

Indian Child Welfare Act (ICWA)

Overview

Purpose

The Indian Child Welfare Act (ICWA) is a federal law that was passed in 1978 to protect and preserve Indian tribes and their most valuable resource, their children. It was created to address the following issues:

- Large numbers of Indian children were being removed from their families by state courts and county social services agencies;
- Most of these children ended up in non-Indian homes and institutions;
- Indian children who were cut off from their tribal communities and cultures often later developed behavioral and emotional problems; and
- State and county officials often did not understand, ignored, or rejected the cultural or social customs of the child's tribal community.

The purpose of ICWA is to:

- Protect the best interest of Indian children;
- 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
- Provide assistance to Indian tribes in the operation of children and family services programs.

Today, while the ICWA contains procedures that help ensure that a child stays within an Indian community, it also can facilitate a team approach to improve outcomes and access resources for agencies and tribes working with high-risk Indian families. For example, using ICWA as a basis for collaboration can provide a child's access to tribal resources to help implement service plans, improve self-esteem and emotional well being, avoid generational post traumatic stress disorder, and expand otherwise limited foster care placement prospects. ICWA compliance also helps ensure that a dependency proceeding is not later invalidated by the juvenile court or overturned on appeal, possibly placing a child at greater risk and undermining permanency efforts.

This policy and procedure is the product of the ICWA Working Group, a collaboration between the Lake County Department of Social Services and Lake County based tribes, which include: Big Valley Rancheria, Elem Indian Colony, Habematolel Pomo Tribe of Upper Lake, Middletown Rancheria Band of Pomo Indians, Robinson Rancheria Band of Pomo Indians, Scotts Valley Band of Pomo Indians; committed through effective implementation of the ICWA to protecting Indian children at risk for abuse or neglect and improving services to Indian families.

Continued on next page

Overview, Continued

Contents

This publication contains the following topics:

Topic	See Page
ICWA and State Indian Child Laws	7
Rights of Federally Recognized Tribes	9
Rights of Non-Federally Recognized Tribes	10
Other Eligibility	12
Inquiry	13
Active Efforts	14
Placing an Indian Child in Foster Care	16
Social Worker and/or Designee Responsibilities/Ongoing Duties	20
Social Worker and/or Designee Responsibilities for Petition	24
Social Worker and/or Designee Responsibilities for Jurisdiction	25
Continue to Notice	30
Additional Noticing Requirements	33
Qualified Expert Witness	34
Social Worker and/or Designee Responsibilities for Disposition	36
Social Worker and/or Designee Responsibilities for Permanent Plan	37
Tribal Customary Adoption (TCA) - Introduction	40
Consultation with the Indian Child's Tribe - TCA	42
Stages of a TCA	45
TCA Dependency Process	49
TCA Home Study	52
Tribal Designee - TCA	56
Review of Criminal and Child Abuse History for TCA	57
Tribal Customary Adoption Order (TCAO)	59
Addendum to the 366.26 Report	61
Full Faith and Credit	62
Set Aside	64
ICPC and TCA	65
Entering Data into CWS/CMS	66

Continued on next page

Introduction, Continued

Authority overview

ICWA governs the child proceedings for determining the placement of an Indian child when that child is removed from the custody of his or her parent or guardian. In 2006, legislation was passed in California (SB 678) that codified into state law various provisions of the federal Indian Child Welfare Act, the BIA Guidelines for State Courts. This affirmed California's interest in protecting Indian children. The proper implementation of the federal ICWA and state laws regarding Indian children is paramount in respecting Indian culture and heritage, preventing the breakup of Indian families and promoting tribal involvement on behalf of Indian children entering the child welfare system.

Federal and State law

ICWA, 25 United States Code Section 1901-1963, provides legal protections designed to prevent the breakup of Indian families.

California Rules of the Court rule 5.664, explains the protocol for ICWA court hearings.

California Rules of Court, Rule 5.664 (d) mandates that the juvenile court and county welfare inquire whether a child is or may be an Indian child.

Family Code 7907.3, the Interstate Compact on the Placement of Children shall not apply to any placement, sending, or bringing of an Indian child into another state pursuant to a transfer of jurisdiction to a tribal court under Section 1911 of the ICWA

California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Division 31-515-520, states ICWA provisions and policies regarding placement of Indian children.

CDSS All County Information Notice [I-40-10](#) Expert Witness

CDSS All County Information Notice [I-86-08](#), clarifies the use of tribally approved homes as placement options for Indian children.

CDSS All County Information Notice [I-23-06](#), CDSS auditing of relative and non-related extended family member approvals for placement.

CDSS All County Information Notice [I-43-04](#), ICWA frequently asked questions.

CDSS All County Letter, [10-47](#), Tribal Customary Adoption.

CDSS All County Letter [10-17](#), Tribal Customary Adoption.

CDSS All County Letter [08-02](#), ICWA changes in state law.

CDSS All County Letter [05-13](#), relative and non-related extended family member approvals for placement.

Continued on next page

Introduction, Continued

Welfare and Institutions Code (WIC)

§ 224 states that California has an interest in protecting Indian children who are members of, or are eligible for membership in an Indian tribe. 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 and other applicable law, designed to prevent the child's involuntary out-of-home placement and, whenever that placement is necessary or ordered, 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.

§ 224.1, definitions according to Section 1903 of the ICWA and Indian child membership in more than one tribe. Factors that need to be considered when determining with which tribe the child has the more significant contact.

§ 224.2, explains the notice requirement for an Indian child custody proceeding, including notice to interested parties and proof of service.

§ 224.3, states that county welfare departments have an affirmative and continuing duty to inquire whether a child for whom a petition under Section 300 is to be, or has been, filed is or may be an Indian child in all dependency proceedings if the child is at risk of entering foster care or is in foster care. It further explains circumstances that may provide reason to know that the child is an Indian child. Explains that a Social Worker (SW) is required to make further inquiry regarding the possible Indian status of the child by interviewing parents, Indian custodian, and extended family members to gather the information required to properly notice the tribe(s). Further states that if new information is obtained regarding the child's Indian heritage, the tribe, BIA must be re-noticed with the new information. This must be done even if the court already found that ICWA does not apply. Notice must be provided according to WIC Section 224.2.

§ 224.4, the Indian child's tribe and Indian custodian have the right to intervene at any point in an Indian child custody proceeding.

§ 224.5, in an Indian child custody proceeding, the court shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe applicable to the proceeding to the same extent that such entities give full faith and credit to the public acts, records, judicial proceedings, and judgments of any other entity.

Continued on next page

Introduction, Continued

**Welfare and
Institutions
Code
(WIC),
Continued**

§ 224.6, requires the testimony of a “qualified expert witness” in an Indian child custody proceeding when recommending foster care placement or termination of parental rights. Further explains who qualifies as a “qualified expert witness” and content of testimony.

§ 290.1, notice requirement for when a child is to be retained in custody, initial petition hearing.

§ 290.2, notice requirement for initial petition hearing, petition filed.

§ 291, notice requirement for jurisdictional, pretrial, adjudication, or disposition hearing.

§ 292, notice requirement for cases where child(ren) is with parent or guardian.

§ 293, notice requirement for 366.21 or 366.22 hearings.

§ 294, notice requirement for 366.26 hearing.

§ 295, notice requirement for review of permanent plan hearing, 366.3.

§ 305.5, the right of a parent, Indian custodian, and Indian tribe to petition for the Indian child custody proceeding to be transferred to the jurisdiction of the child's tribe, also explains good cause to deny the petition.

§ 306.6, states that the court may permit non-federally recognized tribes to participate in the proceeding upon request of the tribe.

§ 361.4, states that the home of every prospective caregiver that is not a licensed or certified foster parent must be visited to assess its appropriateness prior to placing the child in the home, this includes criminal clearances.

§ 361.7, notwithstanding 361.5, definition of active efforts which must be unsuccessful before taking an Indian child into temporary custody (except to prevent imminent physical damage or harm to the child) and prior to termination of parental rights.

§ 361.31, placement preference for Indian Children. Adoptive placement for Indian children.

§ 366.24, Tribal Customary Adoption requirements.

§ 366.26, procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

Continued on next page

Introduction, Continued

**Welfare and
Institutions
Code
(WIC),
Continued**

§ **366.3**, there must be a sufficient basis for termination of parental rights or the court may find a compelling reason for determining that termination would be detrimental to the child.

§ **16507.4 (b)**, explains voluntary family reunification services and procedure to follow for Indian children.

