

**ASSEMBLY BILL**

**No. 2882**

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**Introduced by Committee on Judiciary (Assembly Members  
Mark Stone (Chair), Alejo, Chau, Chiu, Cristina Garcia, and  
Holden)**

February 25, 2016

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An act to amend Sections 302, 304, 306.5, 308, 360, 500, and 8714 of the Family Code, to add Section 69619.5 to the Government Code, and to amend Section 361 of the Welfare and Institutions Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

AB 2882, as introduced, Committee on Judiciary. Judiciary omnibus: family law.

(1) Existing law provides that an unmarried person under 18 years of age is capable of consenting to and consummating marriage upon obtaining a court order granting permission of the underage person or persons to marry. Existing law requires the court order and written consent of the parents of each underage person, or of one of the parents or the guardian of each underage person, to be filed with the clerk of the court, and requires a certified copy of the order to be presented to the county clerk at the time the marriage license is issued.

This bill would instead require the court order and written consent of at least one of the parents or the guardian of each underage person to be filed with the clerk of the court.

Existing law provides that parties to a marriage are not required to have the same name. Existing law provides that one party or both parties to a marriage may elect to change the middle or last names, or both, by which that party wishes to be known after solemnization of the marriage,

and authorizes a person to adopt any of the specified last names and middle names, including a hyphenated combination of last names and a hyphenated combination of the current middle name and current last name of the person or spouse or a hyphenated combination of the current middle name and the last name given at birth of the person or spouse.

The bill would instead authorize a person to adopt a combination of last names, and a combination of the current middle name and the current last name of the person or spouse or a combination of the current middle name and the last name given at birth of the person or spouse.

Existing law requires the person solemnizing the marriage to obtain a duplicate marriage license, if a marriage license is lost, damaged, or destroyed after the marriage ceremony, but before it is returned to the county recorder, or deemed unacceptable for registration by the county recorder. Existing law prohibits the duplicate marriage license from being issued later than one year after the issuance of the original license and requires the license to be returned by the person solemnizing the marriage to the county recorder within one year of the issuance date shown on the original license.

The bill would instead prohibit the duplicate marriage license from being issued later than one year after the date of marriage, and would require the license be returned by the person solemnizing the marriage to the county recorder within one year of the date of marriage.

(2) Existing law authorizes a person desiring to adopt a nondependent child to file an adoption request in an authorized county. Under existing law, a petition for adoption of a nondependent child may be filed in specified locations, including the county in which the petitioner resides or where the adoption agency, department, or public adoption agency is located. If a child has been adjudged to be a dependent of the juvenile court, and thereafter has been freed for adoption by the juvenile court, existing law authorizes the petition to be filed in either the county where the petitioner resides or in the county where the child was freed for adoption.

The bill would instead provide that a petitioner desiring to adopt a dependent child who is freed for adoption by the juvenile court and with whom that dependent child is placed for adoption may file the adoption request either in the county where the petitioner resides or in the county where the child was freed for adoption.

(3) Existing law authorizes the court to limit the control to be exercised over a dependent child by any parent or guardian and requires the court, by its order, to clearly and specifically set forth all those

limitations in all cases in which a minor is adjudged to be a dependent child of the court. Existing law provides that the court's authority does not limit the ability of a parent to voluntarily relinquish his or her child to the State Department of Social Services, to a county adoption agency, or to a licensed private adoption agency at any time while the child is the subject of a petition to declare him or her a dependent child, if the department, county adoption agency, or licensed private adoption agency is willing to accept the relinquishment. When accepting the relinquishment of a child subject to a petition to declare him or her a dependent child, existing law requires a licensed private adoption agency to file with the court one original and 10 copies of a request to approve the relinquishment within 5 court days of accepting the relinquishment.

The bill would instead require a licensed private adoption agency, or allow another party or that party's counsel, to file with the court one original and 5 copies of a request to approve the relinquishment within 10 court days of accepting the relinquishment.

(4) Existing law specifies the number of judges of the superior court for each county, and allocates additional judgeships to the various counties in accordance with uniform standards for factually determining additional need in each county, as approved by the Judicial Council, and other specified criteria. Existing law provides for the conversion of 146 subordinate judicial officer positions in eligible superior courts upon the occurrence of specified conditions, including that the proposed action is ratified by the Legislature, except that no more than 16 positions may be converted to judgeships in any fiscal year. Notwithstanding this provision, existing law authorizes up to 10 additional subordinate judicial officer positions to be converted to judgeships in any fiscal year if the conversions will result in a judge being assigned to a family law or juvenile law assignment previously presided over by a subordinate judicial officer and the proposed action is ratified by the Legislature.

