

AMENDED IN SENATE AUGUST 15, 2005

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 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, 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, 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~~ *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, and would provide that ~~a court may grant standing to a parent, Indian custodian, or tribe may intervene~~ in child custody proceedings involving children with Indian ancestry, ~~upon the request of the tribe as specified~~. The bill ~~provides~~ *would provide* 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~~ *this* 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~~

This 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:

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

PART 3. INDIAN CHILDREN

170. (a) As used in this code, unless the context otherwise requires, the terms “Indian,” “Indian child,” “Indian child’s tribe,” “Indian custodian,” “Indian organization,” “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) When 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. An “Indian child custody proceeding” does not include a proceeding under this code commenced by the parent of an Indian child to determine the custodial rights of the child’s parents, unless the proceeding involves a petition to declare an Indian child free from the custody or control of a parent or involves a grant of custody to a person or persons other than a parent, over the objection of a parent.

(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~~ *may* make a determination, in writing together with the reasons for it, as to which tribe is the Indian child's tribe. *If the court makes that finding, it shall do so* 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 has the more significant contacts shall be designated as the Indian child's tribe. In determining which tribe the child has the more significant contacts with, the court shall consider, among other things, the following factors:

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

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

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

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

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

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

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

(H) The child's self identification.

(3) *If an Indian child becomes a member of a tribe other than the one designated by the court as the Indian child's tribe under paragraph (2), actions taken based on the court's determination prior to the child's becoming a tribal member shall continue to be valid.*

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

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

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

10 (2) It is in the interest of an Indian child that the child's
11 membership in the child's Indian tribe and connection to the
12 tribal community be encouraged and protected, regardless of
13 whether:

14 (A) The child is in the physical custody of an Indian parent or
15 Indian custodian at the commencement of a child custody
16 proceeding.

17 (B) The parental rights of the child's parents have been
18 terminated.

19 (C) The child has resided or been domiciled on an Indian
20 reservation.

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

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

37 (d) (1) If the Indian Child Welfare Act applies to a proceeding
38 under this code, to the extent that this code or the Adoption and
39 Safe Families Act of 1999, (P.L. 105-89) ~~are~~ *is* inconsistent or in

1 conflict with the Indian Child Welfare Act, the provisions of the
2 Indian Child Welfare Act shall prevail.

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

8 (e) Any Indian child, the Indian child's tribe, or the parent or
9 Indian custodian from whose custody the child has been
10 removed, may petition any court of competent jurisdiction to
11 invalidate an action in an Indian child custody proceeding
12 ~~involving the child for foster care, guardianship placement, or~~
13 ~~termination of parental rights~~ if the action violated Sections
14 1911, 1912, and 1913 of the Indian Child Welfare Act (25 U.S.C.
15 Sec. 1901 et seq.).

16 177. (a) In an Indian child custody proceeding, the court
17 shall apply Sections 224.2 to 224.6, inclusive, and Sections
18 305.5, 361.31, and 361.7 of the Welfare and Institutions Code,
19 and the following rules from the California Rules of Court, as
20 they read on January 1, 2005:

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

22 ~~(2) Rule 1412, subdivision (i).~~

23 *(1) Paragraph (7) of subdivision (b) of Rule 1410.*

24 *(2) Subdivision (i) of Rule 1412.*

25 (b) In the provisions cited in subdivision (a), references to
26 social workers, probation officers, county welfare department, or
27 probation department shall be construed as meaning the party
28 seeking a foster care placement, guardianship, or adoption under
29 this code.

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

32 (b) Any notice sent under this section shall be sent to the
33 minor's parent or legal guardian, Indian custodian, if any, *and* the
34 Indian child's tribe and *shall* comply with all of the following
35 requirements:

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

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

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

7 (4) Notice shall be sent to the Secretary of the Interior's
8 designated agent, the Sacramento Area Director, Bureau of
9 Indian Affairs. If the identity or location of the Indian child's
10 tribe is known, a copy of the notice shall also be sent directly to
11 the Secretary of the Interior unless the Secretary of the Interior
12 has waived ~~such~~ *that* notice in writing and the person responsible
13 for giving notice under this section has filed proof of the waiver
14 with the court.

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

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

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

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

26 (D) A copy of the petition by which the proceeding was
27 initiated.

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

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

31 (G) A statement ~~listing the rights of the child's parents, Indian~~
32 ~~custodians, and tribes. The rights shall include all of the~~
33 ~~following:~~

34 (i) ~~The right~~ *absolute right of the child's parents, Indian*
35 *custodians, and tribe* to intervene in the proceeding.

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

1 (iii) The right of the child's parents, Indian custodians, and
2 tribe to, upon request, be granted up to an additional 20 days
3 from the receipt of the notice to prepare for the proceeding.

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

7 (v) ~~A statement that~~ That if the parents or Indian custodians
8 are unable to afford counsel in an involuntary proceeding,
9 counsel will be appointed to represent the parents or Indian
10 custodians.

