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TRIBAL CUSTOMARY ADOPTION

What Judges & Attorneys Need to Know

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Land Acknowledgment

We would like to acknowledge our presentation is brought to you today from the original and current lands of the Ohlone people in the San Francisco Bay Area, where our Judicial Council of California Office is currently located. We thank the Ohlone ancestors and present tribal communities.

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Objectives for This Training

Understand

Understand what a Tribal Customary Adoption (TCA) is & how it differs from a conventional adoption & other permanency options;

Appreciate

Appreciate the importance of maintaining Indian children's connections with their extended family, community, identity, tribe & culture even if they cannot reunify with their parents;

Recognize

Recognize the legal rights of all children in dependency to maintain their cultural identity & social, cultural, political & familial connections; and

Understand

The roles & responsibilities of participants in the dependency system in ensuring TCA is implemented where appropriate.

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What is Tribal Customary Adoption?

A permanency option that allows the adoption of an Indian child by and through the laws, traditions and customs of the child's tribe without requiring termination of the parental rights of the child's biological parents.

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Considerations in Selecting Permanent Plan for Indian Child

- ▶ In selecting permanent plan for Indian children must uphold the underlying values of ICWA – ie. respect tribal connection to Indian children & uphold best interest & rights of Indian children to maintain cultural, legal & political connection & identity;
- ▶ TCA (our focus here) is one tool to achieve this goal;
- ▶ Not all tribes accept idea of adoption – even TCA;
- ▶ In addition to TCA, WIC §366.26(c)(1)(B)(vi) recognizes that potential interference with Indian child's connection to tribal community or membership rights, tribe's identification of guardianship, foster care with a fit & willing relative or other planned permanent living arrangement as a compelling reason **not to terminate parental rights**.

▶ **According to the Assembly Bill Analysis (2009):**

“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.”

Purpose of Tribal Customary Adoption

Judicial Council Report to Legislature

- ▶ AB 1325 required J.C. to report to Legislature by 1/1/2013
- ▶ Conclusions:
 - TCA avoided some children ending up in less permanent plans of long-term foster care or guardianship
 - Finalized in less time than adoption involving termination of parental rights
 - Learning curve marked by some challenges and confusion
 - “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 the outcomes”

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Key Features of Tribal Customary Adoption

Only available when it is chosen by the child's tribe as the child's permanency plan;

If the tribe selects TCA, it presumptively becomes the child's permanent plan absent a finding that TCA would be detrimental to the child. (*In re H.R.* (2012) 208 Cal. App. 4th 751, 755.);

Consent of the child & biological parents is not required (Fam. C. §8600.5; WIC §366.24(c)(11); CRC 5.730);

TPR is not required – but tribes may opt to TPR.

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Basic Phases of a Tribal Customary Adoption



**AGENCY-TRIBAL
CONSULTATION**



**INITIAL 366.26
HEARING**



**CONTINUED
366.26
HEARING(S)**



**HEARING TO
FINALIZE
ADOPTION**

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Early and Ongoing Consultation

Agency must address in disposition report whether TCA is appropriate if reunification fails, in consultation with Tribe(s)

Whenever a 366.26 assessment is ordered (disposition & at 6-, 12-, 18- and 24-month review hearings) must address TCA

Best practice include as part of concurrent planning

Tribe may decide up to point of initial 366.26 hearing to select TCA

WIC 359.1(j) and 366.24(b)

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Court's Role & Responsibilities During Consultation Phase

- ❖ **Court must** in considering the case plan for an Indian child make a finding as to whether the tribe was actively involved in developing the case plan & whether TCA was considered as an appropriate permanent plan if reunification is unsuccessful (CRC 5.708(f)(7) & (8), 5.715(b)(4), 5.720(a)(3), 5.722(a)(4), 5.725(d))

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Prior to or at Initial 366.26 Hearing:

- ▶ If tribe identifies TCA as the permanent plan for the child at or prior to the initial 366.26 hearing
 - ✓ Tribe may request up to 120 days' continuance to complete TCA home study & background checks; or
 - ✓ If already completed, tribe may file TCA order (TCAO) at least 20 days prior to the 366.26 hearing

WIC 366.24(c)(6)

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TCA Home Evaluation

Tribe or designee in consultation with Tribe, completes:

- TCA home study
 - Evaluated in accordance with the prevailing social & cultural standards of the Tribe
- CACI check
- State & federal criminal background check

Final approval of TCA placement by Tribe through TCAO

WIC 366.24(c)

Tribe's Responsibilities for TCAO

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- ▶ **Tribe** develops the TCAO in accordance with tribal customs, laws & procedures:
 - Process must have allowed evidence from child, birth parents & adoptive parents regarding the contents of the TCAO & the child's best interests;
 - TCAO must include a description of:
 - The modification of the legal relationship of the birth parents & the child including any contact, any responsibilities of the birth parents & any rights of inheritance of the child; and
 - The child's legal relationship with the tribe.
 - The order cannot include any child support obligations from the birth parents;
 - There is a conclusive presumption that any parental rights or obligations not specified in the TCAO vest in the adoptive parents.

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Other Possible Provisions in the TCAO

*Protect the child's inherent political relationship with the tribe;

*Inheritance rights;

*Protect other legal and political rights of the child arising from the child's legal status and relationship to the tribe;

*Child's participation in cultural & other tribal activities;

*Visitation (if any);

*Where child may obtain services;

*Ongoing support from the tribe to the child & the family; and

*Whether the child's name is going to be changed or modified.

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Continued 366.26 Hearing(s)

Tribe files TCAO 20
days in advance;
or

Tribe may request
an additional
continuance of up
to 60 days

Agency files an
addendum report 7
days prior

Court affords TCAO
full faith & credit &
authorizes agency
to make TCA
placement

If Tribe does not file
timely TCAO, court
shall determine
best alternative
permanent plan.

Review Hearings After Selection of a Permanent Plan

*When permanent plan is long-term foster care or relative care, TCA must be reconsidered at review hearings held every 6 months thereafter (WIC 366.3(e)(8) and (h)(i))

*Agency must consult with Tribe and revisit TCA prior to final review hearing before child turns 18 (WIC 366.31(e)(5))

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Finalization of TCA

Agency makes TCA placement

- Signs a TCA placement agreement & an adoption assistance agreement
- Must first provide written background report on child to prospective adoptive parent(s)

Agency supervises placement for 6 months, unless

- Child has been in foster care with the family; or
- Prospective adoptive parent is a relative with pre-existing relationship with child

Prospective adoptive parent(s) file petition for adoption

Agency submits a full & final report of the facts of the proposed TCA

Issuance of final adoption decree and termination of jurisdiction

WIC 366.24(c)(8)-(9), (12)-(14)

Pitfalls, Problems & How to Avoid Them

- ▶ Agency fails to discuss option of TCA with the tribe – this is particularly problematic for out of state tribes or tribes unfamiliar with TCA:
 - ▶ Agency & court need to ensure that TCA is being addressed with tribe.
 - ▶ Evidence of discussions need to be in every assessment report.
 - ▶ Court should make sure that issue has been discussed & that the tribe fully understands option & what would be required of the tribe;
 - ▶ If tribe wants TCA, discussion should be included in child & family team meetings, so all parties know what to expect

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Pitfalls, Problems & How to Avoid Them cont.