This bill would ratify the authority of the Judicial Council to convert 10 subordinate judicial officer positions to judgeships in the 2016–17 fiscal year when the conversion will result in a judge being assigned to a family law or juvenile law assignment previously presided over by a subordinate judicial officer.

(5) The bill would delete an obsolete provision, and make other nonsubstantive changes.

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

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

1 SECTION 1. Section 302 of the Family Code is amended to  
 2 read:

3 302. (a) An unmarried person under 18 years of age is capable  
 4 of consenting to and consummating marriage upon obtaining a  
 5 court order granting permission to the underage person or persons  
 6 to marry.

7 (b) The court order and written consent of ~~the parents of each~~  
 8 ~~underage person, or of at least one of the parents or the guardian~~  
 9 of each underage person shall be filed with the clerk of the court,  
 10 and a certified copy of the order shall be presented to the county  
 11 clerk at the time the marriage license is issued.

12 SEC. 2. Section 304 of the Family Code is amended to read:

13 304. As part of the court order granting permission to marry  
 14 under Section 302 or 303, the court ~~shall~~ *shall, if it considers it*  
 15 *necessary*, require the parties to the prospective marriage of a  
 16 minor to participate in premarital counseling concerning social,  
 17 economic, and personal responsibilities incident to ~~marriage, if~~  
 18 ~~the court considers the counseling to be necessary.~~ *marriage.* The  
 19 parties shall not be required, without their consent, to confer with  
 20 counselors provided by religious organizations of any  
 21 denomination. In determining whether to order the parties to  
 22 participate in the premarital counseling, the court shall consider,  
 23 among other factors, the ability of the parties to pay for the  
 24 counseling. The court may impose a reasonable fee to cover the  
 25 cost of any premarital counseling provided by the county or the  
 26 court. The fees shall be used exclusively to cover the cost of the  
 27 counseling services authorized by this section.

28 SEC. 3. Section 306.5 of the Family Code is amended to read:

29 306.5. (a) Parties to a marriage shall not be required to have  
 30 the same name. Neither party shall be required to change his or  
 31 her name. A person’s name shall not change upon marriage unless  
 32 that person elects to change his or her name pursuant to subdivision

33 (b).  
 34 (b) (1) One party or both parties to a marriage may elect to  
 35 change the middle or last names, or both, by which that party  
 36 wishes to be known after solemnization of the marriage by entering  
 37 the new name in the spaces provided on the marriage license  
 38 application without intent to defraud.

1 (2) A person may adopt any of the following last names pursuant  
2 to paragraph (1):

- 3 (A) The current last name of the other spouse.
- 4 (B) The last name of either spouse given at birth.
- 5 (C) A name combining into a single last name all or a segment  
6 of the current last name or the last name of either spouse given at  
7 birth.
- 8 (D) A ~~hyphenated~~ combination of last names.

9 (3) A person may adopt any of the following middle names  
10 pursuant to paragraph (1):

- 11 (A) The current last name of either spouse.
- 12 (B) The last name of either spouse given at birth.
- 13 (C) A ~~hyphenated~~ combination of the current middle name and  
14 the current last name of the person or spouse.
- 15 (D) A ~~hyphenated~~ combination of the current middle name and  
16 the last name given at birth of the person or spouse.

17 (4) (A) An election by a person to change his or her name  
18 pursuant to paragraph (1) shall serve as a record of the name  
19 change. A certified copy of a marriage certificate containing the  
20 new name, or retaining the former name, shall constitute proof  
21 that the use of the new name or retention of the former name is  
22 lawful.

23 (B) A certified copy of a marriage certificate shall be accepted  
24 as identification establishing a true, full name for purposes of  
25 Section 12800.7 of the Vehicle Code.

26 (C) Nothing in this section shall be construed to prohibit the  
27 Department of Motor Vehicles from accepting as identification  
28 other documents establishing a true, full name for purposes of  
29 Section 12800.7 of the Vehicle Code. Those documents may  
30 include, without limitation, a certified copy of a marriage certificate  
31 recording a marriage outside of this state.

32 (D) This section shall be applied in a manner consistent with  
33 the requirements of Sections 1653.5 and 12801 of the Vehicle  
34 Code.