ICWA and State Indian Child Laws

When ICWA and State Indian child laws apply

The ICWA and state Indian child laws apply to Indian child custody proceedings when:

- the Indian child may be placed in foster care as a result of removing the child from his or her parent or Indian custodian and the parent or Indian custodian cannot have the child returned upon demand;
 - the Indian child may be adopted and parental rights will be terminated;
 - parental rights have been terminated;
 - the Indian child may have a legal guardian appointed by the order of the court;
 - pre-adoptive placement;
 - adoptive placement; or
 - involuntary child custody proceedings.
-

Definition of an Indian child

The ICWA and state Indian child law define an "Indian child" as an unmarried person under the age of 18 who:

- is a member of a federally recognized Indian tribe; or
 - is eligible for membership in a federally recognized Indian tribe and he or she is the biological child of a member of a federally recognized Indian tribe.
-

Tribe determines membership

It is the exclusive determination of the tribe whether a child is or is not eligible to be a tribal member. Depending on the tribe's membership laws, enrollment may or may not be necessary for the child to be considered a member.

Right of Tribe and Custodian

The Indian child's tribe and Indian custodian have the right to intervene at any point in an Indian child custody proceeding.

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ICWA and State Indian Child Laws, Continued

**Child's
connection to
Tribal
community is
important**

It is in the best interest of an Indian child that the child's membership in the child's Indian tribe and connection to the tribal community be encouraged and protected, regardless of any of the following:

- whether or not the Indian child was in the physical custody of an Indian parent or Indian custodian at the commencement of a child custody proceeding;
 - whether or not parental rights have been terminated; or,
 - whether or not the Indian child has lived on an Indian reservation.
-

Rights of Federally Recognized Tribes

**Right to
intervene**

The ICWA states, "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 the right to intervene at any point in the proceeding."

**Full
participation**

An intervening tribe may fully participate as a party to a proceeding.

**Right to Tribal
Court**

The Indian tribe has the right to exercise tribal jurisdiction and ask that the case be moved to tribal court as defined by the tribe.

**Additional
rights**

The Indian tribe has the following additional rights:

- the right to be notified about the Indian child custody proceeding;
 - the right to ask for up to 20 more days to get ready for a hearing;
 - the right to deny a parent or Indian custodian request for the case to be moved to tribal court as defined by the tribe;
 - the right to look at the documents about the case that the court has on file;
 - the right to see records kept by the State on the placement of tribal children;
 - the right to assert certain tribal laws or customs to the Indian child custody proceeding, e.g. definition of "extended family";
 - the right to assert ICWA placement between the different categories of placement preferences.
-

**Interstate
Compact on the
Placement of
Children
(ICPC)**

The Interstate Compact on the Placement of Children (ICPC) does not apply to any placement, sending, or bringing of an Indian child into another state pursuant to a transfer of jurisdiction to a tribal court. ICPC continues to apply to all cases in which the county Court retains jurisdiction.

Rights of Non-Federally Recognized Tribes

Court determination

Unless permitted to participate by the court pursuant to WIC Section 306.6, ICWA **may not** apply to a child custody proceeding when a child is a member of or eligible for membership in a non-federally recognized tribe. Active efforts, placement preference, and the testimony of a qualified expert witness are not required for these cases. However, the court shall make this determination, not the SW.

Notice of proceedings

Non-federally recognized tribes are not entitled to notice of the proceedings. However, under state Indian child law, the court may permit the child's non-federally recognized Indian tribe to participate in the child custody proceeding upon request of the tribe. This is limited to one tribe, the tribe with whom the child has the most significant contact.

Applicable web sites

There is limited information on non-federally recognized tribes. Below are some web sites that can be of some assistance. It is recommended that the phone number and address of the non-federally recognized tribe be obtained from the parents.

Web Site	Purpose
www.kstrom.net/isk/maps/usmapindex.html	A list of non-federally recognized tribes; click on the applicable state
http://w1.paulbunyan.net/~giic/pages/office_directory.html	To obtain the address or phone number of the non-federally recognized tribe

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Rights of Non-Federally Recognized Tribes, Continued

Participation in Court proceedings If the court permits a non-federally recognized tribe to participate in the child custody proceeding, the tribe may do the following with the permission of the court:

- Be present at the hearing.
 - Address the court.
 - Request and receive notice of hearings.
 - Request to examine court documents relating to the proceeding.
 - Present information to the court that is relevant to the proceeding.
 - Submit written reports and recommendations to the court.
 - Perform other duties and responsibilities as requested or approved by the court.
-

Request for placement When a non-federally recognized tribe requests that their placement recommendations be considered, such recommendations may be considered by the county, but the placement would still be subject to licensing and/or relative approval standards. The purpose of allowing non-federally recognized tribes to participate in child welfare proceedings is that they can assist the Court in making decisions that are in the best interest of the child. The tribe can inform the Court about placement options, identification of relative or non-related extended family members and help identify Indian specific services and programs available to the child.

Notice of proceedings If the court orders a non-federally recognized tribe to receive notice of hearings, mail the regular notice forms by 1st Class Mail. The [ICWA-030 Notice of Child Custody Proceeding for Indian Child](#) is **not** to be used to notice Non-federally recognized tribes.

Other Eligibility

Tribal membership inconclusive

When an Indian child is a member of more than one federally-recognized tribe or is eligible for membership in more than one tribe but is not a member of any of them, the court will determine which tribe is the Indian child's tribe for purposes of the Indian child custody proceeding. The tribe with which the child has contact that is more significant should be designated as the Indian child's tribe.

Court report

To assist the Court in making an informed decision regarding the membership of an Indian child, the Court report must contain the following information:

- Length of residence on or near the reservation of each tribe and frequency of contacts with each tribe.
 - Child's participation in activities of each tribe.
 - Child's fluency in the language of each tribe.
 - Whether there has been a previous adjudication with respect to the child by a court of one of the tribes.
 - Residence on or near one of the tribes' reservation by the child's relatives.
 - Tribal membership of custodial parent or Indian custodian.
 - Interest asserted by each tribe in response to the notice sent.
 - The child's self-identification.
-

Indian child is a member of one Tribe

If the child is a member of or becomes a member of only one tribe, that tribe should be designated the Indian child's tribe even though the child is eligible for membership in another tribe.

Inquiry

Initial contact Inquiry for American Indian heritage should be done for every family served by Lake County Child Welfare Services during initial contact with all families, especially when placement is imminent.

Completion of Indian Child Inquiry Attachment Court form [ICWA-010\(A\) Indian Child Inquiry Attachment](#) **must** be completed by the detaining SW to be filed with the petition. SW's have an affirmative and **ongoing** duty to inquire if the child is an Indian child. If new information is obtained regarding the child's Indian heritage, the tribe, BIA and Secretary of the Interior must be re-noticed with the new information. This must be done even if the court already found that ICWA does not apply.

Determining whether a child is an Indian child The circumstances that may provide reason to know the child is an Indian child include, but are not limited to the following:

- A person having an interest in the child, including the child, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child's extended family provides information suggesting the child is a member of a tribe, or eligible for membership in a tribe, or one or more of the child's biological parents, grandparents, or great-grandparents are or were a member of a tribe.
- The residence or domicile of the child, the child's parents, or Indian custodian is in a predominantly Indian community.
- The child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as Tribal Health service.

Active Efforts

Keeping Indian families together

The ICWA helps to keep children connected to their families and tribes by requiring child welfare agencies to make active efforts to keep Indian families together. A SW must provide an Indian family with active efforts, which is casework that goes beyond reasonable efforts. Active and early participation and consultation with the child's tribe in all case planning decisions is the key to active efforts, think of the tribe as a partner in identifying culturally appropriate service providers and resources.

When active efforts must be offered

Active efforts must be offered in the following situations:

- prior to removal of an Indian child;
 - to prevent or eliminate the need for removal of an Indian child;
 - to make it possible for an Indian child to return home; and
 - to complete whatever steps are necessary to finalize a permanent plan for an Indian child.
-

Description of active efforts

Active efforts must be unsuccessful before taking an Indian child into temporary custody (except to prevent imminent physical damage or harm to the child) and prior to termination of parental rights. Active efforts include providing remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and shall be assessed on a case-by-case basis. Active efforts shall be delivered in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe. Active efforts shall also utilize the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.

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Active Efforts, Continued

Guidelines for providing active efforts

The following are **suggested** best practice guidelines for providing active efforts:

- A request to the Indian child's tribe to convene traditional and customary support and resolution actions or services.
- Identification and participation of tribally designated representatives at the earliest point.
- Consultation with extended family members to identify family structure and family support that may be provided by extended family members.
- Frequent visitation in the Indian child's home and the homes of the child's extended family members.
- Exhaustion of all tribally appropriate family preservation alternatives.
- Identification and provision of information to the child's family concerning community resources that may be able to offer housing, financial, and transportation assistance and actively assisting the family in accessing the community resources.

Duration of active efforts

SWs shall provide active efforts to families that may be of American Indian descent until eligibility/membership is determined in writing by the tribal representative. If eligibility/ membership is determined, active efforts must continue. If eligibility/membership is denied, active efforts are discontinued after the court has made a finding that ICWA does not apply.

