Tribal Customary Adoption: A Permanency Plan Option
The Office for Tribal Affairs (OTA) within the California Department of Social Services (CDSS), has the primary responsibility of building better government-to-government relationships with the CDSS and California Indian Tribes, counties and tribal governments, as well as working with Native American stakeholders. The OTA implements the CDSS Tribal Consultation Policy (TCP) in concert with Branches and Bureaus throughout the department, to carry out meaningful consultation efforts. The OTA serves as an advisor to leadership throughout the CDSS, to use best practice strategies when working with tribal governments, in considerations of policy decisions and regulations that impact tribes, as well as using appropriate protocols and cultural competency. The OTA coordinates the work of all divisions of the CDSS when it affects tribes to ensure the department is in line with the Governor’s Executive Order B-10-11.

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Visit the OTA website to learn more about their work with Tribal Governments (https://www.cdss.ca.gov/inforesources/Tribal-Affairs).
ICWA AT A GLANCE

ALWAYS
- Consult with tribe early and throughout the case.
- Follow the spirit of ICWA
- Document everything clearly and objectively (i.e. inquiry, notice, active efforts and placement).
- When in doubt, call your attorney.

INQUIRY AND NOTICE
- Ask if they are American Indian/Alaska Native
- Continue to make inquiry throughout the life of the case.
- Notice all tribes of which the child is a member or eligible to be a member.
- Check your county’s ICWA protocol.

ACTIVE EFFORTS
- Active efforts begin immediately
- Active efforts are meant to help families
- Active efforts are required to build trust and overcome generations of mistrust in government agencies.

PLACEMENT
- Place with family/extended family defined by tribal law or custom.
- Work with tribal social worker to identify placement options.
- If a preferred placement is not available, place with caregiver who is 1) willing to promote family, cultural and tribal connections and 2) to which the Tribe does not object.

CONCURRENT PLANNING
- Early & meaningful consultation is key.
- Inform family and tribe of Tribal Customary Adoption (TCA) as an option early in the case.
- TCA may only be chosen by the tribe; the TCA order is issued only by the tribe.

QUALIFIED EXPERT WITNESS
- Insist that the qualified expert witness make efforts to speak with the parents and tribal social worker or advocate.
- Document all of your efforts related to inquiry, notice, active efforts and placement.
- Work with the child’s tribe to identify a qualified expert witness.

MORE AT WWW.NIJC.ORG.

(c) CDSS, ICWA 100
ACKNOWLEDGEMENTS

This training manual was prepared by the National Indian Justice Center, Inc. (NIJC), an Indian owned and operated non-profit corporation with principal offices in Santa Rosa, California, (707) 579-5507. NIJC was created through the combined efforts of those concerned with the improvement of the administration of justice in Indian country and the development of effective governments in Indian country. Financial support was provided by a grant from the California Department of Social Services (CDSS). The authors acknowledge and appreciate the guidance provided by the CDSS Office of Tribal Affairs.

The training materials were produced under grant award # 18-3001 from the California Department of Social Services. It does not necessarily reflect the views or policies of CDSS, nor does mention of trade names, commercial products, or organizations imply endorsement by the State of California.

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# TRIBAL CUSTOMARY ADOPTION: A PERMANENT PLAN OPTION

**Training Session Agenda**

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<thead>
<tr>
<th>Time(s):</th>
<th>Topic(s):</th>
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<tbody>
<tr>
<td>8:30 a.m.—9:00 a.m.</td>
<td>Registration and Materials Distribution</td>
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<tr>
<td>9:00 a.m.—9:30 a.m.</td>
<td>Introductions and Overview of the Training Session</td>
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<tr>
<td>9:30 a.m.—10:15 a.m.</td>
<td><strong>Introduction to Indian Child Welfare Act</strong></td>
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<td>Essential Knowledge: Indian Tribes of California and the Indian Child Welfare Act</td>
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<td></td>
<td>• Reference materials</td>
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<td>• Questions and answers</td>
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<td>10:15 a.m.—10:30 a.m.</td>
<td><strong>BREAK</strong></td>
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<tr>
<td>10:30 a.m.—12:00 p.m.</td>
<td><strong>Overview of Tribal Customary Adoption</strong></td>
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<td>What is Tribal Customary Adoption?</td>
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<td></td>
<td>• Purpose and scope of Tribal Customary Adoption</td>
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<td>Why and when can tribes select Tribal Customary Adoption?</td>
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<td></td>
<td>• Concurrent Planning &amp; Permanency</td>
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<td></td>
<td>• Background of California AB 1325 Tribal Customary Adoption</td>
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<td></td>
<td>• TCA Key Laws</td>
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<td>12:00 p.m.—1:00 p.m.</td>
<td><strong>LUNCH</strong></td>
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<td>1:00 p.m.—2:30 p.m.</td>
<td><strong>Determining Whether to “Adopt” Tribal Customary Adoption</strong></td>
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<td>What placement preferences are available for Indian children?</td>
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<td>• TCA vs. Legal Guardianship</td>
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<td>• TCA vs. Conventional Adoption</td>
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<td>• Financial Assistance Programs for Dependent Children</td>
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<td>2:30 p.m.—2:45 p.m.</td>
<td><strong>BREAK</strong></td>
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<tr>
<td>2:45 p.m.—4:00 p.m.</td>
<td>Major Elements of Tribal Customary Adoption</td>
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<td></td>
<td>• Inquiry &amp; Concurrent Planning</td>
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<td>• Tribal Customary Adoption Home Study</td>
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<td>• Tribal Customary Adoption Order (TCAO)</td>
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<td>• Full Faith and Credit for a TCA Order</td>
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<td>Close of Training Session</td>
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<td>• Evaluations</td>
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TRIBAL CUSTOMARY ADOPTION: A PERMANENT PLAN OPTION

1. INTRODUCTION OF THIS TRAINING SESSION

This training session is designed for tribal social workers or advocates that represent tribes in Indian Child Welfare Act cases involving Tribal Customary Adoption. In these cases, the child eligible for ICWA must be a dependent of a California State Court. The child’s tribe may elect for a Tribal Customary Adoption as an appropriate permanent plan if the family is unable to reunify.

PURPOSE OF THIS TRAINING MANUAL

This training manual is written to educate tribal social workers on Tribal Customary Adoption. It will complement a live training session, Tribal Customary Adoption, that will be delivered in one-day workshops for two to three days at each training site. The training session materials includes a companion PowerPoint presentation.

PRE-REQUISITE SKILLS

This training manual is designed for an audience that is familiar with the Indian Child Welfare Act (ICWA). ICWA fulfills an essential aspect of the federal government’s trust responsibility to tribes by protecting and preserving the bond between Indian children and their tribe. If you are not familiar with ICWA, see Appendix, D-1.

OBJECTIVES:

At the end of this training session, you will be able to:

- Define Tribal Customary Adoption (TCA)
- Explain the purpose of Tribal Customary Adoptions
- Explain the difference between TCA and other placement permanency options
- Understand the requirements and standards of Tribal Customary Adoptions
- Explain the process and procedures of Tribal Customary Adoptions
- Examine the impact of the new revised regulations & guidelines
1.1) A NOTE ABOUT JURISDICTION AND APPLICABLE LAWS IN CALIFORNIA’S INDIAN COUNTRY

Before we begin, please note that there are many legal terms involved in the discussion of tribes, tribal jurisdiction, and Indian child welfare. We have included resources and references in the appendices to help explain some of the legal terms. Do not hesitate to ask questions! Terms such as “Indian child,” “Tribal Social Services Agency” and “Foster Care Placement” are all defined in federal and state statutes. You should know that the determination of jurisdiction and applicable laws in Indian Country are complex subjects. Federally recognized tribes are sovereign entities that have the right to make their own laws and be governed by those laws. However, tribal sovereignty exists alongside state and federal sovereignty. Conflicts may arise among the jurisdictions as to which sovereign’s laws apply to criminal offenses and civil disputes, who has the authority to resolve the disputes, and whether the sovereigns have the resources and willingness to work together to solve issues of mutual concern.

Also, a federal statute known as Public Law 280 permits the State of California to exercise concurrent criminal prohibitory jurisdiction over offenses and civil adjudicatory jurisdiction over disputes arising in Indian Country in California (instead of the exercise of federal criminal jurisdiction). Tribal jurisdiction was not extinguished by P.L. 280. It is important to note that California and the tribes may enter into agreements that may also govern the interface between state and tribal jurisdictions.

HOW TO USE THIS TRAINING MANUAL

This training manual is divided into numeric sections (1-16) followed by subheadings within each section (i.e. 1.2). The training manual includes the training agenda and a table of contents to provide you with the organization of the training session and composition of the manual. The table of contents provides a more detailed account of what the training will include. At the beginning of each main section, we have included a summary section with objectives and necessary tools to help you learn and apply the mater-
rial in the field. We suggest using the manual follows:

may begin with the following steps:


2. Then, you can start on page 4 of the manual, *Introduction to Child Welfare and Tribal Customary Adoption*, and read through each section.

3. Some sections may refer you to the Appendices to read other supplemental material or provide you with an educational tool such as a checklist or form. The Appendices of this manual provides many of the necessary tools and supplements the training session about Tribal Customary Adoption.

4. Now that you understand what a Tribal Customary Adoption is and when to use it, you will learn the step process to identify Tribal Customary Adoption as the preferred permanent plan in a dependency case.
2. INTRODUCTION TO CHILD WELFARE AND ICWA PLACEMENT PREFERENCES

The child welfare system is composed of various public and private agencies that respond to children and families who need assistance. The social services agency will determine if a child has been hurt or abused and if it is safe for the child to remain in the home or find an out-of-home placement for the child. The out-of-home placement must meet specific criteria including a home environment assessment, which requires criminal background checks on all adults living in the home or that have access to the child in the home, and a placement that strictly approximates an Indian home and complies with the ICWA placement preferences unless good cause to the contrary exists.

When an Indian child needs to be removed from their home, the social services agency looks for an out-of-home placement (usually defined by ICWA). If the criminal background checks (CBCs) are not complete, the child cannot be placed in that home or institution even if it is the preferred placement for that child under ICWA. The child may be placed in other temporary placements pending completion of the CBCs. Due to a lack of available out-of-home placements with extended families or tribal foster families where CBCs have been completed, Indian children may experience multiple moves in the foster care system pending CBCs. Frequent placement moves and transfers to restrictive settings like group homes and residential treatment facilities are traditionally associated with poor outcomes for children in foster care.

Therefore, to increase the number of culturally relevant and readily available out-of-home care placements, federally recognized tribes have the authority (but are not required) to develop their own licensing or establish criteria to approve homes for foster care or an adoptive placement under the federal ICWA statute (See 25 USC §1915). Tribal Customary Adoption (TCA) is a new permanency option for Indian children who are dependents of the California State Court to be adopted through the customs, laws, and traditions of the Indian child’s tribe without the termination of the parental rights of the Indian child’s parents (WIC §366.24).
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tr>
<td>“foster care placement”</td>
<td>Any action removing an Indian child from his/her parent or Indian custodian for temporary placement in a foster home, institution, or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated.</td>
</tr>
<tr>
<td>“termination of parental rights”</td>
<td>Any action resulting in the termination of the parent-child relationship.</td>
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<tr>
<td>“preadoptive placement”</td>
<td>The temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement.</td>
</tr>
<tr>
<td>“adoptive placement”</td>
<td>The permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.</td>
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<tr>
<td>“Indian”</td>
<td>Any person who is a member of an Indian tribe or who is an Alaska Native and a member of a Regional Corporation as defined in section 1606 of title 43.</td>
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<tr>
<td>“Indian child”</td>
<td>Any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.</td>
</tr>
<tr>
<td>“Indian child’s tribe”</td>
<td>(a) The Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the most significant contacts.</td>
</tr>
<tr>
<td>“extended family member”</td>
<td>Defined by the law or custom of the Indian child’s tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparents or according to tribal law or custom.</td>
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For more information on the following 25 U.S. Code § 1903 – Definitions, please visit [https://www.law.cornell.edu/uscode/text/25/1903](https://www.law.cornell.edu/uscode/text/25/1903) or go to Appendix E-1
2.1) CALIFORNIA’S PLACEMENT PREFERENCES OF INDIAN CHILDREN

According to California policies (25 U.S. Code § 1915), the following placement preferences of Indian children are covered under the Indian Child Welfare Act 1978:

(a) Adoptive placements—a preference shall be given, in the absence of good cause to the contrary, to a placement with:

- A member of the child's extended family;
- Other members of the Indian child's tribe;
- Other Indian families.

(b) Foster care or pre-adoptive placements—Any child accepted for foster care or pre-adoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or pre-adoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with:

- A member of the child's extended family;
- A foster home licensed, approved, or specified by the Indian child's tribe;
- An Indian foster home licensed or approved by an authorized non-Indian licensing authority;
- An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.
(c) Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences.

![Types of Foster Care Placements](https://www.caltribalfamilies.org/powerpoint-presentations/6-4-18_cdss-101-v3.pdf)

In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: Provided that where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) Social and cultural standards applicable—The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.
(e) Record of placement; availability—A record of each such placement, under state law, of an Indian child shall be maintained by the state in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

A) BEST INTEREST OF THE INDIAN CHILD

The provisions of ICWA that “protect the best interests of Indian children and to promote the stability and security of Indian tribes and families” create a presumption that ICWA’s placement preferences are in the best interests of Indian children. Therefore, an independent analysis of “best interest” would undermine Congress’s findings. Conducting an independent analysis of the “best interest” of an Indian child is inappropriate because it is inconsistent with ICWA’s placement preferences (25 U.S.C. § 1902).

Some “Spirit of the Law” ICWA services include:

- Find out which tribes and Native American resources are in your area.
- Visit and establish connections with local tribes and Native American resources regardless of federal recognition status.
- Request ICWA training from tribal resources, California Department of Social Services training academies, or with staff from the Judicial Council of California.
- Conduct a proper inquiry of possible Native American ancestry in every case at the front end and throughout the duration of the case if family members provide additional lineage information.
- Connect a child and family with their tribe and local Native American resources regardless of tribal affiliation.

To learn more, visit: Following the Spirit of the Indian Child Welfare Act.

B) GOOD CAUSE TO DEPART

Any party seeking a departure from the placement preferences bears the burden of
proving by clear and convincing evidence that there is “good cause” to depart from the placement preferences. That party must provide a statement (orally or in writing) on the record to the parties of the child custody proceeding and the court. Also, the court’s determination must be made on the record or in writing and should be based on one or more of the following considerations:

<table>
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<th>Condition</th>
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<td>The request of one or both of the Indian child’s parents</td>
<td>if they attest that they have reviewed the placement options if any, that comply with the order of preference;</td>
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<tr>
<td>The request of the child</td>
<td>if the child is of sufficient age and capacity to understand the decision that is being made;</td>
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<td>The presence of a sibling attachment</td>
<td>that can be maintained only through a particular placement;</td>
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<td>The extraordinary physical, mental, or emotional needs of the Indian child</td>
<td>– E.g., Specialized treatment services that may be unavailable in the community where families who meet the placement preferences live;</td>
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<tr>
<td>The unavailability of a suitable preferred placement</td>
<td>after the court determines a diligent search was conducted, but none has been located.</td>
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The standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community. The limitations to court determinations are as follows:

- A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.
- A placement may not depart from the preferences based solely on conventional bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA.
C) BURDEN OF PROOF

The burden of proof in a legal case states which party must make an argument and to what degree they must prove that argument. According to the ICWA requirements, the party moving to place a child in foster care, appoint a guardian, and award custody to a non-parent must present clear and convincing evidence. The burden of proof to terminate parental rights is beyond a reasonable doubt. This includes a testimony from a qualified expert witness establishing that continued custody of the child by the parent or Indian custodian, is likely to result in severe emotional or physical damage to the child.

The agency bears the burden of proof if it departs from any of the placement preferences. It must demonstrate that it conducted a diligent search to identify placement options that satisfy the placement preferences, including notification to the child’s parent(s) or Indian custodian(s), extended family, tribe, and others. Then the court must determine whether “good cause” to deviate from the placement preferences exists before departing from them.

In any pre-adoptive, adoptive or foster care placement of an Indian child, ICWA placement preferences apply. However, if the Indian child’s tribe has established by resolution a different order of preference than the order specified in ICWA, the agency or court affecting the placement must follow the tribe’s placement preferences.