- ▶ Agency or county counsel discusses TCA with family **before** confirming it is an option the tribe wants to choose;
 - Only the TRIBE can choose TCA & TCA CANNOT be completed without the tribe. Presenting TCA as an option to the family before confirmation by the tribe that they want a TCA can undermine tribes' relationship with family.
- ▶ Agency or county counsel pressures tribe to do a TCA when tribe would prefer a guardianship or other permanent plan;
 - Only TRIBE can choose a TCA. Tribe may not have the capacity or infrastructure to complete a TCA;
 - TCA may not be consistent with tribal values, customs & traditions.

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Pitfalls, Problems & How to Avoid Them cont.

- ▶ Agency refuses to collaborate with tribe in completing the home study & other requirements to finalize the TCA;
- ▶ Agency doesn't want to or does not know how to use tribal cultural standards to evaluate the home;
- ▶ Minors' counsel or proposed adoptive parents push for conventional adoption rather than TCA;
- ▶ Tribe isn't given enough time to complete the Tribal Customary Adoption Order.

Conclusion

Thank you for attending today's webinar. If you have questions or comments, please contact:

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Welfare and Institutions Code Provisions Implementing Tribal Customary Adoption

§ 358.1. Social studies or evaluations; contents

Each social study or evaluation made by a social worker or child advocate appointed by the court, required to be received in evidence pursuant to Section 358, shall include, but not be limited to, a factual discussion of each of the following subjects:

* * *

(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.

§ 366.21. Status review hearings

* * *

(i)(1) Whenever a court orders that a hearing pursuant to Section 366.26, including, when, in consultation with the child's tribe, tribal customary adoption is recommended, shall be held, it shall direct the agency supervising the child and the county adoption agency, or the State Department of Social Services when it is acting as an adoption agency, to prepare an assessment that shall include:

* * *

(H) In the case of an Indian child, in addition to subparagraphs (A) to (G), inclusive, an assessment of the likelihood that the child will be adopted, when, in consultation with the child's tribe, a tribal customary adoption, as defined in Section 366.24, is recommended. If tribal customary adoption is recommended, the assessment shall include an analysis of both of the following:

(i) Whether tribal customary adoption would or would not be detrimental to the Indian child and the reasons for reaching that conclusion.

(ii) Whether the Indian child cannot or should not be returned to the home of the Indian parent or Indian custodian and the reasons for reaching that conclusion.

§ 366.24. Tribal customary adoptions

(a)(1) 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.

(2) For purposes of this section, "Indian child" also includes a nonminor dependent as described in subdivision (v) of Section 11400, unless the nonminor dependent has elected not to be considered an Indian child pursuant to subdivision (b) of Section 224.1.

(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 drugrelated 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.

California Rules of Court Implementing Tribal Customary Adoption

Rule 5.486. Termination of parental rights

(b) When parental rights may not be terminated The court may not terminate parental rights to an Indian child or declare a child free from the custody and control of one or both parents if the court finds a compelling reason for determining that termination of parental rights would not be in the child's best interest. Such a reason may include:

- (1) The child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship, and the removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child. For purposes of an Indian child, "relative" must include an "extended family member," as defined in the Indian Child Welfare Act (25 U.S.C. § 1903(2));
- (2) 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
- (3) The child's tribe has identified tribal customary adoption, guardianship, longterm foster care with a fit and willing relative, or another planned permanent living arrangement for the child.

Rule 5.502. Definitions and use of terms

(23) "Modification of parental rights" means a modification of parental rights through a tribal customary adoption under Welfare and Institutions Code section 366.24.

(30) "Preadoptive parent" means a licensed foster parent who has been approved to adopt a child by the California State Department of Social Services, when it is acting as an adoption agency, or by a licensed adoption agency, or, in the case of an Indian child for whom tribal customary adoption is the permanent plan, the individual designated by the child's identified Indian tribe as the prospective adoptive parent.

(45) "Tribal customary adoption" means adoption by and through the tribal custom, traditions, or law of an Indian child's tribe as defined in Welfare and Institutions Code section 366.24 and to which a juvenile court may give full faith and credit under 366.26(e)(2). Termination of parental rights is not required to effect a tribal customary adoption.

Rule 5.690. General conduct of disposition hearing

* * *

(c) Case plan (§ 16501.1)

Whenever child welfare services are provided, the social worker must prepare a case plan.

(2) For a child of any age, the court must consider the case plan and must find as follows:

(C) The social worker solicited and integrated into the case plan the input of the child; the child's family; the child's identified Indian tribe, including consultation with the child's tribe on whether tribal customary adoption as defined in section 366.24 is an appropriate permanent plan for the child if reunification is unsuccessful; and other interested parties; or

(D) The social worker did not solicit and integrate into the case plan the input of the child, the child's family, the child's identified Indian tribe, and other interested parties, in which case the court must order that the social worker solicit and integrate into the case plan the input of the child, the child's family, the child's identified Indian tribe, and other interested parties, unless the court finds that each of these participants was unable, unavailable, or unwilling to participate.

Rule 5.708. General review hearing requirements

* * *

(f) Case plan (§§ 16001.9, 16501.1)

The court must consider the case plan submitted for the hearing and must find as follows:

* * *

(7) In the case of an Indian child, the agency consulted with the Indian child's tribe, as defined in rule 5.502, and the tribe was actively involved in the development of the case plan and plan for permanent placement, including consideration of tribal customary adoption as an appropriate permanent plan for the child if reunification is unsuccessful; or

(8) The agency did not consult with the Indian child's tribe, as defined in rule 5.502, and the tribe was not actively involved in the development of the case plan and plan for permanent placement, including consideration of tribal customary adoption as an appropriate permanent plan for the child if reunification is unsuccessful, in which case the court must order the agency to do so, unless the court finds that the tribe is unable, unavailable, or unwilling to participate; and

Rule 5.715. Twelve-month permanency hearing

* * *

(b) Determinations and conduct of hearing (§§ 309(e), 361.5, 366, 366.1, 366.21)

At the hearing, the court and all parties must comply with all relevant requirements and procedures in rule 5.708, General review hearing requirements. The court must make all appropriate findings and orders specified in rule 5.708 and proceed under section 366.21(f) and (g), and as follows:

* * *

(4) In the case of an Indian child, if the child is not returned to his or her parent or legal guardian, the court must determine whether:

- (A) The agency has consulted the child's tribe about tribal customary adoption;
- (B) The child's tribe concurs with tribal customary adoption; and
- (C) Tribal customary adoption is an appropriate permanent plan for the child.

Rule 5.720. Eighteen-month permanency review hearing

(a) Determinations and conduct of hearing (§§ 309(e), 361.5, 366.22)

At the hearing the court and all parties must comply with all relevant requirements and procedures in rule 5.708, General review hearing requirements. The court must make all appropriate findings and orders specified in rule 5.708, and proceed under section 366.22 and as follows:

* * *

(3) In the case of an Indian child, if the child is not returned to his or her parent or legal guardian, the court must determine whether:

- (A) The agency has consulted the child's tribe about tribal customary adoption;
- (B) The child's tribe concurs with tribal customary adoption; and
- (C) Tribal customary adoption is an appropriate permanent plan for the child.

