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AMENDED IN ASSEMBLY APRIL 23, 2014

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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

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**ASSEMBLY BILL**

**No. 1701**

**Introduced by Assembly Member Patterson**  
(Coauthor: Senator Anderson)

February 13, 2014

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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 the child, who have not been joined as 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 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. 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 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 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 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) *This bill would incorporate additional changes to Section 361 of the Welfare and Institutions Code proposed by Senate Bill 977 that would become operative if this bill and Senate Bill 977 are both enacted and this bill is enacted last.*

(9)

(10) 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

1 and child relationship presumed under subdivision (d) or (f) of  
2 Section 7611.

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

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

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

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

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

1 existence of a parent and child relationship under subdivision (a),  
2 (b), or (c), or an action for custody by the alleged natural father,  
3 the court shall join the prospective adoptive parent or licensed  
4 California adoption agency as a party upon application or on its  
5 own motion, without the necessity of a motion for joinder. A joined  
6 party shall not be required to pay a fee in connection with this  
7 action.

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

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

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

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

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

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

1 7662. (a) If a mother relinquishes for or consents to, or  
2 proposes to relinquish for or consent to, the adoption of a child,  
3 or if a child otherwise becomes the subject of an adoption  
4 proceeding, the agency or person to whom the child has been or  
5 is to be relinquished, or the mother or the person having physical  
6 or legal custody of the child, or the prospective adoptive parent,  
7 shall file a petition to terminate the parental rights of the alleged  
8 father, unless one of the following occurs:

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

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

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

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

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

38 (d) This section does not limit the jurisdiction of the court  
39 pursuant to Part 3 (commencing with Section 6240) and Part 4  
40 (commencing with Section 6300) of Division 10 with respect to

1 domestic violence orders, or pursuant to Article 6 (commencing  
2 with Section 300) of Chapter 2 of Part 1 of Division 2 of the  
3 Welfare and Institutions Code with respect to dependency  
4 proceedings.

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

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

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

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

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

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

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

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

35 7671. A single petition may be filed pursuant to Section 7662  
36 to terminate the parental rights of the alleged father or fathers of  
37 two or more biological siblings or to terminate the parental rights  
38 of two or more alleged fathers of the same child. A petition filed  
39 in accordance with this section may be granted in whole or in part  
40 in accordance with the procedures set forth in this chapter. The

1 court shall retain discretion to bifurcate any case in which the  
2 petition was filed in accordance with this section, and shall do so  
3 whenever it is necessary to protect the interests of a party or a child  
4 who is the subject of the proceeding.

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

6 7807. (a) Sections 3020, 3022, 3040 to 3043, inclusive, and  
7 3409 do not apply in a proceeding under this part.

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

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

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

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

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

1 8603. (a) A married person, not lawfully separated from the  
2 person's spouse, shall not adopt a child without the consent of the  
3 spouse, provided that the spouse is capable of giving that consent.

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

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

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

18 8604. (a) Except as provided in subdivision (b), a child having  
19 a presumed father under Section 7611 shall not be adopted without  
20 the consent of the child's birth parents, if living. The consent of a  
21 presumed father is not required for the child's adoption unless he  
22 became a presumed father as described in Chapter 1 (commencing  
23 with Section 7540) or Chapter 3 (commencing with Section 7570)  
24 of Part 2 of Division 12, or subdivision (a), (b), or (c) of Section  
25 7611 before the mother's relinquishment or consent becomes  
26 irrevocable or before the mother's parental rights have been  
27 terminated.

28 (b) If one birth parent has been awarded custody by judicial  
29 order, or has custody by agreement of both parents, and the other  
30 birth parent for a period of one year willfully fails to communicate  
31 with, and to pay for, the care, support, and education of the child  
32 when able to do so, then the birth parent having sole custody may  
33 consent to the adoption, but only after the birth parent not having  
34 custody has been served with a copy of a citation in the manner  
35 provided by law for the service of a summons in a civil action that  
36 requires the birth parent not having custody to appear at the time  
37 and place set for the appearance in court under Section 8718, 8823,  
38 8913, or 9007.

39 (c) Failure of a birth parent to pay for the care, support, and  
40 education of the child for the period of one year or failure of a

1 birth parent to communicate with the child for the period of one  
2 year is prima facie evidence that the failure was willful and without  
3 lawful excuse. If the birth parent or parents have made only token  
4 efforts to support or communicate with the child, the court may  
5 disregard those token efforts.