Placing an Indian Child in Foster Care

Initial placement	When an Indian child who is a member of or eligible for membership in an Indian tribe is detained, the SW shall make every effort to place the child in an ICWA compliant home.
Ongoing placement	When looking at continued placement, Indian children should be placed in the least restrictive setting, resembling a family situation, in which the child's special needs are met and within reasonable proximity to the child's home, taking into account any special needs of the child. The SW should use the services of the Indian child's tribe to secure placement in an ICWA compliant home.
Placement preference	<p>Unless there is good cause to the contrary or the child's tribe establishes a different order of preference by resolution, the order of placement preference for Indian children is:</p> <ul style="list-style-type: none">• A member of the child's extended family (according to the ICWA "extended family member" shall be 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); or• A foster home licensed, approved, or specified by the Indian child's tribe; or• An Indian foster home licensed by an authorized non-Indian licensing authority; or• 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.

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Placing an Indian Child in Foster Care, Continued

**Good cause to
modify
placement
preference
order**

The order indicated above must be followed anytime an Indian child is placed or replaced in foster care, unless there is good cause to modify the order of preference. If a preferred placement is not available for an Indian child, active efforts must be made to place the child with a family committed to enabling the child to have extended family visitation and participation in the cultural and ceremonial events of the child's tribe. "Good cause" includes:

- The unavailability of a preferred placement, after a diligent search has been conducted; or
 - The desires of the Indian parent, child, or tribe; or
 - The child's special needs for a placement, which offers either proximity to a parent or a therapeutic program when no available preferred placement can meet these needs.
-

**Adoptive
placement
preference**

Unless there is good cause to the contrary or the child's tribe establishes a different order of preference by resolution, the adoptive placement preference shall be with:

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

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Placing an Indian Child in Foster Care, Continued

Tribally approved homes

A **tribally approved home** is a home approved by the child's tribe. Tribally approved homes are not subject to State licensing approval standards. ICWA authorizes Indian tribes and tribal organizations to establish and operate child and family services programs, including a system for licensing or otherwise regulating Indian foster and adoptive homes.

Tribally approved homes are deemed equivalent to licensing or approval by the State. Tribes are not required to have a Title IV-E agreement to have a child placed in a tribally approved home. If a tribe chooses to do so, it can establish a process/set of standards for licensing, certifying, or approving homes for placement of their children. Homes that complete this process and are approved by the tribe would be considered a tribally approved home. The approval document could be a tribal resolution or some other document that has been approved by the tribe.

The relative or non-related extended family member approval standards required by Adoptions and Safe Families Act and AB 1695 are not to be applied to **tribally approved** homes. The only exception to this is the requirement for criminal records checks. Prior to placing a child in a tribally approved home the SW will:

- Obtain a tribal council resolution or letter from the tribe identifying the prospective foster or adoptive parents and designating the home as tribally approved for the child.
- Complete a criminal records check and Child Abuse Registry background check on all individuals residing in the home over age eighteen. If the criminal records check indicates that an individual has been convicted of a crime, a child may not be placed in the home, unless a criminal records exemption is granted.
- Obtain a [LIC 508D Out of State Disclosure and Criminal Record Statement](#) from each adult in the home. If an individual has lived out of State within the last five years, the Child Abuse Registry in the other State must also be checked, provided that State maintains a registry, by completing and submitting a [LIC 198B Out of State Child Abuse-Neglect Report Request](#). A list of contacts for registries in other States can be found at <http://www.cclld.ca.gov/res/word/AWStateContacts.doc>
- Check the Child Welfare Services/Case Management System (CWS/CMS) for any hits involving the proposed caregiver, or others residing in the home and assess with supervision to determine the suitability of the proposed caregiver/placement, if hits are found.

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Placing an Indian Child in Foster Care, Continued

Tribally designated homes

A **tribally designated home** is a home not formally approved or licensed by the tribe, but designated as a potential placement home. In this case, the department is responsible for approving the home and completing the [SOC815 Approval of Family Caregiver Home](#), [SOC817 Safety Standards Checklist](#) and [SOC818 NREFM Caregiver Assessment](#) forms, or the home must be licensed or certified by a foster family agency.

CWS determines placement

Ultimately, the final decision and responsibility is with the county child welfare services agency for determining the appropriateness of an Indian child placement. If there is reason to believe that the placement would not be a safe one, the county placement worker should discuss the concern with the tribe and allow for possible correction of the issue of concern. The tribe may also contact the SW to voice their concern for the child's safety in placement. However, licensing/approval requirements (e.g., the size of the home, the number of individuals residing in the home, whether more than two children share a bedroom) are **not** to be used as rationale for not placing an Indian child into a tribally-approved home.

Instances that may cause concern for the county placement worker are those that potentially place the child in situations that are dangerous or do not provide adequate protection. For example, if a child is removed from the parent's home due to substance abuse by the parent that causes his or her inability to protect the child, and the tribe has indicated that it intends to place the child back with the parent, this would not be a safe placement for the child.

Documentation

Document all active efforts made to comply with the order of placement preference for Indian children in the CWS/CMS Contact Notebook and in the court report under the "Out of Home Placement" section.

Even when parental rights have been terminated, ICWA applies and requires compliance with placement preference. The removal of an Indian child from their families and placement in foster and adoptive homes shall be consistent with the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or maintains social and cultural ties.

Social Worker and/or Designee Responsibilities/Ongoing Duties

**Check child's
Indian status**

Check the Client Notebook in CWS/CMS for information on the child's Indian status, by completing the following steps in CWS/CMS:

Step	Action
1	Click the <i>Client Services Application</i>
2	Click the <i>Open Existing Case Folder</i> button
3	Use the <i>Open Folder</i> dialog box to select the case you want to open
4	Click <i>OK</i>
5	Click <i>Yes</i>
6	Click the <i>Client Management (Blue)</i> section.
7	Click the <i>Open Existing Client Notebook</i>
8	Select the <i>Client Notebook(s)</i> you want to open
9	Click <i>OK</i>

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Social Worker and/or Designee Responsibilities/Ongoing Duties, Continued

Further determination of child's Indian status

Attempt to determine if the child is Native American by completing the following:

- Request that the parent/legal guardian/Indian custodian complete a *Parental Notification of Indian Status* [ICWA-020 Parental Notification of Indian Status](#).
- Contact parents, extended family members and Indian custodian to gather the information needed to complete the *Notice of Involuntary Child Custody Proceedings for an Indian Child* [ICWA-030 Notice of Child Custody Proceeding for Indian Child](#).
- Document the name and relationship of the person providing the information and their response in the Contact Notebook of CWS/CMS by completing the following steps in CWS/CMS:

Step	Action
1	Click the <i>Client Services Application</i> .
2	Click the <i>Open Existing Case Folder</i> button.
3	Use the <i>Open Folder</i> dialog box to select the case you want to open.
4	Click <i>OK</i> .
5	Click <i>Yes</i> .
6	Click the <i>Service Management (Orange)</i> section.
7	Click the "+" under the <i>Contact Notebook</i> .
8	Select the child for whom the contact is on the behalf of.
9	Click <i>OK</i> .
10	Complete all known and mandatory on the <i>Contact</i> page.
11	Click the <i>File</i> drop-down menu.
12	Select <i>Save to Database</i> .

- If necessary, contact the BIA or the State Department of Social Services for assistance in identifying the names and contact information of the tribes in which the child may be a member or eligible for membership.

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Social Worker and/or Designee Responsibilities/Ongoing Duties, Continued

Record parent's information

Add new tribal information for a child of Indian ancestry in CWS/CMS by first completing the ICWA page in a parent's Client Notebook. After completing the parental information, all the child's Tribal Membership fields will display the parent's information, except the Membership Status, Status Date, and Enrollment Number fields, which need to be completed in the child's Client Notebook.

Complete ID page in Client Notebook

Code the child as "claims membership" or "pending verification" on the ID page of the Client Notebook on CWS/CMS, as appropriate.

Document efforts

Document all efforts made to determine whether the child is an Indian Child in the Contact Notebook, Case Plan, and Court Report by completing the following steps in CWS/CMS:

Contact Notebook

Step	Action
1	Click the <i>Client Services Application</i> .
2	Click the <i>Open Existing Case Folder</i> button.
3	Use the <i>Open Folder</i> dialog box to select the case you want to open.
4	Click <i>OK</i> .
5	Click <i>Yes</i> .
6	Click the <i>Service Management (Orange)</i> section.
7	Click the "+" under the <i>Contact Notebook</i> .
8	Select the child for whom the contact is on the behalf of.
9	Click <i>OK</i> .
10	Complete all applicable information on the <i>Contact</i> page.
11	Click the <i>File</i> drop-down menu.
12	Select <i>Save to Database</i> .

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Social Worker and/or Designee Responsibilities/Ongoing Duties, Continued

Document efforts
(continued)

Case Plan

Step	Action
1	Click the <i>Client Services Application</i> .
2	Click the <i>Open Existing Case Folder</i> button.
3	Use the <i>Open Folder</i> dialog box to select the case you want to open.
4	Click <i>OK</i> .
5	Click <i>Yes</i> .
6	Click the <i>Case Management (Green)</i> section.
7	Click the <i>Open Existing Case Plan</i> Notebook.
8	In the <i>Open Notebook</i> dialog box, select the <i>In Effect</i> case plan.
9	Click <i>OK</i> .
10	Enter applicable documentation.
11	Click the <i>File</i> drop-down menu.
12	Select <i>Save to Database</i> .