D) TRIBALLY APPROVED HOMES VS. TRIBALLY SPECIFIED HOMES

Tribally Approved Homes are homes that a tribal social services agency establishes using tribal licensing and approval criteria. A Tribally Specified Home is a home that a tribe identifies is suitable for out-of-home placement for an Indian child. A home needs to be “near the reservation” for approving purposes. State Law (SB 1460) authorizes tribal agencies to access DOJ’s criminal background data base and Child Abuse Central Index (CACI).

<table>
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<tr>
<th>Tribally Approved Homes</th>
<th>Tribally Specified Homes</th>
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<tr>
<td><strong>Div. 31 31-002 DEFINITION:</strong></td>
<td><strong>Div. 31 31-002 DEFINITION:</strong></td>
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<tr>
<td>“A home that has been licensed or approved by an Indian tribe for foster care or adoptive placement of an Indian child using standards established by the tribe pursuant to ICWA at Title 25, U.S.C. 1915.”</td>
<td>“A home that a tribe designates as its preferred placement option (out of home placement) for an Indian child who is in the custody of the county.”</td>
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## 2.2) California Laws Regarding Tribally Approved Homes & CBCs

<table>
<thead>
<tr>
<th>WIC §10553.12</th>
<th>Description</th>
<th>Practice Tip</th>
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<td>(b) states:</td>
<td>“[an] Indian child, as defined by subdivisions (a) and (b) of §224, that has been removed under §361, from the custody of his or her parents or Indian custodian may be placed in a <strong>tribally approved home</strong> under §1915 of the federal ICWA statute.”</td>
<td>Tribally approved homes (TAHs) are <strong>not exempt</strong> from the requirement that individuals living in the home must get criminal background check.</td>
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| (c) states:   | “[t]o facilitate the availability of tribally approved homes that have been fully accepted in accord with federal law, including completion of required background checks, a tribal agency may request from the Department of Justice, federal and state summary criminal history information regarding:  
- a prospective foster parent or adoptive parent,  
- an adult who resides or employed in the home of an applicant,  
- a person who has a familial or intimate relationship with a person living in the home of an applicant, or  
- an employee of the child welfare agency who may have contact with children.  
It is in accord with subdivision (m) of §11105 of the Penal Code and Child Abuse Central Index Information under paragraph (8) of subdivision (b) of §11170 of the Penal Code.” | A TAH is the equivalent of a licensed foster care home, so if the home undergoes a home study (assessment), and the family has cleared a criminal background.  
Once the child is placed, the tribal family is eligible for foster care payments as long as they live on or near the reservation. |
<table>
<thead>
<tr>
<th>WIC §10553.12</th>
<th>Description</th>
<th>Practice Tip</th>
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| (d) states:   | “A tribal agency means an entity designated by a federally recognized tribe as authorized to approve homes consistent with the federal Indian Child Welfare Act for placement of Indian children, into foster or adoptive care, including the authority to conduct criminal record and child abuse background checks of, and grant exemptions to:  
- individuals who are prospective foster parents or adoptive parents,  
- an adult who resides or is employed in the home of an applicant for an approval,  
- a person who has a familial or intimate relationship with a person living in the home of an applicant, or  
- an employee of the tribal agency who may have contact with children.” | The tribe must follow the same requirements as the state/county when conducting DOJ criminal backgrounds, checking CACI, and exempting applicants with a criminal history where permitted by federal and state law. |
<p>| County Agency Placement in a Tribally Approved Home | (e) states: “[a] county social worker may place an Indian child in a tribally approved home without having to conduct a separate background check, upon certification by the tribal agency of the following:” | Build a strong relationship with the child’s tribe and vice versa. |</p>
<table>
<thead>
<tr>
<th>WIC §10553.12</th>
<th>Description</th>
<th>Practice Tip</th>
</tr>
</thead>
<tbody>
<tr>
<td>(e) states (cont.):</td>
<td>(1) The tribal agency has completed a criminal record background check in accord with the standards set forth in §1522 of the Health and Safety Code, and a Child Abuse Central Index Check pursuant to §1522.1 of the Health and Safety Code, with respect to each of the individuals described in subdivision (c).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(2) The tribal agency has agreed to report to a county child welfare agency responsible for a child placed in the tribally approved home, within 24 hours of notification to the tribal agency by the Department of Justice, of a subsequent state or federal arrest or disposition notification provided pursuant to §11105.2 of the Penal Code involving an individual associated with the tribally approved home where an Indian child is placed.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(3) If the tribal agency in its certification states that the individual was granted a criminal record exemption, the certification shall specify that the exemption was evaluated in accord with the standards and limitations set forth in paragraph (1) of subdivision (g) of §1522 of the Health and Safety Code and was not granted to an individual ineligible for an exemption under that provision.”</td>
<td></td>
</tr>
</tbody>
</table>
### 2.3) TCA Key Laws

<table>
<thead>
<tr>
<th><strong>Law</strong></th>
<th><strong>Description</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Indian Civil Rights Act (ICRA) (1968)</strong></td>
<td>Federal law that says Indian tribal governments cannot enact or enforce laws that violate certain individual rights.</td>
</tr>
<tr>
<td><strong>Indian Child Welfare Act (1978) – 25 USC §§1901 et seq.</strong></td>
<td>Federal law that governs jurisdiction over the removal of Native American children from their families</td>
</tr>
<tr>
<td><strong>Adoption and Safe Families Act (ASFA) (1997)</strong></td>
<td>It was passed in response to concerns that many children were remaining in foster care for long periods or experiencing multiple placements. It requires criminal background checks for all foster and adoptive parents.</td>
</tr>
<tr>
<td><strong>Calif. Rules of Court (ROC), Rules §§ 5.480 – 5.487 (2008)</strong></td>
<td>Addresses most proceedings involving Indian children that may result in an involuntary foster care placement; guardianship or conservatorship placement; custody placement.</td>
</tr>
<tr>
<td><strong>Senate Bill 678 (2007)</strong></td>
<td>Would provide that a parent, Indian custodian, or tribe may intervene in child custody proceedings involving children with Indian ancestry</td>
</tr>
<tr>
<td><strong>Senate Bill 1325 (2009): Peaceful And Natural Dignity Act (PANDA)</strong></td>
<td>Recognizes the right of every nonincarcerated individual in California to remain unmedicated, and for individuals and groups to voluntarily self-quarantine on private property during an emergency</td>
</tr>
<tr>
<td><strong>Calif. Welfare &amp; Institutions Code WIC §224-224.6</strong></td>
<td>Committed to protecting the essential tribal relations and best interest of an Indian child by promoting practices,</td>
</tr>
<tr>
<td><strong>Calif. Welfare &amp; Institutions Code WIC §366.24</strong></td>
<td>Contains the major elements of TCA Prior consent of Indian parent or custodian is not required for TCA TCA Must Be Addressed in Assessments</td>
</tr>
<tr>
<td><strong>Family Code §8600.5</strong></td>
<td>General adoption codes do not apply to TCA</td>
</tr>
<tr>
<td><strong>Calif. Welfare &amp; Institutions Code WIC §361.5, §366.21, §366.22, §366.25, or §366.26</strong></td>
<td>Whenever an assessment is ordered, it must address the option of TCA; TCA as an option must be included in all of the reports; and from the disposition hearing on, the county should be consulting with the Tribe on whether TCA is appropriate</td>
</tr>
<tr>
<td><strong>Calif. Welfare &amp; Institutions Code WIC §361.3</strong></td>
<td>Removal of child from the custody of parent; special consideration of relative’s request for placement of child with relative; search for relative and furnishing identifying information.</td>
</tr>
<tr>
<td><strong>WIC § 366.29</strong></td>
<td>With the consent of the adoptive parent or parents, the court may include in the final adoption order provisions for the adoptive parent or parents to facilitate postadoptive sibling contact.</td>
</tr>
</tbody>
</table>
3. INTRODUCTION TO TRIBAL CUSTOMARY ADOPTION

Families and counties do not receive the same level of federal support and reimbursement when a child’s permanent plan is long-term guardianship instead of adoption. Adoption has some advantages over other permanent plans. Long-term guardianship does not offer the same stability and permanence as adoption. Further, neither families nor counties receive the same level of federal support and reimbursement when a child’s permanent plan is long-term guardianship rather than adoption. Traditionally, adoption in California requires the termination of the parental rights (TPR) of a child’s birth parents. Termination of parental rights is a concept that many tribal communities find objectionable. Due to historical oppressive policies, like the forced removal of Indian children, many California Indian tribes objected to adoptions that required termination of parental rights.

Therefore, the Assembly Bill (AB) 1325, Chapter 287, Statutes of 2009 recognized and established Tribal Customary Adoption (TCA) as an additional permanent placement option for dependent Indian children. Tribal Customary Adoption (TCA) is a new permanency option for Indian children who are dependents of the California State Court to be adopted through the customs, laws, and traditions of the Indian child’s tribe without the termination of the parental rights of the Indian child’s parents (WIC §366.24). Tribal Customary Adoption was proposed by tribes to provide adoption that vest all rights to care, custody, and control of a child into someone other than the birth parents without terminating parental rights of the birth parents.

3.1) WHAT IS A TRIBAL CUSTOMARY ADOPTION?

Tribal Customary Adoption (TCA) transfers the custody of a child to the care and protection of adoptive parents through the custom, traditions, or law of the child’s tribe without requiring termination of parental rights. Therefore, Tribal Customary Adoptions, are included within the definition of “child-custody proceeding” as either a “foster-care placement” or an “adoptive placement (25 U.S.C. 1903).”

Child-custody proceedings are both involuntary and voluntary proceedings that could prohibit the parent or Indian custodian from regaining custody of the child upon demand; and a proceeding involving status offenses if any part of the proceeding results in the need for out-of-home placement of the child, including a foster-care, pre-adoptive, or adoptive placement,
or termination of parental rights (25 CFR § 23.103).

For more information, see Dependent Children—Judgments and Orders (WIC §366.24(A)(1)).

3.2) CONCURRENT PLANNING & PERMANENCY

Concurrent planning refers to the legal requirement in dependency cases to provide reunification services while developing alternative plans if needed. The goal of concurrent planning is reunification. One plan is created for the possibility that reunification is successful, in which case the placement remains with the parent(s). Another plan is created for the possibility that the reunification is unsuccessful, in which case the placement is with someone besides the parent(s). At the beginning of the case, when an Indian child is involved, it is required for a caseworker to engage in meaningful consultation with the tribe as soon as possible.

A courtesy contact should be made with the tribal authorities to allow an opportunity to request transfer of jurisdiction to tribal court and to facilitate the appropriate placement of the child with an extended family member or other tribally approved home or treatment facility. A best practice includes telephone contact made to the tribe’s child welfare unit, enrollment office, and their designated tribal service agent for ICWA notice. Social workers need to be sure to keep a record of any contact. Therefore, any phone conversation regarding an ICWA case should be documented in the case file. A formal notice should still be sent to the tribe and a written response confirming tribal membership filed in the case file.

3.3) BACKGROUND OF CALIFORNIA AB 1325 TRIBAL CUSTOMARY ADOPTION

Traditionally, due to stability and permanence, federal and state laws prefer adoption over other permanent plans when a dependent child cannot reunify with his or her parents. Adoptions terminate parental rights of the child and receive more funding support than guardianships. When an Indian child is involved, this case is different. Due to historical op-
pressive policies, like the forced removal of Indian children, many California Indian tribes objected to adoptions that required termination of parental rights.

<table>
<thead>
<tr>
<th>State</th>
<th>Disproportionality Rate</th>
<th>% of children who are AI/AN</th>
<th>% of children in foster care who are AI/AN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minnesota</td>
<td>17</td>
<td>1.4%</td>
<td>23.9%</td>
</tr>
<tr>
<td>Nebraska</td>
<td>8.4</td>
<td>1.1%</td>
<td>9.3%</td>
</tr>
<tr>
<td>Idaho</td>
<td>5.2</td>
<td>1.2%</td>
<td>6.0%</td>
</tr>
<tr>
<td>Iowa</td>
<td>4.8</td>
<td>0.3%</td>
<td>1.7%</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>4.8</td>
<td>1.1%</td>
<td>5.1%</td>
</tr>
<tr>
<td>Washington</td>
<td>4.3</td>
<td>1.5%</td>
<td>6.3%</td>
</tr>
<tr>
<td>Oregon</td>
<td>4.0</td>
<td>1.2%</td>
<td>4.9%</td>
</tr>
<tr>
<td>Montana</td>
<td>3.9</td>
<td>9.5%</td>
<td>36.9%</td>
</tr>
<tr>
<td>North Dakota</td>
<td>3.9</td>
<td>8.1%</td>
<td>31.4%</td>
</tr>
<tr>
<td>South Dakota</td>
<td>3.7</td>
<td>12.9%</td>
<td>47.9%</td>
</tr>
<tr>
<td>Alaska</td>
<td>2.6</td>
<td>17.8%</td>
<td>46.6%</td>
</tr>
<tr>
<td>Utah</td>
<td>2.5</td>
<td>0.9%</td>
<td>2.3%</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>2.3</td>
<td>0.2%</td>
<td>0.5%</td>
</tr>
<tr>
<td>California</td>
<td>2.0</td>
<td>0.4%</td>
<td>0.8%</td>
</tr>
<tr>
<td>North Carolina</td>
<td>2.0</td>
<td>1.2%</td>
<td>2.4%</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>1.2</td>
<td>0.2%</td>
<td>0.2%</td>
</tr>
<tr>
<td>Maine</td>
<td>1.1</td>
<td>0.8%</td>
<td>0.9%</td>
</tr>
</tbody>
</table>


Nationwide, AI/AN children are overrepresented in foster care at a rate 2.7 times greater than non-AI/AN of the overall general population. This comparison means that although AI/AN children are just 0.9% of all children in the United States, they are 2.1% of all children who are placed outside their homes in foster care.

The Tribal Customary Adoption, Assembly Bill 1325 (WIC §366.24), was passed in 2010 to provide a new permanency option for Indian children who are dependents of the California courts. Tribal Customary Adoption allows Indian children, with the involvement of their tribes, to be adopted by and through the laws, customs, and traditions of the tribe without requiring termination of the biological parents’ parental rights. The bill offers a culturally appropriate permanency option for Indian children who are dependents of the California courts, while still providing those children with all the benefits associated with other state court adoption procedures (Cook; Stats. 2009, ch. 287).
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.”

4. DETERMINING WHETHER TO “ADOPT” TRIBAL CUSTOMARY ADOPTION

Each tribe has the option to utilize Tribal Customary Adoption (TCA). Tribes using TCA may need to review and update their internal processes, governance, codes and social services systems to meet the TCA requirements. Under Tribal Customary Adoption, the Indian child’s tribe can shape the conditions under which adoption will occur. For example, the tribe can require visitation with extended family/tribal members, attendance at cultural events, and language classes, instead of leaving these practices up to the discretion of a guardian or conventional adoptive parent. The law also provides that when the juvenile court finds that full
**faith and credit** will extend to the Indian child’s tribe Tribal Customary Adoption Order (TCAO), 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. Children may be eligible to receive benefits from the Adoption Assistance Program, the Title IV-E Adoption Subsidy Benefits, or the Kinship Guardian Assistance Payment Program (Kin-GAP).

Under California law, permanency options for Indian children include Legal Guardianship, Conventional Adoption, and Tribal Customary Adoption. The following table shows the differences between each option:

<table>
<thead>
<tr>
<th>Parental Rights</th>
<th>In a Tribal Customary Adoption</th>
<th>In a Conventional Adoption</th>
<th>In a Legal Guardianship</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The parents' rights <strong>are not</strong> permanently terminated.</td>
<td>The parents' rights <strong>are permanently terminated.</strong></td>
<td>Parents still <strong>have parental rights.</strong> They can ask for reasonable contact with the child.</td>
</tr>
<tr>
<td>Determination of the terms</td>
<td>Child’s tribe determines the terms of the TCA order.</td>
<td>The legal relationship with the adoptive parents is permanent and is exactly the same as a birth family.</td>
<td>The court can end a guardianship if the parents become able to take care of the child.</td>
</tr>
<tr>
<td>Consultation with the child’s tribe</td>
<td>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.</td>
<td>An adopted child inherits from his or her adoptive parents, just as a birth child would.</td>
<td>Not required, but child welfare agencies should always consult with the child’s tribe in an ICWA case.</td>
</tr>
<tr>
<td>Supervision by the court</td>
<td>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.</td>
<td>The court does not supervise adoptive families.</td>
<td>The court can supervise guardians.</td>
</tr>
</tbody>
</table>
4.1) TCA VS. LEGAL GUARDIANSHIP

Tribal Customary Adoption is a higher priority for state courts than guardianship or long-term foster care on the list of placement preferences that state courts must follow (WIC §366.26). Courts favor it because it is a more permanent living situation for the child. Counties may prefer TCA because a non-federal, non-relative guardianship must remain an open case for funding purposes with social worker visits, even if there are no ongoing safety concerns. The following table shows the advantages and disadvantages for choosing guardianship as a placement option.

