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AMENDED IN ASSEMBLY APRIL 10, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1701

Introduced by Assembly Member Patterson
(Coauthor: Senator Anderson)

February 13, 2014

An act to amend Sections 7630, 7662, 7666, 7807, 8603, 8604, 8613.5, 8700, 8804, 8807, 8808, 8814, and 8815 of, and to add Sections 7671 and 7842 to, the Family Code, and to amend Section 361 of the Welfare and Institutions Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

AB 1701, as amended, Patterson. Family law: adoption.

(1) Existing law authorizes, among others, a child's natural parent to bring an action to declare the existence or nonexistence of a presumed parent and child relationship. Existing law requires the court to join to that action specified parties, including prospective adoptive parents who have physical custody of *a the* child, who have not been joined as ~~parties~~ *parties*, without the necessity of a motion for joinder.

This bill would instead authorize a child's natural mother to bring that action. The bill would also require the court to join to that action additional specified parties who have not been joined as parties,

including a licensed California adoption agency to which the mother proposes to relinquish the child for adoption.

(2) Existing law provides for the adoption of unmarried minors. Existing law prohibits a married person, not lawfully separated from the person's spouse, from adopting a child without the consent of the spouse if the spouse is capable of giving that consent.

This bill would additionally provide that the consent of the spouse shall not establish any parental rights or responsibilities on the part of the consenting spouse unless he or she has consented to adopt the child in a writing filed with the court and is named in the final decree as an adoptive parent of the child. The bill would authorize the court to dispense with a spouse's consent in certain circumstances and, if consent has been dispensed, prohibit the spouse from being named as an adoptive parent in the final decree.

(3) Existing law generally provides that a child having a presumed father, as specified, shall not be adopted without the consent of the child's birth parents, if living. However, if one birth parent has been awarded custody by judicial order, or has custody by agreement of both parents, and the other birth parent for a period of one year willfully fails to communicate with, and to pay for, the care, support, and education of the child when able to do so, then the birth parent having sole custody may consent to the adoption, after the birth parent who does not have custody has been served with a specified citation. Under existing law, the failure of a birth parent to pay for the care, support, and education of the child for the one-year period or the failure of a birth parent to communicate with the child for the ~~period of one year~~ *one-year period* is prima facie evidence that the failure was willful and without lawful excuse.

This bill would authorize the court to issue a temporary custody order, as specified, if the birth mother of a child for whom there is not a presumed father leaves the child in certain circumstances, including in the physical care of a licensed private adoption agency, and fails to sign a placement agreement, consent, or relinquishment for adoption. The bill would authorize the temporary custody order to be voided upon the birth mother's request to have the child returned to her care and custody.

(4) Existing law requires, if a mother relinquishes for or consents to, or proposes to relinquish for or consent to, the adoption of a child, or if a child otherwise becomes the subject of an adoption proceeding, one of several specified persons to file a petition to terminate the parental rights of the alleged father, except as specified.

Existing law permits an interested person to file a petition for an order or judgment declaring a child free from the custody and control of either or both parents.

This bill would permit a single petition to be filed to terminate the parental rights of the alleged father or fathers of 2 or more biological siblings or to terminate the parental rights of 2 or more alleged fathers of the same child. The bill would also permit a single petition to be filed to free a child, or more than one child if the children are biological siblings, from the custody and control of both parents. The bill would authorize a court to grant one of these joint petitions, in whole or in part, and would specify that the court retains the discretion to bifurcate a case in which a joint petition was filed. The bill would require a court to bifurcate a case in which a joint petition was filed whenever it is necessary to protect the interests of a party or a child who is the subject of the proceeding.

(5) Existing law authorizes the court to waive the personal appearance of a prospective adoptive parent and permit him or her to appear at an adoption proceeding through an attorney if there is clear and convincing evidence that it is impossible or impracticable for the prospective adoptive parent to appear at the adoption proceeding.

This bill would authorize the court to permit a prospective adoptive parent to appear by telephone, videoconference, or other remote electronic means that the court deems reasonable, prudent, and reliable.

(6) Existing law governs independent adoptions, which are defined to mean adoptions in which neither the State Department of Social Services nor an agency licensed by that department is a party to or joins in the adoption petition, and sets forth the procedures for completing an independent adoption.

Existing law requires, as a part of the independent adoption procedures, the department or the delegated county adoption agency to investigate the proposed independent adoption and submit a report to the court of the facts disclosed by its inquiry with a recommendation regarding the granting of the adoption petition.

This bill would provide that when the department or a delegated county adoption agency is investigating a proposed adoption, it is not required to reinvestigate matters addressed in a valid preplacement evaluation or a valid private agency adoption home study, if no new information has been discovered and no new event has occurred subsequent to the approval of the evaluation or home study that creates a reasonable belief that further investigation is necessary, except that

the department must complete all background clearances required by law.

Existing law also requires the department or a delegated county adoption agency to interview the petitioners within 45 working days after the filing of the adoption petition and to interview all persons from whom consent is required and whose addresses are known, as soon as 50% of the fee has been paid. Existing law requires the agency, at the interview, to give the placing parent an opportunity to sign either a statement revoking consent, or a waiver of the right to revoke consent. In order to facilitate the interview, existing law requires the petitioner, at the time the petition is filed, to file, among other things, a copy of the petition and 50% of the fee, with the department or with the delegated county adoption agency responsible for the investigation of the adoption.

This bill would instead require the department or delegated county adoption agency to interview the petitioners within 45 working days after receiving 50% of the fee together with a stamped file copy of the adoption petition, and to interview all persons from whom consent is required and whose addresses are known. The bill would provide that the department is not required to provide the placing parent an opportunity to sign a statement revoking consent, or a waiver of the right to revoke consent, if the parent has already signed a waiver of the right to revoke consent, or if the time period allowed to revoke consent has expired. The bill would require the petitioner, within 5 days of filing the petition, to provide the department or delegated county adoption agency, among other things, a stamped file copy of the petition together with 50% of the fee and a copy of any valid preplacement evaluation or any valid private agency adoption home study.

Existing law requires the court, in an independent adoption, if a birth parent who did not place a child for adoption has refused to give the required consent, or a birth parent revokes consent, or, before the time when a revocable consent becomes permanent, a birth parent requests the return of the child, to order the child restored to the care and custody of the birth parent.

This bill would instead require, in these circumstances, the child to be restored to the care and custody of his or her birth parent, unless the court orders otherwise.

By imposing additional duties on delegated county adoption agencies, this bill would impose a state-mandated local program.