11 (vi) ~~A statement that~~ That the information contained in the
12 notice, petition, pleading, and other court documents is
13 confidential, so tribal officials shall maintain the confidentiality
14 of the information contained in the notice concerning the
15 particular proceeding and not reveal it to anyone who does not
16 need the information in order to exercise the tribe's rights under
17 the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

18 ~~(6)~~

19 (c) Notice shall be sent whenever it is known or there is reason
20 to believe the child may be an Indian child know that an Indian
21 child is involved, and for every hearing thereafter, including, but
22 not limited to, the hearing at which a final adoption order is to be
23 granted. After the Indian child's tribe intervenes in a proceeding,
24 the information set out in paragraphs (3), (4), (5), and (7)
25 subparagraphs (C), (D), (E), and (G) of paragraph (5) of
26 subdivision (b) need not be included with the notice.

27 ~~(7)~~

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

32 ~~(8)~~

33 (e) No proceeding shall be held until at least 10 days after
34 receipt of notice by the parent, Indian custodian, the tribe, or the
35 Bureau of Indian Affairs. The parent, Indian custodian, or the
36 tribe shall, upon request, be granted up to 20 additional days to
37 prepare for the proceeding. Nothing herein shall be construed as
38 limiting the rights of the parent, Indian custodian, or tribe to 10
39 days' notice if a lengthier notice period is required under this
40 code.

~~(9)~~

(f) 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.

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

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

(1) Be present at the hearing.

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

(3) Address the court.

(4) Receive notice of hearings.

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

(6) Present evidence.

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

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

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

(d) This section is intended to assist the court in making decisions that are in the best interest of the child involved by permitting a tribe in the circumstances set out in subdivision (a) to inform the court and parties to the proceeding about placement options for the child within the child's extended family or the tribal community, services and programs available to the child

1 and the child's parents as Indians, and other unique interests the
2 child or the child's parents may have as Indians. This section
3 shall not be construed to make the Indian Child Welfare Act (25
4 U.S.C. Sec. 1901 et seq.), or any state law implementing the
5 Indian Child Welfare Act, applicable to the proceedings, or to
6 limit the court's discretion to permit other interested persons to
7 participate in these or any other proceedings.

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

9 3040. (a) Custody should be granted in the following order
10 of preference according to the best interest of the child as
11 provided in Sections 3011 and 3020:

12 (1) To both parents jointly pursuant to Chapter 4 (commencing
13 with Section 3080) or to either parent. In making an order
14 granting custody to either parent, the court shall consider, among
15 other factors, which parent is more likely to allow the child
16 frequent and continuing contact with the noncustodial parent,
17 consistent with Sections 3011 and 3020, and shall not prefer a
18 parent as custodian because of that parent's sex. The court, in its
19 discretion, may require the parents to submit to the court a plan
20 for the implementation of the custody order.

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

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

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

32 (c) Notwithstanding subdivisions (a) and (b), if the child is an
33 Indian child, before making an order granting custody to a person
34 or persons other than a parent, over the objection of a parent, the
35 court shall apply the placement preferences and standards set out
36 in Section 361.31 of the Welfare and Institutions Code.

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

38 3041. (a) Before making an order granting custody to a
39 person or persons other than a parent, over the objection of a
40 parent, the court shall make a finding that granting custody to a

1 parent would be detrimental to the child and that granting
2 custody to the nonparent is required to serve the best interest of
3 the child. Allegations that parental custody would be detrimental
4 to the child, other than a statement of that ultimate fact, shall not
5 appear in the pleadings. The court may, in its discretion, exclude
6 the public from the hearing on this issue.

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

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

17 (d) Notwithstanding subdivision (b), if the court finds by a
18 preponderance of the evidence that the person to whom custody
19 may be given is a person described in subdivision (c), this
20 finding shall constitute a finding that the custody is in the best
21 interest of the child and that parental custody would be
22 detrimental to the child absent a showing by a preponderance of
23 the evidence to the contrary.

24 (e) Notwithstanding subdivisions (a) to (d), inclusive, if the
25 child is an Indian child, when an allegation is made that parental
26 custody would be detrimental to the child, before considering the
27 allegation and making an order granting custody to a person or
28 persons other than a parent, over the objection of a parent, the
29 court shall apply the

30 evidentiary standards described in subdivisions (d), (e), and (f)
31 of Section 1912 of the Indian Child Welfare Act (25 U.S.C. Sec.
32 1901 et seq.) and Sections 224.6 and 361.7 of the Welfare and
33 Institutions Code.

34 SEC. 4. Section 7810 of the Family Code is repealed.

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

36 7821. A finding pursuant to this chapter shall be supported by
37 clear and convincing evidence, except as otherwise provided.

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

39 7822. (a) A proceeding under this part may be brought where
40 the child has been left without provision for the child’s

1 identification by the child's parent or parents or by others or has
2 been left by both parents or the sole parent in the care and
3 custody of another for a period of six months or by one parent in
4 the care and custody of the other parent for a period of one year
5 without any provision for the child's support, or without
6 communication from the parent or parents, with the intent on the
7 part of the parent or parents to abandon the child.

8 (b) The failure to provide identification, failure to provide
9 support, or failure to communicate is presumptive evidence of
10 the intent to abandon. If the parent or parents have made only
11 token efforts to support or communicate with the child, the court
12 may declare the child abandoned by the parent or parents.

13 (c) If the child has been left without provision for the child's
14 identification and the whereabouts of the parents are unknown, a
15 petition may be filed after the 120th day following the discovery
16 of the child and citation by publication may be commenced. The
17 petition may not be heard until after the 180th day following the
18 discovery of the child.