Court Report

Step	Action
1	Click the <i>Client Services Application</i> .
2	Click the <i>Open Existing Case Folder</i> button.
3	Use the <i>Open Folder</i> dialog box to select the case you want to open.
4	Click <i>OK</i> .
5	Click <i>Yes</i> .
6	Click the <i>Create New Court</i> .
7	Click on <i>Report Type</i> drop-down list to identify the type of report to be created.
8	Enter the date the report will be filed.
9	Click the "+" in the <i>Minors</i> grid to add other children to be included in the court report.
10	Click <i>OK</i> .
11	Click the <i>File</i> drop-down menu.
12	Select <i>Save to Database</i> .

Social Worker and/or Designee Responsibilities for Petition

Notify the tribe If the tribe is known, notify the tribe by telephone and give them the time and place of the detention hearing.

Notify the parents Notify the parents/guardians/custodians in-person or by telephone and give them the time and place of the detention hearing.

Complete the Juvenile Dependency Petition In the [JV100 Juvenile Dependency Petition](#) and [JV101\(A\) Additional Children Attachment](#) sections L and M, indicate if the child(ren) may be or is Native American by selecting the appropriate box for each child. After the allegations document all **active efforts** made to prevent the need for removal, all **ICWA inquiry** information, include if the tribe is federally recognized or non-federally recognized, and to whom and how **notice** was provided.

Completion of ICWA forms Along with the detention paper work, the SW should have the parents/guardians/Indian custodians complete the [ICWA-020 Parental Notification of Indian Status](#) form, the SW must complete the [ICWA-010\(A\) Indian Child Inquiry Attachment](#) form and file both with the petition. If the [ICWA-020 Parental Notification of Indian Status](#) cannot be completed in time to file with the petition, file before or by the Jurisdictional hearing.

Findings and orders In the Detention Findings and Orders, recommend the court order that the “Department of Social Services shall have permission to share case information with a qualified expert witness and the ICWA representative designated by the tribe(s). The parent shall comply with providing the department all known information on relatives.”

Social Worker and/or Designee Responsibilities for Jurisdiction

Post Detention Hearing

Immediately after the Detention hearing, thoroughly complete the [ICWA-030 Notice of Child Custody Proceeding for Indian Child](#) with the information obtained from the parents/guardians/Indian custodians/extended family members, etc. Do not leave any spaces blank and do not put N/A if the information is unknown. Rather, if unknown, write in the applicable space, "No Information Available" or "See Additional Information Below." Then, in the Additional Information box put who was interviewed.

The [ICWA-030 Notice of Child Custody Proceeding for Indian Child](#) notifies the child's tribe of child welfare involvement in the life of an Indian child. It also requests the tribe's determination of membership by the tribal representative. Active efforts include:

- Contact extended family members to gather the information needed to complete the [ICWA-030 Notice of Child Custody Proceeding for Indian Child](#).
- Document the name and relationship of the person providing the information and their response in the Contact Notebook. Update the parents' Client Notebook on the ICWA page, and complete the Ancestor Information.

Continued on next page

Social Worker and/or Designee Responsibilities for Jurisdiction, Continued

Notice of proceedings

The [ICWA-030 Notice of Child Custody Proceeding for Indian Child](#), Petition, and a copy of the child's birth certificate (if available) shall be mailed to the following parties by Certified Mail with no restriction on delivery, and additionally by first-class mail, at least 13 -15 days prior to the hearing (no hearing, except for the detention hearing, shall be held until at least 10 days after receipt of notice by the parent, Indian custodian, the tribe, or the BIA) to:

- Tribe(s) – addressed to the named tribal chairperson, unless the tribe has designated another agent for service. The named tribal chairperson or agent listed in the federal registry must be used as required by the State. Notice shall be addressed to the name of the designated tribal representative and must be sent to all tribes of which the child may be a member or eligible for membership. Notice must be sent to the address located in the [May 2011 Federal Register](#).

(CDSS attempts to keep a current roster of federally recognized tribes and their addresses on the CWS/CMS to facilitate noticing of tribes. However, CWS/CMS cannot be used as the sole contact list for purposes of sending the ICWA notices. Some courts have taken a strict view that only the agent for service designated and posted in the Federal Register is the appropriate contact. It is recommended that notice be sent to the individuals in the list of designated agents for service developed by the BIA, as well as the contact person and address from CDSS, to ensure that legally sufficient notice is achieved. Check the websites noted above before sending the notice.)

- Bureau of Indian Affairs (BIA)
Pacific Regional Director
Federal Office Building
2800 Cottage Way
Sacramento, CA 95825
- Secretary of the Interior
US Department of the Interior
1849 "C" Street, N.W.
Washington, D.C. 20240

Continued on next page

Social Worker and/or Designee Responsibilities for Jurisdiction, Continued

- Notice of proceedings**
(Continued)
- Parents/Guardians.
 - Indian Custodian (if any).
-

Office Assistant (OA) mails and tracks notices

The designated OA will be responsible for mailing the [ICWA-030 Notice of Child Custody Proceeding for Indian Child](#), Petition, and a copy of the child's birth certificate (if available) to the address as described above. Following the mailing of the notices, the OA will complete the following steps:

Step	Action
1	Place a checkmark next to each address listed on the certified mail list for which a notice was mailed.
2	Note at the bottom of the mail list that the notices were mailed, the date mailed and the name of the OA who mailed the notices.
3	Place the mail list in the mail slot of the ICWA SW to be filed in the case.

No response from BIA or Tribe(s) to first notice

If no response is received from the BIA, and/or the tribe(s) that were noticed, within 15 business days from the date of the first mailing, the assigned SW will initiate due diligence efforts by faxing an inquiry to the tribe and requesting information regarding the child's Indian status be faxed to CWS.

Sending the Due Diligence Letter

If no response is received within 15 business days from the date of the inquiry fax, a [LAKCS01363 ICWA Due Diligence Letter](#) with the [ICWA-030 Notice of Child Custody Proceeding for Indian Child](#) attached, will be sent to all parties listed above by certified mail with restricted delivery, in addition to first class mail. This letter informs the parties that if no response is received by the date specified on the letter, the Court will be informed that due diligence efforts have been completed as required by law and that the Court will make a determination as to the ICWA status of the child within 60 days of the initial notice.

CWS/CMS documentation

The assigned SW will document all due diligence active efforts in the Contact Notebook in CWS/CMS. If proper and adequate notice has been provided, and neither a tribe nor the BIA has provided a determinative response within 60 days from the first notice, and the return receipt was received signed by the properly named and designated tribal representative, the court may determine that the ICWA does not apply.

Continued on next page

Social Worker and/or Designee Responsibilities for Jurisdiction, Continued

Update Client Notebook

Update new information received from the tribe(s) or the BIA and code the child as “eligible,” “member,” or “not eligible” in the Client Notebook – ICWA page of CWS/CMS by completing the following steps:

Step	Action
1	Click the <i>Client Services Application</i>
2	Click the <i>Open Existing Case Folder</i> button
3	Use the <i>Open Folder</i> dialog box to select the case you want to open
4	Click <i>OK</i>
5	Click <i>Yes</i>
6	Click the <i>Client Management (Blue)</i> section.
7	Click the <i>Open Existing Client Notebook</i>
8	Select the <i>Client Notebook(s)</i> you want to open
9	Click <i>OK</i>
10	Update the ICWA page.
11	Click the <i>File</i> drop-down menu.
12	Select <i>Save to Database</i> .

Continued on next page

Social Worker and/or Designee Responsibilities for Jurisdiction, Continued

Proof of service File proof of service with the court prior to the hearing by attaching all return receipts and provide copies of all documents filed with the court to County Counsel and all attorneys of record.

Court report Discuss all the pertinent information on the child's Indian status in the court report and attach the following documents to the court report (the documents must be filed in the court prior to the hearing):

- Copies of the proof of service and returned receipts mailed to the tribe(s), BIA, Indian Custodian, Parents/Legal Guardians.
 - Response letters received from BIA and the tribe(s), such as Letter of Confirmation.
-

Continue to Notice

Notice of Child Custody Proceeding

Use the [ICWA-030 Notice of Child Custody Proceeding for Indian Child](#) to notice on Indian child custody proceedings, **until**:

- The tribe(s) acknowledge in writing that the child is not a member and is not eligible for membership and the court determines ICWA does not apply, or
- It has been more than 60 days since the tribe received the notice and after a follow up call has not responded and the court determines ICWA does not apply.

(It is the responsibility of the SW to lodge findings with the court that ICWA does not apply.)

Tribe intervenes

Once a tribe has acknowledged a child or intervened, subsequent notices do not need to include the ancestral information, a copy of the petition, a copy of the child's birth certificate, or the statement of rights. However, continue to use the [ICWA-030 Notice of Child Custody Proceeding for Indian Child](#) form.