(7) Existing law authorizes a parent who is a minor to relinquish his or her child to the department, county adoption agency, or licensed adoption agency and sign a consent for the adoption. Existing law provides that the relinquishment and consent are not subject to revocation by reason of minority.

This bill would also provide that the relinquishment and consent are not subject to revocation because the parent or guardian of the minor parent was not served with notice of the relinquishment or consent, unless the minor parent previously provided written authorization to serve his or her parent or guardian with those notices.

(8) Existing law establishes the jurisdiction of the juvenile court, which may adjudge certain children to be dependents of the juvenile court under certain circumstances. ~~Existing law authorizes, in~~ *In* all cases in which a minor is adjudged a dependent child of the juvenile court under those circumstances, *existing law authorizes* the court to limit the control to be exercised over the dependent child by any parent or guardian. Existing law provides that those provisions do not limit the ability of a parent to voluntarily relinquish his or her child to the State Department of Social Services or to a county adoption agency at any time while the child is a dependent child of the juvenile court, if the department or county adoption agency is willing to accept the relinquishment.

~~This bill would also provide~~ *make those provisions applicable to a child who is the subject of a petition to declare him or her a dependent child of the juvenile court, and would specify* that those provisions do not limit the ability of the parent of *a child who is the subject of a petition to declare him or her a dependent child of the juvenile court* or a dependent child to voluntarily relinquish that child to a licensed private adoption agency. The bill would require the juvenile court, when a child who is the subject of a ~~petition,~~ *petition* to declare him or her a dependent child of the juvenile court, or a child who has been adjudged a dependent child of the juvenile court, has been relinquished to a licensed private adoption agency, after notice and a hearing, to determine whether the relinquishment should be approved or denied. The bill would authorize the court to dispense with notice and a hearing and issue an ex parte order approving the relinquishment if the relinquishment is accompanied by the written agreement of all parties. The bill would require notification of a parent relinquishing a child to a licensed private adoption agency that the relinquishment is subject to court approval.

This bill would also require, when a child who is the subject of a ~~petition~~, *petition* to declare him or her a dependent child of the juvenile court, or a child who has been adjudged a dependent child of the juvenile court, has been relinquished to the department or a county adoption agency, the department or the county adoption agency to file notice of the relinquishment with the court and all parties and their counsel.

(9) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7630 of the Family Code is amended to
2 read:

3 7630. (a) A child, the child’s natural mother, a person
4 presumed to be the child’s parent under subdivision (a), (b), or (c)
5 of Section 7611, an adoption agency to whom the child has been
6 relinquished, or a prospective adoptive parent of the child may
7 bring an action as follows:

8 (1) At any time for the purpose of declaring the existence of the
9 parent and child relationship presumed under subdivision (a), (b),
10 or (c) of Section 7611.

11 (2) For the purpose of declaring the nonexistence of the parent
12 and child relationship presumed under subdivision (a), (b), or (c)
13 of Section 7611 only if the action is brought within a reasonable
14 time after obtaining knowledge of relevant facts. After the
15 presumption has been rebutted, parentage of the child by another
16 person may be determined in the same action, if that person has
17 been made a party.

18 (b) Any interested party may bring an action at any time for the
19 purpose of determining the existence or nonexistence of the parent
20 and child relationship presumed under subdivision (d) or (f) of
21 Section 7611.

1 (c) Except as to cases coming within Chapter 1 (commencing
2 with Section 7540) of Part 2, an action to determine the existence
3 of the parent and child relationship may be brought by the child,
4 a personal representative of the child, the Department of Child
5 Support Services, a presumed parent or the personal representative
6 or a parent of that presumed parent if that parent has died or is a
7 minor, or, in cases in which the natural mother is the only presumed
8 parent or an *action under Section 300 of the Welfare and*
9 *Institutions Code* or adoption is pending, a man alleged or alleging
10 himself to be the father or the personal representative or a parent
11 of the alleged father if the alleged father has died or is a minor.

12 (d) (1) If a proceeding has been filed under Chapter 2
13 (commencing with Section 7820) of Part 4, an action under
14 subdivision (a) or (b) shall be consolidated with that proceeding.
15 The parental rights of the presumed parent shall be determined as
16 set forth in Sections 7820 to 7829, inclusive.

17 (2) If a proceeding pursuant to Section 7662 has been filed under
18 Chapter 5 (commencing with Section 7660), an action under
19 subdivision (c) shall be consolidated with that proceeding. The
20 parental rights of the alleged natural father shall be determined as
21 set forth in Section 7664.

22 (3) The consolidated action under paragraph (1) or (2) shall be
23 heard in the court in which the proceeding under Section 7662 or
24 Chapter 2 (commencing with Section 7820) of Part 4 is filed, unless
25 the court finds, by clear and convincing evidence, that transferring
26 the action to the other court poses a substantial hardship to the
27 petitioner. Mere inconvenience does not constitute a sufficient
28 basis for a finding of substantial hardship. If the court determines
29 there is a substantial hardship, the consolidated action shall be
30 heard in the court in which the parentage action is filed.

31 (e) (1) If any prospective adoptive parent who has physical
32 custody of the child, any licensed California adoption agency that
33 has legal custody of the child or to which the mother proposes to
34 relinquish the child for adoption, or any person whom the mother
35 has designated as the prospective adoptive parent in a written
36 statement executed before a hospital social worker, an adoption
37 service provider, an adoption agency representative, or a notary
38 public, has not been joined as a party to an action to determine the
39 existence of a parent and child relationship under subdivision (a),
40 (b), or (c), or an action for custody by the alleged natural father,

1 the court shall join the prospective adoptive parent or licensed
2 California adoption agency as a party upon application or on its
3 own motion, without the necessity of a motion for joinder. A joined
4 party shall not be required to pay a fee in connection with this
5 action.

6 (2) If a person brings an action to determine parentage and
7 custody of a child who he or she has reason to believe is in the
8 physical or legal custody of an adoption agency, or of one or more
9 persons other than the child's parent who are prospective adoptive
10 parents, he or she shall serve his or her entire pleading on, and
11 give notice of all proceedings to, the adoption agency or the
12 prospective adoptive parents, or both.

13 (f) A party to an assisted reproduction agreement may bring an
14 action at any time to establish a parent and child relationship
15 consistent with the intent expressed in that assisted reproduction
16 agreement.

17 (g) (1) In an action to determine the existence of the parent and
18 child relationship brought pursuant to subdivision (b), if the child's
19 other parent has died and there are no existing court orders or
20 pending court actions involving custody or guardianship of the
21 child, then the persons having physical custody of the child shall
22 be served with notice of the proceeding at least 15 days prior to
23 the hearing, either by mail or in any manner authorized by the
24 court. If any person identified as having physical custody of the
25 child cannot be located, the court shall prescribe the manner of
26 giving notice.

