

What is Tribal Customary Adoption?

Tribal customary adoption (TCA) is an alternative permanent plan option for children in the California dependency system who are “Indian Children” under the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1902). With the consent and participation of the Indian child’s tribe, TCA allows an Indian child who is a dependent of the California courts to be adopted without first requiring the termination of the parental rights of the child’s biological parents. The TCA process is governed by California statutes that were sponsored and drafted by California Indian Tribes.

Why TCA?

TCA may be a good permanency choice where the child’s parent(s) fail to reunify and the child’s tribe prefers TCA to other permanency options. In these circumstances TCA may provide advantages such as:

- Does not disrupt and may provide a means of strengthening an Indian child’s connection with his or her tribe;
- Ensures child maintains eligibility for federal and tribal benefits associated with tribal affiliation;
- Helps maintain connections to extended family and community; and
- Biological parents not burdened with a termination of their parental rights.

Which Cases?

Currently TCA is only available in dependency cases. It is not available in juvenile delinquency cases, family law cases or probate cases.

TCA is an available permanency option when:

- The child is an ICWA eligible Indian child from a federally recognized tribe;
- the child’s tribe agrees that TCA should be the child’s permanent plan;

TCA is an option for both California tribes and out of state tribes. If you are dealing with an out of state tribe, the tribe may not be familiar with the TCA process in California and may require education.

TCA is available even when the child may have already been in an alternative permanent plan such as guardianship. So long as parental rights have not been terminated, the option of TCA should be discussed with the child’s tribe whenever the child’s permanent plan is revisited.

TCA is available for a non-minor dependent when ICWA applied to that non-minor dependent’s dependency case prior to the non-minor dependent’s 18th birthday.

When to consider TCA?

The option of TCA must be considered and discussed with the child’s tribe in each case where the child is in foster care, as soon as the child’s tribe has been identified.

Who must raise TCA as an option?

It is the responsibility of the child welfare agency worker to discuss the option of TCA with the Indian child’s tribe as part of concurrent planning in an ICWA case. Welf. & Inst. Code § 358.1 requires the social worker to consult with the child’s tribe and include in his or her reports a discussion of whether TCA is an appropriate permanent plan if reunification is unsuccessful.

Do the child or the child’s parents need to consent to the TCA?

No. Like any other permanent plan, the parties can contest the plan and make their arguments for a different permanent plan. However, neither the parents nor the child need to consent to TCA. Once it is determined that reunification is no longer an option, and the child’s tribe indicates a preference for TCA, TCA is the child’s presumptive permanent plan and any party challenging TCA as the permanent plan has the burden of establishing that TCA would be detrimental to the child. (*In re H.R.*, (2012) 208 Cal.App.4th 751) Ultimately, it is the judge who decides the child’s permanent plan.

Who gets to decide the terms of the TCA order?

Once TCA is chosen as the child’s permanent plan, the terms of the TCA order are determined by the child’s tribe. The child, birth parents, Indian custodian and prospective tribal customary adoptive parents and their counsel must have the opportunity to present evidence to the tribe regarding the child’s best interest. The TCA order must, at a minimum, address the legal relationship of the birth parents and the child including whether or not there will be continuing contact; the responsibilities of the birth parents if any; and the relationship with the tribe and the rights of inheritance of the child.

What are the standards for approval of a TCA home?

The standards for approval of the home are the prevailing social and cultural standards of the child’s tribe (Welf & Inst Code §366.24(c)(1)(B))

A home study must be completed which includes an evaluation of all the same factors that must be included in other adoptive home studies. All criminal background checks of state and federal level criminal offender records and Child Abuse Central Index checks on persons in the home over 18 years of age must be completed before a tribal customary adoption placement can be made.

Can the TCA be undone?

A TCA is as final and permanent as other adoptions. The superior court reviews the TCA order issued by the tribal court to ensure it meets the statutory requirements and then affords it full faith and credit. Once the tribal TCA order is granted full faith and credit by the State Superior Court, the terms are incorporated into the state order of adoption and all parties are bound by the terms.

Where can I find more resources related to Tribal Customary Adoption?

The Judicial Council Center for Families, Children & the Courts has TCA information and resources at

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

The California Department of Social Services (CDSS) has issued several All County Letters about TCA which are available here

<http://www.childsworld.ca.gov/PG2074.htm>

The Soboba Band of Luiseno Indians, sponsor of the TCA legislation in California has resources related to TCA at <http://www.caltca.org/>

The National Indian Child Welfare Association (NICWA) has information on TCA at

<http://www.nicwa.org/adoption/>

Where can I find more information?

The Tribal/State Programs Unit of the Judicial Council's Center for Families, Children & the Courts, assists the state judicial branch with the development of policies, positions, and programs to promote the highest quality of justice and service for California's Native American communities in all case types. The unit also implements tribal-state programs that improve the administration of justice in all proceedings in which the authority to exercise jurisdiction by the state judicial branch and the tribal justice systems overlaps. To learn more about the Tribal/State Programs Unit or for assistance, call Jennifer Walter at 415-865-7687 or visit www.courts.ca.gov/programs-tribal.htm.

This unit is supported with funds from the Office on Violence Against Women, U.S. Department of Justice that are administered through the Governor's Office of Emergency Services (Cal OES), the U.S. Department of Health and Human Services, Court Improvement Program, and the California Department of Social Services

<http://www.courts.ca.gov/3067.htm>



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