

AMENDED IN SENATE JUNE 20, 2005

AMENDED IN SENATE MAY 9, 2005

SENATE BILL

No. 678

Introduced by Senator Ducheny

February 22, 2005

An act to amend Sections 3040, 3041, 7821, 7822, 8616.5, 8620, 8710, and 9210 of, to add Sections ~~170, 175, 180, 3041.3, 7892.5, 7907.3, 8606.5~~ 8619.5, 9208, *and 9209 to, to add Part 3 (commencing with Section 170) to Division 1 of,* and to repeal Section 7810 of, the Family Code, to amend Sections 1510, 1511, *1513, 1516.5,* and 1601 of, to add Sections 1449, 1456, 1457, 1458, 1460.2, ~~and 1474, and 1500.1~~ to, and to repeal Section 2112 of, the Probate Code, and to amend Sections 100, 290.1, 290.2, 291, 292, 293, 294, 295, 297, 305.5, 317, 361, 361.4, 366, 366.26, ~~and 727.4, 10553.1, and 16507.4~~ of, to add Sections *110, 224, 224.1, 224.2, 224.3, 224.4, 224.5, 224.6, 360.8, 361.31, and 361.7* to, and to repeal Section 360.6 of, the Welfare and Institutions Code, relating to Indian children, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 678, as amended, Ducheny. Indian children.

Existing federal law, the Indian Child Welfare Act, governs the proceedings for determining the placement of an Indian child when that child is removed from the custody of his or her parent or guardian. Existing law authorizes tribes recognized under federal law to intervene in these proceedings.

Existing provisions of state law govern child custody proceedings, adoption proceedings, including postadoption contact agreements, dependency proceedings, including termination of parental rights, the voluntary relinquishment of a child by a parent, and guardianship

proceedings. Existing law recognizes that the Indian Child Welfare Act applies if the subject of these proceedings is or may be an Indian child and specifies conforming procedures in these cases with regard to the right to notice and intervention accorded the child's tribe and the standard of proof applied in evaluating the evidence submitted, among other things.

This bill would revise, recast, and expand various provisions of state law to, among other things, apply to certain children who do not come within the definition of an Indian child for purposes of the Indian Child Welfare Act ~~but who reside on an Indian reservation or have some other special relationship to a tribe~~ and would provide that a court may grant standing to a tribe in child custody proceedings involving children with Indian ancestry, upon the request of the tribe. *The bill provides that an Indian child's parent's consent to adoption or guardianship is invalid unless it meets specified standards.* The bill would require a court to appoint legal counsel to represent an Indian custodian or biological parent of an Indian child in guardianship proceedings if that custodian or parent lacks the financial ability to retain counsel and requests that appointment.

Existing law also requires, until January 1, 2010, a social worker to make a home visit and conduct a criminal records check of persons living in a home before placing the child in the home. *Existing law creates certain notification requirements for probation officers and social workers in child custody cases.*

This bill would delete that termination date, thereby making that provision effective indefinitely. *This bill would require probation officers and social workers to provide additional notices in cases involving Indian children.*

Because the bill would impose additional duties on social workers and other county employees, the bill would impose a state-mandated local program.

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.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. 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 170 is added to the Family Code, to~~
2 ~~read:~~

3 ~~170. (a) As used in this code, unless the context otherwise~~
4 ~~requires, the terms “Indian,” “Indian child,” “Indian child’s~~
5 ~~tribe,” “Indian custodian,” “Indian tribe,” “reservation,” and~~
6 ~~“tribal court” shall be defined as provided in Section 1903 of the~~
7 ~~Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.):~~

8 ~~(b) When used in connection with an Indian child, the terms~~
9 ~~“extended family member” and “parent” shall be defined as~~
10 ~~provided in Section 1903 of the Indian Child Welfare Act.~~

11 ~~(c) “Indian child custody proceeding” means a “child custody~~
12 ~~proceeding” within the meaning of Section 1903 of the Indian~~
13 ~~Child Welfare Act, including a voluntary or involuntary~~
14 ~~proceeding that may result in an Indian child’s temporary or~~
15 ~~long-term foster care or guardianship placement if the parent or~~
16 ~~Indian custodian cannot have the child returned upon demand,~~
17 ~~termination of parental rights or adoptive placement. An “Indian~~
18 ~~child custody proceeding” does not include a proceeding under~~
19 ~~this code commenced by the parent of an Indian child to~~
20 ~~determine the custodial rights of the child’s parents, unless the~~
21 ~~proceeding involves a petition to declare an Indian child free~~
22 ~~from the custody or control of a parent or involves a grant of~~
23 ~~custody to a person or persons other than a parent, over the~~
24 ~~objection of a parent.~~

25 ~~(d) If an Indian child is a member of more than one tribe or is~~
26 ~~eligible for membership in more than one tribe, the court shall~~
27 ~~make a determination, in writing together with the reasons for it,~~
28 ~~as to which tribe is the Indian child’s tribe as follows:~~

29 ~~(1) If the Indian child is or becomes a member of only one~~
30 ~~tribe, that tribe shall be designated as the Indian child’s tribe,~~
31 ~~even though the child is eligible for membership in another tribe.~~

32 ~~(2) If an Indian child is or becomes a member of more than~~
33 ~~one tribe, or is not a member of any tribe but is eligible for~~

1 membership more than one tribe, the tribe with which the child
2 has the more significant contacts shall be designated as the
3 Indian child's tribe. In determining which tribe the child has the
4 more significant contacts with, the court shall consider, among
5 other things, the following factors:

6 (A) The length of residence on or near the reservation of each
7 tribe and frequency of contact with each tribe.

8 (B) The child's participation in activities of each tribe.

9 (C) The child's fluency in the language of each tribe.

10 (D) Whether there has been a previous adjudication with
11 respect to the child by a court of one of the tribes.

12 (E) Residence on or near one of the tribes' reservations by the
13 child parents, Indian custodian or extended family members.

14 (f) Tribal membership of custodial parent or Indian custodian.

15 (g) Interest asserted by each tribe in response to the notice
16 specified in Section 224.11.

17 (h) The child's self identification.

18 SEC. 2. Section 175 is added to the Family Code, to read:

19 175. (a) The Legislature finds and declares the following:

20 (1) There is no resource that is more vital to the continued
21 existence and integrity of recognized Indian tribes than their
22 children, and the State of California has an interest in protecting
23 Indian children who are members of, or are eligible for
24 membership in, an Indian tribe. The state is committed to
25 protecting the essential tribal relations and best interest of an
26 Indian child by promoting practices, in accordance with the
27 Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and other
28 applicable law, designed to prevent the child's involuntary
29 out-of-home placement and, whenever the placement is
30 necessary or ordered, by placing the child, whenever possible, in
31 a placement that reflects the unique values of the child's tribal
32 culture and is best able to assist the child in establishing,
33 developing, and maintaining a political, cultural, and social
34 relationship with the child's tribe and tribal community.

35 (2) It is in the interest of an Indian child that the child's
36 membership in the child's Indian tribe and connection to the
37 tribal community be encouraged and protected, regardless of
38 whether:

1 ~~(A) The child is in the physical custody of an Indian parent or~~
2 ~~Indian custodian at the commencement of a child custody~~
3 ~~proceeding.~~

4 ~~(B) The parental rights of the child's parents have been~~
5 ~~terminated.~~

6 ~~(C) The child has resided or been domiciled on an Indian~~
7 ~~reservation.~~

8 ~~(b) In all Indian child custody proceedings the court shall~~
9 ~~consider all of the findings contained in subdivision (a), strive to~~
10 ~~promote the stability and security of Indian tribes and families,~~
11 ~~comply with the federal Indian Child Welfare Act, and seek to~~
12 ~~protect the best interest of the child. Whenever an Indian child is~~
13 ~~removed from a foster care home or institution, guardianship, or~~
14 ~~adoptive placement for the purpose of further foster care,~~
15 ~~guardianship, or adoptive placement, placement of the child shall~~
16 ~~be in accordance with the Indian Child Welfare Act.~~

17 ~~(c) A determination by an Indian tribe that an unmarried~~
18 ~~person, who is under the age of 18 years, is either (1) a member~~
19 ~~of an Indian tribe or (2) eligible for membership in an Indian~~
20 ~~tribe and a biological child of a member of an Indian tribe shall~~
21 ~~constitute a significant political affiliation with the tribe and shall~~
22 ~~require the application of the federal Indian Child Welfare Act to~~
23 ~~the proceedings.~~

24 ~~(d) (1) If the Indian Child Welfare Act applies to a proceeding~~
25 ~~under this code, to the extent that this code or the Adoption and~~
26 ~~Safe Families Act of 1999, (P.L. 105-89) are inconsistent or in~~
27 ~~conflict with the Indian Child Welfare Act, the provisions of the~~
28 ~~Indian Child Welfare Act shall prevail.~~

29 ~~(2) In any case in which this code or other applicable state or~~
30 ~~federal law provides a higher standard of protection to the rights~~
31 ~~of the parent or Indian custodian of an Indian child, or the Indian~~
32 ~~child's tribe, than the rights provided under the Indian Child~~
33 ~~Welfare Act, the court shall apply the higher standard.~~

34 ~~(e) Any Indian child, the Indian child's tribe, or the parent or~~
35 ~~Indian custodian from whose custody the child has been~~
36 ~~removed, may petition any court of competent jurisdiction to~~
37 ~~invalidate an action in an Indian child custody proceeding~~
38 ~~involving the child if the action violated Sections 1911, 1912,~~
39 ~~and 1913 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901~~
40 ~~et seq.).~~

1 SEC. 3.— Section 180 is added to the Family Code, to read:

2 180. (a) In an Indian child custody proceeding to which the
3 Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) applies,
4 notice shall comply with subdivision (b) of this section.

5 (b) Any notice sent under this section shall be sent to the
6 minor's parent or legal guardian, Indian custodian, if any, the
7 Indian child's tribe and comply with all of the following
8 requirements:

9 (1) Notice shall be sent by registered or certified mail with
10 return receipt requested, and additional notice by first-class mail
11 is recommended.

12 (2) Notice to the tribe shall be to the tribal chairperson, unless
13 the tribe has designated another agent for service.

14 (3) Notice shall be sent to all tribes of which the child may be
15 a member or eligible for membership until the court makes a
16 determination as to which tribe is the Indian child's tribe in
17 accordance with subdivision (d) of Section 1448, after which
18 notice need only be sent to the tribe determined to be the Indian
19 child's tribe.

20 (4) Notice shall be sent to the Secretary of the Interior's
21 designated agent, the Sacramento Area Director, Bureau of
22 Indian Affairs. When the identity of the tribe of which the child
23 may be a member or eligible for membership is unknown, the
24 notice provided to the Bureau of Indian Affairs will serve as
25 substitute notice to the child's tribe. If the identity or location of
26 the Indian child's tribe is known, a copy of the notice shall also
27 be sent directly to the Secretary of the Interior if the notice is
28 required under federal law.

29 (5) In addition to the information specified in other sections of
30 this article, notice shall include all of the following information:

31 (A) The name, birthdate, and birthplace of the Indian child.

32 (B) The name of any Indian tribe in which the child is a
33 member or may be eligible for membership.

34 (C) All names known of the Indian child's biological parents,
35 grandparents, and great-grandparents, or Indian custodians,
36 including maiden, married, and former names or aliases, as well
37 as their current and former addresses, birthdates, places of birth
38 and death, tribal enrollment numbers, and any other identifying
39 information.

1 ~~(D) A copy of the petition by which the proceeding was~~
2 ~~initiated.~~

3 ~~(E) A copy of the child's birth certificate, if available.~~

4 ~~(F) The location, mailing address, and telephone number of~~
5 ~~the court and all parties notified pursuant to this section.~~

6 ~~(G) A statement listing the rights of the child's parents, Indian~~
7 ~~eustodians, and tribes. The rights shall include all of the~~
8 ~~following:~~

9 ~~(i) The right to intervene in the proceeding.~~

10 ~~(ii) The right to petition the court to transfer the proceeding to~~
11 ~~the tribal court of the Indian child's tribe, absent objection by~~
12 ~~either parent and subject to declination by the tribal court.~~

13 ~~(iii) The right to, upon request, be granted up to an additional~~
14 ~~20 days from the receipt of the notice to prepare for the~~
15 ~~proceeding.~~

16 ~~(iv) A statement of the potential legal consequences of an~~
17 ~~adjudication on the future custodial rights of the child's parents~~
18 ~~or Indian eustodians.~~

19 ~~(v) A statement that if the parents or Indian eustodians are~~
20 ~~unable to afford counsel in an involuntary proceeding, counsel~~
21 ~~will be appointed to represent the parents or eustodians.~~

22 ~~(vi) A statement that the information contained in the notice,~~
23 ~~petition, pleading, and other court documents is confidential.~~

24 ~~(6) Notice shall be sent whenever there is reason to believe the~~
25 ~~child may be an Indian child, and for every hearing thereafter,~~
26 ~~including, but not limited to, the hearing at which a final~~
27 ~~adoption order is to be granted. After a tribe intervenes in a~~
28 ~~proceeding, the information set out in subdivisions (3), (4), (5),~~
29 ~~and (7) need not be included with notice.~~

30 ~~(7) Proof of the notice, including copies of notices sent and all~~
31 ~~return receipts and responses received, shall be filed with the~~
32 ~~court in advance of the hearing except as permitted under~~
33 ~~subdivision (h).~~

34 ~~(8) No proceeding shall be held until at least 10 days after~~
35 ~~receipt of notice by the parent, Indian eustodian, the tribe, or the~~
36 ~~Bureau of Indian Affairs, except for the detention hearing,~~
37 ~~provided that notice of the detention hearing shall be given as~~
38 ~~soon as possible after the filing of the petition initiating the~~
39 ~~proceeding and proof of the notice is filed with the court within~~
40 ~~10 days after the filing of the petition. With the exception of the~~

1 ~~detention hearing, the parent, Indian custodian, or the tribe shall,~~
2 ~~upon request, be granted up to 20 additional days to prepare for~~
3 ~~the proceeding. Nothing herein shall be construed as limiting the~~
4 ~~rights of the parent, Indian custodian, or tribe to more than 10~~
5 ~~days notice when the lengthier notice period is required.~~

6 ~~(9) With respect to giving notice to Indian tribes, a party shall~~
7 ~~be subject to court sanctions if that person knowingly and~~
8 ~~willfully falsifies or conceals a material fact concerning whether~~
9 ~~the child is an Indian child, or counsels a party to do so.~~

10 *SECTION 1. Part 3 (commencing with Section 170) is added*
11 *to Division 1 of the Family Code, to read:*

12
13 *PART 3. INDIAN CHILDREN*
14

15 *170. (a) As used in this code, unless the context otherwise*
16 *requires, the terms “Indian,” “Indian child,” “Indian child’s*
17 *tribe,” “Indian custodian,” “Indian organization,” “Indian*
18 *tribe,” “reservation,” and “tribal court” shall be defined as*
19 *provided in Section 1903 of the Indian Child Welfare Act (25*
20 *U.S.C. Sec. 1901 et seq.).*

21 *(b) When used in connection with an Indian child custody*
22 *proceeding, the terms “extended family member” and “parent”*
23 *shall be defined as provided in Section 1903 of the Indian Child*
24 *Welfare Act.*

25 *(c) “Indian child custody proceeding” means a “child custody*
26 *proceeding” within the meaning of Section 1903 of the Indian*
27 *Child Welfare Act, including a voluntary or involuntary*
28 *proceeding that may result in an Indian child’s temporary or*
29 *long-term foster care or guardianship placement if the parent or*
30 *Indian custodian cannot have the child returned upon demand,*
31 *termination of parental rights or adoptive placement. An “Indian*
32 *child custody proceeding” does not include a proceeding under*
33 *this code commenced by the parent of an Indian child to*
34 *determine the custodial rights of the child’s parents, unless the*
35 *proceeding involves a petition to declare an Indian child free*
36 *from the custody or control of a parent or involves a grant of*
37 *custody to a person or persons other than a parent, over the*
38 *objection of a parent.*

39 *(d) If an Indian child is a member of more than one tribe or is*
40 *eligible for membership in more than one tribe, the court shall*

1 *make a determination, in writing together with the reasons for it,*
2 *as to which tribe is the Indian child's tribe as follows:*

3 *(1) If the Indian child is or becomes a member of only one*
4 *tribe, that tribe shall be designated as the Indian child's tribe,*
5 *even though the child is eligible for membership in another tribe.*

6 *(2) If an Indian child is or becomes a member of more than*
7 *one tribe, or is not a member of any tribe but is eligible for*
8 *membership in more than one tribe, the tribe with which the child*
9 *has the more significant contacts shall be designated as the*
10 *Indian child's tribe. In determining which tribe the child has the*
11 *more significant contacts with, the court shall consider, among*
12 *other things, the following factors:*

13 *(A) The length of residence on or near the reservation of each*
14 *tribe and frequency of contact with each tribe.*

15 *(B) The child's participation in activities of each tribe.*

16 *(C) The child's fluency in the language of each tribe.*

17 *(D) Whether there has been a previous adjudication with*
18 *respect to the child by a court of one of the tribes.*

19 *(E) Residence on or near one of the tribes' reservations by the*
20 *child parents, Indian custodian or extended family members.*

21 *(F) Tribal membership of custodial parent or Indian*
22 *custodian.*

23 *(G) Interest asserted by each tribe in response to the notice*
24 *specified in Section 180.*

25 *(H) The child's self identification.*

26 *175. (a) The Legislature finds and declares the following:*

27 *(1) There is no resource that is more vital to the continued*
28 *existence and integrity of recognized Indian tribes than their*
29 *children, and the State of California has an interest in protecting*
30 *Indian children who are members of, or are eligible for*
31 *membership in, an Indian tribe. The state is committed to*
32 *protecting the essential tribal relations and best interest of an*
33 *Indian child by promoting practices, in accordance with the*
34 *Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and other*
35 *applicable law, designed to prevent the child's involuntary*
36 *out-of-home placement and, whenever the placement is necessary*
37 *or ordered, by placing the child, whenever possible, in a*
38 *placement that reflects the unique values of the child's tribal*
39 *culture and is best able to assist the child in establishing,*

1 *developing, and maintaining a political, cultural, and social*
2 *relationship with the child's tribe and tribal community.*

3 *(2) It is in the interest of an Indian child that the child's*
4 *membership in the child's Indian tribe and connection to the*
5 *tribal community be encouraged and protected, regardless of*
6 *whether:*

7 *(A) The child is in the physical custody of an Indian parent or*
8 *Indian custodian at the commencement of a child custody*
9 *proceeding.*

10 *(B) The parental rights of the child's parents have been*
11 *terminated.*

12 *(C) The child has resided or been domiciled on an Indian*
13 *reservation.*

14 *(b) In all Indian child custody proceedings the court shall*
15 *consider all of the findings contained in subdivision (a), strive to*
16 *promote the stability and security of Indian tribes and families,*
17 *comply with the federal Indian Child Welfare Act, and seek to*
18 *protect the best interest of the child. Whenever an Indian child is*
19 *removed from a foster care home or institution, guardianship, or*
20 *adoptive placement for the purpose of further foster care,*
21 *guardianship, or adoptive placement, placement of the child*
22 *shall be in accordance with the Indian Child Welfare Act.*

23 *(c) A determination by an Indian tribe that an unmarried*
24 *person, who is under the age of 18 years, is either (1) a member*
25 *of an Indian tribe or (2) eligible for membership in an Indian*
26 *tribe and a biological child of a member of an Indian tribe shall*
27 *constitute a significant political affiliation with the tribe and*
28 *shall require the application of the federal Indian Child Welfare*
29 *Act to the proceedings.*

30 *(d) (1) If the Indian Child Welfare Act applies to a proceeding*
31 *under this code, to the extent that this code or the Adoption and*
32 *Safe Families Act of 1999, (P.L. 105-89) are inconsistent or in*
33 *conflict with the Indian Child Welfare Act, the provisions of the*
34 *Indian Child Welfare Act shall prevail.*

35 *(2) In any case in which this code or other applicable state or*
36 *federal law provides a higher standard of protection to the rights*
37 *of the parent or Indian custodian of an Indian child, or the*
38 *Indian child's tribe, than the rights provided under the Indian*
39 *Child Welfare Act, the court shall apply the higher standard.*

1 (e) Any Indian child, the Indian child's tribe, or the parent or
2 Indian custodian from whose custody the child has been
3 removed, may petition any court of competent jurisdiction to
4 invalidate an action in an Indian child custody proceeding
5 involving the child if the action violated Sections 1911, 1912, and
6 1913 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et
7 seq.).

8 177. (a) In an Indian child custody proceeding, the court
9 shall apply Sections 224.2 to 224.6, inclusive, and Sections
10 305.5, 361.31, and 361.7 of the Welfare and Institutions Code,
11 and the following rules from the California Rules of Court, as
12 they read on January 1, 2005:

13 (1) Rule 1410, subdivision (b)(7).

14 (2) Rule 1412, subdivision (i).

15 (b) In the provisions cited in subdivision (a), references to
16 social workers, probation officers, county welfare department, or
17 probation department shall be construed as meaning the party
18 seeking a foster care placement, guardianship, or adoption under
19 this code.

20 180. (a) In an Indian child custody proceeding notice shall
21 comply with subdivision (b) of this section.

22 (b) Any notice sent under this section shall be sent to the
23 minor's parent or legal guardian, Indian custodian, if any, the
24 Indian child's tribe and comply with all of the following
25 requirements:

26 (1) Notice shall be sent by registered or certified mail with
27 return receipt requested, and additional notice by first-class mail
28 is recommended.

29 (2) Notice to the tribe shall be to the tribal chairperson, unless
30 the tribe has designated another agent for service.

31 (3) Notice shall be sent to all tribes of which the child may be
32 a member or eligible for membership until the court makes a
33 determination as to which tribe is the Indian child's tribe in
34 accordance with subdivision (d) of Section 170, after which
35 notice need only be sent to the tribe determined to be the Indian
36 child's tribe.