27 (2) If known to the person bringing the parentage action,
28 relatives within the second degree of the child shall be given notice
29 of the proceeding at least 15 days prior to the hearing, either by
30 mail or in any manner authorized by the court. If a person identified
31 as a relative of the second degree of the child cannot be located,
32 or his or her whereabouts are unknown or cannot be ascertained,
33 the court shall prescribe the manner of giving notice, or shall
34 dispense with giving notice to that person.

35 (3) Proof of notice pursuant to this subdivision shall be filed
36 with the court before the proceeding to determine the existence of
37 the parent and child relationship is heard.

38 SEC. 2. Section 7662 of the Family Code is amended to read:

39 7662. (a) If a mother relinquishes for or consents to, or
40 proposes to relinquish for or consent to, the adoption of a child,

1 or if a child otherwise becomes the subject of an adoption
2 proceeding, the agency or person to whom the child has been or
3 is to be relinquished, or the mother or the person having physical
4 or legal custody of the child, or the prospective adoptive parent,
5 shall file a petition to terminate the parental rights of the alleged
6 father, unless one of the following occurs:

7 (1) The alleged father's relationship to the child has been
8 previously terminated or determined not to exist by a court.

9 (2) The alleged father has been served as prescribed in Section
10 7666 with a written notice alleging that he is or could be the
11 biological father of the child to be adopted or placed for adoption
12 and has failed to bring an action for the purpose of declaring the
13 existence of the father and child relationship pursuant to
14 subdivision (c) of Section 7630 within 30 days of service of the
15 notice or the birth of the child, whichever is later.

16 (3) The alleged father has executed a written form developed
17 by the department to waive notice, to deny his paternity, relinquish
18 the child for adoption, or consent to the adoption of the child.

19 (b) The alleged father may validly execute a waiver or denial
20 of paternity before or after the birth of the child, and, once signed,
21 no notice of, relinquishment for, or consent to adoption of the child
22 shall be required from the alleged father for the adoption to
23 proceed.

24 (c) Except as provided in this subdivision and subdivision (d),
25 all proceedings affecting a child, including proceedings under
26 Divisions 8 (commencing with Section 3000) to 11 (commencing
27 with Section 6500), inclusive, Part 1 (commencing with Section
28 7500) to Part 3 (commencing with Section 7600), inclusive, of this
29 division, and Part 1 (commencing with Section 1400), Part 2
30 (commencing with Section 1500), and Part 4 (commencing with
31 Section 2100) of Division 4 of the Probate Code, and any motion
32 or petition for custody or visitation filed in a proceeding under this
33 part, shall be stayed. The petition to terminate parental rights under
34 this section is the only matter that may be heard during the stay
35 until the court issues a final ruling on the petition.

36 (d) This section does not limit the jurisdiction of the court
37 pursuant to Part 3 (commencing with Section 6240) and Part 4
38 (commencing with Section 6300) of Division 10 with respect to
39 domestic violence orders, or pursuant to Article 6 (commencing
40 with Section 300) of Chapter 2 of Part 1 of Division 2 of the

1 Welfare and Institutions Code with respect to dependency
2 proceedings.

3 SEC. 3. Section 7666 of the Family Code is amended to read:

4 7666. (a) Except as provided in subdivision (b), notice of the
5 proceeding shall be given to every person identified as the
6 biological father or a possible biological father in accordance with
7 the Code of Civil Procedure for the service of process in a civil
8 action in this state at least 10 days before the date of the
9 proceeding, except that publication or posting of the notice of the
10 proceeding is not required, and service on the parent or guardian
11 of a biological father or possible biological father who is a minor
12 is not required unless the minor has previously provided written
13 authorization to serve his or her parent or guardian. Proof of giving
14 the notice shall be filed with the court before the petition is heard.

15 (b) Notice to a man identified as or alleged to be the biological
16 father shall not be required, and the court shall issue an order
17 dispensing with notice to him, under any of the following
18 circumstances:

19 (1) The relationship to the child has been previously terminated
20 or determined not to exist by a court.

21 (2) The alleged father has executed a written form to waive
22 notice, deny his paternity, relinquish the child for adoption, or
23 consent to the adoption of the child.

24 (3) The whereabouts or identity of the alleged father are
25 unknown or cannot be ascertained.

26 (4) The alleged father has been served with written notice of
27 his alleged paternity and the proposed adoption, and he has failed
28 to bring an action pursuant to subdivision (c) of Section 7630
29 within 30 days of service of the notice or the birth of the child,
30 whichever is later.

31 SEC. 4. Section 7671 is added to the Family Code, immediately
32 following Section 7670, to read:

33 7671. A single petition may be filed pursuant to Section 7662
34 to terminate the parental rights of the alleged father or fathers of
35 two or more biological siblings or to terminate the parental rights
36 of two or more alleged fathers of the same child. A petition filed
37 in accordance with this section may be granted in whole or in part
38 in accordance with the procedures set forth in this chapter. The
39 court shall retain discretion to bifurcate any case in which the
40 petition was filed in accordance with this section, and shall do so

1 whenever it is necessary to protect the interests of a party or a child
2 who is the subject of the proceeding.

3 SEC. 5. Section 7807 of the Family Code is amended to read:

4 7807. (a) Sections 3020, 3022, 3040 to 3043, inclusive, and
5 3409 do not apply in a proceeding under this part.

6 (b) Except as provided in this subdivision and subdivision (c),
7 all proceedings affecting a child, including proceedings under
8 Divisions 8 (commencing with Section 3000) to 11 (commencing
9 with Section 6500), inclusive, Part 1 (commencing with Section
10 7500) to Part 3 (commencing with Section 7600), inclusive, of this
11 division, and Part 1 (commencing with Section 1400), Part 2
12 (commencing with Section 1500), and Part 4 (commencing with
13 Section 2100) of Division 4 of the Probate Code, and any motion
14 or petition for custody or visitation filed in a proceeding under this
15 part, shall be stayed. The petition to free the minor from parental
16 custody and control under this section is the only matter that may
17 be heard during the stay until the court issues a final ruling on the
18 petition.

19 (c) This section does not limit the jurisdiction of the court
20 pursuant to Part 3 (commencing with Section 6240) and Part 4
21 (commencing with Section 6300) of Division 10 with respect to
22 domestic violence orders, or pursuant to Article 6 (commencing
23 with Section 300) of Chapter 2 of Part 1 of Division 2 of the
24 Welfare and Institutions Code with respect to dependency
25 proceedings.