Rule 5.722. Twenty-four-month subsequent permanency review hearing

(a) Determinations and conduct of hearing (§§ 309(e), 366, 366.1, 366.25)

At the hearing, the court and all parties must comply with all relevant requirements and procedures in rule 5.708, General review hearing requirements. The court must make all appropriate findings and orders specified in rule 5.708, and proceed under section 366.25 and as follows:

* * *

(4) In the case of an Indian child, if the child is not returned to his or her parent or legal guardian, the court must determine whether:

- (A) The agency has consulted the child's tribe about tribal customary adoption;
- (B) The child's tribe concurs with tribal customary adoption; and
- (C) Tribal customary adoption is an appropriate permanent plan for the child.

Rule 5.725. Selection of permanent plan (§§ 366.24, 366.26, 727.31)

* * *

(d) Conduct of hearing

At the hearing, the court must state on the record that the court has read and considered the report of petitioner, the report of any CASA volunteer, the case plan submitted for this hearing, any report submitted by the child's caregiver under section 366.21(d), and any other evidence, and must proceed under section 366.26 and as follows:

(1) In the case of an Indian child, after the agency has consulted with the tribe, when the court has determined with the concurrence of the tribe that tribal customary adoption is the appropriate permanent plan for the child, order a tribal customary adoption in accordance with section 366.24.

(e) Procedures—adoption

(1) The court must follow the procedures in section 366.24 or 366.26, as appropriate.

(2) An order of the court terminating parental rights, ordering adoption under section 366.26 or, in the case of an Indian child, ordering tribal customary adoption under section 366.24, is conclusive and binding on the child, the parent, and all other persons who have been served under the provisions of section 294. Once a final order of adoption has issued, the order may not be set aside or modified by the court, except as provided in section 366.26(e)(3) and (i)(3) and rules 5.538, 5.540, and 5.542 with regard to orders by a referee.

Rule 5.726. Prospective adoptive parent designation (§§ 366.26(n), 16010.6)

(a) Request procedure

A dependent child's caregiver may be designated as a prospective adoptive parent. The court may make the designation on its own motion or on a request by a caregiver, the child, a social worker, the child's identified Indian tribe, or the attorney for any of these parties.

(1) A request for designation as a prospective adoptive parent may be made at a hearing where parental rights are terminated or a plan of tribal customary adoption is ordered or thereafter, whether or not the child's removal from the home of the prospective adoptive parent is at issue.

(b) Facilitation steps

Steps to facilitate the adoption process include those listed in section 366.26(n)(2) and, in the case of an Indian child when tribal customary adoption has been identified as the child's permanent plan, the child's identified Indian tribe has designated the caregiver as the prospective adoptive parent.

Rule 5.727. Proposed removal (§ 366.26(n))

(a) Application of rule

This rule applies, after termination of parental rights or, in the case of tribal customary adoption, modification of parental rights, to the removal by the Department of Social Services (DSS) or a licensed

adoption agency of a dependent child from a prospective adoptive parent or from a caregiver who may meet the criteria for designation as a prospective adoptive parent in section 366.26(n)(1). This rule does not apply if the caregiver requests the child's removal.

Rule 5.728. Emergency removal (§ 366.26(n))

(a) Application of rule

This rule applies, after termination of parental rights or, in the case of tribal customary adoption, modification of parental rights, to the removal by the Department of Social Services (DSS) or a licensed adoption agency of a dependent child from the home of a prospective adoptive parent or a caregiver who may meet the criteria for designation as a prospective adoptive parent in section 366.26(n)(1) when the DSS or the licensed adoption agency has determined a removal must occur immediately due to a risk of physical or emotional harm. This rule does not apply if the child is removed at the request of the caregiver.

State of California

WELFARE AND INSTITUTIONS CODE

Section 16001.9

16001.9. (a) All children placed in foster care, either voluntarily or after being adjudged a ward or dependent of the juvenile court pursuant to Section 300, 601, or 602, shall have the rights specified in this section. These rights also apply to nonminor dependents in foster care, except when they conflict with nonminor dependents' retention of all their legal decisionmaking authority as an adult. The rights are as follows:

(1) To live in a safe, healthy, and comfortable home where they are treated with respect. If the child is an Indian child, to live in a home that upholds the prevailing social and cultural standards of the child's Indian community, including, but not limited to, family, social, and political ties.

(2) To be free from physical, sexual, emotional, or other abuse, corporal punishment, and exploitation.

(3) To receive adequate and healthy food, adequate clothing, grooming and hygiene products, and an age-appropriate allowance. Clothing and grooming and hygiene products shall respect the child's culture, ethnicity, and gender identity and expression.

(4) To be placed in the least restrictive setting possible, regardless of age, physical health, mental health, sexual orientation, and gender identity and expression, juvenile court record, or status as a pregnant or parenting youth, unless a court orders otherwise.

(5) To be placed with a relative or nonrelative extended family member if an appropriate and willing individual is available.

(6) To not be locked in any portion of their foster care placement, unless placed in a community treatment facility.

(7) To have a placement that utilizes trauma-informed and evidence-based deescalation and intervention techniques, to have law enforcement intervention requested only when there is an imminent threat to the life or safety of a child or another person or as a last resort after other diversion and deescalation techniques have been utilized, and to not have law enforcement intervention used as a threat or in retaliation against the child.

(8) To not be detained in a juvenile detention facility based on their status as a dependent of the juvenile court or the child welfare services department's inability to provide a foster care placement. If they are detained, to have all the rights afforded under the United States Constitution, the California Constitution, and all applicable state and federal laws.

(9) To have storage space for private use.

(10) To be free from unreasonable searches of personal belongings.

(11) To be provided the names and contact information for social workers, probation officers, attorneys, service providers, foster youth advocates and supporters, Court Appointed Special Advocates (CASAs), and education rights holder if other than the parent or parents, and when applicable, representatives designated by the child's Indian tribe to participate in the juvenile court proceeding, and to communicate with these individuals privately.

(12) To visit and contact siblings, family members, and relatives privately, unless prohibited by court order, and to ask the court for visitation with the child's siblings.

(13) To make, send, and receive confidential telephone calls and other electronic communications, and to send and receive unopened mail, unless prohibited by court order.

(14) To have social contacts with people outside of the foster care system, including, but not limited to, teachers, coaches, religious or spiritual community members, mentors, and friends. If the child is an Indian child, to have the right to have contact with tribal members and members of their Indian community consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe.

(15) To attend religious services, activities, and ceremonies of the child's choice, including, but not limited to, engaging in traditional Native American religious practices.

(16) To participate in extracurricular, cultural, racial, ethnic, personal enrichment, and social activities, including, but not limited to, access to computer technology and the internet, consistent with the child's age, maturity, developmental level, sexual orientation, and gender identity and expression.

(17) To have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity and expression, mental or physical disability, or HIV status.