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

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

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

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

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

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

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

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

37 (A) Waive the personal appearance of the prospective adoptive  
38 parent. The appearance may be made for the prospective adoptive  
39 parent by counsel, commissioned and empowered in writing for

1 that purpose. The power of attorney may be incorporated in the  
2 adoption petition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 of the relinquishing parent’s state of residence, the same counseling  
2 and advisement services as if the relinquishing parent resided in  
3 this state.

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

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

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

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

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

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

37 (f) The relinquishing parent may name in the relinquishment  
38 the person or persons with whom he or she intends that placement  
39 of the child for adoption be made by the department, county  
40 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 described in paragraph (1) of subdivision  
30 (b) of Section 361 of the Welfare and Institutions Code. If the  
31 relinquishment is to a licensed private adoption agency, the parent  
32 shall be advised, in writing, that the relinquishment shall have no  
33 effect and will be not be filed with, or acknowledged by, the  
34 department, unless the court approves the relinquishment pursuant  
35 to paragraph (3) of subdivision (b) of Section 361 of the Welfare  
36 and Institutions Code. If the court issues an order approving the  
37 relinquishment, the licensed private adoption agency shall file the  
38 relinquishment and the order with the department. If the court  
39 denies the relinquishment, the licensed private adoption agency  
40 shall void the relinquishment and inform the parent of that fact.

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

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

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

7 8804. (a) Whenever the petitioners move to withdraw the  
8 petition for the adoption or to dismiss the proceeding, the clerk of  
9 the court in which the proceeding is pending shall immediately  
10 notify the department at Sacramento of the action. The department  
11 or the delegated county adoption agency shall file a full report  
12 with the court recommending a suitable plan for the child in every  
13 case where the petitioners move to withdraw the petition for the  
14 adoption or where the department or delegated county adoption  
15 agency recommends that the petition for adoption be denied and  
16 shall appear before the court for the purpose of representing the  
17 child.

18 (b) Notwithstanding the withdrawal or dismissal of the petition,  
19 the court may retain jurisdiction over the child for the purposes of  
20 making any order for the child’s custody that the court deems to  
21 be in the child’s best interest.

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

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

29 8807. (a) Except as provided in subdivisions (b) and (c), within  
30 180 days after receiving 50 percent of the fee, the department or  
31 delegated county adoption agency shall investigate the proposed  
32 independent adoption and, after the remaining balance of the fee  
33 is paid, submit to the court a full report of the facts disclosed by  
34 its inquiry with a recommendation regarding the granting of the  
35 petition. If the petitioners have a valid preplacement evaluation or  
36 a valid private agency adoption home study, as described in  
37 paragraph (2) of subdivision (a) of Section 8810, and no new  
38 information has been discovered and no new event has occurred  
39 subsequent to the approval of the evaluation or home study that  
40 creates a reasonable belief that further investigation is necessary,

1 the department or delegated county adoption agency may elect not  
2 to reinvestigate any matters covered in the evaluation or home  
3 study, except that the department shall complete all background  
4 clearances required by law.

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

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

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

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

22 8808. (a) The department or delegated county adoption agency  
23 shall interview the petitioners within 45 working days, excluding  
24 legal holidays, after the department or delegated county adoption  
25 agency receives 50 percent of the investigation fee together with  
26 a stamped file copy of the adoption petition.

27 (b) The department or delegated county adoption agency shall  
28 interview all persons from whom consent is required and whose  
29 addresses are known. The interview with the placing parent or  
30 parents shall include, but not be limited to, discussion of any  
31 concerns or problems that the parent has with the placement and,  
32 if the placing parent was not interviewed as provided in Section  
33 8801.7, the content required in that interview. At the interview,  
34 the agency shall give the parent an opportunity to sign either a  
35 statement revoking the consent, or a waiver of the right to revoke  
36 consent, as provided in Section 8814.5, unless the parent has  
37 already signed a waiver or the time period allowed to revoke  
38 consent has expired.

39 (c) In order to facilitate the interview described in this section,  
40 within five business days of filing the petition, the petitioners shall

1 provide the department or delegated county adoption agency a  
2 stamped file copy of the petition together with 50 percent of the  
3 fee, a copy of any valid preplacement evaluation or any valid  
4 private agency adoption home study, as described in paragraph  
5 (2) of subdivision (a) of Section 8810, and the names, addresses,  
6 and telephone numbers of all parties to be interviewed, if known.

