



CDSS

JOHN A. WAGNER  
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY  
**DEPARTMENT OF SOCIAL SERVICES**

744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



ARNOLD SCHWARZENEGGER  
GOVERNOR

March 24, 2010

ALL COUNTY LETTER NO. 10-17

TO: ALL COUNTY WELFARE DIRECTORS  
ALL CHIEF PROBATION OFFICERS  
ALL CDSS ADOPTION DISTRICT OFFICES  
LICENSED PUBLIC AND PRIVATE ADOPTION AGENCIES  
ALL CHILD WELFARE SERVICES PROGRAM MANAGERS  
ADOPTION SERVICE PROVIDERS  
TITLE IV-E AGREEMENT TRIBES  
ACADEMY OF CALIFORNIA ADOPTION LAWYERS

SUBJECT: ASSEMBLY BILL 1325, CHAPTER 287, STATUTES OF 2009  
TRIBAL CUSTOMARY ADOPTION

REFERENCE: ASSEMBLY BILL 1325, CHAPTER 287, STATUTES OF 2009;  
WELFARE AND INSTITUTIONS CODE 366.24, AND 366.26

The purpose of this All County Letter (ACL) is to provide introductory information to counties, adoption agencies, tribes and other interested individuals/organizations regarding the passage of Assembly Bill (AB) 1325, Chapter 287, Statutes of 2009. A more detailed ACL regarding implementing the provisions of AB 1325 statewide will be circulated in June 2010.

In an effort to meet the permanency needs of dependent Indian children, consistent with tribal culture, California enacted AB 1325. Effective **July 1, 2010**, this statute adds to state law “tribal customary adoption” as a permanency option for a child who is a dependent of the juvenile court and eligible under the Indian Child Welfare Act (ICWA). It defines tribal customary adoption as an adoption which occurs under the customs, laws or traditions of child’s tribe. Termination of parental rights (TPR) is not required to effect the tribal customary adoption. While tribal customary adoption is unique, it is intended to be a seamless integration into the current process of conventional adoption. Aligned with the state’s existing concurrent planning policies, when applicable, it allows, at the tribe’s option, for tribal customary adoption to be included as an alternative permanent plan to family reunification throughout the dependency case.

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

This statute provides the Indian child's tribe the authority to recommend tribal customary adoption as the permanency option for the Indian child. Further, it provides that where the juvenile court finds that full faith and credit shall be extended to the tribe's tribal customary adoption order, the juvenile court will issue a state court order of adoption. It also permits an Indian child who is the subject of a tribal customary adoption to be eligible for Adoption Assistance Program (AAP) benefits.

This statute only applies to a dependent Indian child who is eligible under ICWA whose parents' rights were not terminated. It will not apply to independent or intercountry adoption, an Indian child who is a probation ward or has been voluntarily relinquished to an agency by his or her parents.

The AB 1325 becomes operative on July 1, 2010, and sunsets on January 1, 2014. This statute authorizes California Department of Social Services (CDSS) to develop emergency regulations and requires the Judicial Council's Administrative Office of the Courts to adopt rules of court and necessary forms to implement tribal customary adoption before July 1, 2010. The Judicial Council will publish forms with instructions on their website. The statute also requires the Judicial Council to complete a study of these provisions and to report its findings to the legislature on or before January 1, 2013.

## **BACKGROUND**

The AB 1325 was the result of a gap between tribal cultural norms and existing state law, which did not include a culturally-appropriate means of achieving adoption for dependent Indian children. This statute originated from the CDSS ICWA Workgroup which includes representatives from tribes, counties and other stakeholders in Indian child welfare. It is consistent with CDSS' goal to sustain and enhance permanency for all court-dependent youth. In addition to a conventional adoption, AB 1325 gives an Indian child another permanency option by allowing the child to be adopted without the requirement of TPR, which conflicts with many tribal teachings and cultural values because it severs the child's tribal family systems, connections to extended family members, and to the tribe. Furthermore, TPR and severing family ties may also cause an Indian child to lose benefits afforded only to a member of the tribe. This statute allows Indian children and families to achieve permanency and adoption assistance benefits without TPR.

According to the National Indian Child Welfare Association, "Historically and traditionally, adoption has been practiced in most tribal communities through custom and ceremony. In general, tribes do not practice termination of parental rights. In a customary adoption, tribes are allowed to meet the permanency needs of their children while honoring their own tribal values and beliefs."

