

CALIFORNIA TRIBAL COURT/STATE COURT FORUM

ANNOUNCEMENTS

Draft Tribal Customary Adoption Legislative Report is attached for your review. Assembly Bill 1325 (Cook; Stats. 2009, ch.287) (AB 1325), which became effective July 1, 2010, was tribally initiated legislation which added a new permanency option for Indian children who are dependents of the California courts. This new permanency option known as tribal customary adoption (TCA) allows these children, with the involvement of their tribe, to be adopted by and through the laws, customs and traditions of their tribe without requiring termination of the parental rights of the Indian child's biological parents. The legislation was intended to provide a culturally appropriate permanency option for Indian children who are dependents of the California courts, but still provide those children with the permanency and other benefits of a conventional adoption. Section 12 of AB 1325 (Codified as Welfare and Institutions Code section 366.24 (f)) required the Judicial Council to "...study California's tribal customary adoption provisions and their effects on children, birth parents, adoptive parents, Indian custodians, tribes, and the court, and shall report all of its findings to the Legislature on or before January 1, 2013." AB 1325 originally provided that the tribal customary adoption provisions would remain in effect until January 1, 2014 unless a later enacted statute deleted or extended that date.¹ This sunset date was removed by SB 1013 (http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_1001-1050/sb_1013_bill_20120627_chaptered.pdf) which was signed by the Governor on June 27, 2012. Although the sunset was lifted, the requirement for the Judicial Council to provide a report to the legislature was not removed. AOC staff has conducted research as required by the statute and the attached report sets out the findings of that research.

Tribal Communities and Domestic Violence Judicial Bench Guide

This bench guide will inform judicial officers about barriers, dispel myths about native victims, tribes, and the law, present a primer on federal Indian law, and highlight some of the interjurisdictional challenges state and tribal court judges face when recognizing and enforcing each other's protective orders. By understanding barriers facing native victims, delving into the complexities of federal Indian law, and uncovering the interjurisdictional challenges, courts will be better equipped to make rulings, avoid conflicting rulings, and engage native and non-native service providers and justice system professionals to better serve native victims. The members of the forum's education committee and AOC editing staff are reviewing this bench guide. If you would like a copy of the final version, please contact Jenny Walter at Jennifer.walter@jud.ca.gov.

Forum E-Update

OCTOBER 2012

CALIFORNIA TRIBAL COURT/STATE COURT FORUM

HON. RICHARD C. BLAKE
Cochair

HON. DENNIS M. PERLUSS
Cochair

*Hon. Abby Abinanti
Hon. April E. Attebury
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CALIFORNIA TRIBAL COURT/STATE COURT FORUM

JUDICIAL COUNCIL ADMINISTRATIVE OFFICE OF THE COURTS

JUDICIAL COURT OPERATIONS
SERVICES DIVISION

CENTER FOR FAMILIES,
CHILDREN & THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102

CONFERENCES

Indian Child Welfare Act: What Parents' Attorneys Need to Know - Part 3 in a Multi-Part Series" on Tuesday, October 23, 12:00 to 1:00 pm EST

Ann Gilmour of the Administrative Office of the Courts' Judicial and Court Operations Services Division and others are providing a web-based training for parents' attorneys which will give an in-depth review and discussion of transfers to tribal court and petitioning to invalidate ICWA proceedings; transfers to tribal court -- When can a case be transferred? Who must consent? How do you make the request? What happens when the case is transferred? This training also will provide a detailed question and answer period for presenters to respond to questions about this webinar content and content from the previous two ICWA trainings. If you have questions from the previous trainings, please email them to Elizabeth.Thornton@americanbar.org by October 15, 2012. The training is hosted by the National Child Welfare Resource Center on Legal and Judicial Issues and it is presented by the ABA National Project to Improve Representation for Parents in Child Welfare Cases. See flyer attached.

13th National Indian Nations Conference: Justice for Victims of Crime on December 6 — 8, 2012

Pre-Conference Institutes on Tribal and State Court Collaboration will be held on Wednesday, December 5, 2012 (Deadline to Register: November 16)

This national conference will provide opportunities for tribal, state, and federal participants to share knowledge, experiences, and ideas for developing and improving strategies and programs that serve the unique needs of crime victims in Indian Country. To register follow this link: <http://www.ovcinc.org/>

The California Tribal Court/State Court Forum has been asked to send a delegation to the December 5th Pre-Conference Institute. For more information, contact Maureen White Eagle at mwhiteeagle@msn.com. If you are thinking you would like to attend as part of our forum delegation, please also contact Jenny Walter at jennifer.walter@jud.ca.gov.

Tribal Projects Unit Staff:

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- Jenny Walter, Supervising Attorney, jennifer.walter@jud.ca.gov or 415-865-7687

Tribal Projects Link:
<http://www.courts.ca.gov/programs-tribal.htm>

CALIFORNIA TRIBAL COURT/STATE COURT FORUM

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2012 Aranda Access to Justice Award

SAN FRANCISCO—Judge Juan Ulloa, of the Superior Court of Imperial County, was presented with the 2012 Aranda Access to Justice Award at the California State Bar Annual Meeting in Monterey today. Judge Ulloa was recognized for establishing a collaborative relationship with court and consulate officials from Mexico to better serve the legal needs of his community, as well as, for being a leader in court reform efforts and working to improve access to justice for all Imperial County residents. The award was presented to Judge Ulloa by Chief Justice Tani G. Cantil-Sakauye and Mr. Jon Streeter, President of the State Bar of California during the Bar’s 2012 Awards Reception.



ADMINISTRATIVE OFFICE OF THE COURTS

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GRANT OPPORTUNITIES:

1. OVW Fiscal Year 2012 -Consolidated Grant and Technical Assistance Program to Address Children and Youth Experiencing Domestic and Sexual Violence and Engage Men and Boys as Allies

Deadline: October 24, 2012

Consolidated Grant Program: Grant recipients will develop and implement strategies to address stalking, domestic and dating violence, and sexual assault. This will include providing child- and youth-centered prevention, intervention, and treatment services and conducting public education campaigns to raise community awareness and solicit male involvement in combating the kinds of violence outlined above. **Technical Assistance Program:** The awardee will provide comprehensive training and technical assistance to the Consolidated Grant Program grantees. For more information see this link:

<http://www.ovw.usdoj.gov/docs/consolidated-solicitation.pdf>

2. Applications Now Being Accepted for NDCI's Drug Court Planning Initiative

Deadline: November 1, 2012

The Drug Court Planning Initiative (DCPI) is the world's leading comprehensive Drug Court training and is designed to give communities the tools and strategies they need to implement high-performing, sustainable programs. The DCPI is sponsored by the [Bureau of Justice Assistance](#) (BJA), U.S. Department of Justice. Applications are currently being accepted in two categories:* Adult Drug Court and Tribal Healing-to-Wellness Court. To learn more follow this link: <http://www.ndci.org/training/design-drug-court-0> . If you have any questions about these trainings or the application process, please contact Meghan Wheeler, Senior Consultant, National Drug Court Institute; mwheeler@ndci.org or Misti Porter, Senior Consultant, National Drug Court Institute; mporter@ndci.org

3. Children Exposed to Domestic Violence Specialized Response (EV) Program RFP

Deadline: November 7, 2012

The California Emergency Management Agency has a competitive Request for Proposals (RFP) for the Children Exposed to Domestic Violence Specialized Response (EV) Program. The EV Program funds agencies to build a multi-disciplinary team for the purpose of responding to the needs of children exposed to domestic violence. This team includes elements from each of the agencies involved in providing services to children exposed to domestic violence and will be tasked with ensuring response to child victims of domestic violence, developing protocols and fostering collaborative dialogue. All California city police and county sheriff departments that have not previously participated in this program are eligible to apply. Proposals must be received by Cal EMA or postmarked by Wednesday, November 7, 2012. For more information visit:

http://www.calema.ca.gov/GrantsProcessing/_layouts/DispItem.aspx?List=a0ffeea6-5a86-4de1-b7d8-268add1d7015&ID=90&ContentTypeId=0x0100870320F078C51A4F864B1FAAB594D5D600C590A9DE8442B0469C39F01E70C37434

CALIFORNIA TRIBAL COURT/STATE COURT FORUM

4. National Tribal Protection Order Registry Initiative Call for Concept Papers Deadline: December 18, 2012

Title IX of the Violence Against Women Act of 2005 (VAWA 2005) includes a number of programs and initiatives that are specific to the unique needs of tribal governments. Section 905 of the Act authorizes the creation of a national tribal protection order registry that would contain “civil and criminal order of protection issued by Indian tribes and participating jurisdictions.” The statute also directs the Attorney General of the United States to “contract with any interested Indian tribe, tribal organization, or tribal nonprofit organization to develop and maintain” the registry. The goal of Section 905 is to provide Indian tribal governments with the ability to have timely access to accurate data related to individuals who are the subject of a criminal or civil protection order issued by tribal courts. The registry will also provide participating tribes with the opportunity to share information about alleged domestic violence offenders with other tribal jurisdictions nationwide. Tribes also need the ability to share information with non-tribal law enforcement agencies in order to help protect Indian women from violence. The goal of this initiative is to develop and implement a tribal protection order registry specified in Title IX of VAWA 2005 containing civil and criminal orders of protection issued by Indian tribes and participating jurisdictions, as well as to assist tribes with accessing the national criminal information databases. For more information see this link:
<http://www.ovw.usdoj.gov/docs/ntpori.pdf>



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

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MEMORANDUM

Date	Action Requested
October 19, 2012	Please Review
To	Deadline
Family and Juvenile Law Advisory Committee Tribal Court / State Court Forum	October 25, 2012
From	Contact
Ann Gilmour, Attorney, Center for Families Children and the Courts Judicial and Court Operations Services Division Jennifer Walter, Supervising Attorney, Center for Families Children and the Courts Judicial and Court Operations Services Division	Ann Gilmour, Attorney, Center for Families, Children & the Courts Judicial and Court Operations Services Division 415-865-4207 phone ann.gilmour@jud.ca.gov
Subject	
Rules and forms revisions required by the California Supreme Court Decision <i>In re W.B.</i> 55 Cal. 4th 20	

The California Supreme Court's decision *In re. W.B.* 55 Cal. 4th 30 released August 6, 2012 mandates revisions to the California Rules of Court governing the application of the *Indian Child Welfare Act* (25 U.S.C. 1901 *et seq.*) and corresponding provisions of the Welfare and Institutions Code to juvenile delinquency proceedings.

As currently drafted, the rules (rules 5.480 through 5.487) require compliance with ICWA inquiry, notice and other substantive requirements in all juvenile delinquency proceedings in

which a child is either in foster care or at risk of entering foster care. The California Supreme Court held this is an overbroad application of the ICWA requirements.

While ICWA inquiry is required in all juvenile proceedings, in the delinquency cases inquiry is required only when a child is in foster care or at risk of entering foster care. The notice and other substantive ICWA requirements have a much more limited application. They apply when a child is adjudicated for a “status offense” involving conduct, which would not be a crime if committed by an adult, and is either in foster care or at risk of entering foster care. As a general matter, ICWA notice and other substantive requirements are not required in delinquency cases which are based on conduct which would be a crime if committed by an adult. In these “criminal conduct” cases notice and other substantive ICWA requirements will only be required if the court 1) sets a hearing to terminate parental rights or 2) if the court makes a foster care placement or contemplates such a placement and makes a specific finding that the placement is based entirely on conditions within the home and not even in part upon the child’s criminal conduct.

As a result of the WB decision, we recommend amendments to:

- rule 5.480 defining the application of the ICWA rules;
- rule 5.481 (b)(2) addressing ICWA notice in delinquency cases; and
- rule 5.482 concerning proceedings after ICWA notice;

We request guidance from the committee and forum on whether and how certain other rules which govern interactions with tribes and native service providers in juvenile delinquency cases should also be amended. As noted above, the decision does require ICWA inquiry in all juvenile proceedings:

“Consistent with the federal statutes, we hold that California law requires the court to *inquire* about a child’s Indian status at the outset of all juvenile proceedings...” (at 848)

Notice and other substantive ICWA requirements are only required, however, in a much more limited set of cases. A question then, is what is the purpose of inquiry and what if any obligations would a positive response to such inquiry impose if the case is not one of those to which ICWA notice and other substantive requirements apply? Is there any obligation on the court or probation officers to reach out to and consult with tribes and or native service providers in those cases where the ICWA requirements (beyond inquiry) do not apply?

Other provisions of the Welfare and Institutions Code discuss this issue. For instance WIC 727.1 (a) addressing the placement of minor’s under the supervision of probation officer states that in selecting placements:

“The selection shall consider, in order of priority, placement with relatives, **tribal members**, and foster family...”

Similar language is found in § 16501 (c)(1) which addresses case plan requirements. Do these sections mean that where there has been positive response to the inquiry regarding native ancestry and tribal affiliation the probation officer must be reaching out to the tribe and tribal members regarding placement, even where ICWA requirements may not apply? If so, must the court make findings ensuring that this has happened?

In addition section 727.4 (d) (5) addressing the definition of “reasonable efforts” (D) references the active efforts requirements in section 361.7 which mandate consultation with tribes and incorporation of culturally relevant services in case plans for Indian children. However, this requirement may be limited to “Indian child custody proceedings”.

Section 727.4 (d)(6) addressing the need to seek out relatives and extended family, states that “relative” “... also include an “extended family member” as defined in the Indian Child Welfare Act (25 U.S.C. Sec. 1903(2)). This requirement does not appear to be limited to “Indian child custody proceedings”.

We have identified several existing rules beyond the ICWA rules themselves which touch upon tribal involvement.

Specifically Rule 5.530 addresses who may be present at juvenile proceedings. Rule 5.530 (b)(7) states that “A representative of the Indian child’s tribe” is entitled to be present. We seek the committee and forum’s guidance on whether the rule should be amended to apply only to proceedings coming within rule 5.480 as amended in the proposal.

Rule 5.785 (c) addresses case plans in delinquency proceedings in which the probation officer is recommending placement in foster care or in which the child is already in foster care placement. As currently drafted the court is required to consider whether the probation officer has solicited and integrated into the case plan *inter alia* the input of “...the child’s identified Indian tribe...”. We seek the committee and forum’s guidance on whether this rule also be amended to apply only to proceedings coming within rule 5.480 as amended.

The proposed amendments are attached.

1 **Rule 5.480. Application (Fam. Code, §§ 170, 177, 3041; Prob. Code, § 1459.5; Welf.**
2 **& Inst. Code, §§ 224, 224.1)**

3
4 ***

5
6 (2) Proceedings under and Welfare and Institutions Code sections 601 and 602 et seq.
7 in which are based upon conduct of the minor which would not be criminal if
8 committed by an adult; the child is at risk of entering foster care or is in foster care,
9 including detention hearings, jurisdiction hearings, disposition hearings, review
10 hearings, hearings under section 366.26, and subsequent hearings affecting the
11 status of the Indian child;

12
13 (3) Proceedings under Welfare and Institutions Code section 602 et seq. based upon
14 conduct of the minor which would be criminal if committed by an adult where the
15 court has set a hearing to terminate parental rights over the child or the court is
16 considering a foster care placement based entirely on parental abuse or neglect and
17 not on the child's criminal conduct;

18
19 ~~(2)~~(4) Proceedings under Family Code section 3041;

20
21 ~~(3)~~(5) Proceedings under the Family Code resulting in adoption or termination of parental
22 rights; and

23
24 ~~(4)~~(6) Proceedings listed in Probate Code section 1459.5 and rule 7.1015.

25
26 ***

27
28 **Rule 5.481. Inquiry and notice (Fam. Code, §§ 177(a), 180; Prob. Code, §§ 1459.5(b),**
29 **1460.2; Welf. & Inst. Code, §§ 224.2, 224.3)**

30
31 (a) ***

32
33 (b) **Notice (Fam. Code, § 180; Prob. Code, § 1460.2; Welf. & Inst. Code, § 224.2)**

34
35 (1) ***

36
37 (2) If it is known or there is reason to know that an Indian child is involved in a
38 wardship proceeding under Welfare and Institutions Code sections 601 and
39 602 et seq., ~~and the probation officer has assessed that it is probable the child~~
40 ~~will be entering foster care, or if the child is already in foster care,~~ the
41 probation officer must send *Notice of Child Custody Proceeding for Indian*
42 *Child* (form ICWA-030) to the parent or legal guardian, Indian custodian, if

1 any, and the child's tribe, in accordance with Welfare and Institutions Code
2 section 727.4(a)(2) if:

3
4 (A) the court's jurisdiction is based upon conduct which would not be
5 criminal if the minor was over the age of 18 and the child is either in
6 foster care or at risk of entering foster care;

7
8 (B) although the child was initially detained for conduct which would be
9 criminal if the child were over 18, the child is either in foster care or at
10 risk of entering foster care and the court has found that the placement
11 outside the family home is based entirely on harmful conditions within
12 the child's home; or

13
14 (C) the court is setting a hearing to terminate parental rights of the child's
15 parents;

16
17 (3) – (4) ***

18
19
20 **Rule 5.482. Proceedings after notice (Fam. Code, §§ 177(a), 180(d), (e); Prob. Code,**
21 **§§ 1459.5(b), 1460.2(d), (e); Welf. & Inst. Code, §§ 224.2(c), (d); 25 U.S.C. §**
22 **1916(b))**

23
24 **(a) Timing of proceedings (Fam. Code, § 180(d), (e); Prob. Code, § 1460.2(d), (e);**
25 **Welf. & Inst. Code, § 224.2(c), (d))**

26
27 (1) ***

28
29 (2) The detention hearing in dependency cases and in delinquency cases in which
30 the probation officer has assessed that the child is in foster care or it is
31 probable the child will be entering foster care described by Rule 5.481 (b) (2)
32 (A) through (C) may proceed without delay, provided that:

33
34 (A)– (B) ***

35
36 (3) The parent, Indian custodian, or tribe must be granted a continuance, if
37 requested, of up to 20 days to prepare for the proceeding, except for specified
38 hearings in the following circumstances:

39
40 (A) The detention hearing in dependency cases and in delinquency cases ~~in~~
41 ~~which the probation officer has assessed that the child is in foster care~~
42 ~~or it is probable the child will be entering foster care~~ described by Rule
43 5.481 (b) (2) (A) through (C);

1
2 (B) The jurisdiction hearing in a delinquency case described by Rule 5.481
3 (b) (2) (A) through (C) in which the court finds the continuance would
4 not conform to speedy trial considerations under Welfare and
5 Institutions Code section 657; and

6
7 (C) The disposition hearing in a delinquency case described by Rule 5.481
8 (b) (2) (A) through (C) in which the court finds good cause to deny the
9 continuance under Welfare and Institutions Code section 682. A good
10 cause reason includes when probation is recommending the release of a
11 detained child to his or her parent or to a less restrictive placement. The
12 court must follow the placement preferences under rule 5.484 when
13 holding the disposition hearing.

14
15 (b) – (f)

16
17 (g) **Consultation with tribe**

18
19 Any person or court involved in the placement of an Indian child in a proceeding
20 described in rule 5.480 must use the services of the Indian child's tribe, whenever
21 available through the tribe, in seeking to secure placement within the order of
22 placement preference specified in rule 5.484.

23
24 **Rule 5.530. Persons present**

25
26 (a) ***

27
28 (b) **Persons present (§§ 280, 290.1, 290.2, 332, 347, 349, 353, 656, 658, 677, 679, 681,**
29 **700; 25 U.S.C. §§ 1911, 1931-1934)**

30 The following persons are entitled to be present:

31 (1) – (6) ***

32 (7) In a proceeding described by Rule 5.480, a representative of the Indian
33 child's tribe;

34 (8) - (11) ***

35 **Rule 5.785. General conduct of hearing**

36
37 (c) **Case plan (§§ 636.1, 706.6, 16501.1)**

38

1 When a child is detained and is at risk of entering foster care placement, the
2 probation officer must prepare a case plan.

3
4 (1) ***

5
6 (2) The court must consider the case plan and must find as follows:

7
8 (A) The probation officer solicited and integrated into the case plan the
9 input of the child, the child's family, in a case described by Rule 5.481
10 (b) (2) (A) through (C) the child's identified Indian tribe, and other
11 interested parties; or

12
13 (B) The probation officer did not solicit and integrate into the case plan the
14 input of the child, the child's family, in a case described by Rule 5.481
15 (b) (2) (A) through (C) the child's identified Indian tribe, and other
16 interested parties. If the court finds that the probation officer did not
17 solicit and integrate into the case plan the input of the child, the child's
18 family, the child's identified Indian tribe, and other interested parties,
19 the court must order that the probation officer solicit and integrate into
20 the case plan the input of the child, the child's family, in a case
21 described by Rule 5.481 (b) (2) (A) through (C) the child's identified
22 Indian tribe, and other interested parties, unless the court finds that each
23 of these participants was unable, unavailable, or unwilling to
24 participate.
25
26

H

Supreme Court of California
In re W.B., Jr., a Person Coming Under the Juvenile
Court Law.

The People, Plaintiff and Respondent,

v.

W.B., Jr., Defendant and Appellant.

No. S181638.

Aug. 6, 2012.


Background: After petition alleging that juvenile had committed a burglary was found to be true, at a disposition hearing the Superior Court, Riverside County, No. RIJ114127, [Christian F. Thierbach](#), J., ordered juvenile placed in a suitable foster home, group home, relative home, county or private facility, and directed juvenile to comply with terms of probation. Juvenile appealed, alleging that the juvenile court had failed to comply with notice requirements of the Indian Child Welfare Act (ICWA), and the Court of Appeal affirmed. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

Holding: The Supreme Court, [Corrigan](#), J., held that ICWA notice was not required.

Affirmed.

In re W.B., Jr., [106 Cal.Rptr.3d 1](#), superseded.

West Headnotes

[1] Infants 211  **2560**

[211](#) Infants

[211XV](#) Juvenile Justice

[211XV\(E\)](#) Trial and Adjudication


[211k2559](#) Pleading

[211k2560](#) k. In general. [Most Cited](#)

[Cases](#)

Allegations that a minor refuses to obey orders of a parent or guardian, is beyond parental control, violates age-based curfew ordinances, or is truant or

disobedient in school, must be brought in a delinquency petition under statutory provision for status offenses. [West's Ann.Cal.Welf. & Inst.Code § 601](#).

[2] Infants 211  **2587**

[211](#) Infants

[211XV](#) Juvenile Justice


[211XV\(E\)](#) Trial and Adjudication

[211k2584](#) Judgment, Order, or Adjudication

[211k2587](#) k. Construction, operation,

and effect. [Most Cited Cases](#)

Strictly speaking, an adjudication under status offense delinquency petition statute neither requires nor implies a finding of delinquency. [West's Ann.Cal.Welf. & Inst.Code § 601](#).

[3] Infants 211  **2445**

[211](#) Infants

[211XV](#) Juvenile Justice

[211XV\(A\)](#) In General


[211k2444](#) Nature, Form, and Purpose of

Proceedings

[211k2445](#) k. In general. [Most Cited](#)

[Cases](#)

In juvenile court, a minor is not designated as a “defendant,” nor accused of a “crime,” even though the allegation would describe a crime in adult court.

[4] Infants 211  **2587**

[211](#) Infants

[211XV](#) Juvenile Justice

[211XV\(E\)](#) Trial and Adjudication

[211k2584](#) Judgment, Order, or Adjudication

[211k2587](#) k. Construction, operation,

and effect. [Most Cited Cases](#)

Infants 211  **2671**



[211](#) Infants

[211XV](#) Juvenile Justice

[211XV\(G\)](#) Disposition

[211XV\(G\)2 Particular Dispositions](#)[211k2671](#) k. In general. [Most Cited](#)[Cases](#)

A juvenile adjudication is not a “conviction,” and thus a ward of the juvenile court is not “sentenced” for violating the law, even when disposition of the ward’s case involves removal from home for a period of confinement.

[5] Infants 211  **2065**[211](#) Infants[211XIV](#) Dependency, Permanent Custody, and Termination of Rights; Children in Need[211XIV\(E\)](#) Proceedings[211k2065](#) k. Jurisdiction and venue. [Most Cited Cases](#)**Infants 211**  **2554**[211](#) Infants[211XV](#) Juvenile Justice[211XV\(E\)](#) Trial and Adjudication[211k2554](#) k. Jurisdiction and venue. [Most Cited Cases](#)

Dual delinquency and dependency jurisdiction over a minor is generally forbidden. [West's Ann.Cal.Welf. & Inst.Code § 241.1](#).

[6] Indians 209  **133**[209](#) Indians[209III](#) Protection of Persons and Personal Rights; Domestic Relations[209k132](#) Infants[209k133](#) k. In general. [Most Cited Cases](#)

Congress enacted the Indian Child Welfare Act (ICWA) to further the federal policy that, where possible, an Indian child should remain in the Indian community. Indian Child Welfare Act of 1978, § 2, [25 U.S.C.A. § 1901](#).

[7] Indians 209  **134(3)**[209](#) Indians[209III](#) Protection of Persons and Personal Rights;



Domestic Relations

[209k132](#) Infants

[209k134](#) Dependent Children; Termination of Parental Rights

[209k134\(3\)](#) k. Jurisdiction; state or tribal court. [Most Cited Cases](#)

Under the Indian Child Welfare Act (ICWA), on petition of either parent or the tribe, state-court proceedings for foster care placement or termination of parental rights over an Indian child who does not live on a reservation are to be transferred to the tribal court, except in cases of good cause, objection by either parent, or declination of jurisdiction by the tribal court. Indian Child Welfare Act of 1978, § 101, [25 U.S.C.A. § 1911](#).