<table>
<thead>
<tr>
<th>GUARDIANSHIP PROS</th>
<th>GUARDIANSHIP CONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Guardianship may provide advantages based on the facts of the case. Caregivers may be willing to be a placement, but not the child’s permanent parents.</td>
<td>• Guardianship is less permanent, therefore lower on the list of preferences that state courts must follow unless an exception applies.</td>
</tr>
<tr>
<td>• Guardianship could benefit relatives that want to keep their titles (aunt/uncle instead of mother/father) or don’t want to be seen as “taking away” the child.</td>
<td>• Guardianship funding (Kin-GAP) for caregivers can be lower in amount or flexibility than AAP, including Tribal Customary Adoptions. Guardianship can be expensive and time-consuming for tribes.</td>
</tr>
<tr>
<td>• Parents can correct the cause of the dependency and get the child back. Guardianship benefits caregivers that want to leave the door open for the parents to recover.</td>
<td>• Foster parents and minor’s counsel may oppose guardianship because the child’s parent can petition to get the child back.</td>
</tr>
</tbody>
</table>

4.2) TCA VS. CONVENTIONAL ADOPTION

For Indian children, Tribal Customary Adoption (TCA) is an alternative to a Conventional Adoption. Tribal Customary Adoption will allow the Indian child to remain connected to their tribe, culture, language, and traditions. Before TCA, tribes often opposed adoption and supported Guardianship if reunification with parent(s) was not successful. Historically, Conventional Adoption is associated with assimilation.
Detrimental effects of adoption on Indian children may include:

- Loss of tribal membership
- Loss of trust land inheritance rights (and associated rights – hunting, fishing, gathering, income from land, etc.)
- Loss of connection to Tribe

The following table shows differences between TCA and conventional adoption:

<table>
<thead>
<tr>
<th>Differences</th>
<th>TCA</th>
<th>Conventional Adoption</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requires Termination of Parental Rights (TPR) to finalize</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>Parents’ legal rights intact</td>
<td>YES, but a modification in the Tribal Customary Adoption Order</td>
<td>NO</td>
</tr>
<tr>
<td>Mandated consultation with the child’s tribe</td>
<td>YES</td>
<td>NO, but should consult with the tribe on any IC-WA case</td>
</tr>
<tr>
<td>Main provisions found in</td>
<td>WIC §366.24</td>
<td>Family Code</td>
</tr>
<tr>
<td>Requires testimony of a qualified expert witness for 366.26 hearing</td>
<td>NO, NO Termination of Parental Rights</td>
<td>YES</td>
</tr>
<tr>
<td>Requires consent of child age 12 years and older</td>
<td>NO, but wishes of the child remain important</td>
<td>YES</td>
</tr>
</tbody>
</table>

**4.3 Tribal Customary Adoption Orders vs. Post-adoption Contact Agreements**

Tribal Customary Adoption allows for a Tribal Customary Adoption Order (TCAO), which is a better enforcement option than a post-adoption contact agreement (PACA) under conventional adoption if a placement does not comply with the terms of the order/agreement.

According to Rule 5.451(b), a post-adoption contact agreement provides “an adoptive parent or parents; a birth relative or relatives, including a birth parent or parents or any sib-
lings of a child who is the subject of an adoption petition; or an Indian tribe that the child is a member of and the child may enter into a written agreement permitting postadoption contact between the child and birth relatives, including the birth parent or parents or any siblings, or an Indian tribe. No prospective adoptive parent or birth relative may be required by court order to enter into a contact-after-adoption agreement.

This rule applies to any adoption of a child. The adoption petition must be filed under Family Code § 8714 and 8714.5. If the child is a dependent of the juvenile court, the adoption petition may be filed in that juvenile court and the clerk must open a confidential adoption file for the child, and this file must be separate and apart from the dependency file, with an adoption case number different from the dependency case number. For the purposes of this rule, a "relative" is defined as follows:

(1) An adult related to the child or the child's sibling or half-sibling by blood or affinity, including a relative whose status is preceded by the word "step," "great," "great-great," or "grand"; or

(2) The spouse or domestic partner of any of the persons described in (1) even if the marriage or domestic partnership was terminated by dissolution or the death of the spouse related to the child.

Also, pursuant to § 366.26, with the consent of the adoptive parent or parents, the court may include in the final adoption order provisions for the adoptive parent or parents to facilitate postadoptive sibling contact.
TRIBAL CUSTOMARY ADOPTION
Training Session

<table>
<thead>
<tr>
<th>TCAOs (WIC §366.26(i)(2))</th>
<th>PACAs (WIC §366.29)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Not subject to adoptive parents declining to enter into the agreement.</td>
<td></td>
</tr>
<tr>
<td>• Not subject to being undermined or potentially voided by a long-distance move (“the rights and obligations of the parties as to the matters determined by the Indian child’s tribe shall be binding on all parties”)</td>
<td></td>
</tr>
<tr>
<td>• Enforcement subject to prior mediation, but not to a new determination by the court that it is in the child’s best interest.</td>
<td></td>
</tr>
<tr>
<td>• Must be entered into voluntarily</td>
<td></td>
</tr>
<tr>
<td>• May not impair “the ability of the adoptive parent or parents and the child to change residence within or outside the state.”</td>
<td></td>
</tr>
<tr>
<td>• Enforcement subject to prior mediation and the court’s determination that it is in the child’s best interest.</td>
<td></td>
</tr>
<tr>
<td>• Remember, the same judge may not hear the enforcement request and the original case – so even if the original judge is in favor of PACA, the later judge might not be.</td>
<td></td>
</tr>
</tbody>
</table>

For more information, see [Rule 5.451](#).
For more information, see [TCAO’s](#) and [PACA’s](#).

For more information on financial benefits, see Table “Comparison of financial benefits of adoption, legal guardianship, kin gap, long term foster care, and tribal customary adoption” in Appendix H-1.

### 4.4) Financial Assistance Programs for Dependent Children

The **Adoption Assistance Program** (AAP) provides financial and medical coverage to facilitate the adoption of children who otherwise would remain in long-term foster care. This program focuses on children with special needs. Findings made by the state court and the Indian child’s tribe guarantee access to the Adoption Assistance Program (AAP). Tribal Customary Adoptions allows for AAP funding without the termination of parental rights. For more information: [https://www.cdss.ca.gov/inforesources/Adoptions/Adoption-Assistance-Program](https://www.cdss.ca.gov/inforesources/Adoptions/Adoption-Assistance-Program).

The **Title IV-E Adoption Subsidy Benefits** include the following:

- A monthly negotiated rate,
- Medical coverage (Medicaid/Medi-Cal),
- Reimbursement of nonrecurring adoption expenses up to $400 per child per adoption,
- Payment for eligible out of home placement,
- Payment for eligible wrap-around services, benefits may continue in a subsequent adoption,
- Continues regardless of the adoptive family’s state or country of residence, and
- Benefits may continue to age 21 (if eligible).

For more information on eligibility, visit: https://www.nacac.org/resource/eligibility-benefits-federal-assistance/  

Children in a guardianship placement qualify for the Kinship Guardian Assistance Payment Program (Kin-GAP), which allows an individual who is the guardian of his/her relative to receive the basic foster care rate paid to other licensed foster parents. It provides less funding than the Title IV-E Adoption Subsidy through the Adoption Assistance Program (AAP).

For more information on AAP, please visit: https://www.in.gov/dcs/images/TITLE_IVE_ADOPTION_ASSISTANCE_PROGRAM.pdf

5. MAJOR ELEMENTS OF TRIBAL CUSTOMARY ADOPTION

5.1) Inquiry

In every dependency case, the Court and child welfare agency share an affirmative and continuing duty to inquire whether the child is or may be an Indian child (WIC §224.3(a)). There are two stages of inquiry:

1) Initial inquiry, which is done in each and every case in which a dependency petition is filed or may be filed and documented in a number of ways:
   - The appropriate box should be checked on the petition.
   - A completed judicial council form ICWA-010(A) Indian Child Inquiry Attachment should either be attached to the petition, or, if not available when the
petition is filed, completed and submitted to the court separately.

- Judicial council form ICWA-020 Parental Notification of Indian Status for each of the child’s parents, completed and signed by the parents, should be in the court file.

2) Further inquiry, which is required in cases in which the initial inquiry gives the agency “reason to know” that an Indian child may be involved.

The following individuals are required to ask the child, the parents or legal guardians, and the Indian custodian as soon as possible whether there is information indicating or suggesting the child is an Indian child and must document it:

- Court
- Petitioner
- Social worker
- Probation officer
- A licensed adoption agency or adoption service provider
- Investigator

PRACTICE TIP: Make sure everything is documented in the file. For example, if one or both parents are not available to complete and sign the ICWA-020, the file should clearly document this. If one parent is not available, the other parent and other available family members should be asked about the missing parent’s possible Indian ancestry and this noted in the court file.

To learn more about inquiring and noticing, click on the following links.

- Social Work Practice Tips for Inquiry and Noticing Reasons Why People Do Not Claim to Be American Indian
- Judicial ICWA (Indian Child Welfare Act) Inquiry Checklists (Step 1-3)

5.2) Consultation and Collaboration with the Child’s Tribe

Consultation is an ongoing partnership with the tribe that requires their inclusion and,
INQUIRY PRACTICE TIPS

Best Practice Tip: Always assume that ICWA applies to the case until it has been determined otherwise through the ICWA inquiry process.

1. INTERVIEW THE CHILD AND CHILD’S FAMILY FOR NATIVE AMERICAN ANCESTRY

Find out if the child is or may be an Indian child by asking the child’s parents, legal guardians, adoptive parents, family members, Indian custodian, the child’s tribe, or BIA. If the child is Indian, then specific steps may be taken to prevent the breakup of the child’s Indian family and obtain resources and services for the child that are culturally specific to the child’s family.

2. EDUCATE FAMILY REGARDING ICWA SERVICES

Tribal people may feel reluctant to identify as Native American or Alekaskan Native due to oppressive historical policies aimed at breaking apart Native American families. Let the child’s family know that their self-identification can provide additional culturally specific services under ICWA to prevent the breakup of their family.

3. UTILIZATION OF NATIVE AMERICAN SERVICES

Ask the child and family if they have utilized any Native American services (i.e., Indian Health Services, Title VII Indian Education, or Tribal TANF). Follow-up with any agencies identified during the interview to find out more about their tribal affiliation status.

4. IDENTIFY THE CHILD’S TRIBE

To find out if the child is enrolled or eligible for enrollment in a tribe(s), assist the family in creating a family tree chart. Follow-up by contacting potential tribes to identify the child’s tribal enrollment eligibility. Tribal departments may include family & social services, enrollment, or administration.

SOURCE: NICWA’S “A GUIDE TO COMPLIANCE WITH THE INDIAN CHILD WELFARE ACT & JUDICIAL COUNCIL OF CALIFORNIA "SOCIAL WORK PRACTICE TIPS FOR INQUIRY AND NOTICING REASONS WHY PEOPLE DO NOT CLAIM TO BE AMERICAN INDIAN."

2020 Tribal Indian Child Welfare Advocates Training Program
on many occasions, approval on decisions made regarding the TCA process. It means more than the agency making decisions and “checking in” with the Indian child’s tribe to approve them. A best practice includes telephone contact made to the tribe’s child welfare unit, enrollment office, and their designated tribal service agent for ICWA notice. Social workers need to be sure to keep a record of any contact. Therefore, any phone conversation regarding an ICWA case should be documented in the case file. A formal notice should still be sent to the tribe and a written response confirming tribal membership filed in the case file.

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

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.

Thus, the case worker needs to build a strong relationship with the child’s tribe at the

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**25 CFR § 23.107** states the court must:

“Confirm, by way of a report, declaration, or testimony included in the record that the agency or other party used due diligence to identify and work with all of the Tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership); and treat the child as an “Indian” child.”
Consulting with the Indian Child’s Tribe for Purposes of Concurrent Planning and Permanency

1) The placement agency must initiate consultation with the Indian child’s tribe before initiating the Tribal Customary Adoption process and of the following:
   - Overview of all permanency plan options, including financial benefits.
   - Discuss the services that the Indian child needs pre/post permanency.
   - Consult with the Indian child about the possibility of Tribal Customary Adoption as an appropriate permanent plan. The tribal representative may, but is not required to, provide written confirmation of the identification of Tribal Customary Adoption.

2) Starting at the disposition and in every report filed with the juvenile court thereafter, the placement agency must document whether the Indian child’s tribe has identified Tribal Customary Adoption as the permanent plan. Documentation must occur before initiating the written assessment of the Indian child regarding permanency.

3) Caseworkers need to maintain a TCA discussion throughout the entirety of the case.

4) Nothing in the proceedings supersedes other Tribal Customary Adoption procedures already in place.

References:
Sections 366.24, 351.8, 358.1, and 361.5, Welfare and Institutions Code; and All County Letter 10-47.

Adopt Section 35410

beginning of the case. Early engagement and meaningful consultation are keys to a strong relationship, including a respectful interaction with the tribe and considering the Tribe’s input and recommendations. Caseworkers must work in consultation with the Tribe to minimize unnecessary placement disruptions.

All information received, provided to or discussed with the Indian child’s tribe should be documented in the foster care and adoption case record. When the case is referred to the tribe for development of the TCAO, the social worker needs to continue to collaborate with the tribe on the information relevant to the Indian child’s case, particularly 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 information is necessary, if not inevitable. The primary limitation is sharing criminal record or child abuse registry information. However, the statute provides that if the subject of the background check gives consent, then background check information can be released to the tribe. For more information on background checks, go to page 33.

The home study process may begin at any point in a TCA case. 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:

- A TCA home study may be conducted by the Indian child's tribe or the tribe's designee.
- 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 standards.

5.3) Inclusion of TCA in every court report

An Indian child that is subject to a family reunification plan in state court is identified, as part of concurrent planning, as eligible for customary adoption. All reports must include TCA as a concurrent plan option, beginning with jurisdictional/dispositional hearing (See WIC § 366.26(b)). The following table shows what a written assessment includes.
5.4) Tribal Customary Adoption Home Study

The Indian child’s tribe or the tribe’s designee, in consultation with the tribe, may conduct the tribal customary adoption home study. The Indian child’s tribe may use the Resource Family Approval or conduct a tribal customary adoption home study in accordance with Section 35415(a). Tribally-approved homes must conduct a home study in accordance with Section 35415(a). Completion of a home study could delay permanency. The Indian child’s tribe may conduct the background checks for the purposes of the tribal customary adoption if it has authority pursuant to Penal Code 11105.08(g).

The home study process may begin at any point in a Tribal Customary Adoption (TCA) case. 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. When a TCA home study is initiated, the agency with placement and care responsibility over

### Written Assessment of the Indian Child for Purposes of Adoption

<table>
<thead>
<tr>
<th>In addition to the adoption requirements in Sections 35127.1, the placement agency’s written assessment shall include:</th>
<th>References:</th>
</tr>
</thead>
<tbody>
<tr>
<td>- The Indian child’s tribal membership or tribal affiliation.</td>
<td></td>
</tr>
<tr>
<td>- Any siblings and/or extended family members, including their tribal membership or tribal affiliation.</td>
<td></td>
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<tr>
<td>2) Assessment of the Indian child's readiness for adoption and willingness to be adopted, including:</td>
<td></td>
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<tr>
<td>- A statement from the Indian child's tribe concerning the Indian child’s wishes for Indian children age 12 and older.</td>
<td></td>
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<tr>
<td>- Documentation of any psychological or developmental assessment, if any exists.</td>
<td></td>
</tr>
<tr>
<td>3) An analysis of the likelihood that the Indian child will be adopted through the Tribal Customary Adoption process, including whether a potential adoptive family has been identified.</td>
<td>Adopt Section 35411</td>
</tr>
</tbody>
</table>
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 WIC §366.24(c)(3), no final approval by the tribe to the adoption may be granted without these checks.

