



CALIFORNIA DEPARTMENT OF SOCIAL SERVICES



Tribal Customary Adoption

2011 Technical Assistance Workshop

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WHAT WILL BE COVERED...

- ❖ Historical background/Why TCA?
- ❖ Working with the Indian child's tribe
- ❖ Integration of TCA as a concurrent permanency option
- ❖ Steps to completing a TCA

GLOSSARY OF ACRONYMS

❖ AAP	Adoption Assistance Program
❖ AB/SB	Assembly Bill/Senate Bill
❖ ACL	All County Letter
❖ AOC	Administrative Office of the Courts
❖ ASFA	Adoption and Safe Families Act
❖ CDSS	California Department of Social Services
❖ DO	CDSS (state) Adoption District Office
❖ FF&C	Full Faith and Credit
❖ ICPC	Interstate Compact on the Placement of Children
❖ ICWA	Indian Child Welfare Act
❖ Kin-GAP	Kinship Guardian Assistance Program
❖ PAARP	Private Adoption Agency Reimbursement Program
❖ TCA	Tribal Customary Adoption
❖ TCAO	Tribal Customary Adoption Order
❖ TPR	Termination of Parental Rights
❖ W&IC	Welfare and Institutions Code

HOW DID WE GET HERE?



NATIVE AMERICANS IN CALIFORNIA

Social History

- ❖ Prior to first contact, the Native population of California was approximately 300,000. In a period of about 130 years, the population of Native people dropped to 12,000 to 16,000.
 - Gold rush
 - Missions
 - Bounties for scalps/murder
 - Diseased blankets

NATIVE AMERICANS IN CALIFORNIA

Political History

- ❖ 19th Century Treaties – California
- ❖ Indian Boarding Schools 1879 -Present
- ❖ Allotment Era 1880-1934
- ❖ Indian Reorganization Act 1930-1950
- ❖ Termination Era 1950-1970
- ❖ Self-Determination Era 1970-Present

THE NEED FOR ICWA

- ❖ Congress passed the Indian Child Welfare Act in 1978 following an in depth study of Native American children in foster care and adoption, which found:
 - Disproportionately high number of Native American/Alaska Native (NA/AN) children in foster care and adoptive placements (Adoption Project of the 1960s)
 - Few children were placed with relatives or other NA/AN
 - NA/AN children more likely to spend more time in foster care than non-Indian children
 - NA/AN children more likely to be adopted than non-Indian children

WHY TCA?

“Historically and traditionally, adoption has been practiced in most tribal communities through custom and ceremony. In general, tribes did not practice termination of parental rights. Unfortunately, adoption became a negative thing due to forced assimilation policies; it was used as a tool to destroy Indian families and culture. Due to this historical trauma, many tribes actively abhor adoption as understood by the larger culture’s definition.”

From the website of the National Indian Child Welfare Association (www.nicwa.org).

WHY TCA? - Cont'd

- ❖ Tribes in California routinely contest “conventional” adoption because it requires TPR. TPR is viewed by many tribes as a tool that separates Indian families and deprives Indian children of their tribal heritage.
- ❖ Tribal children often, if the tribe is successful in opposing TPR, remain in guardianship.
 - Guardianship/Kin-GAP is not as secure or stable as adoption.

WHY TCA? - Cont'd

- ❖ Aside from reunification, adoption is the most permanent placement option for a dependent child.
 - TCA more closely resembles what tribes traditionally have done - "**making relatives**" - honoring relationships and avoiding the punitive nature of TPR.
 - TCA allows for AAP funding but without TPR.

PERMANENCY AND TPR

- ❖ Federal child welfare law and policy express clear preference for termination of parental rights and adoption of children who cannot return to their families (ASFA).
- ❖ \$35 million allocated in September of 2009 by HHS for adoption incentive payments.