35 (5) The adoption of a new name, or the choice not to adopt a  
36 new name, by means of a marriage license application pursuant  
37 to paragraph (1) shall only be made at the time the marriage license  
38 is issued. After a marriage certificate is registered by the local  
39 registrar, the certificate ~~may~~ *shall* not be amended to add a new  
40 name or change the name adopted pursuant to paragraph (1). An

1 amendment may be issued to correct a clerical error in the new  
2 name fields on the marriage license. In this instance, the  
3 amendment ~~must~~ *shall* be signed by one of the parties to the  
4 marriage and the county clerk or his or her deputy, and the reason  
5 for the amendment ~~must~~ *shall* be stated as correcting a clerical  
6 error. A clerical error as used in this part is an error made by the  
7 county clerk, his or her deputy, or a notary authorized to issue  
8 confidential marriage licenses, whereby the information shown in  
9 the new name field does not match the information shown on the  
10 marriage license application. This requirement shall not abrogate  
11 the right of either party to adopt a different name through usage  
12 at a future date, or to petition the superior court for a change of  
13 name pursuant to Title 8 (commencing with Section 1275) of Part  
14 3 of the Code of Civil Procedure.

15 (c) Nothing in this section shall be construed to abrogate the  
16 common law right of any person to change his or her name, or the  
17 right of any person to petition the superior court for a change of  
18 name pursuant to Title 8 (commencing with Section 1275) of Part  
19 3 of the Code of Civil Procedure.

20 ~~(d) This section shall become operative on January 1, 2009.~~

21 SEC. 4. Section 308 of the Family Code is amended to read:

22 308. A marriage contracted outside this state that would be  
23 valid by laws of the jurisdiction in which the marriage was  
24 contracted is valid in ~~this state~~. *California*.

25 SEC. 5. Section 360 of the Family Code is amended to read:

26 360. (a) If a marriage license is lost, damaged, or destroyed  
27 after the marriage ceremony, but before it is returned to the county  
28 recorder, or deemed unacceptable for registration by the county  
29 recorder, the person solemnizing the marriage, in order to comply  
30 with Section 359, shall obtain a duplicate marriage license by filing  
31 an affidavit setting forth the facts with the county clerk of the  
32 county in which the license was issued.

33 (b) The duplicate marriage license ~~may~~ *shall* not be issued later  
34 than one year after ~~issuance of the original license~~ *the date of*  
35 *marriage* and shall be returned by the person solemnizing the  
36 marriage to the county recorder within one year of the ~~issuance~~  
37 ~~date shown on the original marriage license~~. *date of marriage*.

38 (c) The county clerk may charge a fee to cover the actual costs  
39 of issuing a duplicate marriage license.

1 (d) If a marriage license is lost, damaged, or destroyed before  
2 a marriage ceremony takes place, the applicants shall purchase a  
3 new marriage license and the old license shall be voided.

4 SEC. 6. Section 500 of the Family Code is amended to read:

5 500. When two unmarried people, not minors, have been living  
6 together as spouses, they may be married pursuant to this chapter  
7 by a person authorized to solemnize a marriage under Chapter 1  
8 (commencing with Section 400) of Part 3, ~~without the necessity~~  
9 ~~of first obtaining health certificates.~~ 3.

10 SEC. 7. Section 8714 of the Family Code is amended to read:

11 8714. (a) A person desiring to adopt a *nondependent* child  
12 may for that purpose file an adoption request in a county authorized  
13 by Section 8609.5. ~~If a~~ *A person desiring to adopt a child who has*  
14 *been adjudged to be a dependent of the juvenile court pursuant to*  
15 *Section 300 of the Welfare and Institutions Code, and has thereafter*  
16 *been freed for adoption by the juvenile court, the petition may be*  
17 *filed and placed for adoption with the petitioner; may file the*  
18 *adoption request either in the county where the petitioner resides*  
19 *or in the county where the child was freed for adoption.*

20 (b) The court clerk shall immediately notify the department at  
21 Sacramento in writing of the pendency of the proceeding and of  
22 any subsequent action taken.

23 (c) If the petitioner has entered into a postadoption contact  
24 agreement with the birth parent as set forth in Section 8616.5, the  
25 agreement, signed by the participating parties, shall be attached  
26 to and filed with the petition for adoption under subdivision (a).

27 (d) The caption of the adoption petition shall contain the names  
28 of the petitioners, but not the child's name. The petition shall state  
29 the child's sex and date of birth. The name the child had before  
30 adoption shall appear in the joinder signed by the licensed adoption  
31 agency.

32 (e) If the child is the subject of a guardianship petition, the  
33 adoption petition shall so state and shall include the caption and  
34 docket number or have attached a copy of the letters of the  
35 guardianship or temporary guardianship. The petitioners shall  
36 notify the court of any petition for guardianship or temporary  
37 guardianship filed after the adoption petition. The guardianship  
38 proceeding shall be consolidated with the adoption proceeding.

39 (f) The order of adoption shall contain the child's adopted name,  
40 but not the name the child had before adoption.