26 SEC. 6. Section 7842 is added to the Family Code, immediately
27 following Section 7841, to read:

28 7842. A single petition may be filed under this part to free a
29 child, or more than one child if the children are biological siblings,
30 from the custody and control of both parents. A petition filed in
31 accordance with this section may be granted in whole or in part in
32 accordance with the procedures set forth in this chapter. The court
33 shall retain discretion to bifurcate any case in which the petition
34 was filed in accordance with this section, and shall do so whenever
35 it is necessary to protect the interests of a party or a child who is
36 the subject of the proceeding.

37 SEC. 7. Section 8603 of the Family Code is amended to read:

38 8603. (a) A married person, not lawfully separated from the
39 person's spouse, shall not adopt a child without the consent of the
40 spouse, provided that the spouse is capable of giving that consent.

1 (b) The consent of the spouse shall not establish any parental
2 rights or responsibilities on the part of the consenting spouse unless
3 he or she has consented to adopt the child in a writing filed with
4 the court and is named in the final decree as an adoptive parent.
5 The court shall not name the consenting spouse as an adoptive
6 parent in the final decree unless the consenting spouse has filed a
7 written consent to adopt the child with the court and has an
8 approved adoption home study.

9 (c) The court may dispense with the consent of a spouse who
10 cannot be located after diligent search, or a spouse determined by
11 the court to lack the capacity to consent. A spouse for whom
12 consent was dispensed shall not be named as an adoptive parent
13 in the final decree.

14 SEC. 8. Section 8604 of the Family Code is amended to read:

15 8604. (a) Except as provided in subdivision (b), a child having
16 a presumed father under Section 7611 shall not be adopted without
17 the consent of the child's birth parents, if living. The consent of a
18 presumed father is not required for the child's adoption unless he
19 became a presumed father as described in Chapter 1 (commencing
20 with Section 7540) or Chapter 3 (commencing with Section 7570)
21 of Part 2 of Division 12, or subdivision (a), (b), or (c) of Section
22 7611 before the mother's relinquishment or consent becomes
23 irrevocable or before the mother's parental rights have been
24 terminated.

25 (b) If one birth parent has been awarded custody by judicial
26 order, or has custody by agreement of both parents, and the other
27 birth parent for a period of one year willfully fails to communicate
28 with, and to pay for, the care, support, and education of the child
29 when able to do so, then the birth parent having sole custody may
30 consent to the adoption, but only after the birth parent not having
31 custody has been served with a copy of a citation in the manner
32 provided by law for the service of a summons in a civil action that
33 requires the birth parent not having custody to appear at the time
34 and place set for the appearance in court under Section 8718, 8823,
35 8913, or 9007.

36 (c) Failure of a birth parent to pay for the care, support, and
37 education of the child for the period of one year or failure of a
38 birth parent to communicate with the child for the period of one
39 year is prima facie evidence that the failure was willful and without
40 lawful excuse. If the birth parent or parents have made only token

1 efforts to support or communicate with the child, the court may
2 disregard those token efforts.

3 (d) (1) If the birth mother of a child for whom there is not a
4 presumed father leaves the child in the physical care of a licensed
5 private adoption agency, in the physical care of a prospective
6 adoptive parent who has an approved preplacement evaluation or
7 private agency adoption home study, or in the hospital after
8 designating a licensed private adoption agency or an approved
9 prospective adoptive parent in a signed document, completed with
10 a hospital social worker, adoption service provider, licensed private
11 adoption agency worker, notary, or attorney, but fails to sign a
12 placement agreement, consent, or relinquishment for adoption, the
13 approved prospective adoptive parent or the licensed private
14 adoption agency may apply for, and the court may issue, a
15 temporary custody order placing the child in the care and custody
16 of the applicant.

17 (2) A temporary custody order issued pursuant to this
18 subdivision shall include all of the following:

19 (A) A requirement that the applicant keep the court informed
20 of the child's residence at all times.

21 (B) A requirement that the child shall not be removed from the
22 state or concealed within the state.

23 (C) The expiration date of the order, which shall not be more
24 than six months after the order is issued.

25 (3) A temporary custody order issued pursuant to this
26 subdivision may be voided upon the birth mother's request to have
27 the child returned to her care and custody.

28 SEC. 9. Section 8613.5 of the Family Code is amended to read:

29 8613.5. (a) (1) If it is impossible or impracticable for either
30 prospective adoptive parent to make an appearance in person, and
31 the circumstances are established by clear and convincing
32 documentary evidence, the court may, in its discretion, do either
33 of the following:

34 (A) Waive the personal appearance of the prospective adoptive
35 parent. The appearance may be made for the prospective adoptive
36 parent by counsel, commissioned and empowered in writing for
37 that purpose. The power of attorney may be incorporated in the
38 adoption petition.

1 (B) Authorize the prospective adoptive parent to appear by
2 telephone, videoconference, or other remote electronic means that
3 the court deems reasonable, prudent, and reliable.

4 (2) For purposes of this section, if the circumstances that make
5 an appearance in person by a prospective adoptive parent
6 impossible or impracticable are temporary in nature or of a short
7 duration, the court shall not waive the personal appearance of that
8 prospective adoptive parent.

9 (b) If the prospective adoptive parent is permitted to appear by
10 counsel, the agreement may be executed and acknowledged by the
11 counsel, or may be executed by the absent party before a notary
12 public, or any other person authorized to take acknowledgments
13 including the persons authorized by Sections 1183 and 1183.5 of
14 the Civil Code.

15 (c) If the prospective adoptive parent is permitted to appear by
16 counsel, or otherwise, the court may, in its discretion, cause an
17 examination of the prospective adoptive parent, other interested
18 person, or witness to be made upon deposition, as it deems
19 necessary. The deposition shall be taken upon commission, as
20 prescribed by the Code of Civil Procedure, and the expense thereof
21 shall be borne by the petitioner.

22 (d) The petition, relinquishment or consent, agreement, order,
23 report to the court from any investigating agency, and any power
24 of attorney and deposition shall be filed in the office of the clerk
25 of the court.

26 (e) The provisions of this section permitting an appearance by
27 counsel or electronically pursuant to subparagraph (B) of paragraph
28 (1) of subdivision (a) are equally applicable to the spouse of a
29 prospective adoptive parent who resides with the prospective
30 adoptive parent outside this state.

31 (f) If, pursuant to this section, neither prospective adoptive
32 parent need appear before the court, the child proposed to be
33 adopted need not appear. If the law otherwise requires that the
34 child execute any document during the course of the hearing, the
35 child may do so through counsel.