TERMINATION EXCEPTIONS

- ❖ W&IC, §366.26 (f) allows for exceptions to terminating parental rights for Indian children when:
 - 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.
- ❖ Unfortunately, the Termination Exceptions are not an adequate protection for Indian Tribes or families. In *Re A.A.*, 167 Cal.App.4th 1292

ASSEMBLY BILL (AB) 1325

- ❖ Added TCA as an additional permanency option
- ❖ Borne out of the CDSS ICWA Workgroup
- ❖ Sponsored by the Soboba Band of Luiseño Indians
- ❖ Signed into law October 10, 2009
- ❖ Effective July 1, 2010
- ❖ Sunsets January 1, 2014
- ❖ Essential provision found in W&IC 366.24
- ❖ Report due to Legislature January 1, 2013

WHAT IS TCA?

Tribal Customary Adoption (TCA) is an agency adoption by and through the tribal custom, traditions, or law of an Indian child's tribe which transfers the custody of a child to the care and protection of adoptive parents without the termination of parental rights.(W&IC, § 366.24)

OVERVIEW OF TCA PROCESS

TCA creates a process for the state court to facilitate and recognize a tribal order of adoption, even if the tribe has a tribal court, for the purpose of recognition of traditional adoption or “making relatives.”

MAIN TENETS OF TCA

- ❖ Aligned with core objectives of CDSS
- ❖ Agency adoption
- ❖ Specific to CA dependent Indian children under the ICWA
- ❖ Occurs under the customs, laws, or traditions of an Indian child's tribe
- ❖ TPR is not required
- ❖ Selected by Indian child's tribe
- ❖ Requires consultation with the Indian child's tribe
- ❖ Main provisions in W&IC, not Family Code
- ❖ Does not apply to:
 - Independent adoption
 - Intercountry adoption
 - Voluntary relinquishments
 - Probation

IMPLEMENTING TRIBAL CUSTOMARY ADOPTION



Key Similarities Between TCA and Conventional Adoption for a Dependent Indian Child

	TCA	CONVENTIONAL ADOPTION
Dependents of California	✓	✓
Concurrent permanency plan to FR	✓	✓
Uses ICWA standard for placement preferences	✓	✓
Uses the state court	✓	✓
Optional plan	✓	✓
Noticing required	✓	✓
Applicant <u>does not</u> have to be Native American	✓	✓
Home study	✓	✓
Adam Walsh background checks	✓	✓
Adoptive placement	✓	✓

Key Similarities Between TCA and Conventional Adoption for a Dependent Indian Child

	TCA	CONVENTIONAL ADOPTION
AAP benefits	✓	✓
Supervision of adoptive placement	✓	✓
Finalized in state court	✓	✓
Once finalized, adoption recognized in U.S	✓	✓
Legal rights are vested with adoptive parents once adoption is finalized	✓	✓
Set aside	✓	✓
Grievance review hearing for agency's decision	✓	✓
Promotes safety, permanence, and well being for the child	✓	✓

Key Distinctions Between TCA and Conventional Adoption for a Dependent Indian Child

	TCA	Conventional Adoption
Requires TPR to finalize adoption	NO	YES
Parents Legal rights in tact	YES, but modified in a TCAO	NO
Must consult with child's tribe	YES	NO, but should consult with tribe on any ICWA case
Main provisions found in	W&IC (366.24)	Family Code
Requires testimony of qualified witness for 366.26 hearing	NO, because there is no TPR	YES
Requires consent of child age 12 years or older	NO, but the wishes of the child remains important (W&IC, § 361.31 (e))	YES

Key Distinctions Between TCA and Conventional Adoption for a Dependent Indian Child

	TCA	Conventional Adoption
Home study approval	Ultimate approval by tribe. Agency recommends approval or denial to tribe.	Agency completing home study has ultimate approval
New case plan following a set aside	Agency must consult with tribe	Agency should, but is not required to consult with tribe
Can be finalized in other states	Highly unlikely	YES
Post adoption contact agreements	Absorbed in TCAO	Optional

CONSULTATION WITH INDIAN CHILD'S TRIBE

Agency with placement care and responsibility

- ❖ Consultation means more than “checking in” with the tribe.
- ❖ The partnership between the agency and the child's tribe is expected to begin as soon as the child is declared an ICWA eligible child.

