

Frequently Asked Questions Tribal Customary Adoption

What is Tribal Customary Adoption?

Tribal Customary Adoption is a new permanency option for Indian children who are dependents of the California State Court. As described in Welfare and Institutions Code 366.24, Tribal Customary Adoption allows an Indian child who is a dependent of the California State Court to be adopted through the customs, laws and traditions of the child's tribe without the termination of the parental rights of the child's parents.

When is Tribal Customary Adoption available?

Tribal Customary Adoption is available as a permanency option for a dependent Indian child who is unable to reunify with his/her parents when the child's tribe elects tribal customary adoption as the child's permanent plan as described in Welfare and Institutions Code 366.24.

When did Tribal Customary Adoption become effective?

Tribal Customary Adoption became effective on July 1, 2010.

Does Tribal Customary Adoption only apply to new cases initiated after July 1, 2010?

No. Tribal Customary Adoption applies to both new and existing cases so long as parental rights have not yet been terminated.

What are the obligations of state and county workers under the new Tribal Customary Adoption law?

The primary obligation that Assembly Bill 1325 (Cook; Stats. 2009, ch.287) (the law enacting Tribal Customary Adoption) places on county child welfare workers is to consult with the child's tribe about the possibility of tribal customary adoption as a permanency option in every case involving an Indian child.

Specifically, Welfare and Institutions Code section 358.1(j), as amended by AB 1325, requires every social study or evaluation for an Indian child under section 358 include a discussion of whether tribal customary adoption is an appropriate permanent plan for the child if reunification is unsuccessful. In considering this issue, the social worker **must** consult with the child's tribe.

In addition, in cases involving an Indian child the court is required to make specific findings at each status review hearing concerning tribal customary adoption to ensure that the child's tribe has been consulted about tribal customary adoption.

Who decides whether to pursue tribal customary adoption as a permanent plan if reunification fails?

Initially, it is the child's tribe who elects whether or not to pursue tribal customary adoption. An essential element of tribal customary adoption is a valid tribal customary adoption order issued by a federal recognized tribe which can be given full faith and credit by the state court. This means that tribal customary adoption is only available with the consent and participation of the child's tribe.

Once the child's tribe elects tribal customary adoption as the child's preferred permanent plan, the child's permanent plan is selected at a hearing held under WIC 366.26.

Does the child or the parents need to consent to tribal customary adoption?

No. AB 1325 states that neither the parents, the Indian Custodian, nor the child need consent to tribal customary adoption as the child's permanent plan. [See § 8600.5 of the Family Code which excludes parts of the family code including requirement for consent of a child over 12 years of age to an adoption from application to a tribal customary adoption and Welfare and Institutions Code § 366.24 (c) (11) which provides that parents and Indian custodian do not need to consent] However, as discussed in the Advisory Committee Comment to Rule 5.730 http://www.courtinfo.ca.gov/rules/index.cfm?title=five&linkid=rule5_730 the wishes of the child are "... an important and appropriate factor for the court to consider and for children's counsel to ascertain and present to the court when determining whether tribal customary adoption is the appropriate permanent plan for an Indian child."

Can the parents of a child contest a decision to order tribal customary adoption as a child's permanent plan?

Yes. There is nothing in AB 1325 that limits any party's ability to contest the selection of tribal customary adoption as a child's permanent plan in the same manner that they could contest the selection of any other permanent plan.

Can the parents of a child (or any other party) appeal a decision to order tribal customary adoption as a child's permanent plan?

Yes. Welfare and Institutions Code section 366.24 (j) provides that “...except in the case of a tribal customary adoption where there is no termination of parental rights, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted...”. Some parties have suggested that this means that parents cannot appeal an order for tribal customary adoption. However there is nothing in AB 1325 that exempts tribal customary adoptions from the operation of section 395 of the Welfare and Institutions Code which provides generally that:

- (a) (1) A judgment in a proceeding under Section 300 may be appealed in the same manner as any final judgment, and any subsequent order may be appealed as an order after judgment...”

The dispositional order is the “judgment” referred to in section 395 and all subsequent orders are appealable. (see *In re. S.B.* (2009) 46 Cal. 4th 529 at 532) Where the Legislature has neither precluded an appeal nor made any alternate arrangements for review of an order the presumption is that the section 395 right of appeal applies. (id. page 531):

We have repeatedly held that if the Legislature intends to abrogate the statutory right to appeal, that intent must be clearly stated. ‘The right of appeal is remedial and in doubtful cases the doubt should be resolved in favor of the right whenever the substantial interests of a party are affected by a judgment... (id. page 531)

Will Attorneys for the minor and the parents be paid by the Court or county for time they spend in the tribal forum in a tribal customary adoption case?

No. Tribal courts and tribal fora are not required to provide court appointed counsel for parties appearing before them. The proceedings in the tribal forum are separate and distinct from the proceedings in the dependency court.

Are there special forms for Tribal Customary Adoption?

No. There are no special forms related to Tribal Customary Adoption. Instead, existing Judicial Council forms have been revised and adapted to include Tribal Customary Adoption. You can find those revised forms here: [Judicial Council Forms Amended to Implement Tribal Customary Adoption.doc](#)

There have also been revisions to a number of forms issued by the California Department of Social Services: <http://www.cdss.ca.gov/cdssweb/entres/forms/English/AAP4.PDF> ; <http://www.cdss.ca.gov/cdssweb/entres/forms/English/AD4348.pdf> .

Are there special rules of Court related to Tribal Customary Adoption?

No. There are no specific rules related to tribal customary adoption. Instead the Judicial Council has made a number of revisions to existing rules to recognize tribal customary adoption. You can find those revised forms here: [California Rules of Court Amended to Implement Tribal Customary Adoption.doc](#)