<table>
<thead>
<tr>
<th>Tribal Customary Adoption Home Study</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) The Indian child’s tribe or the tribe’s designee may conduct the Tribal Customary Adoption home study.</td>
<td>Reference: Sections 336.24, 366.24, and 366.26, Welfare and Institutions Code; and All County Letter 10-47.</td>
</tr>
<tr>
<td>2) The tribe’s designee shall conduct the Tribal Customary Adoption home study in consultation with the Indian child’s tribe.</td>
<td>Adopt Section 35415</td>
</tr>
<tr>
<td>3) If a tribally-specified home was approved through the Resource Family Approval process, a Tribal Customary Adoption home study is not required to complete a Tribal Customary Adoption. • The Indian child’s tribe may use the Resource Family Approval for this purpose or the tribe or its designee may conduct a Tribal Customary Adoption home study in accordance with Section 35415(a), but completion of a home study could delay permanency. 4) Tribally-approved homes must conduct a home study in accordance with Section 35415(a). 5) The Indian child’s tribe may conduct the background checks for the purposes of the Tribal Customary Adoption if it has authority pursuant to Penal Code 11105.08(g). 6) Section 35418 &quot;Tribal Designee Conducts the Home Study&quot; does not apply if the Indian child’s tribe conducts the Tribal Customary Adoption home study.</td>
<td></td>
</tr>
</tbody>
</table>

A) Designation of the Agency

| 1) The tribal representative with authority may designate a placement agency to complete the tribal customary adoption home study. | Reference: Section 366.24, Welfare and Institutions Code; and All County Letter 10-47. |
| 2) The tribal designee may include a county adoption agency, the California Department of Social Services, when it is acting as an adoption agency, or a licensed California private adoption agency. | Adopt Section 35416 |
B) Tribal Designee’s Responsibilities

The tribal designee is responsible for the following:

1. Consult and collaborate with the Indian child’s tribe.
2. Complete the Tribal Customary Adoption home study using the tribe’s prevailing social and cultural standards.
3. Deliver a copy of the signed home study to the Indian child’s tribal representative.
4. Recommend approval or denial of the adoptive applicant.
5. Screen the criminal background and the FBI criminal record of the applicant and any other adults residing in the home from the DOJ.
6. Screen out-of-state child abuse and neglect registry checks for the applicant and any other adult in the household who lived in another state in the preceding five years.
7. Provide a written summary of criminal history information to the Indian child’s tribe.

In addition, the tribal designee may also be responsible for:

- Supervision of the placement.
- Termination of the placement.
- Completing and filing the final juvenile court report.

C) Background Checks for TCA Home Studies

Federal or state law provides that tribes may conduct all required background checks as long as their standards are the same as those applied to all other prospective adoptive parents in California (WIC §366.24(c)(4)). If the Tribe conducts the home study, the agency shall perform the necessary checks (WIC §366.24(c)(2), (c)(3)(C)). For the Tribe to conduct its own
background checks, a tribe would have entered into a Title IV-E agreement with CDSS, receiv-
ing authorization to conduct its own adoption specific background checks. Without this au-
thorization, they do not have access to the CA DOJ criminal offender and/or child abuse index
information. Therefore, the background check will have to be done by an entity with legal au-
thority to access the CA DOJ information.

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 com-
pleted. Pursuant to WIC §366.24(c)(3), no final approval by the tribe to the adoption may be
granted without these checks.

If the designee conducts the home study, he/she needs to be able to access all neces-
sary child abuse indexes and registers and state and federal criminal records and background
check through DOJ (See WIC §§366.24(c)(1)(a), (c)(2), (c)(3)(b)). The standard currently used
for prospective adoptive parents should be used for TCA, including a full state and FBI criminal
background check, as well as the CACI and out-of-state child abuse and neglect registries, if
necessary. This standard also requires that a home study not be approve where the applicant,
or an adult residing in the applicant’s home, has a conviction under Health & Safety Code sec-
tion 1522(g)(1)(A)(i), 1522(g)(1)(B) or for physical assault, battery, or a drug-related offense
within the last five years.

Non-exempt crimes that bar placement (WIC §366.24(c)(5))

- Child abuse or neglect.
- Spousal abuse.
- Crimes against a child, including child pornography.
- A crime involving violence, including rape, sexual assault, or homicide, but not
  including other physical assault and battery.
- A felony conviction that occurred within the last five years for physical assault,
battery, or a drug-related offense.

For more information, see RFA: [http://www.cdss.ca.gov/Portals/9/CCR/RFA/RFA%20BAG%20(rev.3-28-
19).pdf?ver=2019-03-29-085512-103](http://www.cdss.ca.gov/Portals/9/CCR/RFA/RFA%20BAG%20(rev.3-28-
19).pdf?ver=2019-03-29-085512-103) and/or attend a Tribal Criminal Background Checks training session.
5.5) Tribal Customary Adoption Order (TCAO)

The Tribal Customary Adoption Order (TCAO) is only available when the Tribe agrees, in dependency cases, and for Indian children from federally-recognized tribes. The TCAO, in combination with the CA State Court Order of Adoption, will represent the legal framework of the modified relationships of the Indian child. The TCAO will establish modifications:

1) To the legal relationship, responsibilities and privileges between the Indian child and the adoptive family; and,

2) To the legal relationship between the child and the birth parents after TCA.

Tribal customs and/or traditions, processes or ceremonies are not required or recommended to be disclosed in the TCAO. There is a conclusive presumption that any parental rights or obligations not outlined in the TCAO shall become rights or obligations of the adoptive parent(s). TCAO cannot include any child support obligations from the birth parents or Indian custodian.

| 1) The Indian child’s tribe shall prepare the Tribal Customary Adoption Order in accordance with the tribes customs and traditions and is not required to disclose those customs and traditions. | Reference: WIC §366.24 and All County Letter 10-47 |
| 2) The Tribal Customary Adoption Order will be in a form identified by the Indian child’s tribe and shall address, but is not limited to, the following modifications: | Adopt Section 35416 |
| • Relationship of the birth parents or Indian custodian(s) and the Indian child. | |
| • Responsibilities of the birth parents and Indian custodian(s). | |
| • Relationship between the child and the child’s tribe | |
| • Visitation (contact) between the birth parents and Indian custodian (s), if any. | |
| • Inheritance rights of the Indian child. | |

5.6) Adoptive Placement Paperwork

Once the court decides reunification services have been unsuccessful, the child’s tribe can elect a permanent plan of Tribal Customary Adoption. The Court will continue the Perma-
nency Planning Hearing for 120 days (an additional 60 days may be granted if needed) for the Tribe to file the Tribal Customary Adoption Order (TCAO), evidencing that a Customary Adoption has been completed. The other parties may provide evidence to the Tribe regarding the TCAO and the child’s best interests. The Tribe must file the TCAO no less than 20 days prior to the continued 366.26 hearing. The County shall file an addendum report no less than 7 days prior to the continued 366.26 (See WIC 366.24(c)(6)).

5.7) Full faith and credit for a TCA order

Full faith and credit is a legal concept regarding when and how sovereigns recognize and enforce each other’s court orders. In ICWA cases, full faith and credit can mean a Tribal Customary Adoption Order is enforceable in state court. Qualifying for full faith and credit requires due process, including adequate notice and an opportunity to be heard (not necessarily in a formal hearing) before a neutral decision maker. Full faith and credit might be denied if the order does not afford all parties due process and the order offends important and legitimate state public policy (i.e. excessive burden on adoptive parents could be viewed as discouraging adoption). A formal tribal court or council hearing is not required (i.e. in re Sadie S. (2015) 241 Cal.App.4th 1289 ). TCA procedures in a tribal forum may vary from tribe to tribe because a forum may include the Tribal Court, Tribal Council, or other body duly authorized by the Tribe. For full faith and credit to tribal proceedings and records in California, see WIC §224.5. The following table explains placement, supervision, and placement agreements.

| Tribal Customary Adoption Order And Addendum Report To The Juvenile Court |
|-------------------------------------------------|----------------------------------------------------------------------------------|
| The Indian child’s tribe shall provide a copy of the Tribal Customary Adoption Order to the agency and file it with the juvenile court 20 days prior to the Welfare and Institutions Code section 366.26 hearing or 20 days prior to continued 366.26 hearings. | Reference: Sections 366.24 and 366.26, Welfare and Institutions Code; and All County Letter 10-47. |
| The placement agency shall provide a copy of the Tribal Customary Adoption Order to the prospective adoptive parents. | |
| The agency shall file an addendum report with the juvenile court seven days prior the continued 366.26 hearings regarding the prospective Tribal Customary Adoption. | Adopt Section 35420 |
5.8) Finalization of TCA

At the Finalization Hearing, the court shall order the adoption and terminate dependency. Thereafter, biological parents do not have appellate rights; the finalization does not need to wait. Through the adoption assistance agreement, caseworkers facilitate placement and support the adoptive parents. A final report regarding the TCA is submitted to the court for the finalization hearing. The caseworker is responsible for informing the child’s tribe about this hearing. The table below shows what is included in this final report. Once the prospective

<table>
<thead>
<tr>
<th>1. Once the Indian child’s tribe approves the home study, the juvenile court affords full faith and credit to the Tribal Customary Adoption Order and the Indian child is eligible for placement.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reference: WIC §366.24 and All County Letter 10-47</td>
</tr>
<tr>
<td>2. The agency with care and placement responsibility shall make the placement and sign the Adoption Assistance Agreement.</td>
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<tr>
<td>3. The placement agency shall sign the adoption assistance agreement, pursuant to WIC §16120(g), and the prospective adoptive parent(s) may file the petition for adoption.</td>
</tr>
<tr>
<td>4. The agency shall supervise the adoptive placement for six months, except in any of the following circumstances:</td>
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<tr>
<td>- The prospective adoptive parent had an approved assessment and successfully completed the adoption of another child in California within the past five years and the placement was supervised by a placement agency.</td>
</tr>
<tr>
<td>- The prospective adoptive parent is commissioned or enlisted in the military service or auxiliary of the United States, engaged in service on behalf of any governmental entity of the United States, or employed by the American Red Cross or in any other recognized charitable or religious organization, whereas, completion of the six-month supervisory period would delay completion of an adoption which the agency has determined should be completed.</td>
</tr>
<tr>
<td>- The Indian child to be adopted is a foster child of the prospective adoptive parent whose foster care placement has been supervised by a placement agency before the signing of the adoptive placement agreement, in which case the supervisory period may be shortened by a month for each full month that the Indian child has been in foster care with the prospective adoptive family.</td>
</tr>
<tr>
<td>- The Indian child to be adopted was a foster child placed with a relative or a relative of the Indian child’s half sibling whose foster care placement has been supervised by a placement agency before the signing of the adoptive placement agreement, in which case the supervisory period may be shortened by a month for each full month that the Indian child has been in foster care with the relative.</td>
</tr>
<tr>
<td>- The Indian child to be adopted is placed with a relative with whom he or she has an established relationship.</td>
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</tbody>
</table>
adoptive parent(s) have filed the adoption petition, the agency must submit a full and final report of the facts of the proposed TCA with required sections specified by the department’s regulations to the court (WIC §366.24(c)(12)) (WIC §366.24(c)(8)).

<table>
<thead>
<tr>
<th>Completing And Immediately Filing The Final Court Report Tribal Customary Adoption Order</th>
<th>Reference: WIC §294, 366.24, and 366.26 and All County Letter 10-47</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The agency that has placement responsibility for the Indian child shall submit a full and final report to the juvenile court, in accordance with Section 35211(d), that shall include but not be limited to:</td>
<td></td>
</tr>
<tr>
<td>• A copy of the executed Tribal Customary Adoption Order.</td>
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</tr>
<tr>
<td>• Medical and family background information about the birth parents, as required by § 35195(a).</td>
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<tr>
<td>• Information obtained in the Assessment of the Child, as required by § 35127.1.</td>
<td></td>
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<tr>
<td>• Information obtained in the Assessment of the Applicant, as required by § 35180.</td>
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<tr>
<td>• Conclusions drawn from an assessment of whether the petitioner's record of criminal or violent behavior, if any, will affect his or her ability to provide appropriate parenting and a stable and safe home environment for the Indian child.</td>
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</tr>
<tr>
<td>• The placement agency shall utilize the most current criminal record information in its preparation of the final court report.</td>
<td></td>
</tr>
<tr>
<td>2. The placement agency shall send notice to the Indian child’s tribe of the final hearing.</td>
<td>Adopt Section 35422</td>
</tr>
</tbody>
</table>

6. **CONTINUANCE FOR TCA PROCESS**

The following table includes stages for a Tribal Customary Adoption.
### 6.1) TCA Process and Practice Tips

<table>
<thead>
<tr>
<th>TCA STAGE &amp; REGULATIONS</th>
<th>DESCRIPTION</th>
<th>CITATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Detention Hearing</td>
<td>The social worker, in consultation with the Indian child’s tribe, reports to the court if TCA is an appropriate permanent plan.</td>
<td>See WIC §358.1, Refer to page 11</td>
</tr>
<tr>
<td><strong>PRACTICE TIP</strong></td>
<td>The Tribe and parents/Indian custodians must be informed of TCA as an option as soon as concurrent planning begins. A best practice includes telephone contact made to the tribe’s child welfare unit, enrollment office, and their designated tribal service agent.</td>
<td></td>
</tr>
<tr>
<td>2. Recommend permanent plan to TCA</td>
<td>If reunification services are not offered or terminated and a permanency hearing 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</td>
<td>See WIC § 361.5 and 366.26, Refer to page 11</td>
</tr>
<tr>
<td><strong>PRACTICE TIP</strong></td>
<td>Stay in contact with the tribe at all times. Document it.</td>
<td></td>
</tr>
</tbody>
</table>
| 3. 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 his/her prospective TCA adoptive family to facilitate the alternative permanent plan of TCA. These services may include, but are not limited to:  
   i. Assessing the child’s likelihood of being adopted and including the assessment in the review hearing reports (WIC § 360(A), 366.21, 366.22, and 366.25)  
   ii. Conducting a TCA home study as a tribal designee (WIC §366.24)  
   See WIC §366.24, Refer to page 11 |
| **PRACTICE TIP**        | The home study has to be completed before the TCA is written. | |
| 4. Establish permanent plan of TCA | Once a hearing is set and the Indian child’s tribe recommends TCA, the court will review the report as specified in WIC §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 whether TCA would be detrimental to the Indian child and whether the Indian child should be returned home to the Indian parent or Indian custodian. | See WIC § 366.26, Refer to page |
| **PRACTICE TIP**        | Must inform the court at disposition TCA was discussed and the Tribe’s choice if one has been made. | |
5. 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 WIC § 366.24 process, and the WIC 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:

- TCA home study is completed by the Indian child’s tribe or tribal designee and either approved or denied by the Indian child’s tribe;

- Review of criminal/child abuse and neglect background 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);

- The Tribal Customary Adoption Order (TCAO) is completed and filed within 20 days of the continued WIC § 366.26 hearing by the Indian child’s tribe with the court; and

- 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.

- Addendum to the continued WIC §366.26 report is completed by the Indian child’s social worker or adoption worker and submitted to the court within seven days of the continued WIC §366.26 hearing.

<table>
<thead>
<tr>
<th>PRACTICE TIP</th>
<th>Must work in consultation with the Tribe to minimize unnecessary placement disruptions.</th>
</tr>
</thead>
</table>

Credit: All County Letter No. 10-47, pg. 3
| PRACTICE TIP | 6. Continued WIC § 366.26 hearing | Once the TCAO is filed by the Indian child’s tribe and the addendum to the WIC § 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. | See WIC § 366.26 |
| PRACTICE TIP | Make sure to consult with the Tribe when preparing each court to confirm their choice of permanent plan has not changed. |
| 7. Tribal customary adoptive placement and placement agreement | Once the court affords full faith and credit to the TCAO, 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 is responsible for the Indian child’s placement and care must ensure the process is completed. This process is analogous to the conventional adoption process that determines the placement agreement between the public adoption agency and the adoptive parent(s). | See WIC §366.24(c)(8) |
| PRACTICE TIP | Facilitate placement, and supporting the adoptive parents through the adoption assistance agreement. |
| 8. Adoption assistance agreement | 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). | See WIC § 16120 |

Credit: All County Letter No. 10-47, pg. 3
<p>| | |</p>
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<tbody>
<tr>
<td><strong>9. Adoption petition</strong></td>
<td>The prospective adoptive parent(s) desiring to adopt the Indian child must file an adoption petition with the court presiding over the adoption once the TCA home study is approved, the TCAO is afforded full faith and credit, and all the necessary documents are signed. A copy of this petition will continue to be sent to CDSS.</td>
</tr>
<tr>
<td><strong>PRACTICE TIP</strong></td>
<td></td>
</tr>
<tr>
<td><strong>10. Supervision of adoptive placement</strong></td>
<td>Once adoptive placement of the Indian child has been made, the public agency that has placement and care responsibility of the Indian child will be responsible for ensuring the supervision of the adoptive placement.</td>
</tr>
<tr>
<td><strong>PRACTICE TIP</strong></td>
<td>Submit a final report to the court regarding the TCA for the finalization hearing.</td>
</tr>
<tr>
<td><strong>11. Finalization</strong></td>
<td>Once the adoption petition is filed with the court, and a finalization hearing is set, the public adoption agency that is responsible for the Indian child’s placement and care must ensure a final report regarding the proposed TCA is submitted to the court.</td>
</tr>
<tr>
<td><strong>PRACTICE TIP</strong></td>
<td></td>
</tr>
</tbody>
</table>

Credit: All County Letter No. 10-47, pg. 3
6.2) Continuance for TCA Process Flow Chart

The court gives parents a notice; parents get a copy of the petition; know what will happen in a dependency case; both lawyers introduce themselves; names of the child relatives are written down; the child parent’s are confirmed (parentage); and it’s decided whether the child will stay with the parents or live somewhere else.