19 (d) If the parent has placed the child for adoption and has not
20 refused to give the required consent to adoption, evidence of the
21 adoptive placement shall not in itself preclude the court from
22 finding an intent on the part of that parent to abandon the child. If
23 the parent has placed the child for adoption and has refused to
24 give the required consent to adoption but has not taken
25 reasonable action to obtain custody of the child, evidence of the
26 adoptive placement shall not in itself preclude the court from
27 finding an intent on the part of that parent to abandon the child.

28 (e) Notwithstanding subdivisions (a), (b), (c), and (d), if the
29 parent of an Indian child has transferred physical care, custody
30 and control of the child to an Indian custodian, that action shall
31 not be deemed to constitute an abandonment of the child, unless
32 the parent manifests the intent to abandon the child by either of
33 the following:

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

36 (2) Failing to substantially comply with any obligations
37 assumed by the parent in his or her agreement with the Indian
38 custodian despite the Indian custodian's objection to the
39 noncompliance.

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

1 7892.5. The court shall not declare an Indian child free from
2 the custody or control of a parent, unless both of the following
3 apply:

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

7 (b) The court finds, supported by evidence beyond a
8 reasonable doubt, including testimony of one or more “qualified
9 expert witnesses” as ~~defined~~ *described* in Section 224.5 of the
10 Welfare and Institutions Code, that the *continued* custody of the
11 child by the parent is likely to result in serious emotional or
12 physical damage to the child.

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

14 7907.3. The Interstate Compact on the Placement of Children
15 shall not apply to any placement, sending, or bringing of an
16 Indian child into another state pursuant to a transfer of
17 jurisdiction to a tribal court under Section 1911 of the Indian
18 Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

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

20 8606.5. (a) Notwithstanding any other section in this part,
21 and in accordance with Section 1913 of the Indian Child Welfare
22 Act (25 U.S.C. Sec. 1901 et seq.), consent to adoption given by
23 an Indian child’s parent is not valid unless both of the following
24 occur:

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

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

31 (b) *The* parent of an Indian child may withdraw his or her
32 consent to adoption for any reason at any time prior to the entry
33 of a final decree of adoption and the child shall be returned to the
34 parent.

35 (c) After the entry of a final decree of adoption of an Indian
36 child, the Indian child’s parent may withdraw consent to the
37 adoption upon the grounds that consent was obtained through
38 fraud or duress and may petition the court to vacate such decree.
39 Upon a finding that such consent was obtained through fraud or
40 duress, the court shall vacate such decree and return the child to

1 the parent, provided that no adoption that has been effective for
2 at least 2 years may be invalidated unless otherwise permitted
3 under state law.

4 SEC. 10. Section 8616.5 of the Family Code is amended to
5 read:

6 8616.5. (a) The Legislature finds and declares that some
7 adoptive children may benefit from either direct or indirect
8 contact with birth relatives, including the birth parent or parents
9 or an Indian tribe, after being adopted. Postadoption contact
10 agreements are intended to ensure children of an achievable level
11 of continuing contact when contact is beneficial to the children
12 and the agreements are voluntarily entered into by birth relatives,
13 including the birth parent or parents, an Indian tribe, and
14 adoptive parents.

15 (b) (1) Nothing in the adoption laws of this state shall be
16 construed to prevent the adopting parent or parents, the birth
17 relatives, including the birth parent or parents, an Indian tribe,
18 and the child from voluntarily entering into a written agreement
19 to permit continuing contact between the birth relatives,
20 including the birth parent or parents, the Indian tribe, and the
21 child if the agreement is found by the court to have been entered
22 into voluntarily and to be in the best interests of the child at the
23 time the adoption petition is granted.

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

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

31 (B) Provisions for future contact between a birth parent or
32 parents or other birth relatives, including siblings, or both, and
33 the child or an adoptive parent, or both, and in cases governed by
34 the Indian Child Welfare Act, the child's Indian tribe.

35 (C) Provisions for the sharing of information about the child in
36 the future.

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

1 (c) At the time an adoption decree is entered pursuant to a
2 petition filed pursuant to Section 8714, 8714.5, 8802, 8912, or
3 9000, the court entering the decree may grant postadoption
4 privileges if an agreement for those privileges has been entered
5 into, including agreements entered into pursuant to subdivision
6 (f) of Section 8620. The hearing to grant the adoption petition
7 and issue an order of adoption may be continued as necessary to
8 permit parties who are in the process of negotiating a
9 postadoption agreement to reach a final agreement.

10 (d) The child who is the subject of the adoption petition shall
11 be considered a party to the postadoption contact agreement. The
12 written consent to the terms and conditions of the postadoption
13 contact agreement and any subsequent modifications of the
14 agreement by a child who is 12 years of age or older is a
15 necessary condition to the granting of privileges regarding
16 visitation, contact, or sharing of information about the child,
17 unless the court finds by a preponderance of the evidence that the
18 agreement, as written, is in the best interests of the child. Any
19 child who has been found to come within Section 300 of the
20 Welfare and Institutions Code or who is the subject of a petition
21 for jurisdiction of the juvenile court under Section 300 of the
22 Welfare and Institutions Code shall be represented by an attorney
23 for purposes of consent to the postadoption contact agreement.