[8] Statutes 361  **181(1)**[361](#) Statutes[361VI](#) Construction and Operation[361VI\(A\)](#) General Rules of Construction[361k180](#) Intention of Legislature[361k181](#) In General[361k181\(1\)](#) k. In general. [Most Cited](#)[Cases](#)**Statutes 361**  **184**[361](#) Statutes[361VI](#) Construction and Operation[361VI\(A\)](#) General Rules of Construction[361k180](#) Intention of Legislature[361k184](#) k. Policy and purpose of act.[Most Cited Cases](#)

The court’s goal in interpreting a statute is to determine the Legislature’s intent and adopt a construction that best effectuates the purpose of the law.

[9] Statutes 361  **188**[361](#) Statutes[361VI](#) Construction and Operation[361VI\(A\)](#) General Rules of Construction[361k187](#) Meaning of Language[361k188](#) k. In general. [Most Cited Cases](#)

When interpreting a statute, the court begins with the statutory language because it generally provides

the most reliable indication of legislative intent.

[10] Statutes 361  **188**


361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k187 Meaning of Language

361k188 k. In general. [Most Cited Cases](#)

Statutes 361  **212.7**

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k212 Presumptions to Aid Construction

361k212.7 k. Other matters. [Most Cited](#)

[Cases](#)

If the statutory language is unambiguous, the court presumes that Legislature meant what it said, and the plain meaning of the statute controls.

[11] Statutes 361  **214**


361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k213 Extrinsic Aids to Construction

361k214 k. In general. [Most Cited Cases](#)

Statutes 361  **217.4**

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k213 Extrinsic Aids to Construction

361k217.4 k. Legislative history in

general. [Most Cited Cases](#)

The court considers extrinsic aids, such as legislative history, only if the statutory language is reasonably subject to multiple interpretations.

[12] Indians 209  **136**

209 Indians

209III Protection of Persons and Personal Rights; Domestic Relations

209k132 Infants

209k136 k. Child custody. [Most Cited Cases](#)

California's definition of the child custody proceedings to which Indian Child Welfare Act (ICWA) applies incorporates, and is coextensive with, the definition in the ICWA. Indian Child Welfare Act of 1978, § 4, [25 U.S.C.A. § 1903](#); ; [West's Ann.Cal.Welf. & Inst.Code § 224.1\(d\)](#).

[13] Indians 209  **135**

209 Indians

209III Protection of Persons and Personal Rights; Domestic Relations

209k132 Infants

209k135 k. Juvenile delinquency and youthful offenders. [Most Cited Cases](#)

In all juvenile delinquency proceedings, including those alleging adult criminal conduct, the court and the probation department have a duty to inquire about Indian status as soon as they determine that the child is in foster care or is at risk of entering foster care due to conditions in the child's home. Indian Child Welfare Act of 1978, § 4, [25 U.S.C.A. § 1903](#); ; [West's Ann.Cal.Welf. & Inst.Code §§ 224.3\(a\), 601, 602, 727.4\(d\)\(1\)](#).

[14] Indians 209  **135**

209 Indians

209III Protection of Persons and Personal Rights; Domestic Relations

209k132 Infants

209k135 k. Juvenile delinquency and youthful offenders. [Most Cited Cases](#)

Notice pursuant to Indian Child Welfare Act (ICWA) is generally not required in a juvenile delinquency proceeding premised on conduct that would be criminal if committed by an adult; however, if, at the disposition stage or at any point in the proceedings, the court contemplates removing an Indian child from the parental home based on concerns about harmful conditions in the home, and not based on the need for rehabilitation or other concerns related to the child's criminal conduct, notice is required and all other ICWA procedures must be followed. Indian Child Welfare Act of 1978, § 4(1), [25 U.S.C.A. § 1903\(1\)](#);

[West's Ann.Cal.Welf. & Inst.Code §§ 224.1, 602.](#)

[15] Statutes 361  **212.1**

[361](#) Statutes
[361VI](#) Construction and Operation
[361VI\(A\)](#) General Rules of Construction
[361k212](#) Presumptions to Aid Construction
[361k212.1](#) k. Knowledge of legislature.
[Most Cited Cases](#)

Statutes 361  **230**

[361](#) Statutes
[361VI](#) Construction and Operation
[361VI\(A\)](#) General Rules of Construction
[361k230](#) k. Amendatory and amended acts.
[Most Cited Cases](#)

The Legislature is presumed to know about existing case law when it enacts or amends a statute.

[16] Indians 209  **134(1)**

[209](#) Indians
[209III](#) Protection of Persons and Personal Rights; Domestic Relations
[209k132](#) Infants
[209k134](#) Dependent Children; Termination of Parental Rights
[209k134\(1\)](#) k. In general. [Most Cited Cases](#)

Indians 209  **135**

[209](#) Indians
[209III](#) Protection of Persons and Personal Rights; Domestic Relations
[209k132](#) Infants
[209k135](#) k. Juvenile delinquency and youthful offenders. [Most Cited Cases](#)

In all juvenile court proceedings, both dependency and delinquency, the court, social worker, or probation officer must inquire about the child's Indian status whenever the child is in foster care or conditions in the child's family may potentially require a foster care placement. [West's Ann.Cal.Welf. & Inst.Code §§ 224.3\(a\), 300, 601, 602.](#)

[17] Indians 209  **134(5)**

[209](#) Indians
[209III](#) Protection of Persons and Personal Rights; Domestic Relations
[209k132](#) Infants
[209k134](#) Dependent Children; Termination of Parental Rights
[209k134\(5\)](#) k. Notice of pending state proceedings and right to intervene. [Most Cited Cases](#)

Indians 209  **135**

[209](#) Indians
[209III](#) Protection of Persons and Personal Rights; Domestic Relations
[209k132](#) Infants
[209k135](#) k. Juvenile delinquency and youthful offenders. [Most Cited Cases](#)

Notice to the tribes and other Indian Child Welfare Act (ICWA) procedures must be provided in a juvenile court proceeding, either dependency or delinquency, only if the case is a "child custody proceeding," as defined under the ICWA; a case qualifies as a "child custody proceeding" if it will involve action taken to terminate parental rights or to place an Indian child in foster care or in an adoptive or pre-adoptive home or institution, while any case involving placement of a child outside the home based upon an act that would be criminal if committed by an adult is not a "child custody proceeding" and is thus exempt from ICWA. Indian Child Welfare Act of 1978, § 4(1), [25 U.S.C.A. § 1903\(1\)](#); [West's Ann.Cal.Welf. & Inst.Code §§ 224.2\(a\), 300, 601, 602.](#)

[18] Courts 106  **85(1)**

[106](#) Courts
[106II](#) Establishment, Organization, and Procedure
[106II\(F\)](#) Rules of Court and Conduct of Business
[106k85](#) Operation and Effect of Rules
[106k85\(1\)](#) k. In general. [Most Cited Cases](#)

Rules established by the Judicial Council are authoritative only to the extent that they are not inconsistent with legislative enactments and constitutional

provisions.

[19] Indians 209  **135**

[209](#) Indians

[209III](#) Protection of Persons and Personal Rights; Domestic Relations

[209k132](#) Infants

[209k135](#) k. Juvenile delinquency and youthful offenders. [Most Cited Cases](#)

Rule of Court stating that the Indian Child Welfare Act (ICWA) applies in all delinquency proceedings in which the child is in or at risk of entering foster care is overbroad, as the relevant statutes limit the ICWA's application to a narrow category of placements for "violating any law" not based on the minor's delinquent conduct. Indian Child Welfare Act of 1978, § 4(1), [25 U.S.C.A. § 1903\(1\)](#); [West's Ann.Cal.Welf. & Inst.Code §§ 601, 602](#); [Cal.Rules of Court, Rule 5.480](#).

[20] Indians 209  **134(1)**

[209](#) Indians


[209III](#) Protection of Persons and Personal Rights; Domestic Relations

[209k132](#) Infants

[209k134](#) Dependent Children; Termination of Parental Rights

[209k134\(1\)](#) k. In general. [Most Cited Cases](#)

All dependency proceedings must be conducted in compliance with the Indian Child Welfare Act (ICWA). Indian Child Welfare Act of 1978, § 4(1), [25 U.S.C.A. § 1903\(1\)](#); [West's Ann.Cal.Welf. & Inst.Code § 300](#).

[21] Indians 209  **135**

[209](#) Indians

[209III](#) Protection of Persons and Personal Rights; Domestic Relations

[209k132](#) Infants

[209k135](#) k. Juvenile delinquency and youthful offenders. [Most Cited Cases](#)

Delinquency proceedings brought under the status offense delinquency petition statute fall within the

purview of Indian Child Welfare Act (ICWA) because they are based on conduct that would not be criminal if committed by an adult; however, ICWA procedures would be required only in the narrow instance in which a ward is temporarily or permanently removed from the family home. Indian Child Welfare Act of 1978, § 4(1), [25 U.S.C.A. § 1903\(1\)](#); [West's Ann.Cal.Welf. & Inst.Code § 601](#).

[22] Indians 209  **135**

[209](#) Indians

[209III](#) Protection of Persons and Personal Rights; Domestic Relations

[209k132](#) Infants

[209k135](#) k. Juvenile delinquency and youthful offenders. [Most Cited Cases](#)

If a delinquency petition for violating any law alleges only that the minor committed a status offense, Indian Child Welfare Act (ICWA) compliance is required before the minor can be placed outside the home, as such placements are not based on criminal conduct; however, if the petition alleges the minor committed an act that would be a crime if committed by an adult, the proceedings are generally exempt from the ICWA, because the placement of a delinquent ward outside the home will almost always be based, at least in part, on the ward's criminal conduct. Indian Child Welfare Act of 1978, § 4(1), [25 U.S.C.A. § 1903\(1\)](#); [West's Ann.Cal.Welf. & Inst.Code § 602](#).

[23] Indians 209  **135**

[209](#) Indians


[209III](#) Protection of Persons and Personal Rights; Domestic Relations

[209k132](#) Infants

[209k135](#) k. Juvenile delinquency and youthful offenders. [Most Cited Cases](#)

Indian Child Welfare Act (ICWA) compliance is required in delinquency cases brought for violating any law that proceed to a termination of parental rights or that result in a foster care placement motivated solely by concerns about parental abuse or neglect; if the court sets a permanency planning hearing to terminate parental rights over a delinquent ward, or if the court contemplates ordering a delinquent ward placed in foster care and announces on the record that the

placement is based entirely on parental abuse or neglect and not on the ward's offense, notice must be sent to the relevant tribes and all other ICWA procedures must be followed, but in all other cases, it will be presumed that a placement outside the home is based upon the minor's criminal offense and thus not subject to ICWA. Indian Child Welfare Act of 1978, § 4(1), [25 U.S.C.A. § 1903\(1\)](#); [West's Ann.Cal.Welf. & Inst.Code § 602](#).


[24] Infants 211  2065

[211](#) Infants

[211XIV](#) Dependency, Permanent Custody, and Termination of Rights; Children in Need

[211XIV\(E\)](#) Proceedings

[211k2065](#) k. Jurisdiction and venue. [Most Cited Cases](#)

Infants 211  2554

[211](#) Infants

[211XV](#) Juvenile Justice

[211XV\(E\)](#) Trial and Adjudication

[211k2554](#) k. Jurisdiction and venue. [Most Cited Cases](#)

In counties with approved joint protocols, the juvenile court may exercise both dependency and delinquency jurisdiction over a minor who is designated a "dual status child." [West's Ann.Cal.Welf. & Inst.Code §§ 241.1\(e\), 300, 601, 602](#).

[25] Indians 209  134(1)

[209](#) Indians

[209III](#) Protection of Persons and Personal Rights; Domestic Relations

[209k132](#) Infants

[209k134](#) Dependent Children; Termination of Parental Rights

[209k134\(1\)](#) k. In general. [Most Cited Cases](#)

Indians 209  135

[209](#) Indians

[209III](#) Protection of Persons and Personal Rights; Domestic Relations

[209k132](#) Infants

[209k135](#) k. Juvenile delinquency and youthful offenders. [Most Cited Cases](#)

When the court exercises dependency jurisdiction to terminate parental rights or place a dual status Indian minor in foster care due to harmful conditions in the home, full Indian Child Welfare Act (ICWA) compliance is required; however, if the foster care placement of a dual status minor is motivated in part by the minor's delinquent conduct and the need for rehabilitation, the placement is exempt from ICWA. Indian Child Welfare Act of 1978, § 4(1), [25 U.S.C.A. § 1903\(1\)](#); [West's Ann.Cal.Welf. & Inst.Code §§ 241.1, 300, 601, 602](#).

[26] Indians 209  134(5)

[209](#) Indians

[209III](#) Protection of Persons and Personal Rights; Domestic Relations

[209k132](#) Infants

[209k134](#) Dependent Children; Termination of Parental Rights

[209k134\(5\)](#) k. Notice of pending state proceedings and right to intervene. [Most Cited Cases](#)

Indians 209  135

[209](#) Indians

[209III](#) Protection of Persons and Personal Rights; Domestic Relations

[209k132](#) Infants

[209k135](#) k. Juvenile delinquency and youthful offenders. [Most Cited Cases](#)

In both dependency and delinquency proceedings, the juvenile court must give notice and comply with other Indian Child Welfare Act (ICWA) requirements before it can terminate parental rights over an Indian child or place an Indian child in foster care, or in an adoptive or preadoptive placement, due to abuse or neglect in the child's home. Indian Child Welfare Act of 1978, § 4(1), [25 U.S.C.A. § 1903\(1\)](#); [West's Ann.Cal.Welf. & Inst.Code §§ 300, 601, 602](#).

[27] Indians 209  134(1)

[209](#) Indians

[209III](#) Protection of Persons and Personal Rights; Domestic Relations

[209k132](#) Infants
[209k134](#) Dependent Children; Termination
of Parental Rights
[209k134\(1\)](#) k. In general. [Most Cited
Cases](#)

Indians 209 135

[209](#) Indians
[209III](#) Protection of Persons and Personal Rights;
Domestic Relations
[209k132](#) Infants
[209k135](#) k. Juvenile delinquency and
youthful offenders. [Most Cited Cases](#)

Indian Child Welfare Act (ICWA) procedures are required for out-of-home placements of dependent children and status offenders. Indian Child Welfare Act of 1978, § 4(1), [25 U.S.C.A. § 1903\(1\)](#); [West's Ann.Cal.Welf. & Inst.Code §§ 601, 602](#).

[28] Indians 209 135

[209](#) Indians
[209III](#) Protection of Persons and Personal Rights;
Domestic Relations
[209k132](#) Infants
[209k135](#) k. Juvenile delinquency and
youthful offenders. [Most Cited Cases](#)

Indian Child Welfare Act (ICWA) procedures are typically not required for placements of delinquency wards detained for criminal conduct which “violates any law,” and, unless the delinquency court announces otherwise, on the record, it will be presumed that any placement of such a ward outside the home is based, at least in part, on the ward's criminal conduct. Indian Child Welfare Act of 1978, § 4(1), [25 U.S.C.A. § 1903\(1\)](#); [West's Ann.Cal.Welf. & Inst.Code § 602](#).

[29] Indians 209 135

[209](#) Indians
[209III](#) Protection of Persons and Personal Rights;
Domestic Relations
[209k132](#) Infants
[209k135](#) k. Juvenile delinquency and
youthful offenders. [Most Cited Cases](#)

With rare exceptions for dual status minors and

status offenders, placements in delinquency proceedings are presumptively exempt from the Indian Child Welfare Act (ICWA). Indian Child Welfare Act of 1978, § 4(1), [25 U.S.C.A. § 1903\(1\)](#); [West's Ann.Cal.Welf. & Inst.Code §§ 241.1\(e\), 601](#).

[30] Indians 209 135

[209](#) Indians
[209III](#) Protection of Persons and Personal Rights;
Domestic Relations
[209k132](#) Infants
[209k135](#) k. Juvenile delinquency and
youthful offenders. [Most Cited Cases](#)

Juvenile court was not required to give notice pursuant to the Indian Child Welfare Act (ICWA) in delinquency action on petition alleging that juvenile had committed burglary which would be a crime if committed by an adult, where juvenile was placed in a suitable facility but returned to mother's custody upon successful completion of the placement, and no termination of parental rights was contemplated. Indian Child Welfare Act of 1978, § 4(1), [25 U.S.C.A. § 1903\(1\)](#); [West's Ann.Cal.Welf. & Inst.Code § 602](#). See [10 Witkin, Summary of Cal. Law \(10th ed. 2005\) Parent and Child, §§ 528, 896](#). ***[847 Jonathan E. Demson](#), New York, under appointment by the Supreme Court, for Defendant and Appellant.

[Mark Radoff](#), Bishop, and Delia Parr, for California Indian Legal Services as Amicus Curiae on behalf of Defendant and Appellant.

Paulino G. Durán, Public Defender (Sacramento), [Arthur L. Bowie](#) and Randi Barrat, Assistant Public Defenders, for the Office of the Public Defender for Sacramento County as Amicus Curiae on behalf of Defendant and Appellant.

Edmund G. Brown, Jr., and [Kamala D. Harris](#), Attorneys General, [Dane R. Gillette](#), Chief Assistant Attorney General, [Gary W. Schons](#), Assistant Attorney General, [Steven T. Oetting](#) and Meredith S. White, Deputy Attorneys General, for Plaintiff and Respondent.

[W. Scott Thorpe](#); and [Albert C. Locher](#), Assistant District Attorney (Sacramento), for California District

Attorneys Association***848 as Amicus Curiae on behalf of Plaintiff and Respondent.

Jennifer B. Henning, for California State Association of Counties as Amicus Curiae.

CORRIGAN, J.

**910 *40 Passed in 1978, the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) (ICWA, or the Act) formalizes federal policy relating to the placement of Indian children outside the family home. State courts presiding over adoption, guardianship, and dependency matters have become familiar with the many requirements of this federal law. Historically, however, ICWA provisions have not been applied in the juvenile delinquency context because ICWA includes an express exemption for placements “based upon an act which, if committed by an adult, would be deemed a crime.” (25 U.S.C. § 1903(1).)

The minor argues state legislation has expanded ICWA to delinquency proceedings under Welfare and Institutions Code section 602.^{FN1} The Courts of Appeal have considered the question with varying results. Here, we determine the federally required scope of ICWA in juvenile delinquency proceedings and whether our Legislature has expanded those requirements. Consistent with the federal statutes, we hold that California law requires the court to *inquire* about a child's Indian status at the outset of all juvenile proceedings, but that ICWA's additional procedures are not required in most delinquency cases. A delinquency court must ensure that *notice* is given and other ICWA procedures are complied with *only* when (1) exercising “dual status” jurisdiction over an Indian child (see *post*, 144 Cal.Rptr.3d at pp. 852–854, 281 P.3d at pp. 914–915); (2) placing an Indian child outside the family home for committing a “status offense” (§§ 601–602; see *post*, at p. 850, 281 P.3d at p. 912); or (3) placing an Indian child initially detained for “criminal conduct” (§ 602; see *post*, at pp. 850–851, 281 P.3d at pp. 912–913) outside the family home for reasons based entirely on harmful conditions in the home. In this narrow third category, ICWA notice is required when the delinquency court sets a permanency planning hearing to terminate parental rights, or when the court contemplates ordering the ward placed in foster care and announces on the record that the placement is based entirely on abuse or neglect in the family home and not on the ward's delinquent conduct. Without a clear announcement from the court to the

contrary, it will be presumed that a placement of a section 602 ward is based on the ward's delinquent conduct, rather than conditions in the home, and thus not subject to ICWA.

FN1. All California statutory references are to the Welfare and Institutions Code.

I. BACKGROUND

The minor, W.B., Jr. (W.B.), has been the subject of several delinquency petitions. He was referred to probation in 2003 and 2006 on allegations of felony burglary and robbery, but these matters were closed for lack of evidence. Referred to diversion in November 2006 for possessing marijuana *41 on school grounds, he failed to complete the program. On March 27, 2007, shortly before his 15th birthday, a section 602 petition alleged he committed felony burglary and receipt of stolen property. On May 3, 2007, a second section 602 petition alleged he committed**911 battery with serious bodily injury. On May 23, 2007, a third section 602 petition alleged residential burglary. At a combined hearing, after W.B. admitted the battery and one burglary allegation, he was declared a ward of the juvenile court. The court ***849 ordered that he be placed outside the home. The court later reconsidered this order, released him to his mother, and directed that both participate in the Wraparound Program.^{FN2}

FN2. As the Court of Appeal below noted, the Wraparound service program was started in 1997 to provide “family-based service alternatives to group home care using intensive, individualized services.... The target population for the program is children in or at risk of placement in group homes.... (State Dept. of Social Services Web site < http://www.childsworld.ca.gov/PG 1320.htm > [as of Jan. 20, 2010].)”

In June 2008, another section 602 petition was filed alleging robbery. At a contested jurisdiction hearing, the victim testified that as he was leaving school W.B. approached from behind and hit him in the jaw, causing him to drop his cellular phone. A boy with W.B. picked up the phone, and the two ran off with it. The court found the allegation true and continued the minor as a ward. The probation officer's dispositional report noted that “ICWA may apply” because W.B.'s mother had reported possible Chero-

kee ancestry. There was no history of physical, sexual, or emotional abuse. Although the probation department recommended that he continue on home supervision and in the Wraparound Program, the People urged a placement outside the home because W.B. had not “learned to appreciate the seriousness of his conduct.” Following the probation department’s recommendation “with some misgivings,” the court released him to his mother’s custody and ordered continued participation in the Wraparound Program.

On October 14, 2008, just two months after disposition of the robbery case, a subsequent 602 petition was filed alleging residential burglary. W.B. and two others broke into a home through a sliding glass door and stole a number of items. The court found the burglary allegation true and set the maximum confinement time at six years. The probation officer’s report once again stated that “ICWA may apply” because W.B.’s mother had reported Cherokee ancestry. No history of abuse was reported, and the child welfare agency confirmed that it had no active dependency case involving the family.

The probation officer reported that the county’s interagency placement committee (CIPC) unanimously recommended that W.B. be placed in foster care. The committee believed his treatment needs, which included “anger management, victim awareness, [and] impulse control,” would be best met in *42 a placement program. Although he had appeared to be making progress at home, he had continued to commit criminal acts and posed a threat to the community’s safety. The probation department endorsed the CIPC recommendation. The court ordered placement in a foster care facility and directed W.B. to comply with terms of probation. He would be returned to his mother’s custody upon successful completion of the placement. The aggregate term of potential confinement was eight years eight months.

On appeal, W.B. argued the dispositional order placing him in foster care had to be reversed because the juvenile court had failed to comply with the notice requirements of ICWA. The Court of Appeal disagreed, holding notice was not required because federal law specifically excludes delinquency cases from ICWA, and any interpretation of California law that would expand ICWA’s application to delinquencies would be invalid under federal preemption principles. We granted review.

II. DISCUSSION

A. Overview of California’s Juvenile Court Law

In California, the juvenile court’s jurisdiction over a minor can be invoked in two ***850 ways: (1) by a dependency petition ([§ 300](#)), which alleges the child’s home is unfit due to parental abuse or neglect; or (2) by a delinquency petition, which accuses the child of either disobedience or truancy ([§ 601](#)) or the violation of a law that defines a crime ([§ 602](#)). The terms “delinquency” and “status offense” have been employed somewhat **912 loosely in various contexts. Before beginning our analysis, it is useful to clarify the definitions of these terms and explain how they fit into the statutory framework.

[\[1\]\[2\]](#) Allegations that a minor refuses to obey orders of a parent or guardian, is beyond parental control, violates age-based curfew ordinances, or is truant or disobedient in school, must be brought in a petition filed under [section 601](#). ([§ 601, subd. \(a\).](#)) These allegations, which are specifically delineated in [section 601](#), are commonly called “status offenses” because they address conduct that is not criminal but is nevertheless subject to punishment because of the offender’s status as a person under age 18. (See [In re Lucas \(2004\) 33 Cal.4th 682, 731, 16 Cal.Rptr.3d 331, 94 P.3d 477](#); [R.R. v. Superior Court \(2009\) 180 Cal.App.4th 185, 198, 103 Cal.Rptr.3d 110](#).) Strictly speaking, “[a]n adjudication under [section 601](#) neither requires nor implies a finding of ‘delinquency.’” ([In re Bettve K. \(1991\) 234 Cal.App.3d 143, 151, 285 Cal.Rptr. 633](#).) [Section 601](#) allegations are not the only status offenses considered by the juvenile court, however.

[Section 602](#) confers broad juvenile court jurisdiction over allegations that the minor’s conduct “violates any law.” ([§ 602, subd. \(a\).](#)) Some penal *43 statutes proscribe conduct only when it is committed by a minor. For example, although an adult may legally consume alcohol, underage drinking is not permitted. ([Cal. Const., art. XX, § 22](#); see generally [In re Jennifer S. \(2009\) 179 Cal.App.4th 64, 101 Cal.Rptr.3d 467](#) [discussing local and state laws prohibiting underage drinking].) Likewise, although an adult may lawfully purchase cigarettes, a minor cannot. ([Pen.Code, § 308, subd. \(b\).](#)) Offenses like these, which can be committed only by a person under 18, are technically status offenses, but they are adjudicated under [section 602](#) because they describe a mi-

nor's conduct that "violates any law." (§ 602, subd. (a); see, e.g., *In re Jennifer S.*, at p. 67, 101 Cal.Rptr.3d 467.) Section 602 also encompasses conduct by a minor that would be a crime if committed by an adult.