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

8 8814. (a) Except as provided in Section 7662, the consent of  
9 the birth parent or parents who did not place the child for adoption,  
10 as described in Section 8801.3, to the adoption shall be signed in  
11 the presence of an agent of the department or of a delegated county  
12 adoption agency on a form prescribed by the department. The  
13 consent shall be filed with the clerk of the appropriate superior  
14 court.

15 (b) The consent described in subdivision (a), when reciting that  
16 the person giving it is entitled to the sole custody of the child and  
17 when acknowledged before that agent, is prima facie evidence of  
18 the right of the person making it to the sole custody of the child  
19 and that person's sole right to consent.

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

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

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

34 8815. (a) Once the revocable consent to adoption has become  
35 permanent as provided in Section 8814.5, the consent to the  
36 adoption by the prospective adoptive parents may not be  
37 withdrawn.

38 (b) Before the time when the revocable consent becomes  
39 permanent as provided in Section 8814.5, the birth parent or parents  
40 may request return of the child. In that case the child shall

1 immediately be returned to the requesting birth parent or parents,  
2 unless a court orders otherwise.

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

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

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

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

32 (B) Another responsible adult is appointed to make educational  
33 or developmental services decisions for the minor pursuant to this  
34 section.

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

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

38 (E) The child is placed into a planned permanent living  
39 arrangement pursuant to paragraph (5) of subdivision (g) of Section  
40 366.21, Section 366.22, Section 366.26, or subdivision (i) of

1 Section 366.3, at which time, for educational decisionmaking, the  
2 foster parent, relative caretaker, or nonrelative extended family  
3 member as defined in Section 362.7, has the right to represent the  
4 child in educational matters pursuant to Section 56055 of the  
5 Education Code, and for decisions relating to developmental  
6 services, unless the court specifies otherwise, the foster parent,  
7 relative caregiver, or nonrelative extended family member of the  
8 planned permanent living arrangement has the right to represent  
9 the child or nonminor dependent in matters related to  
10 developmental services.

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

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

30 If the court cannot identify a responsible adult who is known to  
31 the child and available to make educational decisions for the child,  
32 subparagraphs (A) to (E), inclusive, of paragraph (1) do not apply,  
33 and the child has either been referred to the local educational  
34 agency for special education and related services, or has a valid  
35 individualized education program, the court shall refer the child  
36 to the local educational agency for appointment of a surrogate  
37 parent pursuant to Section 7579.5 of the Government Code.

38 If the court cannot identify a responsible adult to make  
39 educational decisions for the child, the appointment of a surrogate  
40 parent as defined in subdivision (a) of Section 56050 of the

1 Education Code is not warranted, and there is no foster parent to  
2 exercise the authority granted by Section 56055 of the Education  
3 Code, the court may, with the input of any interested person, make  
4 educational decisions for the child.

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

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

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

39 (6) Nothing in this section in any way removes the obligation  
40 to appoint surrogate parents for students with disabilities who are

1 without parental representation in special education procedures as  
2 required by state and federal law, including Section 1415(b)(2) of  
3 Title 20 of the United States Code, Section 56050 of the Education  
4 Code, Section 7579.5 of the Government Code, and Rule 5.650  
5 of the California Rules of Court.

6 (b) (1) Subdivision (a) does not limit the ability of a parent to  
7 voluntarily relinquish his or her child to the State Department of  
8 Social Services, to a county adoption agency, or to a licensed  
9 private adoption agency at any time while the child is the subject  
10 of a petition to declare him or her, or is, a dependent child of the  
11 juvenile court, if the department, county adoption agency, or  
12 licensed private adoption agency is willing to accept the  
13 relinquishment.

14 (2) When accepting the relinquishment of a child described in  
15 paragraph (1), the department or a county adoption agency shall  
16 comply with Section 8700 of the Family Code and, within five  
17 court days of accepting the relinquishment, shall file written notice  
18 of that fact with the court and all parties to the case and their  
19 counsel.