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

26 (1) After the adoption petition has been granted by the court,
27 the adoption cannot be set aside due to the failure of an adopting
28 parent, a birth parent, a birth relative, an Indian tribe, or the child
29 to follow the terms of this agreement or a later change to this
30 agreement.

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

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

39 (f) Upon the granting of the adoption petition and the issuing
40 of the order of adoption of a child who is a dependent of the

1 juvenile court, juvenile court dependency jurisdiction shall be
2 terminated. Enforcement of the postadoption contact agreement
3 shall be under the continuing jurisdiction of the court granting
4 the petition of adoption. The court may not order compliance
5 with the agreement absent a finding that the party seeking the
6 enforcement participated, or attempted to participate, in good
7 faith in mediation or other appropriate dispute resolution
8 proceedings regarding the conflict, prior to the filing of the
9 enforcement action, and that the enforcement is in the best
10 interests of the child. Documentary evidence or offers of proof
11 may serve as the basis for the court's decision regarding
12 enforcement. No testimony or evidentiary hearing shall be
13 required. The court shall not order further investigation or
14 evaluation by any public or private agency or individual absent a
15 finding by clear and convincing evidence that the best interests of
16 the child may be protected or advanced only by that inquiry and
17 that the inquiry will not disturb the stability of the child's home
18 to the detriment of the child.

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

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

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

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

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

32 (B) There has been a substantial change of circumstances
33 since the original agreement was executed and approved by the
34 court.

35 (C) The party seeking the termination or modification has
36 participated, or attempted to participate, in good faith in
37 mediation or other appropriate dispute resolution proceedings
38 prior to seeking court approval of the proposed termination or
39 modification.

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

(i) All costs and fees of mediation or other appropriate dispute resolution proceedings shall be borne by each party, excluding the child. All costs and fees of litigation shall be borne by the party filing the action to modify or enforce the agreement when no party has been found by the court as failing to comply with an existing postadoption contact agreement. Otherwise, a party, other than the child, found by the court as failing to comply without good cause with an existing agreement shall bear all the costs and fees of litigation.

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

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

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

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

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

(C) The prospective adoptive parent fails to negotiate ~~a postadoption contact agreement in good~~ *in good faith to enter*

1 *into a postadoption contact agreement, provided that the failure*
2 *of the parties to reach an agreement is not in and of itself proof*
3 *of bad faith.*

4 (2) In the circumstances set out in paragraph (1) the court may
5 modify prior orders or issue new orders as necessary to ensure
6 the best interest of the child is met, including, but not limited to,
7 requiring the parties to engage in family mediation services for
8 the purpose of reaching a postadoption contact agreement,
9 initiating guardianship proceedings in lieu of an adoption, or
10 authorizing a change of adoptive placement for the child.

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

12 8619.5. Whenever a final decree of adoption of an Indian
13 child has been vacated or set aside or the adoptive parent
14 voluntarily consents to termination of his or her parental rights to
15 the child, a biological parent or prior Indian custodian may
16 petition for return of custody and the court shall grant that
17 petition unless there is a showing, in a proceeding subject to the
18 provisions of Section 1912 of the Indian Child Welfare Act (25
19 U.S.C. Sec. 1901 et seq.), that the return of custody is not in the
20 best interest of the child.

21 SEC. 12. Section 8620 of the Family Code is amended to
22 read:

23 8620. (a) (1) If a parent is seeking to relinquish a child
24 pursuant to Section 8700 or execute an adoption placement
25 agreement pursuant to Section 8801.3, the department, licensed
26 adoption agency, or adoption service provider, as applicable,
27 shall ask the child and the child's parent or custodian whether the
28 child is, or may be, a member of, or eligible for membership in
29 an Indian tribe or whether the child has been identified as a
30 member of an Indian organization. The department, licensed
31 adoption agency, or adoption service provider, as applicable,
32 shall complete the forms provided for this purpose by the
33 department and shall make this completed form a part of the file.

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

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

1 (B) The name, address, date of birth, and tribal affiliation of
2 the birth parents, maternal and paternal grandparents, and
3 maternal and paternal great-grandparents of the child.

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

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

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

10 (3) (A) The department, licensed adoption agency, or
11 adoption service provider, as applicable, shall send a notice,
12 which shall include information obtained pursuant to paragraph
13 (2) and a request for confirmation of the child's Indian status, to
14 any parent and any custodian of the child, and to any Indian tribe
15 of which the child is, or may be, a member or eligible for
16 membership. If any of the information required under paragraph
17 (2) cannot be obtained, the notice shall indicate that fact.

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

22 (b) The department shall adopt regulations to ensure that if a
23 child who is being voluntarily relinquished for adoption, pursuant
24 to Section 8700, is an Indian child, the parent of the child shall be
25 advised of his or her right to withdraw his or her consent and
26 thereby rescind the relinquishment of an Indian child for any
27 reason at any time prior to entry of a final decree of termination
28 of parental rights or adoption, pursuant to Section 1913 of Title
29 25 of the United States Code.

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

34 (d) Any notice sent under this section shall comply with
35 Section 180.