In the broadest sense, adjudications under section 300 are "dependency" proceedings, and adjudications under sections 601 and 602 are "delinquency" proceedings. When the juvenile court assumes jurisdiction over a child under section 601 or 602, the minor is described as a "ward" of the court.

[3][4] In the course of our discussion, we will occasionally refer to a minor's "criminal conduct" as a shorthand to differentiate behavior that would constitute a crime if committed by an adult from status offenses, which are punishable only because of the minor's age. However, in juvenile court, a minor is not designated as a "defendant," nor accused of a "crime," even though the allegation would describe a crime in adult court. (§ 203.) The determination whether a minor has violated a criminal provision is made solely in order to establish that the juvenile court has jurisdiction. Once this determination is made, the juvenile court can declare the minor a ward of the court and order a disposition that will address the minor's behavior. A juvenile adjudication is not a "conviction" (*In re Bernardino S.* (1992) 4 Cal.App.4th 613, 618, 5 Cal.Rptr.2d 746), and thus a ward of the juvenile court is not "sentenced" for violating the law, even when disposition of the ward's case involves***851 removal from home for a period of confinement.

1. Foster Care Placements in Delinquency Proceedings

A temporary or permanent foster care placement typically arises in the context of juvenile dependency proceedings, in which the court determines whether a child's home is unfit. If allegations of parental abuse or neglect are substantiated, the court assumes jurisdiction and removes the child from the family home for the child's own well-being. Such a child is adjudged to be a "dependent" of the court. (§ 300 et seq.) When a dependent *44 child is placed in a foster home, the family generally participates in reunification services, with the goal of the child's safe return to parental custody. ^{FN3} Meanwhile, the dependency case proceeds through an intricate system of review hearings. Because **913 family reunification is not always possible, child welfare workers also explore alterna-

tives for a child's permanent placement outside the home through guardianship or adoption. The dependency process culminates in a permanency planning hearing, at which the court determines whether the child can be safely returned home or, if not, whether parental rights must be terminated and the child released to a permanent placement. (§ 366.26.)

^{FN3}. In some extreme cases, the court can deny services and foreclose any attempt at reunification. (§§ 361.5, subd. (b) [dependency], 727.2, subd. (b) [delinquency].)

Although the great majority of children enter foster care through the dependency process, a child may also enter foster care in a delinquency placement. ^{FN4} Foster care placement is one of several dispositional options available to the delinquency court. If the allegations of a section 602 petition are found true, the court may dismiss the petition in the interest of justice (§ 782), place the child on informal probation for up to six months without a declaration of wardship (§ 725, subd. (a)), or declare the child a ward of the juvenile court (§ 725, subd. (b)) and proceed to disposition.

^{FN4}. In July 2009, approximately 63,000 California children were in foster care under the supervision of child welfare departments. Another 5,000 were in probation-supervised foster care because of their involvement with the criminal justice system. (Danielson & Lee, *Foster Care in California: Achievements and Challenges* (May 2010) Public Policy Institute of California, p. 5 < <http://www.ppic.org/main/publication.asp?i=905> >[as of Aug. 6, 2012] (*Foster Care in California*).) Children who entered foster care through delinquency proceedings generally comprise less than 10 percent of the population in foster care. (*Id.* at p. 17, fn. 13.)

While a delinquent ward may be allowed to remain at home, the grounds for removing a ward from parental custody are established by statute. Removal is warranted only if the court finds: (1) the parent has not or cannot provide "proper maintenance, training, and education" for the child; (2) previous attempts at in-home probation have failed to reform the child; or (3) the child's welfare requires that custody be taken from the parent. (§ 726, subd. (a).) When removed

from the family home, the ward comes under the supervision of the probation department. (§ 727, subd. (a).) Depending on the severity of the offense and other rehabilitative considerations, the juvenile court may direct that the ward be placed in a nonsecure home or facility or may order that the ward serve a period of physical confinement, either in a secure local facility (§ 730, subd. (a) [juvenile home, ranch, camp, forestry camp, or juvenile hall]) or in the Department of Corrections and Rehabilitation, Division of Juvenile Facilities (DJF) [formerly the California Youth Authority], which is the most restrictive placement. (§ 731; ***852 *In re Eddie M.* (2003) 31 Cal.4th 480, 488, 3 Cal.Rptr.3d 119, 73 P.3d 1115.) If a nonsecure *45 placement is found to be appropriate, the probation department may place a removed ward in the home of a relative, in a licensed community care facility, or in foster care. (§ 727, subd. (a).) A group home is the predominant out-of-home placement chosen for delinquent wards.^{FNS}

FNS. In 2009, 96 percent of probation-supervised minors first removed from parental custody were placed in a group home. (Danielson & Lee, *Foster Care in California, supra*, at p. 18, fn. 27.)

If a delinquent ward is removed from parental custody, even temporarily, reunification services must usually be provided to address the minor's needs and facilitate a safe return to the family home. (§ 727.2, subd. (a).) The reunification process generally mirrors that followed in dependency. Although dependency and delinquency law differ in several ways, the Legislature has announced that both types of proceedings serve the purpose of preserving and strengthening family relationships. (*In re James R.* (2007) 153 Cal.App.4th 413, 430, 62 Cal.Rptr.3d 824.) Family preservation and reunification are "appropriate goals" for a court to consider in determining the disposition of a delinquent minor, so long as they are consistent with public safety and the best interests of the minor. (§ 202, subd. (b); see *In re L.M.* (2009) 177 Cal.App.4th 645, 650, 99 Cal.Rptr.3d 350.)

Every six months, the court must review the status of a ward removed to foster care. (§ 727.2, subd. (c).) At each review hearing, the court considers: (1) the appropriateness and continuing need for the placement; (2) the probation department's compliance with ***914 the case plan for either returning the child home

or finalizing an alternative permanent placement; (3) whether limitations should be placed on the parent's ability to make educational decisions for the child; (4) progress made by the child and parent in correcting the conditions that created the need for the foster care placement; (5) the likely date when the child can be returned home or released for a permanent placement; and (6) whether services are necessary for a child age 16 or older to transition from foster care to independent living. (§ 727.2, subd. (e).) If the child is not returned home within 12 months after entering foster care, the court must hold a permanency planning hearing. (§ 727.3, subd. (a)(1).) At this hearing, it may return the child home, order the child into a different permanent placement, or order that further services be provided. (§ 727.3, subd. (b).) Possible permanent plans include a termination of parental rights, followed by release for adoption; a legal guardianship; placement with a relative; or placement in a "planned permanent living arrangement," such as a foster home, program, or facility. (§ 727.3, subd. (b) (3)-(6).) As of January 1, 2012, if a child will soon turn 18, or if the court finds that delinquency supervision is no longer necessary, the court must consider whether to assume dependency jurisdiction over the child. (§ 727.2, subd. (i).)

*46 2. "Dual Status" Minors

Delinquency courts follow a system parallel to that used in dependency courts for removing a child from the family home. The dependency and delinquency systems serve overlapping but slightly different aims, however. Whereas the dependency system is geared toward protection of a child victimized by parental abuse or neglect, the delinquency system enforces accountability for the child's own wrongdoing, both to rehabilitate the child and to protect the public. (§ 202, subs. (a), (b).)

***853 Although California juvenile courts address the needs of dependent and delinquent minors differently, some minors who come before the court seem to fall under *both* systems. Sociological research has demonstrated a strong link between childhood abuse or neglect and later delinquent behavior. (See, e.g., Judicial Council of Cal., Fact Sheet, Intersection Between Juvenile Dependency and Delinquency: Available Research (June 2005) pp. 2-4 < http://www.courts.ca.gov/documents/Ab129-FactSheetMay05.pdf > [as of Aug. 6, 2012].) Research reveals that dependent children violate criminal laws at a

significantly higher rate than children who have not been the subject of dependency petitions. (Dunlap, *Dependents Who Become Delinquents: Implementing Dual Jurisdiction in California under Assembly Bill 129* (2006) 5 Whittier J. Child & Fam. Advocacy 507, 511–512.) In general, however, California law prohibits a minor from simultaneously being declared a dependent child and a delinquent ward.

[5] In 1989, in response to a Court of Appeal decision that outlined several potential problems with allowing concurrent delinquency and dependency jurisdiction over a minor (*In re Donald S.* (1988) 206 Cal.App.3d 134, 253 Cal.Rptr. 274), the Legislature added [section 241.1 to the Welfare and Institutions Code](#). This statute generally prohibits the juvenile court from assuming dual jurisdiction over minors. [Section 241.1, subdivisions \(a\) through \(d\)](#) state that when a minor appears to come within the description of both [section 300](#) (dependency) and [section 601 or 602](#) (delinquency), the county probation department and child welfare agency must consult with each other and jointly determine which status will best serve the interests of the minor and the protection of society. Based on this joint assessment, the juvenile court decides whether the child should be treated as a dependent child or a delinquent ward. (*Los Angeles County Dept. of Children & Fam. Services v. Superior Court* (2001) 87 Cal.App.4th 320, 325, 104 Cal.Rptr.2d 425; *In re Marcus G.* (1999) 73 Cal.App.4th 1008, 1013, 87 Cal.Rptr.2d 84.) “Dual jurisdiction is generally forbidden....” (*D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1123, 93 Cal.Rptr.3d 418.)

In 2004, the Legislature created a small exception to the ban on dual jurisdiction. [Section 241.1, subdivision \(e\)](#) allows a minor to be designated a *47 “dual status child,” and **915 treated simultaneously under the court's dependency and delinquency jurisdiction, but only in accordance with a precise written protocol. The statute requires that the protocol be developed jointly by the county's probation department and child welfare agency and signed by the heads of these entities as well as the presiding judge of the juvenile court. ([§ 241.1, subd. \(e\)](#).) To avoid duplication of services, county protocols must adopt either an “on-hold” system, in which dependency jurisdiction is suspended while the child is a ward of the delinquency court, or a “lead court/lead agency” system, in which the probation department and social services department decide

which agency will take the lead in all case-management and court-related matters. ([§ 241.1, subd. \(e\)\(5\)](#).)

Few California counties have adopted these joint protocols, however. Currently, eight years after the enactment of [section 241.1, subdivision \(e\)](#), only nine of California's 58 counties have filed dual status protocols with the Judicial Council. (Judicial Council of Cal., Dual Status Children: Protocols for Implementing Assembly Bill 129 < <http://www.courts.ca.gov/7989.htm> > [as of Aug. 6, 2012].) ^{FN6} The reluctance to ***854 embrace dual status designation has generated skepticism about the efficacy of [section 241.1, subdivision \(e\)](#)'s approach and led to calls for broader reforms. (See McCulloch, *Still Between a Rock and a Hard Place ... Victim or Delinquent: Dual Status Minors in California—An Illusory Promise?* (2007) 28 J. Juv.L. 118, 132.)

^{FN6}. The counties with protocols are: Colusa, Inyo, Modoc, Placer, Riverside, San Joaquin, Siskiyou, Sonoma, Stanislaus. (Judicial Council of Cal., Dual Status Children: Protocols for Implementing Assembly Bill 129 < <http://www.courts.ca.gov/7989.htm> > [as of Aug. 6, 2012].)

B. Federal Law Regarding Placement of Indian Children

In the juvenile dependency system, children are removed from the family home not as punishment for their own misconduct, but because conditions in the home subject them to abuse or neglect. Additional procedures are required if a child is of Indian heritage. Congress has determined that, as a matter of federal policy, protective steps must be taken before an Indian child may be removed. In 1978, these protections were codified in ICWA. ([25 U.S.C. § 1901 et seq.](#)) Dependency courts and social workers are accustomed to complying with ICWA, which applies when an Indian child is removed from parental custody, even temporarily. However, because Congress created a specific *exemption* for placements based on a child's criminal conduct ([25 U.S.C. § 1903\(1\)](#)), it has long been understood that ICWA's requirements do not apply in most juvenile delinquency cases. (See, e.g., *In re Enrique O.* (2006) 137 Cal.App.4th 728, 40 Cal.Rptr.3d 570.)

*48 1. ICWA Requirements

[6] ICWA is a federal law giving Indian tribes concurrent jurisdiction over state court child custody proceedings that involve Indian children living off of a reservation. (25 U.S.C. § 1911(b)-(c); *Mississippi Band of Choctaw Indians v. Holyfield* (1989) 490 U.S. 30, 36, 109 S.Ct. 1597, 104 L.Ed.2d 29.)^{FN7} Congress enacted ICWA to further the federal policy “that, where possible, an Indian child should remain in the Indian community....” (*Mississippi Band of Choctaw Indians v. Holyfield*, at p. 37, 109 S.Ct. 1597.) Congress found that Indian children were vitally important “to the continued existence and integrity of Indian tribes” (25 U.S.C. § 1901(3)), but “an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and ... placed in non-Indian foster and adoptive homes and institutions....” (25 U.S.C. § 1901(4).) Congress further found “that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.” (25 U.S.C. § 1901(5).) Based on these findings, **916 Congress declared a national policy “to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and ***855 family service programs.” (25 U.S.C. § 1902.)

FN7. Tribal courts have exclusive jurisdiction in these proceedings when the child lives on a reservation. (25 U.S.C. § 1911(a).)

When applicable, ICWA imposes three types of requirements: notice, procedural rules, and enforcement. (See *In re S.B.* (2005) 130 Cal.App.4th 1148, 1156–1157, 30 Cal.Rptr.3d 726.) First, if the court knows or has reason to know that an “Indian child” is involved in a “child custody proceeding,” as those terms are defined in the Act (25 U.S.C. § 1903(1), (4)), the social services agency must send notice to the child’s parent, Indian custodian, and tribe by registered mail, with return receipt requested. (25 U.S.C. § 1912(a).) If the identity or location of the

tribe cannot be determined, notice must be sent to the Bureau of Indian Affairs (BIA). (*Ibid.*) No hearing on foster care placement or termination of parental rights may be held until at least 10 days after the tribe or BIA has received notice. (*Ibid.*)

[7] Next, after notice has been given, the child’s tribe has “a right to intervene at any point in the proceeding.” (25 U.S.C. § 1911(c).) “At the heart of the ICWA are its provisions concerning jurisdiction over Indian child custody *49 proceedings.... [I]n the case of children not domiciled on the reservation: on petition of either parent or the tribe, state-court proceedings for foster care placement or termination of parental rights are to be transferred to the tribal court, except in cases of ‘good cause,’ objection by either parent, or declination of jurisdiction by the tribal court.” (*Mississippi Band of Choctaw Indians v. Holyfield*, *supra*, 490 U.S. at p. 36, 109 S.Ct. 1597, fn. omitted.) If the tribal court does not assume jurisdiction, ICWA imposes various procedural and substantive requirements on the state court proceedings. Indigent parents or Indian custodians have the right to court-appointed counsel. (25 U.S.C. § 1912(b).) Before the court can place an Indian child in foster care or terminate parental rights, it must find “that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.” (25 U.S.C. § 1912(d).) A foster care placement also requires a finding, by clear and convincing evidence, based on testimony from “qualified expert witnesses,” that “continued custody of the child by the parent ... is likely to result in serious emotional or physical damage to the child.” (25 U.S.C. § 1912(e).) Before a termination of parental rights may occur, likelihood of harm must be proven beyond a reasonable doubt. (25 U.S.C. § 1912(f).) Once the appropriate showing is made, ICWA establishes rules for the placement of an Indian child outside the home. “The most important substantive requirement imposed on state courts is that of § 1915(a), which, absent ‘good cause’ to the contrary, mandates that adoptive placements be made preferentially with (1) members of the child’s extended family, (2) other members of the same tribe, or (3) other Indian families.” (*Mississippi Band of Choctaw Indians v. Holyfield*, at pp. 36–37, 109 S.Ct. 1597.)

Finally, an enforcement provision offers recourse if an Indian child has been removed from parental

custody in violation of ICWA. Upon a petition from the parent or the child's tribe to "any court of competent jurisdiction," a foster care placement or termination of parental rights will be invalidated if the action was conducted in violation of ICWA. ([25 U.S.C. § 1914.](#))

2. ICWA Definitions

ICWA is quite precise in setting out the scope of its provisions. It applies to any "child custody proceeding" involving an "Indian child." ([25 U.S.C. § 1903.](#)) An "Indian child" is an unmarried person under **856** 18 who is either a member of an Indian tribe or is eligible for membership and is the biological child of a tribe member. ([25 U.S.C. § 1903\(4\).](#)) A "child custody proceeding" is any action resulting in a foster **917** care placement, termination of parental rights, preadoptive placement, or adoptive placement. ([25 U.S.C. § 1903\(1\).](#)) A "foster care placement" refers to the temporary removal of a child from the parent or Indian custodian to a foster **50** home or institution, or the home of a guardian or conservator, where parental rights have not been terminated but the parent or Indian custodian cannot have the child returned on demand. ([25 U.S.C. § 1901\(1\) \(i\).](#)) The Act specifies, however, that "[s]uch term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents." ([25 U.S.C. § 1903\(1\)](#), italics added.) Thus, by its plain terms, the Act specifically excludes most delinquency placements from its requirements.

Congressional intent to preclude the application of ICWA in most state juvenile delinquency proceedings is also evident from collateral materials. For example, a letter from the assistant secretary of the Department of the Interior to the sponsor of the bill that enacted ICWA, ^{FN8} stressed that limitations on the Act's scope were "crucial to the carrying out" of its provisions. (H.R.Rep. No. 1386-95, 2d Sess., p. 31 (1978).) The Interior Department believed "delinquency proceedings where the act committed would be a crime if committed by an adult should be excepted from the definition" of placements to which ICWA applied, because the "standards and preferences" of ICWA "have no relevance in the context of a delinquency proceeding." (*Ibid.*)

^{FN8}. House Bill No. 12533, 95th Congress,

2d Session (1978).

Federal guidelines published by the BIA to guide state courts in implementing ICWA also state that "most juvenile delinquency proceedings are not covered by the Act..." (U.S. Dept. of the Interior, Bureau of Indian Affairs, [Guidelines for State Courts; Indian Child Custody Proceedings](#), 44 Fed.Reg. 67584, 67587 (Nov. 26, 1979) (BIA Guidelines).) ^{FN9} However, according to the BIA Guidelines, "the Act does apply to status offenses, such as truancy and incorrigibility, which can only be committed by children, and to any juvenile delinquency proceeding that results in the termination of a parental relationship." (BIA [Guidelines](#), 44 Fed.Reg. at p. 67587.) Commentary to this guideline explains why Congress excluded most delinquency placements from ICWA's requirements: "The entire legislative history makes it clear that the Act is directed primarily at attempts to place someone other than the parent or Indian custodian in charge of raising an Indian child—whether on a permanent or temporary basis. Although there is some overlap, juvenile delinquency proceedings are primarily designed for other purposes. Where the child is taken out of the home for committing a crime it is usually to protect society from further offenses by the child and to punish the child in order to persuade that child and others not to commit other offenses." (*Id.*, 44 Fed.Reg. at p. 67587.) **51** This rationale for excluding delinquency matters from ICWA does not apply to status offenses **857** because Congress believed placements outside the home for status offenses "are usually premised on the conclusion that the present custodian of the child is not providing adequate care or supervision." (*Ibid.*) However, the BIA Guidelines explain that ICWA applies to *all* placements, regardless of the type of offense, if a termination of parental rights is contemplated. (*Id.*, 44 Fed.Reg. at pp. 67587-67588.) "Such terminations are not intended as punishment and do not prevent the child from committing further offenses. They are based on the conclusion that someone other than the present custodian of the child should be raising the child." (*Id.*, 44 Fed.Reg. at p. 67588.)

^{FN9}. Although Congress directed the Secretary of the Department of the Interior to promulgate regulations ([25 U.S.C. § 1952](#)), the BIA instead issued a set of guidelines that are instructive but not determinative of state court decisions. (BIA [Guidelines](#), 44

[Fed.Reg. at p. 67584](#); see *In re Santos Y.* (2001) 92 Cal.App.4th 1274, 1301, 112 Cal.Rptr.2d 692.)

In summary, ICWA grants the parents and custodians of Indian children, as well as the child's tribe, several procedural and substantive rights in "child custody proceedings." As defined in the Act, these proceedings include all foster care or adoptive **918 placements of Indian children *except* placements made in the context of most juvenile delinquency proceedings and parental custody awards in divorce proceedings. (25 U.S.C. § 1903(1).) Congressional intent to exclude most delinquency-based placements from ICWA is clear.

C. California's Implementation of ICWA

1. Background

After Congress enacted ICWA, the states adopted procedures to implement it. For many years, the only guidance for California's juvenile courts in applying ICWA came from a California Rule of Court.^{FN10} Former Rule 1360, and then former Rule 1439, incorporated most of ICWA's definitions and established substantially identical requirements for the placement of Indian children outside the home. (See *In re Santos Y.*, *supra*, 92 Cal.App.4th at pp. 1301–1303, 112 Cal.Rptr.2d 692.) The rule's application was expressly limited to juvenile dependency proceedings. (Former Rule 1439(b) ["This rule applies to all proceedings under [section 300 et seq.](#)..."].) However, in 2005 the Judicial Council expanded the rule to cover all delinquency proceedings when the child is at risk of entering foster care or is in foster care. (*R.R. v. Superior Court*, *supra*, 180 Cal.App.4th at p. 199, 103 Cal.Rptr.3d 110.) These amendments survive in the current version of the rule. ([Rule 5.480.](#))^{FN11}

^{FN10.} All citations to rules refer to the California Rules of Court (hereafter Rule or Rules).

^{FN11.} Under [Rule 5.480 et seq.](#), ICWA "applies to all proceedings involving Indian children that may result in an involuntary foster care placement; guardianship or conservatorship placement; custody placement [with a nonparent]; declaration freeing a child from the custody and control of one or both parents; termination of parental rights; or adoptive placement, including: [¶] ...

[p]roceedings under [Welfare and Institutions Code section 300 et seq.](#), and [sections 601 and 602 et seq.](#) in which the child is at risk of entering foster care or is in foster care..." (Italics added.) The only exception is for "voluntary foster care and guardianship placements where the child can be returned to the parent or Indian custodian on demand." ([Rule 5.480.](#)) As we will discuss (*post*, fn. 17), this rule is overbroad.

*52 In 2006, with the passage of Senate Bill No. 678 (2005–2006 Reg. Sess.), the Legislature incorporated ICWA's requirements into California statutory law. (Stats.2006, ch. 838.) The primary objective of Senate Bill No. 678 was to increase compliance with ICWA. California Indian Legal Services (CILS), a proponent of the bill, observed that courts and county agencies still had difficulty complying with ICWA 25 years after its enactment, and CILS believed codification of the Act's requirements into state law would help alleviate***858 the problem. (Sen. Judiciary Com., Analysis of Sen. Bill No. 678 (2005–2006 Reg. Sess.) as amended Aug. 22, 2005, p. 6.) To accomplish this goal, Senate Bill No. 678 revised and recast several provisions of the Family, Probate, and Welfare and Institutions Codes. (See Assem. Com. on Judiciary, Analysis of Sen. Bill No. 678 (2005–2006 Reg. Sess.) as amended June 14, 2006, p. 1.)

2. California's Statutory Scheme

ICWA's many procedural requirements for juvenile dependency and delinquency cases are found in [sections 224 through 224.6 of the Welfare and Institutions Code](#). We examine these statutes to determine whether, and to what extent, the Legislature extended requirements of the federal Act to delinquency proceedings in California.

[\[8\]\[9\]\[10\]\[11\]](#) Established principles of statutory construction apply. Our goal is to determine the Legislature's intent and adopt a construction that best effectuates the purpose of the law. (*Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 888, 80 Cal.Rptr.3d 690, 188 P.3d 629; *In re J.W.* (2002) 29 Cal.4th 200, 209, 126 Cal.Rptr.2d 897, 57 P.3d 363.) We begin with the statutory language because it generally provides the most reliable indication of legislative intent. (*City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 625, 26 Cal.Rptr.3d 304, 108 P.3d 862; *People v. Gardeley*

(1996) 14 Cal.4th 605, 621, 59 Cal.Rptr.2d 356, 927 P.2d 713.) “‘If the statutory language is unambiguous, we presume the Legislature meant what it said, and the plain meaning of the statute controls. [Citation.]’ [Citation.] We consider extrinsic**919 aids, such as legislative history, only if the statutory language is reasonably subject to multiple interpretations.” (*Miklosy v. Regents of University of California*, at p. 888, 80 Cal.Rptr.3d 690, 188 P.3d 629.)

a. *Statutory Language*

[Section 224.3](#) defines when and how the juvenile court must inquire about a child’s possible Indian ancestry. [Section 224.3, subdivision \(a\)](#) states: *53 “The court, county welfare department, and the probation department have an affirmative and continuing duty to inquire whether a child for whom a petition under [Section 300](#), [601](#), or [602](#) is to be, or has been, filed is or may be an Indian child in all dependency proceedings and *in any juvenile wardship proceedings if the child is at risk of entering foster care or is in foster care.*” (Italics added.) This language is clear. It creates an obligation for the juvenile court, the county welfare department, and the probation department to inquire about the child’s Indian status in all dependency proceedings and in *any* delinquency case involving a child who is already in foster care or who appears to be at risk of entering foster care. “At risk of entering foster care” is a term specifically defined. It “means that conditions within a minor’s family may necessitate his or her entry into foster care unless those conditions are resolved.” (§ [727.4, subd. \(d\)\(2\)](#).) Accordingly, the court or the probation department must ask about Indian status at the outset of any delinquency case involving a child who is currently in foster care. If the child is not currently in foster care, the court and the probation department have a continuing duty to inquire about Indian status if, at any time during the proceedings, it appears that conditions in the child’s family may require a foster care placement unless they are resolved. (§§ [224.3, subd. \(a\)](#), [727.4, subd. \(d\)\(1\)](#).)