37 (4) Notice shall be sent to the Secretary of the Interior's
38 designated agent, the Sacramento Area Director, Bureau of
39 Indian Affairs. If the identity or location of the Indian child's
40 tribe is known, a copy of the notice shall also be sent directly to

1 *the Secretary of the Interior unless the Secretary of the Interior*
2 *has waived such notice in writing and the person responsible for*
3 *giving notice under this section has filed proof of the waiver with*
4 *the court.*

5 *(5) In addition to the information specified in other sections of*
6 *this article, notice shall include all of the following information:*

7 *(A) The name, birthdate, and birthplace of the Indian child.*

8 *(B) The name of any Indian tribe in which the child is a*
9 *member or may be eligible for membership.*

10 *(C) All names known of the Indian child's biological parents,*
11 *grandparents, and great-grandparents, or Indian custodians,*
12 *including maiden, married, and former names or aliases, as well*
13 *as their current and former addresses, birthdates, places of birth*
14 *and death, tribal enrollment numbers, and any other identifying*
15 *information.*

16 *(D) A copy of the petition by which the proceeding was*
17 *initiated.*

18 *(E) A copy of the child's birth certificate, if available.*

19 *(F) The location, mailing address, and telephone number of*
20 *the court and all parties notified pursuant to this section.*

21 *(G) A statement listing the rights of the child's parents, Indian*
22 *custodians, and tribes. The rights shall include all of the*
23 *following:*

24 *(i) The right to intervene in the proceeding.*

25 *(ii) The right to petition the court to transfer the proceeding to*
26 *the tribal court of the Indian child's tribe, absent objection by*
27 *either parent and subject to declination by the tribal court.*

28 *(iii) The right to, upon request, be granted up to an additional*
29 *20 days from the receipt of the notice to prepare for the*
30 *proceeding.*

31 *(iv) A statement of the potential legal consequences of an*
32 *adjudication on the future custodial rights of the child's parents*
33 *or Indian custodians.*

34 *(v) A statement that if the parents or Indian custodians are*
35 *unable to afford counsel in an involuntary proceeding, counsel*
36 *will be appointed to represent the parents or custodians.*

37 *(vi) A statement that the information contained in the notice,*
38 *petition, pleading, and other court documents is confidential.*

39 *(6) Notice shall be sent whenever there is reason to believe the*
40 *child may be an Indian child, and for every hearing thereafter,*

1 *including, but not limited to, the hearing at which a final*
2 *adoption order is to be granted. After the Indian child's tribe*
3 *intervenes in a proceeding, the information set out in paragraphs*
4 *(3), (4), (5), and (7) need not be included with notice.*

5 *(7) Proof of the notice, including copies of notices sent and all*
6 *return receipts and responses received, shall be filed with the*
7 *court in advance of the hearing except as permitted under*
8 *subdivision (h).*

9 *(8) No proceeding shall be held until at least 10 days after*
10 *receipt of notice by the parent, Indian custodian, the tribe, or the*
11 *Bureau of Indian Affairs. The parent, Indian custodian, or the*
12 *tribe shall, upon request, be granted up to 20 additional days to*
13 *prepare for the proceeding. Nothing herein shall be construed as*
14 *limiting the rights of the parent, Indian custodian, or tribe to 10*
15 *days' notice if a lengthier notice period is required under this*
16 *code.*

17 *(9) With respect to giving notice to Indian tribes, a party shall*
18 *be subject to court sanctions if that person knowingly and*
19 *willfully falsifies or conceals a material fact concerning whether*
20 *the child is an Indian child, or counsels a party to do so.*

21 *185. (a) If a custody proceeding involves a child who has*
22 *Indian ancestry but who is not an Indian child, the court may*
23 *recognize the tribe from which the child is descended and grant*
24 *standing to participate as a party in the proceeding upon request*
25 *of the tribe.*

26 *(b) If the court recognizes the child's tribe and grants standing*
27 *to the tribe to participate as a party to the proceeding, the tribe*
28 *may do all of the following:*

29 *(1) Be present at the hearing.*

30 *(2) Be represented by retained counsel or a representative of*
31 *the tribe designated by the tribe to intervene on behalf of the*
32 *tribe, provided that when the tribe appears as a party by a*
33 *representative of the tribe, the name of the representative and a*
34 *statement of authorization for that individual to appear on behalf*
35 *of the tribe shall be submitted to the court in the form of a tribal*
36 *resolution or other document evidencing an official act of the*
37 *tribe.*

38 *(3) Address the court.*

39 *(4) Receive notice of hearings.*

40 *(5) Examine all court documents relating to the proceeding.*

1 (6) *Present evidence.*

2 (7) *Submit written reports and recommendations to the court.*

3 (8) *Perform other duties and responsibilities as requested or*
4 *approved by the court.*

5 (c) *If more than one tribe requests intervention under*
6 *subdivision (a), the court may limit intervention to the tribe with*
7 *which the child has the most significant contacts, as determined*
8 *in accordance with paragraph (2) of subdivision (d) of Section*
9 *170.*

10 (d) *This section is intended to assist the court in making*
11 *decisions that are in the best interest of the child involved by*
12 *permitting a tribe in the circumstances set out in subdivision (a)*
13 *to inform the court and parties to the proceeding about*
14 *placement options for the child within the child's extended family*
15 *or the tribal community, services and programs available to the*
16 *child and the child's parents as Indians, and other unique*
17 *interests the child or the child's parents may have as Indians.*
18 *This section shall not be construed to make the Indian Child*
19 *Welfare Act (25 U.S.C. Sec. 1901 et seq.), or any state law*
20 *implementing the Indian Child Welfare Act, applicable to the*
21 *proceedings, or to limit the court's discretion to permit other*
22 *interested persons to participate in these or any other*
23 *proceedings.*

24 ~~SEC. 4.—~~

25 SEC. 2. Section 3040 of the Family Code is amended to read:

26 3040. (a) Custody should be granted in the following order
27 of preference according to the best interest of the child as
28 provided in Sections 3011 and 3020:

29 (1) To both parents jointly pursuant to Chapter 4 (commencing
30 with Section 3080) or to either parent. In making an order
31 granting custody to either parent, the court shall consider, among
32 other factors, which parent is more likely to allow the child
33 frequent and continuing contact with the noncustodial parent,
34 consistent with ~~Section~~ Sections 3011 and 3020, and shall not
35 prefer a parent as custodian because of that parent's sex. The
36 court, in its discretion, may require the parents to submit to the
37 court a plan for the implementation of the custody order.

38 (2) If to neither parent, to the person or persons in whose
39 home the child has been living in a wholesome and stable
40 environment.

1 (3) To any other person or persons deemed by the court to be
2 suitable and able to provide adequate and proper care and
3 guidance for the child.

4 (b) This section establishes neither a preference nor a
5 presumption for or against joint legal custody, joint physical
6 custody, or sole custody, but allows the court and the family the
7 widest discretion to choose a parenting plan that is in the best
8 interest of the child.

9 (c) Notwithstanding subdivisions (a) and (b), if the child is an
10 ~~“Indian child” within the meaning of the Indian Child Welfare~~
11 ~~Act (25 U.S.C. Sec. 1901 et seq.), or the court has reason to~~
12 ~~know the child may be an~~ Indian child, before making an order
13 granting custody to a person or persons other than a parent, over
14 the objection of a parent, the court shall apply the placement
15 preferences and standards set out in Section 361.31 of the
16 Welfare and Institutions Code.

17 ~~SEC. 5.—~~

18 *SEC. 3.* Section 3041 of the Family Code is amended to read:

19 3041. (a) Before making an order granting custody to a
20 person or persons other than a parent, over the objection of a
21 parent, the court shall make a finding that granting custody to a
22 parent would be detrimental to the child and that granting
23 custody to the nonparent is required to serve the best interest of
24 the child. Allegations that parental custody would be detrimental
25 to the child, other than a statement of that ultimate fact, shall not
26 appear in the pleadings. The court may, in its discretion, exclude
27 the public from the hearing on this issue.

28 (b) Subject to subdivision (d), a finding that parental custody
29 would be detrimental to the child shall be supported by clear and
30 convincing evidence.

31 (c) As used in this section, “detriment to the child” includes
32 the harm of removal from a stable placement of a child with a
33 person who has assumed, on a day-to-day basis, the role of his or
34 her parent, fulfilling both the child’s physical needs and the
35 child’s psychological needs for care and affection, and who has
36 assumed that role for a substantial period of time. A finding of
37 detriment does not require any finding of unfitness of the parents.

38 (d) Notwithstanding subdivision (b), if the court finds by a
39 preponderance of the evidence that the person to whom custody
40 may be given is a person described in subdivision (c), this

1 finding shall constitute a finding that the custody is in the best
2 interest of the child and that parental custody would be
3 detrimental to the child absent a showing by a preponderance of
4 the evidence to the contrary.

5 (e) Notwithstanding subdivisions (a) to (d), inclusive, if the
6 child is an “Indian child” within the meaning of the Indian Child
7 Welfare Act (25 U.S.C. Sec. 1901 et seq.), or the court has
8 reason to know that the child may be an Indian child, when an
9 allegation is made that parental custody would be detrimental to
10 the child, before considering the allegation and making an order
11 granting custody to a person or persons other than a parent, over
12 the objection of a parent, the court shall apply the act, including,
13 but not limited to, subdivision (e) of Section 1911 and Sections
14 1912, 1914, and 1915 of the Indian Child Welfare Act. When the
15 Indian Child Welfare Act applies to a proceeding under this
16 division, the court shall apply Sections 224.2 to 224.6, inclusive,
17 and Sections 305.5, 361.31, and 361.7 of the Welfare and
18 Institutions Code, and the following rules from the California
19 Rules of Court, as they read on January 1, 2005:

20 (1) Rule 1410, subdivision (b)(7):

21 (2) Rule 1412, subdivision (i):

22 (3) Rule 1439 *evidentiary standards described in subdivisions*
23 *(d), (e), and (f) of Section 1912 of the Indian Child Welfare Act*
24 *(25 U.S.C. Sec. 1901 et seq.) and Sections 224.6 and 361.7 of the*
25 *Welfare and Institutions Code.*

26 SEC. 6. Section 3041.3 is added to the Family Code, to read:

27 3041.3. (a) Before making an order granting custody to a
28 person or persons other than a parent, over the objection of a
29 parent, if a proceeding involves a child who is not an Indian
30 child, the court may recognize the child’s tribe and grant standing
31 to participate as a party in the proceeding

32 if the child is not eligible for membership in his or her tribe but
33 is the biological grandchild of a member of the tribe or resides or
34 is domiciled within the boundaries of an Indian reservation.

35 (b) If the court recognizes the child is tribe and grants standing
36 to the tribe to participate as a party to the proceeding, the tribe
37 may do all of the following:

38 (1) Be present at the hearing:

39 (2) Be represented by retained counsel or a representative of
40 the tribe designated by the tribe to intervene on behalf of the

1 ~~tribe, provided that when the tribe appears as a party by a~~
2 ~~representative of the tribe, the name of the representative and a~~
3 ~~statement of authorization for that individual to appear on behalf~~
4 ~~of the tribe shall be submitted to the court in the form of a tribal~~
5 ~~resolution or other document evidencing an official act of the~~
6 ~~tribe.~~

7 ~~(3) Address the court.~~

8 ~~(4) Receive notice of hearings.~~

9 ~~(5) Examine all court documents relating to the proceeding.~~

10 ~~(6) Present evidence.~~

11 ~~(7) Submit written reports and recommendations to the court.~~

12 ~~(8) Perform other duties and responsibilities as requested or~~
13 ~~approved by the court.~~

14 ~~SEC. 7.—~~

15 *SEC. 4.* Section 7810 of the Family Code is repealed.

16 ~~SEC. 8.—~~

17 *SEC. 5.* Section 7821 of the Family Code is amended to read:

18 7821. A finding pursuant to this chapter shall be supported by
19 clear and convincing evidence, except as otherwise provided.

20 ~~SEC. 9.—~~

21 *SEC. 6.* Section 7822 of the Family Code is amended to read:

22 7822. (a) A proceeding under this part may be brought where
23 the child has been left without provision for the child's
24 identification by the child's parent or parents or by others or has
25 been left by both parents or the sole parent in the care and
26 custody of another for a period of six months or by one parent in
27 the care and custody of the other parent for a period of one year
28 without any provision for the child's support, or without
29 communication from the parent or parents, with the intent on the
30 part of the parent or parents to abandon the child.

31 (b) The failure to provide identification, failure to provide
32 support, or failure to communicate is presumptive evidence of
33 the intent to abandon. If the parent or parents have made only
34 token efforts to support or communicate with the child, the court
35 may declare the child abandoned by the parent or parents.

36 (c) If the child has been left without provision for the child's
37 identification and the whereabouts of the parents are unknown, a
38 petition may be filed after the 120th day following the discovery
39 of the child and citation by publication may be commenced. The

1 petition may not be heard until after the 180th day following the
2 discovery of the child.

3 (d) If the parent has placed the child for adoption and has not
4 refused to give the required consent to adoption, evidence of the
5 adoptive placement shall not in itself preclude the court from
6 finding an intent on the part of that parent to abandon the child. If
7 the parent has placed the child for adoption and has refused to
8 give the required consent to adoption but has not taken
9 reasonable action to obtain custody of the child, evidence of the
10 adoptive placement shall not in itself preclude the court from
11 finding an intent on the part of that parent to abandon the child.

12 (e) Notwithstanding subdivisions (a), (b), (c), and (d), if the
13 parent of an Indian child has transferred physical care, custody
14 and control of the child to an Indian custodian, that action shall
15 not be deemed to constitute an abandonment of the child, *unless*
16 *the parent manifests the intent to abandon the child by either of*
17 *the following:*

18 (1) *Failing to resume physical care, custody, and control of*
19 *the child upon the request of the Indian custodian.*

20 (2) *Failing to substantially comply with any obligations*
21 *assumed by the parent in his or her agreement with the Indian*
22 *custodian despite the Indian custodian's objection to the*
23 *noncompliance.*

24 ~~SEC. 10.—~~

25 SEC. 7. Section 7892.5 is added to the Family Code, to read:

26 7892.5. The court shall not declare an Indian child free from
27 the custody or control of ~~both parents, or one parent if the other~~
28 ~~no longer has custody and control, a parent~~ unless both of the
29 following apply:

30 (a) The court finds, supported by clear and convincing
31 evidence, that active efforts were made in accordance with
32 Section 361.7 of the Welfare and Institutions Code.

33 (b) The court finds, supported by evidence beyond a
34 reasonable doubt, including testimony of one or more “qualified
35 expert witnesses” as defined in Section 224.5 of the Welfare and
36 Institutions Code, that the ~~continued~~ custody of the child by the
37 parent is likely to result in serious emotional or physical damage
38 to the child.

39 ~~SEC. 11.—~~

40 SEC. 8. Section 7907.3 is added to the Family Code, to read:

1 7907.3. The Interstate Compact on the Placement of Children
2 shall not apply to any placement, sending, or bringing of an
3 Indian child into another state pursuant to a transfer of
4 jurisdiction to a tribal court under Section 1911 of the Indian
5 Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

6 *SEC. 9. Section 8606.5 is added to the Family Code, to read:*

7 *8606.5. (a) Notwithstanding any other section in this part,*
8 *and in accordance with Section 1913 of the Indian Child Welfare*
9 *Act (25 U.S.C. Sec. 1901 et seq.), consent to adoption given by*
10 *an Indian child's parent is not valid unless both of the following*
11 *occur:*

12 *(1) The consent is executed in writing at least 10 days after the*
13 *child's birth and recorded before a judge.*

14 *(2) The judge certifies that the terms and consequences of the*
15 *consent were fully explained in detail in English and were fully*
16 *understood by the parent or that they were interpreted into a*
17 *language that the parent understood.*

18 *(b) parent of an Indian child may withdraw his or her consent*
19 *to adoption for any reason at any time prior to the entry of a*
20 *final decree of adoption and the child shall be returned to the*
21 *parent.*

22 *(c) After the entry of a final decree of adoption of an Indian*
23 *child, the Indian child's parent may withdraw consent to the*
24 *adoption upon the grounds that consent was obtained through*
25 *fraud or duress and may petition the court to vacate such decree.*
26 *Upon a finding that such consent was obtained through fraud or*
27 *duress, the court shall vacate such decree and return the child to*
28 *the parent, provided that no adoption that has been effective for*
29 *at least 2 years may be invalidated unless otherwise permitted*
30 *under state law.*

31 ~~SEC. 12.—~~

32 *SEC. 10. Section 8616.5 of the Family Code is amended to*
33 *read:*

34 *8616.5. (a) The Legislature finds and declares that some*
35 *adoptive children may benefit from either direct or indirect*
36 *contact with birth relatives, including the birth parent or parents*
37 *or an Indian tribe, after being adopted. Postadoption contact*
38 *agreements are intended to ensure children of an achievable level*
39 *of continuing contact when contact is beneficial to the children*
40 *and the agreements are voluntarily entered into by birth relatives,*

1 including the birth parent or parents, an Indian tribe, and
2 adoptive parents.

3 (b) (1) Nothing in the adoption laws of this state shall be
4 construed to prevent the adopting parent or parents, the birth
5 relatives, including the birth parent or parents, an Indian tribe,
6 and the child from voluntarily entering into a written agreement
7 to permit continuing contact between the birth relatives,
8 including the birth parent or parents, the Indian tribe, and the
9 child if the agreement is found by the court to have been entered
10 into voluntarily and to be in the best interests of the child at the
11 time the adoption petition is granted.

12 (2) Except as provided in paragraph (3), the terms of any
13 postadoption contact agreement executed under this section shall
14 be limited to, but need not include, all of the following:

15 (A) Provisions for visitation between the child and a birth
16 parent or parents and other birth relatives, including siblings, and
17 the child's Indian tribe if the case is governed by the Indian Child
18 Welfare Act (25 U.S.C. Sec. 1901 et seq.).

19 (B) Provisions for future contact between a birth parent or
20 parents or other birth relatives, including siblings, or both, ~~or the~~
21 ~~Indian tribe~~ and the child or an adoptive parent, or both, and in
22 cases governed by the Indian Child Welfare Act, the child's
23 Indian tribe.

24 (C) Provisions for the sharing of information about the child in
25 the future.

26 (3) The terms of any postadoption contact agreement shall be
27 limited to the sharing of information about the child, unless the
28 child has an existing relationship with the birth relative.

29 (c) At the time an adoption decree is entered pursuant to a
30 petition filed pursuant to Section 8714, 8714.5, 8802, 8912, or
31 9000, the court entering the decree may grant postadoption
32 privileges if an agreement for those privileges has been entered
33 into, including agreements entered into pursuant to subdivision
34 (f) of Section 8620. The hearing to grant the adoption petition
35 and issue an order of adoption may be continued as necessary to
36 permit parties who are in the process of negotiating a
37 postadoption agreement to reach a final agreement.

38 (d) The child who is the subject of the adoption petition shall
39 be considered a party to the postadoption contact agreement. The
40 written consent to the terms and conditions of the postadoption

1 contact agreement and any subsequent modifications of the
2 agreement by a child who is 12 years of age or older is a
3 necessary condition to the granting of privileges regarding
4 visitation, contact, or sharing of information about the child,
5 unless the court finds by a preponderance of the evidence that the
6 agreement, as written, is in the best interests of the child. Any
7 child who has been found to come within Section 300 of the
8 Welfare and Institutions Code or who is the subject of a petition
9 for jurisdiction of the juvenile court under Section 300 of the
10 Welfare and Institutions Code shall be represented by an attorney
11 for purposes of consent to the postadoption contact agreement.

12 (e) A postadoption contact agreement shall contain the
13 following warnings in bold type:

14 (1) After the adoption petition has been granted by the court,
15 the adoption cannot be set aside due to the failure of an adopting
16 parent, a birth parent, a birth relative, an Indian tribe, or the child
17 to follow the terms of this agreement or a later change to this
18 agreement.

19 (2) A disagreement between the parties or litigation brought to
20 enforce or modify the agreement shall not affect the validity of
21 the adoption and shall not serve as a basis for orders affecting the
22 custody of the child.

23 (3) A court will not act on a petition to change or enforce this
24 agreement unless the petitioner has participated, or attempted to
25 participate, in good faith in mediation or other appropriate
26 dispute resolution proceedings to resolve the dispute.

27 (f) Upon the granting of the adoption petition and the issuing
28 of the order of adoption of a child who is a dependent of the
29 juvenile court, juvenile court dependency jurisdiction shall be
30 terminated. Enforcement of the postadoption contact agreement
31 shall be under the continuing jurisdiction of the court granting
32 the petition of adoption. The court may not order compliance
33 with the agreement absent a finding that the party seeking the
34 enforcement participated, or attempted to participate, in good
35 faith in mediation or other appropriate dispute resolution
36 proceedings regarding the conflict, prior to the filing of the
37 enforcement action, and that the enforcement is in the best
38 interests of the child. Documentary evidence or offers of proof
39 may serve as the basis for the court's decision regarding
40 enforcement. No testimony or evidentiary hearing shall be

1 required. The court shall not order further investigation or
2 evaluation by any public or private agency or individual absent a
3 finding by clear and convincing evidence that the best interests of
4 the child may be protected or advanced only by that inquiry and
5 that the inquiry will not disturb the stability of the child's home
6 to the detriment of the child.

7 (g) The court may not award monetary damages as a result of
8 the filing of the civil action pursuant to subdivision (e) of this
9 section.

10 (h) A postadoption contact agreement may be modified or
11 terminated only if either of the following occurs:

12 (1) All parties, including the child if the child is 12 years of
13 age or older at the time of the requested termination or
14 modification, have signed a modified postadoption contact
15 agreement and the agreement is filed with the court that granted
16 the petition of adoption.

17 (2) The court finds all of the following:

18 (A) The termination or modification is necessary to serve the
19 best interests of the child.

20 (B) There has been a substantial change of circumstances
21 since the original agreement was executed and approved by the
22 court.

23 (C) The party seeking the termination or modification has
24 participated, or attempted to participate, in good faith in
25 mediation or other appropriate dispute resolution proceedings
26 prior to seeking court approval of the proposed termination or
27 modification.

28 Documentary evidence or offers of proof may serve as the
29 basis for the court's decision. No testimony or evidentiary
30 hearing shall be required. The court shall not order further
31 investigation or evaluation by any public or private agency or
32 individual absent a finding by clear and convincing evidence that
33 the best interests of the child may be protected or advanced only
34 by that inquiry and that the inquiry will not disturb the stability
35 of the child's home to the detriment of the child.

36 (i) All costs and fees of mediation or other appropriate dispute
37 resolution proceedings shall be borne by each party, excluding
38 the child. All costs and fees of litigation shall be borne by the
39 party filing the action to modify or enforce the agreement when
40 no party has been found by the court as failing to comply with an

1 existing postadoption contact agreement. Otherwise, a party,
2 other than the child, found by the court as failing to comply
3 without good cause with an existing agreement shall bear all the
4 costs and fees of litigation.

5 (j) The Judicial Council shall adopt rules of court and forms
6 for motions to enforce, terminate, or modify postadoption contact
7 agreements.

8 (k) The court may not set aside a decree of adoption, rescind a
9 relinquishment, or modify an order to terminate parental rights or
10 any other prior court order because of the failure of a birth
11 parent, adoptive parent, birth relative, an Indian tribe, or the child
12 to comply with any or all of the original terms of, or subsequent
13 modifications to, the postadoption contact agreement, except as
14 follows:

15 (1) The court may modify a prior court order upon petition of
16 the birth parent, birth relative, or Indian tribe prior to issuing the
17 order of adoption under the following circumstances:

18 (A) When the prospective adoptive parent expressed a
19 willingness to enter into a postadoption contact agreement prior
20 to or during the proceedings to terminate parental rights or free
21 the child from parental custody and control or prior to a birth
22 parent giving consent to the adoption.

23 (B) Parental rights are terminated or a petition for freedom
24 from parental custody and control is granted at least in part
25 because of that willingness.

26 (C) The prospective adoptive parent fails to negotiate a
27 postadoption contact agreement in good faith.

28 (2) In the circumstances set out in paragraph (1) the court may
29 modify prior orders or issue new orders as necessary to ensure
30 the best interest of the child ~~are~~ *is* met, including, but not limited
31 to, requiring the parties to engage in family mediation services
32 for the purpose of reaching a postadoption contact agreement,
33 initiating guardianship proceedings in lieu of an adoption, or
34 authorizing a change of adoptive placement for the child.