1 SEC. 8. Section 69619.5 is added to the Government Code, to  
2 read:

3 69619.5. (a) The Legislature hereby ratifies the authority of  
4 the Judicial Council to convert 10 subordinate judicial officer  
5 positions to judgeships in the 2016–17 fiscal year when the  
6 conversion will result in a judge being assigned to a family law or  
7 juvenile law assignment previously presided over by a subordinate  
8 judicial officer, pursuant to subparagraph (C) of paragraph (1) of  
9 subdivision (c) of Section 69615.

10 (b) The action described in subdivision (a) shall be in addition  
11 to any action that may be taken pursuant to the authority described  
12 in subparagraph (B) of paragraph (1) of subdivision (c) of Section  
13 69615 to convert up to 16 subordinate judicial officer positions to  
14 judgeships.

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

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

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

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

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

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

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

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

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

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

1 agency for special education and related services, or has a valid  
2 individualized education program, the court shall refer the child  
3 to the local educational agency for appointment of a surrogate  
4 parent pursuant to Section 7579.5 of the Government Code.

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

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

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

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

1 this article, provide information and recommendations concerning  
2 the child’s educational needs to the child’s social worker, make  
3 written recommendations to the court, or attend the hearing and  
4 participate in those portions of the hearing that concern the child’s  
5 education.

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

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

21 (2) When accepting the relinquishment of a child described in  
22 paragraph (1), the department or a county adoption agency shall  
23 comply with Section 8700 of the Family Code and, within five  
24 court days of accepting the relinquishment, shall file written notice  
25 of that fact with the court and all parties to the case and their  
26 counsel.

27 (3) When accepting the relinquishment of a child described in  
28 paragraph (1), a licensed private adoption agency shall comply  
29 with Section 8700 of the Family Code and, within ~~five~~ 10 court  
30 days of accepting the relinquishment, shall file *or allow another*  
31 *party or that party’s counsel to file* with the court one original and  
32 ~~10~~ five copies of a request to approve the relinquishment. The clerk  
33 of the court shall file the request under seal, subject to examination  
34 only by the parties and their counsel or by others upon court  
35 approval. If the request is accompanied by the written agreement  
36 of all parties, the court may issue an ex parte order approving the  
37 relinquishment. Unless approved pursuant to that agreement, the  
38 court shall set the matter for hearing no later than 10 court days  
39 after filing, and shall provide notice of the hearing to all parties  
40 and their counsel, and to the licensed private adoption agency and

1 its counsel. The licensed private adoption agency and any  
2 prospective adoptive parent or parents named in the relinquishment  
3 shall be permitted to attend the hearing and participate as parties  
4 regarding the strictly limited issue of whether the court should  
5 approve the relinquishment. The court shall issue an order  
6 approving or denying the relinquishment within 10 court days after  
7 the hearing.

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

14 (1) There is or would be a substantial danger to the physical  
15 health, safety, protection, or physical or emotional well-being of  
16 the minor if the minor were returned home, and there are no  
17 reasonable means by which the minor's physical health can be  
18 protected without removing the minor from the minor's parent's  
19 or guardian's physical custody. The fact that a minor has been  
20 adjudicated a dependent child of the court pursuant to subdivision  
21 (e) of Section 300 shall constitute prima facie evidence that the  
22 minor cannot be safely left in the physical custody of the parent  
23 or guardian with whom the minor resided at the time of injury.  
24 The court shall consider, as a reasonable means to protect the  
25 minor, each of the following:

26 (A) The option of removing an offending parent or guardian  
27 from the home.

28 (B) Allowing a nonoffending parent or guardian to retain  
29 physical custody as long as that parent or guardian presents a plan  
30 acceptable to the court demonstrating that he or she will be able  
31 to protect the child from future harm.

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

37 (3) The minor is suffering severe emotional damage, as indicated  
38 by extreme anxiety, depression, withdrawal, or untoward aggressive  
39 behavior toward himself or herself or others, and there are no  
40 reasonable means by which the minor's emotional health may be

1 protected without removing the minor from the physical custody  
2 of his or her parent or guardian.

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

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

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

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

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

35 (d) The court shall make a determination as to whether  
36 reasonable efforts were made to prevent or to eliminate the need  
37 for removal of the minor from his or her home or, if the minor is  
38 removed for one of the reasons stated in paragraph (5) of  
39 subdivision (c), whether it was reasonable under the circumstances  
40 not to make any of those efforts, or, in the case of an Indian child

1 custody proceeding, whether active efforts as required in Section  
2 361.7 were made and that these efforts have proved unsuccessful.  
3 The court shall state the facts on which the decision to remove the  
4 minor is based.

5 (e) The court shall make all of the findings required by  
6 subdivision (a) of Section 366 in either of the following  
7 circumstances:

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

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