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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 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.