35 ~~SEC. 13.—~~

36 *SEC. 11.* Section 8619.5 is added to the Family Code, to read:

37 8619.5. Whenever a final decree of adoption of an Indian
38 child has been vacated or set aside or the adoptive parent
39 voluntarily consents to termination of his or her parental rights to
40 the child, a biological parent or prior Indian custodian may

1 petition for return of custody and the court shall grant that
2 petition unless there is a showing, in a proceeding subject to the
3 provisions of Section 1912 of the Indian Child Welfare Act (25
4 U.S.C. Sec. 1901 et seq.), that the return of custody is not in the
5 best interest of the child.

6 ~~SEC. 14.~~

7 *SEC. 12.* Section 8620 of the Family Code is amended to
8 read:

9 8620. (a) (1) If a parent is seeking to relinquish a child
10 pursuant to Section 8700 or execute an adoption placement
11 agreement pursuant to Section 8801.3, the department, licensed
12 adoption agency, or adoption service provider, as applicable,
13 shall ask the child and the child's parent or custodian whether the
14 child is, or may be, a member of, or eligible for membership in
15 an Indian tribe or whether the child has been identified as a
16 member of an Indian organization. The department, licensed
17 adoption agency, or adoption service provider, as applicable,
18 shall complete the forms provided for this purpose by the
19 department and shall make this completed form a part of the file.

20 (2) If there is any oral or written information that indicates that
21 the child is, or may be, an Indian child, the department, licensed
22 adoption agency, or adoption service provider, as applicable,
23 shall obtain the following information:

24 (A) The name of the child involved, and the actual date and
25 place of birth of the child.

26 (B) The name, address, date of birth, and tribal affiliation of
27 the birth parents, maternal and paternal grandparents, and
28 maternal and paternal great-grandparents of the child.

29 (C) The name and address of extended family members of the
30 child who have a tribal affiliation.

31 (D) The name and address of the Indian tribes or Indian
32 organizations of which the child is, or may be, a member.

33 (E) A statement of the reasons why the child is, or may be, an
34 Indian.

35 (3) (A) The department, licensed adoption agency, or
36 adoption service provider, as applicable, shall send a notice,
37 which shall include information obtained pursuant to paragraph
38 (2) and a request for confirmation of the child's Indian status, to
39 any parent and any custodian of the child, and to any Indian tribe
40 of which the child is, or may be, a member or eligible for

1 membership. If any of the information required under paragraph
2 (2) cannot be obtained, the notice shall indicate that fact.

3 (B) The notice sent pursuant to subparagraph (A) shall
4 describe the nature of the proceeding and advise the recipient of
5 the Indian tribe's right to intervene in the proceeding on its own
6 behalf or on behalf of a tribal member relative of the child.

7 (b) The department shall adopt regulations to ensure that if a
8 child who is being voluntarily relinquished for adoption, pursuant
9 to Section 8700, is an Indian child, the parent of the child shall be
10 advised of his or her right to withdraw his or her consent and
11 thereby rescind the relinquishment of an Indian child for any
12 reason at any time prior to entry of a final decree of termination
13 of parental rights or adoption, pursuant to Section 1913 of Title
14 25 of the United States Code.

15 (c) If a child who is the subject of an adoption proceeding after
16 being relinquished for adoption pursuant to Section 8700, is an
17 Indian child, the child's Indian tribe may intervene in that
18 proceeding on behalf of a tribal member relative of the child.

19 (d) Any notice sent under this section shall comply with
20 Section 180.

21 (e) If all prior notices required by this section have been
22 provided to an Indian tribe, the Indian tribe receiving those prior
23 notices is encouraged to provide notice to the department and to
24 the licensed adoption agency or adoption service provider, not
25 later than five calendar days prior to the date of the hearing to
26 determine whether or not the final adoption order is to be
27 granted, indicating whether or not it intends to intervene in the
28 proceeding required by this section, either on its own behalf or
29 on behalf of a tribal member who is a relative of the child.

30 (f) The Legislature finds and declares that some adoptive
31 children may benefit from either direct or indirect contact with an
32 Indian tribe. Nothing in the adoption laws of this state shall be
33 construed to prevent the adopting parent or parents, the birth
34 relatives, including the birth parent or parents, an Indian tribe,
35 and the child, from voluntarily entering into a written agreement
36 to permit continuing contact between the Indian tribe and the
37 child, if the agreement is found by the court to have been entered
38 into voluntarily and to be in the best interest of the child at the
39 time the adoption petition is granted.

(g) With respect to giving notice to Indian tribes in the case of voluntary placements of Indian children pursuant to this section, a person, other than a birth parent of the child, shall be subject to a civil penalty if that person knowingly and willfully:

(1) Falsifies, conceals, or covers up by any trick, scheme, or device, a material fact concerning whether the child is an Indian child or the parent is an Indian.

(2) Makes any false, fictitious, or fraudulent statement, omission, or representation.

(3) Falsifies a written document knowing that the document contains a false, fictitious, or fraudulent statement or entry relating to a material fact.

(4) Assists any person in physically removing a child from the State of California in order to obstruct the application of notification.

(h) Civil penalties for a violation of subdivision (g) by a person other than a birth parent of the child are as follows:

(1) For the initial violation, a person shall be fined not more than ten thousand dollars (\$10,000).

(2) For any subsequent violation, a person shall be fined not more than twenty thousand dollars (\$20,000).

~~(i) For purposes of this section, the terms “Indian tribe,” “Indian organization,” and “Indian child” are defined in Section 1903 of Title 25 of the United States Code.~~

~~SEC. 15.—~~

SEC. 13. Section 8710 of the Family Code is amended to read:

8710. (a) If a child is being considered for adoption, the department or licensed adoption agency shall first consider adoptive placement in the home of a relative or, in the case of an Indian child, according to the placement preferences and standards set out in subdivisions (c), (d), (e), (f), (g), (h), and (i) of Section 361.31 of the Welfare and Institutions Code. However, if a relative is not available, if placement with an available relative is not in the child’s best interest, or if placement would permanently separate the child from other siblings who are being considered for adoption or who are in foster care and an alternative placement would not require the permanent separation, the foster parent or parents of the child shall be considered with respect to the child along with all other

1 prospective adoptive parents where all of the following
2 conditions are present:

3 (1) The child has been in foster care with the foster parent or
4 parents for a period of more than four months.

5 (2) The child has substantial emotional ties to the foster parent
6 or parents.

7 (3) The child's removal from the foster home would be
8 seriously detrimental to the child's well-being.

9 (4) The foster parent or parents have made a written request to
10 be considered to adopt the child.

11 (b) In the case of an Indian child whose foster parent or
12 parents or other prospective adoptive parents do not fall within
13 the placement preferences established in subdivision (c) or (d) of
14 Section 361.31 of the Welfare and Institutions Code, the foster
15 parent or parents or other prospective adoptive parents shall only
16 be considered if the court finds, supported by clear and
17 convincing evidence, that good cause exists to deviate from these
18 placement preferences.

19 (c) This section does not apply to a child who has been
20 adjudged a dependent of the juvenile court pursuant to Section
21 300 of the Welfare and Institutions Code.

22 ~~SEC. 16.—~~

23 *SEC. 14.* Section 9208 is added to the Family Code, to read:

24 9208. (a) The clerk of the superior court entering a final
25 order of adoption concerning an Indian child shall provide the
26 Secretary of the Interior or his or her designee with a copy of the
27 order within 30 days of the date of the order, together with any
28 information necessary to show the following:

29 (1) The name and tribal affiliation of the child.

30 (2) The names and addresses of the biological parents.

31 (3) The names and addresses of the adoptive parents.

32 (4) The identity of any agency having files or information
33 relating to that adoptive placement.

34 (b) If the court records contain an affidavit of the biological
35 parent or parents that their identity remain confidential, the court
36 shall include that affidavit with the other information.

37 ~~SEC. 17.—~~

38 *SEC. 15.* Section 9209 is added to the Family Code, to read:

39 9209. (a) Upon application by an Indian individual who has
40 reached the age of 18 years and who was the subject of an

1 adoptive placement, the court which entered the final decree of
2 adoption shall inform that individual of the tribal affiliation, if
3 any, of the individual's biological parents and provide any other
4 information as may be necessary to protect any rights flowing
5 from the individual's tribal relationship, including, but not
6 limited to, tribal membership rights or eligibility for federal or
7 tribal programs or services available to Indians.

8 (b) If the court records contain an affidavit of the biological
9 parent or parents that their identity remain confidential, the court
10 shall ~~include that affidavit with the other information~~ *inform the*
11 *individual that the Secretary of the Interior may, upon request,*
12 *certify to the individual's tribe that the individual's parentage*
13 *and other circumstances of birth entitle the individual to*
14 *membership under the criteria established by the tribe.*

15 ~~SEC. 18.—~~

16 *SEC. 16.* Section 9210 of the Family Code is amended to
17 read:

18 9210. (a) Except as otherwise provided in subdivisions (b)
19 and (c), a court of this state has jurisdiction over a proceeding for
20 the adoption of a minor commenced under this part if any of the
21 following applies:

22 (1) Immediately before commencement of the proceeding, the
23 minor lived in this state with a parent, a guardian, a prospective
24 adoptive parent, or another person acting as parent, for at least
25 six consecutive months, excluding periods of temporary absence,
26 or, in the case of a minor under six months of age, lived in this
27 state with any of those individuals from soon after birth and there
28 is available in this state substantial evidence concerning the
29 minor's present or future care.

30 (2) Immediately before commencement of the proceeding, the
31 prospective adoptive parent lived in this state for at least six
32 consecutive months, excluding periods of temporary absence,
33 and there is available in this state substantial evidence concerning
34 the minor's present or future care.

35 (3) The agency that placed the minor for adoption is located in
36 this state and both of the following apply:

37 (A) The minor and the minor's parents, or the minor and the
38 prospective adoptive parent, have a significant connection with
39 this state.

1 (B) There is available in this state substantial evidence
2 concerning the minor's present or future care.

3 (4) The minor and the prospective adoptive parent are
4 physically present in this state and the minor has been abandoned
5 or it is necessary in an emergency to protect the minor because
6 the minor has been subjected to or threatened with mistreatment
7 or abuse or is otherwise neglected.

8 (5) It appears that no other state would have jurisdiction under
9 requirements substantially in accordance with paragraphs (1) to
10 (4), inclusive, or another state has declined to exercise
11 jurisdiction on the ground that this state is the more appropriate
12 forum to hear a petition for adoption of the minor, and there is
13 available in this state substantial evidence concerning the minor's
14 present or future care.

15 (b) A court of this state may not exercise jurisdiction over a
16 proceeding for adoption of a minor if at the time the petition for
17 adoption is filed a proceeding concerning the custody or adoption
18 of the minor is pending in a court of another state exercising
19 jurisdiction substantially in conformity with this part, unless the
20 proceeding is stayed by the court of the other state because this
21 state is a more appropriate forum or for another reason. ~~For~~
22 ~~purposes of this subdivision, "a court of another state" includes,~~
23 ~~in the case of an Indian child, a "tribal court" as defined in~~
24 ~~Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec.~~
25 ~~1901 et seq.).~~

26 (c) If a court of another state has issued a decree or order
27 concerning the custody of a minor who may be the subject of a
28 proceeding for adoption in this state, a court of this state may not
29 exercise jurisdiction over a proceeding for adoption of the minor,
30 unless both of the following apply:

31 (1) The requirements for modifying an order of a court of
32 another state under this part are met, the court of another state
33 does not have jurisdiction over a proceeding for adoption
34 substantially in conformity with paragraphs (1) to (4), inclusive,
35 of subdivision (a), or the court of another state has declined to
36 assume jurisdiction over a proceeding for adoption.

37 (2) The court of this state has jurisdiction under this section
38 over the proceeding for adoption.

39 (d) *For purposes of subdivisions (b) and (c), "a court of*
40 *another state" includes, in the case of an Indian child, a tribal*

1 *court having and exercising jurisdiction over a custody*
2 *proceeding involving the Indian child.*

3 ~~SEC. 19.—~~

4 *SEC. 17.* Section 1449 is added to the Probate Code, to read:

5 1449. (a) As used in this division, unless the context
6 otherwise requires, the terms “Indian,” “Indian child,” “Indian
7 child’s tribe,” “Indian custodian,” “Indian tribe,” “reservation,”
8 and “tribal court” shall be defined as provided in Section 1903 of
9 the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

10 (b) When used in connection with an Indian child *custody*
11 *proceeding*, the terms “extended family member” and “parent”
12 shall be defined as provided in Section 1903 of the Indian Child
13 Welfare Act (25 U.S.C. Sec. 1901 et seq.).

14 (c) “Indian child custody proceeding” means a “child custody
15 proceeding” within the meaning of Section 1903 of the Indian
16 Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), including a
17 voluntary or involuntary proceeding that may result in an Indian
18 child’s temporary or long-term foster care or guardianship
19 placement if the parent or Indian custodian cannot have the child
20 returned upon demand, termination of parental rights or adoptive
21 placement.

22 (d) When an Indian child is a member of more than one tribe
23 or is eligible for membership in more than one tribe, the court
24 shall make a determination, in writing together with the reasons
25 for it, as to which tribe is the Indian child’s tribe as follows:

26 (1) If the Indian child is or becomes a member of only one
27 tribe, that tribe shall be designated as the Indian child’s tribe,
28 even though the child is eligible for membership in another tribe.

29 (2) If an Indian child is or becomes a member of more than
30 one tribe, or is not a member of any tribe but is eligible for
31 membership in more than one tribe, the tribe with which the child
32 has the more significant contacts shall be designated as the
33 Indian child’s tribe. In determining which tribe the child has the
34 more significant contacts with, the court shall consider, among
35 other things, the following factors:

36 (A) The length of residence on or near the reservation of each
37 tribe and frequency of contact with each tribe.

38 (B) The child’s participation in activities of each tribe.

39 (C) The child’s fluency in the language of each tribe.

1 (D) Whether there has been a previous adjudication with
2 respect to the child by a court of one of the tribes.

3 (E) The residence on or near one of the tribes' reservations by
4 the child parents, Indian custodian, or extended family members.

5 ~~(F)~~

6 (F) Tribal membership of custodial parent or Indian custodian.

7 ~~(G)~~

8 (G) Interest asserted by each tribe in response to the notice
9 specified in Section ~~224.11~~ 1460.2.

10 ~~(H)~~

11 (H) The child's self-identification.

12 ~~SEC. 20.—~~

13 *SEC. 18.* Section 1456 is added to the Probate Code, to read:

14 1456. (a) The Legislature finds and declares the following:

15 (1) There is no resource that is more vital to the continued
16 existence and integrity of recognized Indian tribes than their
17 children, and the State of California has an interest in protecting
18 Indian children who are members of, or are eligible for
19 membership in, an Indian tribe. The state is committed to
20 protecting the essential tribal relations and best interest of an
21 Indian child by promoting practices, in accordance with the
22 Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and other
23 applicable law, designed to prevent the child's involuntary
24 out-of-home placement and, whenever such placement is
25 necessary or ordered, by placing the child, whenever possible, in
26 a placement that reflects the unique values of the child's tribal
27 culture and is best able to assist the child in establishing,
28 developing, and maintaining a political, cultural, and social
29 relationship with the child's tribe and tribal community.

30 (2) It is in the interest of an Indian child that the child's
31 membership in the child's Indian tribe and connection to the
32 tribal community be encouraged and protected, regardless of
33 whether or not the child is in the physical custody of an Indian
34 parent or Indian custodian at the commencement of a child
35 custody proceeding, the parental rights of the child's parents
36 have been terminated, or the child has resided or been domiciled
37 on an Indian reservation.

38 (b) In all Indian child custody proceedings, as defined in the
39 federal Indian Child Welfare Act, the court shall consider all of
40 the findings contained in subdivision (a), strive to promote the

1 stability and security of Indian tribes and families, comply with
2 the federal Indian Child Welfare Act, and seek to protect the best
3 interest of the child. Whenever an Indian child is removed from a
4 foster care home or institution, guardianship, or adoptive
5 placement for the purpose of further foster care, guardianship, or
6 adoptive placement, placement of the child shall be in
7 accordance with the Indian Child Welfare Act.

8 (c) A determination by an Indian tribe that an unmarried
9 person, who is under the age of 18 years, is either (1) a member
10 of an Indian tribe or (2) eligible for membership in an Indian
11 tribe and a biological child of a member of an Indian tribe shall
12 constitute a significant political affiliation with the tribe and shall
13 require the application of the federal Indian Child Welfare Act to
14 the proceedings.

15 (d) (1) If the Indian Child Welfare Act applies to a proceeding
16 under this code, to the extent that this code or the Adoption and
17 Safe Families Act of 1999 (P.L. No. 105-89) are inconsistent or
18 in conflict with the Indian Child Welfare Act, the provisions of
19 the Indian Child Welfare Act shall prevail.

20 (2) In any case in which this code or other applicable state or
21 federal law provides a higher standard of protection to the rights
22 of the parent or Indian custodian of an Indian child, or the Indian
23 child's tribe, than the rights provided under the Indian Child
24 Welfare Act, the court shall apply the higher state or federal
25 standard.

26 (e) Any Indian child, the Indian child's tribe, or the parent or
27 Indian custodian from whose custody the child has been
28 removed, may petition any court of competent jurisdiction to
29 invalidate an action in an Indian child custody proceeding
30 involving the child if the action violated Sections 1911, 1912,
31 and 1913 of the Indian Child Welfare Act.

32 ~~SEC. 21.—~~

33 *SEC. 19.* Section 1457 is added to the Probate Code, to read:

34 1457. (a) ~~If the court or petitioner knows or has reason to~~
35 ~~know that the proposed ward may be an Indian child, the~~ *The*
36 *Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) shall*
37 *apply to the following guardianship or conservatorship*
38 *proceedings under this division when the proposed ward or*
39 *conservatee is an Indian child:*

(1) In any case in which the petition is a petition for guardianship of the person and the proposed guardian is not the natural parent or Indian custodian of the proposed ward, unless the proposed guardian has been nominated by the natural parents pursuant to Section 1500 and the parents retain the right to have custody of the child returned to them upon demand.

(2) To a proceeding to have an Indian child declared free from the custody and control of one or both parents brought in a guardianship proceeding.

(3) In any case in which the petition is a petition for conservatorship of the person of a minor whose marriage has been dissolved, the proposed conservator is seeking physical custody of the minor, the proposed conservator is not the natural parent or Indian custodian of the proposed conservatee and the natural parent or Indian custodian does not retain the right to have custody of the child returned to them upon demand.

(b) When the Indian Child Welfare Act applies to a proceeding under this division, the court shall apply Sections ~~224.2~~ 224.3 to 224.6, inclusive, and Sections 305.5, 361.31, and 361.7 of the Welfare and Institutions Code, and the following rules from the California Rules of Court, as they read on January 1, 2005:

(1) Rule 1410, subdivision (b)(7).

(2) Rule 1412, subdivision (i).

~~(3) Rule 1439.~~

(c) *In the provisions cited in subdivision (b), references to social workers, probation officers, county welfare department, or probation department shall be construed as meaning the party seeking a foster care placement, guardianship, or adoption.*

~~SEC. 22.—~~

SEC. 20. Section 1458 is added to the Probate Code, to read:

1458. (a) If a *custody* proceeding under this division involves a child who *has Indian ancestry but who* is not an Indian child, the court may recognize the ~~child's~~ *tribe from which the child is descended* and grant standing to participate as a party ~~to the proceeding if the child is not eligible for membership in his or her tribe but is the biological grandchild of a member of the tribe or resides or is domiciled within the boundaries of an Indian reservation~~ *in the proceeding upon the request of the tribe.*

1 (b) If the court recognizes the child's tribe and grants standing
2 to the tribe to participate as a party to the proceeding, the tribe
3 may do all of the following:

4 (1) Be present at the hearing.

5 (2) Be represented by retained counsel or a representative of
6 the tribe designated by the tribe to intervene on behalf of the
7 tribe, provided that when the tribe appears as a party by a
8 representative of the tribe, the name of the representative and a
9 statement of authorization for that individual to appear on behalf
10 of the tribe shall be submitted to the court in the form of a tribal
11 resolution or other document evidencing an official act of the
12 tribe.

13 (3) Address the court.

14 (4) Receive notice of hearings.

15 (5) Examine all court documents relating to the proceeding.

16 (6) Present evidence.

17 (7) Submit written reports and recommendations to the court.

18 (8) Perform other duties and responsibilities as requested or
19 approved by the court.

20 *(c) If more than one tribe requests intervention under*
21 *subdivision (a), the court may limit intervention to the tribe with*
22 *which the child has the most significant contacts, as determined*
23 *in accordance with paragraph (2) of subdivision (d) of Section*
24 *170.*

25 *(d) This section is intended to assist the court in making*
26 *decisions that are in the best interest of the child involved by*
27 *permitting a tribe in the circumstances described in subdivision*
28 *(a) to inform the court and parties to the proceeding about*
29 *placement options for the child within the child's extended family*
30 *or the tribal community, services and programs available to the*
31 *child and the child's parents as Indians, and other unique*
32 *interests the child or the child's parents may have as Indians.*
33 *This section shall not be construed to make the Indian Child*
34 *Welfare Act (25 U.S.C. Sec. 1901 et seq.), or any state law*
35 *implementing the Indian Child Welfare Act, applicable to the*
36 *proceedings, or to limit the court's discretion to permit other*
37 *interested persons to participate in these or any other*
38 *proceedings.*

1 ~~SEC. 23.—~~

2 *SEC. 21.* Section 1460.2 is added to the Probate Code, to
3 read:

4 1460.2. (a) If the court or petitioner knows or has reason to
5 know that the proposed ward *or conservatee* may be an Indian
6 child, notice shall comply with subdivision (b) in any case in
7 which the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.)
8 applies, as specified in Section 1457.

9 (b) Any notice sent under this section shall be sent to the
10 minor's parent or legal guardian, Indian custodian, if any, and the
11 Indian child's tribe, and shall comply with all of the following
12 requirements:

13 (1) Notice shall be sent by registered or certified mail with
14 return receipt requested, and additional notice by first-class mail
15 is recommended.

16 (2) Notice to the tribe shall be to the tribal chairperson, unless
17 the tribe has designated another agent for service.

18 (3) Notice shall be sent to all tribes of which the child may be
19 a member or eligible for membership until the court makes a
20 determination as to which tribe is the Indian child's tribe in
21 accordance with subdivision (d) of Section ~~1448~~ 1449, after
22 which notice need only be sent to the tribe determined to be the
23 Indian child's tribe.

24 (4) Notice shall be sent to the Secretary of the Interior's
25 designated agent, the Sacramento Area Director, Bureau of
26 Indian Affairs. ~~When the identity of the tribe of which the child~~
27 ~~may be a member or eligible for membership is unknown, the~~
28 ~~notice provided to the Bureau of Indian Affairs shall serve as~~
29 ~~substitute notice to the child's tribe.~~ If the identity or location of
30 the Indian child's tribe is known, a copy of the notice shall also
31 be sent directly to the Secretary of the Interior ~~if that notice is~~
32 ~~required under federal law unless the Secretary of the Interior~~
33 ~~has waived the notice in writing and the person responsible for~~
34 ~~giving notice under this section has filed proof of the waiver with~~
35 ~~the court.~~

36 (5) The notice shall include all of the following information:

37 (A) The name, birthdate, and birthplace of the Indian child.