20 (3) When accepting the relinquishment of a child described in  
21 paragraph (1), a licensed private adoption agency shall comply  
22 with Section 8700 of the Family Code and, within five court days  
23 of accepting the relinquishment, shall file with the court one  
24 original and 10 copies of a request to approve the relinquishment.  
25 The clerk of the court shall file the request under seal, subject to  
26 examination only by the parties and their counsel or by others upon  
27 court approval. If the request is accompanied by the written  
28 agreement of all parties, the court may issue an ex parte order  
29 approving the relinquishment. Unless approved pursuant to that  
30 agreement, the court shall set the matter for hearing no later than  
31 10 court days after filing, and shall provide notice of the hearing  
32 to all parties and their counsel, and to the licensed private adoption  
33 agency and its counsel. The licensed private adoption agency and  
34 any prospective adoptive parent or parents named in the  
35 relinquishment shall be permitted to attend the hearing and  
36 participate as parties regarding the strictly limited issue of whether  
37 the court should approve the relinquishment. The court shall issue  
38 an order approving or denying the relinquishment within 10 court  
39 days after the hearing.

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

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

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

29 (3) The minor is suffering severe emotional damage, as indicated  
30 by extreme anxiety, depression, withdrawal, or untoward aggressive  
31 behavior toward himself or herself or others, and there are no  
32 reasonable means by which the minor's emotional health may be  
33 protected without removing the minor from the physical custody  
34 of his or her parent or guardian.

35 (4) The minor or a sibling of the minor has been sexually abused,  
36 or is deemed to be at substantial risk of being sexually abused, by  
37 a parent, guardian, or member of his or her household, or other  
38 person known to his or her parent, and there are no reasonable  
39 means by which the minor can be protected from further sexual  
40 abuse or a substantial risk of sexual abuse without removing the

1 minor from his or her parent or guardian, or the minor does not  
2 wish to return to his or her parent or guardian.

3 (5) The minor has been left without any provision for his or her  
4 support, or a parent who has been incarcerated or institutionalized  
5 cannot arrange for the care of the minor, or a relative or other adult  
6 custodian with whom the child has been left by the parent is  
7 unwilling or unable to provide care or support for the child and  
8 the whereabouts of the parent is unknown and reasonable efforts  
9 to locate him or her have been unsuccessful.

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

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

22 (B) Failure to meet non-Indian family and child-rearing  
23 community standards, or the existence of other behavior or  
24 conditions that meet the removal standards of this section, will not  
25 support an order for placement in the absence of the finding in this  
26 paragraph.

27 (d) The court shall make a determination as to whether  
28 reasonable efforts were made to prevent or to eliminate the need  
29 for removal of the minor from his or her home or, if the minor is  
30 removed for one of the reasons stated in paragraph (5) of  
31 subdivision (c), whether it was reasonable under the circumstances  
32 not to make any of those efforts, or, in the case of an Indian child  
33 custody proceeding, whether active efforts as required in Section  
34 361.7 were made and that these efforts have proved unsuccessful.  
35 The court shall state the facts on which the decision to remove the  
36 minor is based.

37 (e) The court shall make all of the findings required by  
38 subdivision (a) of Section 366 in either of the following  
39 circumstances:

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

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

6 *SEC. 16.5. Section 361 of the Welfare and Institutions Code*  
7 *is amended to read:*

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

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

29 (B) Another responsible adult is appointed to make educational  
30 or developmental services decisions for the minor pursuant to this  
31 section.

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

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

35 (E) The child is placed into a planned permanent living  
36 arrangement pursuant to paragraph (5) of subdivision (g) of Section  
37 366.21, Section 366.22, Section 366.26, or subdivision (i) of  
38 Section 366.3, at which time, for educational decisionmaking, the  
39 foster parent, relative caretaker, or nonrelative extended family  
40 member as defined in Section 362.7, has the right to represent the

1 child in educational matters pursuant to Section 56055 of the  
2 Education Code, and for decisions relating to developmental  
3 services, unless the court specifies otherwise, the foster parent,  
4 relative caregiver, or nonrelative extended family member of the  
5 planned permanent living arrangement has the right to represent  
6 the child or nonminor dependent in matters related to  
7 developmental services.

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

21 (3) If the court limits the parent’s educational rights pursuant  
22 to this subdivision, the court shall determine whether there is a  
23 responsible adult who is a relative, nonrelative extended family  
24 member, or other adult known to the child who is available and  
25 willing to serve as the child’s educational representative before  
26 appointing an educational representative or surrogate who is not  
27 known to the child.

28 If the court cannot identify a responsible adult who is known to  
29 the child and available to make educational decisions for the child,  
30 subparagraphs (A) to (E), inclusive, of paragraph (1) do not apply,  
31 and the child has either been referred to the local educational  
32 agency for special education and related services, or has a valid  
33 individualized education program, the court shall refer the child  
34 to the local educational agency for appointment of a surrogate  
35 parent pursuant to Section 7579.5 of the Government Code.