(18) To have caregivers, child welfare and probation personnel, and legal counsel who have received instruction on cultural competency and sensitivity relating to sexual orientation, gender identity and expression, and best practices for providing adequate care to lesbian, gay, bisexual, and transgender children in out-of-home care.

(19) To be placed in out-of-home care according to their gender identity, regardless of the gender or sex listed in their court, child welfare, medical, or vital records, to be referred to by the child's preferred name and gender pronoun, and to maintain privacy regarding sexual orientation and gender identity and expression, unless the child permits the information to be disclosed, or disclosure is required to protect their health and safety, or disclosure is compelled by law or a court order.

(20) To have child welfare and probation personnel and legal counsel who have received instruction on the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.) and on cultural competency and sensitivity relating to, and best practices for, providing adequate care to Indian children in out-of-home care.

(21) To have recognition of the child's political affiliation with an Indian tribe or Alaskan village, including a determination of the child's membership or citizenship

in an Indian tribe or Alaskan village; to receive assistance in becoming a member of an Indian tribe or Alaskan village in which the child is eligible for membership or citizenship; to receive all benefits and privileges that flow from membership or citizenship in an Indian tribe or Alaskan village; and to be free from discrimination based on the child's political affiliation with an Indian tribe or Alaskan village.

(22) (A) To access and receive medical, dental, vision, mental health, and substance use disorder services, and reproductive and sexual health care, with reasonable promptness that meets the needs of the child, to have diagnoses and services explained in an understandable manner, and to participate in decisions regarding health care treatment and services. This right includes covered gender affirming health care and gender affirming mental health care, and is subject to existing laws governing consent to health care for minors and nonminors and does not limit, add, or otherwise affect applicable laws governing consent to health care.

(B) To view and receive a copy of their medical records to the extent they have the right to consent to the treatment provided in the medical record and at no cost to the child until they are 26 years of age.

(23) Except in an emergency, to be free of the administration of medication or chemical substances, and to be free of all psychotropic medications unless prescribed by a physician, and in the case of children, authorized by a judge, without consequences or retaliation. The child has the right to consult with and be represented by counsel in opposing a request for the administration of psychotropic medication and to provide input to the court about the request to authorize medication. The child also has the right to report to the court the positive and adverse effects of the medication and to request that the court reconsider, revoke, or modify the authorization at any time.

(24) (A) To have access to age-appropriate, medically accurate information about reproductive health care, the prevention of unplanned pregnancy, and the prevention and treatment of sexually transmitted infections.

(B) At any age, to consent to or decline services regarding contraception, pregnancy care, and perinatal care, including, but not limited to, abortion services and health care services for sexual assault without the knowledge or consent of any adult.

(C) At 12 years of age or older, to consent to or decline health care services to prevent, test for, or treat sexually transmitted diseases, including HIV, and mental health services, without the consent or knowledge of any adult.

(25) At 12 years of age or older, to choose, whenever feasible and in accordance with applicable law, their own health care provider for medical, dental, vision, mental health, substance use disorder services, and sexual and reproductive health care, if payment for the service is authorized under applicable federal Medicaid law or other approved insurance, and to communicate with that health care provider regarding any treatment concerns or needs and to request a second opinion before being required to undergo invasive medical, dental, or psychiatric treatment.

(26) To confidentiality of medical and mental health records, including, but not limited to, HIV status, substance use disorder history and treatment, and sexual and reproductive health care, consistent with existing law.

(27) To attend school, to remain in the child's school of origin, to immediate enrollment upon a change of school, to partial credits for any coursework completed, and to priority enrollment in preschool, afterschool programs, a California State University, and each community college district, and to receive all other necessary educational supports and benefits, as described in the Education Code.

(28) To have access to existing information regarding the educational options available, including, but not limited to, the coursework necessary for career, technical, and postsecondary educational programs, and information regarding financial aid for postsecondary education, and specialized programs for current and former foster children available at the University of California, the California State University, and the California Community Colleges.

(29) To attend Independent Living Program classes and activities, if the child meets the age requirements, and to not be prevented by caregivers from attending as a consequence or punishment.

(30) To maintain a bank account and manage personal income, consistent with the child's age and developmental level, unless prohibited by the case plan.

(31) To work and develop job skills at an age-appropriate level, consistent with state law.

(32) For children 14 to 17 years of age, inclusive, to receive a consumer credit report provided to the child by the social worker or probation officer on an annual basis from each of the three major credit reporting agencies, and to receive assistance with interpreting and resolving any inaccuracies.

(33) To be represented by an attorney in juvenile court; to have an attorney appointed to advise the court of the child's wishes, to advocate for the child's protection, safety, and well-being, and to investigate and report to the court on legal interests beyond the scope of the juvenile proceeding; to speak to the attorney confidentially; and to request a hearing if the child feels their appointed counsel is not acting in their best interest or adequately representing their legal interests.

(34) To receive a notice of court hearings, to attend court hearings, to speak to the judge, to view and receive a copy of the court file, subject to existing federal and state confidentiality laws, and to object to or request the presence of interested persons during court hearings. If the child is an Indian child, to have a representative designated by the child's Indian tribe be in attendance during hearings.

(35) To the confidentiality of all juvenile court records consistent with existing law.

(36) To view and receive a copy of their child welfare records, juvenile court records, and educational records at no cost to the child until the child is 26 years of age, subject to existing federal and state confidentiality laws.

(37) To be involved in the development of their own case plan, including placement decisions, and plan for permanency. This involvement includes, but is not limited to, the development of case plan elements related to placement and gender affirming health care, with consideration of the child's gender identity. If the child is an Indian child, the case plan shall include protecting the essential tribal relations and best interests of the Indian child by assisting the child in establishing, developing, and

maintaining political, cultural, and social relationships with the child's Indian tribe and Indian community.

(38) To review the child's own case plan and plan for permanent placement if the child is 10 years of age or older, and to receive information about their out-of-home placement and case plan, including being told of changes to the plan.

(39) To request and participate in a child and family team meeting, as follows:

(A) Within 60 days of entering foster care, and every 6 months thereafter.

(B) If placed in a short-term residential therapeutic program, or receiving intensive home-based services or intensive case coordination, or receiving therapeutic foster care services, to have a child and family team meeting at least every 90 days.

(C) To request additional child and family team meetings to address concerns, including, but not limited to, placement disruption, change in service needs, addressing barriers to sibling or family visits, and addressing difficulties in coordinating services.

(D) To have both informal and formal support people participate, consistent with state law.

(40) To be informed of these rights in an age and developmentally appropriate manner by the social worker or probation officer and to be provided a copy of the rights in this section at the time of placement, any placement change, and at least once every six months or at the time of a regularly scheduled contact with the social worker or probation officer.

(41) To be provided with contact information for the Community Care Licensing Division of the State Department of Social Services, the tribal authority approving a tribally approved home, and the State Foster Care Ombudsperson, at the time of each placement, and to contact any or all of these offices immediately upon request regarding violations of rights, to speak to representatives of these offices confidentially, and to be free from threats or punishment for making complaints.

(b) The rights described in this section are broad expressions of the rights of children in foster care and are not exhaustive of all rights set forth in the United States Constitution and the California Constitution, federal and California statutes, and case law.