Once the court has learned that a child under its jurisdiction may have Indian ancestry, the next step ICWA typically requires***859 is notice to the tribe or, if no tribe is identified, to the BIA. ([25 U.S.C. § 1912\(a\)](#).) Obviously, ICWA requirements apply only in those cases that fall under the statutory scheme. Two California statutes describe the notice requirement and when it applies. [Section 224.3](#), the same

statute that establishes a duty of inquiry, provides in a later subdivision: “If the court, social worker, or probation officer knows or has reason to know that an Indian child is involved, the social worker or probation officer shall provide notice in accordance with [paragraph \(5\) of subdivision \(a\) of Section 224.2.](#)” (§ [224.3, subd. \(d\)](#).) Although [section 224.3](#) does not specify what type of proceeding the Indian child must be “involved” in for the notice obligation to apply, this ambiguity is clarified by the cross-referenced statute. [Section 224.2, subdivision \(a\)](#), states that “[i]f the court, a social worker, or probation officer knows or has reason to know that an Indian child is involved, any notice sent *in an Indian child custody proceeding* under this code shall be sent to the minor’s parents or legal guardian, Indian custodian, if any, and the minor’s tribe and comply with [several enumerated] requirements.” (Italics added.) ^{FN12} The language of [section 224.2, subdivision \(a\)](#) limits the notice requirement to the context of “an Indian child custody proceeding.” Thus, read together, [sections 224.2](#) and [224.3](#) require that ICWA notice be provided *only* when an Indian child is *54 involved in an Indian child custody proceeding. (See *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387, 241 Cal.Rptr. 67, 743 P.2d 1323; *People v. Pieters* (1991) 52 Cal.3d 894, 899, 276 Cal.Rptr. 918, 802 P.2d 420 [statutory provisions relating to the same subject should be harmonized].)

^{FN12} Subdivision (a)(5) describes the particular information that must be included in the notice. (§ [224.2, subd. \(a\)\(5\)](#).)

[12] “Indian child custody proceeding” is a term of art. [Section 224.1, subdivision \(d\)](#) states, in part: “‘Indian child custody proceeding’ means a ‘child custody proceeding’ within the meaning of [Section 1903](#) of the Indian Child Welfare Act, including a proceeding for temporary or long-term foster care or guardianship placement, termination of parental rights, preadoptive placement after***920 termination of parental rights, or adoptive placement.” California’s definition of the child custody proceedings to which ICWA applies thus incorporates, and is coextensive with, the definition in the federal Act. ^{FN13} As noted, the definition of “child custody proceeding” in [title 25 United States Code section 1903](#) expressly *excludes* delinquency proceedings based on an act that would be criminal if committed by an adult.

[FN13](#). The Legislature's desire to import the federal definition is also evident in [section 224, subdivision \(b\)](#), which declares that in “all Indian child custody proceedings, *as defined in the federal Indian Child Welfare Act*” (italics added), the court must consider legislative findings about California's interest in preserving tribal communities, strive to promote the stability of Indian tribes and families, and protect the best interests of the child.

[Section 224.3, subdivision \(a\)](#) is the only provision in California's ICWA legislation that expressly applies to juvenile delinquency proceedings. (See [R.R. v. Superior Court, supra](#), 180 Cal.App.4th at p. 200, 103 Cal.Rptr.3d 110.) All of the other statutes, including the two notice statutes just discussed, extend the rights and protections of ICWA to participants in “an Indian child custody proceeding.” (E.g., § 224.4; see also §§ 224.2, subd. (a), 224.5, 224.6, subd. (a).) Because an “Indian child custody proceeding” by definition excludes proceedings to place a child outside the home based on conduct that would be ***860 criminal if committed by an adult (§ 224.1, subd. (d); 25 U.S.C. § 1903(1)), it follows that California's ICWA statutes impose no duty of notice, or any other ICWA procedures, in most delinquency cases alleging adult criminal conduct. A narrow exception applies when the court decides to place a delinquent ward outside the home for reasons *other than* the ward's criminal conduct. Even if the case began as a delinquency matter, circumstances may lead the court to remove a ward from parental custody because of abuse or neglect in the home. In such cases in which a placement is imposed because of dependency concerns and not, even in part, because of the ward's criminal conduct, both California and federal law require that ICWA procedures be followed.

The relevant statutory language indicates that, although the Legislature created a duty of inquiry in all cases involving a potential foster care *55 placement, it did not extend ICWA's notice and enforcement requirements so broadly. Instead, consistent with federal law, the Legislature dictated that the notice and procedural protections of ICWA be provided only in the subset of delinquency cases that meet the federal definition of a “child custody proceeding,” i.e., those based on considerations *other than* the child's criminal conduct.

[\[13\]\[14\]](#) In sum, from the language of the statutes, we distill the following. In all juvenile delinquency proceedings, including those alleging adult criminal conduct, the court and the probation department have a duty to *inquire* about Indian status as soon as they determine that the child is in foster care or is at risk of entering foster care due to conditions in the child's home. (§§ 224.3, subd. (a), 727.4, subd. (d)(1).) Notice pursuant to ICWA is generally *not* required in a delinquency proceeding premised on conduct that would be criminal if committed by an adult. However, if, at the disposition stage or at any point in the proceedings, the court contemplates removing an Indian child from the parental home based on concerns about harmful conditions in the home, and *not* based on the need for rehabilitation or other concerns related to the child's criminal conduct, notice is required and all other ICWA procedures must be followed. [FN14](#)

[FN14](#). At oral argument, W.B.'s counsel asserted the duties of notice and inquiry cannot be separated because communication with the tribes is the only way to determine whether a child is truly an Indian child. (See § 224.1, subd. (a); 25 U.S.C. § 1903(4).) This argument goes too far. For example, it would require notice to the tribes in every single dependency case, even when there has been no suggestion of Indian ancestry or when the parents have disavowed such ancestry. We have never interpreted ICWA's duty of inquiry so expansively. [Section 224.3, subdivision \(a\)](#) describes when the duty to inquire arises, and subdivision (b) describes information that may provide reason to know an Indian child is involved. Contact with the BIA and tribes is required only if information produced by the initial inquiry gives the court, social worker, or probation officer reason to know the minor is an Indian child. (§ 224.3, subd. (c).) Although final confirmation of a child's Indian status may not occur until the tribes have been contacted, this is no reason to expand ICWA notice beyond the boundaries set by the Legislature. [Section 224.3](#) imposes a duty to inquire about possible Indian status; it does not obligate the court to confirm that status with the BIA and tribes in every juvenile court case.

****921 b. Legislative History**

Legislative history also supports this interpretation. The primary purpose of Senate Bill No. 678 was to encourage full compliance with ICWA by codifying its requirements into state law. (Sen. Judiciary Com., Analysis of Sen. Bill No. 678 (2005–2006 Reg. Sess.) as amended Aug. 22, 2005, pp. 1, 6; Sen. Appropriations Com., Analysis of Sen. Bill No. 678 (2005–****861** 2006 Reg. Sess.) as amended Aug. 22, 2005, p. 1; Assem. Com. on Judiciary, Analysis of Sen. Bill No. 678 (2005–2006 Reg. Sess.) as amended June 14, 2006, p. 6.) To a large extent, the bill simply reorganized and supplemented existing provisions of the Family, Probate, and Welfare and Institutions Codes to ***56** address ICWA compliance. (Sen. Judiciary Com., Analysis of Sen. Bill No. 678 (2005–2006 Reg. Sess.) as amended Aug. 22, 2005, pp. 6–7.) Nothing in the history of Senate Bill No. 678 suggests an intent to override the criminal acts exception or expand ICWA to delinquency cases that Congress explicitly excluded. ^{FN15}

FN15. In some other respects, Senate Bill No. 678 did go beyond the protections in federal law to enact higher standards of protection. For example, ICWA requires a finding that active efforts were made to prevent breakup of an Indian family before a *government-initiated* foster care placement or termination of parental rights. (25 U.S.C. § 1912(d).) Senate Bill No. 678 expanded this requirement to private adoptions as well. (Stats.2006, ch. 838, §§ 8–15; Sen. Judiciary Com., Analysis of Sen. Bill No. 678 (2005–2006 Reg. Sess.) as amended Aug. 22, 2005, pp. 8–9.) However, these expansions are directly addressed in the legislative history. The same cannot be said of an extension of ICWA to delinquency placements based on criminal acts.

If our Legislature had intended to extend ICWA's protections to a whole new realm of juvenile delinquency cases otherwise exempted under the federal law, one would expect evidence of this intent to feature prominently in the legislative history. Yet, no mention of such a purpose appears. Legislative committee analyses consistently state that Senate Bill No. 678 “clarifies which proceedings, under California law, are Indian child custody proceedings” and thus “subject to ICWA.” (Sen. Judiciary Com., Analysis of

Sen. Bill No. 678 (2005–2006 Reg. Sess.) as amended Aug. 22, 2005, p. 12, italics added.) The committee reports say nothing about extending ICWA to delinquency placements based on criminal acts. Although the bill's sponsor mentioned delinquency at an informational hearing before the Senate Judiciary Committee, she stated only that Senate Bill No. 678 sought “to clarify what ICWA requires in juvenile court and of the county agencies in delinquency cases.” (Sen. Judiciary Com., Transcript of Informational Hearing, “The Indian Child Welfare Act and Related Compliance Problems” (May 17, 2005) p. 4 [testimony of Sen. Denise Moreno Ducheny].)

A Court of Appeal case decided while the Legislature was actively considering Senate Bill No. 678 also supports the conclusion that the Legislature did not intend to extend ICWA to delinquency placements based on criminal conduct. In *In re Enrique O.*, supra, 137 Cal.App.4th at page 732, 40 Cal.Rptr.3d 570, a minor who had committed a sexual battery was placed in a group home based on the aggressive nature of his offense, his “home situation,” and the probation officer's belief that aggressive sexual misconduct required inpatient counseling. On appeal, the minor challenged the lack of ICWA notice. He asserted the 2005 amendments to former Rule 1439, which mandated notice in all section 601 and 602 proceedings in which the child is in or at risk of entering foster care, trumped the longstanding rule that ICWA does not apply in delinquency proceedings. (*In re Enrique O.*, at p. 733, 40 Cal.Rptr.3d 570.) Despite the juvenile court's concern about the general well-being of the ***57** minor, the Court of Appeal concluded the placement was “‘based on’” the minor's criminal activity. The court reasoned: “This is not a case where criminal activity simply highlights a situation that results in removal from the home for reasons in the home; rather, the offenses ****862** appellant committed here placed him squarely and unavoidably within the delinquency exception of the ICWA.” (*Id.* at p. 734, 40 Cal.Rptr.3d 570.) ****922** More to the point, the court observed that the minor's interpretation of former Rule 1439 was in direct conflict with the federal statute on which it was based, “which is an untenable result.” (*In re Enrique O.*, at p. 734, 40 Cal.Rptr.3d 570.) Accordingly, the court refused to “interpret the California Rules of Court ... to expressly contradict the ICWA by ordering ICWA notices and procedures to occur in all out of home placements arising out of acts that would be deemed crimes if committed by an adult. [Citations.]” (*In re Enrique O.*, at p. 735, 40

[Cal.Rptr.3d 570.](#))

[15] The *Enrique O.* decision was published while the Legislature was considering Senate Bill No. 678.^{FN16} Because the Legislature is presumed to know about existing case law when it enacts or amends a statute (*People v. Overstreet* (1986) 42 Cal.3d 891, 897, 231 Cal.Rptr. 213, 726 P.2d 1288), we assume the Legislature was aware of *Enrique O.*'s holding that former Rule 1439 was inconsistent with federal law and invalid to the extent it would expand ICWA to delinquency placements based on acts that would be criminal if committed by an adult. The Legislature did not signal an intent to supersede this holding. In fact, it specifically adopted and incorporated the federal definition of "child custody proceedings" that is the origin of the delinquency exemption. (§ 224.1, subd. (a), citing 25 U.S.C. § 1903.) There is nothing to suggest the Legislature meant to expand ICWA to a subset of cases *specifically excluded* from the federal definition of "child custody proceedings" to which the Act applies. On the contrary, if the Legislature had wanted to make ICWA applicable to a whole new category of cases, it would have made little sense for it to incorporate a federal definition directly contradicting such an extension.

^{FN16} The bill was introduced in August 2005. The Court of Appeal decided *Enrique O.* on March 13, 2006, and this court denied review on June 28, 2006. (*In re Enrique O.*, *supra*, 137 Cal.App.4th 728, 40 Cal.Rptr.3d 570.) Senate Bill No. 678 eventually passed on September 30, 2006. (Stats.2006, ch. 838.)

3. Application of ICWA in Delinquency Cases

[16][17][18][19] We have determined that California's ICWA statutes require the following: In all juvenile court proceedings, both dependency and delinquency, the court, social worker, or probation officer must inquire about the child's Indian status whenever the child is in foster care or conditions in the child's family may potentially require a foster care placement. (§ 224.3, subd. (a).) Notice to the tribes and other ICWA procedures must be provided *58 only if the case is a "child custody proceeding," as defined in 25 U.S.C. section 1903(1). (§ 224.2, subd. (a).) A case qualifies as a "child custody proceeding" if it will involve action taken to terminate parental rights or to place an Indian child in foster care or in an

adoptive or preadoptive home or institution. (25 U.S.C. § 1903(1).) Any case involving placement of a child outside the home based upon an act that would be criminal if committed by an adult is *not* a " 'child custody proceeding' " and is thus exempt from ICWA. (25 U.S.C. § 1903(1).)^{FN17}

^{FN17} Because it does not account for the limited applicability of ICWA in delinquency cases, the Rule of Court describing ICWA's requirements is overbroad. Rule 5.480 states that ICWA applies in all section 601 and 602 proceedings in which the child is in or at risk of entering foster care. Rules established by the Judicial Council are authoritative only "to the extent that they are not inconsistent with legislative enactments and constitutional provisions." (*In re Richard S.* (1991) 54 Cal.3d 857, 863, 2 Cal.Rptr.2d 2, 819 P.2d 843.) As demonstrated, the relevant statutes limit ICWA's application to the narrow category of section 602 placements not based on the minor's delinquent conduct.

***863 [20][21] Different types of juvenile court cases in California therefore require different levels of ICWA compliance. It is undisputed that all dependency proceedings must be conducted in compliance with ICWA. (See, e.g., *Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 253, 126 Cal.Rptr.2d 639 ["The ICWA confers on tribes the right to intervene at any point in state court dependency proceedings"].) Delinquency proceedings brought under section 601 also fall within the purview of ICWA because they are based on conduct that would not be criminal if committed by an adult. However, ICWA **923 procedures would be required only in the narrow instance in which a section 601 ward is temporarily or permanently removed from the family home. (See § 601, subd. (b) [expressing legislative intent that truant wards remain in parental custody].)

[22] Whether ICWA applies in a delinquency case brought under section 602 depends, first, on the type of offense alleged in the petition. If the section 602 petition alleges only that the minor committed a status offense (see *ante*, 144 Cal.Rptr.3d at p. 850, 281 P.3d at p. 912), ICWA compliance is required before the minor can be placed outside the home. Like placements under section 601 for truancy or incorrigibility, placements under section 602 based on the

minor's commission of a status offense are subject to ICWA because they are not based on criminal conduct. However, if the [section 602](#) petition alleges the minor committed an act that would be a crime if committed by an adult, the proceedings are generally *exempt* from ICWA. ICWA procedures are ordinarily not required in such proceedings because the placement of a delinquent ward outside the home will almost always be based, at least in part, on the ward's criminal conduct.

***59** In some rare cases, the court may remove a [section 602](#) ward from home for reasons completely unrelated to the ward's offense. Placement of the ward in some type of foster care setting is one option available to the court at a [section 602](#) disposition hearing. (See §§ 727, subd. (a)(3), 727.4, subd. (d)(1), 11402.) In typical delinquency cases, it can be presumed that such placements are made to address the child's misconduct and prevent future wrongdoing. In some rare cases, however, the court may elect to remove a [section 602](#) ward from home and order a foster care placement solely because of parental abuse or neglect. Although a delinquency court cannot assume concurrent dependency jurisdiction over a ward except in a county with an approved dual status protocol (§ 241.1, subd. (d)), the delinquency court does have the power to remove a minor from home if the parent is not providing appropriate care. (§ 726, subd. (a).) These placements may result in termination of parental rights if reunification efforts are unsuccessful. (§ 727.3.) A termination hearing in delinquency court proceeds exactly like a termination hearing in dependency court. (§ 727.31, subd. (a); see § 366.26.)

[23] Under our interpretation of the relevant statutes, ICWA compliance is required in these rare [section 602](#) cases that proceed to a termination of parental rights or that result in a foster care placement motivated solely by concerns about parental abuse or neglect. If the court sets a permanency planning hearing to terminate parental rights over a delinquent ward, or *****864** if the court contemplates ordering a delinquent ward placed in foster care and *announces on the record* that the placement is based *entirely* on parental abuse or neglect and not on the ward's offense, notice must be sent to the relevant tribes and all other ICWA procedures must be followed. In all other [section 602](#) cases, it will be presumed that a placement outside the home is based upon the minor's criminal offense and thus not subject to ICWA.

[24][25] A hybrid situation is presented in “dual status” cases. In counties with approved joint protocols, the juvenile court may exercise both dependency and delinquency jurisdiction over a minor who is designated a “dual status child.” (§ 241.1, subd. (e); see *ante*, 144 Cal.Rptr.3d at pp. 852–854, 281 P.3d at pp. 914–915.) The same principles we have discussed govern ICWA's application to dual status minors. When the court exercises dependency jurisdiction to terminate parental rights or place a dual status Indian minor in foster care due to harmful conditions in the home, full ICWA compliance is required. However, if the foster care placement of a dual status minor is motivated in part by the minor's delinquent conduct and the need for rehabilitation, the placement is *exempt* from ICWA.

[26][27][28][29] ***60** To summarize, in both dependency and delinquency proceedings, the juvenile court must give notice and comply with other ICWA requirements before it can terminate parental rights over an Indian child or place an Indian child in foster care, or in an adoptive or preadoptive placement, due to abuse or neglect in the child's home. ICWA procedures are thus required for out-of-home ****924** placements of dependent children and [section 601](#) and [602](#) status offenders. Depending on the reasons for the placement, these procedures may also be required when dual status minors are removed from home. ICWA procedures are typically *not* required for placements of [section 602](#) wards detained for criminal conduct. Unless the delinquency court announces otherwise, on the record, it will be presumed that any placement of a [section 602](#) ward outside the home is based, at least in part, on the ward's criminal conduct. With rare exceptions for dual status minors and status offenders, placements in delinquency proceedings are *presumptively exempt* from ICWA. ^{FN18}

FN18. Because we have concluded California's statutory scheme is entirely consistent with federal law, we do not reach issues of federal preemption.

D. Application to the Present Case

[30] The minor in this case came before the juvenile court on a [section 602](#) petition alleging he had committed residential burglary, conduct that would be a crime if committed by an adult. The court found the allegation true and ordered him placed in a suitable

public or private facility but returned to his mother's custody upon successful completion of the placement. No termination of parental rights was contemplated. On the contrary, the probation department reported that the minor had previously been making progress at home in addressing his problems with anger and impulsiveness. The department recommended a placement outside the home not because of abuse or neglect, but because the minor had continued to commit criminal acts and presented a risk to the safety of the community.

This was a straightforward juvenile delinquency case. W.B. had committed a string of serious crimes and was ordered to spend time in a controlled setting where he could receive treatment designed to rehabilitate his delinquent behavior. W.B. was not designated a "dual status" minor. ***865 The court ordered that he be returned home after a defined period of time, and he was in fact returned home. For the reasons discussed, ICWA does not apply to delinquency placements such as this, which are based on the minor's criminal acts and which do not contemplate an eventual termination of parental rights. Accordingly, assuming the minor was an Indian child, the juvenile court did not err in failing to give notice under ICWA.

***61 DISPOSITION**

The judgment of the Court of Appeal is affirmed.

WE CONCUR: [CANTIL-SAKAUYE](#), C.J., [KENNARD](#), [BAXTER](#), [WERDEGAR](#), [CHIN](#), and [LIU](#), JJ.

Cal.,2012.

In re W.B., Jr.

55 Cal.4th 30, 281 P.3d 906, 144 Cal.Rptr.3d 843, 12 Cal. Daily Op. Serv. 8873, 2012 Daily Journal D.A.R. 10,817

END OF DOCUMENT

- (B) The court that issued the order, with a completed clerk's certificate of mailing, for inclusion in the sending court's file.

(Subd (a) amended effective January 1, 2007.)

(b) Modification of former guardian visitation orders—custodial parent

When a parent of the child has custody of the child following termination of a probate guardianship, proceedings for modification of the probate court visitation order, including an order denying visitation, must be determined in a proceeding under the Family Code.

(Subd (b) amended effective January 1, 2007.)

(c) Independent action for former guardian visitation

- (1) If the court terminated a guardianship under the Probate Code and did not issue a visitation order, the former guardian may maintain an independent action for visitation if a dependency proceeding is not pending. The former guardian may bring the action without the necessity of a separate joinder action.
- (2) If the child has at least one living parent and has no guardian, visitation must be determined in a proceeding under the Family Code. If the child does not have at least one living parent, visitation must be determined in a guardianship proceeding, which may be initiated for that purpose.
- (3) *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105/GC-120) must be filed with a petition or motion for visitation by a former guardian.

(Subd (c) amended effective January 1, 2007.)

Rule 5.475 amended effective January 1, 2008; adopted effective January 1, 2006; previously amended effective January 1, 2007.

Chapter 2. Indian Child Welfare Act

Chapter 2 adopted effective January 1, 2008.

Rule 5.480. Application (*Fam. Code, §§ 170, 177, 3041; Prob. Code, § 1459.5; Welf. & Inst. Code, §§ 224, 224.1*)

Rule 5.481. Inquiry and notice (*Fam. Code, §§ 177(a), 180; Prob. Code, §§ 1459.5(b), 1460.2; Welf. & Inst. Code, §§ 224.2, 224.3*)

Rule 5.482. Proceedings after notice (*Fam. Code, §§ 177(a), 180(d), (e); Prob. Code, §§ 1459.5(b), 1460.2(d), (e); Welf. & Inst. Code, §§ 224.2(c), (d); 25 U.S.C. § 1916(b)*)

Rule 5.483. Transfer of case (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 305.5; Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed.Reg. 67584 (Nov. 26, 1979) Bureau of Indian Affairs Guideline C)

Rule 5.484. Placement of an Indian child (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, §§ 361, 361.31, 361.7(c))

Rule 5.485. Termination of parental rights (Fam. Code, § 7892.5; Welf. & Inst. Code, §§ 361.7, 366.26(c)(2)(B))

Rule 5.486. Petition to invalidate orders (Fam. Code, § 175(e); Prob. Code, § 1459(e); Welf. & Inst. Code, § 224(e))

Rule 5.487. Adoption record keeping (Fam. Code, § 9208)

Rule 5.480. Application (Fam. Code, §§ 170, 177, 3041; Prob. Code, § 1459.5; Welf. & Inst. Code, §§ 224, 224.1)

This chapter addressing the Indian Child Welfare Act (25 United States Code section 1901 et seq.) as codified in various sections of the California Family, Probate, and Welfare and Institutions Codes, applies to all proceedings involving Indian children that may result in an involuntary foster care placement; guardianship or conservatorship placement; custody placement under Family Code section 3041; declaration freeing a child from the custody and control of one or both parents; termination of parental rights; or adoptive placement, including:

- (1) Proceedings under Welfare and Institutions Code section 300 et seq., and sections 601 and 602 et seq. in which the child is at risk of entering foster care or is in foster care, including detention hearings, jurisdiction hearings, disposition hearings, review hearings, hearings under section 366.26, and subsequent hearings affecting the status of the Indian child;
- (2) Proceedings under Family Code section 3041;
- (3) Proceedings under the Family Code resulting in adoption or termination of parental rights; and
- (4) Proceedings listed in Probate Code section 1459.5 and rule 7.1015.

This chapter does not apply to voluntary foster care and guardianship placements where the child can be returned to the parent or Indian custodian on demand.

Rule 5.480 adopted effective January 1, 2008.

Rule 5.481. Inquiry and notice (Fam. Code, §§ 177(a), 180; Prob. Code, §§ 1459.5(b), 1460.2; Welf. & Inst. Code, §§ 224.2, 224.3)

- (a) **Inquiry (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 224.3)**

The court, court-connected investigator, and party seeking a foster-care placement, guardianship, conservatorship, custody placement under Family Code section 3041, declaration freeing a child from the custody or control of one or both parents, termination of parental rights, or adoption have an affirmative and continuing duty to inquire whether a child is or may be an Indian child in all proceedings identified in rule 5.480. The court, court-connected investigator, and party include the county welfare department, probation department, licensed adoption agency, adoption service provider, investigator, petitioner, appointed guardian or conservator of the person, and appointed fiduciary.