36 If the court cannot identify a responsible adult to make  
37 educational decisions for the child, the appointment of a surrogate  
38 parent as defined in subdivision (a) of Section 56050 of the  
39 Education Code is not warranted, and there is no foster parent to  
40 exercise the authority granted by Section 56055 of the Education

1 Code, the court may, with the input of any interested person, make  
2 educational decisions for the child.

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

12 If the court cannot identify a responsible adult to make  
13 developmental services decisions for the child or nonminor  
14 dependent, the court may, with the input of any interested person,  
15 make developmental services decisions for the child or nonminor  
16 dependent. If the child is receiving services from a regional center,  
17 the provision of any developmental services related to the court's  
18 decision must be consistent with the child's or nonminor  
19 dependent's individual program plan and pursuant to the provisions  
20 of the Lanterman Developmental Disabilities Services Act  
21 (Division 4.5 (commencing with Section 4500)).

22 (5) All educational and school placement decisions shall seek  
23 to ensure that the child is in the least restrictive educational  
24 programs and has access to the academic resources, services, and  
25 extracurricular and enrichment activities that are available to all  
26 pupils. In all instances, educational and school placement decisions  
27 shall be based on the best interests of the child. If an educational  
28 representative or surrogate is appointed for the child, the  
29 representative or surrogate shall meet with the child, shall  
30 investigate the child's educational needs and whether those needs  
31 are being met, and shall, prior to each review hearing held under  
32 this article, provide information and recommendations concerning  
33 the child's educational needs to the child's social worker, make  
34 written recommendations to the court, or attend the hearing and  
35 participate in those portions of the hearing that concern the child's  
36 education.

37 (6) Nothing in this section in any way removes the obligation  
38 to appoint surrogate parents for students with disabilities who are  
39 without parental representation in special education procedures as  
40 required by state and federal law, including Section 1415(b)(2) of

1 Title 20 of the United States Code, Section 56050 of the Education  
2 Code, Section 7579.5 of the Government Code, and Rule 5.650  
3 of the California Rules of Court.

4 (b) (1) Subdivision (a) does not limit the ability of a parent to  
5 voluntarily relinquish his or her child to the State Department of  
6 Social Services ~~or~~, to a county adoption *agency*, or to a licensed  
7 private adoption agency at any time while the child is *the subject*  
8 *of a petition to declare him or her, or is*, a dependent child of the  
9 juvenile court, if the department ~~or~~, county adoption agency, or  
10 licensed private adoption agency is willing to accept the  
11 relinquishment.

12 (2) *When accepting the relinquishment of a child described in*  
13 *paragraph (1), the department or a county adoption agency shall*  
14 *comply with Section 8700 of the Family Code and, within five court*  
15 *days of accepting the relinquishment, shall file written notice of*  
16 *that fact with the court and all parties to the case and their counsel.*

17 (3) *When accepting the relinquishment of a child described in*  
18 *paragraph (1), a licensed private adoption agency shall comply*  
19 *with Section 8700 of the Family Code and, within five court days*  
20 *of accepting the relinquishment, shall file with the court one*  
21 *original and 10 copies of a request to approve the relinquishment.*  
22 *The clerk of the court shall file the request under seal, subject to*  
23 *examination only by the parties and their counsel or by others*  
24 *upon court approval. If the request is accompanied by the written*  
25 *agreement of all parties, the court may issue an ex parte order*  
26 *approving the relinquishment. Unless approved pursuant to that*  
27 *agreement, the court shall set the matter for hearing no later than*  
28 *10 court days after filing, and shall provide notice of the hearing*  
29 *to all parties and their counsel, and to the licensed private adoption*  
30 *agency and its counsel. The licensed private adoption agency and*  
31 *any prospective adoptive parent or parents named in the*  
32 *relinquishment shall be permitted to attend the hearing and*  
33 *participate as parties regarding the strictly limited issue of whether*  
34 *the court should approve the relinquishment. The court shall issue*  
35 *an order approving or denying the relinquishment within 10 court*  
36 *days after the hearing.*

37 (c) A dependent child ~~may~~ *shall* not be taken from the physical  
38 custody of his or her parents or guardian or guardians with whom  
39 the child resides at the time the petition was initiated, unless the  
40 juvenile court finds clear and convincing evidence of any of the