(c) This section does not require, and shall not be interpreted to require, a foster care provider to take any action that would impair the health and safety of children in out-of-home placement.

(d) The State Department of Social Services and each county welfare department are encouraged to work with the Student Aid Commission, the University of California, the California State University, and the California Community Colleges to receive information pursuant to paragraph (28) of subdivision (a).

(Repealed and added by Stats. 2019, Ch. 416, Sec. 3. (AB 175) Effective January 1, 2020.)

Comparing TCA with other Permanency Options

	In a Tribal Customary Adoption	In a Conventional Adoption	In a Legal Guardianship
Parental Rights	The parents' rights <u>are not</u> necessarily permanently terminated.	The parents' rights <u>are permanently terminated</u> .	Parents still <u>have parental rights</u> . They can ask for reasonable contact with the child.
Determination of the terms	Child's tribe determines the terms of the TCA order.	The legal relationship with the adoptive parents is permanent and is exactly the same as a birth family.	The court can end a guardianship if the parents become able to take care of the child.
Consultation with the child's tribe	The child, birth parents, Indian custodian, and prospective tribal customary adoptive parents and their counsel must have the opportunity to present evidence to the tribe regarding the child's best interest.	An adopted child inherits from his or her adoptive parents, just as a birth child would.	Not required, but child welfare agencies should always consult with the child's tribe in an ICWA case.
Supervision by the court	The TCA order must, at a minimum, address the legal relationship of the birth parents and the child, including whether contact will; the responsibilities of the birth parents if any; and the relationship with the tribe and the rights of inheritance of the child.	The court does not supervise adoptive families.	The court can supervise guardians.



JOHN A. WAGNER
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



ARNOLD SCHWARZENEGGER
GOVERNOR

March 24, 2010

ALL COUNTY LETTER NO. 10-17

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

SUBJECT: ASSEMBLY BILL 1325, CHAPTER 287, STATUTES OF 2009
TRIBAL CUSTOMARY ADOPTION

REFERENCE: ASSEMBLY BILL 1325, CHAPTER 287, STATUTES OF 2009;
WELFARE AND INSTITUTIONS CODE 366.24, AND 366.26

REASON FOR THIS TRANSMITTAL

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

The purpose of this All County Letter (ACL) is to provide introductory information to counties, adoption agencies, tribes and other interested individuals/organizations regarding the passage of Assembly Bill (AB) 1325, Chapter 287, Statutes of 2009. A more detailed ACL regarding implementing the provisions of AB 1325 statewide will be circulated in June 2010.

In an effort to meet the permanency needs of dependent Indian children, consistent with tribal culture, California enacted AB 1325. Effective **July 1, 2010**, this statute adds to state law “tribal customary adoption” as a permanency option for a child who is a dependent of the juvenile court and eligible under the Indian Child Welfare Act (ICWA). It defines tribal customary adoption as an adoption which occurs under the customs, laws or traditions of child’s tribe. Termination of parental rights (TPR) is not required to effect the tribal customary adoption. While tribal customary adoption is unique, it is intended to be a seamless integration into the current process of conventional adoption. Aligned with the state’s existing concurrent planning policies, when applicable, it allows, at the tribe’s option, for tribal customary adoption to be included as an alternative permanent plan to family reunification throughout the dependency case.

This statute provides the Indian child's tribe the authority to recommend tribal customary adoption as the permanency option for the Indian child. Further, it provides that where the juvenile court finds that full faith and credit shall be extended to the tribe's tribal customary adoption order, the juvenile court will issue a state court order of adoption. It also permits an Indian child who is the subject of a tribal customary adoption to be eligible for Adoption Assistance Program (AAP) benefits.

This statute only applies to a dependent Indian child who is eligible under ICWA whose parents' rights were not terminated. It will not apply to independent or intercountry adoption, an Indian child who is a probation ward or has been voluntarily relinquished to an agency by his or her parents.

The AB 1325 becomes operative on July 1, 2010, and sunsets on January 1, 2014. This statute authorizes California Department of Social Services (CDSS) to develop emergency regulations and requires the Judicial Council's Administrative Office of the Courts to adopt rules of court and necessary forms to implement tribal customary adoption before July 1, 2010. The Judicial Council will publish forms with instructions on their website. The statute also requires the Judicial Council to complete a study of these provisions and to report its findings to the legislature on or before January 1, 2013.

BACKGROUND

The AB 1325 was the result of a gap between tribal cultural norms and existing state law, which did not include a culturally-appropriate means of achieving adoption for dependent Indian children. This statute originated from the CDSS ICWA Workgroup which includes representatives from tribes, counties and other stakeholders in Indian child welfare. It is consistent with CDSS' goal to sustain and enhance permanency for all court-dependent youth. In addition to a conventional adoption, AB 1325 gives an Indian child another permanency option by allowing the child to be adopted without the requirement of TPR, which conflicts with many tribal teachings and cultural values because it severs the child's tribal family systems, connections to extended family members, and to the tribe. Furthermore, TPR and severing family ties may also cause an Indian child to lose benefits afforded only to a member of the tribe. This statute allows Indian children and families to achieve permanency and adoption assistance benefits without TPR.

According to the National Indian Child Welfare Association, "Historically and traditionally, adoption has been practiced in most tribal communities through custom and ceremony. In general, tribes do not practice termination of parental rights. In a customary adoption, tribes are allowed to meet the permanency needs of their children while honoring their own tribal values and beliefs."

HOW THE BILL WORKS

The option of a tribal customary adoption is to be considered in all stages of the dependency case. The primary procedures and standards applicable to tribal customary adoptions are contained in the new section, 366.24, of the Welfare and Institutions Code (W&IC). They include the following:

- Provides the tribe to choose the option of tribal customary adoption as a permanency option for dependent Indian children eligible under ICWA in cases involving federally recognized tribes.
- Defines “tribal customary adoption” as an adoption which occurs under the customs, laws or traditions of an Indian child’s tribe, but where TPR is not required.
- Excludes tribal customary adoption from the Family Code.
- Excludes probation wards, independent or intercountry adoptions, and Indian children that have been voluntarily relinquished by their parents from tribal customary adoption.
- Includes tribal customary adoption as a permanency option when noticing parents regarding a selection and implementation hearing.
- Affords tribal customary adoptive parents the same rights and privileges as any other adoptive parents.
- Requires the dependency social worker and the adoptions worker, in consultation with the child’s tribe, to address in the court report for each review hearing, whether the tribal customary adoption is an appropriate permanent plan for the child if reunification is unsuccessful.
- Provides that when family reunification is unsuccessful, and a hearing is ordered to determine the appropriate permanent plan for a dependent Indian child, if the child’s tribe recommends tribal customary adoption, the juvenile court may order, without termination of parental rights, tribal customary adoption as the permanent plan for that child.
- Provides requirements for cases in which tribal customary adoption is determined as the child’s permanent plan, including:
 - The completion of an adoptive home study by either the Indian child’s tribe or the tribe’s designee;
 - If the tribe designates an agency to complete the home study, the agency must conduct the tribal customary adoption home study in consultation with the child’s tribe.
 - The tribe’s designee may include a licensed county adoption agency, CDSS when it is acting as an adoption agency, or a licensed adoption agency.