- (1) The party seeking a foster-care placement, guardianship, conservatorship, custody placement under Family Code section 3041, declaration freeing a child from the custody or control of one or both parents, termination of parental rights, or adoption must ask the child, if the child is old enough, and the parents, Indian custodian, or legal guardians whether the child is or may be an Indian child and must complete the *Indian Child Inquiry Attachment* (form ICWA-010(A)) and attach it to the petition unless the party is filing a subsequent petition, and there is no new information.
- (2) At the first appearance by a parent, Indian custodian, or guardian in any dependency case; or in juvenile wardship proceedings in which the child is at risk of entering foster care or is in foster care; or at the initiation of any guardianship, conservatorship, proceeding for custody under Family Code section 3041, proceeding to terminate parental rights proceeding to declare a child free of the custody and control of one or both parents, or adoption proceeding; the court must order the parent, Indian custodian, or guardian if available, to complete *Parental Notification of Indian Status* (form ICWA-020).
- (3) If the parent, Indian custodian, or guardian does not appear at the first hearing, or is unavailable at the initiation of a proceeding, the court must order the person or entity that has the inquiry duty under this rule to use reasonable diligence to find and inform the parent, Indian custodian, or guardian that the court has ordered the parent, Indian custodian, or guardian to complete *Parental Notification of Indian Status* (form ICWA-020).
- (4) If the social worker, probation officer, licensed adoption agency, adoption service provider, investigator, or petitioner knows or has reason to know that an Indian child is or may be involved, that person or entity must make further inquiry as soon as practicable by:
 - (A) Interviewing the parents, Indian custodian, and “extended family members” as defined in 25 United States Code sections 1901 and 1903(2), to gather the information listed in Welfare and Institutions Code section 224.2(a)(5), Family Code section 180(b)(5), or Probate

Code section 1460.2(b)(5), which is required to complete the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030);

- (B) Contacting the Bureau of Indian Affairs and the California 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; and
 - (C) Contacting the tribes and any other person that reasonably can be expected to have information regarding the child's membership status or eligibility.
- (5) The circumstances that may provide reason to know the child is an Indian child include the following:
- (A) The child or a person having an interest in the child, including an Indian tribe, an Indian organization, an officer of the court, a public or private agency, or a member of the child's extended family, informs or otherwise provides information suggesting that the child is an Indian child to the court, the county welfare agency, the probation department, the licensed adoption agency or adoption service provider, the investigator, the petitioner, or any appointed guardian or conservator;
 - (B) The residence or domicile of the child, the child's parents, or an Indian custodian is or was in a predominantly Indian community; or
 - (C) 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 the U.S. Department of Health and Human Services, Indian Health Service, or Tribal Temporary Assistance to Needy Families benefits.

(b) Notice (Fam. Code, § 180; Prob. Code, § 1460.2; Welf. & Inst. Code, § 224.2)

- (1) If it is known or there is reason to know that an Indian child is involved in a proceeding listed in rule 5.480, except for a wardship proceeding under Welfare and Institutions Code sections 601 and 602 et seq., the social worker, petitioner, or in probate guardianship and conservatorship proceedings, if the petitioner is unrepresented, the court must send *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) to the parent or legal guardian and Indian custodian of an Indian child, and the Indian child's tribe, in the manner specified in Welfare and Institutions Code section 224.2, Family Law Code section 180, and Probate Code section 1460.2.
- (2) If it is known or there is reason to know that an Indian child is involved in a wardship proceeding under Welfare and Institutions Code sections 601 and

602 et seq., and the probation officer has assessed that it is probable the child will be entering foster care, or if the child is already in foster care, the probation officer must send *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) to the parent or legal guardian, Indian custodian, if any, and the child's tribe, in accordance with Welfare and Institutions Code section 727.4(a)(2).

- (3) The circumstances that may provide reason to know the child is an Indian child include the circumstances specified in (a)(5).
- (4) Notice to an Indian child's tribe must be sent to the tribal chairperson unless the tribe has designated another agent for service.

Rule 5.481 adopted effective January 1, 2008.

Rule 5.482. Proceedings after notice (Fam. Code, §§ 177(a), 180(d), (e); Prob. Code, §§ 1459.5(b), 1460.2(d), (e); Welf. & Inst. Code, §§ 224.2(c), (d); 25 U.S.C. § 1916(b))

(a) Timing of proceedings (Fam. Code, § 180(d), (e); Prob. Code, § 1460.2(d), (e); Welf. & Inst. Code, § 224.2(c), (d))

- (1) If it is known or there is reason to know that a child is an Indian child, the court hearing must not proceed until at least 10 days after the parent, Indian custodian, the tribe, or the Bureau of Indian Affairs have received notice, except as stated in sections (a)(2) and (3).
- (2) The detention hearing in dependency cases and in delinquency cases in which the probation officer has assessed that the child is in foster care or it is probable the child will be entering foster care may proceed without delay, provided that:
 - (A) Notice of the detention hearing must be given as soon as possible after the filing of the petition initiating the proceeding; and
 - (B) Proof of notice must be filed with the court within 10 days after the filing of the petition.
- (3) The parent, Indian custodian, or tribe must be granted a continuance, if requested, of up to 20 days to prepare for the proceeding, except for specified hearings in the following circumstances:
 - (A) The detention hearing in dependency cases and in delinquency cases in which the probation officer has assessed that the child is in foster care or it is probable the child will be entering foster;

- (B) The jurisdiction hearing in a delinquency case in which the court finds the continuance would not conform to speedy trial considerations under Welfare and Institutions Code section 657; and
- (C) The disposition hearing in a delinquency case in which the court finds good cause to deny the continuance under Welfare and Institutions Code section 682. A good cause reason includes when probation is recommending the release of a detained child to his or her parent or to a less restrictive placement. The court must follow the placement preferences under rule 5.484 when holding the disposition hearing.

(b) Proof of notice (Fam. Code, § 180(d); Prob. Code, § 1460.2(d); Welf. & Inst. Code, § 224.2(c))

Proof of notice filed with the court must include *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030), return receipts, and any responses received from the Bureau of Indian Affairs and tribes.

(c) When there is information or a response from a tribe that requires additional steps

If after notice has been provided as required by federal and state law a tribe responds indicating that the child is eligible for membership if certain steps are followed, the court must proceed as if the child is an Indian child and direct the appropriate individual or agency to provide active efforts under rule 5.484(c) to secure tribal membership for the child.

(d) When there is no information or response from a tribe (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 224.3(e)(3))

- (1) If after notice has been provided as required by federal and state law and neither the tribe nor the Bureau of Indian Affairs has provided a determinative response within 60 days after receiving that notice, then the court may determine that the Indian Child Welfare Act does not apply to the proceedings, provided that the court must reverse its determination of the inapplicability of the act and must apply it prospectively if a tribe or the Bureau of Indian Affairs subsequently confirms that the child is an Indian child.
- (2) If at any time, based on the petition or other information, the court knows or has reason to know the child is an Indian child, the court must proceed as if the child were an Indian child.
- (3) The court is not required to delay proceedings until a response to notice is received.

(e) Intervention (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 224.4)

The Indian child's tribe and Indian custodian may intervene, orally or in writing, at any point in the proceedings and may, but are not required to, file with the court the *Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child* (form ICWA-040) to give notice of their intent to intervene.

(f) Posthearing actions (25 U.S.C. § 1916(b))

Whenever an Indian child is removed from a guardian, conservator, other custodian, foster home, or institution for placement with a different guardian, conservator, custodian, foster home, institution, or preadoptive or adoptive home, the placement must comply with the placement preferences and standards specified in Welfare and Institutions Code section 361.31.

(g) Consultation with tribe

Any person or court involved in the placement of an Indian child must use the services of the Indian child's tribe, whenever available through the tribe, in seeking to secure placement within the order of placement preference specified in rule 5.484.

Rule 5.482 adopted effective January 1, 2008.

Rule 5.483. Transfer of case (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 305.5; Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed.Reg. 67584 (Nov. 26, 1979) Bureau of Indian Affairs Guideline C)

(a) Mandatory transfer of case to tribal court with exclusive jurisdiction

The court must order transfer of a case to the tribal court of the child's tribe if:

- (1) The Indian child is a ward of the tribal court; or
- (2) The Indian child is domiciled or resides within a reservation of an Indian tribe that has exclusive jurisdiction over Indian child custody proceedings under section 1911 or 1918 of title 25 of the United States Code.

(b) Presumptive transfer of case to tribal court with concurrent state and tribal jurisdiction

Unless the court finds good cause under subdivision (d), the court must order transfer of a case to the tribal court of the child's tribe if the parent, the Indian custodian, or the child's tribe requests.

(c) Documentation of request to transfer a case to tribal court

The parent, the Indian custodian, or the child's tribe may request transfer of the case, either orally or in writing or by filing *Notice of Petition and Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction* (form ICWA-050).

If the request is made orally, the court must document the request and make it part of the record.

(d) Cause to deny a request to transfer to tribal court with concurrent state and tribal jurisdiction under subdivision (b)

- (1) One or more of the following circumstances constitutes mandatory good cause to deny a request to transfer:
 - (A) One or both of the child's parents objects to the transfer in open court or in an admissible writing for the record;
 - (B) The child's tribe does not have a "tribal court" or any other administrative body as defined in section 1903 of the Indian Child Welfare Act: "a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings;" or
 - (C) The tribal court of the child's tribe declines the transfer.
- (2) One or more of the following circumstances may constitute discretionary good cause to deny a request to transfer:
 - (A) The evidence necessary to decide the case cannot be presented in the tribal court without undue hardship to the parties or the witnesses, and the tribal court is unable to mitigate the hardship by making arrangements to receive and consider the evidence or testimony by use of remote communication, by hearing the evidence or testimony at a location convenient to the parties or witnesses, or by use of other means permitted in the tribal court's rules of evidence or discovery;
 - (B) The proceeding was at an advanced stage when the request to transfer was received and the petitioner did not make the request within a reasonable time after receiving notice of the proceeding, provided the notice complied with statutory requirements. Waiting until reunification efforts have failed and reunification services have been

terminated before filing a request to transfer may not, by itself, be considered an unreasonable delay;

- (C) The Indian child is over 12 years of age and objects to the transfer; or
- (D) The parents of a child over five years of age are not available and the child has had little or no contact with his or her tribe or members of the child's tribe.

- (3) If it appears that there is good cause to deny a transfer, the court must hold an evidentiary hearing on the transfer and make its findings on the record.

(e) Evidentiary considerations under subdivision (b)

The court may not consider socioeconomic conditions and the perceived adequacy of tribal social services, tribal probation, or the tribal judicial systems in its determination that good cause exists to deny a request to transfer to tribal court with concurrent state and tribal jurisdiction.

(f) Evidentiary burdens under subdivision (b)

- (1) The burden of establishing good cause to deny a request to transfer is on the party opposing the transfer.
- (2) If the court believes, or any party asserts, that good cause to deny the request exists, the reasons for that belief or assertion must be stated in writing, in advance of the hearing, and made available to all parties who are requesting the transfer, and the petitioner must have the opportunity to provide information or evidence in rebuttal of the belief or assertion.

(g) Order on request to transfer

The court must issue its final order on the *Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction* (form ICWA-060).

(h) Proceeding after transfer

When, under Welfare and Institutions Code section 305.5, Family Code section 177(a), or Probate Code section 1459.5(b), the court transfers any proceeding listed in rule 5.480, the court must proceed as follows:

- (1) Dismiss the proceeding or terminate jurisdiction if the court has received proof that the tribal court has accepted the transfer of jurisdiction;
- (2) Make an order transferring the physical custody of the child to a designated representative of the tribal court (not necessarily the same "designated

representative” identified in the *Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child* (form ICWA-040)); and

- (3) Include in the *Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction* (form ICWA-060) all contact information for the designated tribal court representative.

Rule 5.483 adopted effective January 1, 2008.

Rule 5.484. Placement of an Indian child (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, §§ 361, 361.31, 361.7(c))

- (a) **Evidentiary burdens (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, §§ 361, 361.31, 361.7(c))**

In any child custody proceeding listed in rule 5.480, the court may not order placement of an Indian child unless it finds by clear and convincing evidence that continued custody with the parent or Indian custodian is likely to cause the Indian child serious emotional or physical damage and it considers evidence regarding prevailing social and cultural standards of the child’s tribe, including that tribe’s family organization and child-rearing practices.

- (1) Testimony by a “qualified expert witness,” as defined in Welfare and Institutions Code section 224.6, Family Code section 177(a), and Probate Code section 1459.5(b), is required before a court orders a child placed in foster care or terminates parental rights.
- (2) Stipulation by the parent, Indian custodian, or tribe, or failure to object, may waive the requirement of producing evidence of the likelihood of serious damage only if the court is satisfied that the person or tribe has been fully advised of the requirements of the Indian Child Welfare Act and has knowingly, intelligently, and voluntarily waived them. Any such stipulation must be agreed to in writing.
- (3) Failure to meet non-Indian family and child-rearing community standards, or the existence of other behavior or conditions that meet the removal standards of Welfare and Institutions Code section 361, will not support an order for placement absent the finding that continued custody with the parent or Indian custodian is likely to cause serious emotional or physical damage.

- (b) **Standards and preferences in placement of an Indian child (Fam. Code, § 177(a); Prob. Code, § 1459(b); Welf. & Inst. Code, § 361.31)**

- (1) Unless the court finds good cause to the contrary, all placements of Indian children in any proceeding listed in rule 5.480 must follow the specified

placement preferences in Family Code section 177(a), Probate Code section 1459(b), and Welfare and Institutions Code section 361.31.

- (2) The court may deviate from the preference order only for good cause, which may include the following considerations:
 - (A) The requests of the parent or Indian custodian;
 - (B) The requests of the Indian child, when of sufficient age;
 - (C) The extraordinary physical or emotional needs of the Indian child as established by a qualified expert witness; or
 - (D) The unavailability of suitable families based on a documented diligent effort to identify families meeting the preference criteria.
 - (3) The burden of establishing good cause for the court to deviate from the preference order is on the party requesting that the preference order not be followed.
 - (4) The tribe, by resolution, may establish a different preference order, which must be followed if it provides for the least restrictive setting.
 - (5) The preferences and wishes of the Indian child, when of sufficient age, and the parent must be considered, and weight given to a consenting parent's request for anonymity.
 - (6) When no preferred placement is available, active efforts must be made and documented to place the child with a family committed to enabling the child to have visitation with "extended family members," as defined in rule 5.481(a)(4)(A), and participation in the cultural and ceremonial events of the child's tribe.
- (c) **Active efforts (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); Welf. & Inst. Code, § 361.7)**

In addition to any other required findings to place an Indian child with someone other than a parent or Indian custodian, or to terminate parental rights, the court must find that active efforts have been made, in any proceeding listed in rule 5.480, to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and must find that these efforts were unsuccessful.

- (1) The court must consider whether active efforts were made in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe.

- (2) Efforts to provide services must include pursuit of any steps necessary to secure tribal membership for a child if the child is eligible for membership in a given tribe, as well as attempts to use the available resources of extended family members, the tribe, tribal and other Indian social service agencies, and individual Indian caregivers.

Rule 5.484 adopted effective January 1, 2008.

Rule 5.485. Termination of parental rights (Fam. Code, § 7892.5; Welf. & Inst. Code, §§ 361.7, 366.26(c)(2)(B))

(a) Evidentiary burdens

The court may only terminate parental rights to an Indian child or declare an Indian child free of the custody and control of one or both parents if at the hearing terminating parental rights or declaring the child free of the custody and control of one or both parents, the court:

- (1) Finds by clear and convincing evidence that active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family were made; and
- (2) Makes a determination, supported by evidence beyond a reasonable doubt, including testimony of one or more “qualified expert witnesses” as defined in Welfare and Institutions Code section 224.6 and Family Code section 177(a), that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child.

(b) When parental rights may not be terminated

The court may not terminate parental rights to an Indian child or declare a child free from the custody and control of one or both parents if the court finds a compelling reason for determining that termination of parental rights would not be in the child’s best interest. Such a reason may include:

- (1) 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; or
- (2) 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.

Rule 5.485 adopted effective January 1, 2008.

Rule 5.486. Petition to invalidate orders (Fam. Code, § 175(e); Prob. Code, § 1459(e); Welf. & Inst. Code, § 224(e))

(a) Who may petition

Any Indian child who is the subject of any action for foster-care placement, guardianship placement, or termination of parental rights; any parent or Indian custodian from whose custody such child was removed; and the Indian child's tribe may petition the court to invalidate the action on a showing that the action violated the Indian Child Welfare Act.

(b) Court of competent jurisdiction

If the Indian child is a dependent child or ward of the juvenile court or the subject of a pending petition, the juvenile court is a court of competent jurisdiction with the authority to hear the request to invalidate the foster placement or termination of parental rights.

(c) Request to return custody of the Indian child

If a final decree of adoption is vacated or set aside, or if the adoptive parents voluntarily consent to the termination of their parental rights, a biological parent or prior Indian custodian may request a return of custody of the Indian child.

- (1) The court must reinstate jurisdiction.
- (2) In a juvenile case, the juvenile court must hold a new disposition hearing in accordance with 25 United States Code section 1901 et seq. where the court may consider all placement options as stated in Welfare and Institutions Code sections 361.31(b), (c), (d), and (h).
- (3) The court may consider placement with a biological parent or prior Indian custodian if the biological parent or prior Indian custodian can show that placement with him or her is not detrimental to the child and that the placement is in the best interests of the child.
- (4) The hearing on the request to return custody of an Indian child must be conducted in accordance with statutory requirements and the relevant sections of this rule.

Rule 5.486 adopted effective January 1, 2008.

Rule 5.487. Adoption record keeping (Fam. Code, § 9208)

(a) Copies of adoption decree and other information to the Secretary of the Interior

After granting a decree of adoption of an Indian child, the court must provide the Secretary of the Interior with a copy of the decree and the following information:

- (1) The name and tribal affiliation of the Indian child;
- (2) The names and addresses of the biological parents;
- (3) The names and addresses of the adoptive parents; and
- (4) The agency maintaining files and records regarding the adoptive placement.

(b) Affidavit of confidentiality to the Bureau of Indian Affairs

If a biological parent has executed an affidavit requesting that his or her identity remain confidential, the court must provide the affidavit to the Bureau of Indian Affairs, which must ensure the confidentiality of the information.

Rule 5.487 adopted effective January 1, 2008.

Advisory Committee Comment

This chapter was adopted, effective January 1, 2008, as the result of the passage of Senate Bill 678 (Ducheny; Stats. 2006, ch. 838), which codified the federal Indian Child Welfare Act into California's Family, Probate, and Welfare and Institutions Codes affecting all proceedings listed in rule 5.480. Rule 5.664, which applied the Indian Child Welfare Act but was limited in its effect to juvenile proceedings, was repealed effective January 1, 2008, and was replaced by this chapter.

As of January 1, 2008, only the Washoe Tribe of Nevada and California is authorized under the Indian Child Welfare Act to exercise exclusive jurisdiction as discussed in rule 5.483.

Division 3. Juvenile Rules

Chapter 1. Preliminary Provisions—Title and Definitions

Rule 5.500. Division title

Rule 5.501. Preliminary provisions

Rule 5.502. Definitions and use of terms

Rule 5.504. Judicial Council forms

Rule 5.505. Juvenile dependency court performance measures

Rule 5.500. Division title

The rules in this division may be referred to as the Juvenile Rules.

Rule 5.500 adopted effective January 1, 2007.

Tribal Customary Adoption: Evaluation of AB 1325

A REPORT TO THE CALIFORNIA
LEGISLATURE

JANUARY, 2013

[DRAFT]



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Tribal Customary Adoption: an Evaluation of Assembly Bill 1325

A REPORT TO THE CALIFORNIA LEGISLATURE

JANUARY, 2013



ADMINISTRATIVE OFFICE
OF THE COURTS

JUDICIAL AND COURT OPERATIONS
SERVICES DIVISION

CENTER FOR FAMILIES, CHILDREN & THE COURTS

This report has been prepared and submitted to the California Legislature under Assembly Bill 1325 (2010).

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Administrative Office of the Courts

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*Chief Justice of California and
Chair of the Judicial Council*

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Executive Summary

Assembly Bill 1325 (Cook; Stats. 2009, ch.287) (AB 1325), which became effective July 1, 2010, was tribally initiated legislation which added a new permanency option for “Indian children”¹ who are dependents of the California courts. This new permanency option known as tribal customary adoption (TCA) allows these children, with the involvement of their tribe, to be adopted by and through the laws, customs and traditions of their tribe without requiring termination of the parental rights of the Indian child’s biological parents.

The legislation was intended to provide a culturally appropriate permanency option for Indian children who are dependents of the California courts, but still provide those children with the permanency and other benefits of a conventional adoption.

Overview

Before AB 1325, the permanency options available for dependent Indian children who were unable to reunify with their parents were limited to: conventional adoption (i.e. one requiring termination of parental rights); legal guardianship; or permanent placement with a fit and willing relative.² Federal and state law establishes a preference for a permanent plan of adoption for all dependent children who are unable to reunify with their parents.³ Before AB 1325, adoptions of dependent Indian children required termination of parental rights of the birth parents. Many Indian tribes in California, however, object to adoptions which require termination of parental rights, because such adoptions are “...associated with oppressive policies used historically against tribes and Indian people – for example, forced removal of Indian children and Indian Boarding schools.”⁴ This created a tension between state and federal law and the cultures and values of many Indian tribes and conflicts over the appropriate permanent placements of dependent Indian children. AB 1325 was sponsored by the Soboba Band of Luiseno Indians, supported by the California State Association of Counties, the California County Child Welfare Directors Association and over 50 California tribes and agencies serving American Indians in California.⁵ The substantive and procedural aspects of AB 1325 are discussed in more detail below. In addition to these, the legislation called upon the Judicial Council to create rules and forms necessary to implement tribal customary adoption, and to provide a report to the legislature:

(f) The Judicial Council shall adopt rules of court and necessary forms required to implement tribal customary adoption as a permanent plan for dependent Indian children. The Judicial Council shall study California's tribal customary adoption provisions and their effects on children, birth parents, adoptive parents, Indian custodians, tribes, and the

¹ As that term is defined in 25 U.S.C. 1903 (4) and Welf. & Inst. Code § 224.1 (a).

² Welfare and Institutions Code 366.26 stats 2009.

³ Id. And 42 U.S.C. 675 (5) (E)

⁴ See Bill Analysis for Senate Human Services Committee Senator Carol Liu, Chair hearing date June 23, 2009 at page 12.

⁵ See Bill Analysis for Senate Human Services Committee Senator Carol Liu, Chair hearing date June 23, 2009 at page 6 and 12-13, and California TCA History at <http://www.caltca.org/index.php/tca-history>

court, and shall report all of its findings to the Legislature on or before January 1, 2013. The report shall include, but not be limited to, the following:

- (1) The number of families served and the number of completed tribal customary adoptions.
- (2) The length of time it takes to complete a tribal customary adoption.
- (3) The challenges faced by social workers, court, and tribes in completing tribal customary adoptions.
- (4) The benefits or detriments to Indian children from a tribal customary adoption.⁶

AB 1325 originally provided that the tribal customary adoption provisions would remain in effect until January 1, 2014 unless a later enacted statute deleted or extended that date.⁷ This sunset date was removed by SB 1013 (http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_1001-1050/sb_1013_bill_20120627_chaptered.pdf) which was signed by the Governor on June 27, 2012. Although the sunset was lifted, the requirement for the Judicial Council to provide a report to the legislature was not removed.

Methodology Overview

In answering the quantitative questions posed by the legislature, the Administrative Office of the Courts (AOC) looked at data available from the statewide Child Welfare Services / Case Management System (CWS/CMS) maintained by the California Department of Social Services (CDSS) as well as answers to surveys compiled from child welfare professionals⁸ throughout the state. The qualitative questions were addressed through a combination of court case file review, surveys of child welfare professionals and telephone focus groups with child welfare professionals who had been involved in tribal customary adoption cases. The precise methodology is discussed in more detail below.

Key Findings

Tracking child welfare cases that involve Indian children is difficult. It is hard to know whether all tribal customary adoption cases have been identified. In particular, it is hard to know if all cases in which tribal customary adoption was considered or should have been considered but was not pursued for some reason have been identified. As discussed in more detail below, tracking depends upon information entered and coded in the CWS/CMS system. Because tribal

⁶ See Welfare & Institutions Code § 366.24 (f)

⁷ See for example WIC section 358.1 (k) as enacted by AB 1325.

⁸ The categories of child welfare professionals included social workers, county counsel, attorneys representing minors in dependency cases, attorneys representing parents in dependency cases, attorneys representing care givers/prospective adoptive parents in dependency cases and attorneys or advocates for tribes in dependency cases.

customary adoptions are so new, it seems that some counties may not have been aware of the procedures for coding and tracking these cases. It also seems that different counties were not always using the coding system in the same way. Through this research the AOC became aware of a number of tribal customary adoption cases which were not coded in the CWS/CMS system. It is possible, however, that there were others that were not identified.

