumstances and for good cause approaching the necessitous.

(2) Except as otherwise permitted or required by statute, neither the department, county adoption agency, nor any licensed adoption agency shall release information that would identify persons who receive, or have received, tribal customary adoption services. However, employees of the department, county adoption agencies, and licensed adoption agencies shall release to the State Department of Social Services any requested information, including identifying information, for the purpose of recordkeeping and monitoring, evaluation, and regulation of the provision of tribal customary adoption services.

(3) The department, county adoption agency, or licensed adoption agency may, upon written authorization for the release of specified information by the subject of that information, share information regarding a prospective tribal customary adoptive parent or birth parent with other social service agencies, including the department, county adoption agencies, and other licensed adoption agencies, or providers of health care as defined in Section 56.05 of the Civil Code.

(4) Notwithstanding any other law, the department, county adoption agency, or licensed adoption agency may furnish information relating to a tribal customary adoption petition or to a child in the custody of the department or any public adoption agency to the juvenile court, county welfare department, public welfare agency, private welfare agency licensed by the department, provider of foster care services, potential adoptive parents, or provider of health care as defined in Section 56.05 of the Civil Code, if it is believed the child's welfare will be promoted thereby.

(5) The department, county adoption agency, or licensed adoption agency may make tribal customary adoption case records, including identifying information, available for research purposes, provided that the research will not result in the disclosure of the identity of the child or the parties to the tribal customary adoption to anyone other than the entity conducting the research.

(e) This section shall remain operative only to the extent that compliance with its provisions does not conflict with federal law as a condition of receiving funding under Title IV-E or the federal Social Security Act (42 U.S.C. Sec. 670 et seq.).

(f) The Judicial Council shall adopt rules of court and necessary forms required to implement tribal customary adoption as a permanent plan for dependent Indian children. The Judicial Council shall study California's tribal customary adoption provisions and their effects on children, birth parents, adoptive parents, Indian custodians, tribes, and the court, and shall report all of its findings to the Legislature on or before January 1, 2013. The report shall include, but not be limited to, the following:

(1) The number of families served and the number of completed tribal customary adoptions.

(2) The length of time it takes to complete a tribal customary adoption.

(3) The challenges faced by social workers, court, and tribes in completing tribal customary adoptions.

(4) The benefits or detriments to Indian children from a tribal customary adoption.

# Appendix B

## TRIBAL CUSTOMARY ADOPTION QUESTIONNAIRE:

County where matter is located:

Court case number:

Name and contact information of social worker and attorneys (please do not include any personal identifying information about the minor, parents or other parties) including:

County child welfare worker:

Minor's attorney:

Parents' attorney(s):

County Counsel:

Tribal Advocate/representative:

Tribal Attorney (if any):

Other attorney (ie. attorney for de facto parents):

How long at the case been open and what stage was the case at when Tribal Customary Adoption (TCA) was first raised as a permanency option?

Which party raised TCA as a permanency option?

What position did each of the parties take to the prospect of TCA? Did they oppose or support TCA?

If a party opposed TCA, what was the basis for this opposition?

Were there any particular concerns or issues raised by any party?

Were there any particular challenges in implementing TCA?

Did the option of TCA:

- Increase or decrease the number of hearings that were required? \_\_\_\_\_



- Increase or decrease the length of hearings required?  
\_\_\_\_\_
- Increase or decrease the length of time to permanency? \_\_\_\_\_
- Other? \_\_\_\_\_
- Overall would you say that the option of TCA positively or negatively affected this case?  
\_\_\_\_\_

Any other comments:



## Appendix C

### COMPARISON OF FINANCIAL BENEFITS of ADOPTION, LEGAL GUARDIANSHIP, KIN GAP, LONG TERM FOSTER CARE and TRIBAL CUSTOMARY ADOPTION