1 following circumstances listed in paragraphs (1) to (5), inclusive,  
2 and, in an Indian child custody proceeding, paragraph (6):

3 (1) There is or would be a substantial danger to the physical  
4 health, safety, protection, or physical or emotional well-being of  
5 the minor if the minor were returned home, and there are no  
6 reasonable means by which the minor's physical health can be  
7 protected without removing the minor from the minor's parent's  
8 or guardian's physical custody. The fact that a minor has been  
9 adjudicated a dependent child of the court pursuant to subdivision  
10 (e) of Section 300 shall constitute prima facie evidence that the  
11 minor cannot be safely left in the physical custody of the parent  
12 or guardian with whom the minor resided at the time of injury.  
13 The court shall consider, as a reasonable means to protect the  
14 minor, ~~the option of removing an offending parent or guardian~~  
15 ~~from the home. The court shall also consider, as a reasonable means~~  
16 ~~to protect the minor, allowing a nonoffending parent or guardian~~  
17 ~~to retain physical custody as long as that parent or guardian~~  
18 ~~presents a plan acceptable to the court demonstrating that he or~~  
19 ~~she will be able to protect the child from future harm.~~ *each of the*  
20 *following:*

21 (A) *The option of removing an offending parent or guardian*  
22 *from the home.*

23 (B) *Allowing a nonoffending parent or guardian to retain*  
24 *physical custody as long as that parent or guardian presents a*  
25 *plan acceptable to the court demonstrating that he or she will be*  
26 *able to protect the child from future harm.*

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

32 (3) The minor is suffering severe emotional damage, as indicated  
33 by extreme anxiety, depression, withdrawal, or untoward aggressive  
34 behavior toward himself or herself or others, and there are no  
35 reasonable means by which the minor's emotional health may be  
36 protected without removing the minor from the physical custody  
37 of his or her parent or guardian.

38 (4) The minor or a sibling of the minor has been sexually abused,  
39 or is deemed to be at substantial risk of being sexually abused, by  
40 a parent, guardian, or member of his or her household, or other

1 person known to his or her parent, and there are no reasonable  
2 means by which the minor can be protected from further sexual  
3 abuse or a substantial risk of sexual abuse without removing the  
4 minor from his or her parent or guardian, or the minor does not  
5 wish to return to his or her parent or guardian.

6 (5) The minor has been left without any provision for his or her  
7 support, or a parent who has been incarcerated or institutionalized  
8 cannot arrange for the care of the minor, or a relative or other adult  
9 custodian with whom the child has been left by the parent is  
10 unwilling or unable to provide care or support for the child and  
11 the whereabouts of the parent is unknown and reasonable efforts  
12 to locate him or her have been unsuccessful.

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

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

25 (B) Failure to meet non-Indian family and child-rearing  
26 community standards, or the existence of other behavior or  
27 conditions that meet the removal standards of this section, will not  
28 support an order for placement in the absence of the finding in this  
29 paragraph.

30 (d) The court shall make a determination as to whether  
31 reasonable efforts were made to prevent or to eliminate the need  
32 for removal of the minor from his or her home or, if the minor is  
33 removed for one of the reasons stated in paragraph (5) of  
34 subdivision (c), whether it was reasonable under the circumstances  
35 not to make any of those efforts, or, in the case of an Indian child  
36 custody proceeding, whether active efforts as required in Section  
37 361.7 were made and that these efforts have proved unsuccessful.  
38 The court shall state the facts on which the decision to remove the  
39 minor is based.

1 (e) The court shall make all of the findings required by  
2 subdivision (a) of Section 366 in either of the following  
3 circumstances:

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

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

9 *SEC. 17. Section 16.5 of this bill incorporates amendments to*  
10 *Section 361 of the Welfare and Institutions Code proposed by both*  
11 *this bill and Senate Bill 977. It shall only become operative if (1)*  
12 *both bills are enacted and become effective on or before January*  
13 *1, 2015, (2) each bill amends Section 361 of the Welfare and*  
14 *Institutions Code, and (3) this bill is enacted after Senate Bill 977,*  
15 *in which case Section 16 of this bill shall not become operative.*

16 ~~SEC. 17.~~

17 *SEC. 18.* If the Commission on State Mandates determines that  
18 this act contains costs mandated by the state, reimbursement to  
19 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.