36 (g) If none of the parties appear, the court may not make an
37 order of adoption until after a report has been filed with the court
38 pursuant to Section 8715, 8807, 8914, or 9001.

39 SEC. 10. Section 8700 of the Family Code is amended to read:

1 8700. (a) Either birth parent may relinquish a child to the
2 department, county adoption agency, or licensed adoption agency
3 for adoption by a written statement signed before two subscribing
4 witnesses and acknowledged before an authorized official of the
5 department, county adoption agency, or licensed adoption agency.
6 The relinquishment, when reciting that the person making it is
7 entitled to the sole custody of the child and acknowledged before
8 the officer, is prima facie evidence of the right of the person making
9 it to the sole custody of the child and the person's sole right to
10 relinquish.

11 (b) A relinquishing parent who is a minor has the right to
12 relinquish his or her child for adoption to the department, county
13 adoption agency, or licensed adoption agency, and the
14 relinquishment is not subject to revocation by the relinquishing
15 parent by reason of the minority, or because the parent or guardian
16 of the relinquishing minor parent was not served with notice that
17 the relinquishing minor parent relinquished his or her child for
18 adoption, unless the relinquishing minor parent has previously
19 provided written authorization to serve his or her parent or guardian
20 with that notice.

21 (c) If a parent resides outside this state and the other parent has
22 relinquished the child for adoption pursuant to subdivision (a) or
23 (d), the parent residing out of state may relinquish the child by a
24 written statement signed before a notary on a form prescribed by
25 the department, and previously signed by an authorized official of
26 the department, county adoption agency, or licensed adoption
27 agency that signifies the willingness of the department, county
28 adoption agency, or licensed adoption agency to accept the
29 relinquishment.

30 (d) If a parent and child reside outside this state and the other
31 parent has not relinquished the child for adoption to the department,
32 county adoption agency, or licensed adoption agency, the parent
33 residing out of state may relinquish the child to the department,
34 county adoption agency, or licensed adoption agency by a written
35 statement signed by the relinquishing parent, after the following
36 requirements have been satisfied:

37 (1) Prior to signing the relinquishment, the relinquishing parent
38 shall have received, from a representative of an agency licensed
39 or otherwise approved to provide adoption services under the laws
40 of the relinquishing parent's state of residence, the same counseling

1 and advisement services as if the relinquishing parent resided in
2 this state.

3 (2) The relinquishment shall be signed before a representative
4 of an agency licensed or otherwise approved to provide adoption
5 services under the laws of the relinquishing parent's state of
6 residence whenever possible or before a licensed social worker on
7 a form prescribed by the department, and previously signed by an
8 authorized official of the department, county adoption agency, or
9 licensed adoption agency, that signifies the willingness of the
10 department, county adoption agency, or licensed adoption agency
11 to accept the relinquishment.

12 (e) (1) The relinquishment authorized by this section has no
13 effect until a certified copy is sent to, and filed with, the
14 department. The county adoption agency or licensed adoption
15 agency shall send that copy by certified mail, return receipt
16 requested, or by overnight courier or messenger, with proof of
17 delivery, to the department no earlier than the end of the business
18 day following the signing thereof. The agency shall inform the
19 birth parent that during this time period he or she may request that
20 the relinquishment be withdrawn and that, if he or she makes the
21 request, the relinquishment shall be withdrawn. The relinquishment
22 shall be final 10 business days after receipt of the filing by the
23 department, unless any of the following applies:

24 (A) The department sends written acknowledgment of receipt
25 of the relinquishment prior to the expiration of that 10-day period,
26 at which time the relinquishment shall be final.

27 (B) A longer period of time is necessary due to a pending court
28 action or some other cause beyond control of the department.

29 (C) The birth parent signs a waiver of right to revoke
30 relinquishment pursuant to Section 8700.5, in which case the
31 relinquishment shall become final as provided in that section.

32 (2) After the relinquishment is final, it may be rescinded only
33 by the mutual consent of the department, county adoption agency,
34 or licensed adoption agency to which the child was relinquished
35 and the birth parent or parents relinquishing the child.

36 (f) The relinquishing parent may name in the relinquishment
37 the person or persons with whom he or she intends that placement
38 of the child for adoption be made by the department, county
39 adoption agency, or licensed adoption agency.

1 (g) Notwithstanding subdivision (e), if the relinquishment names
2 the person or persons with whom placement by the department,
3 county adoption agency, or licensed adoption agency is intended
4 and the child is not placed in the home of the named person or
5 persons or the child is removed from the home prior to the granting
6 of the adoption, the department, county adoption agency, or
7 licensed adoption agency shall mail a notice by certified mail,
8 return receipt requested, to the birth parent signing the
9 relinquishment within 72 hours of the decision not to place the
10 child for adoption or the decision to remove the child from the
11 home.

12 (h) The relinquishing parent has 30 days from the date on which
13 the notice described in subdivision (g) was mailed to rescind the
14 relinquishment.

15 (1) If the relinquishing parent requests rescission during the
16 30-day period, the department, county adoption agency, or licensed
17 adoption agency shall rescind the relinquishment.

18 (2) If the relinquishing parent does not request rescission during
19 the 30-day period, the department, county adoption agency, or
20 licensed adoption agency shall select adoptive parents for the child.

21 (3) If the relinquishing parent and the department, county
22 adoption agency, or licensed adoption agency wish to identify a
23 different person or persons during the 30-day period with whom
24 the child is intended to be placed, the initial relinquishment shall
25 be rescinded and a new relinquishment identifying the person or
26 persons completed.

27 (i) Subject to the requirements of subdivision (b) of Section 361
28 of the Welfare and Institutions Code, a parent may sign a
29 relinquishment of a child ~~who is the subject of a petition to declare~~
30 ~~him or her a dependent child of the juvenile court, or a child who~~
31 ~~has been adjudged a dependent child of the juvenile court, on the~~
32 ~~ground that the minor is a person described by Section 300 of the~~
33 ~~Welfare and Institutions Code. described in paragraph (1) of~~
34 ~~subdivision (b) of Section 361 of the Welfare and Institutions Code.~~
35 If the relinquishment is to a licensed private adoption agency, the
36 parent shall be advised, in writing, that the relinquishment shall
37 have no effect and will be not be filed with, or acknowledged by,
38 the department, unless the court approves the relinquishment
39 pursuant to paragraph (3) of subdivision (b) of Section 361 of the
40 Welfare and Institutions Code. If the court issues an order

1 approving the relinquishment, the licensed private adoption agency
2 shall file the relinquishment and the order with the department. If
3 the court denies the relinquishment, the licensed private adoption
4 agency shall void the relinquishment and inform the parent of that
5 fact.