## HOW THE BILL WORKS

The option of a tribal customary adoption is to be considered in all stages of the dependency case. The primary procedures and standards applicable to tribal customary adoptions are contained in the new section, 366.24, of the Welfare and Institutions Code (W&IC). They include the following:

- Provides the tribe to choose the option of tribal customary adoption as a permanency option for dependent Indian children eligible under ICWA in cases involving federally recognized tribes.
- Defines “tribal customary adoption” as an adoption which occurs under the customs, laws or traditions of an Indian child’s tribe, but where TPR is not required.
- Excludes tribal customary adoption from the Family Code.
- Excludes probation wards, independent or intercountry adoptions, and Indian children that have been voluntarily relinquished by their parents from tribal customary adoption.
- Includes tribal customary adoption as a permanency option when noticing parents regarding a selection and implementation hearing.
- Affords tribal customary adoptive parents the same rights and privileges as any other adoptive parents.
- Requires the dependency social worker and the adoptions worker, in consultation with the child’s tribe, to address in the court report for each review hearing, whether the tribal customary adoption is an appropriate permanent plan for the child if reunification is unsuccessful.
- Provides that when family reunification is unsuccessful, and a hearing is ordered to determine the appropriate permanent plan for a dependent Indian child, if the child’s tribe recommends tribal customary adoption, the juvenile court may order, without termination of parental rights, tribal customary adoption as the permanent plan for that child.
- Provides requirements for cases in which tribal customary adoption is determined as the child’s permanent plan, including:
  - The completion of an adoptive home study by either the Indian child’s tribe or the tribe’s designee;
    - If the tribe designates an agency to complete the home study, the agency must conduct the tribal customary adoption home study in consultation with the child’s tribe.
    - The tribe’s designee may include a licensed county adoption agency, CDSS when it is acting as an adoption agency, or a licensed adoption agency.

- The tribe may choose to complete the tribal customary adoption home study. In that case the agency with placement and care responsibility for the child will complete the criminal and child abuse registry background checks.
- The completion, by the child's tribe, of a Tribal Customary Adoption Order (TCAO) that includes a description of the modification of the legal relationship of the birth parents or Indian custodian and the child, and a description of the child's legal relationship with the tribe;
- The filing of the TCAO evidencing that tribal customary adoption had been completed by the child's tribe within 120 days of the original 366.26 hearing with a court option to grant a continuance of up to 60 additional days;
- Court discretion, if the child's tribe does not file the tribal customary adoption order within the timeframes specified for completion of the order, to alter the original order of tribal customary adoption as the child's permanency option.
- The filing of an addendum to the continued W & IC 366.26 report by the licensed county adoption agency, or CDSS when it is acting as an adoption agency, to the court;
- An opportunity for the child, birth parents, Indian custodian, tribal customary adoptive parents, and their counsel, to present evidence regarding the child's best interest.
- Provides that once the juvenile court affords full faith and credit to the TCAO received from the child's tribal court or council to the extent it would afford full faith and credit to the public acts, records, judicial proceedings and judgments of any other entity, the Indian child shall be eligible for tribal customary adoptive placement.
  - The completion of a tribal customary adoptive placement is contingent on the approval of the tribal customary adoption home study.
- Provides that once an adoption petition is filed, supervision is complete and the final report by the supervising agency is submitted, the court issues an order of adoption pursuant to section 366.24.
- Provides that once the adoption order is granted dependency is terminated.

#### Private Adoption Agency Reimbursement Program (PAARP)

The PAARP was enacted as an incentive for licensed private adoption agencies to recruit adoptive families for children who would otherwise remain in foster care. The PAARP is governed by W&IC section 16122, which requires CDSS to reimburse licensed private adoption agencies for otherwise unreimbursed costs incurred, for completing the adoptions of children who are eligible for the AAP benefits because of age, membership in a sibling group, medical or psychological problems, adverse parental background or other circumstances that will make placement of the youth(s)

especially difficult. With the passage of Senate Bill 84 the maximum PAARP rate, effective February 1, 2008, was increased to \$10,000.

Effective July 1, 2010, licensed private adoption agencies can claim PAARP reimbursement for tribal customary adoptions. Some private adoption agencies have expressed concern as to whether PAARP eligibility would be impacted should any part of the TCA process be initiated prior to July 1, 2010. These cases will be eligible for PAARP reimbursement provided the tribal customary adoptive placement occurs on or after July 1, 2010.

Although AB 1325 was passed October 11, 2009, its provisions do not become law until July 1, 2010. Therefore, tribal customary adoption will not be recognized as a permanent plan until July 1, 2010. Should you have any questions regarding this letter, please contact the Permanency Policy Bureau at (916) 657-1858, or me at (916) 657-2614.

Sincerely,

***Original Document Signed By:***

GREGORY E. ROSE  
Deputy Director  
Children and Family Services Division