The court decides if what the petition says is true. Before the judge accepts an admission or submission, the court has to be sure the parents want to give up (waive) their right to a trial. This means they give up the right to: see, hear and question witnesses, bring their own witnesses, testify or stay silent.

A review hearing shall be held 6 months after the initial dispositional hearing, but no later than 12 months after the child has entered foster care. The main determination made at any hearing is whether the child’s current placement is safe and appropriate for the child’s needs.

A permanency hearing shall be held 12 months after the child has entered foster care.

Once TCA is ordered as the permanent plan, the case is referred to the tribe to conduct their part of the WIC § 366.24 process, and the WIC 366.26 hearing is continued for 120 days. The court can grant a continuance, but no more than an additional 60 days.

The Tribal Customary Adoption Order (TCAO) is completed and filed within 20 days of the continued WIC § 366.26 hearing by the Indian child’s tribe with the court;

Once the TCAO is filed by the Indian child’s tribe and the addendum to the WIC § 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.

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).

The prospective adoptive parent(s) desiring to adopt the Indian child must file an adoption petition with the court presiding over the adoption once the TCA home study is approved, the TCAO is afforded full faith and credit, and all the necessary documents are signed.

Once the adoption petition is filed with the court, and a finalization hearing is set, the public adoption agency that is responsible for the Indian child’s placement and care must ensure a final report regarding the proposed TCA is submitted to the court.
6.3) Continuance TCA Hearings

**FIRST .26 HEARING**
TCA ordered as permanent plan; Court continues hearing for 120 days for Tribe to complete TCA

Tribe to file TCAO no less than 20 days prior to continued .26

Department to file addendum report no less than 7 days prior to the continued .26

**CONTINUED .26 HEARING**
Court Reviews TCAO; Affords FF&C. Adoption Finalization hearing set upon filing of adoption petition.

- Adoptive placement papers & AAP agreement signed
- Petition for adoption filed

If Tribe does not file TCAO the Court enters new .26 orders

60 day continuance can be granted

ADOPTION FINALIZATION HEARING
Adoption order issued Jurisdiction dismissed

If FF&C not offered by Court, Court may remand TCAO back to Tribe or set for contest
TIMELINE
ICWA COMPONENTS

INQUIRY
- Begins at the initial intake with the family.

NOTICE
NO REQUESTS FOR A COURT PROCEEDING (WITH THE EXCEPTION OF EMERGENCY REMOVALS) CAN BE MADE UNTIL:
- At least 10 days after receipt of notice by parents or Indian Custodian, or after 30 days if 20 additional days are requested by the parents or Indian Custodian to prepare for the proceedings; or
- At least 10 days after receipt of notice by the tribe, or after 30 days if the tribe requests an additional 20 days to prepare or the proceeding;
- No fewer than 15 days after receipt of notice by the Bureau of Indian Affairs

ACTIVE EFFORTS
BEGIN THE MOMENT THE POSSIBILITY ARISES THAT THE CHILD WILL BE PLACED OUTSIDE THE HOME
- Active Efforts are also provided when a child has been removed from the home.
- The goal is to work towards reunification of the family.
- Emergency proceedings should not be continued for more than 30 days unless the court has made any of the follow determinations:
  (1) returning the child to the family would cause harm,
  (2) the court has not been able to transfer the proceeding to tribal jurisdiction or
  (3) it has not been possible to initiate the child custody proceeding.

PLACEMENT
STATUS REVIEW
- No less than once every 6 months the status of a dependent child must be reviewed.
- At the review hearing, if the child is to remain out of the home, the court must state a date in which the child is likely to return home, or if the child will remain in one of the many placement options.
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Title</th>
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<tbody>
<tr>
<td>AAP</td>
<td>Adoption Assistance Program</td>
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<tr>
<td>ACIN</td>
<td>All County Information Notices, California Department of Social Services</td>
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<td>CACI</td>
<td>Child Abuse Central Index</td>
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<td>CBC</td>
<td>Criminal Background Check</td>
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<td>Criminal History Record Information</td>
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<td>DOJ</td>
<td>Department of Justice, CA DOJ = California Department of Justice, US DOJ = United States Department of Justice</td>
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<td>Indian Child Protection and Family Violence Prevention Act</td>
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<td>QEW</td>
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<td>Tribal Customary Adoption Order</td>
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<td>Tribal Consultation Policy</td>
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<td>TSH</td>
<td>Tribally Specified Home</td>
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<td>WIC</td>
<td>California Welfare and Institutions Code</td>
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I. Essential Knowledge About Tribal Communities in California

A. The Role of Culture in Crisis Response

Culture is comprised of the shared practices and beliefs of a group of people as well as the individual life experiences of those same people. Tribal culture is a dynamic function of a group of people that share an environment, experiences and spiritual practices. Trauma is defined as a deeply distressing or disturbing experience. Shared traumas are part of a tribal community’s shared experience. Therefore, it is imperative for tribal social workers to consider the role that tribal culture may play in improving outcomes for children and families that need social services. This will ensure that their crisis response does not compound the trauma experienced by the community.

Culture may be defined as “the sum total of ways of living, including values, beliefs, aesthetic standards, linguistic expression, patterns of thinking, behavioral norms, and styles of communication which a group of people has developed to assure its survival in a particular physical and human environment. Culture, and the people who are part of it, interact, so that culture is not static. Culture is the response of a group of human beings to the valid and particular needs of its members. It, therefore, has an inherent logic and essential balance between positive and negative dimensions.”

B. Tribal Communities of California

Tribal communities in California were subjected to religious, federal, state and local policies that sought to eliminate tribal people, culture, and communities. From the conversion practices of the Catholic missionaries to the militias reimbursed for killing Indians, tribal communities in California have survived horrific histories.

There are 573 federally-recognized Indian Tribes in the United States. The 2010 U.S Census reports that there are 308.7 million people in the United States. Of that, 2,932,248 are American Indian and/or Alaska Native (AI/AN) alone and 5,220,579 AI/AN in combination with another race. The 2010 U.S. Census reports that in California, there are 362,801 AI/AN alone, and 723,225 AI/AN in combination with another race. This population includes American Indians that are from California tribes as well as those from tribes from other states. There are 109 federally recognized tribes are indigenous to California. Federal policies such as the Relocation Act targeted Indians residing on reservation lands for relocation for job training programs in large U.S. cities. Generally, California tribal histories are comprised of several eras:
1) Prior to the Catholic Mission System Era,
2) Mission System Era,
3) End of the Catholic Mission System,
4) Prior to the Gold Rush Era,
5) Gold Rush Era, California enters the Union,
6) Termination Era, and
7) Self-Determination Era.

1. Prior to the Catholic Mission System

According to anthropologists, California was populated by Native Americans for at least 19,000 years. Humans in this area dated back to 50,000 years. Tribal origin stories cite tribal presence since time immemorial.

Before European settlement, California had more than 500 “tribelets” speaking about 300 dialects of at least 100 languages. The diversity of dialects required knowledge of multiple languages in order to engage in social interaction and trade. California Indians were also engaged in trade with the Russian American Company (RAC) established in Fort Ross, California. In those times they sailed the Pacific seas in competition with the Hudson Bay Company in search of fur. While the Russians were at Fort Ross, they interacted with the Kashaya Pomos from the Fort Ross area. When the RAC finally left after being at Fort Ross for 30 years, they took with them Kashaya wives and children.

Tribal food staples included acorn “mush,” salmon, deer, elk, and rabbit. Much of the traditional foods of California Indians are scarcely available in the modern era. Plant materials for cultural arts such as basket weaving have been heavily damaged by pesticides and are unsafe, inaccessible due to private property rights.

2. Catholic Mission System Era

It is estimated that there were 310,000 natives in California prior to the Mission System. By 1900, it The conservative estimation of the pre-contact population of California Indians is 350,000. However, today some scientists argue that the pre-contact populations was likely in the millions. The high death rate and low birth rate among the California Indian population was attributed to psychological abuse, forced labor, changed diet, foreign disease, poor living conditions and inadequate sanitation systems.

The Catholic Missions were intended to operate for a limited number of years to establish primary settlements in California and to bring civilization to the Indian people. At the end of the mission program, the mission property and operations were to be turned over to the Indian people. The social infrastructure developed within the Mission System was to engage the California Indians in religious conversion and forced labor to construct the Missions and produce Mission products. Indian people worked 30-40 hours/week within the Missions. Products from the Missions included grains, vegetables, dairy products, fruit, wine, beeswax products (i.e., candles), leather tooling (saddles, bridles). The income generated from trade supported the operation of the Mission.
3. End of the Mission Era

The Mission Period lasted until 1832, when Mexico, having taken over California from Spain 10 years earlier, secularized the missions, and began doling out the vast mission holdings to political favorites, wealthy people, and cronies of the governors of California. These "land grants" were called ranchos, and many of the Indian people living in the Missions had little choice but to stay on and work for the new land owners.

4. Pre-Gold Rush Era

Prior to the Gold Rush era, the economic structure of California consisted of few Spanish landholders who controlled Indian workers who tended to mines, animals and agriculture. Indians gained basic necessities and wealth through trading, raiding or working on the Ranchos. During this era, Indians outnumbered non-Indians 10 to 1. Consequently, some tribal villages remained intact in the Sierra foothills and the northwest region (the richest gold bearing areas of California).

5. Gold Rush Era, California enters the Union

In January of 1848, Indian and non-Indian workers discovered gold while building Sutter’s sawmill in Coloma Nisenan country. Sutter was the federal Indian subagent. He indentured the Yalisumni Nisenan Indians and signed a 20-year lease to the Nisenan property with the exclusive right to cultivate land, cut timber and build a saw mill.

From 1848 – 1857, it is estimated that 23.3 million ounces of gold was mined in California. The value of the gold at 1998 prices would have been $6.9 billion or $285/ounce. Gold mining practices had a devastating impact on the California environment. Liquid mercury was used in sluices to combine with gold and gold laden materials which would sink to the bottom as water and sand passed through the sluice. More than 100 tons of mercury was dug up for use in the gold rush. 7,000+ tons of mercury was lost in local rivers during this time. (One gram of mercury in a lake violates modern federal health standards.) 250 million cubic meters of mercury laden sediment from the Gold Rush have filled the San Francisco Bay.

Due to the mission system and gold rush waves of genocide, by 1850, non-Indians outnumbered Indians 2 to 1 in California. At this time, the population was no longer predominately Spanish but instead largely American settlers. Unlike the Spanish landholders, the American gold miners were not solely dependent on Indian labor in the mines. Native subsistence lifestyles were ending due to the impact upon the environment.

Indians were forced into the American economy but were not treated fairly. Indians paid for food, mining clothes and other goods with an “equal weight” in gold. Traders created the Digger Ounce using a lead slug that outweighed the standard weights. Indians were paid wages in liquor. Indians constituted more than half of the miners in some mines of more than 4,000 miners. Indian women worked in the mines as well. Prostitution by Indian women increased as Indian mining earning power decreased. Forced prostitution was ram-
pant. Indians were able to survive as part of the consumer market, which changed subsistence traditions to commercial crafts.

In 1851, the Barbour Commissioners, a federal delegation, was sent to California to negotiate eighteen treaties with California Indian Tribes. 7.5 million acres were set aside in the treaties for California tribes. The treaties were never ratified and put under Injunction of Secrecy until 1905. This left many of the California Indian communities landless, with no claims to Mission lands as guaranteed in the Treaty of Guadalupe Hidalgo and the loss of their homelands under early Land Claims Acts of the first California legislature.

The early laws of California subjected Indians to many atrocities including indentured servitude, targeted extermination and child abduction. From 1848 – 1870s, more than 10,000 Indians were forced into indentured servitude, 4,000 were children. Boys sold for $60, girls sold for $200. From 1850 – 1865, the Act for the Government and Protection of Indians and related amendments, facilitated removal of Indians from their traditional lands, separating at least a generation of children and adults from their families, languages and cultures. Laws governing indentured servitude made it easy to kidnap and sell Indian children. Vagrant Indians could be by hired out to the highest bidder at public auction, if no bail was produced by the Indian. Early laws also prohibited Indians from testifying against non-Indians in court. In addition, during 1851-1859, California Governors ordered local sheriffs to organize settlers to conduct expeditions to murder Indians. Twenty-seven laws were passed by the California legislature to implement the militia organization and payments. The total claims submitted by the expeditions amounted to $1,293,179.20.

In 1906, after the expiration of the Injunction of Secrecy applied to the Unratified Treaties, the U.S. Congress adopted the Appropriation Acts (also termed the Rancheria Acts) to set aside funds to buy land and put the land into Trust for landless California Indians. Eighty-two (82) Rancherias were put in Trust pursuant to these set asides.

6. Termination Era

During the Termination Era (1953-1968), federal policies were enacted aimed at terminating federal responsibility toward Indian Tribes and assimilating Indian people. In 1953, the House Concurrent Resolution 108 proposed ending Indians status as wards of the United States. Federal benefits and services to certain tribes were stopped and their reservations were forcibly dissolved, and more than 100 tribes were terminated through foreclosures on properties by banks.

Public Law 83-280, adopted by Congress in 1953, is a federal statute that transferred federal criminal jurisdiction and authorized some civil adjudicatory jurisdiction over matters arising on tribal lands to state courts. Prior to this transfer, state courts had no jurisdiction over matters arising on tribal lands. Application of state civil regulatory laws is prohibited.

In 1956, the Indian Relocation Act (also termed as Public Law 959 or the Adult Vocational Training Program),
TRIBAL CUSTOMARY ADOPTION
Training Session

encouraged Indians to leave the reservations to obtain work in urban areas with no training, no services offered for those living off-reservations (i.e. health), and no support groups (e.g. extended families and relatives) in urban areas. Relocation further broke Indian families apart. Poverty was a reason used for removing Indian children from their homes and placing them with more affluent white families.

7. Self-Determination Era

After the late 1960s, the Self-Determination Era gave Indian tribes opportunities to manage their own local government and issues. The Self-Determination and Education Act of 1975 (PL-93-638) required federal agencies to permit qualifying tribes and Indian organizations to administer the federal government’s Indian programs on the reservations (i.e. education, social services, health clinics, etc.). Despite these opportunities to strengthen tribes, the contract process was controlled by the BIA’s rules and regulations, which challenged tribal sovereignty. Nonetheless, this was the time of great Indian activism and advancements in education, economic, and religious freedom rights for Indians.

C. Nexus of Tribal Culture and Health Outcomes

Tribes in California could cite these histories as the bases or determinants for poor health; however, tribes in California and throughout the United States have responded to the devastating impacts of state and federal policies by asserting their sovereignty and maintaining their legal right to live pursuant to their own laws. Despite a resurgence of federal policy in the 1950s known as the Termination Era designed to eliminate tribal governments in California, the Tribes in California have focused their efforts and resources on developing their communities within the scope of their community values. As reported in the 2010 American Indian and Alaska Native (AI/AN) Health Assessment in California, the major determinants of AI/AN health in California are 1) Sovereignty and Self-Determination, 2) Cultural Revitalization and 3) Access to Culturally Competent and Affordable Healthcare. Awareness of these core determinants of health will result in better outcomes for Indian people and communities.
7 Essential Understandings for California Indian History and Culture
By the California Indian Museum and Cultural Center
http://www.cimcc.org

Essential Understanding 1
There is great diversity among the 150 + tribes of California in their languages, cultures, histories and governments. Each tribe has a distinct and unique cultural heritage that contributes to modern California.

Essential Understanding 2
There is great diversity among individual American Indians as identity is developed, defined and redefined by many entities, organizations and people. There is a continuum of Indian identity ranging from assimilated to traditional and is unique to each individual. There is no generic American Indian.