38 (B) The name of any Indian tribe in which the child is a
39 member or may be eligible for membership.

(C) All names known of the Indian child's biological parents, grandparents and great-grandparents or Indian custodians, including maiden, married, and former names or aliases, as well as their current and former addresses, birthdates, places of birth and death, tribal enrollment numbers, *and* any other identifying information.

(D) A copy of the petition.

(E) A copy of the child's birth certificate, if available.

(F) The location, mailing address, and telephone number of the court and all parties notified pursuant to this section.

(G) A statement listing the rights of the child's parents, Indian custodians, and tribes, including all of the following:

(i) The right to intervene in the proceeding.

(ii) The right to petition the court to transfer the proceeding to the tribal court of the Indian child's tribe, absent objection by either parent and subject to declination by the tribal court.

(iii) The right to, upon request, be granted up to an additional 20 days from the receipt of the notice to prepare for the proceeding.

(iv) A statement of the potential legal consequences of an adjudication on the future custodial rights of the child's parents or Indian custodians.

(v) A statement that if the parents or Indian custodians are unable to afford counsel in an involuntary proceeding, counsel shall be appointed to represent the parents or custodians.

(vi) A statement that the information contained in the notice, petition, pleading, and other court documents is confidential.

(6) Notice shall be sent whenever there is reason to believe the child may be an Indian child, and for every hearing thereafter, including, but not limited to, the hearing at which a final adoption order is to be granted. After ~~a~~ *the Indian child's* tribe intervenes in a proceeding, the information required pursuant to paragraphs (3), (4), (5), and (7) need not be included with notice.

(7) Proof of the notice, including copies of notices sent and all return receipts and responses received, shall be filed with the court in advance of the hearing except as permitted under subdivision (h).

(8) No proceeding shall be held until at least 10 days after receipt of notice by the parent, Indian custodian, the tribe or the Bureau of Indian Affairs, ~~except for the detention hearing,~~

~~provided that notice of the detention hearing shall be given as soon as possible after the filing of the petition initiating the proceeding and proof of the notice is filed with the court within 10 days after the filing of the petition. With the exception of the detention hearing, the. The parent, Indian custodian, or the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceeding. Nothing herein shall be construed as limiting the rights of the parent, Indian custodian, or tribe to more than 10-days' notice when the a lengthier notice period is required.~~

(9) With respect to giving notice to Indian tribes, a party shall be subject to court sanctions if that person knowingly and willfully falsifies or conceals a material fact concerning whether the child is an Indian child, or counsels a party to do so.

SEC. 24.—

SEC. 22. Section 1474 is added to the Probate Code, to read:

1474. (a) If an Indian custodian or biological parent of an Indian child lacks the financial ability to retain counsel and requests the appointment of counsel, the court shall, at or before the time of the hearing, appoint the public defender or private counsel to represent the interest of the person in proceedings described in ~~Part 2 (commencing with Section 1500)~~ *Section 1457.*

(b) If the court appoints counsel under subdivision (a), the county shall pay the sum to that counsel.

SEC. 23. *Section 1500.1 is added to the Probate Code, to read:*

1500.1. (a) Notwithstanding any other section in this part, and in accordance with Section 1913 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), consent to nomination of a guardian of the person or of a guardian of the person and the estate given by an Indian child's parent is not valid unless both of the following occur:

(1) The consent is executed in writing at least 10 days after the child's birth and recorded before a judge.

(2) The judge certifies that the terms and consequences of the consent were fully explained in detail in English and were fully understood by the parent or that they were interpreted into a language that the parent understood.

1 **(b)** *The parent of an Indian child may withdraw his or her*
2 *consent to guardianship for any reason at any time prior to the*
3 *entry of a final decree of adoption and the child shall be returned*
4 *to the parent.*

5 ~~SEC. 25.—~~

6 **SEC. 24.** Section 1510 of the Probate Code is amended to
7 read:

8 1510. (a) A relative or other person on behalf of the minor,
9 or the minor if 12 years of age or older, may file a petition for the
10 appointment of a guardian of the minor.

11 (b) The petition shall request that a guardian of the person or
12 estate of the minor, or both, be appointed, shall specify the name
13 and address of the proposed guardian and the name and date of
14 birth of the proposed ward, and shall state that the appointment is
15 necessary or convenient.

16 (c) The petition shall set forth, so far as is known to the
17 petitioner, the names and addresses of all of the following:

18 (1) The parents of the proposed ward.

19 (2) The person having legal custody of the proposed ward and,
20 if that person does not have the care of the proposed ward, the
21 person having the care of the proposed ward.

22 (3) The relatives of the proposed ward within the second
23 degree.

24 (4) In the case of a guardianship of the estate, the spouse of the
25 proposed ward.

26 (5) Any person nominated as guardian for the proposed ward
27 under Section 1500 or 1501.

28 (6) In the case of a guardianship of the person involving an
29 Indian child, any Indian custodian and the ~~proposed ward's~~
30 *Indian child's* tribe.

31 (d) If the proposed ward is a patient in or on leave of absence
32 from a state institution under the jurisdiction of the State
33 Department of Mental Health or the State Department of
34 Developmental Services and that fact is known to the petitioner,
35 the petition shall state that fact and name the institution.

36 (e) The petition shall state, so far as is known to the petitioner,
37 whether or not the proposed ward is receiving or is entitled to
38 receive benefits from the Veterans Administration and the
39 estimated amount of the monthly benefit payable by the Veterans
40 Administration for the proposed ward.

1 (f) If the petitioner has knowledge of any pending adoption,
2 juvenile court, marriage dissolution, domestic relations, custody,
3 or other similar proceeding affecting the proposed ward, the
4 petition shall disclose the pending proceeding.

5 (g) If the petitioners have accepted or intend to accept physical
6 care or custody of the child with intent to adopt, whether formed
7 at the time of placement or formed subsequent to placement, the
8 petitioners shall so state in the guardianship petition, whether or
9 not an adoption petition has been filed.

10 (h) If the proposed ward is or becomes the subject of an
11 adoption petition, the court shall order the guardianship petition
12 consolidated with the adoption petition.

13 (i) If the proposed ward is or may be an Indian child, the
14 petition shall state that fact.

15 **SEC. 26.—**

16 *SEC. 25.* Section 1511 of the Probate Code is amended to
17 read:

18 1511. (a) Except as provided in subdivisions (f) and (g), at
19 least 15 days before the hearing on the petition for the
20 appointment of a guardian, notice of the time and place of the
21 hearing shall be given as provided in subdivisions (b), (c), (d),
22 and (e) of this section. The notice shall be accompanied by a
23 copy of the petition. The court may not shorten the time for
24 giving the notice of hearing under this section.

25 (b) Notice shall be served in the manner provided in Section
26 415.10 or 415.30 of the Code of Civil Procedure, or in any
27 manner authorized by the court, on all of the following persons:

- 28 (1) The proposed ward if 12 years of age or older.
29 (2) Any person having legal custody of the proposed ward, or
30 serving as guardian of the estate of the proposed ward.
31 (3) The parents of the proposed ward.
32 (4) Any person nominated as a guardian for the proposed ward
33 under Section 1500 or 1501.

34 (c) Notice shall be given by mail sent to their addresses stated
35 in the petition, or in any manner authorized by the court, to all of
36 the following:

- 37 (1) The spouse named in the petition.
38 (2) The relatives named in the petition, except that if the
39 petition is for the appointment of a guardian of the estate only the

1 court may dispense with the giving of notice to any one or more
2 or all of the relatives.

3 (3) The person having the care of the proposed ward if other
4 than the person having legal custody of the proposed ward.

5 (d) If notice is required by Section 1461 or Section 1542 to be
6 given to the Director of Mental Health or the Director of
7 Developmental Services or the Director of Social Services, notice
8 shall be mailed as so required.

9 (e) If the petition states that the proposed ward is receiving or
10 is entitled to receive benefits from the Veterans Administration,
11 notice shall be mailed to the office of the Veterans
12 Administration referred to in Section 1461.5.

13 (f) Unless the court orders otherwise, notice shall not be given
14 to any of the following:

15 (1) The parents or other relatives of a proposed ward who has
16 been relinquished to a licensed adoption agency.

17 (2) The parents of a proposed ward who has been judicially
18 declared free from their custody and control.

19 (g) Notice need not be given to any person if the court so
20 orders upon a determination of either of the following:

21 (1) The person cannot with reasonable diligence be given the
22 notice.

23 (2) The giving of the notice would be contrary to the interest
24 of justice.

25 (h) Before the appointment of a guardian is made, proof shall
26 be made to the court that each person entitled to notice under this
27 section either:

28 (1) Has been given notice as required by this section.

29 (2) Has not been given notice as required by this section
30 because the person cannot with reasonable diligence be given the
31 notice or because the giving of notice to that person would be
32 contrary to the interest of justice.

33 (i) If notice is required by Section 1460.2 to be given to an
34 Indian custodian or tribe, notice shall be mailed as so required.

35 *SEC. 26. Section 1513 of the Probate Code is amended to*
36 *read:*

37 1513. (a) Unless waived by the court, a court investigator,
38 probation officer, or domestic relations investigator may make an
39 investigation and file with the court a report and recommendation
40 concerning each proposed guardianship of the person or

guardianship of the estate. Investigations where the proposed guardian is a relative shall be made by a court investigator. Investigations where the proposed guardian is a nonrelative shall be made by the county agency designated to investigate potential dependency. The report for the guardianship of the person shall include, but need not be limited to, an investigation and discussion of all of the following:

(1) A social history of the guardian.

(2) A social history of the proposed ward, including, to the extent feasible, an assessment of any identified developmental, emotional, psychological, or educational needs of the proposed ward and the capability of the petitioner to meet those needs.

(3) The relationship of the proposed ward to the guardian, including the duration and character of the relationship, where applicable, the circumstances whereby physical custody of the proposed ward was acquired by the guardian, and a statement of the proposed ward's attitude concerning the proposed guardianship, unless the statement of the attitude is affected by the proposed ward's developmental, physical, or emotional condition.

(4) The anticipated duration of the guardianship and the plans of both natural parents and the proposed guardian for the stable and permanent home for the child. The court may waive this requirement for cases involving relative guardians.

(b) The report shall be read and considered by the court prior to ruling on the petition for guardianship, and shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding.

(c) If the investigation finds that any party to the proposed guardianship alleges the minor's parent is unfit, as defined by Section 300 of the Welfare and Institutions Code, the case shall be referred to the county agency designated to investigate potential dependencies. Guardianship proceedings shall not be completed until the investigation required by Sections 328 and 329 of the Welfare and Institutions Code is completed and a report is provided to the court in which the guardianship proceeding is pending.

(d) The report authorized by this section is confidential and shall only be made available to persons who have been served in the proceedings or their attorneys. The clerk of the court shall

1 make provisions for the limitation of the report exclusively to
2 persons entitled to its receipt.

3 (e) For the purpose of writing the report authorized by this
4 section, the person making the investigation and report shall have
5 access to the proposed ward's school records, probation records,
6 and public and private social services records, and to an oral or
7 written summary of the proposed ward's medical records and
8 psychological records prepared by any physician, psychologist,
9 or psychiatrist who made or who is maintaining those records.
10 The physician, psychologist, or psychiatrist shall be available to
11 clarify information regarding these records pursuant to the
12 investigator's responsibility to gather and provide information for
13 the court.

14 (f) This section does not apply to guardianships resulting from
15 a permanency plan for a dependent child pursuant to Section
16 366.25 of the Welfare and Institutions Code.

17 (g) For purposes of this section, a "relative" means a person
18 who is a spouse, parent, stepparent, brother, sister, stepbrother,
19 stepsister, half-brother, half-sister, uncle, aunt, niece, nephew,
20 first cousin, or any person denoted by the prefix "grand" or
21 "great," or the spouse of any of these persons, even after the
22 marriage has been terminated by death or dissolution.

23 (h) *In an Indian child custody proceeding, the person making*
24 *the investigation and report shall consult with the Indian child's*
25 *tribe and include in the report information provided by the tribe.*

26 *SEC. 27. Section 1516.5 of the Probate Code is amended to*
27 *read:*

28 1516.5. (a) A proceeding to have a child declared free from
29 the custody and control of one or both parents may be brought in
30 the guardianship proceeding pursuant to Part 4 (commencing
31 with Section 7800) of Division 12 of the Family Code, if all of
32 the following requirements are satisfied:

33 (1) One or both parents do not have the legal custody of the
34 child.

35 (2) The child has been in the physical custody of the guardian
36 for a period of not less than two years.

37 (3) The court finds that the child would benefit from being
38 adopted by his or her guardian. In making this determination, the
39 court shall consider all factors relating to the best interest of the

1 child, including but not limited to, the nature and extent of the
2 relationship between all of the following:

3 (A) The child and the birth parent.

4 (B) The child and the guardian, including family members of
5 the guardian.

6 (C) The child and any siblings or half-siblings.

7 (b) The court shall appoint a court investigator or other
8 qualified professional to investigate all factors enumerated in
9 subdivision (a). The findings of the investigator or professional
10 regarding those issues shall be included in the written report
11 required pursuant to Section 7851 of the Family Code.

12 (c) The rights of the parent, including the rights to notice and
13 counsel provided in Part 4 (commencing with Section 7800) of
14 Division 12 of the Family Code, shall apply to actions brought
15 pursuant to this section.

16 (d) This section does not apply to any child who is a
17 dependent of the juvenile court *or to any Indian child*.

18 ~~SEC. 27.—~~

19 SEC. 28. Section 1601 of the Probate Code is amended to
20 read:

21 1601. Upon petition of the guardian, a parent, the ward, or, in
22 the case of an Indian child *custody proceeding*, an Indian
23 custodian or the ward's tribe, the court may make an order
24 terminating the guardianship if the court determines that it is in
25 the ward's best interest to terminate the guardianship. Notice of
26 the hearing on the petition shall be given for the period and in the
27 manner provided in Chapter 3 (commencing with Section 1460)
28 of Part 1.

29 ~~SEC. 28.—~~

30 SEC. 29. Section 2112 of the Probate Code is repealed.

31 SEC. 30. *Section 100 of the Welfare and Institutions Code is*
32 *amended to read:*

33 100. The Judicial Council shall establish a planning and
34 advisory group consisting of appropriate professional and
35 program specialists to recommend on the development of
36 program guidelines and funding procedures consistent with this
37 chapter. At a minimum, the council shall adopt program
38 guidelines consistent with the guidelines established by the
39 National Court Appointed Special Advocate Association, and
40 with California law; but the council may require additional or

1 more stringent standards. State funding shall be contingent on a
2 program adopting and adhering to the program guidelines
3 adopted by the council.

4 The program guidelines adopted by the council shall be
5 adopted and incorporated into local rules of court by each
6 participating superior court as a prerequisite to funding pursuant
7 to this chapter.

8 The council shall adopt program guidelines and criteria for
9 funding which encourage multicounty CASA programs where
10 appropriate, and shall in no case provide for funding more than
11 one program per county, *except where the additional CASA*
12 *programs are operated by an Indian tribe or Indian*
13 *organization.*

14 The council shall establish in a timely fashion a
15 request-for-proposal process to establish, maintain, or expand
16 local CASA programs and require local matching funds or
17 in-kind funds equal to the proposal request. The maximum state
18 grant per county program per year shall not exceed seventy
19 thousand dollars (\$70,000) in counties in which the population is
20 less than 700,000 and shall not exceed one hundred thousand
21 dollars (\$100,000) in counties in which the population is 700,000
22 or more, according to the annual population report provided by
23 the Department of Finance.

24 *SEC. 31. Section 110 is added to the Welfare and Institutions*
25 *Code, to read:*

26 *110. Nothing in this chapter shall be construed as limiting the*
27 *right of an Indian tribe or Indian organization to establish or*
28 *operate CASA programs independent of state funding or the*
29 *discretion of the court to appoint CASAs from those programs in*
30 *Indian child custody proceedings.*

31 ~~SEC. 29.—~~

32 *SEC. 32. Section 224 is added to the Welfare and Institutions*
33 *Code, to read:*

34 224. (a) The Legislature finds and declares the following:

35 (1) There is no resource that is more vital to the continued
36 existence and integrity of Indian tribes than their children, and
37 the State of California has an interest in protecting Indian
38 children who are members of, or are eligible for membership in,
39 an Indian tribe. The state is committed to protecting the essential
40 tribal relations and best interest of an Indian child by promoting

practices, in accordance with the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and other applicable law, designed to prevent the child's involuntary out-of-home placement and, whenever that placement is necessary or ordered, by placing the child, whenever possible, in a placement that reflects the unique values of the child's tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the child's tribe and tribal community.

(2) It is in the interest of an Indian child that the child's membership in the child's Indian tribe and connection to the tribal community be encouraged and protected, regardless of whether ~~or not~~ the child is in the physical custody of an Indian parent or Indian custodian at the commencement of a child custody proceeding, the parental rights of the child's parents have been terminated, or the child has resided or been domiciled on an Indian reservation.

(b) In all Indian child custody proceedings, as defined in the federal Indian Child Welfare Act the court shall consider all of the findings contained in subdivision (a), strive to promote the stability and security of Indian tribes and families, comply with the federal Indian Child Welfare Act, and seek to protect the best interest of the child. Whenever an Indian child is removed from a foster care home or institution, guardianship, or adoptive placement for the purpose of further foster care, guardianship, or adoptive placement, placement of the child shall be in accordance with the Indian Child Welfare Act.

(c) A determination by an Indian tribe that an unmarried person, who is under the age of 18 years, is either (1) a member of an Indian tribe or (2) eligible for membership in an Indian tribe and a biological child of a member of an Indian tribe shall constitute a significant political affiliation with the tribe and shall require the application of the federal Indian Child Welfare Act to the proceedings.

(d) (1) If the Indian Child Welfare Act applies to a child custody proceeding under this code, to the extent that this code or the Adoption and Safe Families Act of 1999 (P.L. 105-89) are inconsistent or in conflict with the Indian Child Welfare Act, the provisions of the Indian Child Welfare Act shall prevail.

(2) In any case in which this code or other applicable state or federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child, or the Indian child's tribe, than the rights provided under the Indian Child Welfare Act, the court shall apply the higher standard.

(e) Any Indian child, the Indian child's tribe, or the parent or Indian custodian from whose custody the child has been removed, may petition any court of competent jurisdiction to invalidate an action in an Indian child custody proceeding involving the child if the action violated Sections 1911, 1912, and 1913 of the Indian Child Welfare Act.

~~SEC. 30.—~~

SEC. 33. Section 224.1 is added to the Welfare and Institutions Code, to read:

224.1. (a) As used in this division, unless the context otherwise requires, the terms "Indian," "Indian child," "Indian child's tribe," "Indian custodian," "Indian tribe," "reservation," and "tribal court" shall be defined as provided in Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

(b) As used in connection with an Indian child custody proceeding, the terms "extended family member" and "parent" shall be defined as provided in Section 1903 of the Indian Child Welfare Act.

(c) "Indian child custody proceeding" means a "child custody proceeding" within the meaning of Section 1903 of the Indian Child Welfare Act, including a voluntary or involuntary proceeding that may result in an Indian child's temporary or long-term foster care or guardianship placement if the parent or Indian custodian cannot have the child returned upon demand, termination of parental rights or adoptive placement.

(d) If an Indian child is a member of more than one tribe or is eligible for membership in more than one tribe, the court shall make a determination, in writing together with the reasons for it, as to which tribe is the Indian child's tribe as follows:

(1) If the Indian child is or becomes a member of only one tribe, that tribe shall be designated as the Indian child's tribe, even though the child is eligible for membership in another tribe.

(2) If an Indian child is or becomes a member of more than one tribe, or is not a member of any tribe but is eligible for membership in more than one tribe, the tribe with which the child

1 has the more significant contacts shall be designated as the
2 Indian child's tribe. In determining which tribe the child has the
3 more significant contacts with, the court shall consider, among
4 other things, the following factors:

5 (A) The length of residence on or near the reservation of each
6 tribe and frequency of contact with each tribe.

7 (B) The child's participation in activities of each tribe.

8 (C) The child's fluency in the language of each tribe.

9 (D) Whether there has been a previous adjudication with
10 respect to the child by a court of one of the tribes.

11 (E) Residence on or near one of the tribes' reservations by the
12 child parents, Indian custodian or extended family members.

13 (F) Tribal membership of custodial parent or Indian custodian.

14 (G) Interest asserted by each tribe in response to the notice
15 specified in Section ~~224.1~~ 224.2.

16 (H) The child's self identification.

17 ~~SEC. 31.—~~

18 *SEC. 34.* Section 224.2 is added to the Welfare and
19 Institutions Code, to read:

20 224.2. If the court, a social worker, or probation officer
21 knows or has reason to know that an Indian child is involved, any
22 notice sent in an Indian child custody proceeding under this code
23 shall be sent to the minor's parents or legal guardian, Indian
24 custodian, if any, and the minor's tribe and comply with all of the
25 following requirements:

26 (a) Notice shall be sent by registered or certified mail with
27 return receipt requested, and additional notice by first-class mail
28 is recommended.

29 (b) Notice to the tribe shall be to the tribal chairperson, unless
30 the tribe has designated another agent for service.

31 (c) Notice shall be sent to all tribes of which the child may be
32 a member or eligible for membership, *until the court makes a*
33 *determination as to which tribe is the child's tribe in accordance*
34 *with subdivision (d) of Section 224.1, after which notice need*
35 *only be sent to the tribe determined to be the Indian child's tribe.*

36 (d) Notice shall be sent to the Secretary of the Interior's
37 designated agent, the Sacramento Area Director, Bureau of
38 Indian Affairs. ~~When the identity of the tribe of which the child~~
39 ~~may be a member or eligible for membership in is unknown, the~~
40 ~~notice provided to the Bureau of Indian Affairs will serve as~~

~~substitute notice to the child's tribe.~~ If the identity or location of the parents, Indian custodians, or the minor's tribe is known, a copy of the notice shall also be sent directly to the Secretary of the Interior ~~if the notice is required under federal law~~ *unless the Secretary of the Interior has waived the notice in writing and the person responsible for giving notice under this section has filed proof of the waiver with the court.*

(e) In addition to the information specified in other sections of this article, notice shall include all of the following information:

(1) The name, birthdate, and birthplace of the Indian child.

(2) The name of the Indian tribe in which the child is a member or may be eligible for membership.

(3) All names known of the Indian child's biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married and former names or aliases, as well as their current and former addresses, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information.

(4) A copy of the petition by which the proceeding was initiated.

(5) A copy of the child's birth certificate, if available.

(6) The location, mailing address, and telephone number of the court and all parties notified pursuant to this section.

(7) A statement listing the rights of the child's parents or legal guardians, Indian custodians, and tribes. The rights shall include all of the following:

(A) The right to intervene in the proceeding.

(B) The right to petition the court to transfer the proceeding to the tribal court of the Indian child's tribe, absent objection by either parent and subject to declination by the tribal court.

(C) The right to, upon request, be granted up to an additional 20 days from the receipt of the notice to prepare for the proceeding.

(D) A statement of the potential legal consequences of an adjudication on the future custodial rights of the child's parents, legal guardians, or Indian custodians.