CONSULTATION WITH INDIAN CHILD'S TRIBE

- ❖ Types of consultation shall include:
 - Verbal and written communication
 - In person meetings
 - TDM/FGDM

- ❖ All information should be documented in foster care and adoption case record and/or in the case notes section of CWS/CMS

******Each Tribe maintains the authority and discretion to disclose its tribal customs, laws, traditions, ceremonies and significant history to the agency. ******

CONSULTATION WITH INDIAN CHILD'S TRIBE

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

- ❖ Tribes should decide amongst themselves who has the strongest bond with child and will serve as the primary tribe.
- ❖ If the tribes cannot decide, the presiding judge has the discretion to determine who will serve as the primary tribe in the child's case
- ❖ Primary tribe responsible for selected TCA

STAGES OF A FINALIZED TCA

- ❖ CA dependent child is declared ICWA eligible child and child's tribe is identified
 - Agency* informs tribe that TCA is a permanency option
- ❖ Indian child's tribe selects permanent plan of TCA
 - Tribe informs agency (verbally or in writing) of its interest to pursue TCA
 - Agency begins discussion with tribe about tribe's social and cultural standards
 - Agency obtains any information needed to address the appropriateness of TCA as a permanent plan in the dispositional report (W&IC 358.1) to the court
 - Agency and tribe should outline expectations, duties, etc.

**Agency means agency with placement care and responsibility of child*

STAGES OF A FINALIZED TCA

❖ Disposition of case

- ◆ FR = Early concurrent permanency planning
 - Agency and tribe working together
 - Tribe informs agency whether it will conduct its own home study or designate an adoption agency
 - Agency obtains any relevant information to update court on likelihood the child will be adopted and if TCA continues to be the appropriate plan (status review hearings)
- ◆ No FR/FR services terminated = First W&IC 366.26 hearing
 - Agency receives written statement from tribe of its selection of TCA
 - Agency completes written assessment of child
 - TCA ordered as permanent plan
 - Referred to Tribe to complete W&IC 366.24 process

STAGES OF A FINALIZED TCA – Cont'd

❖ W&IC 366.24 Process:

- Home study (can occur prior to first 366.26 hearing)
 - A Tribe can conduct its own TCA home study or designate an agency to conduct the TCA home study.
 - **Only** 3 types of tribal designees:
 - ✓ Public adoption agency
 - ✓ Private adoption agency
 - ✓ CDSS adoption district office (DO)

❖ If tribal designee conducts home study:

- Tribe request agency as designee in writing
- If agency is designee, agency works with tribe to complete the home study and obtains final approval from tribe
- If other adoption agency designated, agency receives updates from tribe and tribal designee and obtains final copy of home study (approved or denied) from tribe
- Designee performs adoption specific Adam Walsh level checks

STAGES OF A FINALIZED TCA – Cont'd

- ❖ If tribe conducts its own home study:
 - Agency receives updates on home study from tribe
 - Agency (or DO) performs adoption Adam Walsh level checks
 - Provides a letter to tribe stating the applicant is cleared

STAGES OF A TCA – Cont'd

- ◆ TCAO completed by child's tribe
 - Agency receives updates on the progress of TCAO
 - Tribe does not have to disclose private ceremonies or customs used during this process to agency
- ❖ Continued 366.26 Hearing
 - ◆ TCAO filed with court
 - Agency request a copy of completed TCAO from tribe
 - ◆ Addendum report submitted to court
 - Subsection of existing 366.26 report
 - Agency obtains copy of final home study
 - Agency discusses any concerns with tribe before submitting report
 - ◆ Full Faith & Credit afforded by court

STAGES OF A FINALIZED TCA – Cont'd

❖ Adoptive placement

- Completed by agency
- Agency compiles supporting documents (AD 512)
- Placement agreement (AD 907) reviewed with/signed by applicant
- Forms: AD 558; 580; 907 modified to include TCA (07/10)