- The tribe may choose to complete the tribal customary adoption home study. In that case the agency with placement and care responsibility for the child will complete the criminal and child abuse registry background checks.
- The completion, by the child's tribe, of a Tribal Customary Adoption Order (TCAO) that includes a description of the modification of the legal relationship of the birth parents or Indian custodian and the child, and a description of the child's legal relationship with the tribe;
- The filing of the TCAO evidencing that tribal customary adoption had been completed by the child's tribe within 120 days of the original 366.26 hearing with a court option to grant a continuance of up to 60 additional days;
- Court discretion, if the child's tribe does not file the tribal customary adoption order within the timeframes specified for completion of the order, to alter the original order of tribal customary adoption as the child's permanency option.
- The filing of an addendum to the continued W & IC 366.26 report by the licensed county adoption agency, or CDSS when it is acting as an adoption agency, to the court;
- An opportunity for the child, birth parents, Indian custodian, tribal customary adoptive parents, and their counsel, to present evidence regarding the child's best interest.
- Provides that once the juvenile court affords full faith and credit to the TCAO received from the child's tribal court or council to the extent it would afford full faith and credit to the public acts, records, judicial proceedings and judgments of any other entity, the Indian child shall be eligible for tribal customary adoptive placement.
 - The completion of a tribal customary adoptive placement is contingent on the approval of the tribal customary adoption home study.
- Provides that once an adoption petition is filed, supervision is complete and the final report by the supervising agency is submitted, the court issues an order of adoption pursuant to section 366.24.
- Provides that once the adoption order is granted dependency is terminated.

Private Adoption Agency Reimbursement Program (PAARP)

The PAARP was enacted as an incentive for licensed private adoption agencies to recruit adoptive families for children who would otherwise remain in foster care. The PAARP is governed by W&IC section 16122, which requires CDSS to reimburse licensed private adoption agencies for otherwise unreimbursed costs incurred, for completing the adoptions of children who are eligible for the AAP benefits because of age, membership in a sibling group, medical or psychological problems, adverse parental background or other circumstances that will make placement of the youth(s)

especially difficult. With the passage of Senate Bill 84 the maximum PAARP rate, effective February 1, 2008, was increased to \$10,000.

Effective July 1, 2010, licensed private adoption agencies can claim PAARP reimbursement for tribal customary adoptions. Some private adoption agencies have expressed concern as to whether PAARP eligibility would be impacted should any part of the TCA process be initiated prior to July 1, 2010. These cases will be eligible for PAARP reimbursement provided the tribal customary adoptive placement occurs on or after July 1, 2010.

Although AB 1325 was passed October 11, 2009, its provisions do not become law until July 1, 2010. Therefore, tribal customary adoption will not be recognized as a permanent plan until July 1, 2010. Should you have any questions regarding this letter, please contact the Permanency Policy Bureau at (916) 657-1858, or me at (916) 657-2614.

Sincerely,

Original Document Signed By:

GREGORY E. ROSE
Deputy Director
Children and Family Services Division



CDSS

JOHN A. WAGNER
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES

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ARNOLD SCHWARZENEGGER
GOVERNOR

REASON FOR THIS TRANSMITTAL

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

October 27, 2010

ALL COUNTY LETTER NO. 10-47

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

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

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

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

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

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

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

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

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1.0 Tribal Customary Adoption

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

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

The key differences between TCA and a conventional adoption are:

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

1.2 To whom does TCA apply?

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

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

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

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

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

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

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

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

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

1.6 What are the stages of a TCA?

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

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

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

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

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

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

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

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

Kimberly Cluff, Attorney
Forman & Associates
4340 Redwood Hwy Ste F228
San Rafael, CA 94903
Phone (415) 491-2310

2.0 Consultation with the Indian Child's Tribe

2.1 What does this mean?

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

2.2 When should the agency begin consulting the tribe?

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

2.3 How should the agency consult with the tribe?

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

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

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

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

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

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

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

2.5 What does consulting with tribe include?

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

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

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

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

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

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

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

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

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

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

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

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

3.0 Dependency Process

3.1 How is TCA included in the dependency process?

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

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

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

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

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

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

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

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

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

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

3.5 How does TCA affect the judicial process?

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

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

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

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

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

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

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

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

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

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

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

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

3.11 Does TCA add any noticing requirements?

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

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

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

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

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

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

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

4.0 Written Assessment of the Child's Suitability for TCA

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

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

Additions to current standards

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

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

Exclusions of current standards

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

5.0 TCA Home Study

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

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

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

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

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

When the tribe conducts its own home study

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

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

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

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

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

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

When a tribe designates an agency to conduct the home study

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Designated Agency

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

Indian Child's Tribe

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

6.0 Tribal Designee

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

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

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

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

6.3 What are the responsibilities of the tribal designees?

Tribal designees will be responsible for the following:

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

Additional responsibilities may include, but not be limited to:

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

6.4 Is an agency obligated to be a designee?

No.

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

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

7.0 Review of Criminal and Child Abuse and Neglect Background

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

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

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

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

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

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

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

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

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

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

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

8.0 The TCAO

8.1 What is TCAO?

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

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

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

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

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

8.2 Is the agency responsible for facilitating the TCAO?

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

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

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

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

8.3 Will the agency need a copy of the TCAO?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10.0 Full Faith and Credit

10.1 What does full faith and credit mean?

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

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

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

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

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

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

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

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

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

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

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

11.0 Tribal Customary Adoptive Placement

11.1 When does tribal customary adoptive placement occur?

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

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

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

Section 35195 - Child's Medical and Psychological Information

Section 35197 - Adoptive Placement Requirements

Section 35201 - Adoptive Placement Agreement

Section 35207 - Termination of Adoptive Placement

Section 35207.1 - Reporting Suspected Child Abuse

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

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

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

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

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

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

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

11.5 Can a tribal customary adoptive placement be terminated?

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

12.0 Supervision of Tribal Customary Adoptive Placement

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

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

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

13.0 Adoption Assistance Program (AAP) Benefits

13.1 Will the child be eligible for Adoption Assistance Program?

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

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

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

14.0 Private Adoption Assistance Reimbursement Program (PAARP)

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

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

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

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

15.0 Finalization

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

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

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

15.2 What happens to the rights of the biological parents?

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

15.3 What are the rights of the adoptive parents?

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

16.0 Disclosure and Confidentiality

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

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

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

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

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

17.0 Set Aside

17.1 What is a set aside?

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

17.2 Will a TCA be able to be set aside?

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

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

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

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

18.0 ICPC

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

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

18.2 Does ICPC apply to TCA?

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

19.0 Data Reporting on TCA

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

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

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

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

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

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

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

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

Step 2: Select the following code:

"S-Tribal Customary Adoption"

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

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

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

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

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

20.0 Forms

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

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

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

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

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

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

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

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

20.2 What CDSS forms have been modified to include TCA?

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

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

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

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

1. AAP 4: Eligibility Certification – Adoption Assistance Program

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

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

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

Sincerely,

Original Document Signed By:

GREGORY E. ROSE
Deputy Director
Children and Family Services Division

**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.

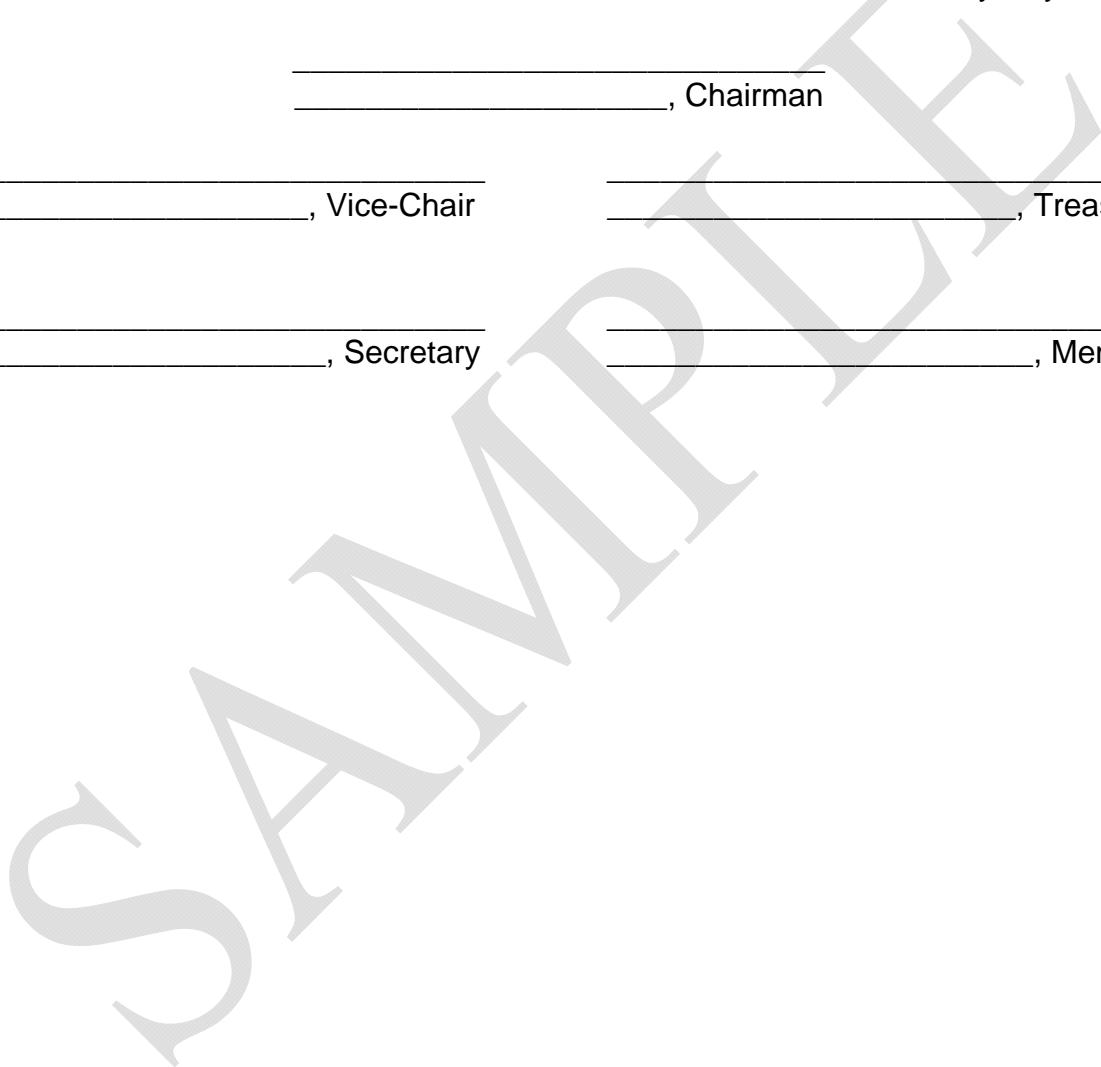
_____, Chairman

_____, Vice-Chair

_____, Treasurer

_____, Secretary

_____, Member



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Insert Name
Address
Etc.

In the Matter of

DOB: _____
DOB: _____

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

Case No:

A Minor Child/ren

This matter came before the X Tribe on the ____ day of _____, 20__.
Formal appearances before the Tribal Council were/were not made. The Tribal Council has
either reviewed or been briefed on all the documents of record received by the Tribe in the X
County Superior Court Case No. _____, In the Matter of _____, Minor
Child/ren, DOB: _____.

ALTERNATIVE 1:

This matter came before the X Tribal Court on the ____ day of _____, 20__.
Formal appearances before the Tribal Court were/were not made. The Tribal Court has either
reviewed, been briefed, received oral argument on all the issues and documents of record

1 received by the Tribal Court in the X County Superior Court Case No. _____, In the Matter
2 of _____, Minor Child/ren, DOB: _____.

3 The Tribal Council/Court received and reviewed (reports/declarations/legal memos)
4 provided by the Tribe's ICWA representative(s), the Tribe's legal counsel and
5 _____ regarding this case and is also knowledgeable
6 about (other cases, prior cases, sibling cases).

7 This matter comes before the Tribe for the purpose of considering the long term
8 placement plan of the minor and after said deliberation the Tribe orders a plan of tribal customary
9 adoption of the minor, _____.

10 History:

11 The child/ren _____, DOB: _____,
12 is/are the biological child/ren of his/her/their mother/father, _____,
13 who is a member of the Tribe. The mother/father is also a biological parent of the child/ren.
14 Mrs./Mr. _____ is not a tribal member. The Tribe is the child's/ren's Indian tribe. The Tribe
15 formally intervened in the court case in X County Superior Court. According to X County
16 Superior Court documents, the child/ren was/were removed from his/her/their
17 mother's/father's/parents' custody and care on or about _____. The
18 mother/father/parents was/were allegedly
19 _____
20 _____
21 at the time of the removal.

22 The mother/father/parents were provided a reunification plan. The mother/father/parents
23 did not substantially comply with the reunification plan as she/he/they failed
24 to _____
25 _____
26 Of particular concern to the Tribe is the failure to _____.

27 The Tribe is familiar with the proposed tribal customary adoptive
28 parents _____. They are (tribal members,

1 non-tribal native, non-native). The home does/does not comply with the placement preferences
2 of the Indian Child Welfare Act (25 U.S.C. §1915), state law (Welf. & Inst. Code §361.31) or the
3 Tribe's preferences. The Tribe has agreed to this placement in an effort to keep the child/ren with
4 (his/her siblings, his/her relatives, his her current school). On _____, the Tribe
5 filed Tribal Resolution No. ____ in the X County Superior Court action which outlined the
6 Tribe's custom regarding termination of parental rights and its commitment to a permanent
7 placement for the child/ren.

8 Findings:

9 Based upon the X County Superior Court record, information from the Tribe's ICWA
10 representative(s) and tribal legal counsel, and tribal customs and tradition, the Tribe makes the
11 following findings:

12 1. As an exercise of its inherent sovereignty the Tribe, by and through its governing
13 body/Tribal court, [perhaps cite the Tribe's constitution if it is written, or other tribal law] has the
14 authority and jurisdiction to formally order a placement plan of tribal customary adoption of the
15 child/ren, _____, DOB _____.