(E) A statement that if the parents or Indian custodians are unable to afford counsel in an involuntary proceeding, counsel will be appointed to represent the parents or custodians.

(F) A statement that the information contained in the notice, petition, pleading, and other court documents is confidential.

(f) Notice shall be sent whenever there is reason to believe the child may be an Indian child, and for every hearing thereafter, including, but not limited to, the hearing at which a final adoption order is to be granted. After a tribe intervenes in a proceeding, the information set out in paragraphs (3), (4), (5) and (7) of subdivision (e) need not be included with notice.

(g) Proof of the notice, including copies of notices sent and all return receipts and responses received, shall be filed with the court in advance of the hearing except as permitted under subdivision (h).

(h) No proceeding shall be held until at least 10 days after receipt of notice by the parent, Indian custodian, the tribe, or the Bureau of Indian Affairs, except for the detention hearing, provided that notice of the detention hearing shall be given as soon as possible after the filing of the petition initiating the proceeding and proof of the notice is filed with the court within 10 days after the filing of the petition. With the exception of the detention hearing, the parent, Indian custodian, or the tribe shall, upon request, be granted up to 20 additional days to prepare for that proceeding. Nothing herein shall be construed as limiting the rights of the parent, Indian custodian, or tribe to more than 10 days notice when the a lengthier notice period is required.

(i) With respect to giving notice to Indian tribes, a party shall be subject to court sanctions if that person knowingly and willfully falsifies or conceals a material fact concerning whether the child is an Indian child, or counsels a party to do so.

~~SEC. 32.—~~

SEC. 35. Section 224.3 is added to the Welfare and Institutions Code, to read:

224.3. (a) The court, county welfare department, and the probation department have an affirmative and continuing duty to inquire whether a child for whom a petition under Section 300, 601, or 602 is to be, or has been, filed is or may be an Indian child in all dependency proceedings and in any juvenile wardship proceedings if the child is at risk of entering foster care or is in foster care.

(b) The court, county welfare department, and the probation department shall be deemed to know or have reason to know that

1 an Indian child is involved whenever any of the following
2 circumstances exist:

3 (1) A person having an interest in the child, including the
4 child, an officer of the court, a tribe, an Indian organization, a
5 public or private agency, or a member of the child's extended
6 family provides information suggesting the child is a member of
7 a tribe or eligible for membership in a tribe or one or more of the
8 child's biological parents, grandparents, or great-grandparents
9 are or were a member of a tribe.

10 (2) The residence or domicile of the child, the child's parents,
11 or Indian custodian is in a predominantly Indian community.

12 (3) The child or the child's family has received services or
13 benefits from a tribe or services that are available to Indians from
14 tribes or the federal government, such as the Indian Health
15 Service.

16 (c) If the court, social worker, or probation officer knows or
17 has reason to know that an Indian child is involved, the social
18 worker or probation officer is required to make further inquiry
19 regarding the possible Indian status of the child, and to do so as
20 soon as practicable, by interviewing the parents, Indian
21 custodian, and extended family members to gather the
22 information required in *subdivision (e) of Section 224.2*,
23 contacting the Bureau of Indian Affairs and the State Department
24 of Social Services for assistance in identifying the names and
25 contact information of the tribes in which the child may be a
26 member or eligible for membership in and contacting the tribes
27 and any other person that reasonably can be expected to have
28 information regarding the child's membership status or
29 eligibility.

30 (d) If the court, social worker, or probation officer knows or
31 has reason to know that an Indian child is involved, the social
32 worker or probation officer shall provide notice in accordance
33 with *subdivision (e) of Section 224.2*.

34 (e) (1) A written determination by an Indian tribe that a child
35 is or is not a member of or eligible for membership in that tribe,
36 or testimony attesting to ~~such~~ that status by a person authorized
37 by the tribe to provide that determination, shall be conclusive.
38 Information that the child is not enrolled or eligible for
39 enrollment in the tribe is not determinative of the child's
40 membership status unless the tribe also confirms in writing that

1 enrollment is a prerequisite for membership under tribal law or
2 custom.

3 (2) In the absence of a contrary determination by the tribe, a
4 determination by the Bureau of Indian Affairs that a child is or is
5 not a member of or eligible for membership in that tribe is
6 conclusive.

7 (3) If proper and adequate notice has been provided pursuant
8 to Section ~~224.1~~ 224.2, and neither a tribe nor the Bureau of
9 Indian Affairs has provided a determinative response within 60
10 days after receiving that notice, the court may determine ~~the child~~
11 ~~is not an Indian child~~ and that the Indian Child Welfare Act (25
12 U.S.C. Sec. 1901 et seq.) does not apply to the proceedings,
13 provided that the court shall reverse its determination and apply
14 the act ~~prospectively~~ if a tribe or the Bureau of Indian Affairs
15 submits written evidence confirming the child is an Indian child.

16 (f) Notwithstanding a determination that the Indian Child
17 Welfare Act does not apply to the proceedings made in
18 accordance with subdivision (e) of this section, if the court,
19 social worker, or probation officer subsequently receives any
20 information required under subdivision (e) of Section 224.2 that
21 was not previously available or included in the notice issued
22 under Section 224.2, the social worker or probation officer shall
23 provide the additional information to any tribes entitled to notice
24 under subdivision (c) of Section 224.2 and the Bureau of Indian
25 Affairs.

26 ~~SEC. 33.—~~

27 *SEC. 36.* Section 224.4 is added to the Welfare and
28 Institutions Code, to read:

29 224.4. (a) The Indian child's tribe and Indian custodian have
30 the right to intervene at any point in an Indian child custody
31 proceeding.

32 (b) Each party to a child custody proceeding involving an
33 Indian child shall have the right to examine all reports or other
34 documents filed with the court upon which any decision with
35 respect to the action may be based. With the exception of the
36 initial petition commencing the proceedings, any report filed in
37 connection with a hearing in an Indian child custody proceeding
38 shall be provided to each party to the proceeding at least 10
39 calendar days prior to the hearing, which may be accomplished
40 by mailing the report at least 15 calendar days prior to the

1 hearing. The court shall grant a reasonable continuance, not to
2 exceed 20 calendar days, upon request by any party on the
3 ground that the report was not provided at least 10 calendar days
4 prior to the hearing as required by this section, unless the party
5 has expressly waived the requirement that the report be provided
6 within the 10-day period or the court finds by clear and
7 convincing evidence that the party's ability to proceed at the
8 hearing is not prejudiced by the lack of timely service of the
9 report.

10 ~~SEC. 34.—~~

11 *SEC. 37.* Section 224.5 is added to the Welfare and
12 Institutions Code, to read:

13 224.5. In an Indian child custody proceeding, the court shall
14 give full faith and credit to the public acts, records, judicial
15 proceedings, and judgments of any Indian tribe applicable to the
16 proceeding.

17 ~~SEC. 35.—~~

18 *SEC. 38.* Section 224.6 is added to the Welfare and
19 Institutions Code, to read:

20 224.6. (a) When testimony of a "qualified expert witness" is
21 required in an Indian child custody proceeding, a "qualified
22 expert witness" may include, but is not limited to, a social
23 worker, sociologist, physician, psychologist, traditional tribal
24 therapist and healer, ~~spiritual leader, historian, or elder tribal~~
25 *spiritual leader, tribal historian, or tribal elder*, provided the
26 individual is not an employee of the person or agency
27 recommending *foster care placement or termination of parental*
28 *rights*.

29 (b) In considering whether to involuntarily place an Indian
30 child in foster care or to terminate the parental rights of the
31 parent of an Indian child, the court shall require that *one or more*
32 qualified expert witnesses with specific knowledge of the *Indian*
33 ~~child's—Indian~~ tribe testify regarding that tribe's family
34 organization and child-rearing practices, and regarding whether
35 the tribe's culture, customs, and laws would support the
36 placement of the child in foster care or the termination of
37 parental rights on the grounds that ~~continued~~ custody of the child
38 by the parent or Indian custodian is likely to result in serious
39 emotional or physical damage to the child.

(c) In the following descending order of preference, a qualified expert witness is a person who is one of the following:

(1) A member of the *Indian* child's ~~Indian~~ tribe who is recognized by the child's tribal community as knowledgeable regarding tribal customs as the customs pertain to family organization or child-rearing practices.

(2) A member of another tribe who is formally recognized by the Indian child's tribe as having the knowledge to be a qualified expert witness.

(3) A layperson having substantial experience in the delivery of child and family services to Indians, and substantial knowledge of the prevailing social and cultural standards and child-rearing practices within the Indian child's tribe.

(4) A professional person having substantial education and experience in the person's professional specialty and having substantial knowledge of the prevailing social and cultural standards and child-rearing practices within the Indian child's tribe.

(5) A professional person having substantial education and experience in the person's professional specialty and having extensive knowledge of the customs, traditions, and values of the Indian child's tribe as the customs, traditions, and values pertain to family organization and child-rearing practices. Prior to accepting the testimony of a qualified expert witness, the court shall document the efforts made to secure a qualified expert witness described in paragraphs (1), (2), (3) ~~and (4)~~, (4), and (5) of subdivision (c). The efforts shall include, but are not limited to, contacting the Indian child's tribe's governing body, that tribe's Indian child welfare office, and the tribe's social service office. *If the court determines that no individuals meet the criteria of subdivision (c) who are willing and available to testify within a reasonable period of time, the parties may stipulate in writing to have an individual who does not meet the criteria of subdivision (c) testify, subject to the approval of the court, if the court is satisfied the stipulation is made knowingly, intelligently, and voluntarily.*

~~SEC. 36.—~~

SEC. 39. Section 290.1 of the Welfare and Institutions Code is amended to read:

1 290.1. If the probation officer or social worker determines
2 that the child shall be retained in custody, he or she shall
3 immediately file a petition pursuant to Section 332 with the clerk
4 of the juvenile court, who shall set the matter for hearing on the
5 detention hearing calendar. The probation officer or social
6 worker shall serve notice as prescribed in this section.

7 (a) Notice shall be given to the following persons whose
8 whereabouts are known or become known prior to the initial
9 petition hearing:

10 (1) The mother.

11 (2) The father or fathers, presumed and alleged.

12 (3) The legal guardian or guardians.

13 (4) The child, if the child is 10 years of age or older.

14 (5) Any known sibling of the child who is the subject of the
15 hearing if that sibling either is the subject of a dependency
16 proceeding or has been adjudged to be a dependent child of the
17 juvenile court. If the sibling is 10 years of age or older, the
18 sibling, the sibling's caregiver, and the sibling's attorney. If the
19 sibling is under 10 years of age, the sibling's caregiver and the
20 sibling's attorney. However, notice is not required to be given to
21 any sibling whose matter is calendared in the same court on the
22 same day.

23 (6) If there is no parent or guardian residing in California, or if
24 the residence is unknown, then to any adult relative residing
25 within the county or if none, the adult relative residing nearest
26 the court.

27 (7) The attorney for the parent or parents, or legal guardian or
28 guardians.

29 (8) The district attorney, if the district attorney has notified the
30 clerk of the court that he or she wishes to receive the petition,
31 containing the time, date, and place of the hearing.

32 (9) The probate department of the superior court that
33 appointed the guardian, if the child is a ward of a guardian
34 appointed pursuant to the Probate Code.

35 (b) No notice is required for a parent whose parental rights
36 have been terminated.

37 (c) The notice shall be given as soon as possible after the filing
38 of the petition.

39 (d) The notice of the initial petition hearing shall include all of
40 the following:

1 (1) The date, time, and place of the hearing.

2 (2) The name of the child.

3 (3) A copy of the petition.

4 *(e) Service of the notice shall be written or oral. If the person*
5 *being served cannot read, notice shall be given orally.*

6 *(f) If the probation officer or social worker knows or has*
7 *reason to know that an Indian child is involved, notice shall be*
8 *given in accordance with Section 224.2.*

9 **SEC. 37.—**

10 **SEC. 40.** Section 290.2 of the Welfare and Institutions Code
11 is amended to read:

12 290.2. Upon the filing of a petition by a probation officer or
13 social worker, the clerk of the juvenile court shall issue notice, to
14 which shall be attached a copy of the petition, and he or she shall
15 cause the same to be served as prescribed in this section.

16 (a) Notice shall be given to the following persons whose
17 address is known or becomes known prior to the initial petition
18 hearing:

19 (1) The mother.

20 (2) The father or fathers, presumed and alleged.

21 (3) The legal guardian or guardians.

22 (4) The child, if the child is 10 years of age or older.

23 (5) Any known sibling of the child who is the subject of the
24 hearing if that sibling either is the subject of a dependency
25 proceeding or has been adjudged to be a dependent child of the
26 juvenile court. If the sibling is 10 years of age or older, the
27 sibling, the sibling's caregiver, and the sibling's attorney. If the
28 sibling is under 10 years of age, the sibling's caregiver and the
29 sibling's attorney. However, notice is not required to be given to
30 any sibling whose matter is calendared in the same court on the
31 same day.

32 (6) If there is no parent or guardian residing in California, or if
33 the residence is unknown, to any adult relative residing within
34 the county or if none, the adult relative residing nearest the court.

35 (7) Upon reasonable notification by counsel representing the
36 child, parent, or guardian, the clerk of the court shall give notice
37 to that counsel as soon as possible.

38 (8) The district attorney, if the district attorney has notified the
39 clerk of the court that he or she wishes to receive the petition,
40 containing the time, date, and place of the hearing.

(9) The probate department of the superior court that appointed the guardian, if the child is a ward of a guardian appointed pursuant to the Probate Code.

(b) No notice is required for a parent whose parental rights have been terminated.

(c) Notice shall be served as follows:

(1) If the child is retained in custody, the notice shall be given to the persons required to be noticed as soon as possible, and at least five days before the hearing, unless the hearing is set to be heard in less than five days in which case notice shall be given at least 24 hours prior to the hearing.

(2) If the child is not retained in custody, the notice shall be given to those persons required to be noticed at least 10 days prior to the date of the hearing. If any person who is required to be given notice is known to reside outside of the county, the clerk of the juvenile court shall mail the notice and copy of the petition by first-class mail, to that person as soon as possible after the filing of the petition and at least 10 days before the time set for hearing. Failure to respond to the notice is not cause for an arrest or detention. In the instance of a failure to appear after notice by first-class mail, the court shall direct that the notice and copy of the petition be personally served on all persons required to receive the notice and copy of the petition. For these purposes, personal service of the notice and copy of the petition outside of the county at least 10 days before the time set for hearing is equivalent to service by first-class mail. Service may be waived by any person by a voluntary appearance entered in the minutes of the court or by a written waiver of service filed with the clerk of the court at, or prior to, the hearing.

(d) The notice of the initial petition hearing shall include all of the following:

(1) The date, time, and place of the hearing.

(2) The name of the child.

(3) A copy of the petition.

(e) *If the court knows or has reason to know that an Indian child is involved, notice shall be given in accordance with Section 224.2.*

~~SEC. 38.—~~

SEC. 41. Section 291 of the Welfare and Institutions Code is amended to read:

1 291. After the initial petition hearing, the clerk of the court
2 shall cause the notice to be served in the following manner:

3 (a) Notice of the hearing shall be given to the following
4 persons:

5 (1) The mother.

6 (2) The father or fathers, presumed and alleged.

7 (3) The legal guardian or guardians.

8 (4) The child, if the child is 10 years of age or older.

9 (5) Any known sibling of the child who is the subject of the
10 hearing if that sibling either is the subject of a dependency
11 proceeding or has been adjudged to be a dependent child of the
12 juvenile court. If the sibling is 10 years of age or older, the
13 sibling, the sibling's caregiver, and the sibling's attorney. If the
14 sibling is under 10 years of age, the sibling's caregiver and the
15 sibling's attorney. However, notice is not required to be given to
16 any sibling whose matter is calendared in the same court on the
17 same day.

18 (6) Each attorney of record unless counsel of record is present
19 in court when the hearing is scheduled, then no further notice
20 need be given.

21 (7) If there is no parent or guardian residing in California, or if
22 the residence is unknown, then to any adult relative residing
23 within the county or if none, the adult relative residing nearest
24 the court.

25 (b) No notice is required for a parent whose parental rights
26 have been terminated.

27 (c) Notice shall be served as follows:

28 (1) If the child is detained, the notice shall be given to the
29 persons required to be noticed as soon as possible, and at least
30 five days before the hearing, unless the hearing is set less than
31 five days and then at least 24 hours prior to the hearing.

32 (2) If the child is not detained, the notice shall be given to
33 those persons required to be noticed at least 10 days prior to the
34 date of the hearing.

35 (d) The notice shall include all of the following:

36 (1) The name and address of the person notified.

37 (2) The nature of the hearing.

38 (3) Each section and subdivision under which the proceeding
39 has been initiated.

40 (4) The date, time, and place of the hearing.

1 (5) The name of the child upon whose behalf the petition has
2 been brought.

3 (6) A statement that:

4 (A) If they fail to appear, the court may proceed without them.

5 (B) The child, parent, guardian, Indian custodian, or adult
6 relative to whom notice is required to be given is entitled to have
7 an attorney present at the hearing.

8 (C) If the parent, guardian, Indian custodian, or adult relative
9 is indigent and cannot afford an attorney, and desires to be
10 represented by an attorney, the parent, guardian, Indian
11 custodian, or adult relative shall promptly notify the clerk of the
12 juvenile court.

13 (D) If an attorney is appointed to represent the parent,
14 guardian, Indian custodian, or adult relative, the represented
15 person shall be liable for all or a portion of the costs to the extent
16 of his or her ability to pay.

17 (E) The parent, guardian, Indian custodian, or adult relative
18 may be liable for the costs of support of the child in any
19 out-of-home placement.

20 (7) A copy of the petition.

21 (e) Service of the notice of the hearing shall be given in the
22 following manner:

23 (1) If the child is detained and the persons required to be
24 noticed are not present at the initial petition hearing, they shall be
25 noticed by personal service or by certified mail, return receipt
26 requested.

27 (2) If the child is detained and the persons required to be
28 noticed are present at the initial petition hearing, they shall be
29 noticed by personal service or by first-class mail.

30 (3) If the child is not detained, the persons required to be
31 noticed shall be noticed by personal service or by first-class mail,
32 unless the person to be served is known to reside outside the
33 county, in which case service shall be by first-class mail.

34 (f) Any of the notices required to be given under this section
35 or Sections 290.1 and 290.2 may be waived by a party in person
36 or through his or her attorney, or by a signed written waiver filed
37 on or before the date scheduled for the hearing.

38 (g) *If the court knows or has reason to know that an Indian*
39 *child is involved, notice shall be given in accordance with*
40 *Section 224.2.*

1 ~~SEC. 39.—~~

2 *SEC. 42.* Section 292 of the Welfare and Institutions Code is
3 amended to read:

4 292. The social worker or probation officer shall give notice
5 of the review hearing held pursuant to Section 364 in the
6 following manner:

7 (a) Notice of the hearing shall be given to the following
8 persons:

9 (1) The mother.

10 (2) The presumed father or any father receiving services.

11 (3) The legal guardian or guardians.

12 (4) The child, if the child is 10 years of age or older.

13 (5) Any known sibling of the child who is the subject of the
14 hearing if that sibling either is the subject of a dependency
15 proceeding or has been adjudged to be a dependent child of the
16 juvenile court. If the sibling is 10 years of age or older, the
17 sibling, the sibling's caregiver, and the sibling's attorney. If the
18 sibling is under 10 years of age, the sibling's caregiver and the
19 sibling's attorney. However, notice is not required to be given to
20 any sibling whose matter is calendared in the same court on the
21 same day.

22 (6) Each attorney of record, if that attorney was not present at
23 the time that the hearing was set by the court.

24 (b) No notice is required for a parent whose parental rights
25 have been terminated.

26 (c) The notice of the hearing shall be served not earlier than 30
27 days, nor later than 15 days, before the hearing.

28 (d) The notice shall contain a statement regarding the nature of
29 the hearing to be held and any change in the custody or status of
30 the child being recommended by the supervising agency. The
31 notice shall also include a statement that the child and the parent
32 or parents or legal guardian or guardians have a right to be
33 present at the hearing, to be represented by counsel at the hearing
34 and the procedure for obtaining appointed counsel, and to present
35 evidence regarding the proper disposition of the case. The notice
36 shall also state that if the parent or parents or legal guardian or
37 guardians fail to appear, the court may proceed without them.

38 (e) Service of the notice shall be by personal service, by
39 first-class mail, or by certified mail, return receipt requested,
40 addressed to the last known address of the person to be noticed.

1 (f) *If the social worker or the probation officer knows or has*
2 *reason to know that an Indian child is involved, notice shall be*
3 *given in accordance with Section 224.2.*

4 ~~SEC. 40.—~~

5 SEC. 43. Section 293 of the Welfare and Institutions Code is
6 amended to read:

7 293. The social worker or probation officer shall give notice
8 of the review hearings held pursuant to Section 366.21 or 366.22
9 in the following manner:

10 (a) Notice of the hearing shall be given to the following
11 persons:

12 (1) The mother.

13 (2) The presumed father or any father receiving services.

14 (3) The legal guardian or guardians.

15 (4) The child, if the child is 10 years of age or older.

16 (5) Any known sibling of the child who is the subject of the
17 hearing if that sibling either is the subject of a dependency
18 proceeding or has been adjudged to be a dependent child of the
19 juvenile court. If the sibling is 10 years of age or older, the
20 sibling, the sibling's caregiver, and the sibling's attorney. If the
21 sibling is under 10 years of age, the sibling's caregiver and the
22 sibling's attorney. However, notice is not required to be given to
23 any sibling whose matter is calendared in the same court on the
24 same day.

25 (6) In the case of a child removed from the physical custody of
26 his or her parent or legal guardian, the foster parents, relative
27 caregivers, community care facility, or foster family agency
28 having custody of the child. In a case in which a foster family
29 agency is notified of the hearing pursuant to this section, and the
30 child resides in a foster home certified by the foster family
31 agency, the foster family agency shall provide timely notice of
32 the hearing to the child's caregivers.

33 (7) Each attorney of record if that attorney was not present at
34 the time that the hearing was set by the court.

35 (b) No notice is required for a parent whose parental rights
36 have been terminated.

37 (c) The notice of hearing shall be served not earlier than 30
38 days, nor later than 15 days, before the hearing.

39 (d) The notice shall contain a statement regarding the nature of
40 the hearing to be held and any change in the custody or status of

the child being recommended by the supervising agency. If the notice is to the child, parent or parents, or legal guardian or guardians, the notice shall also advise them of the right to be present, the right to be represented by counsel, the right to request counsel, and the right to present evidence. The notice shall also state that if the parent or parents or legal guardian or guardians fail to appear, the court may proceed without them.

(e) Service of the notice shall be by first-class mail addressed to the last known address of the person to be noticed or by personal service on the person. Service of a copy of the notice shall be by personal service or by certified mail, return receipt requested, or any other form of notice that is equivalent to service by first-class mail.

(f) Notice to a foster parent, a relative caregiver, a certified foster parent who has been approved for adoption, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, shall indicate that the person notified may attend all hearings or may submit any information he or she deems relevant to the court in writing.