Essential Understanding 3
The ideologies of Native traditional beliefs and spirituality persist into modern day life as tribal cultures, traditions and languages are still practiced by many American Indian people and are incorporated into how tribes govern and manage their affairs. Additionally, each tribe has their own oral history beginning with their genesis that is as valid as written histories. These histories pre-date the “discovery” of North America.

Essential Understanding 4
There were many foreign, state and federal policies put into place throughout American history that have impacted California Indian people and shape who they are today. Much of Indian history can be related through several major policy periods. Examples: Mission Period, The Gold Rush Allotment Period, Boarding School Period, Termination and Self-determination

Essential Understanding 5
Reservations are lands that have been reserved for tribal use through treaties and were not “given” to them. The principle that land should be acquired from the Indians only through their consent with treaties involved three assumptions:
   I. That both parties to treaties were sovereign powers.
   II. That Indian tribes had some form of transferable title to the land.
   III. That acquisition of Indian lands was solely a government matter not to be left to individual colonists.

Essential Understanding 6
History is a story and most often related through the subjective experience of the teller. Histories are being rediscovered and revised. History told from an Indian perspective conflicts with what most of mainstream history tells us.

Essential Understanding 7
Under the American legal system, Indian tribes have sovereign powers, separate and independent from the federal and state governments. However, the extent and breadth of tribal sovereignty is not the same for each tribe.
Essential Knowledge about the Indian Child Welfare Act

I. INTRODUCTION

On October 15, 1978, the Indian Child Welfare Act, Public Law 95-608 (ICWA), was passed into law by the U.S. Congress to remedy the harms of inconsistent federal policies with respect to Indian tribes. The legislative history of the ICWA cites the constitutional authority of Congress to exercise broad legislative powers in Indian affairs. It describes that in exercising its authority, Congress recognizes a solemn responsibility to protect and preserve Indian tribes and their resources. Additionally, the legislative history references studies conducted in 1969 and 1974 by the Association on American Indian Affairs (AAIA) indicating approximately 25-35% of all Indian children were separated from their families and placed in foster homes, adoptive homes or institutions. The legislative history states “[t]he wholesale separation of Indian children from their families is perhaps the most tragic and destructive aspect of American Indian life today.” Congress found “that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe.”

The mission of the ICWA is to protect Indian children from arbitrary removal from Indian families by establishing minimum federal standards for state courts and agencies to follow in state court proceedings involving an Indian child. The ICWA was designed to protect the continued existence and integrity of Indian tribes and to preserve the interest of the United States, as a trustee, for Indian children who are members of or are eligible for membership in an Indian tribe. It is also designed to maintain Indian cultural integrity by returning jurisdiction over certain Indian child custody matters to Indian communities.

II. NATIVE AMERICAN CULTURES AND VALUES

Although labeled collectively for legislative purposes, Native American cultures are incredibly diverse. One cannot make meaningful generalizations of Native American cultures and the tribal structures representing those cultures. However, the following premises are essential to a basic understanding of most Native American cultures.

First, there is a symbiotic relationship between tribes and their children. Tribal cultures communicate traditions to their children in a variety of ways: day to day activities, ceremonies and/or "stories" shared by elders, and unique familial relationships involving extended families. Therefore, the participation of children in the culture/community is essential to the perpetuation of the culture, the development of the child's Native American identity and involves a wide spectrum of activities: participation in daily life, extended family visits involving the exposure of the child to knowledge of a group larger than a "nuclear" family, ceremonies occurring throughout the seasons, and the activities of the tribe as a living community.

Second, tribes traditionally practice child rearing within an extended family structure consisting of relatives, friends, elders and others in the community. The nuclear family unit is not the focal point of Native
American social structures. Consequently, regular practices used by state child protection agencies may be inappropriate and even damaging to Indian children. The ICWA offers protection from this potential harm.

Third, the Native child-community relationship perpetuates Native American tradition, identity and culture. The survival of the relationship is essential to the survival of the culture as noted in ICWA §1901, "there is no resource more vital to the continued existence and integrity of the Indian tribes than their children."

III. THE BASIS FOR PROTECTIVE LEGISLATION

Prior to the adoption of the ICWA in 1978, the AAIA studies conducted in 1969 and 1974 revealed that the removal of Native American children from their families and communities had reached epidemic proportions. The following selected statistics from the AAIA studies showed the scope of the Indian child removal phenomenon during those same years within California:

California (1974 - 1975):

- 8.1 of every 1000 Indian children were in foster care placement (compared to 3 of every 1000 non-Indians in foster care). Foster placement of Indian children was 2.7 times that of non-Indian children.²
- 38 of every 1000 Indian children were adopted (compared to 4.5 of every 1000 non-Indian children adopted). Adoptive placement of Indian children was 8.4 times that of non-Indian children.³
- Only four states during the AAIA 1969 and 1974 studies had records of the percentage of adopted Indian children who were adopted by non-Indians: Alaska (93%); California (92%); Montana (87%); and North Dakota (75%). Of the thirteen states involved in the research studies, 80% of all adopted Indian children were adopted before their first birthdays.⁴
- Rates of foster placements with non-Indian families were 95% in Washington and Oregon, 93% in California, 87% in Montana, and 75% in North Dakota.⁵

Federal boarding-school programs compounded the effects of removal. A 1971 BIA school census indicated that 34,538 children lived in boarding schools away from their families and communities.⁶ In the 1930s, Navajo children were rounded up like cattle and shipped to boarding schools without notice to the families or the tribe.⁷ Many of these children were taken from their homes to distant states for periods of 1-6 years and registered under "American" names, making it difficult for parents or the tribe to locate the children until they returned.⁸ If and when the children returned, they had to be reacquainted with their languages, families and communities.

Many Indian children were removed from their families and communities without due process by
state social workers. Many state social workers forced families relying on federal and state financial support to relinquish custody of their children under threat of losing welfare benefits. The social workers testified as "experts" that poverty on reservations was an obstacle to "proper" parenting. They did not measure parental love and affection or cultural fulfillment as off-sets to poverty when determining proper parenting.

Additionally, many removals were based upon caseworkers' lack of knowledge about tribal cultures. Common bases for removal of Indian children were neglect and emotional mistreatment because a biological parent would leave her child with an extended family member for lengthy periods of time. Indian parents commonly leave a child with relatives who shape the child's tribal clan identity and further the child's cultural knowledge. However, social workers, unfamiliar with tribal child-rearing practices, found the practices unacceptable under Anglo-American standards. As the United States Supreme Court noted “[a]n Indian child may have scores of, perhaps more than a hundred, relatives who are counted as close, responsible members of the family. Many social workers, untutored in the ways of Indian family life or assuming them to be socially irresponsible, consider leaving the child with persons outside the nuclear family as neglect and thus as grounds for terminating parental rights.”

Yet, not all grounds for removal were baseless. Some removals were due to a parent's alcoholism and/or drug addiction. However, the number of Native American children removed from their homes due to alcoholism was disproportionate to removals in non-Indian homes afflicted with alcoholism. These combined assimilative efforts eroded Native social structures. Fortunately, Congress acknowledged that “the states, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities.”

Congress enacted the Indian Child Welfare Act, seeking to preserve Native American cultures and to halt assimilative practices that targeted Indian children. The ICWA is intended to serve the “best interests of Native American children and their tribes” by “maintaining Native American children in homes that reflect their unique Native cultures and values.” Congress announced that compliance with the ICWA is “in the best interest of an Indian child.”

IV. THE INDIAN CHILD WELFARE ACT

The ICWA confers upon tribes exclusive jurisdiction over specific child custody proceedings in state courts that involve Indian children residing or domiciled on an Indian reservation, unless jurisdiction is otherwise vested in the state by existing federal law. Absent good cause, state courts must transfer such cases to the jurisdiction of the tribe: (1) absent objection by a natural parent, or (2) upon the petition of a natural parent, Indian custodian or the tribe. All transfers are subject to declination by the tribal court. An Indian custodian or the child's tribe has a right to intervene in the child custody proceeding at any time. Voluntary consent for foster care placement or termination of parental rights must be in writing and recorded before a judge with competent jurisdiction. Consent must be certified in terms and consequences and understood by
the parent or custodian and explained in a language known to them. Any consent to terminate parental rights given within 10 days after the birth of a Native American child is invalid. In cases of termination of Native American parental rights, the standard of proof is “beyond a reasonable doubt,” rather than the “clear and convincing” standard for non-Indian parents. Full faith and credit must be accorded to the public acts, records, and judicial proceedings of an Indian tribe with regard to Indian child custody proceedings. The ICWA allows tribal court judges to determine the placement which best serves the interests of American Indian children. These provisions include exclusive tribal court jurisdiction over "non-member" Native American children residing or domiciled on the reservation. The provisions of the ICWA are intended to curtail unintentional or unconscious bias.

Stay Alert for Key Terms and Legal Definitions

ICWA is a statute that requires state court and agency personnel to ask questions to determine whether ICWA applies to a case or situation involving an Indian child. ICWA includes many key terms that have legal definitions found in the federal statute as well as in the state implementation rules and regulations. The first question asked is whether the child of concern is an Indian child (as defined by ICWA). ICWA should ideally be invoked before a child is removed from their home; however, it is commonly invoked when the child custody proceeding reaches the state court.

The next question is whether ICWA applies to the "child custody proceedings" in state court:

(1) "Foster care placement"
(2) "Termination of parental rights"
(3) "Pre-adoptive placement"; and
(4) "Adoptive placement"

The ICWA specifies that for any foster care or pre-adoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with,

(i) A member of the Indian child's extended family;
(ii) A foster home licensed, approved, or specified by the Indian child's tribe;
(iii) An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
(iv) An institution for children approved by an Indian tribe or operated by an Indian organization, which has a program suitable to meet the Indian child's needs.

Under the ICWA, an "Indian Child" is "any unmarried person who is under age eighteen and is either (1) a member of an Indian tribe or (2) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.”
Experience has demonstrated that this definition presents significant problems:

(1) There are numerous tribes not federally recognized,

(2) Tribes have had their federally recognized status terminated, often against their will, during the termination era and several have yet to regain federal recognition.

(3) The ICWA has not been recognized in Canada, with respect to members of tribes who live on or near the U.S.-Canadian border, but are related to members of American Indian tribes.

(4) Additionally, many tribal membership rolls and Bureau of Indian Affairs (BIA) information are out of date because of lengthy bureaucratic approval processes. Therefore, proof of tribal membership may be problematic. In such cases, the BIA may conclusively determine membership status and that determination may be inaccurate.

An “Indian tribe” is defined as “any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of Title 43.”

The ICWA defines “parent” as “any biological parent or parents of an Indian child or Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom.” It does not include the unwed father where paternity has not been acknowledged or established.

The term “domicile” was interpreted by the U.S. Supreme Court in Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989), that “a state court, in determining the domicile of an Indian child, should look to generally accepted federal and common-law concepts of domicile.” The Court stated that "a person’s domicile need not necessarily be his or her residence, especially with respect to minor children who usually assume the domicile of their natural parents.”

The Court decision suggests that state courts should not interpret "domicile" in a manner which frustrates the congressional intent behind the enactment of the ICWA.

The definition of an “Indian reservation” is taken from the definition of "Indian country" as defined by 18 U.S.C. §1151: “(a) any territory located within the exterior boundaries of an Indian reservation, including fee-owned land, (b) any dependent Indian community; and (c) any Indian allotment and the rights of way running through them.” Although this definition does not refer to assimilation era Indian land allotments or Indian communities on trust land, such lands are considered “Indian country” for jurisdictional purposes. Reservations that have been terminated or reservation boundaries that have been diminished pose jurisdictional questions and delay ICWA proceedings and child placement.

The ICWA primarily addresses jurisdiction over involuntary custody cases involving Indian children in state jurisdiction. Transfer to tribal jurisdiction does not imply removal of an Indian child from a non-Indian home and placement with the natural parents. However, many state court judges are hesitant to distinguish between jurisdictional and dispositional issues.
V. IMPLEMENTATION AND IMPACT OF THE INDIAN CHILD WELFARE ACT

Historically, the relationship between Indian tribes and the federal government has been a political relationship between nations; not a relationship based on the racial classification of Native Americans. Consequently, the Supreme Court ruled that Congress is not in violation of equal protection when it distinguishes Native Americans from other racially classified groups. As a result of the broad Congressional power to regulate Indian affairs and the limited recourse allowed for challenges to that power, states may not exercise any authority over Indian tribes (on the reservation) that is contrary to federal authority.

Before the ICWA was enacted, states could govern and regulate any Indian child within state boundaries but outside the boundaries of the reservation. Some state courts and state social services view the ICWA as a federal intrusion upon their governmental power over Indian children within their jurisdictions. Challenges to the ICWA include constitutional arguments based upon dissimilar treatment of parties in state court based upon the parties’ race. Pursuant to the Indian Commerce Clause, Congress can make laws to protect tribes and their members from state intrusions. Federal Indian laws based upon the political classification rather than racial classification are reviewed under the rational basis test rather than strict scrutiny. Thus, if the law is rationally tied to Congress’ duty to protect Native Americans, the law will survive equal protection challenges.

The U.S. Supreme Court on the ICWA

In 1989, the U.S. Supreme Court heard Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989), the first ICWA case heard by the U.S. Supreme Court. In Holyfield, the natural parents of twins were domiciled on the Mississippi Choctaw reservation. Upon the birth of the twins, the biological parents voluntarily placed their children for adoption with a non-Indian family living off the reservation. During the proceedings, the tribe intervened claiming that the state court lacked jurisdiction under the ICWA, which granted exclusive jurisdiction to the Mississippi Choctaw Tribal Court because the twins were considered to have been domiciled on the reservation. The Mississippi Supreme Court affirmed the adoption, holding that the ICWA did not apply because the children never lived with an Indian family and never lived on the Choctaw Reservation. The U.S. Supreme Court granted certiorari to resolve the question of domicile. It rejected the Mississippi Supreme Court ruling, reversed the adoption, and remanded the case to the Mississippi Choctaw Tribal Court. Holyfield does not allow state courts to bypass the ICWA by applying state law interpretations of its terms, even though Congress did not define those terms. Ultimately, the Mississippi Choctaw Tribal Court held that the twins should be left with the adoptive parents with whom the children had already forged familial bonds.

Implementation of ICWA within the State of California

California has adopted laws, policies, rules and regulations to implement the federal ICWA statute. These
provisions are predominately found in the California Family Code, California Probate Code and the California Welfare and Institutions Code. Additional provisions implementing ICWA include state bills, rules, forms and informational notices some of which may be found in the California Rules of Court (CRC), California Judicial Council Forms, and California Department of Social Services All County Information Notices (ACINs) and All County Letters (ACLs).

California Department of Social Services

Office of Tribal Affairs

- http://www.cdss.ca.gov/inforesources/Tribal-Affairs

ICWA at CDSS

- http://www.cdss.ca.gov/inforesources/Tribal-Affairs/ICWA

All County Information Notices

- http://www.cdss.ca.gov/inforesources/Letters-Regulations/Letters-and-Notices/All-County-Information-Notices

All County Letters


Tribal Customary Adoption

- http://www.courts.ca.gov/12569.htm

California Family Code Provisions Implementing the Indian Child Welfare Act


California Probate Code Sections implementing the Indian Child Welfare Act


The California code provisions provide for the implementation of the federal ICWA statute but they also provide for additional policy and direction surrounding Indian Child Welfare actions and decisions under state law. California adopted California Senate Bill (SB) 678\(^{39}\) and Assembly Bill (AB) 1325\(^{40}\) which adhere to the provisions of the federal ICWA statute. “The state is committed to protecting the essential tribal relations and best interest of an Indian child by promoting practices, in accordance with the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) ... by placing the child, whenever possible, in a placement that reflects the
unique values of the child's tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the child's tribe and tribal community."\textsuperscript{41}

The California rules and regulations implementing the ICWA set forth requirements for social service departments for:

- making and documenting an initial inquiry as to whether a child is an Indian child during investigation and intake procedures,
- documenting active efforts to prevent the break-up of an Indian family,
- complying with notice requirements by sending form ICWA-030 to the child’s parents or guardians, Indian custodian (if any), tribe(s) with which the child may be affiliated; and the Sacramento Office of the BIA; or the Secretary of the Interior as soon as possible,
- documenting consultation with the tribe concerning placement and how the placement fits within the ICWA placement preferences, if detention of the child occurs,
- complying with disposition report requirements for a case involving an Indian child that may be entering or is in foster care,
- obtaining a qualified expert witness (QEW) to provide testimony as required,
- complying with the foster care placement requirements,
- complying with status review, permanency planning and post-permanency planning hearing requirements, and
- complying with termination of parental rights requirements such as QEW testimony and the beyond a reasonable doubt evidentiary standard.