The research identified finalized tribal customary adoptions for seventeen children. Of these, seven were either in a permanent plan of guardianship or long term foster care prior to tribal customary adoption being a permanency option. The availability of tribal customary adoption allowed these children and families to move from guardianship to this new permanency option which provided them with the advantages of adoption. Similarly county counsel in counties where tribes routinely object to termination of parental rights said that they believed that most, if not all, of their tribal customary adoption cases would have resulted in legal guardianship as the permanent plan for the children, had tribal customary adoption not been an available option.⁹

Not all tribes are comfortable with tribal customary adoption. Many tribes object to any form of adoption. The requirement in the law that child welfare workers continue to raise tribal customary adoption as a permanency option throughout the life of the case, even when a tribe has clearly stated that they do not want to pursue tribal customary adoption, has created friction in some counties. However, survey respondents from other counties state that they have been able to find ways to comply with the requirement while being sensitive to the expressed wishes of the tribe.

Some (but not all) system participants reported confusion, frustrations and delays in implementing their first tribal customary adoptions due primarily to lack of knowledge and experience.

As discussed in more detail below under the section, *Challenges faced in completing tribal customary adoptions*, questions linger about how the tribal customary adoption process fits with other aspects of the child welfare and adoption system.

Despite the challenges faced in early implementation of tribal customary adoptions, most of those involved in these cases expressed the view that having the additional permanency option of tribal customary adoption in cases involving Indian children is a benefit and had a positive impact on their cases.

⁹ Since 2006, WIC 366.26 (c)(B)(vi) has provided that, with respect to Indian children, that the Court may find as a compelling reason not to terminate parental rights and free a child for adoption, that such termination would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights or that 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.

Chapter 1: Introduction

Overview of the Legislation

AB 1325 establishes a process to allow Indian children in the California child welfare system to be provided with the permanence offered by adoption without first terminating the parental rights of the child's birth parents.¹⁰ The process requires the participation of the child's tribe. If the California superior court, in accordance with California law, finds that the child cannot successfully reunify with his or her parents, then if the child's tribe agrees, the superior court may order tribal customary adoption as the child's permanent plan. If tribal customary adoption is selected as the child's permanent plan, then the state court proceedings are held in abeyance while the child's tribe develops and issues the tribal customary adoption order (TCAO)¹¹ which is then submitted to the superior court. The superior court decides whether or not to afford full faith and credit to the TCAO issued by the tribe. If the superior court affords the TCAO full faith and credit, the parental rights of the birth parents are modified in accordance with the TCAO rather than being terminated. The child may then be placed for adoption without termination of parental rights. When the adoption is finalized by the superior court, the TCAO is incorporated by reference into the adoption order issued by the superior court and the dependency action is dismissed.

AB 1325 follows legislation adopted in 2006 which incorporated a variety of provisions of the federal Indian Child Welfare Act¹² (ICWA) into California law. One aspect of this earlier legislation (SB 678 (Ducheny), Chap. 838, Stats. 2006) was the creation of two exceptions to the termination of parental rights for the parents of Indian children in the child welfare system where the court could otherwise order such termination of rights. As a result of SB 678, the court can, if it finds that termination of parental rights would be detrimental to the Indian child, not order such termination if 1) 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 or 2) 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.¹³ Tribal customary adoption added yet another permanent plan option which could be identified and form the basis for a finding that termination of parental rights was not the best interests of an Indian child.

AB 1325 made a number of changes to various sections of the California Welfare and Institutions Code,¹⁴ including those which mandate the contents of social studies provided to the

¹⁰ April 29, 2008 ASSEMBLY COMMITTEE ON JUDICIARY AB 2736 (Cook and Beall)
http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_2701-2750/ab_2736_cfa_20080428_102800_asm_comm.html at page 1

¹¹ The content of the TCAO is discussed in more detail below.

¹² 25 U.S.C. §§1901 - 1963

¹³ Bill Analysis Date of Hearing: April 29, 2008 ASSEMBLY COMMITTEE ON JUDICIARY AB 2736
http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_2701-2750/ab_2736_cfa_20080428_102800_asm_comm.html at page 8

¹⁴ All further statutory references are to the Welfare and Institutions code unless specifically stated otherwise.

courts by social workers and the findings and orders which courts must make at various stages of dependency proceedings. Amendments to section 358.1¹⁵ require social workers to include in each social study submitted to the court after an Indian child's tribe has been identified, a discussion, after consultation with the child's tribe of whether tribal customary adoption would be an appropriate permanent plan for the child if reunification is unsuccessful.

Changes to sections 361.5 (g) (1) (G), 366.21(i) (1) and 366.22 (a) and (c) similarly require that the assessment prepared by the agency whenever the court orders a hearing be held pursuant to Section 366.26 and the courts orders around those assessments include analysis related to tribal customary adoption when the proceeding involves an Indian child.

The main implementing provision is found in section 366.24 and 366.26. Section 366.24 sets out how the adoptive home study for a tribal customary adoption shall be conducted, who may conduct the home study and what it must contain. It mandates criminal background checks, a check of child abuse registries and precludes any adoptive placement if these checks disclose felony convictions of any adults in the home related to child abuse or neglect, spousal abuse, crimes against a child, including child pornography, or a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault and battery, or a felony conviction that occurred within the last five years for physical assault, battery, or a drug-related offense.¹⁶

It also sets out the procedures for the superior court to follow in cases in which tribal customary adoption is selected as the permanent plan for an Indian child, the interaction between the superior court and the child's tribe, as well as the minimum required features and content of a tribal customary adoption order.¹⁷

Impetus for the Legislation

The legislation was initiated and sponsored by the Soboba Band of Luiseno Indians and supported by a number of tribes and tribal agencies throughout the state as well as by the California State Association of Counties and the California County Child Welfare Directors Association. The legislative analyses prepared for the various senate committees which reviewed the bill describe the impetus for the legislation. First these analyses note that for many tribal communities:

¹⁵ Specifically see Welfare and Institutions Code § 358.1 (j).

¹⁶ The complete text of section 366.24 is attached as Appendix "A".

¹⁷ The complete text of AB 1325 can be found at http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1301-1350/ab_1325_bill_20091011_chaptered.pdf

...the termination of parental rights which is currently a prerequisite to adoption of a child is "totally contrary to many tribes' cultural beliefs and it is, in fact, associated with some of the most oppressive policies historically used against tribes and Indian people."¹⁸

Tribal communities' objections to termination of parental rights created conflict because federal and state laws place a strong preference on adoption as a permanent plan where a dependent child cannot reunify with his or her parents:

From the tribal perspective, concepts of identity and belonging are central to the idea of permanency and are considered paramount in decisions regarding the placement of Indian children. Thus, within tribal communities, child welfare decisions often are based on the concept of community permanency. When family reunification is not an option, the tribal perspective places emphasis on permanency alternatives that help the child stay connected to his or her extended family, clan, and tribe.

In contrast, within mainstream society, greater emphasis is often placed on certain types of permanency, such as adoption with full termination of parental rights. Many tribal communities, however, do not agree with terminating a parent's rights and may instead utilize customary adoption practices. In a customary adoption, the child is taken by a family or community member but still has the opportunity to have a relationship with his or her biological parents and extended family.¹⁹

The legislation was intended to reconcile the requirements under state and federal law which mandate adoption as the most preferred permanent plan for a dependent minor who is unable to reunify with his or her birth parents, with the cultural values of tribal communities:

tribal customary adoptions allow a person or persons to adopt a child while still maintaining the birth parents' parental rights. Maintaining a connection with the birth parent is a way that tribes can find permanency for a child while continuing to honor tribal values and beliefs. Extended lineages and tribal family systems form the basis for all tribes. Maintaining the birth parent/child connection, even when the child is permanently placed with another family, protects the child's connection to their extended family and their lineage.²⁰

¹⁸ Bill Analysis, Assembly Committee on Human Services, Hearing Date April 14, 2009 at page 6
http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1301-1350/ab_1325_cfa_20090413_111557_asm_comm.html

¹⁹ BILL ANALYSIS SENATE JUDICIARY COMMITTEE AB 2736 Hearing Date June 24, 2008
http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_2701-2750/ab_2736_cfa_20080626_115809_sen_comm.html
page 7-8

²⁰ Date of Hearing: May 14, 2008 ASSEMBLY COMMITTEE ON APPROPRIATIONS AB 2736
http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_2701-2750/ab_2736_cfa_20080513_155322_asm_comm.html at
page 2

The goal of the legislation was to provide an option which was culturally sensitive to the needs of tribes but provided the benefits of a “conventional” adoption for children, adoptive families and counties:

... the sponsor states that non-adoption outcomes are a disincentive for counties because of federal and state laws. The sponsor explains that counties do not receive the same reimbursement from the State and Federal governments for guardianships as they do for adoptions and, even though these placements are permanent, counties are unable to report them to the State and Federal governments as completed cases. Additionally, funding for guardianship placements is very limited. While there are Kinship Guardianship Assistance Payment Program (Kin GAP) funds available to guardians, the funds are significantly less than those provided to adoptive parents through the Adoption Assistance Program (AAP). The AAP can help with the cost of therapy, out-of-home placement, and wrap-around services to minimize the effects of the disruption in the child's life. Kin GAP lacks the comparable ability to provide for the needs of these children and their families.²¹

Implementation

Following passage of AB 1325, in compliance with the requirement contained in section 366.24 (f), the Judicial Council amended a number of rules of court and forms to implement tribal customary adoption. These changes essentially wove the requirements of tribal customary adoption throughout the rules and forms which govern placement and permanency planning hearings in dependency cases and adoptions. The Report to the Judicial Council concerning the proposal which included these changes was entitled Juvenile Law: Tribal Customary Adoption and was approved by the Judicial Council on April 30, 2010 as Item A-6. That report can be found at <http://www.courts.ca.gov/documents/20100423itema6.pdf>

The California Department of Social Services (CDSS) issued two All County Letters to explaining tribal customary adoption and its requirements to social service agencies. The first of these was All County Letter No. 10-17 dated March 24, 2010. That All County Letter can be found at <http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acl/2010/10-17.pdf>. The second of these was All County Letter No. 10-47 dated October 27, 2010 which can be found at <http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acl/2010/10-47.pdf>.

Chapter 2: Methodology

Tracking tribal customary adoption cases has been challenging. In anticipation of the required legislative report, CDSS modified Child Welfare Services Case Management System

²¹ See Bill Analysis AB 2736 Hearing Date April 15, 2008 at pages 4 – 6. http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_2701-2750/ab_2736_cfa_20080414_093238_asm_comm.html

(CWS/CMS) to include a “special project code” intended to help identify tribal customary adoption cases. However, child welfare agency staff in various counties reported that they were not aware of the special project’s code. Child welfare departments in different counties also reported different interpretations of when the special project’s code should be used. Some understood the code should be used any time that tribal customary adoption was available and considered as a permanency option. Others understood the code should be used only when a tribe expressed a wish to pursue tribal customary adoption as a permanency option and others understood the special project’s code should only be used when tribal customary adoption was selected and finalized as a child’s permanent plan.²²

Further, due to the confidential nature of the information contained in the CWS/CMS system and the strict federal and state regulations which govern access to information contained in the CWS/CMS system, CDSS was not able to provide any case identifying information for those cases which were flagged with the special project’s code in the CWS/CMS system. CDSS was able to provide aggregate data from CWS/CMS on overall numbers, but was not able to identify in which counties cases were located or which social workers or other professionals were involved in tribal customary adoption cases. The AOC received two data runs from CDSS. The first dated May 9, 2011 showed eleven children whose cases had been flagged with the special project code. The second run dated May 18, 2012 showing open case information from 7/1/2012 through 12/31/2011 showed thirty-one cases in which the special projects’ code was used. While this information was useful in determining the numbers of tribal customary adoption cases, it was not helpful in assessing the challenges (if any) faced by child welfare professionals and other system participants in implementing tribal customary adoption. From the data the AOC was able to look at length of time to permanency, but few other factors that would assist in determining the benefits or detriments to Indian children of choosing tribal customary adoption as a permanency option.

In order to answer both the quantitative and qualitative questions posed by the legislature the AOC used a combination of data and information available from CWS/CMS, surveys of child welfare professionals, file reviews and focus groups.

In October of 2011, the AOC sent an email questionnaire to over one hundred and thirty tribal advocates, over 600 attorneys representing parents and minors in dependency proceedings, Child Welfare Directors and County Counsel throughout the state, as well as all participants of the Statewide Indian Child Welfare Working Group.²³ A copy of that questionnaire is attached as

²² From telephone discussions with Child Welfare Directors and discussions with social workers.

²³ This group is convened by CDSS and includes tribal advocates and representatives, county child welfare representatives, county counsel, state representatives and others. Currently over 200 individuals participate in this group. You can find more information about the Statewide ICWA Working Group at <http://www.childsworld.ca.gov/PG2073.htm>

appendix “B”. The AOC received forty-three substantive responses. The low response rate and low number means that we must be cautious about drawing too many general conclusions.

The AOC also convened eight focus group conference calls, two each for tribal advocates, county social workers, minors’ attorneys, parents’ attorneys and county counsel. The AOC emailed the presiding juvenile court judges in each of the counties identified by questionnaire respondents and focus group participants as having tribal customary adoption cases and requested permission to conduct file reviews and also requested comments from those judicial officers involved in tribal customary adoption cases.

AOC requested permission to conduct file reviews from the juvenile court presiding judges in all of the counties identified as containing tribal customary adoption cases. AOC staff attorneys received permission to conduct file reviews in eleven counties. AOC staff attorneys conducted review of thirty-six cases in those eleven counties. AOC staff was unable to conduct file reviews in five counties containing at least seven cases.

Due to concerns about the confidential nature of child welfare proceedings and the potential sensitivity of parties directly involved in child welfare proceedings, the AOC did not conduct any interviews directly with children, birth parents, adoptive parents or other individuals party to the dependency or adoption proceedings. Instead the AOC relied upon information received from tribal advocates, social workers, minors’ and parents’ attorneys, county counsel and judicial officers to assess the impact of tribal customary adoption.

Chapter 3: Findings

Number of Tribal Customary Adoptions

In addition to the data received from CDSS, the AOC received information about cases from questionnaires to and interviews with child welfare professionals including county social workers, attorneys, county counsel and tribal representatives. To the extent possible, the AOC cross referenced the information received in these surveys with the data runs received from CDSS.²⁴ From all of these sources the AOC identified thirty-nine cases²⁵ involving forty-two children for whom tribal customary adoption was at least considered as a permanency option.²⁶

²⁴ The data received from CDSS did not include case identifying information. The first run received in May of 2011 did identify the county in which the case was located, the case “start date”, the “Case Project Start Date” meaning the date on which the tribal customary adoption special project’s code was included in the case information and the “Case Project End Date” if any. The second run of data received from state DSS in May of 2012 did not identify which counties the cases were located in. This run did include the child’s birth date, the Special Project Code start date and the Special Project Code end date, if any.

²⁵ It is difficult to be certain that we have correctly identified the outcome in all cases because we found a number of instances where CDSS data showed that parental rights had been terminated, but in conducting our file review we confirmed that in fact the case disposition was a tribal customary adoption in which parental rights had been modified rather than terminated.

²⁶ Some counties count cases involving multiple siblings as one case. Other counties open a separate case for each child in a sibling group.

Of those thirty-nine cases fourteen cases involving seventeen children have been the subject of finalized tribal customary adoptions. Five are pending finalization of the tribal customary adoption.

Fifteen cases had some other permanency option or case resolution other than tribal customary adoption. For ten, the chosen plan was guardianship. Three were subject to a conventional adoption which included termination of the parental rights of the biological parents. In two cases jurisdiction of the case was transferred to tribal court following termination of reunification services but prior to the selection of a permanent plan.

Two cases were appealed. One case is still pending on appeal. It involves a parent appealing the selection of any form of adoption as the permanent plan. A decision has now been rendered in the other case and is reported at *In re. H.R.* 208 Cal.App.4th 751.

In three cases the AOC was unable to determine the outcome of the case or its current status.

Time it takes to complete a Tribal Customary Adoption

Of the fifteen finalized tribal customary adoption cases that the AOC identified, the AOC were able to review the court case files for ten. In the cases reviewed, it took an average of 9.7 months from the time tribal customary adoption was ordered as a permanent plan until the tribal customary adoption was finalized and the dependency dismissed.

Of the ten finalized customary adoption cases that AOC staff reviewed, the range in finalization time was from a low of three months to a high of seventeen months. The cases on the lower end of spectrum were cases in which children had been in long term foster care or legal guardianship placement prior to tribal customary adoption being available as a permanency option. These cases were “reactivated” to move to a tribal customary adoption in lieu of the other permanent plan. The cases on the high end of the spectrum typically were ones in which it was the first tribal customary adoption being completed by both the county and the tribe. In these cases (as reported in more detail below under *Challenges faced in completing Tribal customary adoptions*), parties tended to report uncertainties and lack of information about how the tribal customary adoption process worked.

The AOC also looked at the data received from CDSS. This data included eighteen cases for which there was both a tribal customary special project code start date and a tribal customary adoption special project code end date. Note that the end date could signify either that the case finalized as a tribal customary adoption, or that tribal customary adoption was rejected and the case finalized in some other way. The average time from TCA Start Date and the TCA End Date was 8.1 months. The range in the CDSS data was from a low of two months to a high of fifteen months.

The CDSS data also included information on all ICWA eligible children in adoption placements in open cases from 7/1/2010 through 12/31/2011. The AOC analyzed the information on these cases to compare the length of time to permanency in these “conventional” adoption cases to the identified tribal customary adoption cases. Based on the CDSS information it took an average of 13.1 months from the date of termination of parental rights in these cases until the date of the finalization of the adoption. The range was from a high of 39 months to a low of 2 months. The AOC did not have any other information on these cases to assess whether there were any particular case characteristics associated with the high or low ends of the spectrum.

Caution should be used in drawing a comparison between the special project’s initiation date and the termination of parental rights date. In tribal customary adoption cases, parental rights are not terminated. Instead parental rights are modified when the superior court accords full faith and credit to the TCAO submitted by the child’s tribe. Accordingly the date upon which the TCAO developed by the tribe is accorded full faith and credit by the superior court is the date which would correspond to the termination of parental rights. Unfortunately this is not a data element which was captured or included in the CWS/CMS data which the AOC received on tribal customary adoption cases. Further, because it was new as of 2010, the longest possible time at which TCA could have been identified as a permanency option for data captured up to December 31, 2011 would be 18 months. At this point it is impossible to know how long the tribal customary adoption cases that are in process will take to finalize.

Six cases were reported on both the data runs for the tribal customary adoption special project code and the ICWA eligible children in adoption placements. From comparing the information on these cases in the two data sets, the AOC determined that the special project’s start date, (ie. the date upon which tribal customary adoption was identified as a permanency option and coded as such in the CWS/CMS system) was invariably earlier than the date listed for termination of parental rights. In the six cases which appeared on both the special project’s code and ICWA eligible children in adoption placements data runs, the date TCA initiation date was on average six months earlier than the date listed for TPR.

Although the sample size is very small, based on available data, it takes less time to complete a TCA (9.7 months on average) from identification of this as a permanency option to finalization than it does to complete a conventional adoption in an ICWA case (13.1 months on average) from termination of parental rights to finalization of the adoption. If we had used the TPR date as the start date on both sets of cases rather than using the TCA initiation date as the start date on the tribal customary adoption cases, the difference would have been even greater.

The questionnaire of child welfare professionals asked whether, in the respondent’s opinion, tribal customary adoption had increased or decreased the number of hearings required; the length

of hearings required and increased or decreased the length of time to permanency of the case. The responses received were almost evenly split between those that reported that tribal customary adoption had increased the number of hearings required in their particular case, those that reported it had decreased the number of hearings and those that reported no impact. The questionnaire also asked whether tribal customary adoption had increased or decreased the length of hearings required. Again the responses were almost evenly split between those that felt it had increased the length of hearings, those that felt it had decreased the length of hearings and those that felt it had had no impact. There was similarly an even split in response to the question of whether tribal customary adoption had increased or decreased length of time to permanency. Thus there does not appear to be a clear cut answer from child welfare professionals on the impact of tribal customary adoption on the timing of their cases.

Challenges faced in completing Tribal Customary Adoptions

Information about the challenges faced in completing tribal customary adoptions came primarily from the responses to the questionnaire sent to child welfare professionals as well as focus group calls, calls for technical assistance and discussions with child welfare professionals throughout the state. In the questionnaire child welfare professionals were specifically asked, “Were there any particular challenges in implementing TCA?” Several respondents reported that there were no specific challenges. A higher number reported that there were challenges related to the newness of the process and a lack of knowledge and information on the part of those involved. Several respondents reported that there were challenges with timing and timeliness, and several reported that there were problems getting the criminal background checks completed so that the tribes could complete the home studies. The complete text of the responses received to this question are contained in Appendix “C”.

In focus group calls, child welfare professionals in some counties reported problems with county social workers raising the option of tribal customary adoption with caregivers before the tribe had decided whether they were interested in tribal customary adoption in the case. Because a tribal customary adoption cannot be completed without the participation of the child’s tribe, this caused unnecessary tension between the tribe and the caregivers.

Tribal representatives commented that in some cases tribes and families were being pressured into tribal customary adoption in inactive cases with established guardianships. Tribes reported that these were not priority cases for them and social services unilateral action seeking to alter the permanent plan to tribal customary adoption caused problems for the tribe.

Some county social workers reported that tribal customary adoption resulted in an increased time to permanency as compared to a conventional adoption.

Attorneys for several parents reported that parents in some cases involving tribal customary adoption were not afforded the same kind of procedural and constitutional protections and the

same standards were not being applied as would have been applied in a conventional adoption including termination of parental rights. Although, through modification of parental rights under a tribal customary adoption, parents can permanently lose virtually all of the substantive rights related to legal parentage, these attorneys reported that the same evidentiary standard was not being applied because there was an assumption that tribal customary adoption would provide for a continuing relationship with the child. This was so even though any ongoing relationship between the child and parent was left to the discretion of the tribe and the adoptive parents.

Some social workers reported that they were experiencing difficulty in accessing Private Adoption Assistance Reimbursement Program (PAARP) funds for the home study which had been completed by a private foster family agency because in order to access the benefits the social worker needed to enter a code for termination of parental rights.

County counsel indicated that some tribes oppose any form of adoption, including tribal customary adoption. The law requires the agency to discuss tribal customary adoption as a permanency option in each case should the Indian child fail to reunify. Further the law requires that the agency raise the issue with the Indian child's tribe prior to each hearing from disposition leading to the finalization of a permanent plan. The county counsel reports that the requirement to continue to raise the option of tribal customary adoption has caused some tension when the tribe has rejected the proposal of tribal customary adoption on a number of occasions and explained that the tribe is opposed to any form of adoption as a matter of principle.

Tribal representatives reported that tribal customary adoption as codified within the California law was not truly reflective of some tribes' customs and traditions and these tribes did not want to pursue this option.

In some of the files reviewed, there was no indication that tribal customary adoption was raised at an early stage in the proceedings as contemplated by section 358.1. Researchers reviewed several court reports which, according to section 358.1 should have included mention of tribal customary adoption as a permanency option, but did not. Similarly specific findings and orders around tribal customary adoption as a potential permanent plan are not being consistently made in all cases reviewed. As discussed earlier, we were not able to review social worker files and instead relied upon review of court files. It is possible that discussion is taking place between social workers and tribal representatives concerning tribal customary adoption, but that these discussions are not being documented in court reports and assessments. It is not clear whether the failure to raise tribal customary adoption at the earliest stages resulted in any delays in finalizing a permanent plan.

Tribal representatives in one case reported some confusion in integrating tribal customary adoption with other child welfare provisions. Specifically as required by section 366.24, the

tribal customary adoption orders issued by the tribe include provisions related to post adoption contact between the child and the birth-parents. Some orders also contain provisions related to ongoing contact with other family members, including the non-Indian half-siblings of the child being adopted under the TCAO. Notwithstanding these provisions in the TCAO, the superior court judge referred the matter to mediation on the issue of post adoption contact. Although ultimately a resolution was achieved which reconciled the recommendations of the mediator with what was contained in the TCAO, the tribe did not think that the matter should have gone to the mediator when the tribe had already issued an order on the subject and that order had been granted full faith and credit by the superior court.

Benefits or detriments to Indian children from a tribal customary adoption

Information to answer this question was obtained primarily through questionnaires completed by child welfare professionals, as well as focus group calls and other discussions with system participants. In response to the question about whether the option of tribal customary adoption had positively or negatively affected their cases, most respondents stated that it had positively affected the outcome of the case. The few negative comments were generally related to the length of time it took to complete the adoption. The full text of comments received is contained in Appendix “D”

The AOC also received comments on this during our focus group calls. Again, most respondents indicated that tribal customary adoption had positively impacted their cases. Many felt that without the option, their cases would have resulted in legal guardianships. A permanent plan of tribal customary adoption was seen as more beneficial to both children and county agencies.

Generally respondents stated that birth parents were happy about having the option of TCA as it was seen as providing them with an option of some kind of ongoing participation in the child(ren)’s life. Commentators generally reported that birth parents were not as likely to contest termination of services and permanent plan of tribal customary adoption as they were to fight a conventional adoption with full termination of parental rights (TPR).