36 (e) If all prior notices required by this section have been
37 provided to an Indian tribe, the Indian tribe receiving those prior
38 notices is encouraged to provide notice to the department and to
39 the licensed adoption agency or adoption service provider, not
40 later than five calendar days prior to the date of the hearing to

1 determine whether or not the final adoption order is to be
2 granted, indicating whether or not it intends to intervene in the
3 proceeding required by this section, either on its own behalf or
4 on behalf of a tribal member who is a relative of the child.

5 (f) The Legislature finds and declares that some adoptive
6 children may benefit from either direct or indirect contact with an
7 Indian tribe. Nothing in the adoption laws of this state shall be
8 construed to prevent the adopting parent or parents, the birth
9 relatives, including the birth parent or parents, an Indian tribe,
10 and the child, from voluntarily entering into a written agreement
11 to permit continuing contact between the Indian tribe and the
12 child, if the agreement is found by the court to have been entered
13 into voluntarily and to be in the best interest of the child at the
14 time the adoption petition is granted.

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

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

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

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

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

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

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

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

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

38 8710. (a) If a child is being considered for adoption, the
39 department or licensed adoption agency shall first consider
40 adoptive placement in the home of a relative or, in the case of an

1 Indian child, according to the placement preferences and
2 standards set out in subdivisions (c), (d), (e), (f), (g), (h), and (i)
3 of Section 361.31 of the Welfare and Institutions Code.
4 However, if a relative is not available, if placement with an
5 available relative is not in the child's best interest, or if
6 placement would permanently separate the child from other
7 siblings who are being considered for adoption or who are in
8 foster care and an alternative placement would not require the
9 permanent separation, the foster parent or parents of the child
10 shall be considered with respect to the child along with all other
11 prospective adoptive parents where all of the following
12 conditions are present:

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

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

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

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

21 (b) In the case of an Indian child whose foster parent or
22 parents or other prospective adoptive parents do not fall within
23 the placement preferences established in subdivision (c) or (d) of
24 Section 361.31 of the Welfare and Institutions Code, the foster
25 parent or parents or other prospective adoptive parents shall only
26 be considered if the court finds, supported by clear and
27 convincing evidence, that good cause exists to deviate from these
28 placement preferences.

29 (c) This section does not apply to a child who has been
30 adjudged a dependent of the juvenile court pursuant to Section
31 300 of the Welfare and Institutions Code.

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

33 9208. (a) The clerk of the superior court entering a final
34 order of adoption concerning an Indian child shall provide the
35 Secretary of the Interior or his or her designee with a copy of the
36 order within 30 days of the date of the order, together with any
37 information necessary to show the following:

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

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

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

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

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

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

7 9209. (a) Upon application by an Indian individual who has
8 reached the age of 18 years and who was the subject of an
9 adoptive placement, the court which entered the final decree of
10 adoption shall inform that individual of the tribal affiliation, if
11 any, of the individual's biological parents and provide any other
12 information as may be necessary to protect any rights flowing
13 from the individual's tribal relationship, including, but not
14 limited to, tribal membership rights or eligibility for federal or
15 tribal programs or services available to Indians.

16 (b) If the court records contain an affidavit of the biological
17 parent or parents that their identity remain confidential, the court
18 shall inform the individual that the Secretary of the Interior may,
19 upon request, certify to the individual's tribe that the individual's
20 parentage and other circumstances of birth entitle the individual
21 to membership under the criteria established by the tribe.

22 SEC. 16. Section 9210 of the Family Code is amended to
23 read:

24 9210. (a) Except as otherwise provided in subdivisions (b)
25 and (c), a court of this state has jurisdiction over a proceeding for
26 the adoption of a minor commenced under this part if any of the
27 following applies:

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

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

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

3 (A) The minor and the minor's parents, or the minor and the
4 prospective adoptive parent, have a significant connection with
5 this state.

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

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

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

20 (b) A court of this state may not exercise jurisdiction over a
21 proceeding for adoption of a minor if at the time the petition for
22 adoption is filed a proceeding concerning the custody or adoption
23 of the minor is pending in a court of another state exercising
24 jurisdiction substantially in conformity with this part, unless the
25 proceeding is stayed by the court of the other state because this
26 state is a more appropriate forum or for another reason.

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

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

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

(d) For purposes of subdivisions (b) and (c), “a court of another state” includes, in the case of an Indian child, a tribal court having and exercising jurisdiction over a custody proceeding involving the Indian child.

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

1449. (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) When 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 (25 U.S.C. Sec. 1901 et seq.).

(c) “Indian child custody proceeding” means a “child custody proceeding” within the meaning of Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), 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) When an Indian child is a member of more than one tribe or is eligible for membership in more than one tribe, the court ~~shall~~ *may* make a determination, in writing together with the reasons for it, as to which tribe is the Indian child’s tribe. *If the court makes that finding, it shall do so* 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 has the more significant contacts shall be designated as the Indian child’s tribe. In determining which tribe the child has the more significant contacts with, the court shall consider, among other things, the following factors:

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

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

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

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

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

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

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

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

10 (3) *If an Indian child becomes a member of a tribe other than*
11 *the one designated by the court as the Indian child's tribe under*
12 *paragraph (2), actions taken based on the court's determination*
13 *prior to the child's becoming a tribal member shall continue to*
14 *be valid.*

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

16 1456. (a) The Legislature finds and declares the following:

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

32 (2) It is in the interest of an Indian child that the child's
33 membership in the child's Indian tribe and connection to the
34 tribal community be encouraged and protected, regardless of
35 whether or not the child is in the physical custody of an Indian
36 parent or Indian custodian at the commencement of a child
37 custody proceeding, the parental rights of the child's parents
38 have been terminated, or the child has resided or been domiciled
39 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 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 state or federal 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~~ *for foster care or guardianship placement or termination of parental rights* if the action violated Sections 1911, 1912, and 1913 of the Indian Child Welfare Act.