COMPARISON OF FINANCIAL BENEFITS					
	<b>Adoption (Adoption Assistance Program –AAP)</b>	<b>Tribal Customary Adoption (Adoption Assistance Program –AAP)</b>	<b>Kin-GAP (Legal Guardianship)</b>	<b>Non-Relative AFDC Foster Care (FC) (Legal Guardianship)</b>	<b>Long Term Foster Care</b>
<b>Amount</b>	A negotiated rate based on the special needs of the child and circumstances of the family	A negotiated rate based on the special needs of the child and circumstances of the family	A fixed payment according to age	A fixed payment according to age	Based on age and in some cases, child's disability
<b>Special Needs Allowance</b>	Available in most counties; varies according to county  A child who is developmentally delayed and a current consumer of California Regional Center may qualify for the dual agency flat rate.	Available in most counties; varies according to county  A child who is developmentally delayed and a current consumer of California Regional Center may qualify for the dual agency flat rate.	Included if child was eligible while in foster care	Available in most counties	Based on current Foster Care funding
<b>Medi-Cal</b>	Included	Included	Included	Included	Included
<b>Clothing Allowance</b>	None	None	Varies according to county	Varies according to county	Varies according to county

<b>Maximum Age</b>	Until child turns 18; can be extended to 21 if a child has a mental or physical handicap that warrants continuation of benefits.	Until child turns 18; can be extended to 21 if a child has a mental or physical handicap that warrants continuation of benefits.	Until child turns 18; until 19 if child is in school and can graduate	Until child turns 18; until 19 if child is in school and can graduate	Until child turns 18; can be extended to 21 if a child has a disability
<b>Independent Living Program</b>	Yes, if child adopted at or after age 16	Yes, if child adopted at or after age 16	Yes	Yes	Yes
<b>Reassessment</b>	At least every two years	At least every two years	Every year	Every six months	Ongoing
<b>Foster Care Case Closed</b>	Yes	Yes	Yes	No	No

## Appendix D

<b>COMPARISON OF RIGHTS AND RESPONSIBILITIES</b>				
	<b>ADOPTIVE PARENTS</b>	<b>TRIBAL CUSTOMARY ADOPTIVE PARENTS</b>	<b>LEGAL GUARDIANS</b>	<b>FOSTER PARENTS/RELATIVE CAREGIVER</b>
<b>Relationship</b>	The child becomes the adoptive parent's child in all respects	The child becomes the adoptive parent's child in all respects	The child becomes the "ward" of the guardian	The child remains the responsibility of the county agency and Juvenile Court
<b>Parental legal rights and responsibilities for the child are transferred to the adopting relative</b>	Yes	Yes	No	No
<b>Relative makes decisions for the child</b>	Yes	Yes	Most	Some
<b>Relative has control over visitation with parents</b>	All	May be determined through Tribal Customary Adoption Order (TCAO)	Some	None
<b>Child will stay in the foster care system</b>	No	No	Maybe	Yes
<b>A payment and Medi-Cal is available for the child</b>	Yes	Yes	Yes	Yes

<b>COMPARISON OF RIGHTS AND RESPONSIBILITIES</b>				
	<b>ADOPTIVE PARENTS</b>	<b>TRIBAL CUSTOMARY ADOPTIVE PARENTS</b>	<b>LEGAL GUARDIANS</b>	<b>FOSTER PARENTS/RELATIVE CAREGIVER</b>
<b>Child's Residence</b>	Residence solely determined by adoptive family	Residence solely determined by adoptive family.  Tribe may request that minors remain in local area to maintain their Tribal ties.	Guardian may decide where child and family live in California. Need court permission to move from California or placed back with parent. If move to new state, must re-establish guardianship in new state, subject to new state's rules	Placement/residence determined by Juvenile Court and Social Services Department. Juvenile Court must pre-approve any move out of California. The family may need to be licensed in the new state
<b>Education</b>	Adoptive parents make all decisions. Special services may be available from schools, regional centers and other service providers	Adoptive parents make all decisions. Special services may be available from schools, regional centers and other service providers  Johnson O'Malley Act  College benefit – may be college benefits through the tribe.	Guardian can make all decisions. Legal guardian can request special services from schools, regional centers, or any other service providers	Unless education rights are limited by the Court or parental rights are terminated, the birth parents retain the right to make critical decisions regarding education
<b>Marriage</b>	Adoptive parents may consent to the marriage of the child	Adoptive parents may consent to the marriage of the child	Both guardian <b>and the court</b> must give consent to the child's marriage. If the child enters a valid marriage, the child becomes emancipated under California law	Juvenile Court retains the responsibility to consent to the marriage of a child under its jurisdiction