Continued on next page

Continue to Notice, Continued

Review minute orders	<p>Review each minute order and findings and orders for one or more of the following findings required for Indian cases:</p> <ul style="list-style-type: none">• Notice has been provided to all required parties;• The child's Indian status and the child's tribal membership, either ICWA applies or ICWA does not apply.• When the Court has made the finding that ICWA does or does not apply, code the child as "eligible", "member", or "not eligible" on the ID page of the child's Client Notebook in the CWS/CMS. This will take the child out of an ICWA pending status in CWS/CMS.• For cases where it is determined that the child is an Indian child:<ul style="list-style-type: none">▪ Culturally sensitive active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the break-up of the Indian family, and these efforts were unsuccessful.▪ At disposition or hearings where recommendation is for the child not to return home, clear and convincing evidence, including the testimony of a qualified expert witness who shall consider evidence concerning the prevailing social and cultural standards of the Indian child's tribe, including that tribe's family organization and child rearing practices, that continued custody by the parent(s) or Indian custodian is likely to cause the Indian child serious emotional or physical damage.▪ At 366.26 hearing, when the recommendation is termination of parental rights, there must be an active efforts finding, and a finding beyond a reasonable doubt, including the testimony of a qualified expert witness who shall consider evidence concerning the prevailing social and cultural standards of the Indian child's tribe, including that tribe's family organization and child rearing practices, 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.▪ The statutory preference order for placement was followed or good cause exists to modify the placement order.
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Continue to Notice, Continued

Invalidation

If the ICWA notice is not proper, active efforts were not provided, or there was not a qualified ICWA expert witness, any Indian child, parent, Indian custodian, or the tribe may petition the court to invalidate the proceedings. If the minute order and the findings and orders indicate that the court heard the case without verification of the child's Indian status, or if questions remain, contact County Counsel to determine a course of action.

Additional Noticing Requirements

Essential notice information

Notices must include all of the following information:

- The name, birthdate and birthplace of the child, if known.
 - The name of the Tribe in which the child is a member, or may be eligible for membership, if known.
 - All names and aliases known of the child's biological parents, grandparents, great-grandparents, Indian custodians including maiden, married and former names and aliases. The current and former addresses, birthdates, places of birth and death, tribal enrollment numbers and any other identifying information, if known.
 - A copy of the petition by which the proceeding was initiated.
 - A copy of the child's birth certificate, if available.
 - The location, mailing address and telephone number of the court and all parties notified.
-

Qualified Expert Witness

When is an expert witness needed

The ICWA requires the testimony of a qualified expert witness when recommending involuntary foster care placement, at the Disposition Hearing, or termination of parental rights, at the 366.26 Hearing.

Expert witness content

The expert witness must testify on the issue of whether continued custody by the parents or Indian custodian is likely to result in serious physical or emotional damage to the child. This requires the expert witness to answer two basic questions: 1) Is it likely that the conduct of the parents will result in serious physical or emotional harm to the child? 2) If such conduct is likely to cause harm, can the parents be persuaded to modify their conduct?

Additionally, the standards for the removal of an Indian child and the termination of parental rights for an Indian child require that the court consider evidence concerning the prevailing social and cultural standards of the Indian child's tribe, including that tribe's family organization and child rearing practices.

Testimony, Declaration or Affidavit

The court may accept a declaration or affidavit from a qualified expert witness in lieu of testimony only if the parties involved have so stipulated in writing and the court is satisfied the agreement was made knowingly, intelligently, and voluntarily.

Qualifications of expert witness

A qualified expert witness may include, but is not limited to, a SW (a qualified expert witness **cannot** be a Lake County DSS employee), sociologist, physician, psychologist, traditional tribal therapist and healer, tribal spiritual leader, tribal historian, or tribal elder. Persons with the following characteristics are most likely to meet the requirements for a qualified expert witness for purposes of Indian child custody proceedings:

- A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child rearing practices.
 - Any expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe.
 - A professional person having substantial education and experience in the area of his or her specialty.
-

Continued on next page

Qualified Expert Witness, Continued

**Arranging for
the appearance
of the expert
witness**

The case carrying SW shall make every effort to make the request to the expert witness 10 days before the hearing so that they may be prepared.

The following is a link to the Administrative Office of the Courts (AOC) California ICWA Expert Witness List:

<http://www.courtinfo.ca.gov/programs/cfcc/programs/description/jrta-ICWAExpertWitness.htm#northern>

Social Worker and/or Designee Responsibilities for Disposition

Document active efforts

When recommending that an Indian child remain in out of home care at the Disposition Hearing, document in the disposition court report how active efforts have been unsuccessful to keep the Indian family together.

Notify expert witness

Contact the qualified expert witness. If the court has given the department permission to release information to the qualified expert witness, provide the expert with case documents to make a recommendation regarding the Indian child custody proceeding.

If the court has not given the department permission to release documents to the qualified expert witness, contact the County Counsel on the case to file an 827 petition. Once the court grants the request, release the documents to the qualified expert witness.

Inform the qualified expert witness of the court date for the disposition hearing and that their testimony will be requested in court.

Summarize expert witness recommendation

Once the qualified expert witness provides a final recommendation report, summarize the recommendation in the disposition court report under the following sections "Relevant Social, Cultural and Physical Factors" and "Statements of Others."

Attach expert witness report

Submit the qualified expert witness' report as an attachment to the court report.

Social Worker and/or Designee Responsibilities for Permanent Plan

Testimony from expert witness At the Permanent Plan Hearing (WIC 366.26) ICWA requires the testimony of a qualified expert witness when recommending termination of parental rights in an Indian child custody proceeding. See the section titled "Qualified Expert Witness" in this policy beginning on page 37 for additional information.

Reasons for not terminating parental rights – adoption exception The court may find that there are compelling reasons for determining that termination of parental rights would not be in the best interest of an Indian child:

- Termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights.
- The child's tribe has identified guardianship, long-term foster care with a fit and willing relative, or another planned permanent living arrangement for the child. Compelling reasons listed under WIC 366.26 – 366.3 (c)(1) A-F (i) (ii) also apply to Indian children.

An exception to adoption also exists for Indian children six years of age or older who are living with an Indian Custodian or extended family member when removal of the child would be detrimental to their emotional well-being.

Continued on next page

Social Worker and/or Designee Responsibilities for Permanent Plan, Continued

Prepare the report

The SW preparing the WIC 366.26 report will:

- Contact the qualified expert witness and discuss the case. The expert must consider evidence concerning the prevailing social and cultural standards of the Indian child's tribe, including that tribe's organization and child rearing practices. Provide the expert with case documents to make a recommendation regarding a permanent plan for the Indian child.
- Inform the qualified expert witness of the court date for the WIC 366.26 Hearing and that their testimony will be requested by the court.
- Once the qualified expert witness' final recommendation report is received, summarize the recommendation in the court report under "Analysis of the Likelihood of Adoption and Proposed Permanent Plan."
- Submit the qualified expert witness report as an attachment to the court report.
- If the prospective adoptive home is a non-Indian home, document in the court report how the prospective adoptive parent is committed to enabling the child to participate in the cultural and ceremonial events of the child's tribe and discuss if they agree to a Post-Adoption Contact Agreement. If the Indian child is already in the prospective adoptive home, document in the court report how the caretaker has demonstrated this commitment by discussing family visits and participation in cultural and ceremonial events of the child's tribe.

Continued on next page

Social Worker and/or Designee Responsibilities for Permanent Plan, Continued

Links

The following web sites provide additional information on ICWA:

Web Site	Description
http://frwebgate1.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=mqY83X/6/2/0&WAISaction=retrieve	List of Federally Recognized Tribes (Effective May 19, 2010).
http://www.kstrom.net/isk/maps/usmapindex.html	List of Non-Federally Recognized Tribes
http://www.courtinfo.ca.gov/programs/cfcc/programs/description/jrta-ICWAExpertWitness.htm#northern	California ICWA Expert Witness List from AOC
http://www.courtinfo.ca.gov/forms/	Judicial Council Court Forms
http://www.doi.gov/ancestry	Tracing Indian Ancestry
http://www.childsworld.ca.gov/PG1322.htm	Children and Family Services ICWA

Tribal Customary Adoption (TCA) - Introduction

Background

Effective July 1, 2010, Assembly Bill 1325 established a new permanency option for Indian children who are dependents of the California Courts. Dependent Indian children who are unable to reunify with their parents may now, at the option of their tribe, be eligible for adoption by and through the laws, traditions and customs of the child's tribe without requiring termination of the parental rights of the child's biological parents.