6 (j) The filing of the relinquishment with the department
7 terminates all parental rights and responsibilities with regard to
8 the child, except as provided in subdivisions (g) and (h).

9 (k) The department shall adopt regulations to administer the
10 provisions of this section.

11 SEC. 11. Section 8804 of the Family Code is amended to read:

12 8804. (a) Whenever the petitioners move to withdraw the
13 petition for the adoption or to dismiss the proceeding, the clerk of
14 the court in which the proceeding is pending shall immediately
15 notify the department at Sacramento of the action. The department
16 or the delegated county adoption agency shall file a full report
17 with the court recommending a suitable plan for the child in every
18 case where the petitioners move to withdraw the petition for the
19 adoption or where the department or delegated county adoption
20 agency recommends that the petition for adoption be denied and
21 shall appear before the court for the purpose of representing the
22 child.

23 (b) Notwithstanding the withdrawal or dismissal of the petition,
24 the court may retain jurisdiction over the child for the purposes of
25 making any order for the child's custody that the court deems to
26 be in the child's best interest.

27 (c) If a birth parent who did not place a child for adoption as
28 specified in Section 8801.3 has refused to give the required consent,
29 or a birth parent revokes consent as specified in Section 8814.5,
30 the child shall be restored to the care and custody of the birth parent
31 or parents, unless the court orders otherwise, subject to Section
32 3041.

33 SEC. 12. Section 8807 of the Family Code is amended to read:

34 8807. (a) Except as provided in subdivisions (b) and (c), within
35 180 days after receiving 50 percent of the fee, the department or
36 delegated county adoption agency shall investigate the proposed
37 independent adoption and, after the remaining balance of the fee
38 is paid, submit to the court a full report of the facts disclosed by
39 its inquiry with a recommendation regarding the granting of the
40 petition. If the petitioners have a valid preplacement evaluation or

1 a valid private agency adoption home study, as described in
2 paragraph (2) of subdivision (a) of Section 8810, and no new
3 information has been discovered and no new event has occurred
4 subsequent to the approval of the evaluation or home study that
5 creates a reasonable belief that further investigation is necessary,
6 the department or delegated county adoption agency may elect not
7 to reinvestigate any matters covered in the evaluation or home
8 study, except that the department shall complete all background
9 clearances required by law.

10 (b) If the investigation establishes that there is a serious question
11 concerning the suitability of the petitioners, the care provided to
12 the child, or the availability of the consent to adoption, the report
13 shall be filed immediately.

14 (c) In its discretion, the court may allow additional time for the
15 filing of the report, after at least five days' notice to the petitioner
16 or petitioners and an opportunity for the petitioner or petitioners
17 to be heard with respect to the request for additional time.

18 (d) If a petitioner is a resident of a state other than California,
19 an updated and current home study report, conducted and approved
20 by a licensed adoption agency or other authorized resource in the
21 state in which the petitioner resides, shall be reviewed and endorsed
22 by the department or delegated county adoption agency, if the
23 standards and criteria established for a home study report in the
24 other state are substantially commensurate with the home study
25 standards and criteria established in California adoption regulations.

26 SEC. 13. Section 8808 of the Family Code is amended to read:

27 8808. (a) The department or delegated county adoption agency
28 shall interview the petitioners within 45 working days, excluding
29 legal holidays, after the department or delegated county adoption
30 agency receives 50 percent of the investigation fee together with
31 a stamped file copy of the adoption petition.

32 (b) The department or delegated county adoption agency shall
33 interview all persons from whom consent is required and whose
34 addresses are known. The interview with the placing parent or
35 parents shall include, but not be limited to, discussion of any
36 concerns or problems that the parent has with the placement and,
37 if the placing parent was not interviewed as provided in Section
38 8801.7, the content required in that interview. At the interview,
39 the agency shall give the parent an opportunity to sign either a
40 statement revoking the consent, or a waiver of the right to revoke

1 consent, as provided in Section 8814.5, unless the parent has
2 already signed a waiver or the time period allowed to revoke
3 consent has expired.

4 (c) In order to facilitate the interview described in this section,
5 within five business days of filing the petition, the petitioners shall
6 provide the department or delegated county adoption agency a
7 stamped file copy of the petition together with 50 percent of the
8 fee, a copy of any valid preplacement evaluation or any valid
9 private agency adoption home study, as described in paragraph
10 (2) of subdivision (a) of Section 8810, and the names, addresses,
11 and telephone numbers of all parties to be interviewed, if known.

12 SEC. 14. Section 8814 of the Family Code is amended to read:

13 8814. (a) Except as provided in Section 7662, the consent of
14 the birth parent or parents who did not place the child for adoption,
15 as described in Section 8801.3, to the adoption shall be signed in
16 the presence of an agent of the department or of a delegated county
17 adoption agency on a form prescribed by the department. The
18 consent shall be filed with the clerk of the appropriate superior
19 court.

20 (b) The consent described in subdivision (a), when reciting that
21 the person giving it is entitled to the sole custody of the child and
22 when acknowledged before that agent, is prima facie evidence of
23 the right of the person making it to the sole custody of the child
24 and that person’s sole right to consent.

25 (c) If the birth parent described in subdivision (a) is located
26 outside this state for an extended period of time unrelated to the
27 adoption at the time of signing the consent, the consent may be
28 signed before a notary or other person authorized to perform
29 notarial acts, and in that case the consent of the department or of
30 the delegated county adoption agency is also necessary.

31 (d) A birth parent who is a minor has the right to sign a consent
32 for the adoption of the birth parent’s child and the consent is not
33 subject to revocation by the birth parent by reason of minority, or
34 because the parent or guardian of the consenting minor parent was
35 not served with notice that the minor parent consented to the
36 adoption, unless the minor parent has previously provided written
37 authorization to serve his or her parent or guardian with that notice.

38 SEC. 15. Section 8815 of the Family Code is amended to read:

39 8815. (a) Once the revocable consent to adoption has become
40 permanent as provided in Section 8814.5, the consent to the

1 adoption by the prospective adoptive parents may not be
2 withdrawn.

3 (b) Before the time when the revocable consent becomes
4 permanent as provided in Section 8814.5, the birth parent or parents
5 may request return of the child. In that case the child shall
6 immediately be returned to the requesting birth parent or parents,
7 unless a court orders otherwise.