<b>COMPARISON OF RIGHTS AND RESPONSIBILITIES</b>				
	<b>ADOPTIVE PARENTS</b>	<b>TRIBAL CUSTOMARY ADOPTIVE PARENTS</b>	<b>LEGAL GUARDIANS</b>	<b>FOSTER PARENTS/RELATIVE CAREGIVER</b>
<b>Child's Drivers License and Driving</b>	Adoptive parents may sign for child's drivers license. The law requires anyone signing DMV application get insurance to cover the child driver	Adoptive parents may sign for child's drivers license. The law requires anyone signing DMV application get insurance to cover the child driver	Guardian has authority to consent to the child's application for drivers' license. Guardian becomes liable for any civil damages that may result if the child causes accident. The law requires anyone signing DMV application get insurance to cover the child driver	Require child to file proof of financial responsibility. Certain adults, such as biological parents, can sign the DMV application. Contact DMV
<b>Armed Services</b>	Adoptive parents may consent to enlistment of child	Adoptive parents may consent to enlistment of child	Guardian may consent to enlistment of child. If child enters into active duty with the armed forces, the child becomes emancipated under California law	Juvenile Court retains the responsibility to consent to the enlistment of child
<b>Death of Caregiver</b>	Adoptive child is treated the same as birth child. Adoptive parents can designate who will raise child in the event of their deaths. Adoption Assistance Program payments will terminate	Wills, advanced directive, may be addressed in TCAO	Guardianship terminates in event of death of caregiver. Birth parents may attempt to regain custody. Court may appoint successor guardian, in which case Kin-GAP eligibility may be continued, or reopen dependency and place child in long-term foster care	The agency retains placement authority and must locate a new living situation for the child

<b>COMPARISON OF RIGHTS AND RESPONSIBILITIES</b>				
	<b>ADOPTIVE PARENTS</b>	<b>TRIBAL CUSTOMARY ADOPTIVE PARENTS</b>	<b>LEGAL GUARDIANS</b>	<b>FOSTER PARENTS/RELATIVE CAREGIVER</b>
<b>Social Security Benefits</b>	An adopted child may be eligible for Social Security dependent's or survivor's benefits when the adopted parent(s) retires, becomes disabled or dies	An adopted child may be eligible for Social Security dependent's or survivor's benefits when the adopted parent(s) retires, becomes disabled or dies  Child may also be eligible for dependent/survivor benefits from birth parents	Eligible for benefits under the birth parent's accounts	Eligible for benefits under birth parent's accounts
<b>Inheritance</b>	An adoptive child is a legal heir of the adoptive parents	An adoptive child is a legal heir of the adoptive parents  Child may inherit from birth parents. May be specified in TCAO	Child has no inheritance rights unless the guardian chooses to make the child a legal heir through a will. The child retains rights of inheritance from the birth parents	Child has no inheritance rights unless the foster parent chooses to make the child a legal heir through a will. The child retains rights of inheritance from the birth parents
<b>Child Misconduct/ Destruction of Property</b>	Adoptive parent is generally responsible for damages resulting from a child's misconduct or destruction of property of others	Adoptive parent is generally responsible for damages resulting from a child's misconduct or destruction of property of others	A guardian, like a parent, is liable for the harm and damages caused by the willful misconduct of a child. There are special rules concerning harm caused by the use of a firearm. If you are concerned about your possible liability, you should consult an attorney	The foster parents are not legally liable for the behavior of the child