❖ AAP

- Documents compiled by agency and signed by applicants
- Form AAP-4 currently being modified to include TCA

❖ Adoption petition filed with court

STAGES OF A FINALIZED TCA – Cont'd

- ❖ Supervision of adoptive placement
 - Agency is responsible for ensuring supervision
- ❖ Finalization
 - Final court report submitted to court
 - Agency responsible for ensuring report is submitted
 - Court (Juvenile/Superior) issues final decree of adoption
- ❖ Dependency terminated

SAMPLE CASE

- ❖ 14 year old female
- ❖ W&IC 300 (a) petition sustained
 - Mother discovered child is having sex with 16 year old boy
 - Mother angered by child's recent behavior
 - Mother admits to abusing drugs
- ❖ Mother is a member of a tribe
- ❖ Court declared child ICWA eligible
- ❖ Father is unknown
- ❖ Judge ordered FR for mother
- ❖ Mother's cousin wants to adopt child, but does not want mother involved in the adoption process.
- ❖ Mother and child have strained relationships with this relative.
- ❖ Tribe wants TCA
- ❖ Mother does not want TCA

ACKNOWLEDGEMENTS

- ❖ The sponsors of AB1325: The Soboba Band of Luiseño Indians.
 - Special thanks to Nancy Currie and Kimberly Cluff.
- ❖ CWDA, specifically Kathy Watkins and Kathy Senderling.
- ❖ The ICWA CDSS workgroup.
- ❖ Valuable input from various California tribes.
- ❖ California Social Work Education Center (CalSWEC).
- ❖ Regional Training Academies (RTA).
- ❖ CDSS' Legal team, Permanency Policy Bureau, ICWA unit and Adoption Services Bureau.

Dispositional Hearing

Social worker, in consultation with the dependent Indian child's tribe, addresses if TCA is the most appropriate permanent plan.

Reunification services offered
(W&IC 361.5 (a));
Tribe recommends TCA as the concurrent permanent plan

Reunification services are NOT offered
(W&IC 361.5 (b))

TCA Home Study (including Adam Walsh background checks)