One of the initial rationales for the legislation as presented by the sponsors of AB 1325, the Soboba Band of Luiseno Indians, was that it provided Indian children and their tribal customary adoptive parents with the federal benefits and funding under the Adoptive Assistance Program (AAP) without requiring termination of parental rights. Attached as appendix “E” and “F” are charts prepared by the Soboba Band of Luiseno Indians comparing tribal customary adoption to other permanency options. Researchers were unable to confirm whether or not all adoption assistance program (AAP) resources and funding were being provided to families who had completed tribal customary adoptions. However, the Child Welfare Policy Manual published by the federal Administration for Families and Children does state that:

... there are situations in which adoptions are legal without a TPR. Specifically, in some Tribes adoption is legal without a TPR or a relinquishment from the biological parent(s), and there is at least one State that allows relatives who have cared for a related child for a period of time to adopt without first obtaining a 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 or relinquishment, 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.²⁷

It appears, therefore, that children and families adopting under tribal customary adoption should be eligible for AAP assistance.

File reviews particularly of those cases which moved from a permanent plan of legal guardianship or long term foster care to tribal customary adoption confirmed that parties viewed this as a benefit to both the child(ren) and their caregivers. Tribal customary adoption is not subject to being modified by a Welfare and Institutions Code 388 petition in the same way that a plan of legal guardianship or long term foster care may be.

Discussed in more detail below are some of the conditions found in the tribal customary adoption orders that were reviewed. Virtually all of the tribal customary adoption orders contained provisions:

- stating that the child(ren) maintained their rights of inheritance from and through their birth parents and specifically retained the right to inherit trust assets under tribal and federal law;
- related to the child(ren) maintaining the right to a variety of services through the tribe, tribal agencies and/or the Indian Health Service;
- related to the child(ren)'s ongoing connection with the tribe and participation in cultural and community events; and
- allowing for some ongoing contact and visitation with birth parents and extended family members.

²⁷ See "8.2B.11 TITLE IV-E, Adoption Assistance Program, Eligibility, Special needs" found at http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=49

It is too soon to assess the long term impact of these provisions but certainly many system participants stated that the provisions are potentially beneficial to the children involved.

System participants also remarked that whether tribal customary adoption is a benefit or a detriment to other system participants – and particularly birth parents and caregivers/adoptive parents – depends upon what alternative permanent plan you compare it to. Most respondents who represented birth parents expressed the view that tribal customary adoption was beneficial to their clients as compared to the alternative of conventional adoption with termination of parental rights because it left open the potential for future contact and relationship between the birth parents and the child(ren). However, in those cases where respondents did not believe that a conventional adoption would have been warranted on the facts of their case, and they believed either that reunification services should have been continued or the children should have been returned to the birth parents, respondents expressed concern that the option of tribal customary adoption might have resulted in a lessening of protections for their clients. The AOC is aware that at least one such case is currently under appeal.

One respondent also stated that she believed that caregivers would be less interested in adopting a child if it had to be through a tribal customary adoption rather than a conventional adoption because "... [a]doptive families do not like the uncertainty of the tribe intervening and dictating what happens post-adoption." Other than this one survey response, the AOC did not receive any information supporting the proposition that caregivers withdrew from children rather than complete a tribal customary adoption. In most of the cases which were identified, children had been in placement with the caregivers for a substantial period of time. In some cases, the child was in a relative placement that did not want to participate in termination of parental rights. In other cases, where the caretaker might have agreed to a conventional adoption, the Indian child's tribe opposed termination of parental rights and conventional adoption. In a number of cases, the child's tribe was seeking to remove the child from the existing placement. File reviews and focus group discussions confirm that in a number of cases caretakers might have preferred a conventional adoption. The exact nature of the required ongoing visits with the birth family and participation in tribal and cultural events does seem to have been a subject of concern and negotiation. The AOC reviewed several files in which the tribe had initially been seeking a requirement of specific visits and participation in tribal cultural events. The final tribal customary adoption orders, however, required only "best efforts" or "reasonable efforts".

The main detriments of tribal customary adoption identified by respondents to the survey of child welfare professionals and focus group calls was the length of time it took to complete a tribal customary adoption.

Conditions in the TCAO Orders

Welfare and Institutions Code section 366.24 (c) (10) requires that the tribal customary adoption order issued by the tribe:

Include, but not be limited to, a description of (A) the modification of the legal relationship of the birth parents or Indian custodian and the child, including contact, if any, between the child and the birth parents or Indian custodian, responsibilities of the birth parents or Indian custodian, and the rights of inheritance of the child and (B) the child's legal relationship with the tribe. The order shall not include any child support obligation from the birth parents or Indian custodian. There shall be a conclusive presumption that any parental rights or obligations not specified by the tribal customary adoption order shall vest in the tribal customary adoptive parents.

Several samples of "generic" tribal customary adoption orders were drafted by the sponsors of AB 1325 and are attached as Appendix "G" and "H". These samples are fairly representative of the TCAO's that were reviewed in actual case files. Summaries of the nature and content of the TCAOs are provided.

None of the tribal customary adoption orders which were reviewed reserve any legal rights to the birth parents. All of the tribal customary adoption orders say that the birth parents may visit the child(ren), but most of the tribal customary adoption orders say that such visitation shall be at the discretion of the tribal customary adoptive parents and that the tribal customary adoptive parents may suspend or discontinue visits if they believe they are no longer in the best interests of the child(ren).

Several of the tribal customary adoption orders say that both the tribe and the tribal customary adoptive parents will be involved in decisions concerning ongoing contact or visitation between the birth parents and the child(ren).

Several of the tribal customary adoption orders state that prior to any visitation the birth parents must provide test results proving that they are free of drugs and alcohol. Several also set conditions on the maximum number and duration of such visits, require that such visits be supervised and that the birth parents pay for the supervision. Other orders set up very detailed provisions for the birth parents to request visits, requires that such visits be supervised, and also provides that if the birth parents miss two consecutive visits that they shall lose all rights to visitation.

All of the tribal customary adoption orders relieve the birth parents of their legal and financial obligations to the child(ren).

All of the orders provide that the child(ren) shall maintain their rights of inheritance from the birth parents under federal and tribal law. Some specifically reference the continued right to

inherit trust property. Several orders also say that the child shall maintain rights of inheritance from their birth parents that exist under state law.

All of the orders say something about the tribal customary adoptive parents maintaining contact and connections between the child(ren) and the tribe. All of the orders express that the tribal customary adoptive parents shall make “best efforts” to maintain these contacts. The exact terms differ. Some orders are quite specific about the number and nature of tribal events that the child(ren) should attend. These more specific requirements tend to be found in those cases where the tribal customary adoptive parents are non-tribal members. Others are more general in their terms.

Most of the orders contain some reference to the child(ren)’s ongoing right to receive services from the tribe and or Indian health services. Some of the orders also say that the tribe will provide support and assistance to the child and tribal customary adoptive parents in meeting the requirements of maintaining the cultural connection between the child(ren) and the tribe.

Many of the orders contain clauses which express the tribal views on the relationship between the child(ren) and the tribe. Below is an example of some representative terms from a tribal customary adoption order:

...minor must grow and develop with a sound, solid and organic connection to [his/her] cultural and racial identity...

[Tribe] ...has inherent sovereign right to make decisions regarding the best interests of its children including who should provide care, custody and control of its children...

...the Tribe does not believe or adhere to Termination of Parental Rights and finds that the state law construct of Termination of Parental Rights is inconsistent with Tribal Customs and traditions...

...the Tribe does support the process of joining individuals and relatives into family relationships and expanding family resources...

In several cases in which tribal customary adoptive parents were either elderly or single, the tribal customary adoptive order contained a specific provision regarding successor care planning. In these, the tribal customary adoptive parent agrees to appoint a specific person as the child(ren)’s caregiver in their will. Further if that successor caregiver is unable or unwilling to serve in that capacity when the time comes, the tribal customary adoptive order provides that the tribe will designate a successor and that the tribal customary adoptive parent will put such a provision in their will.

Outstanding questions

During this research, a number of questions were raised by child welfare professionals about tribal customary adoption procedures and implementation for which there do not yet seem to be clear answers. These questions include:

- When a new birth certificate is issued following a tribal customary adoption, will it show all four parents if nothing is said to the contrary in either the adoption order or the tribal customary adoption order?
- When do a birth parent's appellate rights accrue if they want to contest the plan of tribal customary adoption? Are their appellate rights the same as if there had been a termination of parental rights?
- When do substitute caregivers become "prospective adoptive parents" within the meaning of the Welfare and Institutions Code?

Chapter 4: Conclusion

The numbers of tribal customary adoptions are small. Despite the small number of cases, for those identified in the study we can conclude that some children who would have otherwise remained in a less permanent plan of long term foster care or legal guardianship were able to be adopted through tribal customary adoption and their dependencies dismissed. Child welfare professionals report tribal customary adoption is a more permanent and more advantageous for both children and their adoptive families.

Despite a "learning curve" and some challenges and confusion in implementing tribal customary adoptions most child welfare professionals involved in tribal customary adoption cases believed that tribal customary adoption positively influenced their case and that having the additional permanency option for Indian children was a benefit. Further, available information shows that it may actually take less time to complete a tribal customary adoption than to complete a "conventional" adoption which includes termination of parental rights in an ICWA case.

Appendix “A”

Welfare and Institutions Code § 366.24

§ 366.24. Tribal customary adoptions

(a) For purposes of this section, “tribal customary adoption” means adoption by and through the tribal custom, traditions, or law of an Indian child's tribe. Termination of parental rights is not required to effect the tribal customary adoption.

(b) Whenever an assessment is ordered pursuant to Section 361.5, 366.21, 366.22, 366.25, or 366.26 for Indian children, the assessment shall address the option of tribal customary adoption.

(c) For purposes of Section 366.26, in the case of tribal customary adoptions, all of the following apply:

(1) The child's tribe or the tribe's designee shall conduct a tribal customary adoptive home study prior to final approval of the tribal customary adoptive placement.

(A) If a tribal designee is conducting the home study, the designee shall do so in consultation with the Indian child's tribe. The designee may include a county adoption agency, the State Department of Social Services when it is acting as an adoption agency, or a California-licensed adoption agency. Any tribal designee must be an entity that is authorized to request a search of the Child Abuse Central Index and, if necessary, a check of any other state's child abuse and neglect registry, and must be an entity that is authorized to request a search for state and federal level criminal offender records information through the Department of Justice.

(B) The standard for the evaluation of the prospective adoptive parents' home shall be the prevailing social and cultural standard of the child's tribe. The home study shall include an evaluation of the background, safety, and health information of the adoptive home, including the biological, psychological, and social factors of the prospective adoptive parent or parents, and an assessment of the commitment, capability, and suitability of the prospective adoptive parent or parents to meet the child's needs.

(2) In all cases, an in-state check of the Child Abuse Central Index and, if necessary, a check of any other state's child abuse and neglect registry shall be conducted. If the tribe chooses a designee to conduct the home study, the designee shall perform a check of the Child Abuse Central Index pursuant to Section 1522.1 of the Health and Safety Code as it applies to prospective adoptive parents and persons over 18 years of age residing in their household. If the tribe conducts its own home study, the agency that has the placement and care responsibility of the child shall perform the check.

(3)(A) In all cases prior to final approval of the tribal customary adoptive placement, a state and federal criminal background check through the Department of Justice shall be conducted on the prospective tribal customary adoptive parents and on persons over 18 years of age residing in their household.

(B) If the tribe chooses a designee to conduct the home study, the designee shall perform the state and federal criminal background check required pursuant to subparagraph (A) through the Department of Justice prior to final approval of the adoptive placement.

(C) If the tribe conducts its own home study, the public adoption agency that is otherwise authorized to obtain criminal background information for the purpose of adoption shall perform the state and federal criminal background check required pursuant to subparagraph (A) through the Department of Justice prior to final approval of the adoptive placement.

(D) An individual who is the subject of a background check conducted pursuant to this paragraph may be provided by the entity performing the background check with a copy of his or her state or federal level criminal offender record information search response as provided to that entity by the Department of Justice if the entity has denied a criminal background clearance based on this information and the individual makes a written request to the entity for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in his or her written request. The entity shall retain a copy of the individual's written request and the response and date provided.

(4) If federal or state law provides that tribes may conduct all required background checks for prospective adoptive parents, the tribally administered background checks shall satisfy the requirements of this section, so long as the standards for the background checks are the same as those applied to all other prospective adoptive parents in the State of California.

(5) Under no circumstances shall final approval be granted for an adoptive placement in any home if the prospective adoptive parent or any adult living in the prospective tribal customary adoptive home has any of the following:

(A) A felony conviction for child abuse or neglect, spousal abuse, crimes against a child, including child pornography, or a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault and battery. For purposes of this subdivision, crimes involving violence means those violent crimes contained in clause (i) of subparagraph (A) and subparagraph (B), or paragraph (1) of, subdivision (g) of Section 1522 of the Health and Safety Code.

(B) A felony conviction that occurred within the last five years for physical assault, battery, or a drug-related offense.

(6) If the tribe identifies tribal customary adoption as the permanent placement plan for the Indian child, the court may continue the selection and implementation hearing governed by

Section 366.26 for a period not to exceed 120 days to permit the tribe to complete the process for tribal customary adoption and file with the court a tribal customary adoption order evidencing that a tribal customary adoption has been completed. The tribe shall file with the court the tribal customary adoption order no less than 20 days prior to the date set by the court for the continued selection and implementation hearing. The department shall file with the court the addendum selection and implementation hearing court report no less than seven days prior to the date set by the court for the continued selection and implementation hearing. The court shall have discretion to grant an additional continuance to the tribe for filing a tribal customary adoption order up to, but not exceeding, 60 days. If the child's tribe does not file the tribal customary adoption order within the designated time period, the court shall make new findings and orders pursuant to subdivision (b) of Section 366.26 and this subdivision to determine the best permanent plan for the child.

(7) The child, birth parents, or Indian custodian and the tribal customary adoptive parents and their counsel, if applicable, may present evidence to the tribe regarding the tribal customary adoption and the child's best interest.

(8) Upon the court affording full faith and credit to the tribal customary adoption order and the tribe's approval of the home study, the child shall be eligible for tribal customary adoptive placement. The agency that has placement and care responsibility of the child shall be authorized to make a tribal customary adoptive placement and sign a tribal customary adoptive placement agreement and, thereafter, shall sign the adoption assistance agreement pursuant to subdivision (g) of Section 16120. The prospective adoptive parent or parents desiring to adopt the child may then file the petition for adoption. The agency shall supervise the adoptive placement for a period of six months unless either of the following circumstances exists:

(A) The child to be adopted is a foster child of the prospective adoptive parents whose foster care placement has been supervised by an agency before the signing of the adoptive placement agreement in which case the supervisory period may be shortened by one month for each full month that the child has been in foster care with the family.

(B) The child to be adopted is placed with a relative with whom he or she has an established relationship.

(9) All licensed public adoption agencies shall cooperate with and assist the department in devising a plan that will effectuate the effective and discreet transmission to tribal customary adoptees or prospective tribal customary adoptive parents of pertinent medical information reported to the department or the licensed public adoption agency, upon the request of the person reporting the medical information.

(A) A licensed public adoption agency may not place a child for tribal customary adoption unless a written report on the child's medical background and, if available, the medical background on the child's biological parents, so far as ascertainable, has been submitted to the prospective tribal customary adoptive parents and they have acknowledged in writing the receipt of the report.

(B) The report on the child's background shall contain all known diagnostic information, including current medical reports on the child, psychological evaluations, and scholastic information, as well as all known information regarding the child's developmental history.

(10) The tribal customary adoption order shall include, but not be limited to, a description of (A) the modification of the legal relationship of the birth parents or Indian custodian and the child, including contact, if any, between the child and the birth parents or Indian custodian, responsibilities of the birth parents or Indian custodian, and the rights of inheritance of the child and (B) the child's legal relationship with the tribe. The order shall not include any child support obligation from the birth parents or Indian custodian. There shall be a conclusive presumption that any parental rights or obligations not specified in the tribal customary adoption order shall vest in the tribal customary adoptive parents.

(11) Prior consent to a permanent plan of tribal customary adoption of an Indian child shall not be required of an Indian parent or Indian custodian whose parental relationship to the child will be modified by the tribal customary adoption.

(12) After the prospective adoptive parent or parents desiring to adopt the child have filed the adoption petition, the agency that has placement, care, and responsibility for the child shall submit to the court, a full and final report of the facts of the proposed tribal customary adoption. The requisite elements of the final court report shall be those specified for court reports in the department's regulations governing agency adoptions.

(13) Notwithstanding any other provision of law, after the tribal customary adoption order has been issued and afforded full faith and credit by the state court, supervision of the adoptive placement has been completed, and the state court has issued a final decree of adoption, the tribal customary adoptive parents shall have all of the rights and privileges afforded to, and are subject to all the duties of, any other adoptive parent or parents pursuant to the laws of this state.

(14) Consistent with Section 366.3, after the tribal customary adoption has been afforded full faith and credit and a final adoption decree has been issued, the court shall terminate its jurisdiction over the Indian child.

(15) Nothing in this section is intended to prevent the transfer of those proceedings to a tribal court where transfer is otherwise permitted under applicable law.

(d) The following disclosure provisions shall apply to tribal customary adoptions:

(1) The petition, agreement, order, report to the court from any investigating agency, and any power of attorney filed in a tribal customary adoption proceeding is not open to inspection by any person other than the parties to the proceeding and their attorneys and the department, except upon the written authority of the judge of the juvenile court. A judge may not authorize anyone to inspect the petition, agreement, order, report to the court from any investigating agency, and any power of attorney except in exceptional circumstances and for good cause approaching the necessitous.

(2) Except as otherwise permitted or required by statute, neither the department, county adoption agency, nor any licensed adoption agency shall release information that would identify persons who receive, or have received, tribal customary adoption services. However, employees of the department, county adoption agencies, and licensed adoption agencies shall release to the State Department of Social Services any requested information, including identifying information, for the purpose of recordkeeping and monitoring, evaluation, and regulation of the provision of tribal customary adoption services.

(3) The department, county adoption agency, or licensed adoption agency may, upon written authorization for the release of specified information by the subject of that information, share information regarding a prospective tribal customary adoptive parent or birth parent with other social service agencies, including the department, county adoption agencies, and other licensed adoption agencies, or providers of health care as defined in Section 56.05 of the Civil Code.

(4) Notwithstanding any other law, the department, county adoption agency, or licensed adoption agency may furnish information relating to a tribal customary adoption petition or to a child in the custody of the department or any public adoption agency to the juvenile court, county welfare department, public welfare agency, private welfare agency licensed by the department, provider of foster care services, potential adoptive parents, or provider of health care as defined in Section 56.05 of the Civil Code, if it is believed the child's welfare will be promoted thereby.

(5) The department, county adoption agency, or licensed adoption agency may make tribal customary adoption case records, including identifying information, available for research purposes, provided that the research will not result in the disclosure of the identity of the child or the parties to the tribal customary adoption to anyone other than the entity conducting the research.

(e) This section shall remain operative only to the extent that compliance with its provisions does not conflict with federal law as a condition of receiving funding under Title IV-E or the federal Social Security Act (42 U.S.C. Sec. 670 et seq.).

(f) The Judicial Council shall adopt rules of court and necessary forms required to implement tribal customary adoption as a permanent plan for dependent Indian children. The Judicial Council shall study California's tribal customary adoption provisions and their effects on children, birth parents, adoptive parents, Indian custodians, tribes, and the court, and shall report all of its findings to the Legislature on or before January 1, 2013. The report shall include, but not be limited to, the following:

(1) The number of families served and the number of completed tribal customary adoptions.

(2) The length of time it takes to complete a tribal customary adoption.

(3) The challenges faced by social workers, court, and tribes in completing tribal customary adoptions.

(4) The benefits or detriments to Indian children from a tribal customary adoption.

Appendix “B”

TRIBAL CUSTOMARY ADOPTION QUESTIONNAIRE:

County where matter is located:

Court case number:

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

County child welfare worker:

Minor’s attorney:

Parents’ attorney(s):

County Counsel:

Tribal Advocate/representative:

Tribal Attorney (if any):

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

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

Which party raised TCA as a permanency option?

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

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

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

Were there any particular challenges in implementing TCA?

Did the option of TCA:

- Increase or decrease the number of hearings that were required? _____

- Increase or decrease the length of hearings required?

- Increase or decrease the length of time to permanency? _____
- Other? _____
- Overall would you say that the option of TCA positively or negatively affected this case?

Any other comments:

DRAFT

Appendix “C”

TCA Questionnaire Responses

“Were there any particular challenges in implementing TCA?”

<p>Yes. The tribe did not submit the TCAO in a timely manner. As a result, it delayed the .26 hearing which resulted in the Agency writing two .26 reports (conventional adoption and TCA) to remain within the specified time period.</p>
<p>First TCA proposed by the [] Tribe and as such the Tribal Council had to pass a resolution in order to consider this as a plan that the tribe would embrace. TCAO taking longer than the 90 days requiring a request for a court extension.</p>
<p>Lack of knowledge and training.</p>
<p>No. Just lack of knowledge of particulars since first time either tribe or this social worker has participated in one.</p>
<p>Timing!</p>
<p>Yes. 1. Timeliness of tribal response (current TCA has not happened yet); 2. Education of the parents around what TCA is about; 3. The tribe feelings around not having enough information/education/training around TCA; 4. It was a new process so the learning curve of the Agency, Court, Tribe, etc. No one had a working/experience knowledge of the process.</p>
<p>Yes, it was difficult to get the Tribe’s buy-in initially.</p>
<p>Other than education for the court and Tribe because of the newness of the TCA option, no.</p>
<p>No one knew anything about them, and there was not a whole lot of research available. No one knew if parental rights would be terminated as to the (bio dad – my client, a non indian) or not, and no one knew what to expect from or include in the TCA order.</p>
<p>No.</p>
<p>No.</p>
<p>The difficulty in these cases was getting the tribe access to the criminal background checks that were conducted by the County. Adam Walsh criminal background checks were conducted and the adoptive parents were cleared we wanted a letter from the Department (we cannot get the criminal report) so the Tribal Council can acknowledge that the background check was done and the individuals cleared the checks (the TCAO cannot be finalized with the criminal background checks) The delay has been in getting the letters. In both cases the Tribe conducted the home studies.</p>
<p>Initially it was educating everyone about what a tribal customary adoption is, how it is similar to and different from a conventional</p>

adoption. There was also a cultural piece regarding why tribes want to maintain families and relations. In addition, there was some reluctance/fear based upon a lack of knowledge/information about how the Tribe could issue the TCA Order and how it is afforded full faith and credit and made a part of the Superior court's order. The difficulty in this case [and related case] is that the Adam Walsh criminal background checks were conducted and the adoptive parents were cleared. [Tribe] requested a letter from the Department (we cannot get the criminal report) so the Tribal Council can acknowledge that the background check was done and the individuals cleared the checks (the TCAO cannot be finalized without the criminal background checks). The delay has been in getting the letters.