<b>COMPARISON OF RIGHTS AND RESPONSIBILITIES</b>				
	<b>ADOPTIVE PARENTS</b>	<b>TRIBAL CUSTOMARY ADOPTIVE PARENTS</b>	<b>LEGAL GUARDIANS</b>	<b>FOSTER PARENTS/RELATIVE CAREGIVER</b>
<b>Support of Child</b>	Adoptive parent is legally responsible for the support of the child	Adoptive parent is legally responsible for the support of the child	The parents remain legally responsible for the child's support. The child may be eligible for TANF (formerly known as AFDC), social security benefits, Veterans Administration benefits, and other public or private funds	The foster parent has no responsibility for the financial support of his/her foster child
<b>Additional Responsibilities</b>	Adoptive child is treated as birth child	Adoptive child is treated as birth child.  Other: May include specifics regarding culture, activities, ceremony, name and birth certificate changes	Judge may ask the guardian to agree to other special conditions concerning the child's welfare, such as ongoing visitation with birth parents. A birth parent can petition the court at any time to rescind the guardianship and return custody to the parent. The court will determine if this is a safe and appropriate plan for the child	Foster parents are expected to remain available and to make the child available for visitation by the birth parent and for regular contact with the social worker, CASA, child's attorney and/or other professionals needing access to the child. They must be accountable for any monies received on behalf of the child

## Appendix E

### TRIBAL CUSTOMARY ADOPTION ORDER OF THE [CALIFORNIA TRIBE]

**CASE. NO:**

**SUBJECT:** IN THE MATTER OF THE \_\_\_\_\_ MINOR  
[\_\_\_\_\_] COUNTY JUVENILE COURT NO. \_\_\_\_\_  
TRIBAL CUSTOMARY ADOPTION ORDER

**WHEREAS**, the [California Tribe] is a federally recognized Indian tribe eligible for all rights and privileges afforded to federally recognized tribes; and

**WHEREAS**, the [California Tribe] Tribal Council is the governing body of the [California Tribe] under the authority of the Constitution/Customs and Traditions of the [California Tribe]; and

**WHEREAS**, the minor child/ren, \_\_\_\_\_, date of birth \_\_\_\_\_, is a member of the [California Tribe] or is eligible for membership and is the natural child/descendent of \_\_\_\_\_, who is/was a member of the [California Tribe]; and

**WHEREAS**, it has been determined that return of the above named minor child/ren to the birth parents would likely result in serious detriment to the child/ren, the [California Tribe] Tribal Council has met with the family and determined, after careful consideration regarding the best interest of the child/ren, birth parents, adoptive family and tribal community, that customary adoption is in the child/ren's best interest. To that end, the above named child/ren shall now be considered the legal child/ren of \_\_\_\_\_ and \_\_\_\_\_, who are the minor's \_\_\_\_\_.

**WHEREAS**, under California State law (Welfare and Institutions Code §XX), a permanent plan of Tribal Customary Adoption can and has been found to be in an Indian Child's best interest and the Tribe retains all rights and responsibilities for ordering the Tribal Customary Adoption,

**NOW THEREFORE BE IT RESOLVED**, the parental rights of \_\_\_\_\_ shall be suspended/modified as follows:

1. **The Birth Parent/s:** \_\_\_\_\_ is/are no longer physically, legally, or financially responsible for the child. All such responsibilities are hereby transferred to the customary adoptive parents. However, under and pursuant to the customs and traditions of the Tribe and the inviolate nature of the connection between tribal children and tribal parents, the birth parents shall retain the following rights:

(a) Visitation:

Birth parents and/or child can have contact in a manner at a time that the adoptive family determines is in the child's best interest and as follows:

(b) Inheritance:

**2. The Adoptive Family:** Rights and obligations of the adoptive family, \_\_\_\_\_ and \_\_\_\_\_ are now the legal parents of \_\_\_\_\_. They shall have the following rights and obligations as defined below:

(a) Financial Support:

(b) Medical/Dental/Mental health care, including, but not limited to, the right to make all medical decisions:

(c) Educational rights:

(d) Inheritance:

(f) Receipt of benefits: For purposes of all tribal, state and federal benefits, including, but not limited to, financial, insurance, educational, cultural, and citizenship benefits, the child/ren is/are the children of the adoptive parents.