366.21 (e) or (f) status review hearing

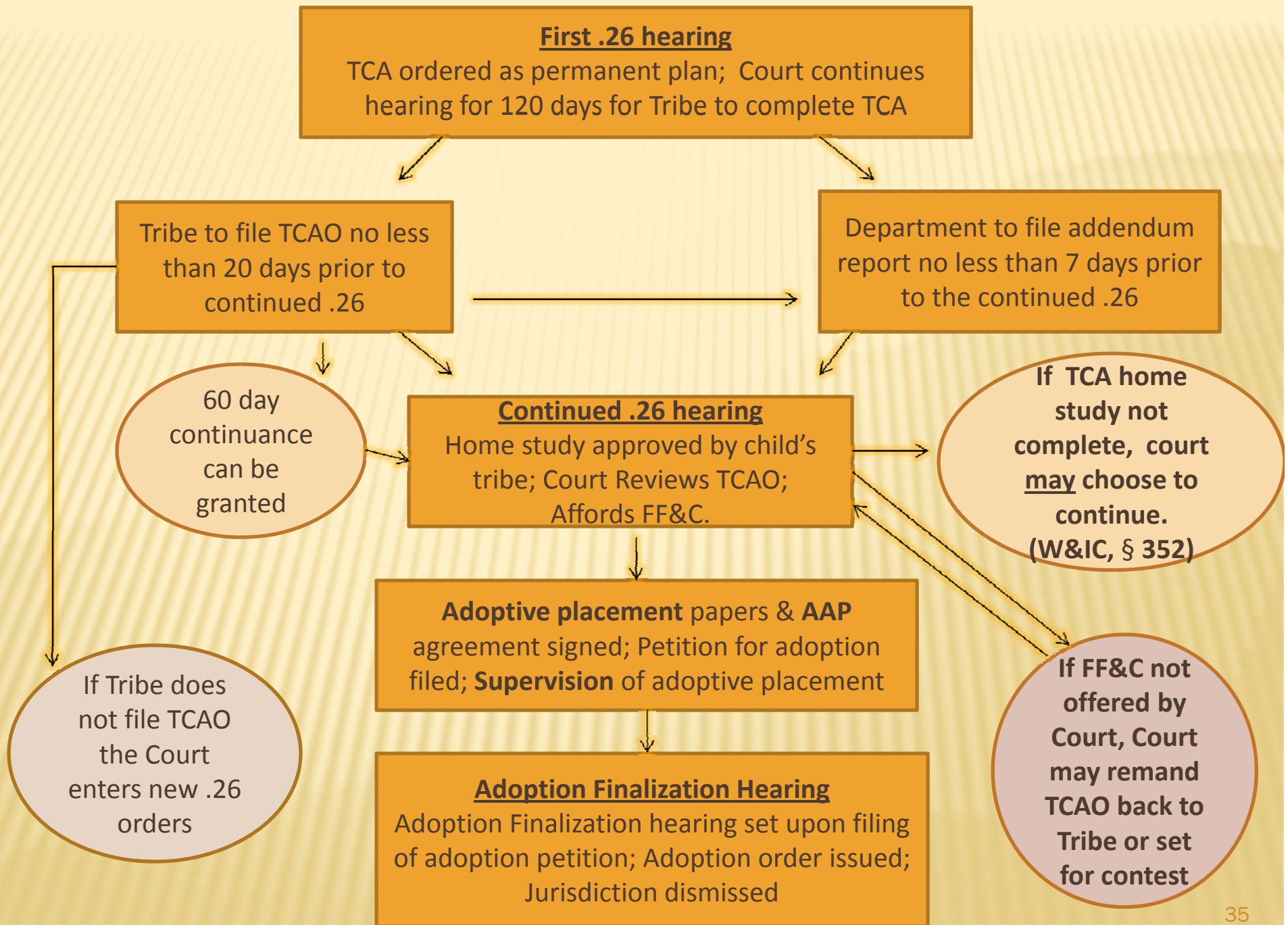
366.22 status review hearing

366.25 status review hearing

First .26 hearing

TCA ordered as permanent plan;
Court continues hearing for 120 days for Tribe to complete TCA

Notice of 366.26 hearing must be given
(W&IC 294 (f)(6))



RESOURCES

❖ Agencies & Organizations

- Administrative Office of the Courts (AOC), <http://www.courtinfo.ca.gov/programs/cfcc/programs/description/ICWA>
- California Indian Legal Services (CILS), <http://www.calindian.org>
- National Indian Child Welfare Association (NICWA), <http://www.nicwa.org>

❖ County Letters & Legislation

- All County Letter (ACL) No. 10-47, <http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acl/2010/10-47.pdf>
- All County Letter (ACL) No. 10-17, <http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acl/2010/10-17.pdf>
- AB 1325, Chapter 287, Statutes of 2009, http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1301-1350/ab_1325_bill_20091011_chaptered.pdf
- Indian Child Welfare Act(ICWA) of 1978, [\(Public Law 95-608, 92 Stat. 3069, November 8, 1978\)](#)

RESOURCES CONT'D

- ❖ CDSS ICWA Unit website:
<http://www.childsworld.ca.gov/PG1322.htm>
- ❖ AOC website:
<http://www.courtinfo.ca.gov/programs/cfcc/programs/description/TribalProjectUnit.htm>
- ❖ Letters and Notices Distribution List:
fmudss@dss.ca.gov

CONTACT INFORMATION

- ❖ For technical assistance regarding Tribal Customary Adoption:
Concurrent Planning Policy Unit
ConcurrentPlanningPolicyUnit@dss.ca.gov or (916) 657-1858

- ❖ For technical assistance regarding ICWA:
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CONTACT INFORMATION CONT'D...

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

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- ❖ For questions regarding the judicial process:

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