16 2. The Tribe possesses the inherent sovereign right to make decisions regarding the
17 best interests of its children including who should provide care, custody and control of its
18 children.

19 3. The Tribe is responsible to tribal children for their protection, safety, well-being
20 and welfare, sense of belonging, preservation of identity as a tribal member and member of an
21 extended family, preservation of the culture, religion, language, values, and relationships with the
22 Tribe. The Tribe must embody and promote the traditional values of the Tribe regarding the
23 protection and care of the Tribe's children. The Tribe believes that it is the responsibility of the
24 Tribe, the tribal community and extended families to protect, care for and nurture tribal children.

25 4. The Tribe finds that children deserve a sense of permanency and belonging
26 throughout their lives and at the same time they deserve to have knowledge about their unique
27 cultural heritage including their tribal customs, history, language, religion, values and political
28 systems.

1 5. The Tribe finds that based upon tribal custom and tradition, the Tribe does not
2 believe in the termination of parental rights and finds that the state law construct of termination
3 of parental rights is inconsistent with tribal customs and traditions. The Tribe does support the
4 process of joining individuals and relatives into family relationships and expanding family
5 resources. The Tribe recognizes that the relationship between the child/ren and the Tribal
6 Customary Adoptive family will be one of Tribal Customary Adoptive family. The Tribe also
7 recognizes the child/ren's right to a continued relationship with her/his/their birth parents and
8 extended families.

9 6. The Tribe finds that the child/ren will benefit from a relationship with his/her/their
10 biological parents and encourages said relationship. The biological parents may have visitation
11 with the child/ren provided the following conditions are met: [*insert requirements*; for example:
12 the parents offer proof of sobriety from a recognized health facility and all visits take place in the
13 presence of _____ at a mutually agreed upon location.] At any time should the
14 Tribal Customary Adoptive family have a reasonable belief that either parent is under the
15 influence of drugs or alcohol a visit may be cancelled or terminated. Visitation between the
16 child/ren and her/his/their extended family may take place upon consultation with

17 _____
18 _____ and the Tribe and at the discretion of each.

19 7. The Tribe finds that the child/ren shall attend any and all holiday functions hosted
20 by the Tribe. The Tribe or its designee shall assist the Tribal Customary Adoptive family with
21 the development of regalia, language, cultural and ceremonial development of the child/ren.

22 8. The Tribe is confident the Tribal Customary Adoptive family have and will
23 always provide the child/ren with all the love, caring, dedication and support they would provide
24 to a biological child and it is the Tribe's intention that the child/ren be raised until the age of
25 majority and beyond by the Tribal Customary Adoptive family.

26 9. The Tribe has and will continue to provide support, guidance and assistance to the
27 child/ren and the Tribal Customary Adoptive family including offering tribal services and
28 programs to the family. The services and programs which may be available to the Tribal

1 Customary Adoptive family shall include, but not be limited to: medical care, dental care, and
2 behavioral health services at Indian Health Services centers; timely consideration for enrollment
3 for the child/ren upon completion of his/her/their application form and its submission to the
4 Tribe; The Tribal _____(name resources) are available to the child/ren
5 and the Tribal Customary Adoptive family and will continue to be after the tribal customary
6 adoption order is finalized and the case is dismissed by the X County Superior Court. The Tribe's
7 ICWA/social services staff can assist by conducting traditional and culturally appropriate
8 mentoring and activities, interfacing with mental health and medical providers, provide respite
9 care, transportation and guidance to the child/ren and the Tribal Customary Adoptive family now
10 and in the future.

11 10. The Tribe is committed to the permanent placement of child/ren with the Tribal
12 Customary Adoptive family and believes the child/ren will thrive with the Tribal Customary
13 Adoptive family and become [a] successful and meaningful member/s of the tribal community.

14 11. In an effort to protect and preserve the Tribal Customary Adoptive family
15 structure the Tribe pledges its full commitment to this family and its continuing development and
16 evolution with the child/ren including support for the child's/ren's legal name/s to be changed to
17 reflect both his/her/their birth name and the Tribal Customary Adoptive family surname and
18 recognition that, as the Tribal Customary Adoptive family they share all the rights and
19 responsibilities as his/her/their parents including control over family visitation and his/her/their
20 health, education and welfare. [*Name change is optional!*]

21 12. The Tribe finds that the child/ren may possess certain rights of inheritance which
22 may be controlled by federal law pursuant to the American Indian Probate Reform Act of 2004,
23 ("AIPRA") P.L. 108-374, or by state or tribal probate laws enacted now or in the future. The
24 Tribe further finds that the child/ren will benefit from maintaining rights of inheritance by and
25 between herself/himself/themselves and her/his/their biological parents and her/his/their Tribal
26 Customary Adoptive Family.

27 13. The Tribe finds that the biological parents have no ongoing legal obligations to the
28 child/ren and are not responsible for the child's/ren's care, custody or welfare. The parents may

1 however contribute to his/her/their welfare by: [for example: purchasing age appropriate gifts,
2 school supplies and by providing culturally appropriate items to assist with his/her cultural and
3 ceremonial development].

4 14. The Tribe finds that based on tribal custom and tradition the Tribe must support
5 and protect the legal relationship between the child/ren and the Tribe, the child's/ren's current or
6 future citizenship in the Tribe and therefore where the care, custody and control of the child/ren
7 will be placed with the Tribal Customary Adoptive family the child/ren shall retain his/her/their
8 legal relationship with the Tribe as a citizen/citizens or eligible for citizenship in the Tribe with
9 all of the rights, duties and privileges that are inherent in his/her/their status as a citizen/citizens
10 and member/s of a federally recognized tribe.

11 Therefore, the Tribe hereby orders the following:

12 The Tribe/Tribal Court hereby adopts findings 1 – 14 as its Tribal Customary Adoption
13 Order in this case and will submit the final Order to the X County Superior Court to grant full
14 faith and credit, and make this Order the Order of the X Court.

15
16 IT IS SO ORDERED, this ____ day of _____, 20__.

17
18 _____
19 Chairperson/Tribal Council/Tribal Judge
_____ [TRIBE]

Tribal Customary Adoption Resources

California Indian Legal Services Tribal Customary Adoption Handbook: <https://www.calindian.org/wp-content/uploads/2017/06/TCA-Handbook.-Final.pdf>

California Tribal Customary Adoption website sponsored by the Soboba Band of Luiseño Indians: <http://www.caltca.org/resources>

California Tribal Families Coalition Tribal Customary Adoption (TCA) and the Resource Family Approval (RFA) Process: Challenges and Opportunities: <https://caltribalfamilies.org/wp-content/uploads/2020/12/2020.12.13-TCA-RFA-Report-KAC-draft-2-3.pdf>

Judicial Council of California Tribal/State Programs Unit Tribal Customary Adoption Resources: <https://www.courts.ca.gov/12569.htm>

National Indian Justice Center Tribal Customary Adoption Manual: <https://nijc.org/pdfs/Webinars/TCA%20Manual.pdf>