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

1457. (a) The Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) shall apply to the following guardianship or conservatorship proceedings under this division when the proposed ward or conservatee is an Indian child:

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

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

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

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

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

23 ~~(2) Rule 1412, subdivision (i).~~

24 *(1) Paragraph (7) of subdivision (b) of Rule 1410.*

25 *(2) Subdivision (i) of Rule 1412.*

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

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

31 1458. (a) If a custody proceeding under this division involves
32 a child who has Indian ancestry but who is not an Indian child,
33 the court may recognize the tribe from which the child is
34 descended and grant standing to participate as a party in the
35 proceeding upon the request of the tribe.

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

39 (1) Be present at the hearing.

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

(3) Address the court.

(4) Receive notice of hearings.

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

(6) Present evidence.

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

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

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

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

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

1460.2. (a) If the court or petitioner knows or has reason to know that the proposed ward or conservatee may be an Indian child, notice shall comply with subdivision (b) in any case in

1 which the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.)
2 applies, as specified in Section 1457.

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

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

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

12 (3) Notice shall be sent to all tribes of which the child may be
13 a member or eligible for membership until the court makes a
14 determination as to which tribe is the Indian child's tribe in
15 accordance with subdivision (d) of Section 1449, after which
16 notice need only be sent to the tribe determined to be the Indian
17 child's tribe.

18 (4) Notice shall be sent to the Secretary of the Interior's
19 designated agent, the Sacramento Area Director, Bureau of
20 Indian Affairs. If the identity or location of the Indian child's
21 tribe is known, a copy of the notice shall also be sent directly to
22 the Secretary of the Interior, unless the Secretary of the Interior
23 has waived the notice in writing and the person responsible for
24 giving notice under this section has filed proof of the waiver with
25 the court.

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

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

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

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

36 (D) A copy of the petition.

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

38 (F) The location, mailing address, and telephone number of
39 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~~ *absolute right of the child's parents, Indian custodians, and tribe* to intervene in the proceeding.

(ii) *The right of the child's parents, Indian custodians, and tribe* 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 of the child's parents, Indian custodians, and tribe* 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~~ *The potential legal consequences of an adjudication the proceedings* on the future custodial rights of the child's parents or Indian custodians.

(v) ~~A statement that~~ *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 *Indian custodians.*

(vi) ~~A statement that~~ *That* the information contained in the notice, petition, pleading, and other court documents is confidential, *so tribal officials shall maintain the confidentiality of the information contained in the notice concerning the particular proceeding and not reveal it to anyone who does not need the information in order to exercise the tribe's rights under the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).*

~~(6)~~
(c) Notice shall be sent whenever *it is known or* there is reason to believe the child may be an Indian child *know that an Indian child is involved,* and for every hearing thereafter, including, but not limited to, the hearing at which a final adoption order is to be granted. After the Indian child's tribe intervenes in a proceeding, the information required pursuant to paragraphs (3), (4), (5), and ~~(7)~~ *set out in subparagraphs (C), (D), (E), and (G) of paragraph (5) of subdivision (b)* need not be included with the notice.

~~(7)~~
(d) 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)~~ (e).

~~(8)~~

1 (e) No proceeding shall be held until at least 10 days after
2 receipt of notice by the parent, Indian custodian, the tribe or the
3 Bureau of Indian Affairs. The parent, Indian custodian, or the
4 tribe shall, upon request, be granted up to 20 additional days to
5 prepare for the proceeding. Nothing herein shall be construed as
6 limiting the rights of the parent, Indian custodian, or tribe to 10
7 days' notice when a lengthier notice period is required.

8 ~~(9)~~

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

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

14 1474. (a) If an Indian custodian or biological parent of an
15 Indian child lacks the financial ability to retain counsel and
16 requests the appointment of counsel, the court shall, at or before
17 the time of the hearing, appoint the public defender or private
18 counsel to represent the interest of the person in proceedings
19 described in Section 1457.

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

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

24 1500.1. (a) Notwithstanding any other section in this part,
25 and in accordance with Section 1913 of the Indian Child Welfare
26 Act (25 U.S.C. Sec. 1901 et seq.), consent to nomination of a
27 guardian of the person or of a guardian of the person and the
28 estate given by an Indian child's parent is not valid unless both of
29 the following occur:

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

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

36 (b) The parent of an Indian child may withdraw his or her
37 consent to guardianship for any reason at any time prior to the
38 entry of a final decree of adoption and the child shall be returned
39 to the parent.

1 SEC. 24. Section 1510 of the Probate Code is amended to
2 read:

3 1510. (a) A relative or other person on behalf of the minor,
4 or the minor if 12 years of age or older, may file a petition for the
5 appointment of a guardian of the minor.