(g) Travel:

(h) Cultural support: The adoptive parents will endeavor to keep the minor child closely connected to his [California Tribe] heritage and will provide the child with every opportunity to develop a strong cultural identity as a member of the [California Tribe].

All rights not specified herein shall be invested to the adoptive family.

**OTHER POTENTIAL ISSUES TO BE ADDRESSED:**

- Clan, family, village, community, ceremonial affiliation
- Name Change

**3.** The Tribal Council, or any other tribal entity exercising authority specifically delegated to it by and through the duly exercised authority of the Tribal Council, retains jurisdiction to review and thereafter alter and/or modify this Order from time to time as necessary. Parties seeking such review, alteration or modification must utilize an available dispute resolution process prior to seeking Tribal Council review.

**CERTIFICATION**

We, the elected members of the Tribal Council of the [California Tribe] do hereby certify that the foregoing Order was adopted by the [California Tribe] Council at a duly held meeting convened on the [California Tribe] [Reservation/Rancheria] on \_\_\_\_\_, \_\_\_\_ by a vote of \_\_\_\_ "FOR", \_\_\_\_ "AGAINST", \_\_\_\_ "ABSTAINING", and such Order has not been rescinded or amended in any way.

\_\_\_\_\_  
\_\_\_\_\_, Chairman

\_\_\_\_\_  
\_\_\_\_\_, Vice-Chair

\_\_\_\_\_  
\_\_\_\_\_, Treasurer

\_\_\_\_\_  
\_\_\_\_\_, Secretary

\_\_\_\_\_  
\_\_\_\_\_, Member

SAMPLE

**APPENDIX F**

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In the Matter of

\_\_\_\_\_ DOB: \_\_\_\_\_

A Minor Child

**TRIBAL CUSTOMARY ADOPTION  
ORDER OF [TRIBE]**

This matter came before the TRIBE on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. No formal appearances were made and the Tribal Council has either reviewed or been briefed on all the documents of record received by the TRIBE in the XXXXX County Superior Court Case No. \_\_\_\_\_, In the Matter of \_\_\_\_\_, A Minor Child, DOB: \_\_\_\_\_.

The Tribal Council has also been well briefed by the Tribe's ICWA representative(s) and the TRIBE's legal counsel regarding this case and is also knowledgeable of the minor's siblings' status and their case while it was pending before the XXXXX County Superior Court.

This matter comes before the TRIBE for the purpose of considering the long term placement plan of the minor and after said deliberation the TRIBE orders a tribal customary adoption of the minor, \_\_\_\_\_.

1 History:

2 \_\_\_\_\_, DOB: \_\_\_\_\_, is the biological  
3 child of his/her mother, JANE DOE, who is a member of the TRIBE.

4 \_\_\_\_\_ is also the biological child of the father, JOHN DOE. Mr. DOE is  
5 not a tribal member. The TRIBE is the minor's Indian tribe. The Tribe formally intervened in the  
6 XXXXX County Superior Court case in \_\_\_\_\_. According to  
7 XXXXX County Superior Court documents, Ms. DOE has not appeared in the Superior Court  
8 matter since \_\_\_\_\_, and Mr. DOE has not appeared since  
9 \_\_\_\_\_.

10 \_\_\_\_\_ was removed from his/her mother's custody and care on or  
11 about \_\_\_\_\_. The mother was allegedly under the influence and  
12 unconscious at the time of the removal. She was later transported to the  
13 \_\_\_\_\_. The XXXXX County Department of Human Services was  
14 informed that the mother tested positive for methamphetamine.

15 The father has complied with services as ordered but has not regularly visited his child.  
16 Of concern to the TRIBE is each parent's failure to attend court hearings, comply with their  
17 service plans and remain clean and sober and maintain or form a connection with the child.