8 (c) If the person or persons with whom the child has been placed
9 have concerns that the birth parent or parents requesting return of
10 the child are unfit or present a danger of harm to the child, that
11 person or those persons may report their concerns to the appropriate
12 child welfare agency. These concerns shall not be a basis for failure
13 to immediately return the child, unless a court orders otherwise.

14 SEC. 16. Section 361 of the Welfare and Institutions Code is
15 amended to read:

16 361. (a) (1) In all cases in which a minor is adjudged a
17 dependent child of the court on the ground that the minor is a
18 person described by Section 300, the court may limit the control
19 to be exercised over the dependent child by any parent or guardian
20 and shall by its order clearly and specifically set forth all those
21 limitations. Any limitation on the right of the parent or guardian
22 to make educational or developmental services decisions for the
23 child shall be specifically addressed in the court order. The
24 limitations may not exceed those necessary to protect the child. If
25 the court specifically limits the right of the parent or guardian to
26 make educational or developmental services decisions for the child,
27 or, for the nonminor dependent, if the court finds the appointment
28 of a developmental services decisionmaker to be in the best
29 interests of the nonminor dependent, the court shall at the same
30 time appoint a responsible adult to make educational or
31 developmental services decisions for the child or nonminor
32 dependent until one of the following occurs:

33 (A) The minor reaches 18 years of age, unless the child or
34 nonminor dependent chooses not to make educational or
35 developmental services decisions for himself or herself, or is
36 deemed by the court to be incompetent.

37 (B) Another responsible adult is appointed to make educational
38 or developmental services decisions for the minor pursuant to this
39 section.

1 (C) The right of the parent or guardian to make educational or
2 developmental services decisions for the minor is fully restored.

3 (D) A successor guardian or conservator is appointed.

4 (E) The child is placed into a planned permanent living
5 arrangement pursuant to paragraph (5) of subdivision (g) of Section
6 366.21, Section 366.22, Section 366.26, or subdivision (i) of
7 Section 366.3, at which time, for educational decisionmaking, the
8 foster parent, relative caretaker, or nonrelative extended family
9 member as defined in Section 362.7, has the right to represent the
10 child in educational matters pursuant to Section 56055 of the
11 Education Code, and for decisions relating to developmental
12 services, unless the court specifies otherwise, the foster parent,
13 relative caregiver, or nonrelative extended family member of the
14 planned permanent living arrangement has the right to represent
15 the child or nonminor dependent in matters related to
16 developmental services.

17 (2) An individual who would have a conflict of interest in
18 representing the child or nonminor dependent may not be appointed
19 to make educational or developmental services decisions. For
20 purposes of this section, “an individual who would have a conflict
21 of interest,” means a person having any interests that might restrict
22 or bias his or her ability to make educational or developmental
23 services decisions, including, but not limited to, those conflicts of
24 interest prohibited by Section 1126 of the Government Code, and
25 the receipt of compensation or attorney’s fees for the provision of
26 services pursuant to this section. A foster parent may not be deemed
27 to have a conflict of interest solely because he or she receives
28 compensation for the provision of services pursuant to this section.

29 (3) If the court limits the parent’s educational rights pursuant
30 to this subdivision, the court shall determine whether there is a
31 responsible adult who is a relative, nonrelative extended family
32 member, or other adult known to the child who is available and
33 willing to serve as the child’s educational representative before
34 appointing an educational representative or surrogate who is not
35 known to the child.

36 If the court cannot identify a responsible adult who is known to
37 the child and available to make educational decisions for the child,
38 subparagraphs (A) to (E), inclusive, of paragraph (1) do not apply,
39 and the child has either been referred to the local educational
40 agency for special education and related services, or has a valid

1 individualized education program, the court shall refer the child
2 to the local educational agency for appointment of a surrogate
3 parent pursuant to Section 7579.5 of the Government Code.

4 If the court cannot identify a responsible adult to make
5 educational decisions for the child, the appointment of a surrogate
6 parent as defined in subdivision (a) of Section 56050 of the
7 Education Code is not warranted, and there is no foster parent to
8 exercise the authority granted by Section 56055 of the Education
9 Code, the court may, with the input of any interested person, make
10 educational decisions for the child.

11 (4) If the court appoints a developmental services decisionmaker
12 pursuant to this section, he or she shall have the authority to access
13 the child's or nonminor dependent's information and records
14 pursuant to subdivision (u) of Section 4514 and subdivision (y) of
15 Section 5328, and to act on the child's or nonminor dependent's
16 behalf for the purposes of the individual program plan process
17 pursuant to Sections 4646, 4646.5, and 4648 and the fair hearing
18 process pursuant to Chapter 7 (commencing with Section 4700)
19 of Division 4.5, and as set forth in the court order.

20 If the court cannot identify a responsible adult to make
21 developmental services decisions for the child or nonminor
22 dependent, the court may, with the input of any interested person,
23 make developmental services decisions for the child or nonminor
24 dependent. If the child is receiving services from a regional center,
25 the provision of any developmental services related to the court's
26 decision must be consistent with the child's or nonminor
27 dependent's individual program plan and pursuant to the provisions
28 of the Lanterman Developmental Disabilities Services Act
29 (Division 4.5 (commencing with Section 4500)).

30 (5) All educational and school placement decisions shall seek
31 to ensure that the child is in the least restrictive educational
32 programs and has access to the academic resources, services, and
33 extracurricular and enrichment activities that are available to all
34 pupils. In all instances, educational and school placement decisions
35 shall be based on the best interests of the child. If an educational
36 representative or surrogate is appointed for the child, the
37 representative or surrogate shall meet with the child, shall
38 investigate the child's educational needs and whether those needs
39 are being met, and shall, prior to each review hearing held under
40 this article, provide information and recommendations concerning

1 the child's educational needs to the child's social worker, make
2 written recommendations to the court, or attend the hearing and
3 participate in those portions of the hearing that concern the child's
4 education.

5 (6) Nothing in this section in any way removes the obligation
6 to appoint surrogate parents for students with disabilities who are
7 without parental representation in special education procedures as
8 required by state and federal law, including Section 1415(b)(2) of
9 Title 20 of the United States Code, Section 56050 of the Education
10 Code, Section 7579.5 of the Government Code, and Rule 5.650
11 of the California Rules of Court.

12 (b) (1) Subdivision (a) does not limit the ability of a parent to
13 voluntarily relinquish his or her child to the State Department of
14 Social Services, to a county adoption agency, or to a licensed
15 private adoption agency at any time while the child is *the subject*
16 *of a petition to declare him or her, or is*, a dependent child of the
17 juvenile court, if the department, county adoption agency, or
18 licensed private adoption agency is willing to accept the
19 relinquishment.