(g) *If the social worker or probation officer knows or has reason to know that an Indian child is involved, notice shall be given in accordance with Section 224.2.*

~~SEC. 41.—~~

SEC. 44. Section 294 of the Welfare and Institutions Code is amended to read:

294. The social worker or probation officer shall give notice of a selection and implementation hearing held pursuant to Section 366.26 in the following manner:

(a) Notice of the hearing shall be given to the following persons:

- (1) The mother.
- (2) The fathers, presumed and alleged.
- (3) The child, if the child is 10 years of age or older.
- (4) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court. If the sibling is 10 years of age or older, the sibling, the sibling's caregiver, and the sibling's attorney. If the sibling is under 10 years of age, the sibling's caregiver and the

1 sibling's attorney. However, notice is not required to be given to
2 any sibling whose matter is calendared in the same court on the
3 same day.

4 (5) The grandparents of the child, if their address is known and
5 if the parent's whereabouts are unknown.

6 (6) All counsel of record.

7 (b) The following persons shall not be notified of the hearing:

8 (1) A parent who has relinquished the child to the State
9 Department of Social Services or to a licensed adoption agency
10 for adoption, and the relinquishment has been accepted and filed
11 with notice as required under Section 8700 of the Family Code.

12 (2) An alleged father who has denied paternity and has
13 executed a waiver of the right to notice of further proceedings.

14 (3) A parent whose parental rights have been terminated.

15 (c) (1) Service of the notice shall be completed at least 45
16 days before the hearing date. Service is deemed complete at the
17 time the notice is personally delivered to the person named in the
18 notice or 10 days after the notice has been placed in the mail, or
19 at the expiration of the time prescribed by the order for
20 publication.

21 (2) Service of notice in cases where publication is ordered shall
22 be completed at least 30 days before the date of the hearing.

23 (d) Regardless of the type of notice required, or the manner in
24 which it is served, once the court has made the initial finding that
25 notice has properly been given to the parent, or to any person
26 entitled to receive notice pursuant to this section, subsequent
27 notice for any continuation of a Section 366.26 hearing may be
28 by first-class mail to any last known address, by an order made
29 pursuant to Section 296, or by any other means that the court
30 determines is reasonably calculated, under any circumstance, to
31 provide notice of the continued hearing. However, if the
32 recommendation changes from the recommendation contained in
33 the notice previously found to be proper, notice shall be provided
34 to the parent, and to any person entitled to receive notice
35 pursuant to this section, regarding that subsequent hearing.

36 (e) The notice shall contain the following information:

37 (1) The date, time, and place of the hearing.

38 (2) The right to appear.

39 (3) The parents' right to counsel.

40 (4) The nature of the proceedings.

1 (5) The recommendation of the supervising agency.

2 (6) A statement that, at the time of hearing, the court is
3 required to select a permanent plan of adoption, legal
4 guardianship, or long-term foster care for the child.

5 (f) Notice to the parents may be given in any one of the
6 following manners:

7 (1) If the parent is present at the hearing at which the court
8 schedules a hearing pursuant to Section 366.26, the court shall
9 advise the parent of the date, time, and place of the proceedings,
10 their right to counsel, the nature of the proceedings, and the
11 requirement that at the proceedings the court shall select and
12 implement a plan of adoption, legal guardianship, or long-term
13 foster care for the child. The court shall direct the parent to
14 appear for the proceedings and then direct that the parent be
15 notified thereafter by first-class mail to the parent's usual place
16 of residence or business only.

17 (2) Certified mail, return receipt requested, to the parent's last
18 known mailing address. This notice shall be sufficient if the child
19 welfare agency receives a return receipt signed by the parent.

20 (3) Personal service to the parent named in the notice.

21 (4) Delivery to a competent person who is at least 18 years of
22 age at the parent's usual place of residence or business, and
23 thereafter mailed to the parent named in the notice by first-class
24 mail at the place where the notice was delivered.

25 (5) If the residence of the parent is outside the state, service
26 may be made as described in paragraph (1), (3), or (4) or by
27 certified mail, return receipt requested.

28 (6) If the recommendation of the probation officer or social
29 worker is legal guardianship or long-term foster care, service
30 may be made by first-class mail to the parent's usual place of
31 residence or business.

32 (7) If the parent's whereabouts are unknown and the parent
33 cannot, with reasonable diligence, be served in any manner
34 specified in paragraphs (1) to (6), inclusive, the petitioner shall
35 file an affidavit with the court at least 75 days before the hearing
36 date, stating the name of the parent and describing the efforts
37 made to locate and serve the parent.

38 (A) If the court determines that there has been due diligence in
39 attempting to locate and serve the parent and the probation
40 officer or social worker recommends adoption, service shall be to

1 that parent's attorney of record, if any, by certified mail, return
2 receipt requested. If the parent does not have an attorney of
3 record, the court shall order that service be made by publication
4 of citation requiring the parent to appear at the date, time, and
5 place stated in the citation, and that the citation be published in a
6 newspaper designated as most likely to give notice to the parent.
7 Publication shall be made once a week for four consecutive
8 weeks. Whether notice is to the attorney of record or by
9 publication, the court shall also order that notice be given to the
10 grandparents of the child by first-class mail.

11 (B) If the court determines that there has been due diligence in
12 attempting to locate and serve the parent and the probation
13 officer or social worker recommends legal guardianship or
14 long-term foster care, no further notice is required to the parent,
15 but the court shall order that notice be given to the grandparents
16 of the child by first-class mail.

17 (C) In any case where the residence of the parent becomes
18 known, notice shall immediately be served upon the parent as
19 provided for in either paragraph (2), (3), (4), (5), or (6).

20 (8) If the identity of one or both of the parents, or alleged
21 parents, of the child is unknown, or if the name of one or both
22 parents is uncertain, then that fact shall be set forth in the
23 affidavit and the court, if ordering publication, shall order the
24 published citation to be directed to either the father or mother, or
25 both, of the child, and to all persons claiming to be the father or
26 mother of the child, naming and otherwise describing the child.

27 (g) Notice to the child and all counsel of record shall be by
28 first-class mail.

29 ~~(h)~~

30 ~~Notwithstanding~~

31 *(h) If the court knows or has reason to know that an Indian*
32 *child is involved, notice shall be given in accordance with*
33 *Section 224.2.*

34 *(i) Notwithstanding* subdivision (a), if the attorney of record is
35 present at the time the court schedules a hearing pursuant to
36 Section 366.26, no further notice is required, except as required
37 by subparagraph (A) of paragraph (7) of subdivision (f).

38 ~~(i)~~

39 *(j)* This section shall also apply to children adjudged wards
40 pursuant to Section 727.31.

1 ~~SEC. 42.—~~

2 *SEC. 45.* Section 295 of the Welfare and Institutions Code is
3 amended to read:

4 295. The social worker or probation officer shall give notice
5 of review hearings held pursuant to Section 366.3 in the
6 following manner:

7 (a) Notice of the hearing shall be given to the following
8 persons:

9 (1) The mother.

10 (2) The presumed father.

11 (3) The legal guardian or guardians.

12 (4) The child, if the child is 10 years of age or older.

13 (5) Any known sibling of the child who is the subject of the
14 hearing if that sibling either is the subject of a dependency
15 proceeding or has been adjudged to be a dependent child of the
16 juvenile court. If the sibling is 10 years of age or older, the
17 sibling, the sibling's caregiver, and the sibling's attorney. If the
18 sibling is under 10 years of age, the sibling's caregiver and the
19 sibling's attorney. However, notice is not required to be given to
20 any sibling whose matter is calendared in the same court on the
21 same day.

22 (6) The foster parents, relative caregivers, community care
23 facility, or foster family agency having physical custody of the
24 child in the case of a child removed from the physical custody of
25 the parents or legal guardian.

26 (7) The attorney of record if that attorney of record was not
27 present at the time that the hearing was set by the court.

28 (8) The alleged father or fathers, but only if the
29 recommendation is to set a new hearing pursuant to Section
30 366.26.

31 (b) No notice is required for a parent whose parental rights
32 have been terminated.

33 (c) The notice of the review hearing shall be served no earlier
34 than 30 days, nor later than 15 days, before the hearing.

35 (d) The notice of the review hearing shall contain a statement
36 regarding the nature of the hearing to be held, any recommended
37 change in the custody or status of the child, and any
38 recommendation that the court set a new hearing pursuant to
39 Section 366.26 in order to select a more permanent plan.

(e) Service of notice shall be by first-class mail addressed to the last known address of the person to be provided notice.

(f) If the child is ordered into a permanent plan of legal guardianship, and subsequently a petition to terminate or modify the guardianship is filed, the probation officer or social worker shall serve notice of the petition not less than 15 court days prior to the hearing on all persons listed in subdivision (a) and on the court that established legal guardianship if it is in another county.

(g) *If the social worker or probation officer knows or has reason to know that an Indian child is involved, notice shall be given in accordance with Section 224.2.*

~~SEC. 43.—~~

SEC. 46. Section 297 of the Welfare and Institutions Code is amended to read:

297. (a) Notice required for an initial petition filed pursuant to Section 300 is applicable to a subsequent petition filed pursuant to Section 342.

(b) Upon the filing of a supplemental petition pursuant to Section 387, the clerk of the juvenile court shall immediately set the matter for hearing within 30 days of the date of the filing, and the social worker or probation officer shall cause notice thereof to be served upon the persons required by, and in the manner prescribed by, Sections 290.1, 290.2, and 291.

(c) If a petition for modification has been filed pursuant to Section 388, and it appears that the best interest of the child may be promoted by the proposed change of the order, the recognition of a sibling relationship, or the termination of jurisdiction, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the social worker or probation officer and to the child's attorney of record, or if there is no attorney of record for the child, to the child, and his or her parent or parents or legal guardian or guardians in the manner prescribed by Section 291 unless a different manner is prescribed by the court.

(d) *If the court knows or has reason to know that an Indian child is involved, notice shall be given in accordance with Section 224.2.*

~~SEC. 44.—~~

SEC. 47. Section 305.5 of the Welfare and Institutions Code is amended to read:

305.5. (a) If an Indian child, who is a ward of a tribal court or resides or is domiciled within a reservation of an Indian tribe that has exclusive jurisdiction over child custody proceedings as recognized in Section 1911 of Title 25 of the United States Code or reassumed exclusive jurisdiction over Indian child custody proceedings pursuant to Section 1918 of Title 25 of the United States Code, has been removed by a state or local authority from the custody of his or her parents or Indian custodian, the state or local authority shall provide notice of the removal to the tribe no later than the next working day following the removal and shall provide all relevant documentation to the tribe regarding the removal and the child's identity. If the tribe determines that the child is an Indian child, the state or local authority shall transfer the child custody proceeding to the tribe within 24 hours after receipt of written notice from the tribe of that determination.

(b) In the case of an Indian child who is not domiciled or residing within a reservation of an Indian tribe or who resides or is domiciled within a reservation of an Indian tribe who does not have exclusive jurisdiction over child custody proceedings pursuant to Section 1911 or 1918 of Title 25 of the United States Code, the court shall transfer—~~such~~ *the* proceeding to the jurisdiction of the child's tribe upon petition of either parent, the Indian custodian, if any, or the child's tribe, unless the court finds good cause not to transfer. The court shall dismiss the proceeding or terminate jurisdiction only after receiving proof that the tribal court has accepted the transfer.

(c) (1) If a petition to transfer proceedings as described in subdivision (b) is filed, the court shall find good cause to deny the petition only if one or more of the following circumstances are shown to exist:

(A) One or both of the child's parents object to the transfer.

(B) The child's tribe does not have a "tribal court" as defined in Section 1910 of Title 25 of the United States Code.

(C) The tribal court of the child's tribe declines the transfer.

(D) The evidence necessary to decide the case cannot be presented in the tribal court without undue hardship to the parties or the witnesses, and the tribal court is unable to mitigate the hardship by making arrangements to receive and consider the evidence or testimony by use of remote communication, by hearing the evidence or testimony at a location convenient to the

1 parties or witnesses, or by use of other means permitted in the
2 tribal court's rules of evidence or discovery.

3 (2) Socioeconomic conditions and the perceived adequacy of
4 tribal social services or judicial systems may not be considered in
5 a determination that good cause exists.

6 (d) An Indian child's domicile or place of residence is
7 determined by that of his or her parents or Indian custodian.

8 (e) If any petitioner in an Indian child custody proceeding has
9 improperly removed the child from the custody of the parent or
10 Indian custodian or has improperly retained custody after a visit
11 or other temporary relinquishment of custody, the court shall
12 decline jurisdiction over the petition and shall immediately return
13 the child to his *or her* parent or Indian custodian, unless returning
14 the child to the parent or Indian custodian would subject the child
15 to a substantial and immediate danger or threat of danger.

16 *(f) Nothing in this section shall be construed to prevent the*
17 *emergency removal of an Indian child who is a ward of a tribal*
18 *court or resides or is domiciled within a reservation of an Indian*
19 *tribe, but is temporarily located off the reservation, from a*
20 *parent or Indian custodian or the emergency placement of the*
21 *child in a foster home or institution in order to prevent imminent*
22 *physical damage or harm to the child. The state or local*
23 *authority shall insure that the emergency removal or placement*
24 *terminates immediately when the removal or placement is no*
25 *longer necessary to prevent imminent physical damage or harm*
26 *to the child and shall expeditiously initiate an Indian child*
27 *custody proceeding, transfer the child to the jurisdiction of the*
28 *Indian child's tribe, or restore the child to the parent or Indian*
29 *custodian, as may be appropriate.*

30 ~~SEC. 45.—~~

31 *SEC. 48.* Section 317 of the Welfare and Institutions Code is
32 amended to read:

33 317. (a) When it appears to the court that a parent, Indian
34 custodian, or guardian of the child desires counsel but is
35 presently financially unable to afford and cannot for that reason
36 employ counsel, the court may appoint counsel as provided in
37 this section.

38 (b) When it appears to the court that a parent, Indian
39 custodian, or guardian of the child is presently financially unable
40 to afford and cannot for that reason employ counsel, and the

1 child has been placed in out-of-home care, or the petitioning
2 agency is recommending that the child be placed in out-of-home
3 care, the court shall appoint counsel, unless the court finds that
4 the parent, Indian custodian, or guardian has made a knowing
5 and intelligent waiver of counsel as provided in this section.

6 (c) Where a child is not represented by counsel, the court shall
7 appoint counsel for the child unless the court finds that the child
8 would not benefit from the appointment of counsel. The court
9 shall state on the record its reasons for that finding. A primary
10 responsibility of any counsel appointed to represent a child
11 pursuant to this section shall be to advocate for the protection,
12 safety, and physical and emotional well-being of the child.
13 Counsel for the child may be a district attorney, public defender,
14 or other member of the bar, provided that the counsel does not
15 represent another party or county agency whose interests conflict
16 with the child's *interests*. The fact that the district attorney
17 represents the child in a proceeding pursuant to Section 300 as
18 well as conducts a criminal investigation or files a criminal
19 complaint or information arising from the same or reasonably
20 related set of facts as the proceeding pursuant to Section 300 is
21 not in and of itself a conflict of interest. The court may fix the
22 compensation for the services of appointed counsel. The
23 appointed counsel shall have a caseload and training that assures
24 adequate representation of the child. The Judicial Council shall
25 promulgate rules of court that establish caseload standards,
26 training requirements, and guidelines for appointed counsel for
27 children and shall adopt rules as required by Section 326.5 no
28 later than July 1, 2001.

29 (d) The counsel appointed by the court shall represent the
30 parent, guardian, Indian custodian, or child at the detention
31 hearing and at all subsequent proceedings before the juvenile
32 court. Counsel shall continue to represent the parent, guardian,
33 Indian custodian, or child unless relieved by the court upon the
34 substitution of other counsel or for cause. The representation
35 shall include representing the parent, guardian, Indian custodian,
36 or the child in termination proceedings and in those proceedings
37 relating to the institution or setting aside of a legal guardianship.

38 (e) The counsel for the child shall be charged in general with
39 the representation of the child's interests. To that end, the
40 counsel shall make or cause to have made any further

1 investigations that he or she deems in good faith to be reasonably
2 necessary to ascertain the facts, including the interviewing of
3 witnesses, and he or she shall examine and cross-examine
4 witnesses in both the adjudicatory and dispositional hearings. He
5 or she may also introduce and examine his or her own witnesses,
6 make recommendations to the court concerning the child's
7 welfare, and participate further in the proceedings to the degree
8 necessary to adequately represent the child. In any case in which
9 the child is four years of age or older, counsel shall interview the
10 child to determine the child's wishes and to assess the child's
11 well-being, and shall advise the court of the child's wishes.
12 Counsel for the child shall not advocate for the return of the child
13 if, to the best of his or her knowledge, that return conflicts with
14 the protection and safety of the child. In addition counsel shall
15 investigate the interests of the child beyond the scope of the
16 juvenile proceeding and report to the court other interests of the
17 child that may need to be protected by the institution of other
18 administrative or judicial proceedings. The attorney representing
19 a child in a dependency proceeding is not required to assume the
20 responsibilities of a social worker and is not expected to provide
21 nonlegal services to the child. The court shall take whatever
22 appropriate action is necessary to fully protect the interests of the
23 child.

24 (f) Either the child or the counsel for the child, with the
25 informed consent of the child if the child is found by the court to
26 be of sufficient age and maturity to so consent, may invoke the
27 psychotherapist-client privilege, physician-patient privilege, and
28 clergyman-penitent privilege; and if the child invokes the
29 privilege, counsel may not waive it, but if counsel invokes the
30 privilege, the child may waive it. Counsel shall be holder of these
31 privileges if the child is found by the court not to be of sufficient
32 age and maturity to so consent. For the sole purpose of fulfilling
33 his or her obligation to provide legal representation of the child,
34 counsel for a child shall have access to all records with regard to
35 the child maintained by a health care facility, as defined in
36 Section 1545 of the Penal Code, health care providers, as defined
37 in Section 6146 of the Business and Professions Code, a
38 physician and surgeon or other health practitioner as defined in
39 Section 11165.8 of the Penal Code or a child care custodian, as
40 defined in Section 11165.7 of the Penal Code. Notwithstanding

any other law, counsel shall be given access to all records relevant to the case which are maintained by state or local public agencies. All information requested from a child protective agency regarding a child who is in protective custody, or from a child's guardian ad litem, shall be provided to the child's counsel within 30 days of the request.

(g) In a county of the third class, if counsel is to be provided to a child at county expense other than by counsel for the agency, the court shall first utilize the services of the public defender prior to appointing private counsel, to provide legal counsel. Nothing in this subdivision shall be construed to require the appointment of the public defender in any case in which the public defender has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the public defender after making a finding of good cause and stating the reasons therefor on the record.

(h) In a county of the third class, if counsel is to be appointed for a parent, Indian custodian, or guardian at county expense, the court shall first utilize the services of the alternate public defender, prior to appointing private counsel, to provide legal counsel. Nothing in this subdivision shall be construed to require the appointment of the alternate public defender in any case in which the public defender has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the alternate public defender after making a finding of good cause and stating the reasons therefor on the record.

~~SEC. 46.—~~

SEC. 49. Section 360.6 of the Welfare and Institutions Code is repealed.

~~SEC. 47.—~~

SEC. 50. Section 360.8 is added to the Welfare and Institutions Code, to read:

360.8. (a) When a proceeding under this chapter involves a child who is Indian but who does not meet the definition of "Indian child" in the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) has Indian ancestry but who is not an Indian child, and the proceeding would otherwise be an Indian child custody proceeding, the court may recognize the child's tribe from which

1 *the child is descended and grant standing to participate as a party*
2 *in the proceeding upon the request of a tribe. ~~The tribe may:~~*

3 *(b) If the court recognizes the child's tribe and grants standing*
4 *to the tribe to participate as a party to the proceeding, the tribe*
5 *may do all of the following:*

6 (1) Be present at the hearing.

7 (2) Be represented by retained counsel or a representative of
8 the tribe designated by the tribe to intervene on behalf of the
9 tribe, provided that when the tribe appears as a party by a
10 representative of the tribe, the name of the representative and a
11 statement of authorization for that individual to appear as the
12 tribe shall be submitted to the court in the form of a tribal
13 resolution or other document evidencing an official act of the
14 tribe.

15 (3) Address the court.

16 (4) Receive notice of hearings.

17 (5) Examine all court documents relating to the proceeding.

18 (6) Present evidence.

19 (7) Submit written reports and recommendations to the court.

20 (8) Perform other duties and responsibilities as requested or
21 approved by the court.

22 ~~(b) Subdivision (a) applies when~~

23 ~~the child is not eligible for membership in his or her tribe but is~~
24 ~~the biological grandchild of a member of the tribe or resides or is~~
25 ~~domiciled within the boundaries of an Indian reservation.~~

26 *(c) If more than one tribe requests intervention under*
27 *subdivision (a), the court may limit intervention to the tribe with*
28 *which the child has the most significant contacts, as determined*
29 *in accordance with paragraph (2) of subdivision (d) of Section*
30 *170 of the Family Code.*

31 *(d) This section is intended to assist the court in making*
32 *decisions that are in the best interest of the child involved by*
33 *permitting a tribe, in the circumstances set out in subdivision (a),*
34 *to inform the court and parties to the proceeding about*
35 *placement options for the child within the child's extended family*
36 *or the tribal community, services and programs available to the*
37 *child and the child's parents as Indians, and other unique*
38 *interests the child or the child's parents may have as Indians.*
39 *This section shall not be construed to make the Indian Child*
40 *Welfare Act (25 U.S.C. Sec. 1901 et seq.), or any state law*

1 *implementing the Indian Child Welfare Act, applicable to the*
2 *proceedings, or to limit the court's discretion to permit other*
3 *interested persons to participate in these or any other*
4 *proceedings.*

5 ~~SEC. 48.—~~

6 SEC. 51. Section 361 of the Welfare and Institutions Code is
7 amended to read:

8 361. (a) 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
12 guardian and shall by its order clearly and specifically set forth
13 all those limitations. Any limitation on the right of the parent or
14 guardian to make educational decisions for the child shall be
15 specifically addressed in the court order. The limitations may not
16 exceed those necessary to protect the child. If the court
17 specifically limits the right of the parent or guardian to make
18 educational decisions for the child, the court shall at the same
19 time appoint a responsible adult to make educational decisions
20 for the child until one of the following occurs:

21 (1) The minor reaches 18 years of age, unless the child
22 chooses not to make educational decisions for himself or herself,
23 or is deemed by the court to be incompetent.

24 (2) Another responsible adult is appointed to make educational
25 decisions for the minor pursuant to this section.

26 (3) The right of the parent or guardian to make educational
27 decisions for the minor is fully restored.

28 (4) A successor guardian or conservator is appointed.

29 (5) The child is placed into a planned permanent living
30 arrangement pursuant to paragraph (3) of subdivision (g) of
31 Section 366.21, Section 366.22, or Section 366.26, at which time
32 the foster parent, relative caretaker, or nonrelative extended
33 family member as defined in Section 362.7 has the right to
34 represent the child in educational matters pursuant to Section
35 56055 of the Education Code.

36 An individual who would have a conflict of interest in
37 representing the child may not be appointed to make educational
38 decisions. For purposes of this section, "an individual who would
39 have a conflict of interest," means a person having any interests
40 that might restrict or bias his or her ability to make educational

1 decisions, including, but not limited to, those conflicts of interest
2 prohibited by Section 1126 of the Government Code, and the
3 receipt of compensation or attorneys' fees for the provision of
4 services pursuant to this section. A foster parent may not be
5 deemed to have a conflict of interest solely because he or she
6 receives compensation for the provision of services pursuant to
7 this section.

