




Understanding and Implementing Tribal Customary Adoption

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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. Today, tribes are healing those old wounds and reclaiming their positive tradition for "making relatives."

Terry Cross from NICWA website - www.nicwa.org



Historical Trauma

Historical trauma is cumulative emotional and psychological wounding over the lifespan and across generations, emanating from massive group trauma. Native Americans have, for over 500 years, endured physical, emotional, social, and spiritual genocide from European and American colonialist policy. Contemporary Native American life has adapted, such that, many are healthy and economically self-sufficient. Yet a significant proportion of Native people are not faring as well.

Dr. Maria Yellow Horse Braveheart, PhD



Effects of Historical Trauma

The effects of historical trauma include:

- Unsettled emotional trauma
- Depression
- High mortality rates
- High rates of alcohol abuse
- Significant problems of child abuse (including sexual abuse)
- Domestic violence

Maria Yellow Horse Braveheart, PhD

The Impact of Loss

- http://courts.ms.gov/trialcourts/youthcourt/webhelp/videos/yc_process/icwa/index.html

The Definition

Tribal Customary Adoption is an agency adoption by and through the tribal customs, 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&I Code §366.24)

AAP Funding Without TPR

The Administration for Children and Families stated, "It has been brought to our attention that there are situations in which adoptions are legal without a TPR...Specifically, in some Tribes adoption is legal without TPR...After consideration, we believe that our earlier policy is an unduly narrow interpretation of the statute. Consequently, if a child can be adopted in accordance with State or Tribal law without a TPR...the requirement of section 473(c)(1) of the Act will be satisfied, so long as the State or Tribe has documented the valid reason why the child cannot or should not be returned to the home of his or her parents."

ASAC 1/23/01



Components of TCA

- Inquiry
- Collaboration with the child's tribe
- Inclusion of TCA in every court report beginning with JD
- Home studies
- TCAO
- Adoptive placement paperwork
- Finalization

CDSS ACL 10-47



Components of a TCAO

- Required components of a TCAO
 - Relationship between the child and biological parents
 - Relationship between the child and the adoptive parents
 - Relationship between the child and the child's tribe
 - Visitation
 - Inheritance



Preparing the TCAO

- Who?
- How?
- Format?
- Pitfalls and things to avoid!
- Examples, Tips and Suggested Non-Mandatory provisions
 - money, letters and gifts, siblings, travel, ceremonies, activities

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 does not have to be Native American (However, ICWA placement preferences apply.)	✓	✓
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 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	NO	YES
Parents' legal rights in tact	YES, but modified in the TCAO	NO
Mandated consultation with child's tribe	YES	NO, but should consult with tribe on any ICWA case
Main provisions found in	WIC 366.24	Family Code
Requires testimony of qualified expert witness for 366.26 hearing	NO, no TPR	YES
Requires consent of child age 12 years and older	NO, but wishes of child remain important	YES

PROCESS: Conventional Adoption vs. TCA

Detention hearing

J/D hearing

366.21 (e) Review hearing

366.21 (f) Review Hearing

***Initial* 366.26 Permanency Plan
Hearing (TPR)**

***Continued* 366.26 Hearing (FF&C)**

Adoptive placement papers signed

Petition Filed

Finalization/Dependency Dismissed

Referred to Tribe for TCAO

TCAO filed with the Court



Appellate Cases – Issues Raised

- In Re AM: (Yolo County) *“What if we really just want guardianship?” “When do we say we want a TCA and when do we prepare the TCAO?”*. Essential to prepare TCAO early and be mindful of the timelines for TCA.
- In Re HR: (Del Norte County) *“What if a party says NO to TCA!”*. While the state court has discretion to deviate from Tribe’s selection of TCA, TCA is the best option for native children, unless proven otherwise.
- In Re GC (Butte County): *What if we say nothing about TCA?*. It is essential to include/raise TCA as a permanency option at every step of a case. “the failure to object to deficiencies in the selection and implementation report or errors at the 366.26 hearing related to the tribal customary adoption procedures forfeits those issues on appeal”.
- *These cases are from the 1st and 3rd districts, so every county north of Inyo, Stanislaus, Santa Cruz,*



Important Items to Consider

- It is imperative that the TCA Adoptive Family receive and understand the TCAO.
- It is imperative that the caregivers/TCA Adoptive Family receive a copy of the child's birth certificate:
 - Tribal enrollment
 - Family connection
 - Belongs to the child
 - WIC Section 366.21 (h)
 - WIC Section 16010.4 & 16010.5
 - Rule of Court 5.484 (c)(2) re: active efforts

Common Questions

- Does the Department need to have a QEW for a TCA?: NO
- Does the Tribe have to get every parties' approval to do a TCA? NO
- Does the Tribe have to get parties' approval of the TCAO? NO
- Can a TCA happen with a non-Indian family? YES
- What happens, what are our remedies, if the TCA adoptive family doesn't follow the TCAO?
- Are TCA's doing what the tribe's expected? Are there unintended down sides?
- Can a tribal court issue the TCAO? YES
- Can the tribe/should the tribe tell the parties we want a TCA even if we do not have an adoptive family in mind? YES

Bibliography

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- Native American Rights Fund. (2007). *A Practical Guide to the Indian Child Welfare Act.* Boulder, Colorado: Native American Rights Fund.
- Simon, R. & Hernandez, S. (2008). *Native American Transracial Adoptees Tell Their Stories*. Lanham, Maryland: Lexington Books.
- Atwood, B. (2010) *Children, Tribes and States, Adoption and Custody Conflicts Over American Indian Children*; Carolina Academic Press.

Bibliography

Implementation Resources:

- California Department of Social Services - All County Letter on Tribal Customary Adoption - ACL 10-47
- Comparison of Financial Benefits - Original through CDSS - revised by the Soboba Band of Luiseño Indians and approved by CDSS. (Has not been updated to include AB 12)
- Comparison of Right and Responsibilities - Original through CDSS - revised by the Soboba Band of Luiseño Indians and approved by CDSS. (Has not been updated to include AB 12)
- TCA Website: www.caltca.org

Bibliography

Bringing Our Children Home video:

http://courts.ms.gov/trialcourts/youthcourt/webhelp/videos/yc_process/icwavideo/index.html

Legal Citations:

- Indian Child Welfare Act United States Code §1901 et seq.
- California Welfare and Institutions Code §366.24, §366.26
- California Rules of Court, Rules: 5.480-5.487 & 5.725



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