Implementation of the ICWA in California requires diligence and patience. The resources and tools found in this curriculum are provided to support your efforts. Just remember that the motivating factor is to serve the best interests of an Indian child “by placing the Indian child, whenever possible, in a placement that reflects the unique values of the child's tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the child's tribe and tribal community."\textsuperscript{42}

ENDNOTES:

1. United States Constitution, clause 3, section 8, article 1.
3. Id.
5. Id.


7. Dane Coolidge, 'Kid catching' on the Navajo Reservation," Address to the Indian investigation Committee of the U.S. Senate on November 12, 1930; The Destruction of American Indian Families, Association on American Indian Affairs, (1977), p. 18.

8. Id.


17. ICWA Handbook at p. 4.


22. Id.


30. Holyfield at 49.

31. Id.


33. ICWA Handbook at p. 7.


37. In re Marcus S., 638 A.2d 1158 (Maine 1994); Matter of Miller at p. 579.
38. Holyfield at pp. 44-45.
39. SB 678 Chapter 838, Statutes of 2006
40. AB 1325 Chapter 287, Statutes of 2009
41. CDSS ICWA & Relative Placement Preference in Foster Care Fact Sheet April 2016, summarizing WIC 224(a)(1).
42. CDSS ICWA & Relative Placement Preference in Foster Care Fact Sheet April 2016, summarizing WIC 224(a)(1).
1901. Congressional findings.

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—(1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes (FOOTNOTE 1) " and, through this and other constitutional authority, Congress has plenary power over Indian affairs; (2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources; (3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe; (4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such
children are placed in non-Indian foster and adoptive homes and institutions; and (5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

1902. Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

1903. Definitions

For the purposes of this chapter, except as may be specifically provided otherwise, the term—(1) "child custody proceeding" shall mean and include: (i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated; (ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship; (iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and (iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption. Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents. (2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent; (3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 1606 of title 43; (4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe; (5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts; (6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child; (7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians; (8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of title 43; (9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established; (10) "reservation" means Indian country as defined in section 1151 of title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation; (11) "Secretary" means the Secretary of the Interior; and (12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

1911. Indian tribe jurisdiction over Indian child custody proceedings
(a) Exclusive jurisdiction

An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) Transfer of proceedings; declination by tribal court

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child’s tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child’s tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) State court proceedings; intervention

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child’s tribe shall have a right to intervene at any point in the proceeding.

(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes

The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

1912. Pending court proceedings

(a) Notice; time for commencement of proceedings; additional time for preparation

In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child’s tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: Provided, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) Appointment of counsel

In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.

(c) Examination of reports or other documents

Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such
action may be based.

(d) Remedial services and rehabilitative programs; preventive measures

Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. (e) Foster care placement orders; evidence; determination of damage to child No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) Parental rights termination orders; evidence; determination of damage to child

No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

1914. Petition to court of competent jurisdiction to invalidate action upon showing of certain violations

Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child’s tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title.

1915. Placement of Indian children

(a) Adoptive placements; preferences

In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child’s extended family; (2) other members of the Indian child’s tribe; or (3) other Indian families.

(b) Foster care or preadoptive placements; criteria; preferences

Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with -

(i) a member of the Indian child’s extended family; (ii) a foster home licensed, approved, or specified by the Indian child’s tribe; (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or (iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child’s needs.

(c) Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences

In the case of a placement under subsection (a) or (b) of this section, if the Indian child’s tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: Provided, That where a consenting parent evidences
a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) Social and cultural standards applicable

The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) Record of placement; availability

A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

1916. Return of custody

(a) Petition; best interests of child

Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 1912 of this title, that such return of custody is not in the best interests of the child.

(b) Removal from foster care home; placement procedure

Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this chapter, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

1917. Tribal affiliation information and other information for protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court

Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

1918. Reassumption of jurisdiction over child custody proceedings

(a) Petition; suitable plan; approval by Secretary

Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b) Criteria applicable to consideration by Secretary; partial retrocession (1) In considering the petition and feasibility of the plan of a tribe under subsection (a) of this section, the Secretary may consider, among other things: (i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe; (ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe; (iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and (iv) the feasibility of the plan in cases of multiracial occupation of a single reservation or geographic area. (2) In those cases where the Secretary determines that the jurisdictional provisions of section 1911(a)
of this title are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 1911(b) of this title, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 1911(a) of this title over limited community or geographic areas without regard for the reservation status of the area affected.

(c) Approval of petition; publication

in Federal Register; notice; reassumption period; correction of causes for disapproval If the Secretary approves any petition under subsection (a) of this section, the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a) of this section, the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Pending actions or proceedings unaffected

Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 1919 of this title.

1919. Agreements between States and Indian tribes

(a) Subject coverage

States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Revocation; notice; actions or proceedings unaffected

Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception

Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child

In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard.

1922. Emergency removal or placement of child; termination; appropriate action

Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm.
to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, transfer
the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appro-
priate.

1923. Effective date

None of the provisions of this subchapter, except sections 1911(a), 1918, and 1919 of this title, shall affect a proceeding under
State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was
initiated or completed prior to one hundred and eighty days after November 8, 1978, but shall apply to any subsequent pro-
ceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

1931. Grants for on or near reservation programs and child welfare codes

(a) Statement of purpose; scope of programs

The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child
and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The
objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular,
to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort.
Such child and family service programs may include, but are not limited to -

(1) a system for licensing or otherwise regulating Indian foster and adoptive homes; (2) the operation and maintenance of
facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children; (3) family
assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activi-
ties, and respite care; (4) home improvement programs; (5) the employment of professional and other trained personnel
to assist the tribal court in the disposition of domestic relations and child welfare matters; (6) education and training of
Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs; (7) a
subsidy program under which Indian adoptive children may be provided support comparable to that for which they would
be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical
needs; and (8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custo-
dy proceedings.

(b) Non-Federal matching funds for related Social Security or other Federal financial assistance programs; assistance for such
programs unaffected; State licensing or approval for qualification for assistance under federally assisted program

Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in
connection with funds provided under titles IV-B and XX of the Social Security Act (42 U.S.C. 620 et seq., 1397 et seq.) or under
any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be ap-
propriated for use under this chapter. The provision or possibility of assistance under this chapter shall not be a basis for the
denial or reduction of any assistance otherwise authorized under titles IV-B and XX of the Social Security Act or any other fede-
rally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensing or approval of fos-
ter or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

1932. Grants for off-reservation programs for additional services

The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and
family service programs which may include, but are not limited to - (1) a system for regulating, maintaining, and supporting
Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support
comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State stan-
dards of support for maintenance and medical needs; (2) the operation and maintenance of facilities and services for counseling
and treatment of Indian families and Indian foster and adoptive children; (3) family assistance, including homemaker and home
counselors, day care, afterschool care, and employment, recreational activities, and respite care; and (4) guidance, legal representation, and advice to Indian families involved in child custody proceedings.

1933. Funds for on and off reservation programs

(a) Appropriated funds for similar programs of Department of Health and Human Services; appropriation in advance for payments

In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary may enter into agreements with the Secretary of Health and Human Services, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health and Human Services: Provided, That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

(b) Appropriation authorization under section 13 of this title

Funds for the purposes of this chapter may be appropriated pursuant to the provisions of section 13 of this title.

1934. "Indian" defined for certain purposes

For the purposes of sections 1932 and 1933 of this title, the term "Indian" shall include persons defined in section 1603(c) of this title.

1951. Information availability to and disclosure by Secretary

(a) Copy of final decree or order; other information; anonymity affidavit; exemption from Freedom of Information Act

Any State court entering a final decree or order in any Indian child adoptive placement after November 8, 1978, shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show -

(1) the name and tribal affiliation of the child; (2) the names and addresses of the biological parents; (3) the names and addresses of the adoptive parents; and (4) the identity of any agency having files or information relating to such adoptive placement. Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended.

(b) Disclosure of information for enrollment of Indian child in tribe or for determination of member rights or benefits; certification of entitlement to enrollment

Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child’s tribe, where the information warrants, that the child’s parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

1952. Rules and regulations

Within one hundred and eighty days after November 8, 1978, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter.

1961. Locally convenient day schools

(a) Sense of Congress
It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

(b) Report to Congress; contents, etc.

The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health and Human Services, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from November 8, 1978. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades.

1962. Copies to the States

Within sixty days after November 8, 1978, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this chapter, together with committee reports and an explanation of the provisions of this chapter.

1963. Severability

If any provision of this chapter or the applicability thereof is held invalid, the remaining provisions of this chapter shall not be affected thereby.
ONLINE RESOURCES

California Court Website

http://www.courts.ca.gov/12569.htm

Amended Court Rules for TCA

- **Rule 5.502** Definitions and use of terms
- **Rule 5.690** General conduct of a disposition hearing
- **Rule 5.708** General review hearing requirements
- **Rule 5.715** Twelve-month permanency hearing
- **Rule 5.720** Eighteen-month permanency review hearing
- **Rule 5.722** Twenty-four month subsequent permanency review hearing
- **Rule 5.725** Selection of a permanent plan
- **Rule 5.726** Prospective adoptive parent designation
- **Rule 5.727** Proposed removal
- **Rule 5.728** Emergency removal
- **Rule 5.730** Adoption
- **Rule 5.740** Hearings subsequent to a permanent plan

National Child Welfare Resource Center for Tribes (NRC4Tribes)

http://www.nrc4tribes.org/state.cfm?topic=20&state=CA

ICWA Information Sheet - NOTICE (DEPENDENCY)


Resource Family Criminal Background Checklist

http://www.childsworld.ca.gov/res/RFA/pdf/Criminal_Background_Checks.pdf

State Crimes that Cannot be Exempted (from the California Department of Social Services’ Evaluator Manual) (Oct. 25, 2016).

http://www.cdss.ca.gov/Portals/9/CCLD/EM/BackgroundCheckProcedures.pdf
## COMPARISON OF FINANCIAL BENEFITS of ADOPTION, LEGAL GUARDIANSHIP, KIN GAP, LONG TERM FOSTER CARE and TRIBAL CUSTOMARY ADOPTION

<table>
<thead>
<tr>
<th></th>
<th>Adoption (Adoption Assistance Program – AAP)</th>
<th>Tribal Customary Adoption (Adoption Assistance Program – AAP)</th>
<th>Kin-GAP (Legal Guardianship)</th>
<th>Non-Relative AFDC Foster Care (FC) (Legal Guardianship)</th>
<th>Long Term Foster Care</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Amount</strong></td>
<td>A negotiated rate based on the special needs of the child and circumstances of the family</td>
<td>A negotiated rate based on the special needs of the child and circumstances of the family</td>
<td>A fixed payment according to age</td>
<td>A fixed payment according to age</td>
<td>Based on age and in some cases, child’s disability</td>
</tr>
<tr>
<td><strong>Special Needs Allowance</strong></td>
<td>Available in most counties; varies according to county</td>
<td>Available in most counties; varies according to county</td>
<td>Included if child was eligible while in foster care</td>
<td>Available in most counties</td>
<td>Based on current Foster Care funding</td>
</tr>
<tr>
<td><strong>Medi-Cal</strong></td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
</tr>
<tr>
<td><strong>Clothing Allowance</strong></td>
<td>None</td>
<td>None</td>
<td>Varies according to county</td>
<td>Varies according to county</td>
<td>Varies according to county</td>
</tr>
<tr>
<td>Maximum Age</td>
<td>Until child turns 18; can be extended to 21 if a child has a mental or physical handicap that warrants continuation of benefits.</td>
<td>Until child turns 18; can be extended to 21 if a child has a mental or physical handicap that warrants continuation of benefits.</td>
<td>Until child turns 18; until 19 if child is in school and can graduate</td>
<td>Until child turns 18; until 19 if child is in school and can graduate</td>
<td>Until child turns 18; can be extended to 21 if a child has a disability</td>
</tr>
<tr>
<td>-------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Independent Living Program</td>
<td>Yes, if child adopted at or after age 16</td>
<td>Yes, if child adopted at or after age 16</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Reassessment</td>
<td>At least every two years</td>
<td>At least every two years</td>
<td>Every year</td>
<td>Every six months</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Foster Care Case Closed</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Relationship</td>
<td>ADOPTIVE PARENTS</td>
<td>TRIBAL CUSTOMARY ADOPTIVE PARENTS</td>
<td>LEGAL GUARDIANS</td>
<td>FOSTER PARENTS/RELATIVE CAREGIVER</td>
<td></td>
</tr>
<tr>
<td>-------------------------------</td>
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<td>----------------------------------</td>
<td>----------------</td>
<td>----------------------------------</td>
<td></td>
</tr>
<tr>
<td>The child becomes the adoptive parent’s child in all respects</td>
<td>The child becomes the adoptive parent’s child in all respects</td>
<td>The child becomes the “ward” of the guardian</td>
<td>The child remains the responsibility of the county agency and Juvenile Court</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parental legal rights and responsibilities for the child are transferred to the adopting relative</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Relative makes decisions for the child</td>
<td>Yes</td>
<td>Yes</td>
<td>Most</td>
<td>Some</td>
<td></td>
</tr>
<tr>
<td>Relative has control over visitation with parents</td>
<td>All</td>
<td>May be determined through Tribal Customary Adoption Order (TCAO)</td>
<td>Some</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Child will stay in the foster care system</td>
<td>No</td>
<td>No</td>
<td>Maybe</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>A payment and Medi-Cal is available for the child</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>
## COMPARISON OF RIGHTS AND RESPONSIBILITIES

<table>
<thead>
<tr>
<th></th>
<th>ADOPTIVE PARENTS</th>
<th>TRIBAL CUSTOMARY ADOPTIVE PARENTS</th>
<th>LEGAL GUARDIAN</th>
<th>FOSTER PARENTS/RELATIVE CAREGIVER</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Child's Residence</strong></td>
<td>Residence solely determined by adoptive family</td>
<td>Residence solely determined by adoptive family.</td>
<td>Guardian may decide where child and family live in California. Need court permission to move from California or placed back with parent. If move to new state, must re-establish guardianship in new state, subject to new</td>
<td>Placement/residence determined by Juvenile Court and Social Services Department. Juvenile Court must pre-approve any move out of California. The family may need to be licensed in the new state</td>
</tr>
<tr>
<td><strong>Education</strong></td>
<td>Adoptive parents make all decisions. Special services may be available from schools, regional centers and other service providers</td>
<td>Adoptive parents make all decisions. Special services may be available from schools, regional centers and other service providers</td>
<td>Guardian can make all decisions. Legal guardian can request special services from schools, regional centers, or any other service providers</td>
<td>Unless education rights are limited by the Court or parental rights are terminated, the birth parents retain the right to make critical decisions regarding education</td>
</tr>
<tr>
<td><strong>Marriage</strong></td>
<td>Adoptive parents may consent to the marriage of the child</td>
<td>Adoptive parents may consent to the marriage of the child</td>
<td>Both guardian and the court must give consent to the child’s marriage. If the child enters a valid marriage, the child becomes emancipated under California law</td>
<td>Juvenile Court retains the responsibility to consent to the marriage of a child under its jurisdiction</td>
</tr>
</tbody>
</table>
## COMPARISON OF RIGHTS AND RESPONSIBILITIES

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

<table>
<thead>
<tr>
<th>Inheritance</th>
<th>ADOPTIVE PARENTS</th>
<th>TRIBAL CUSTOMARY ADOPTIVE PARENTS</th>
<th>LEGAL GUARDIANS</th>
<th>FOSTER PARENTS/RELATIVE CAREGIVER</th>
</tr>
</thead>
<tbody>
<tr>
<td>An adoptive child is a legal heir of the adoptive parents</td>
<td>An adoptive child is a legal heir of the adoptive parents</td>
<td>Child has no inheritance rights unless the guardian chooses to make the child a legal heir through a will. The child retains rights of inheritance from the birth parents</td>
<td>Child has no inheritance rights unless the foster parent chooses to make the child a legal heir through a will. The child retains rights of inheritance from the birth parents</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Child Misconduct/Destruction of Property</th>
<th>ADOPTIVE PARENTS</th>
<th>TRIBAL CUSTOMARY ADOPTIVE PARENTS</th>
<th>LEGAL GUARDIANS</th>
<th>FOSTER PARENTS/RELATIVE CAREGIVER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adoptive parent is generally responsible for damages resulting from a child’s misconduct or destruction of property of others</td>
<td>Adoptive parent is generally responsible for damages resulting from a child’s misconduct or destruction of property of others</td>
<td>A guardian, like a parent, is liable for the harm and damages caused by the willful misconduct of a child. There are special rules concerning harm caused by the use of a firearm. If you are concerned about your possible liability, you should consult an attorney</td>
<td>The foster parents are not legally liable for the behavior of the child</td>
<td></td>
</tr>
</tbody>
</table>