18 The TRIBE understands these parents have struggled in the past and continue to struggle  
19 to this day. These parents have two other children, who are members of the TRIBE, and are in a  
20 guardianship because the parents can not provide for the children. \_\_\_\_\_  
21 is placed with his siblings and being cared for by their guardians, \_\_\_\_\_.

22 The TRIBE is familiar with the \_\_\_\_\_ and knows they are non-Indian and  
23 their home does not comply with the placement preferences of the Indian Child Welfare Act (25  
24 U.S.C. §1915), state law (Welf. & Inst. Code §361.31) or the Tribe's preferences. However, the  
25 Tribe has agreed to this placement in an effort to keep \_\_\_\_\_ with his/her  
26 siblings, \_\_\_\_\_, and keep the children together. On  
27 \_\_\_\_\_, the TRIBE filed Tribal Resolution No. \_\_\_\_ in the XXXXX County  
28 Superior Court action which outlined the TRIBE's custom regarding termination of parental

1 rights and its commitment to a permanent placement for \_\_\_\_\_.

2 Findings:

3 Based upon the XXXXX County Superior Court record, information from the TRIBE's  
4 ICWA representative(s) and tribal legal counsel, and tribal customs and tradition, the TRIBE  
5 makes the following findings:

6 1. As an exercise of its inherent sovereignty the TRIBE, by and through its  
7 governing body, the TRIBE, has the authority and jurisdiction to formally order a placement plan  
8 of tribal customary adoption of the minor, \_\_\_\_\_, DOB \_\_\_\_\_.  
9 (Site the constitution here or some other source of authority).

10 2. The TRIBE finds that the Tribe possesses the inherent sovereign right to make  
11 decisions regarding the best interests of its children including who should provide care, custody  
12 and control of its children.

13 3. The TRIBE finds that the protection of the child's safety, well-being and welfare  
14 and his/her sense of belonging; preservation of the child's identity as a tribal member and  
15 member of an extended family; preservation of the culture, religion, language, values, and  
16 relationships with the Tribe embodies and promotes the traditional values of the TRIBE  
17 regarding the protection and care of the Tribe's children. The TRIBE believes that it is the  
18 responsibility of the TRIBE, the tribal communities and extended families to protect, care for and  
19 nurture our children.

20 4. The TRIBE finds that children deserve a sense of permanency and belonging  
21 throughout their lives and at the same time they deserve to have knowledge about their unique  
22 cultural heritage including their tribal customs, history, language, religion, values and political  
23 systems.

24 5. The TRIBE finds that based upon tribal custom and tradition, the TRIBE does not  
25 believe or adhere to termination of parental rights and finds that the state law construct of  
26 Termination of Parental rights is inconsistent with tribal customs and traditions. The TRIBE  
27 does support the process of joining individuals and relatives into family relationships and  
28 expanding family resources. The TRIBE recognizes that the relationship between the minor and

1 the GUARDIANS will be one of Tribal Customary Adoptive family. The TRIBE also recognizes  
2 the minor's right to a continued relationship with his birth parents and extended families.

3 6. The TRIBE finds that \_\_\_\_\_ will benefit from a relationship with  
4 his/her biological parents and encourages said relationship. The TRIBE also recognizes that  
5 \_\_\_\_\_ will benefit from a relationship with his/her extended family. The  
6 biological parents may have visitation with \_\_\_\_\_ provided the following  
7 conditions are met: the parents offer proof of sobriety from a recognized health facility and all  
8 visits take place in the presence of the GUARDIANS either in their home or at a mutually agreed  
9 upon location. At any time should the GUARDIANS have a reasonable belief that either parent  
10 is under the influence of drugs or alcohol a visit may be cancelled or terminated. Visitation  
11 between \_\_\_\_\_ and his/her extended family may take place upon consultation  
12 with the GUARDIANS and the TRIBE and at the discretion of each.

13 7. The TRIBE finds that \_\_\_\_\_ shall attend any and all holiday  
14 functions hosted by the TRIBE and the Tribe's Pow Wow. The TRIBE or its designee shall assist  
15 the GUARDIANS with the development of regalia, language, cultural and ceremonial  
16 development of \_\_\_\_\_.