20 (2) When accepting the relinquishment of a child ~~who is the~~
21 ~~subject of a petition to declare him or her a dependent child of the~~
22 ~~juvenile court, or a child who has been adjudged a dependent child~~
23 ~~of the juvenile court, on the ground that the minor is a person~~
24 ~~described by Section 300, described in paragraph (1), the~~
25 department or a county adoption agency shall comply with Section
26 8700 of the Family Code and, within five court days of accepting
27 the relinquishment, shall file written notice of that fact with the
28 court and all parties to the case and their counsel.

29 (3) When accepting the relinquishment of a child ~~who is the~~
30 ~~subject of a petition to declare him or her a dependent child of the~~
31 ~~juvenile court, or a child who has been adjudged a dependent child~~
32 ~~of the juvenile court, on the ground that the minor is a person~~
33 ~~described by Section 300, described in paragraph (1), a licensed~~
34 private adoption agency shall comply with Section 8700 of the
35 Family Code and, within five court days of accepting the
36 relinquishment, shall file with the court one original and ~~ten~~ 10
37 copies of a request to approve the relinquishment. The clerk of the
38 court shall file the request under seal, subject to examination only
39 by the parties and their counsel or by others upon court approval.
40 If the request is accompanied by the written agreement of all

1 parties, the court may issue an ex parte order approving the
2 relinquishment. Unless approved pursuant to that agreement, the
3 court shall set the matter for hearing no later than ~~ten~~ 10 court days
4 after filing, and shall provide notice of the hearing to all parties
5 and their counsel, and to the licensed private adoption agency and
6 its counsel. The licensed private adoption agency and any
7 prospective adoptive parent or parents named in the relinquishment
8 shall be permitted to attend the hearing and participate as parties
9 regarding the strictly limited issue of whether the court should
10 approve the relinquishment. The court shall issue an order
11 approving or denying the relinquishment within ~~ten~~ 10 court days
12 after the hearing.

13 (c) A dependent child may not be taken from the physical
14 custody of his or her parents or guardian or guardians with whom
15 the child resides at the time the petition was initiated, unless the
16 juvenile court finds clear and convincing evidence of any of the
17 following circumstances listed in paragraphs (1) to (5), inclusive,
18 and, in an Indian child custody proceeding, paragraph (6):

19 (1) There is or would be a substantial danger to the physical
20 health, safety, protection, or physical or emotional well-being of
21 the minor if the minor were returned home, and there are no
22 reasonable means by which the minor's physical health can be
23 protected without removing the minor from the minor's parent's
24 or guardian's physical custody. The fact that a minor has been
25 adjudicated a dependent child of the court pursuant to subdivision
26 (e) of Section 300 shall constitute prima facie evidence that the
27 minor cannot be safely left in the physical custody of the parent
28 or guardian with whom the minor resided at the time of injury.
29 The court shall consider, as a reasonable means to protect the
30 minor, the option of removing an offending parent or guardian
31 from the home. The court shall also consider, as a reasonable means
32 to protect the minor, allowing a nonoffending parent or guardian
33 to retain physical custody as long as that parent or guardian
34 presents a plan acceptable to the court demonstrating that he or
35 she will be able to protect the child from future harm.

36 (2) The parent or guardian of the minor is unwilling to have
37 physical custody of the minor, and the parent or guardian has been
38 notified that if the minor remains out of their physical custody for
39 the period specified in Section 366.26, the minor may be declared
40 permanently free from their custody and control.

1 (3) The minor is suffering severe emotional damage, as indicated
2 by extreme anxiety, depression, withdrawal, or untoward aggressive
3 behavior toward himself or herself or others, and there are no
4 reasonable means by which the minor’s emotional health may be
5 protected without removing the minor from the physical custody
6 of his or her parent or guardian.

7 (4) The minor or a sibling of the minor has been sexually abused,
8 or is deemed to be at substantial risk of being sexually abused, by
9 a parent, guardian, or member of his or her household, or other
10 person known to his or her parent, and there are no reasonable
11 means by which the minor can be protected from further sexual
12 abuse or a substantial risk of sexual abuse without removing the
13 minor from his or her parent or guardian, or the minor does not
14 wish to return to his or her parent or guardian.

15 (5) The minor has been left without any provision for his or her
16 support, or a parent who has been incarcerated or institutionalized
17 cannot arrange for the care of the minor, or a relative or other adult
18 custodian with whom the child has been left by the parent is
19 unwilling or unable to provide care or support for the child and
20 the whereabouts of the parent is unknown and reasonable efforts
21 to locate him or her have been unsuccessful.

22 (6) In an Indian child custody proceeding, continued custody
23 of the child by the parent or Indian custodian is likely to result in
24 serious emotional or physical damage to the child, and that finding
25 is supported by testimony of a “qualified expert witness” as
26 described in Section 224.6.

27 (A) Stipulation by the parent, Indian custodian, or the Indian
28 child’s tribe, or failure to object, may waive the requirement of
29 producing evidence of the likelihood of serious damage only if the
30 court is satisfied that the party has been fully advised of the
31 requirements of the federal Indian Child Welfare Act (25 U.S.C.
32 Sec. 1901 et seq.), and has knowingly, intelligently, and voluntarily
33 waived them.

34 (B) Failure to meet non-Indian family and child-rearing
35 community standards, or the existence of other behavior or
36 conditions that meet the removal standards of this section, will not
37 support an order for placement in the absence of the finding in this
38 paragraph.

39 (d) The court shall make a determination as to whether
40 reasonable efforts were made to prevent or to eliminate the need

1 for removal of the minor from his or her home or, if the minor is
2 removed for one of the reasons stated in paragraph (5) of
3 subdivision (c), whether it was reasonable under the circumstances
4 not to make any of those efforts, or, in the case of an Indian child
5 custody proceeding, whether active efforts as required in Section
6 361.7 were made and that these efforts have proved unsuccessful.
7 The court shall state the facts on which the decision to remove the
8 minor is based.

9 (e) The court shall make all of the findings required by
10 subdivision (a) of Section 366 in either of the following
11 circumstances:

12 (1) The minor has been taken from the custody of his or her
13 parent or guardian and has been living in an out-of-home placement
14 pursuant to Section 319.

15 (2) The minor has been living in a voluntary out-of-home
16 placement pursuant to Section 16507.4.

17 SEC. 17. If the Commission on State Mandates determines
18 that this act contains costs mandated by the state, reimbursement
19 to local agencies and school districts for those costs shall be made
20 pursuant to Part 7 (commencing with Section 17500) of Division
21 4 of Title 2 of the Government Code.