6 (b) The petition shall request that a guardian of the person or
7 estate of the minor, or both, be appointed, shall specify the name
8 and address of the proposed guardian and the name and date of
9 birth of the proposed ward, and shall state that the appointment is
10 necessary or convenient.

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

13 (1) The parents of the proposed ward.

14 (2) The person having legal custody of the proposed ward and,
15 if that person does not have the care of the proposed ward, the
16 person having the care of the proposed ward.

17 (3) The relatives of the proposed ward within the second
18 degree.

19 (4) In the case of a guardianship of the estate, the spouse of the
20 proposed ward.

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

23 (6) In the case of a guardianship of the person involving an
24 Indian child, any Indian custodian and the Indian child's tribe.

25 (d) If the proposed ward is a patient in or on leave of absence
26 from a state institution under the jurisdiction of the State
27 Department of Mental Health or the State Department of
28 Developmental Services and that fact is known to the petitioner,
29 the petition shall state that fact and name the institution.

30 (e) The petition shall state, so far as is known to the petitioner,
31 whether or not the proposed ward is receiving or is entitled to
32 receive benefits from the Veterans Administration and the
33 estimated amount of the monthly benefit payable by the Veterans
34 Administration for the proposed ward.

35 (f) If the petitioner has knowledge of any pending adoption,
36 juvenile court, marriage dissolution, domestic relations, custody,
37 or other similar proceeding affecting the proposed ward, the
38 petition shall disclose the pending proceeding.

39 (g) If the petitioners have accepted or intend to accept physical
40 care or custody of the child with intent to adopt, whether formed

1 at the time of placement or formed subsequent to placement, the
2 petitioners shall so state in the guardianship petition, whether or
3 not an adoption petition has been filed.

4 (h) If the proposed ward is or becomes the subject of an
5 adoption petition, the court shall order the guardianship petition
6 consolidated with the adoption petition.

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

9 SEC. 25. Section 1511 of the Probate Code is amended to
10 read:

11 1511. (a) Except as provided in subdivisions (f) and (g), at
12 least 15 days before the hearing on the petition for the
13 appointment of a guardian, notice of the time and place of the
14 hearing shall be given as provided in subdivisions (b), (c), (d),
15 and (e) of this section. The notice shall be accompanied by a
16 copy of the petition. The court may not shorten the time for
17 giving the notice of hearing under this section.

18 (b) Notice shall be served in the manner provided in Section
19 415.10 or 415.30 of the Code of Civil Procedure, or in any
20 manner authorized by the court, on all of the following persons:

- 21 (1) The proposed ward if 12 years of age or older.
22 (2) Any person having legal custody of the proposed ward, or
23 serving as guardian of the estate of the proposed ward.
24 (3) The parents of the proposed ward.
25 (4) Any person nominated as a guardian for the proposed ward
26 under Section 1500 or 1501.

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

- 30 (1) The spouse named in the petition.
31 (2) The relatives named in the petition, except that if the
32 petition is for the appointment of a guardian of the estate only the
33 court may dispense with the giving of notice to any one or more
34 or all of the relatives.
35 (3) The person having the care of the proposed ward if other
36 than the person having legal custody of the proposed ward.
37 (d) If notice is required by Section 1461 or Section 1542 to be
38 given to the Director of Mental Health or the Director of
39 Developmental Services or the Director of Social Services, notice
40 shall be mailed as so required.

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

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

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

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

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

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

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

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

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

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

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

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

1513. (a) Unless waived by the court, a court investigator, probation officer, or domestic relations investigator may make an investigation and file with the court a report and recommendation 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.

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

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

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

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

21 (c) If the investigation finds that any party to the proposed
22 guardianship alleges the minor's parent is unfit, as defined by
23 Section 300 of the Welfare and Institutions Code, the case shall
24 be referred to the county agency designated to investigate
25 potential dependencies. Guardianship proceedings shall not be
26 completed until the investigation required by Sections 328 and
27 329 of the Welfare and Institutions Code is completed and a
28 report is provided to the court in which the guardianship
29 proceeding is pending.

30 (d) The report authorized by this section is confidential and
31 shall only be made available to persons who have been served in
32 the proceedings or their attorneys. The clerk of the court shall
33 make provisions for the limitation of the report exclusively to
34 persons entitled to its receipt.

35 (e) For the purpose of writing the report authorized by this
36 section, the person making the investigation and report shall have
37 access to the proposed ward's school records, probation records,
38 and public and private social services records, and to an oral or
39 written summary of the proposed ward's medical records and
40 psychological records prepared by any physician, psychologist,

1 or psychiatrist who made or who is maintaining those records.
2 The physician, psychologist, or psychiatrist shall be available to
3 clarify information regarding these records pursuant to the
4 investigator's responsibility to gather and provide information for
5 the court.

6 (f) This section does not apply to guardianships resulting from
7 a permanency plan for a dependent child pursuant to Section
8 366.25 of the Welfare and Institutions Code.