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

Differences between TCA and conventional adoption

The key differences between TCA and a conventional adoption are:

- TCA allows a dependent Indian child to be adopted utilizing the state court without termination of parental rights (TPR). The current TPR procedures and corresponding forms and documents such as the Confirmation of Receipt of Child Freeing Documents (AD 4333) are not required to finalize a TCA.
 - The plan of TCA cannot be recommended, selected, facilitated or finalized without the consultation (involvement) of the Indian child's tribe. Only the tribe can select TCA as an option for the Indian child.
 - TCA is excluded from the adoption requirements found in §§ 7660-7670 of the Family Code. (Termination of parental rights).
-

Dependents prior to implementation of TCA

Although TCA became effective on July 1, 2010, as long as the dependency case is still open and parental rights have not been terminated, TCA may be a permanency option for any dependent Indian child, regardless of the date the Indian child became a dependent.

When TCA becomes an option

Once a federally recognized tribe has responded to an ICWA notice affirming that the child is a member of or is eligible for membership in the tribe, TCA will become a permanency option for that child when dependency has been established.

This may begin as early as the dispositional stage of a dependency case. However, at any point following the disposition of the dependency case, the Indian child's tribe may elect for TCA to be included as an alternative permanent plan to family reunification.

Continued on next page

Tribal Customary Adoption (TCA) - Introduction, Continued

Selecting prospective adoptive parents

In any adoptive placement of an Indian child, preference will be given to a placement with one of the following, in descending priority order:

- A member of the child's extended family (according to the ICWA **"extended family member"** shall be 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).
 - Other members of the child's tribe.
 - Another Indian family.
-

Consultation with the Indian Child's Tribe - TCA

SW begins by consulting with the tribe

The partnership between CWS and the child's tribe will begin as soon as the child is declared an ICWA eligible child and the concurrent planning process commences.

As part of the concurrent planning process, the SW will inform the tribe that TCA is a permanency option. When that option is selected by the tribe, the tribe will inform the agency either in a verbal or written format. Either way, the SW is responsible for including that information into all necessary reports to the court, the foster care and adoption case record and the case notes section in CWS/CMS. (Please see section titled "Entering Data into CWS/CMS" on page 70 of this policy for additional information).

Definition of consultation with tribe

Consultation means more than the SW making decisions and "checking in" with the Indian child's tribe to approve them. It is an ongoing partnership with the tribe that requires their inclusion and, on many occasions, approval on decisions made regarding the TCA process.

The Indian child's tribe is a necessary part of the TCA process for a dependent Indian child for two main reasons: A TCA cannot commence unless the child's tribe selects TCA as the permanent plan; and only the tribe can provide information regarding its tribal customs, traditions or laws.

Methods of tribal consultation

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

- Verbal and written communication via telephone, regular or electronic mail, or facsimile.
- In person meetings.
- Family Team Meetings (FTM's).

Note: All information received, provided to or discussed with the Indian child's tribe must be documented in CWS/CMS. (Please see section titled "Entering Data into CWS/CMS" on page 70 of this policy for additional information).

Continued on next page

Consultation with the Indian Child's Tribe - TCA, Continued

Types of information to be discussed with the tribe

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

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

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

Elements of communication with the tribe

Consultation with the tribe may vary at any of the different stages of a dependency action but should include the same basic elements of communication and collaboration. At any point in the dependency case, even as early as the dispositional hearing, the tribe may communicate its election of TCA. The SW must be prepared to answer questions that arise from all involved individuals and to interact with the tribe's representative throughout the TCA process.

When the tribe has formally intervened in the action, the tribe's representative will be identified in the [ICWA-040 Notice of Designation of Tribal Representative](#), completed and sent by the tribe. Where the tribe has not formally intervened, the SW will request a formal designation of a representative for purposes of the TCA process from the Tribe's chairperson in order to facilitate the consultation process.

Tribe informs prior to dispositional hearing

If the SW is informed prior to the dispositional hearing of the tribe's election of TCA, the SW will discuss the case with the tribe through it's representative and obtain information needed for the report to the court on the appropriateness of TCA as a plan for the child if reunification is unsuccessful.

Continued on next page

Consultation with the Indian Child's Tribe - TCA, Continued

Tribe informs during concurrent planning process

If informed by the tribe during the concurrent planning process (e.g. during review hearings) that TCA be established as the permanent plan, the SW will communicate with the tribe through its representative, to obtain any relevant information needed to update the court regarding the likelihood the child will be adopted and whether TCA continues to be the appropriate permanent plan for the child.

Child is associated with more than one tribe

If an Indian child is a member of more than one tribe or is eligible for membership in more than one tribe, it is preferable that the tribes determine among themselves which is the tribe that will serve as the primary tribe in the Indian child's case. Generally where it is confirmed in writing that a child is a member (e.g. enrolled) in one of the tribes, that tribe will be accepted as the child's tribe. However, where it is not clear, and if the tribes cannot reach an accord on the issue, the Court has the authority to determine which tribe has the most significant contacts with the child and will serve as the child's tribe in the proceeding. Once the primary tribe is established that tribe becomes the Indian child's tribe responsible for recommending TCA as the permanency plan for the Indian child.

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

Out of State tribes

Communication with out of State tribes can be challenging. However, in all ICWA cases due diligence efforts will be made by the SW to inform the tribe of, and provide information about, California's option of a TCA for the child.

Stages of a TCA

Dispositional hearing report

For all ICWA cases, the SW, after consulting the Indian child's tribe, will include in the Dispositional hearing report information as to whether TCA is an appropriate permanent plan for the child.

Permanent plan of TCA recommended

If reunification services are not offered or terminated and a 366.26 hearing is ordered, the SW, in consultation with the child's tribe, will indicate in the report to the court that the tribe has selected TCA as the permanent plan.

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 SW and adoption worker will work with the child, child's tribe and prospective TCA adoptive family to facilitate the alternative permanent plan of TCA. These services may include, but are not limited to:

- Assessing the child's likelihood of being adopted and including the assessment in the review hearing reports.
 - Conducting a TCA Home study as a tribal designee.
 - Performing criminal/child abuse and neglect checks.
-

Permanent plan of TCA established

Once a 366.26 hearing is set and the Indian child's tribe recommends TCA, the court will review the report and other evidence and order, **without TPR**, the plan of TCA. This report, in addition to court reports for every review hearing, must include an assessment regarding the Indian child's likelihood of being adopted. The 366.26 hearing report must also include information as to whether TCA would or would not be detrimental to the Indian child and whether the Indian child should be returned home to the Indian parent or Indian custodian.

Continued on next page

Stages of a TCA, Continued

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 process (listed below), and the 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:

- Completion of the TCA home study by the Indian child's tribe or tribal designee and either approved or denied by the Indian child's tribe. (See section titled "TCA Homestudy" beginning on page 56 of this policy for additional information.)
- Review of criminal/child abuse and neglect background by the tribal designee, public adoption agency, 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 Adam Walsh Act.
- Tribal Customary Adoption Order (TCAO) is completed and filed within 20 days of the continued 366.26 hearing by the Indian child's tribe with the court. 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 366.26 report is completed by the SW (or Adoptions worker depending on who has placement and care responsibility of the child at the time of the 366.26 hearing) and submitted to the court within seven days of the continued 366.26 hearing. (See section titled "Addendum to the 366.26 Report" on page 65 of this policy for additional information.)

Continued 366.26 hearing

Once the TCAO is filed by the Indian child's tribe and the addendum to the 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.

Continued on next page

Stages of a TCA, Continued

Tribal customary adoptive placement and placement agreement

Once the court affords full faith and credit to the TCAO and the Indian child's tribe approves the adoptive applicant's TCA home study and the applicant's criminal and child abuse and neglect checks are cleared, the Indian child is eligible for tribal customary adoptive placement. State adoptions is responsible for ensuring the process is completed. This process is analogous to the conventional adoption process which determines the placement agreement between the public adoption agency and the adoptive parent(s).

The following information is required by State adoptions to complete the tribal customary adoptive placement:

- A written report, using form [AD 512 Psychosocial and Medical History of Child](#), regarding the Indian child's medical, and if available, the medical background on the child's biological parents, including an acknowledgement by the prospective tribal customary adoptive parents that they received a copy of this report.
 - The report on the Indian child's background must contain all known diagnostic information, including the following:
 - Current medical reports on the Indian child.
 - Psychological evaluations.
 - Scholastic information.
 - Developmental history.

Similar to the conventional adoption process, an adoptive placement agreement can be prepared and executed during the tribal customary adoptive placement process, after full faith and credit has been afforded to the TCAO and the home study has been completed and approved by the tribe. (See section titled "Full Faith and Credit" beginning on page 66 of this policy for additional information.)

Birth Certificate

The Indian child will essentially have two sets of legal parents, however, two sets of parents will not appear on the birth certificate. Subject to the terms of the tribally issued TCAO, TCA parents will be afforded the same opportunity as any current adoptive parent to maintain the Indian child's original birth certificate or have it amended.

Termination of customary adoptive placement

Similar to a conventional adoptive placement, if an agency, in consultation with the child's tribe, has any reason to remove the child, the placement may be terminated.