Information compiled by the Soboba Band of Luiseno Indians 2/11/11
<table>
<thead>
<tr>
<th>Support of Child</th>
<th>ADOPTIVE PARENTS</th>
<th>TRIBAL CUSTOMARY ADOPTIVE PARENTS</th>
<th>LEGAL GUARDIANS</th>
<th>FOSTER PARENTS/RELATIVE CAREGIVER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adoptive parent is legally responsible for the support of the child</td>
<td>Adoptive parent is legally responsible for the support of the child</td>
<td>The parents remain legally responsible for the child’s support. The child may be eligible for TANF (formerly known as AFDC), social security benefits, Veterans Administration benefits, and other public or private funds</td>
<td>The foster parent has no responsibility for the financial support of his/her foster child</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Additional Responsibilities</th>
<th>ADOPTIVE PARENTS</th>
<th>TRIBAL CUSTOMARY ADOPTIVE PARENTS</th>
<th>LEGAL GUARDIANS</th>
<th>FOSTER PARENTS/RELATIVE CAREGIVER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adoptive child is treated as birth child.</td>
<td>Adoptive child is treated as birth child.</td>
<td>Judge may ask the guardian to agree to other special conditions concerning the child’s welfare, such as ongoing visitation with birth parents. A birth parent can petition the court at any time to rescind the guardianship and return custody to the parent. The court will determine if this is a safe and appropriate plan for the child</td>
<td>Foster parents are expected to remain available and to make the child available for visitation by the birth parent and for regular contact with the social worker, CASA, child’s attorney and/or other professionals needing access to the child. They must be accountable for any monies received on behalf of the child</td>
<td></td>
</tr>
<tr>
<td>Other: May include specifics regarding culture, activities, ceremony, name and birth certificate changes</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Information compiled by the Soboba Band of Luiseno Indians 2/11/11
### Foster Care/Pre-Adoptive Placements Tribal Resources

<table>
<thead>
<tr>
<th>Name of Foster Care/Pre-Adoptive Placements</th>
<th>Description</th>
<th>Contact Information</th>
</tr>
</thead>
</table>
Contact: fostercare@aicrc.org |
| **Indian Child and Family Preservation Program** | Recruitment of Indian foster families in Santa Rosa and Ukiah, CA. | Website: [https://www.icfpp.net/services](https://www.icfpp.net/services)  
Contact: Santa Rosa (707) 544-8509, Ukiah (707) 463-2644 |
| **Indian Child & Family Services: A Tribal Consortium Strengthening Indian Children and Families** | in Temecula, CA. Licensed tribal foster family and adoption agency. Service area includes: Riverside, San Bernardino, and San Diego Counties. | Website: [https://indianchildandfamily.org/about.html](https://indianchildandfamily.org/about.html)  
Contact: 800.969.4237 |
Contact: (530) 841-3141 |
| **Tolowa Dee-ni Nation Community Family Services** | Foster care program in Smith River, CA. | Website: [https://www.tolowa-nsn.gov/departments/cfs/](https://www.tolowa-nsn.gov/departments/cfs/)  
Contact: (707) 487-9255 |
| **Tule River Tribe, IV-E Tribe** | Home Studies for relative and/or Tribal placement homes. | Website: [http://www.tulerivertribe-nsn.gov/icwa/](http://www.tulerivertribe-nsn.gov/icwa/)  
Contact: 559-853-6057 |
Contact: gshaw@yuroktribe.nsn.us |
TRIBAL CUSTOMARY ADOPTION QUESTIONNAIRE

County where matter is located:

Court case number:

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

County child welfare worker:

Minor’s attorney:

Parents’ attorney(s):

County Counsel:

Tribal Advocate/representative:

Tribal Attorney (if any):

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

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

Which party raised TCA as a permanency option?

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

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

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

Were there any particular challenges in implementing TCA?

Did the option of TCA:

- Increase or decrease the number of hearings that were required? _____________
- Increase or decrease the length of hearings required? ___________________________
- Increase or decrease the length of time to permanency? _______________________
- Other? _________________________________________________________________
- Overall would you say that the option of TCA positively or negatively affected this case?
  - ________________________________________________________________

Any other comments:
TRIBAL CUSTOMARY ADOPTION CHECKLIST

This checklist was designed to assist tribes through the process of considering and implementing a tribal customary adoption (TCA) as a permanency plan for Indian children in the California dependency system.

Please note that in certain appellate districts (as of March 2017, the Third, Fourth, and Fifth Districts), the relative timing of the selection and implementation hearing (".26 hearing"), the TCA Order, and the home study may differ from other districts.

- Internal consideration of TCA as a possible permanent plan if reunification fails
  (This may need to occur as early as the disposition hearing, if reunification services are bypassed and a selection and implementation hearing — " .26 hearing" — is set)
  a) Desirability of TCA as opposed to less permanent alternative (such as guardianship) — benefits and drawbacks
  b) Likelihood of availability of alternative(s) (i.e., will county, minor’s counsel oppose an alternative? Will court find an exception to TPR applies?)

- Discussion of TCA with county, birth parents (or Indian custodian), child, adoptive parents, and their counsel
  (This should begin at around the same time as the Tribe’s internal consideration)

- Identification and formal notification of the entity who will perform which aspects of the home study (Tribe, county, etc.)
  a) Does the Tribe have the resources to perform its own home study? Are there any advantages to performing it internally?
  b) Can the Tribe do its own background checks, or will it need county/state involvement?
  c) Is there any known criminal history in the home for which an exemption will be required?

- Written notice to child, birth parents (or Indian custodian), adoptive parents, and their counsel of how they may present evidence to the Tribe regarding the TCA and the child’s best interest
  (This can include other persons if the Tribe wishes, such as extended family or persons to whom the child is connected)
  (This should be at least 30 days’ notice, and should allow enough time after the date on which evidence is to be presented for the Tribe to consider and finalize its TCA Order, and then to file it 20 days in advance of the .26 hearing — so probably a minimum of 60 days before the .26 date)

- Receipt of evidence regarding the TCA and the child's best interest

- Finalization of TCA Order

- Filing of TCA Order with Superior Court — 20 days in advance of the .26 hearing
- Superior Court granting of full faith and credit to TCA Order
- Tribe’s approval of the home study
- Remaining adoption documents (these usually do not directly involve the Tribe – adoption
- Expiration of county’s supervision of the adoptive placement, final decree of adoption, and termination of dependency jurisdiction (these also do not directly involve the Tribe)
HYPOTHETICAL TCA SCENARIOS

Scenario #1
Three children are being adopted by non-Indians. They will live about three hours from the tribe’s reservation. Every year the tribe holds two sacred dances in the summer and fall, but the exact dates are not determined until several weeks beforehand by the tribe’s elders. The dances can last as long as two weeks, but there are certain days at the beginning and end of the dance which are the most important to attend. The dances are usually scheduled to allow these days to fall on weekends.

The tribe wants the children to attend all of the dances. But the adoptive parents are concerned about the children’s schedules (school, other extracurricular activities like sports, etc.) and the short amount of advance warning for the dances. They are also concerned about whether as non-Indians they will be able to keep an eye on the children during the dances, and whether they will be welcome to stay on or near the reservation while the dances occur. (There are extended family members who live on the reservation and who have had some positive and some negative interactions with the adoptive parents in the past.)

Scenario #2
Three children are being adopted by non-Indians. The adoptive parents are vegetarian. However, hunting and fishing are very important in the tribe’s culture.

The tribe wants the children to at minimum be aware of the importance of these activities (if not actually learn how to do them). Under tribal custom, friends and family members will sometimes gift portions of a successful hunting or fishing trip. The tribe wants the children to be able to receive and consume these gifts.

Scenario #3
Two young children are being adopted by non-Indians. The TCA Order calls for the children’s attendance at two cultural events per year and visitation with extended family members.

Several years after the TCAs are finalized; one of the adoptive parents loses their job, but soon after receives a better job offer in the Midwest. The TCA Order does not explicitly provide for alternatives to attendance at cultural events or in-person visitation.

Scenario #4
Four children (ages 10 – 2) are being adopted by non-Indians. The Tribe drafts a TCA Order that requires visitation with the parents if certain conditions (primarily sobriety) are met.

One parent then starts acting poorly in regards to visitation – not showing up for visits, and being hostile towards the adoptive parents when they do, questioning the children about the adoptive parents’ home, and
making comments like the adoptive parents are not fit to raise Indian children. The behavior begins to have an adverse effect on the children. They appreciate being able to visit with their parents, but are also happy in the adoptive home.

The adoption has not yet been finalized, as the home study is not yet complete.

Scenario #5

One young child is being adopted by their Indian grandparent. The father has had a drug problem in the past. The grandparent is concerned about threatening statements and behaviors the father has made while under the influence, and wants all visits to be supervised.

The father has recently been diagnosed with an untreated mental illness for which he may have been self-medicating, and the Tribe is hopeful that in time he will be able to safely have unsupervised visits. The case has been open for a long time and the superior court is unwilling to continue it any further.

The child, both parents, and the grandparent are all members of the Tribe.

The Tribal Court is willing to hear the matter in the future solely for the purpose of determining whether visits can move to unsupervised upon improvement by the father in treatment and clean drug test results.
Frequently Asked Questions

Tribal Customary Adoption

1. What is Tribal Customary Adoption?

Tribal Customary Adoption is a new permanency option for Indian children who are dependents of the California State Court. As described in Welfare and Institutions Code 366.24, Tribal Customary Adoption allows an Indian child who is a dependent of the California State Court to be adopted through the customs, laws and traditions of the child’s tribe without the termination of the parental rights of the child’s parents.

2. When is Tribal Customary Adoption available?

Tribal Customary Adoption is available as a permanency option for a dependent Indian child who is unable to reunify with his/her parents when the child’s tribe elects tribal customary adoption as the child’s permanent plan as described in Welfare and Institutions Code 366.24.

3. When did Tribal Customary Adoption become effective?

Tribal Customary Adoption became effective on July 1, 2010.

4. Does Tribal Customary Adoption only apply to new cases initiated after July 1, 2010?

No. Tribal Customary Adoption applies to both new and existing cases so long as parental rights have not yet been terminated.

5. What are the obligations of state and county workers under the new Tribal Customary Adoption law?

The primary obligation that Assembly Bill 1325 (Cook; Stats. 2009, ch.287) (the law enacting Tribal Customary Adoption) places on county child welfare workers is to consult with the child’s tribe about the possibility of tribal customary adoption as a permanency option in every case involving an Indian child.

Specifically, Welfare and Institutions Code section 358.1(j), as amended by AB 1325, requires every social study or evaluation for an Indian child under section 358 include a discussion of whether tribal customary adoption is an appropriate permanent plan for the child if reunification is unsuccessful. In considering this issue, the social worker must consult with the child’s tribe.

Judicial Council of California, Tribal Customary Adoption FAQs, located at: http://www.courts.ca.gov/documents/Tribal-AdoptionFAQ.pdf

In addition, in cases involving an Indian child the court is required to make specific findings at each status review hearing concerning tribal customary adoption to ensure that the child’s tribe has been consulted about tribal customary adoption.

6. Who decides whether to pursue tribal customary adoption as a permanent plan if reunification fails?

Initially, it is the child’s tribe who elects whether or not to pursue tribal customary adoption. An essential element of tribal customary adoption is a valid tribal customary adoption order issued by a federal recognized tribe which can be given full faith and credit by the state court. This means that tribal customary adoption is
only available with the consent and participation of the child’s tribe.

Once the child’s tribe elects tribal customary adoption as the child’s preferred permanent plan, the child’s permanent plan is selected at a hearing held under WIC 366.26.

7. **Does the child or the parents need to consent to tribal customary adoption?**

No. AB 1325 states that neither the parents, the Indian Custodian, nor the child need consent to tribal customary adoption as the child’s permanent plan. [See § 8600.5 of the Family Code which excludes parts of the family code including requirement for consent of a child over 12 years of age to an adoption from application to a tribal customary adoption and Welfare and Institutions Code § 366.24 (c) (11) which provides that parents and Indian custodian do not need to consent] However, as discussed in the Advisory Committee Comment to Rule 5.730 http://www.courthandbook.ca.gov/rules/index.cfm?title=five&linkid=rule5_730 the wishes of the child are “… an important and appropriate factor for the court to consider and for children’s counsel to ascertain and present to the court when determining whether tribal customary adoption is the appropriate permanent plan for an Indian child.”

8. **Can the parents of a child contest a decision to order tribal customary adoption as a child’s permanent plan?**

Yes. There is nothing in AB 1325 that limits any party’s ability to contest the selection of tribal customary adoption as a child’s permanent plan in the same manner that they could contest the selection of any other permanent plan.

9. **Can the parents of a child (or any other party) appeal a decision to order tribal customary adoption as a child’s permanent plan?**

Yes. Welfare and Institutions Code section 366.24 (j) provides that “…except in the case of a tribal customary adoption where there is no termination of parental rights, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted…”. Some parties have suggested that this means that parents cannot appeal an order for tribal customary adoption. However there is nothing in AB 1325 that exempts tribal customary adoptions from the operation of section 395 of the Welfare and Institutions Code which provides generally that:

(a) (1) A judgment in a proceeding under Section 300 may be appealed in the same manner as any final judgment, and any subsequent order may be appealed as an order after judgment…”

The dispositional order is the “judgment” referred to in section 395 and all subsequent orders are appealable. (see In re. S.B. (2009) 46 Cal. 4th 529 at 532) Where the Legislature has neither precluded an appeal nor made any alternate arrangements for review of an order the presumption is that the section 395 right of appeal applies. (id. page 531):
We have repeatedly held that if the Legislature intends to abrogate the statutory right to appeal, that intent must be clearly stated. ‘The right of appeal is remedial and in doubtful cases the doubt should be resolved in favor of the right whenever the substantial interests of a party are affected by a judgment... (id. page 531)

10. Will Attorneys for the minor and the parents be paid by the Court or county for time they spend in the tribal forum in a tribal customary adoption case?

No. Tribal courts and tribal fora are not required to provide court appointed counsel for parties appearing before them. The proceedings in the tribal forum are separate and distinct from the proceedings in the dependency court.

11. Are there special forms for Tribal Customary Adoption?

No. There are no special forms related to Tribal Customary Adoption. Instead, existing Judicial Council forms have been revised and adapted to include Tribal Customary Adoption. You can find those revised forms here: Judicial Council Forms Amended to Implement Tribal Customary Adoption.doc

Judicial Council of California, Tribal Customary Adoption FAQs, located at: http://www.courts.ca.gov/documents/Tribal-AdoptionFAQ.pdf

There have also been revisions to a number of forms issued by the California Department of Social Services: http://www.cdss.ca.gov/cdssweb/entres/forms/English/AAP4.PDF ; http://www.cdss.ca.gov/cdssweb/entres/forms/English/AD4348.pdf .

12. Are there special rules of Court related to Tribal Customary Adoption?

No. There are no specific rules related to tribal customary adoption. Instead the Judicial Council has made a number of revisions to existing rules to recognize tribal customary adoption. You can find those revised forms here: California Rules of Court Amended to Implement Tribal Customary Adoption.doc

13. Does the Department need to have a QEW for a TCA?

NO

14. Does the Tribe have to get every party’s approval to do a TCA?

NO

15. Does the Tribe have to get parties’ approval of the TCAO?

NO

16. Can a TCA happen with a non-Indian family?

YES
17. What happens, what are our remedies, if the TCA adoptive family doesn’t follow the TCAO?

If one party violates the TCAO, then the other party must participate or attempt to participate, in good faith, in family mediation services of the court or dispute resolution through the tribe regarding the conflict (WIC §366.26(i)(2)).

If the conflict is not resolved through mediation or dispute resolution, then the damaged party may file an enforcement action in court (WIC §366.26(i)(2)).

18. Can a tribal court issue a TCAO?

YES

19. Can the tribe/should the tribe tell the parties we want a TCA even if we do not have an adoptive family in mind?

YES

SOURCE: Judicial Council of California, Tribal Customary Adoption FAQs, located at: http://www.courts.ca.gov/documents/Tribal-AdoptionFAQ.pdf
TRIBAL CUSTOMARY ADOPTION ORDER OF THE
[CALIFORNIA TRIBE] SAMPLE

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:

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:
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:

Inheritance:

**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:

Financial Support:

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

Educational rights:

Inheritance:

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.

Travel:

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

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