8 If the court is unable to appoint a responsible adult to make
9 educational decisions for the child and paragraphs (1) to (5),
10 inclusive, do not apply, and the child has either been referred to
11 the local educational agency for special education and related
12 services, or has a valid individualized education program, the
13 court shall refer the child to the local educational agency for
14 appointment of a surrogate parent pursuant to Section 7579.5 of
15 the Government Code.

16 All educational and school placement decisions shall seek to
17 ensure that the child is in the least restrictive educational
18 programs and has access to the academic resources, services, and
19 extracurricular and enrichment activities that are available to all
20 pupils. In all instances, educational and school placement
21 decisions shall be based on the best interests of the child.

22 (b) Subdivision (a) does not limit the ability of a parent to
23 voluntarily relinquish his or her child to the State Department of
24 Social Services or to a licensed county adoption agency at any
25 time while the child is a dependent child of the juvenile court, if
26 the department or agency is willing to accept the relinquishment.

27 (c) A dependent child may not be taken from the physical
28 custody of his or her parents or guardian or guardians with whom
29 the child resides at the time the petition was initiated, unless the
30 juvenile court finds clear and convincing evidence of any of the
31 following:

32 (1) There is a substantial danger to the physical health, safety,
33 protection, or physical or emotional well-being of the minor or
34 would be if the minor were returned home, and there are no
35 reasonable means by which the minor's physical health can be
36 protected without removing the minor from the minor's parents'
37 or guardians' physical custody. The fact that a minor has been
38 adjudicated a dependent child of the court pursuant to
39 subdivision (e) of Section 300 shall constitute prima facie
40 evidence that the minor cannot be safely left in the custody of the

1 parent or guardian with whom the minor resided at the time of
2 injury. The court shall consider, as a reasonable means to protect
3 the minor, the option of removing an offending parent or
4 guardian from the home. The court shall also consider, as a
5 reasonable means to protect the minor, allowing a nonoffending
6 parent or guardian to retain custody as long as that parent or
7 guardian presents a plan acceptable to the court demonstrating
8 that he or she will be able to protect the child from future harm.

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

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

20 (4) The minor or a sibling of the minor has been sexually
21 abused, or is deemed to be at substantial risk of being sexually
22 abused, by a parent, guardian, or member of his or her household,
23 or other person known to his or her parent, and there are no
24 reasonable means by which the minor can be protected from
25 further sexual abuse or a substantial risk of sexual abuse without
26 removing the minor from his or her parent or guardian, or the
27 minor does not wish to return to his or her parent or guardian.

28 (5) The minor has been left without any provision for his or
29 her support, or a parent who has been incarcerated or
30 institutionalized cannot arrange for the care of the minor, or a
31 relative or other adult custodian with whom the child has been
32 left by the parent is unwilling or unable to provide care or
33 support for the child and the whereabouts of the parent is
34 unknown and reasonable efforts to locate him or her have been
35 unsuccessful.

36 (6) In the case of an Indian child, ~~the continued~~ custody of the
37 child by the parent or Indian custodian is likely to result in
38 serious emotional or physical damage to the child, and ~~such that~~
39 finding is supported by testimony of a "qualified expert witness"
40 as defined in Section 224.6.

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

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

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

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

~~SEC. 49.—~~

SEC. 52. Section 361.31 is added to the Welfare and Institutions Code, to read:

361.31. (a) In any case in which an Indian child is removed from the physical custody of his or her parents or Indian custodian pursuant to Section 361, the child's placement shall comply with this section.

(b) Any emergency removal, foster care, or guardianship placement of an Indian child shall be in the least restrictive setting which most approximates a family situation and in which the child's special needs, if any, may be met. The child shall also be placed within reasonable proximity to the child's home, taking into account any special needs of the child. Preference shall be given to the child's placement with one of the following, in descending priority order:

(1) A member of the child's extended family, as defined in Section 1903 of ~~Title 25 of the United States Code~~ *the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.)*.

(2) A foster home licensed, approved, or specified by the child's tribe.

(3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority.

1 (4) An institution for children approved by an Indian tribe or
2 operated by an Indian organization which has a program suitable
3 to meet the Indian child's needs.

4 (c) In any adoptive placement of an Indian child, preference
5 shall be given to a placement with one of the following, in
6 descending priority order:

7 (1) A member of the child's extended family, as defined in
8 Section 1903 of ~~Title 25 of the United States Code~~ *the Indian*
9 *Child Welfare Act (25 U.S.C. Sec. 1901 et seq.)*.

10 (2) Other members of the child's tribe.

11 (3) Another Indian family.

12 (4) A non-Indian family approved by the Indian child's tribe.

13 (d) Notwithstanding the placement preferences listed in
14 subdivisions (b) and (c), if a different order of placement
15 preference is established by the child's tribe, the court or agency
16 effecting the placement shall follow the order of preference
17 established by the tribe or in the agreement.

18 (e) Where appropriate, the placement preference of the Indian
19 child or parent shall be considered. In applying the preferences, a
20 consenting parent's request for anonymity shall also be given
21 weight by the court or agency effecting the placement. Unless
22 there is clear and convincing evidence that placement within the
23 order of preference applicable under subdivision (b), (c) or (d)
24 would be harmful to the Indian child, consideration of the
25 preference of the Indian child or parent or a parent's request for
26 anonymity shall not be a basis for placing an Indian child outside
27 of the applicable order of preference.

28 (f) The prevailing social and cultural standards of the Indian
29 community in which the parent or extended family members of
30 an Indian child reside, or with which the parent or extended
31 family members maintain social and cultural ties, or the
32 prevailing social and cultural standards of the Indian child's tribe
33 shall be applied in meeting the placement preferences under this
34 section. A determination of the applicable prevailing social and
35 cultural standards shall be confirmed by the testimony or other
36 documented support of qualified expert witnesses.

37 (g) Any person or court involved in the placement of an Indian
38 child shall use the services of the Indian child's tribe, whenever
39 available through the tribe, in seeking to secure placement within

1 the order of placement preference established in this section and
2 in the supervision of the placement.

3 (h) Except as otherwise provided in subdivision (e), the court
4 may only determine that good cause exists not to follow
5 placement preferences applicable under subdivision (b), (c) or (d)
6 when there is clear and convincing evidence that a diligent search
7 has been completed for families meeting the preference criteria
8 and no suitable placement is available. When no preferred
9 placement is available, active efforts shall be made to place the
10 child with a family committed to enabling the child to have
11 extended family visitation and participation in the cultural and
12 ceremonial events of the child's tribe.

13 (i) A record of each foster care placement or adoptive
14 placement of an Indian child shall be maintained in perpetuity by
15 the State Department of Social Services. The record shall
16 document the active efforts to comply with the applicable order
17 of preference specified in this section.

18 ~~SEC. 50.—~~

19 *SEC. 53.* Section 361.4 of the Welfare and Institutions Code
20 is amended to read:

21 361.4. (a) Prior to placing a child in the home of a relative, or
22 the home of any prospective guardian or other person who is not
23 a licensed or certified foster parent, the county social worker
24 shall visit the home to ascertain the appropriateness of the
25 placement.

26 (b) Whenever a child may be placed in the home of a relative,
27 or the home of any prospective guardian or other person who is
28 not a licensed or certified foster parent, the court or county social
29 worker placing the child shall cause a state and federal level
30 criminal records check to be conducted by an appropriate
31 governmental agency through the California Law Enforcement
32 Telecommunications System (CLETS) pursuant to Section
33 16504.5. The criminal records check shall be conducted with
34 regard to all persons over the age of 18 years living in the home,
35 and on any other person over the age of 18 years, other than
36 professionals providing professional services to the child, known
37 to the placing entity who may have significant contact with the
38 child, including any person who has a familial or intimate
39 relationship with any person living in the home. A criminal
40 records check may be conducted pursuant to this section on any

1 person over the age of 14 years living in the home who the
2 county social worker believes may have a criminal record.
3 Within five judicial days following the criminal records check
4 conducted through the California Law Enforcement
5 Telecommunications System, the social worker shall ensure that
6 a fingerprint clearance check of the relative and any other person
7 whose criminal record was obtained pursuant to this subdivision
8 is initiated through the Department of Justice to ensure the
9 accuracy of the criminal records check conducted through the
10 California Law Enforcement Telecommunications System and
11 shall review the results of any criminal records check to assess
12 the safety of the home. The Department of Justice shall forward
13 fingerprint requests for federal level criminal history information
14 to the Federal Bureau of Investigation pursuant to this section.

15 (c) Whenever a child may be placed in the home of a relative,
16 or a prospective guardian or other person who is not a licensed or
17 certified foster parent, the county social worker shall cause a
18 check of the Child Abuse Index pursuant to subdivision (a) of
19 Section 11170 of the Penal Code to be requested from the
20 Department of Justice. The Child Abuse Index check shall be
21 conducted on all persons over the age of 18 years living in the
22 home.

23 (d) (1) If the criminal records check indicates that the person
24 has no criminal record, the county social worker and court may
25 consider the home of the relative, prospective guardian, or other
26 person who is not a licensed or certified foster parent for
27 placement of a child.

28 (2) If the criminal records check indicates that the person has
29 been convicted of a crime that would preclude licensure under
30 Section 1522 of the Health and Safety Code, the child may not be
31 placed in the home, unless a criminal records exemption has been
32 granted by the county, based on substantial and convincing
33 evidence to support a reasonable belief that the person with the
34 criminal conviction is of such good character as to justify the
35 placement and not present a risk of harm to the child pursuant to
36 paragraph (3).

37 (3) (A) A county may issue a criminal records exemption only
38 if that county has been granted permission by the Director of
39 Social Services to issue criminal records exemptions. The county
40 may file a request with the Director of Social Services seeking

1 permission for the county to establish a procedure to evaluate and
2 grant appropriate individual criminal records exemptions for
3 persons described in subdivision (b). The director shall grant or
4 deny the county's request within 14 days of receipt. The county
5 shall evaluate individual criminal records in accordance with the
6 standards and limitations set forth in paragraph (1) of subdivision
7 (g) of Section 1522 of the Health and Safety Code, and in no
8 event shall the county place a child in the home of a person who
9 is ineligible for an exemption under that provision.

10 (B) The department shall monitor county implementation of
11 the authority to grant an exemption under this paragraph to
12 ensure that the county evaluates individual criminal records and
13 allows or disallows placements according to the standards set
14 forth in paragraph (1) of subdivision (g) of Section 1522 of the
15 Health and Safety Code.

16 (4) The department shall conduct an evaluation of the
17 implementation of paragraph (3) through random sampling of
18 county exemption decisions.

19 (5) The State Department of Social Services shall not evaluate
20 or grant criminal ~~record~~ records exemption requests for persons
21 described in subdivision (b), unless the exemption request is
22 made by an Indian tribe pursuant to subdivision (f).

23 (6) If a county has not requested, or has not been granted,
24 permission by the State Department of Social Services to
25 establish a procedure to evaluate and grant criminal records
26 exemptions, the county may not place a child into the home of a
27 person described in subdivision (b) if any person residing in the
28 home has been convicted of a crime other than a minor traffic
29 violation, except as provided in subdivision (f).

30 (e) Nothing in this section shall preclude a county from
31 conducting a criminal background check that the county is
32 otherwise authorized to conduct using fingerprints.

33 (f) Upon request from an Indian tribe, the State Department of
34 Social Services shall evaluate an exemption request, if needed, to
35 allow placement into an Indian home that the tribe has designated
36 for placement under the Indian Child Welfare Act (25 U.S.C.
37 Sec. 1901 et seq.) that would otherwise be barred under this
38 section. However, if the county with jurisdiction over the child
39 that is the subject of the tribe's request has established an
40 approved procedure pursuant to paragraph (3) of subdivision (d),

1 the tribe may request that the county evaluate the exemption
2 request. Once a tribe has elected to have the exemption request
3 reviewed by either the State Department of Social Services or the
4 county, the exemption decision may only be made by that entity.
5 Nothing in this subdivision limits the duty of a county social
6 worker to evaluate the home for placement or to gather
7 information needed to evaluate an exemption request.

8 ~~SEC. 51.—~~

9 *SEC. 54.* Section 361.7 is added to the Welfare and
10 Institutions Code, to read:

11 361.7. (a) Notwithstanding Section 361.5, a party seeking an
12 involuntary foster care placement of, or termination of parental
13 rights over, an Indian child shall provide evidence to the court
14 that active efforts have been made to provide remedial services
15 and rehabilitative programs designed to prevent the breakup of
16 the Indian family and that these efforts have proved unsuccessful.
17 The court shall not order the placement or termination; unless the
18 evidence of active efforts shows there has been a vigorous and
19 concerted level of casework beyond the level that typically
20 constitutes reasonable efforts as defined in Section 727.4.
21 Reasonable efforts shall not be construed to be active efforts. The
22 active efforts shall be made in a manner that takes into account
23 the prevailing social and cultural values, conditions, and way of
24 life of the Indian child's tribe. Active efforts shall utilize the
25 available resources of the Indian child's extended family, tribe,
26 tribal and other Indian social service agencies, and individual
27 Indian caregivers. Active efforts shall include, but are not limited
28 to, all of the following:

29 (1) A request to the Indian child's tribe to convene traditional
30 and customary support and resolution actions or services.

31 (2) Identification and participation of tribally designated
32 representatives at the earliest point.

33 (3) Consultation with extended family members to identify
34 family structure and family support services that may be
35 provided by extended family members.

36 (4) Frequent visitation in the Indian child's home and the
37 homes of the child's extended family members.

38 (5) Exhaustion of all tribally appropriate family preservation
39 alternatives.

(6) Identification and provision of information to the child's family concerning community resources that may be able to offer housing, financial, and transportation assistance and actively assisting the family in accessing the community resources.

(b) No foster care placement or guardianship may be ordered in the proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of a qualified expert witness, as defined in Section 224.6, that ~~the continued~~ custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

~~SEC. 52.—~~

SEC. 55. Section 366 of the Welfare and Institutions Code is amended to read:

366. (a) (1) The status of every dependent child in foster care shall be reviewed periodically as determined by the court but no less frequently than once every six months, as calculated from the date of the original dispositional hearing, until the hearing described in Section 366.26 is completed. The court shall consider the safety of the child and shall determine all of the following:

(A) The continuing necessity for and appropriateness of the placement.

(B) The extent of the agency's compliance with the case plan in making reasonable efforts, or, in the case of an Indian child, active efforts as ~~defined~~ *described* in Section 361.7, to return the child to a safe home and to complete any steps necessary to finalize the permanent placement of the child, including efforts to maintain relationships between a child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care, and individuals other than the child's siblings who are important to the child, consistent with the child's best interests.

(C) Whether there should be any limitation on the right of the parent or guardian to make educational decisions for the child. That limitation shall be specifically addressed in the court order and may not exceed those necessary to protect the child. Whenever the court specifically limits the right of the parent or guardian to make educational decisions for the child, the court shall at the same time appoint a responsible adult to make educational decisions for the child pursuant to Section 361.

1 (D) (i) Whether the child has other siblings under the court's
2 jurisdiction, and, if any siblings exist, all of the following:

3 (I) The nature of the relationship between the child and his or
4 her siblings.

5 (II) The appropriateness of developing or maintaining the
6 sibling relationships pursuant to Section 16002.

7 (III) If the siblings are not placed together in the same home,
8 why the siblings are not placed together and what efforts are
9 being made to place the siblings together, or why those efforts
10 are not appropriate.

11 (IV) If the siblings are not placed together, the frequency and
12 nature of the visits between siblings.

13 (V) The impact of the sibling relationships on the child's
14 placement and planning for legal permanence.

15 (VI) The continuing need to suspend sibling interaction, if
16 applicable, pursuant to subdivision (c) of Section 16002.

17 (ii) The factors the court may consider in making a
18 determination regarding the nature of the child's sibling
19 relationships may include, but are not limited to, whether the
20 siblings were raised together in the same home, whether the
21 siblings have shared significant common experiences or have
22 existing close and strong bonds, whether either sibling expresses
23 a desire to visit or live with his or her sibling, as applicable, and
24 whether ongoing contact is in the child's best emotional interests.

25 (E) The extent of progress which has been made toward
26 alleviating or mitigating the causes necessitating placement in
27 foster care.

28 (2) The court shall project a likely date by which the child may
29 be returned to and safely maintained in the home or placed for
30 adoption, legal guardianship, or in another planned permanent
31 living arrangement.

32 (b) Subsequent to the hearing, periodic reviews of each child
33 in foster care shall be conducted pursuant to the requirements of
34 Sections 366.3 and 16503.

35 (c) If the child has been placed out of state, each review
36 described in subdivision (a) and any reviews conducted pursuant
37 to Sections 366.3 and 16503 shall also address whether the
38 out-of-state placement continues to be the most appropriate
39 placement selection and in the best interests of the child.

1 (d) A child may not be placed in an out-of-state group home,
2 or remain in an out-of-state group home, unless the group home
3 is in compliance with Section 7911.1 of the Family Code.

4 ~~SEC. 53.—~~

5 *SEC. 56.* Section 366.26 of the Welfare and Institutions Code
6 is amended to read:

7 366.26. (a) This section applies to children who are adjudged
8 dependent children of the juvenile court pursuant to subdivision
9 (c) of Section 360. The procedures specified herein are the
10 exclusive procedures for conducting these hearings; Part 2
11 (commencing with Section 3020) of Division 8 of the Family
12 Code is not applicable to these proceedings. Section 8714.7 of
13 the Family Code is applicable and available to all dependent
14 children meeting the requirements of that section, if the
15 postadoption contact agreement has been entered into
16 voluntarily. For children who are adjudged dependent children of
17 the juvenile court pursuant to subdivision (c) of Section 360, this
18 section and Sections 8604, 8605, 8606, and 8700 of the Family
19 Code and Chapter 5 (commencing with Section 7660) of Part 3
20 of Division 12 of the Family Code specify the exclusive
21 procedures for permanently terminating parental rights with
22 regard to, or establishing legal guardianship of, the child while
23 the child is a dependent child of the juvenile court.

24 (b) At the hearing, that shall be held in juvenile court for all
25 children who are dependents of the juvenile court, the court, in
26 order to provide stable, permanent homes for these children, shall
27 review the report as specified in Section 361.5, 366.21, or
28 366.22, shall indicate that the court has read and considered it,
29 shall receive other evidence that the parties may present, and then
30 shall make findings and orders in the following order of
31 preference:

32 (1) Terminate the rights of the parent or parents and order that
33 the child be placed for adoption and, upon the filing of a petition
34 for adoption in the juvenile court, order that a hearing be set. The
35 court shall proceed with the adoption after the appellate rights of
36 the natural parents have been exhausted.

37 (2) On making a finding under paragraph (3) of subdivision
38 (c), identify adoption as the permanent placement goal and order
39 that efforts be made to locate an appropriate adoptive family for
40 the child within a period not to exceed 180 days.

1 (3) Appoint a legal guardian for the child and order that letters
2 of guardianship issue.

3 (4) Order that the child be placed in long-term foster care,
4 subject to the periodic review of the juvenile court under Section
5 366.3.

6 In choosing among the above alternatives the court shall
7 proceed pursuant to subdivision (c).

8 (c) (1) If the court determines, based on the assessment
9 provided as ordered under subdivision (i) of Section 366.21 or
10 subdivision (b) of Section 366.22, and any other relevant
11 evidence, by a clear and convincing standard, that it is likely the
12 child will be adopted, the court shall terminate parental rights and
13 order the child placed for adoption. The fact that the child is not
14 yet placed in a preadoptive home nor with a relative or foster
15 family who is prepared to adopt the child, shall not constitute a
16 basis for the court to conclude that it is not likely the child will
17 be adopted. A finding under subdivision (b) or paragraph (1) of
18 subdivision (e) of Section 361.5 that reunification services shall
19 not be offered, under subdivision (e) of Section 366.21 that the
20 whereabouts of a parent have been unknown for six months or
21 that the parent has failed to visit or contact the child for six
22 months or that the parent has been convicted of a felony
23 indicating parental unfitness, or, under Section 366.21 or 366.22,
24 that the court has continued to remove the child from the custody
25 of the parent or guardian and has terminated reunification
26 services, shall constitute a sufficient basis for termination of
27 parental rights unless the court finds a compelling reason for
28 determining that termination would be detrimental to the child
29 due to one or more of the following circumstances:

30 (A) The parents, *Indian custodians*, or guardians have
31 maintained regular visitation and contact with the child and the
32 child would benefit from continuing the relationship.
33 ~~“Guardians” shall include an “Indian custodian” as defined in the~~
34 ~~Indian Child Welfare Act (25 U.S.C. 1903(6)).~~

35 (B) A child 12 years of age or older objects to termination of
36 parental rights.

37 (C) The child is placed in a residential treatment facility,
38 adoption is unlikely or undesirable, and continuation of parental
39 rights will not prevent finding the child a permanent family

1 placement if the parents cannot resume custody when residential
2 care is no longer needed.

3 (D) The child is living with a nonrelative foster parent who is
4 unable or unwilling to adopt the child because of exceptional
5 circumstances, that do not include an unwillingness to accept
6 legal or financial responsibility for the child, but who is willing
7 and capable of providing the child with a stable and permanent
8 environment and the removal of the child from the physical
9 custody of his or her foster parent would be detrimental to the
10 emotional well-being of the child. This subparagraph does not
11 apply to any child who is either (i) under six years of age or (ii) a
12 member of a sibling group where at least one child is under six
13 years of age and the siblings are, or should be, permanently
14 placed together.

15 (E) There would be substantial interference with a child's
16 sibling relationship, taking into consideration the nature and
17 extent of the relationship, including, but not limited to, whether
18 the child was raised with a sibling in the same home, whether the
19 child shared significant common experiences or has existing
20 close and strong bonds with a sibling, and whether ongoing
21 contact is in the child's best interest, including the child's
22 long-term emotional interest, as compared to the benefit of legal
23 permanence through adoption. When a child's removal and
24 subsequent lack of contact with siblings has prevented the child
25 from establishing or maintaining sibling relationships, the court
26 shall consider the potential benefit of establishing and
27 maintaining sibling relationships when applying this
28 subparagraph.

29 (F) The child is living with a relative who is willing and
30 capable of providing the child with a stable and permanent
31 environment and the removal of the child from the physical
32 custody of his or her relative would be detrimental to the
33 emotional well-being of the child. "Relative" shall include an
34 "extended family member" as defined in the Indian Child
35 Welfare Act (25 U.S.C. Sec. 1903(2)).

36 (G) The child is an Indian child and there is a compelling
37 reason for determining that termination of parental rights would
38 not be in the best interest of the child, including, but not limited
39 to:

1 (i) Termination of parental rights would substantially interfere
2 with the child's connection to his or her tribal community or the
3 child's tribal membership rights.

4 (ii) The child's tribe has identified guardianship, long-term
5 foster care with a fit and willing relative, or another planned
6 permanent living arrangement for the child.