Continued on next page

Stages of a TCA, Continued

Adoption assistance agreement

Once the tribal customary adoptive placement paperwork is signed, State adoptions is responsible for facilitating this agreement between adoptions and the adoptive parent(s). Access to AAP benefits are made available when a dependent Indian child is the subject of an order of the tribal customary adoption.

Adoption petition

Once the TCA home study is approved, the TCAO is afforded full faith and credit, and all the necessary documents are signed, the prospective adoptive parent(s) desiring to adopt the Indian child must file an adoption petition with the court presiding over the adoption. A copy of this petition will be sent to CDSS. (See section titled "Full Faith and Credit" beginning on page 66 of this policy for additional information.)

Supervision of adoptive placement

Once adoptive placement of the Indian child has been made, State adoptions will be responsible for ensuring the supervision of the adoptive placement.

Note: The SW must continue to see the child monthly as long as the child is a court dependent and under the care and supervision of CWS.

Finalization

Once the adoption petition is filed with the court, and a finalization hearing is set, State adoptions is responsible for ensuring a final report regarding the proposed TCA is submitted to the court.

The rights of the parents are modified during the TCAO process by the Indian child's tribe. Subject only to the terms of the TCAO, tribal customary adoptive parents will be afforded the same rights and privileges, and are subject to all the duties of any other adoptive parent consistent with the TCAO.

Post-adoption contact agreements are not applicable to TCA. Post adoption contact between the birth parents or Indian custodians and the child will be addressed in the TCAO. If applicable, the TCAO may also address contact between the Indian child and the child's siblings.

TCA Dependency Process

Parental consent to TCA not required

Prior consent to a permanent plan of TCA of an Indian child is not required of an Indian parent or Indian custodian whose parental relationship to the child will be modified by the TCA.

Consent of child not required

The consent of a child age 12 or older is not required for a TCA. However, while the consent of the child age 12 or older is not required for a TCA, the wishes of a child are still an important and appropriate factor for the court to consider when determining whether TCA is the appropriate permanent plan for an Indian child.

Formal tribal intervention not required

TCA is a permanency option for any Indian child whose tribe wants to pursue TCA as a permanency option. An Indian child's tribe does not need to formally intervene in a case in order to be entitled to make representations to CWS and the court as to the appropriate permanent plan for that child. This means that an individual affiliated with the tribe may be permitted by the Court to represent the tribe as opposed to the tribe intervening as a party.

TCA is an optional plan

A tribe is not required to choose TCA as the permanent plan. All permanency options are available to tribes, and the exceptions to TPR still apply. If TCA is not chosen, the SW, in consultation with all interested parties, will select an alternative permanent plan.

TCA following legal guardianship

If following the establishment of a legal guardianship for a dependent Indian child, the SW, in consultation with the Indian child's tribe, becomes aware of changed circumstances that indicate TCA may be an appropriate plan for the child, the court may vacate its previous order dismissing dependency jurisdiction over the child and order that a new hearing be set to determine whether TCA or continued legal guardianship is the most appropriate plan for the child.

No qualified expert witness testimony required for TCA

The testimony of a qualified expert witness is not required for a TCA to be ordered at the 366.26 hearing because the termination of parental rights is not required for a TCA. **Note: This testimony is still required at the Disposition Hearing for all ICWA cases. (See the section titled "Qualified Expert Witness" in this policy beginning on page 38 for additional information.)**

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TCA Dependency Process, Continued

Additions to current standards for written assessments

Currently, prior to the initial 366.26 hearing, a report including a written assessment (completed by adoptions) of the child's suitability for adoption must be submitted to the Court. The required standards for this assessment are located in Title 22, Division 2, CCR sections 35127.1-35127.3. TCA adds and excludes certain requirements specified in those sections. Additions for this assessment include the following:

- A written assessment of the child's suitability for adoption should include:
 - The Indian child's relationship to/with the Indian child's tribe.
- Identifying information should include:
 - The Indian child's tribal membership or tribal affiliation.
 - Any siblings with tribal membership or tribal affiliation.
- A review of the amount of and nature of any contact between the Indian child and his or her birth parents or other members of his or her extended family since the time of placement in out-of-home care should include:
 - Family defined consistent with the tribe's culture when reviewing whether the child would benefit from contact with members of his or her extended family once the TCA is finalized.
- Consistent with the stated religious and or cultural background preference from the birth parent, this assessment should include:
 - A stated religious or cultural background preference indicated by the tribe or tribes and the Indian child, unless the Indian child's age or physical, emotional or other conditions precludes his or her meaningful response.
- Documents Adoptions will obtain include:
 - A written statement from the Indian child's tribe regarding it's intention to pursue TCA for the Indian child.
 - This statement should include whether the tribe or the tribe's designee will conduct the home study.
- Services for children accepted for adoption planning, including:
 - Collaboration with the Indian child's tribe to provide these services.

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TCA Dependency Process, Continued

Exclusions from current standards

Exclusions from the written assessment discussed in the above section are:

- An analysis of the likelihood that the child will be adopted should exclude:
 - If parental rights are terminated.
 - An assessment of the need for a psychological evaluation should exclude the list of abnormal and symptomatic illnesses used to determine if a child's behavior warrants this evaluation. Adoptions is expected to consult with the child's tribe and base the need for a psychological evaluation on the child's behavior relative to the prevailing cultural and social standard of the child's tribe.
-

TCA Home Study

How a TCA home study differs from a conventional home study

Similar to a conventional adoption home study, a TCA home study is an evaluation of the background, safety and health information of the adoptive applicant's home, including the biological, psychological and social factors of the adoptive applicant and an assessment of the commitment, capability and suitability of the applicant to meet the child's needs. A TCA home study completed by a designee may be a full, abbreviated, or updated home study.

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

- 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 standard.

Continued on next page

TCA Home Study, Continued

When the tribe conducts its own home study

Tribes must complete the TCA home study using the prevailing social and cultural standard of the child's tribe. The home study must include:

- An evaluation of the background, safety and health information of the adoptive home.
- Biological, psychological and social factors of the prospective adoptive parent(s).
- An assessment of the commitment, capability and suitability of the prospective parent(s) to meet the child's needs.

The SW will be provided a copy of the approved or denied TCA home study, **upon request**, from the tribe or tribal designee completing the home study, to enable the SW to submit to the court all pertinent information addressing the TCA in the continued 366.26 hearing report. The tribe must obtain a release of information from the prospective adoptive parent(s) (hereafter referred to as "applicant") authorizing CWS to view the home study.

When a tribe has formally intervened, the request for the home study will be sent by the SW to the tribal representative identified on page 2 of the [ICWA-040 Notice of Designation of Tribal Representative](#).

When the tribe has not formally intervened, and if a formal representative with authority to respond on behalf of the tribe has not already been identified by the tribe, the request will be sent to the Tribal Chair. If the TCA home study is not received by the allotted time provided for the SW to submit the addendum to the continued 366.26 report to the court (seven days), the SW will include that information in the addendum report and inform the court that it cannot recommend approval of the applicant until it has time to review the TCA home study.

(See section titled "Addendum to the 366.26 Report" on page 65 of this policy for additional information.)

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TCA Home Study, Continued

When the tribe designates an agency to conduct the home study – required information

In addition to the information required for a conventional adoption, when a TCA is completed by a designee, it must be done in consultation with the Indian child's tribe using the tribe's prevailing social and cultural standards. The information currently required to provide to, and obtain from, the adoptive applicant and information used to base a determination to approve or deny an adoptive applicant for TCA must include:

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

Abbreviated home study

If the adoptive applicant has completed a tribal customary, conventional agency, independent, or intercountry adoption within the last five years, that applicant may be eligible to receive an abbreviated TCA home study.

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TCA Home Study, Continued

Final approval /disapproval of home study

When an agency is designated to complete the TCA home study, the agency shall make a recommendation to the tribe regarding approval or disapproval of the adoptive applicant's TCA home study. The tribe has discretion to issue final approval or disapproval of the home study, except however, that no home study may be approved by the tribe when the applicant's criminal record and child abuse report has not been cleared.

If the designated agency's recommendation does not correspond to the tribe's decision, the agency, tribe and any other pertinent individuals should discuss the recommendation and issues of the applicant's case.

If the agency recommends approval of an applicant and the tribe disagrees, TCA with that applicant can no longer be the permanent plan, as the tribe cannot be forced to do a TCA. However, if the agency recommends denial and the tribe approves the applicant, the tribe may continue the preparation of a TCAO. When this occurs, if the agency believes the child would be at risk if placed with this applicant, the agency should include the facts that led to the agency not recommending approval of the applicant in the addendum to the continued 366.26 report. See section titled "Addendum to the 366.26 Report" on page 65 of this policy for additional information.

Note: The TCA process does not prevent a mandated reporter from reporting any suspected child abuse or CWS from investigating a report of child abuse or neglect.

Grievance review hearing

Designated Agency

When a designated agency recommends a denial of an adoptive applicant's TCA home study, regardless of the tribe's final decision, the adoptive applicant retains the right to request a grievance review hearing.