17 8. The TRIBE is confident the GUARDIANS have and will always provide  
18 with all the love, caring, dedication and support they would provide to a biological child and it is  
19 the TRIBE's intention that \_\_\_\_\_ be raised until the age of majority and  
20 beyond by the \_\_\_\_\_ family. The TRIBE has and will continue to  
21 provide support, guidance and assistance to \_\_\_\_\_ and the  
22 \_\_\_\_\_ family including offering tribal services and programs to the family. The  
23 services and programs which may be available to the \_\_\_\_\_ family shall  
24 include, but not be limited to: Medical, dental, and behavioral health services at Indian Health  
25 Services centers; Timely enrollment consideration for \_\_\_\_\_ upon  
26 completion of his/her application form and its submission by the GUARDIANS at the next  
27 scheduled meeting of the Enrollment Committee; The TRIBAL ICWA Representative and staff  
28 are available to \_\_\_\_\_ and the \_\_\_\_\_ family currently



1 and after the tribal customary adoption order is finalized and the case is dismissed by the  
2 XXXXX County Superior Court. The Tribe's ICWA staff can assist by conducting traditional  
3 and culturally appropriate mentoring and activities, interfacing with mental health and medical  
4 providers, provide respite care, transportation and guidance to \_\_\_\_\_ and the  
5 \_\_\_\_\_ family now and in the future.

6 9. The TRIBE is committed to the permanent placement of  
7 \_\_\_\_\_ with GUARDIANS. The Tribe is committed to this placement and  
8 this tribal customary adoption and believes THE MINOR will thrive with the  
9 \_\_\_\_\_ family as his/her tribal customary adoptive family, and become a  
10 successful and meaningful member of the tribal community. In an effort to protect  
11 and preserve the \_\_\_\_\_ family structure the TRIBE pledges its full  
12 commitment to this family and its continuing development and evolution with  
13 \_\_\_\_\_ including support for \_\_\_\_\_'s legal name to be  
14 changed to reflect both his/her birth name and the \_\_\_\_\_ surname and  
15 recognition that, as the adoptive parents of \_\_\_\_\_,  
16 \_\_\_\_\_'s share all the rights and responsibilities as his/her parents including  
17 control over family visitation and his/her health, education and welfare.

18 10. The TRIBE finds that \_\_\_\_\_ may possess certain rights of  
19 inheritance which may be controlled by federal law pursuant to the American Indian Probate  
20 Reform Act of 2004, ("AIPRA") P.L. 108-374, or by tribal probate laws enacted now or in the  
21 future. The TRIBE further finds that the minor will benefit from maintaining rights of  
22 inheritance by and between himself and his biological parents and his tribal customary adoptive  
23 family.

24 11. The TRIBE finds that the biological parents have no ongoing legal obligations to  
25 and are not responsible for his/her care, custody or welfare. The parents may however contribute  
26 to his/her welfare by purchasing age appropriate gifts, school supplies and by providing culturally  
27 appropriate items to assist with his/her cultural and ceremonial development.

28 12. The TRIBE finds that based on tribal custom and tradition the TRIBE must

1 support and protect the legal relationship between the minor and the TRIBE, the minor's current  
2 or future citizenship in the TRIBE and therefore where the care, custody and control of the child  
3 will be placed with non-tribal members the child shall retain his/her legal relationship with the  
4 Tribe as a citizen or eligible for citizenship in the Tribe with all of the rights, duties and  
5 privileges that are inherent in his/her status as a citizen and member of a federally recognized  
6 tribe.

7 Therefore, the TRIBE hereby orders the following:

8 The TRIBE hereby adopts findings 1 – 12 as its Tribal Customary Adoption Order in this  
9 case and will submit the final Order to the XXXXX County Superior Court to grant full faith and  
10 credit, and make this Order the Order of the Court.

11  
12 IT IS SO ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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14 \_\_\_\_\_  
15 Chairperson/Tribal Council  
16 \_\_\_\_\_ [TRIBE]  
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