7 If the court finds that termination of parental rights would be
8 detrimental to the child pursuant to subparagraph (A), (B), (C),
9 (D), (E), (F) or (G), it shall state its reasons in writing or on the
10 record.

11 (2) The court shall not terminate parental rights unless:

12 (A) At each hearing at which the court was required to
13 consider reasonable efforts or services, the court has found that
14 reasonable efforts were made or that reasonable services were
15 offered or provided.

16 (B) In the case of an Indian child:

17 (i) At the hearing terminating parental rights and at each prior
18 hearing at which the court was required to consider active efforts
19 or services the court has found, supported by clear and
20 convincing evidence, that active efforts were made in accordance
21 with Section 361.7.

22 (ii) The court has made a determination at the hearing
23 terminating parental rights, supported by evidence beyond a
24 reasonable doubt, including testimony of one or more "qualified
25 expert witnesses" as defined in Section 224.6, that ~~the continued~~
26 custody of the child by the parent is likely to result in serious
27 emotional or physical damage to the child.

28 (3) If the court finds that termination of parental rights would
29 not be detrimental to the child pursuant to paragraph (1) and that
30 the child has a probability for adoption but is difficult to place for
31 adoption and there is no identified or available prospective
32 adoptive parent, the court may identify adoption as the
33 permanent placement goal and without terminating parental
34 rights, order that efforts be made to locate an appropriate
35 adoptive family for the child within a period not to exceed 180
36 days. During this 180-day period, the public agency responsible
37 for seeking adoptive parents for each child shall, to the extent
38 possible, ask each child who is 10 years of age or older who is
39 placed in a group home for six months or longer from the date
40 the child entered foster care, to identify any individuals, other

1 than the child's siblings, who are important to the child, in order
2 to identify potential adoptive parents. The public agency may ask
3 any other child to provide that information, as appropriate.
4 During the 180-day period, the public agency shall, to the extent
5 possible, contact other private and public adoption agencies
6 regarding the availability of the child for adoption. During the
7 180-day period, the public agency shall conduct the search for
8 adoptive parents in the same manner as prescribed for children in
9 Sections 8708 and 8709 of the Family Code. At the expiration of
10 this period, another hearing shall be held and the court shall
11 proceed pursuant to paragraph (1) or (3) of subdivision (b). For
12 purposes of this section, a child may only be found to be difficult
13 to place for adoption if there is no identified or available
14 prospective adoptive parent for the child because of the child's
15 membership in a sibling group, or the presence of a diagnosed
16 medical, physical, or mental handicap, or the child is the age of
17 seven years or more.

18 (4) (A) If the court finds that adoption of the child or
19 termination of parental rights is not in the best interest of the
20 child, because one of the conditions in subparagraph (A), (B),
21 (C), (D), (E), (F), or (G) of paragraph (1) or in paragraph (2)
22 applies, the court shall either order that the present caretakers or
23 other appropriate persons shall become legal guardians of the
24 child or order that the child remain in long-term foster care.
25 Legal guardianship shall be considered before long-term foster
26 care, if it is in the best interests of the child and if a suitable
27 guardian can be found. A child who is 10 years of age or older
28 who is placed in a group home for six months or longer from the
29 date the child entered foster care, shall be asked to identify any
30 individuals, other than the child's siblings, who are important to
31 the child, in order to identify potential guardians. The agency
32 may ask any other child to provide that information, as
33 appropriate.

34 (B) If the child is living with a relative or a foster parent who
35 is willing and capable of providing a stable and permanent
36 environment, but not willing to become a legal guardian, the
37 child shall not be removed from the home if the court finds the
38 removal would be seriously detrimental to the emotional
39 well-being of the child because the child has substantial
40 psychological ties to the relative caretaker or foster parents.

1 (C) The court shall also make an order for visitation with the
2 parents or guardians unless the court finds by a preponderance of
3 the evidence that the visitation would be detrimental to the
4 physical or emotional well-being of the child.

5 (5) If the court finds that the child should not be placed for
6 adoption, that legal guardianship shall not be established, and
7 that there are no suitable foster parents except exclusive-use
8 homes available to provide the child with a stable and permanent
9 environment, the court may order the care, custody, and control
10 of the child transferred from the county welfare department to a
11 licensed foster family agency. The court shall consider the
12 written recommendation of the county welfare director regarding
13 the suitability of the transfer. The transfer shall be subject to
14 further court orders.

15 The licensed foster family agency shall place the child in a
16 suitable licensed or exclusive-use home that has been certified by
17 the agency as meeting licensing standards. The licensed foster
18 family agency shall be responsible for supporting the child and
19 providing appropriate services to the child, including those
20 services ordered by the court. Responsibility for the support of
21 the child shall not, in and of itself, create liability on the part of
22 the foster family agency to third persons injured by the child.
23 Those children whose care, custody, and control are transferred
24 to a foster family agency shall not be eligible for foster care
25 maintenance payments or child welfare services, except for
26 emergency response services pursuant to Section 16504.

27 (d) The proceeding for the appointment of a guardian for a
28 child who is a dependent of the juvenile court shall be in the
29 juvenile court. If the court finds pursuant to this section that legal
30 guardianship is the appropriate permanent plan, it shall appoint
31 the legal guardian and issue letters of guardianship. The
32 assessment prepared pursuant to subdivision (g) of Section 361.5,
33 subdivision (i) of Section 366.21, and subdivision (b) of Section
34 366.22 shall be read and considered by the court prior to the
35 appointment, and this shall be reflected in the minutes of the
36 court. The person preparing the assessment may be called and
37 examined by any party to the proceeding.

38 (e) The proceeding for the adoption of a child who is a
39 dependent of the juvenile court shall be in the juvenile court if
40 the court finds pursuant to this section that adoption is the

1 appropriate permanent plan and the petition for adoption is filed
2 in the juvenile court. Upon the filing of a petition for adoption,
3 the juvenile court shall order that an adoption hearing be set. The
4 court shall proceed with the adoption after the appellate rights of
5 the natural parents have been exhausted. The full report required
6 by Section 8715 of the Family Code shall be read and considered
7 by the court prior to the adoption and this shall be reflected in the
8 minutes of the court. The person preparing the report may be
9 called and examined by any party to the proceeding. It is the
10 intent of the Legislature, pursuant to this subdivision, to give
11 potential adoptive parents the option of filing in the juvenile
12 court the petition for the adoption of a child who is a dependent
13 of the juvenile court. Nothing in this section is intended to
14 prevent the filing of a petition for adoption in any other court as
15 permitted by law, instead of in the juvenile court.

16 (f) At the beginning of any proceeding pursuant to this section,
17 if the child or the parents are not being represented by previously
18 retained or appointed counsel, the court shall proceed as follows:

19 (1) In accordance with subdivision (c) of Section 317, if a
20 child before the court is without counsel, the court shall appoint
21 counsel unless the court finds that the child would not benefit
22 from the appointment of counsel. The court shall state on the
23 record its reasons for that finding.

24 (2) If a parent appears without counsel and is unable to afford
25 counsel, the court shall appoint counsel for the parent, unless this
26 representation is knowingly and intelligently waived. The same
27 counsel shall not be appointed to represent both the child and his
28 or her parent. The public defender or private counsel may be
29 appointed as counsel for the parent.

30 (3) Private counsel appointed under this section shall receive a
31 reasonable sum for compensation and expenses, the amount of
32 which shall be determined by the court. The amount shall be paid
33 by the real parties in interest, other than the child, in any
34 proportions the court deems just. However, if the court finds that
35 any of the real parties in interest are unable to afford counsel, the
36 amount shall be paid out of the general fund of the county.

37 (g) The court may continue the proceeding for not to exceed
38 30 days as necessary to appoint counsel, and to enable counsel to
39 become acquainted with the case.

1 (h) (1) At all proceedings under this section, the court shall
2 consider the wishes of the child and shall act in the best interests
3 of the child.

4 (2) In accordance with Section 349, the child shall be present
5 in court if the child or the child's counsel so requests or the court
6 so orders. If the child is 10 years of age or older and is not
7 present at a hearing held pursuant to this section, the court shall
8 determine whether the minor was properly notified of his or her
9 right to attend the hearing and inquire as to the reason why the
10 child is not present.

11 (3) (A) The testimony of the child may be taken in chambers
12 and outside the presence of the child's parent or parents, if the
13 child's parent or parents are represented by counsel, the counsel
14 is present, and any of the following circumstances exist:

15 (i) The court determines that testimony in chambers is
16 necessary to ensure truthful testimony.

17 (ii) The child is likely to be intimidated by a formal courtroom
18 setting.

19 (iii) The child is afraid to testify in front of his or her parent or
20 parents.

21 (B) After testimony in chambers, the parent or parents of the
22 child may elect to have the court reporter read back the testimony
23 or have the testimony summarized by counsel for the parent or
24 parents.

25 (C) The testimony of a child also may be taken in chambers
26 and outside the presence of the guardian or guardians of a child
27 under the circumstances specified in this subdivision.

28 (i) Any order of the court permanently terminating parental
29 rights under this section shall be conclusive and binding upon the
30 child, upon the parent or parents and upon all other persons who
31 have been served with citation by publication or otherwise as
32 provided in this chapter. After making the order, the court shall
33 have no power to set aside, change, or modify it, but nothing in
34 this section shall be construed to limit the right to appeal the
35 order.

36 (j) If the court, by order or judgment, declares the child free
37 from the custody and control of both parents, or one parent if the
38 other does not have custody and control, the court shall at the
39 same time order the child referred to the State Department of
40 Social Services or a licensed adoption agency for adoptive

1 placement by the agency. However, a petition for adoption may
2 not be granted until the appellate rights of the natural parents
3 have been exhausted. The State Department of Social Services or
4 licensed adoption agency shall be responsible for the custody and
5 supervision of the child and shall be entitled to the exclusive care
6 and control of the child at all times until a petition for adoption is
7 granted. With the consent of the agency, the court may appoint a
8 guardian of the child, who shall serve until the child is adopted.

9 (k) Notwithstanding any other provision of law, the
10 application of any person who, as a relative caretaker or foster
11 parent, has cared for a dependent child for whom the court has
12 approved a permanent plan for adoption, or who has been freed
13 for adoption, shall be given preference with respect to that child
14 over all other applications for adoptive placement if the agency
15 making the placement determines that the child has substantial
16 emotional ties to the relative caretaker or foster parent and
17 removal from the relative caretaker or foster parent would be
18 seriously detrimental to the child's emotional well-being.

19 As used in this subdivision, "preference" means that the
20 application shall be processed and, if satisfactory, the family
21 study shall be completed before the processing of the application
22 of any other person for the adoptive placement of the child.

23 (l) (1) An order by the court that a hearing pursuant to this
24 section be held is not appealable at any time unless all of the
25 following applies:

26 (A) A petition for extraordinary writ review was filed in a
27 timely manner.

28 (B) The petition substantively addressed the specific issues to
29 be challenged and supported that challenge by an adequate
30 record.

31 (C) The petition for extraordinary writ review was summarily
32 denied or otherwise not decided on the merits.

33 (2) Failure to file a petition for extraordinary writ review
34 within the period specified by rule, to substantively address the
35 specific issues challenged, or to support that challenge by an
36 adequate record shall preclude subsequent review by appeal of
37 the findings and orders made pursuant to this section.

38 (3) The Judicial Council shall adopt rules of court, effective
39 January 1, 1995, to ensure all of the following:

1 (A) A trial court, after issuance of an order directing a hearing
2 pursuant to this section be held, shall advise all parties of the
3 requirement of filing a petition for extraordinary writ review as
4 set forth in this subdivision in order to preserve any right to
5 appeal in these issues. This notice shall be made orally to a party
6 if the party is present at the time of the making of the order or by
7 first-class mail by the clerk of the court to the last known address
8 of a party not present at the time of the making of the order.

9 (B) The prompt transmittal of the records from the trial court
10 to the appellate court.

11 (C) That adequate time requirements for counsel and court
12 personnel exist to implement the objective of this subdivision.

13 (D) That the parent or guardian, or their trial counsel or other
14 counsel, is charged with the responsibility of filing a petition for
15 extraordinary writ relief pursuant to this subdivision.

16 (4) The intent of this subdivision is to do both of the
17 following:

18 (A) Make every reasonable attempt to achieve a substantive
19 and meritorious review by the appellate court within the time
20 specified in Sections 366.21 and 366.22 for holding a hearing
21 pursuant to this section.

22 (B) Encourage the appellate court to determine all writ
23 petitions filed pursuant to this subdivision on their merits.

24 (5) This subdivision shall only apply to cases in which an
25 order to set a hearing pursuant to this section is issued on or after
26 January 1, 1995.

27 (m) Except for subdivision (j), this section shall also apply to
28 minors adjudged wards pursuant to Section 727.31.

29 ~~SEC. 54.—~~

30 *SEC. 57.* Section 727.4 of the Welfare and Institutions Code
31 is amended to read:

32 727.4. (a) (1) Notice of any hearing pursuant to Section 727,
33 727.2, or 727.3 shall be mailed by the probation officer to the
34 minor, the minor's parent or guardian, any adult provider of care
35 to the minor including, but not limited to, foster parents, relative
36 caregivers, preadoptive parents, community care facility, or
37 foster family agency, and to the counsel of record if the counsel
38 of record was not present at the time that the hearing was set by
39 the court, by first-class mail addressed to the last known address
40 of the person to be notified, or shall be personally served on

1 those persons, not earlier than 30 days nor later than 15 days
2 preceding the date of the hearing. The notice shall contain a
3 statement regarding the nature of the status review or
4 permanency planning hearing and any change in the custody or
5 status of the minor being recommended by the probation
6 department. The notice shall also include a statement informing
7 the foster parents, relative caregivers, or preadoptive parents that
8 he or she may attend all hearings or may submit any information
9 he or she deems relevant to the court in writing. The foster
10 parents, relative caregiver, and preadoptive parents are entitled to
11 notice and opportunity to be heard but need not be made parties
12 to the proceedings. Proof of notice shall be filed with the court.

13 (2) If the court or probation officer knows or has reason to
14 know that the minor *is or* may be an Indian child, any notice sent
15 under this section shall comply with the requirements of Section
16 224.2.

17 (b) At least 10 calendar days prior to each status review and
18 permanency planning hearing, after the hearing during which the
19 court orders that the care, custody and control of the minor to be
20 under the supervision of the probation officer for placement
21 pursuant to subdivision (a) of Section 727, the probation officer
22 shall file a social study report with the court, pursuant to the
23 requirements listed in Section 706.5.

24 (c) The probation department shall inform the minor, the
25 minor's parent or guardian, and all counsel of record that a copy
26 of the social study prepared for the hearing will be available 10
27 days prior to the hearing and may be obtained from the probation
28 officer.

29 (d) As used in Article 15 (commencing with Section 625) to
30 Article 18 (commencing with Section 725), inclusive:

31 (1) "Foster care" means residential care provided in any of the
32 settings described in Section 11402.

33 (2) "At risk of entering foster care" means that conditions
34 within a minor's family may necessitate his or her entry into
35 foster care unless those conditions are resolved.

36 (3) "Preadoptive parent" means a licensed foster parent who
37 has been approved for adoption by the State Department of
38 Social Services when it is acting as an adoption agency or by a
39 licensed adoption agency.

1 (4) “Date of entry into foster care” means the date that is 60
2 days after the date on which the minor was removed from his or
3 her home, unless one of the exceptions below applies:

4 (A) If the minor is detained pending foster care placement, and
5 remains detained for more than 60 days, then the date of entry
6 into foster care means the date the court adjudges the minor a
7 ward and orders the minor placed in foster care under the
8 supervision of the probation officer.

9 (B) If, before the minor is placed in foster care, the minor is
10 committed to a ranch, camp, school, or other institution pending
11 placement, and remains in that facility for more than 60 days,
12 then the “date of entry into foster care” is the date the minor is
13 physically placed in foster care.

14 (C) If at the time the wardship petition was filed, the minor
15 was a dependent of the juvenile court and in out-of-home
16 placement, then the “date of entry into foster care” is the earlier
17 of the date the juvenile court made a finding of abuse or neglect,
18 or 60 days after the date on which the child was removed from
19 his or her home.

20 (5) “Reasonable efforts” means:

21 (A) Efforts made to prevent or eliminate the need for
22 removing the minor from the minor’s home.

23 (B) Efforts to make it possible for the minor to return home,
24 including, but not limited to, case management, counseling,
25 parenting training, mentoring programs, vocational training,
26 educational services, substance abuse treatment, transportation,
27 and therapeutic day services.

28 (C) Efforts to complete whatever steps are necessary to
29 finalize a permanent plan for the minor.

30 (D) In child custody proceedings involving an Indian child,
31 “*reasonable efforts*” shall also include “active efforts” as defined
32 in Section 361.7.

33 (6) “Relative” means an adult who is related to the minor by
34 blood, adoption, or affinity within the fifth degree of kinship
35 including stepparents, stepsiblings, and all relatives whose status
36 is preceded by the words “great,” “great-great,” “grand,” or the
37 spouse of any of these persons even if the marriage was
38 terminated by death or dissolution. “Relative” shall also include
39 an “extended family member” as defined in the Indian Child
40 Welfare Act (25 U.S.C. Sec. 1903(2)).

(7) “Hearing” means a noticed proceeding with findings and orders that are made on a case-by-case basis, heard by either of the following:

(A) A judicial officer, in a courtroom, recorded by a court reporter.

(B) An administrative panel, provided that the hearing is a status review hearing and that the administrative panel meets the following conditions:

(i) The administrative review shall be open to participation by the minor and parents or legal guardians and all those persons entitled to notice under subdivision (a).

(ii) The minor and his or her parents or legal guardians receive proper notice as required in subdivision (a).

(iii) The administrative review panel is composed of persons appointed by the presiding judge of the juvenile court, the membership of which shall include at least one person who is not responsible for the case management of, or delivery of services to, the minor or the parents who are the subjects of the review.

(iv) The findings of the administrative review panel shall be submitted to the juvenile court for the court’s approval and shall become part of the official court record.

SEC. 58. *Section 10553.1 of the Welfare and Institutions Code is amended to read:*

10553.1. (a) Notwithstanding any other provision of law, the director may enter into an agreement, in accordance with Section 1919 of Title 25 of the United States Code, with any California Indian tribe or any out-of-state Indian tribe, ~~as defined in Section 1903 of Title 25 of the United States Code, that has reservation lands that extend into this state~~ *regarding the care and custody of Indian children and jurisdiction over Indian child custody proceedings, including, but not limited to, agreements that provide for orderly transfer of jurisdiction on a case-by-case basis, for exclusive tribal or state jurisdiction, or for concurrent jurisdiction between the state and tribes.*

(b) (1) An agreement under subdivision (a) *regarding the care and custody of Indian children* shall provide for the delegation to the tribe or tribes of the responsibility that would otherwise be the responsibility of the county for the provision of child welfare services or assistance payments under the AFDC-FC program, or both.

(2) An agreement under subdivision (a) concerning the provision of child welfare services shall ensure that a tribe meets current service delivery standards provided for under Chapter 5 (commencing with Section 16500) of Part 4, and provides the local matching share of costs required by Section 10101.

(3) An agreement under subdivision (a) concerning assistance payments under the AFDC-FC program shall ensure that a tribe meets current foster care standards provided for under Article 5 (commencing with Section 11400) of Chapter 2 of Part 3, and provides the local matching share of costs required by Section 15200.

(c) Upon the implementation date of an agreement authorized by subdivision ~~(a)~~ (b), the county that would otherwise be responsible for providing the child welfare services or AFDC-FC payments specified in the agreement as being provided by the tribe shall no longer be subject to that responsibility to children served under the agreement.

(d) Upon the effective date of an agreement authorized by subdivision ~~(a)~~ (b), the tribe shall comply with fiscal reporting requirements specified by the department for federal and state reimbursement child welfare or AFDC-FC services.

(e) An Indian tribe that is a party to an agreement under subdivision (a), shall, in accordance with the agreement, be eligible to receive allocations of child welfare services funds pursuant to Section 10102.

(f) Implementation of an agreement under subdivision (a) may not be construed to impose liability upon, or to require indemnification by, the participating county or the State of California for any act or omission performed by an officer, agent, or employee of the participating tribe pursuant to this section.

SEC. 59. Section 16507.4 of the Welfare and Institutions Code is amended to read:

16507.4. (a) Notwithstanding any other provisions of this chapter, voluntary family reunification services shall be provided without fee to families who qualify, or would qualify if application had been made therefor, as recipients of public assistance under the Aid to Families with Dependent Children program. If the family is not qualified for ~~such~~ aid, voluntary family reunification services may be utilized, provided that the county seeks reimbursement from the parent or guardian on a

1 statewide sliding scale according to income as determined by the
2 State Department of Social Services and approved by the
3 Department of Finance.

4 (b) An out-of-home placement of a minor without adjudication
5 by the juvenile court may occur only when ~~both~~ *all* of the
6 following conditions exist:

7 (1) There is a mutual decision between the child's parent or
8 guardian and the county welfare department in accordance with
9 regulations promulgated by the State Department of Social
10 Services.

11 (2) There is a written agreement between the county welfare
12 department and the parent or guardian specifying the terms of the
13 voluntary placement. The State Department of Social Services
14 shall develop a form for voluntary placement agreements which
15 shall be used by all counties. The form shall indicate that foster
16 care under the Aid to Families with Dependent Children program
17 is available to such children.

18 (3) *In the case of an Indian child, in accordance with Section*
19 *1913 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et*
20 *seq.), the following criteria are met:*

21 (A) *The parent or Indian custodian's consent to the voluntary*
22 *out-of-home placement is executed in writing at least 10 days*
23 *after the child's birth and recorded before a judge.*

24 (B) *The judge certifies that the terms and consequences of the*
25 *consent were fully explained in detail in English and were fully*
26 *understood by the parent or that they were interpreted into a*
27 *language that the parent understood.*

28 (C) *A parent of an Indian child may withdraw his or her*
29 *consent for any reason at any time and the child shall be*
30 *returned to the parent.*

31 (c) In the case of a voluntary placement pending
32 relinquishment, a county welfare department shall have the
33 option of delegating to a licensed private adoption agency the
34 responsibility for placement by the county welfare department. If
35 such a delegation occurs, the voluntary placement agreement
36 shall be signed by the county welfare department, the child's
37 parent or guardian, and the licensed private adoption agency.

38 (d) The State Department of Social Services shall amend its
39 plan pursuant to Part E (commencing with Section 670) of
40 Subchapter IV of Chapter 7 of Title 42 of the United States Code

1 in order to conform to mandates of Public Law 96-272 for federal
2 financial participation in voluntary placements.

3 ~~SEC. 55.—~~

4 *SEC. 60.* If the Commission on State Mandates determines
5 that this act contains costs mandated by the state, reimbursement
6 to local agencies and school districts for those costs shall be
7 made pursuant to Part 7 (commencing with Section 17500) of
8 Division 4 of Title 2 of the Government Code.

9 ~~SEC. 56.—~~

10 *SEC. 61.* This act is an urgency statute necessary for the
11 immediate preservation of the public peace, health, or safety
12 within the meaning of Article IV of the Constitution and shall go
13 into immediate effect. The facts constituting the necessity are:

14 In order to clarify the scope of the Indian Child Welfare Act
15 for purposes of applying those provisions in this state, it is
16 necessary that the act take effect immediately.