Indian Child's Tribe

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

Tribal Designee - TCA

Agencies that can be designated by tribe

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

How a tribe designates an agency

It is the tribe's decision to determine whether it will conduct the TCA home study itself or seek a designee. If the tribe chooses to seek a designee, it is responsible for providing the agency with a written request for that agency to be the designee and conduct the assessment of the TCA adoptive applicant.

The request should come from a tribal representative with authority to make a request on behalf of the tribe. Where the tribe has formally intervened in the action, the tribe's representative would be identified in the [ICWA-040 Notice of Designation of Tribal Representative](#). If the Tribe has not formally intervened it may be advisable for the designated agency to request a formal designation of a representative for purposes of the TCA process from the Tribe's Chairperson.

Responsibilities of the tribal designee

Tribal designees are responsible for the following:

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

Additional responsibilities may include, but are not limited to:

- Supervision of the adoptive placement.
 - Termination of the adoptive placement.
 - Completing the final court report.
 - The immediate filing of the final court report.
-

Review of Criminal and Child Abuse History for TCA

When tribe cannot complete criminal and child abuse background checks

When a TCA home study is initiated, CWS has the ultimate responsibility to ensure any necessary checks of the adoptive applicant's criminal background and child abuse and neglect report history are completed. No final approval by the tribe to the adoption may be granted without these checks.

If the tribe chooses a designee to conduct the home study, the designee shall perform a state and federal criminal background check and a check of CACI through DOJ on the prospective adoptive parents and any persons over 18 years of age residing in the household. Any tribal designee must be an entity authorized to request a search of CACI and, if necessary, a check of any other state's child abuse and neglect registry and authorized to request a search for state or federal level criminal offender records information through DOJ.

If the tribe conducts its own home study, the public agency otherwise authorized to obtain criminal background and child abuse and neglect report information for the purpose of adoption (CWS or Adoptions depending on status of placement and care responsibility) will perform the state and federal criminal background and child abuse and neglect report history check. When CWS or Adoptions approves or denies the applicant's criminal background clearance, either the assigned SW or Adoptions staff must inform the child's tribe, conducting the home study, of this decision in writing.

If CWS or Adoptions denies the applicant a criminal background clearance, that applicant may make a written request to CWS or Adoptions for a copy of his or her state or federal level criminal offender record information search response.

When tribe can complete criminal and child abuse background checks

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

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Review of Criminal and Child Abuse History for TCA, Continued

**Standard for
background
checks**

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

Tribal Customary Adoption Order (TCAO)

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

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

The TCAO is required to address the following issues:

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

Additionally, the tribe will be able to specify anything else it deems appropriate per its laws and customs except that the order may not include any orders pertaining to the child support obligation of the birth parents or Indian custodian. There must be a conclusive presumption that any parental rights or obligations not specified in the TCAO will rest with the tribal customary adoptive parents.

Timeframe for filing TCAO Once the 366.26 hearing is continued, the dependency case is referred to the tribe to complete the TCAO. The tribe has 120 days from the initial 366.26 hearing to file the TCAO with the court. The court has the discretion to grant an additional continuance to the tribe for filing a TCAO up to, but no more than 60 days.

If the tribe does not file the TCAO within the time allotted, the court has the discretion to make new orders to determine the best permanent plan for the child. This permanent plan could include any permanency plan options available to a dependent child. In that case, the SW would use the current standards and procedures governing the permanency planning process.

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Tribal Customary Adoption Order (TCAO), Continued

Obtaining a copy of the TCAO

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

Where a tribe has formally intervened, the request will be sent to the tribal representative as identified in the [ICWA-040 Notice of Designation of Tribal Representative](#). If the tribe has not formally intervened, and if a formal representative with authority to respond on behalf of the tribe has not already been identified by the tribe, the request will be sent to the Tribal Chairperson.

Rights of birth parents

Although the rights of the birth parents are not terminated, and they still have legal rights to the child, the tribe is responsible for modifying the parental rights and obligations and specifying them in the TCAO. If the rights of the birth parents are not specified in the TCAO, the rights and obligations will presume to be with the tribal customary adoptive parents.

Child support obligations

Although the birth parents rights are not terminated in a TCA, they are modified by the tribe and through the TCAO. The TCAO is not to include child support obligations from the birth parents or Indian custodian. If the birth parent had an existing child support case prior to the TCAO, that case may remain open and arrears owed may still be enforced by the Lake County Department of Child Support Services (LCDCSS).

Resolving disputes concerning the TCAO

If there is a problem with visitation or other aspects of the TCAO, the parties must show evidence of good faith efforts to resolve the dispute prior to seeking judicial relief. They may use either tribal or other dispute resolution services to address the problem, but failure to comply with the TCAO does not undo the TCA. The parties may return to court to address the issues if the dispute resolution fails.

Addendum to the 366.26 Report

Description

The addendum to the 366.26 hearing provides the SW (or Adoptions worker depending on who has placement and care responsibility of the child at the time of the 366.26 hearing) the opportunity to express his/her opinion about the prospective tribal customary adoption including providing a recommendation to the court on whether it is or is not in support of the adoption. The addendum is an additional section in the continued 366.26 report that must address the following:

- Continued suitability of TCA being the appropriate plan for the child.
 - The recommendation for the approval or denial of the prospective tribal customary adoptive applicant(s). This is contingent on the completion of the home study. If the home study is not complete, the SW must include information as to the status of the home study in this report. The SW is not expected to recommend an approval of an applicant when the home study is not complete or the agency has not reviewed the home study when completed by the Indian child's tribe.
 - The results of the background checks.
 - Any pertinent information gathered during the TCA process, including any concerns with the TCAO.
 - Any updates regarding TCA deemed necessary to report to the court.
-

Full Faith and Credit

Definition Full faith and credit is a legal concept regarding when and how different sovereigns recognize and enforce each other's court orders.

Full faith and credit in a TCA At the continued 366.26 hearing, the Court may give full faith and credit to the tribe's TCAO. This means the Court would enforce the tribe's TCAO and the Indian child would be eligible for adoptive placement and ultimate finalization. This **does not** mean the Court has finalized a TCA because a TCA adoption finalization hearing must still be held.

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

- The Indian child becomes eligible for adoptive placement.
 - The tribal customary adoptive placement agreement is executed and signed.
 - The AAP agreement is executed and signed.
 - Supervision of tribal customary adoptive placement begins.
 - The TCA prospective adoptive parents file the petition for TCA.
 - Once the petition is filed, the court sets a hearing to finalize the adoption.
 - The court issues a final decree of adoption.
 - The court orders dependency terminated.
-

Reasons for not giving full faith and credit If an order from the Indian child's tribe (sovereign #1) violates a generally accepted public policy of California (sovereign #2), then the Court may not enforce the tribe's order. Other reasons may include:

- Fraud.
 - The entity issuing the order had no authority to do so.
 - Due process not provided.
 - The order offends a strongly held public policy.
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Full Faith and Credit, Continued

If full faith and credit is not given

If full faith and credit is not given, the tribe and other parties must address the issue. If the issues cannot be resolved and the plan of TCA may no longer be the appropriate permanent plan for the Indian child, the Court has the discretion to order a hearing to determine the most appropriate permanent plan for the Indian child.

Set Aside

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

Set aside timeframe A finalized TCA may be set aside within five years of the date of finalization.

Standards used to set aside a TCA Most of the same standards currently used to set aside a conventional adoption apply to a TCA with the following exception: As part of the investigative set aside report, the Adoption Worker conducting the investigation needs to consult with the child's tribe to develop a plan for the child. This recommended plan will be part of the report to the court.

ICPC and TCA

**Out of state
tribe**

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

**How ICPC
applies to TCA**

The TCA statutes do not alter ICPC obligations that apply if a California dependent child is placed with prospective adoptive parents residing out of state. The SW must consider and comply with the ICPC protocols and may be working with both the receiving state and the tribe to complete the ICPC requirements.

Because most out-of-state courts do not provide a process for finalizing an adoption without termination of parental rights, agencies will have to work to finalize the adoption in California or in the other state, as appropriate, depending on the circumstances of the particular case.

Entering Data into CWS/CMS

TCA information

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

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

Step	Action
1	In the Case Folder of CWS/CMS, go to the, "Special Projects" tab.
2	Select the Special Projects page tab and then the (+) button in the grid to enter a new Special Project for the focus child.
3	Click the down (+) button to display the available list of Special Projects.
4	Select the following code: "S-Tribal Customary Adoption" The child is in out-of-home care, and reunification services have been ordered. The child has been determined to be ICWA eligible and tribal customary adoption is an option to be discussed with the tribe as a concurrent plan option should reunification be unsuccessful.

Adoptive placement information

To enter adoptive placement information in CWS/CMS, a TPR date is currently required. Since TCA does not require TPR, enter the date the court afforded full faith and credit to the TCAO and note that in the case notes, until further notice from the State.

Selection of case plan

Since the case plan of TCA is not currently available, select the ADOPTION or ADOPTION WITH SIBLING(S) case plan, until further notice from the State.