DRAFT

Appendix “D”

TCA Questionnaire Responses

<p>It seems harder to attract potential adoptive families when TCA’s are an option. Adoptive families do not like the uncertainty of the tribe intervening and dictating what happens post-adoption.</p>
<p>The negative was the length of time it took to finalize the adoption was very frustrating to the caretakers.</p>
<p>Positive conclusion to the case.</p>
<p>Positive conclusion to the case.</p>
<p>Positively, since the tribe supported the placement and permanent plan of adoption of the child by the maternal grandmother.</p>
<p>This permanent plan has allowed for bridging with the []Tribe as well as initial discussions with other local tribes about this possibility. The notion of permanence has been an issue for this adoption office as sometimes have seen Native Children remain in the system and have multiple moves because the plan of Guardianship disrupted or LTFC which is not a secure plan. Additionally, the continuous and simultaneous concurrent planning which is a part of this law requires all parties to be in close and regular communication regarding planning for the child. Early placement decisions are important and require various parties to come together in decision making for the child. Also, a TCA is a more culturally appropriate plan for many Tribes and is an option that has not been available before and it has encouraged better working relationships.</p>
<p>Positively as it gave a choice to the family.</p>
<p>Positively affected case.</p>
<p>We are hopeful that TCA is a positive move for the minor child. It appears that the court wants permanency for the child.</p>
<p>This particular case, negatively. However, the hope is that with more experience and knowledge all parties would be able to participate more efficiently.</p>
<p>Because TCA has not come to fruition in this case, it is difficult to say how many hearings would be required. For one, a 288 petition will be needed initially to reinstate dependency jurisdiction and set a new 366.26 hearing. At that point, the agency will need to notice all parties. In this one case, which is the only one so far in [] County, the children are already in a legal guardianship, so permanency plans are already in place. The LGs have always wanted to adopt but the Tribe adamantly opposed adoption at the original 366.26 phase.</p>
<p>Positively affected case.</p>
<p>Positively, no question. TCA proved to be a good, workable option even though the Tribe was located out of state.</p>
<p>Positive effect except for the time delay. Basically, everyone one. Kid got to stay in the only home kid new. Foster mom got to adopt. Parental rights were not terminated and parents get to visit. Not sure what the tribe got out of it... but they seemed happy with the result.</p>

COMPARISON OF FINANCIAL BENEFITS of ADOPTION, LEGAL GUARDIANSHIP, KIN GAP, LONG TERM FOSTER CARE and TRIBAL CUSTOMARY ADOPTION

COMPARISON OF FINANCIAL BENEFITS					
	Adoption (Adoption Assistance Program –AAP)	Tribal Customary Adoption (Adoption Assistance Program –AAP)	Kin-GAP (Legal Guardianship)	Non-Relative AFDC Foster Care (FC) (Legal Guardianship)	Long Term Foster Care
Amount	A negotiated rate based on the special needs of the child and circumstances of the family	A negotiated rate based on the special needs of the child and circumstances of the family	A fixed payment according to age	A fixed payment according to age	Based on age and in some cases, child's disability
Special Needs Allowance	Available in most counties; varies according to county A child who is developmentally delayed and a current consumer of California Regional Center may qualify for the dual agency flat rate.	Available in most counties; varies according to county A child who is developmentally delayed and a current consumer of California Regional Center may qualify for the dual agency flat rate.	Included if child was eligible while in foster care	Available in most counties	Based on current Foster Care funding
Medi-Cal	Included	Included	Included	Included	Included
Clothing Allowance	None	None	Varies according to county	Varies according to county	Varies according to county

Maximum Age	Until child turns 18; can be extended to 21 if a child has a mental or physical handicap that warrants continuation of benefits.	Until child turns 18; can be extended to 21 if a child has a mental or physical handicap that warrants continuation of benefits.	Until child turns 18; until 19 if child is in school and can graduate	Until child turns 18; until 19 if child is in school and can graduate	Until child turns 18; can be extended to 21 if a child has a disability
Independent Living Program	Yes, if child adopted at or after age 16	Yes, if child adopted at or after age 16	Yes	Yes	Yes
Reassessment	At least every two years	At least every two years	Every year	Every six months	Ongoing
Foster Care Case Closed	Yes	Yes	Yes	No	No

COMPARISON OF RIGHTS AND RESPONSIBILITIES				
	ADOPTIVE PARENTS	TRIBAL CUSTOMARY ADOPTIVE PARENTS	LEGAL GUARDIANS	FOSTER PARENTS/RELATIVE CAREGIVER
Relationship	The child becomes the adoptive parent's child in all respects	The child becomes the adoptive parent's child in all respects	The child becomes the "ward" of the guardian	The child remains the responsibility of the county agency and Juvenile Court
Parental legal rights and responsibilities for the child are transferred to the adopting relative	Yes	Yes	No	No
Relative makes decisions for the child	Yes	Yes	Most	Some
Relative has control over visitation with parents	All	May be determined through Tribal Customary Adoption Order (TCAO)	Some	None
Child will stay in the foster care system	No	No	Maybe	Yes
A payment and Medi-Cal is available for the child	Yes	Yes	Yes	Yes

COMPARISON OF RIGHTS AND RESPONSIBILITIES				
	ADOPTIVE PARENTS	TRIBAL CUSTOMARY ADOPTIVE PARENTS	LEGAL GUARDIANS	FOSTER PARENTS/RELATIVE CAREGIVER
Child's Residence	Residence solely determined by adoptive family	Residence solely determined by adoptive family. Tribe may request that minors remain in local area to maintain their Tribal ties.	Guardian may decide where child and family live in California. Need court permission to move from California or placed back with parent. If move to new state, must re-establish guardianship in new state, subject to new state's rules	Placement/residence determined by Juvenile Court and Social Services Department. Juvenile Court must pre-approve any move out of California. The family may need to be licensed in the new state
Education	Adoptive parents make all decisions. Special services may be available from schools, regional centers and other service providers	Adoptive parents make all decisions. Special services may be available from schools, regional centers and other service providers Johnson O'Malley Act College benefit – may be college benefits through the tribe.	Guardian can make all decisions. Legal guardian can request special services from schools, regional centers, or any other service providers	Unless education rights are limited by the Court or parental rights are terminated, the birth parents retain the right to make critical decisions regarding education
Marriage	Adoptive parents may consent to the marriage of the child	Adoptive parents may consent to the marriage of the child	Both guardian and the court must give consent to the child's marriage. If the child enters a valid marriage, the child becomes emancipated under California law	Juvenile Court retains the responsibility to consent to the marriage of a child under its jurisdiction

COMPARISON OF RIGHTS AND RESPONSIBILITIES

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

COMPARISON OF RIGHTS AND RESPONSIBILITIES

	ADOPTIVE PARENTS	TRIBAL CUSTOMARY ADOPTIVE PARENTS	LEGAL GUARDIANS	FOSTER PARENTS/RELATIVE CAREGIVER
Social Security Benefits	An adopted child may be eligible for Social Security dependent's or survivor's benefits when the adopted parent(s) retires, becomes disabled or dies	An adopted child may be eligible for Social Security dependent's or survivor's benefits when the adopted parent(s) retires, becomes disabled or dies Child may also be eligible for dependent/survivor benefits from birth parents	Eligible for benefits under the birth parent's accounts	Eligible for benefits under birth parent's accounts
Inheritance	An adoptive child is a legal heir of the adoptive parents	An adoptive child is a legal heir of the adoptive parents Child may inherit from birth parents. May be specified in TCAO	Child has no inheritance rights unless the guardian chooses to make the child a legal heir through a will. The child retains rights of inheritance from the birth parents	Child has no inheritance rights unless the foster parent chooses to make the child a legal heir through a will. The child retains rights of inheritance from the birth parents
Child Misconduct/ Destruction of Property	Adoptive parent is generally responsible for damages resulting from a child's misconduct or destruction of property of others	Adoptive parent is generally responsible for damages resulting from a child's misconduct or destruction of property of others	A guardian, like a parent, is liable for the harm and damages caused by the willful misconduct of a child. There are special rules concerning harm caused by the use of a firearm. If you are concerned about your possible liability, you should consult an attorney	The foster parents are not legally liable for the behavior of the child

COMPARISON OF RIGHTS AND RESPONSIBILITIES

	ADOPTIVE PARENTS	TRIBAL CUSTOMARY ADOPTIVE PARENTS	LEGAL GUARDIANS	FOSTER PARENTS/RELATIVE CAREGIVER
Support of Child	Adoptive parent is legally responsible for the support of the child	Adoptive parent is legally responsible for the support of the child	The parents remain legally responsible for the child's support. The child may be eligible for TANF (formerly known as AFDC), social security benefits, Veterans Administration benefits, and other public or private funds	The foster parent has no responsibility for the financial support of his/her foster child
Additional Responsibilities	Adoptive child is treated as birth child	Adoptive child is treated as birth child. Other: May include specifics regarding culture, activities, ceremony, name and birth certificate changes	Judge may ask the guardian to agree to other special conditions concerning the child's welfare, such as ongoing visitation with birth parents. A birth parent can petition the court at any time to rescind the guardianship and return custody to the parent. The court will determine if this is a safe and appropriate plan for the child	Foster parents are expected to remain available and to make the child available for visitation by the birth parent and for regular contact with the social worker, CASA, child's attorney and/or other professionals needing access to the child. They must be accountable for any monies received on behalf of the child

**TRIBAL CUSTOMARY ADOPTION ORDER OF THE
[CALIFORNIA TRIBE]**

CASE. NO:

SUBJECT: IN THE MATTER OF THE _____ MINOR
[_____] COUNTY JUVENILE COURT NO. _____
TRIBAL CUSTOMARY ADOPTION ORDER

WHEREAS, the [California Tribe] is a federally recognized Indian tribe eligible for all rights and privileges afforded to federally recognized tribes; and

WHEREAS, the [California Tribe] Tribal Council is the governing body of the [California Tribe] under the authority of the Constitution/Customs and Traditions of the [California Tribe]; and

WHEREAS, the minor child/ren, _____, date of birth _____, is a member of the [California Tribe] or is eligible for membership and is the natural child/descendent of _____, who is/was a member of the [California Tribe]; and

WHEREAS, it has been determined that return of the above named minor child/ren to the birth parents would likely result in serious detriment to the child/ren, the [California Tribe] Tribal Council has met with the family and determined, after careful consideration regarding the best interest of the child/ren, birth parents, adoptive family and tribal community, that customary adoption is in the child/ren's best interest. To that end, the above named child/ren shall now be considered the legal child/ren of _____ and _____, who are the minor's _____.

WHEREAS, under California State law (Welfare and Institutions Code §XX), a permanent plan of Tribal Customary Adoption can and has been found to be in an Indian Child's best interest and the Tribe retains all rights and responsibilities for ordering the Tribal Customary Adoption,

NOW THEREFORE BE IT RESOLVED, the parental rights of _____ shall be suspended/modified as follows:

1. The Birth Parent/s: _____ is/are no longer physically, legally, or financially responsible for the child. All such responsibilities are hereby transferred to the customary adoptive parents. However, under and pursuant to the customs and traditions of the Tribe and the inviolate nature of the connection between tribal children and tribal parents, the birth parents shall retain the following rights:

(a) Visitation:

Birth parents and/or child can have contact in a manner at a time that the adoptive family determines is in the child's best interest and as follows:

(b) Inheritance:

2. The Adoptive Family: Rights and obligations of the adoptive family, _____ and _____ are now the legal parents of _____. They shall have the following rights and obligations as defined below:

(a) Financial Support:

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

(c) Educational rights:

(d) Inheritance:

(f) Receipt of benefits: For purposes of all tribal, state and federal benefits, including, but not limited to, financial, insurance, educational, cultural, and citizenship benefits, the child/ren is/are the children of the adoptive parents.

(g) Travel:

(h) Cultural support: The adoptive parents will endeavor to keep the minor child closely connected to his [California Tribe] heritage and will provide the child with every opportunity to develop a strong cultural identity as a member of the [California Tribe].

All rights not specified herein shall be invested to the adoptive family.

OTHER POTENTIAL ISSUES TO BE ADDRESSED:

- Clan, family, village, community, ceremonial affiliation
- Name Change

3. The Tribal Council, or any other tribal entity exercising authority specifically delegated to it by and through the duly exercised authority of the Tribal Council, retains jurisdiction to review and thereafter alter and/or modify this Order from time to time as necessary. Parties seeking such review, alteration or modification must utilize an available dispute resolution process prior to seeking Tribal Council review.

CERTIFICATION

We, the elected members of the Tribal Council of the [California Tribe] do hereby certify that the foregoing Order was adopted by the [California Tribe] Council at a duly held meeting convened on the [California Tribe] [Reservation/Rancheria] on _____, ____ by a vote of ____ "FOR", ____ "AGAINST", ____ "ABSTAINING", and such Order has not been rescinded or amended in any way.

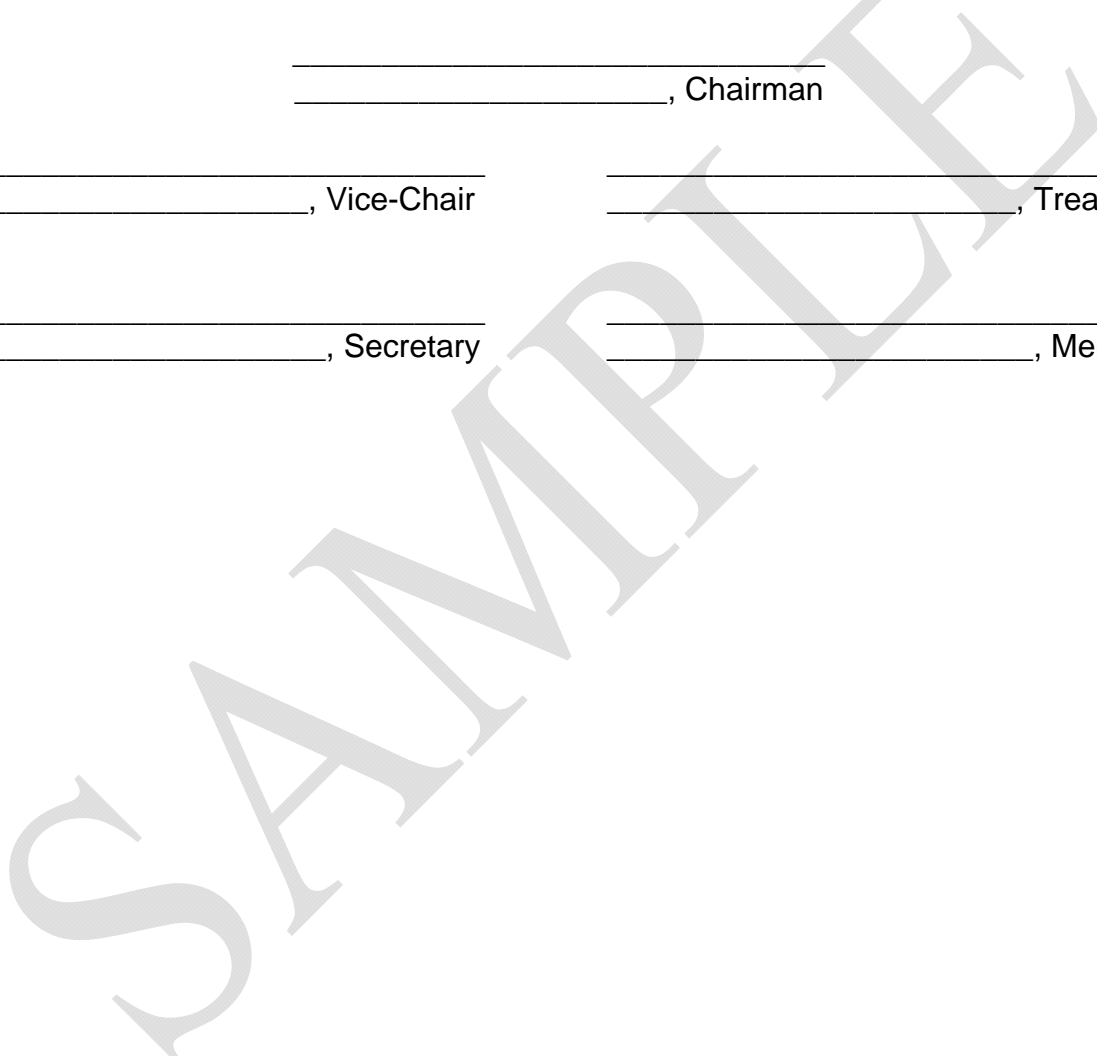
_____, Chairman

_____, Vice-Chair

_____, Treasurer

_____, Secretary

_____, Member



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In the Matter of

_____ DOB: _____

A Minor Child

**TRIBAL CUSTOMARY ADOPTION
ORDER OF [TRIBE]**

This matter came before the TRIBE on the _____ day of _____, 20___. No formal appearances were made and the Tribal Council has either reviewed or been briefed on all the documents of record received by the TRIBE in the XXXXX County Superior Court Case No. _____, In the Matter of _____, A Minor Child, DOB: _____.

The Tribal Council has also been well briefed by the Tribe's ICWA representative(s) and the TRIBE's legal counsel regarding this case and is also knowledgeable of the minor's siblings' status and their case while it was pending before the XXXXX County Superior Court.

This matter comes before the TRIBE for the purpose of considering the long term placement plan of the minor and after said deliberation the TRIBE orders a tribal customary adoption of the minor, _____.

1 History:

2 _____, DOB: _____, is the biological
3 child of his/her mother, JANE DOE, who is a member of the TRIBE.

4 _____ is also the biological child of the father, JOHN DOE. Mr. DOE is
5 not a tribal member. The TRIBE is the minor's Indian tribe. The Tribe formally intervened in the
6 XXXXX County Superior Court case in _____. According to
7 XXXXX County Superior Court documents, Ms. DOE has not appeared in the Superior Court
8 matter since _____, and Mr. DOE has not appeared since
9 _____.

10 _____ was removed from his/her mother's custody and care on or
11 about _____. The mother was allegedly under the influence and
12 unconscious at the time of the removal. She was later transported to the
13 _____. The XXXXX County Department of Human Services was
14 informed that the mother tested positive for methamphetamine.

15 The father has complied with services as ordered but has not regularly visited his child.
16 Of concern to the TRIBE is each parent's failure to attend court hearings, comply with their
17 service plans and remain clean and sober and maintain or form a connection with the child.

18 The TRIBE understands these parents have struggled in the past and continue to struggle
19 to this day. These parents have two other children, who are members of the TRIBE, and are in a
20 guardianship because the parents can not provide for the children. _____
21 is placed with his siblings and being cared for by their guardians, _____.
22 The TRIBE is familiar with the _____ and knows they are non-Indian and
23 their home does not comply with the placement preferences of the Indian Child Welfare Act (25
24 U.S.C. §1915), state law (Welf. & Inst. Code §361.31) or the Tribe's preferences. However, the
25 Tribe has agreed to this placement in an effort to keep _____ with his/her
26 siblings, _____, and keep the children together. On
27 _____, the TRIBE filed Tribal Resolution No. ____ in the XXXXX County
28 Superior Court action which outlined the TRIBE's custom regarding termination of parental

1 rights and its commitment to a permanent placement for _____.

2 Findings:

3 Based upon the XXXXX County Superior Court record, information from the TRIBE's
4 ICWA representative(s) and tribal legal counsel, and tribal customs and tradition, the TRIBE
5 makes the following findings:

6 1. As an exercise of its inherent sovereignty the TRIBE, by and through its
7 governing body, the TRIBE, has the authority and jurisdiction to formally order a placement plan
8 of tribal customary adoption of the minor, _____, DOB _____.

9 (Site the constitution here or some other source of authority).

10 2. The TRIBE finds that the Tribe possesses the inherent sovereign right to make
11 decisions regarding the best interests of its children including who should provide care, custody
12 and control of its children.

13 3. The TRIBE finds that the protection of the child's safety, well-being and welfare
14 and his/her sense of belonging; preservation of the child's identity as a tribal member and
15 member of an extended family; preservation of the culture, religion, language, values, and
16 relationships with the Tribe embodies and promotes the traditional values of the TRIBE
17 regarding the protection and care of the Tribe's children. The TRIBE believes that it is the
18 responsibility of the TRIBE, the tribal communities and extended families to protect, care for and
19 nurture our children.

20 4. The TRIBE finds that children deserve a sense of permanency and belonging
21 throughout their lives and at the same time they deserve to have knowledge about their unique
22 cultural heritage including their tribal customs, history, language, religion, values and political
23 systems.

24 5. The TRIBE finds that based upon tribal custom and tradition, the TRIBE does not
25 believe or adhere to termination of parental rights and finds that the state law construct of
26 Termination of Parental rights is inconsistent with tribal customs and traditions. The TRIBE
27 does support the process of joining individuals and relatives into family relationships and
28 expanding family resources. The TRIBE recognizes that the relationship between the minor and

1 the GUARDIANS will be one of Tribal Customary Adoptive family. The TRIBE also recognizes
2 the minor's right to a continued relationship with his birth parents and extended families.

3 6. The TRIBE finds that _____ will benefit from a relationship with
4 his/her biological parents and encourages said relationship. The TRIBE also recognizes that
5 _____ will benefit from a relationship with his/her extended family. The
6 biological parents may have visitation with _____ provided the following
7 conditions are met: the parents offer proof of sobriety from a recognized health facility and all
8 visits take place in the presence of the GUARDIANS either in their home or at a mutually agreed
9 upon location. At any time should the GUARDIANS have a reasonable belief that either parent
10 is under the influence of drugs or alcohol a visit may be cancelled or terminated. Visitation
11 between _____ and his/her extended family may take place upon consultation
12 with the GUARDIANS and the TRIBE and at the discretion of each.

13 7. The TRIBE finds that _____ shall attend any and all holiday
14 functions hosted by the TRIBE and the Tribe's Pow Wow. The TRIBE or its designee shall assist
15 the GUARDIANS with the development of regalia, language, cultural and ceremonial
16 development of _____.

17 8. The TRIBE is confident the GUARDIANS have and will always provide
18 with all the love, caring, dedication and support they would provide to a biological child and it is
19 the TRIBE's intention that _____ be raised until the age of majority and
20 beyond by the _____ family. The TRIBE has and will continue to
21 provide support, guidance and assistance to _____ and the
22 _____ family including offering tribal services and programs to the family. The
23 services and programs which may be available to the _____ family shall
24 include, but not be limited to: Medical, dental, and behavioral health services at Indian Health
25 Services centers; Timely enrollment consideration for _____ upon
26 completion of his/her application form and its submission by the GUARDIANS at the next
27 scheduled meeting of the Enrollment Committee; The TRIBAL ICWA Representative and staff
28 are available to _____ and the _____ family currently

1 and after the tribal customary adoption order is finalized and the case is dismissed by the
2 XXXXX County Superior Court. The Tribe's ICWA staff can assist by conducting traditional
3 and culturally appropriate mentoring and activities, interfacing with mental health and medical
4 providers, provide respite care, transportation and guidance to _____ and the
5 _____ family now and in the future.

6 9. The TRIBE is committed to the permanent placement of
7 _____ with GUARDIANS. The Tribe is committed to this placement and
8 this tribal customary adoption and believes THE MINOR will thrive with the
9 _____ family as his/her tribal customary adoptive family, and become a
10 successful and meaningful member of the tribal community. In an effort to protect
11 and preserve the _____ family structure the TRIBE pledges its full
12 commitment to this family and its continuing development and evolution with
13 _____ including support for _____'s legal name to be
14 changed to reflect both his/her birth name and the _____ surname and
15 recognition that, as the adoptive parents of _____,
16 _____'s share all the rights and responsibilities as his/her parents including
17 control over family visitation and his/her health, education and welfare.

18 10. The TRIBE finds that _____ may possess certain rights of
19 inheritance which may be controlled by federal law pursuant to the American Indian Probate
20 Reform Act of 2004, ("AIPRA") P.L. 108-374, or by tribal probate laws enacted now or in the
21 future. The TRIBE further finds that the minor will benefit from maintaining rights of
22 inheritance by and between himself and his biological parents and his tribal customary adoptive
23 family.

24 11. The TRIBE finds that the biological parents have no ongoing legal obligations to
25 and are not responsible for his/her care, custody or welfare. The parents may however contribute
26 to his/her welfare by purchasing age appropriate gifts, school supplies and by providing culturally
27 appropriate items to assist with his/her cultural and ceremonial development.

28 12. The TRIBE finds that based on tribal custom and tradition the TRIBE must

1 support and protect the legal relationship between the minor and the TRIBE, the minor's current
2 or future citizenship in the TRIBE and therefore where the care, custody and control of the child
3 will be placed with non-tribal members the child shall retain his/her legal relationship with the
4 Tribe as a citizen or eligible for citizenship in the Tribe with all of the rights, duties and
5 privileges that are inherent in his/her status as a citizen and member of a federally recognized
6 tribe.

7 Therefore, the TRIBE hereby orders the following:

8 The TRIBE hereby adopts findings 1 – 12 as its Tribal Customary Adoption Order in this
9 case and will submit the final Order to the XXXXX County Superior Court to grant full faith and
10 credit, and make this Order the Order of the Court.

11

12 IT IS SO ORDERED, this ____ day of _____, 20__.

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Chairperson/Tribal Council

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[TRIBE]

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INDIAN CHILD WELFARE ACT:
WHAT PARENTS' ATTORNEYS NEED TO KNOW
PART 3 IN A MULTI-PART SERIES

Training Hosted by:

National Child Welfare Resource Center on Legal and Judicial Issues

Training Presented by:

ABA National Project to Improve Representation for Parents in Child Welfare Cases

TUESDAY, OCTOBER 23, 12:00 TO 1:00 PM EST

Join us for a **free web-based training** for parents' attorneys which will provide:

- An in-depth review and discussion of transfers to tribal court and petitioning to invalidate ICWA proceedings.
- Transfers to tribal court -- When can a case be transferred? Who must consent? How do you make the request? What happens when the case is transferred?
- Motions to invalidate – What is a motion to invalidate? What court hears the motion? When can the motion be made and how can it help your client?
- This training also will provide a detailed question and answer period for presenters to respond to questions about this webinar content and content from the previous two ICWA trainings. If you have questions from the previous trainings, please email them to Elizabeth.Thornton@americanbar.org by October 15, 2012.

Presenters

Judge Anita Fineday is the Managing Director of the Indian Child Welfare Program for the Casey Family Programs. She previously served as the Chief Judge for the White Earth Tribal Nation for 14 years. She holds a Master's degree in Public Administration from the Harvard University's Kennedy School of Government and a Juris Doctorate from the University of Colorado School of Law. She has previously served as an associate judge for the Leech Lake Band of Ojibwe and the Grand Portage Band of Chippewa. She is an enrolled member of the White Earth Tribal Nation.

Shannon Smith is the Executive Director of the Indian Child Welfare Law Center in Minneapolis, Minnesota. She has over 13 years of experience working in the field of Indian child welfare. She is a graduate of the University of Minnesota Law School. Prior to joining the ICW Law Center, Shannon clerked for the Honorable Robert A. Blaeser of the Hennepin County Juvenile Court. Shannon has served on several committees impacting the interests of Indian children, their families and their tribes, including the Minnesota Supreme Court Juvenile Protection Rules Committee, the Legal Service Advisory Council Emerging Leaders and the Tribal/ State Agreement drafting committee.

Ann Gilmour is an attorney with the Judicial Council of California, Administrative Office of the Courts, Center for Families, Children and the Courts, working with the Tribal Project Unit. Her work with the Tribal Project Unit includes a focus on improving compliance with ICWA. Ms. Gilmour has close to twenty years experience in the field of Indian law practicing first in British Columbia where she did aboriginal rights and title litigation. Since moving to California in 1999 she has continued to work in the field of Indian law, including representing tribes and individuals in cases involving ICWA.

. Registration

To register, go to the following link:

https://abanet.qualtrics.com/SE/?SID=SV_d1oL2Vn7V3c23sx

Registration is limited to the first 300 people who request to register.

If you have questions about registration, please contact Scott Trowbridge at:

Scott.Trowbridge@americanbar.org