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

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

18 SEC. 27. Section 1516.5 of the Probate Code is amended to
19 read:

20 1516.5. (a) A proceeding to have a child declared free from
21 the custody and control of one or both parents may be brought in
22 the guardianship proceeding pursuant to Part 4 (commencing
23 with Section 7800) of Division 12 of the Family Code, if all of
24 the following requirements are satisfied:

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

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

29 (3) The court finds that the child would benefit from being
30 adopted by his or her guardian. In making this determination, the
31 court shall consider all factors relating to the best interest of the
32 child, including, but not limited to, the nature and extent of the
33 relationship between all of the following:

34 (A) The child and the birth parent.

35 (B) The child and the guardian, including family members of
36 the guardian.

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

38 (b) The court shall appoint a court investigator or other
39 qualified professional to investigate all factors enumerated in
40 subdivision (a). The findings of the investigator or professional

1 regarding those issues shall be included in the written report
2 required pursuant to Section 7851 of the Family Code.

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

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

9 SEC. 28. Section 1601 of the Probate Code is amended to
10 read:

11 1601. Upon petition of the guardian, a parent, the ward, or, in
12 the case of an Indian child custody proceeding, an Indian
13 custodian or the ward's tribe, the court may make an order
14 terminating the guardianship if the court determines that it is in
15 the ward's best interest to terminate the guardianship. Notice of
16 the hearing on the petition shall be given for the period and in the
17 manner provided in Chapter 3 (commencing with Section 1460)
18 of Part 1.

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

20 SEC. 30. Section 100 of the Welfare and Institutions Code is
21 amended to read:

22 100. The Judicial Council shall establish a planning and
23 advisory group consisting of appropriate professional and
24 program specialists to recommend on the development of
25 program guidelines and funding procedures consistent with this
26 chapter. At a minimum, the council shall adopt program
27 guidelines consistent with the guidelines established by the
28 National Court Appointed Special Advocate Association, and
29 with California law; but the council may require additional or
30 more stringent standards. State funding shall be contingent on a
31 program adopting and adhering to the program guidelines
32 adopted by the council.

33 The program guidelines adopted by the council shall be
34 adopted and incorporated into local rules of court by each
35 participating superior court as a prerequisite to funding pursuant
36 to this chapter.

37 The council shall adopt program guidelines and criteria for
38 funding which encourage multicounty CASA programs where
39 appropriate, and shall in no case provide for funding more than

1 one program per county, except where the additional CASA
2 programs are operated by an Indian tribe or Indian organization.

3 The council shall establish in a timely fashion a
4 request-for-proposal process to establish, maintain, or expand
5 local CASA programs and require local matching funds or
6 in-kind funds equal to the proposal request. The maximum state
7 grant per county program per year shall not exceed seventy
8 thousand dollars (\$70,000) in counties in which the population is
9 less than 700,000 and shall not exceed one hundred thousand
10 dollars (\$100,000) in counties in which the population is 700,000
11 or more, according to the annual population report provided by
12 the Department of Finance.

13 SEC. 31. Section 110 is added to the Welfare and Institutions
14 Code, to read:

15 110. Nothing in this chapter shall be construed as limiting the
16 right of an Indian tribe or Indian organization to establish or
17 operate CASA programs independent of state funding or the
18 discretion of the court to appoint CASAs from those programs in
19 Indian child custody proceedings.

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

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

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

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

whether 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~~ *for foster care or guardianship placement or termination of parental rights* if the action violated Sections 1911, 1912, and 1913 of the Indian Child Welfare Act.

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 proceeding for~~ 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, *preadoptive placement after termination of parental rights*, or adoptive placement. *“Indian child custody proceeding” does not include a voluntary foster care or guardianship placement if the parent or Indian custodian retains the right to have the child returned upon demand.*

(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~~ *may* make a determination, in writing together with the reasons for it, as to which tribe is the Indian child’s tribe. *If the court makes that finding, it shall do so* 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 has the more significant contacts shall be designated as the Indian child’s tribe. In determining which tribe the child has the more significant contacts with, the court shall consider, among other things, the following factors:

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

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

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

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

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

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

8 (G) Interest asserted by each tribe in response to the notice
9 specified in Section 224.2.

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

11 *(3) If an Indian child becomes a member of a tribe other than*
12 *the one designated by the court as the Indian child's tribe under*
13 *paragraph (2), actions taken based on the court's determination*
14 *prior to the child's becoming a tribal member continue to be*
15 *valid.*

16 SEC. 34. Section 224.2 is added to the Welfare and
17 Institutions Code, to read:

18 224.2. (a) If the court, a social worker, or probation officer
19 knows or has reason to know that an Indian child is involved, any
20 notice sent in an Indian child custody proceeding under this code
21 shall be sent to the minor's parents or legal guardian, Indian
22 custodian, if any, and the minor's tribe and comply with all of the
23 following requirements:

24 ~~(a)~~

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

28 ~~(b)~~

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

31 ~~(c)~~

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

37 ~~(d)~~

38 (4) Notice shall be sent to the Secretary of the Interior's
39 designated agent, the Sacramento Area Director, Bureau of
40 Indian Affairs. If the identity or location of the parents, Indian

1 custodians, or the minor's tribe is known, a copy of the notice
2 shall also be sent directly to the Secretary of the Interior, unless
3 the Secretary of the Interior has waived the notice in writing and
4 the person responsible for giving notice under this section has
5 filed proof of the waiver with the court.

6 ~~(e)~~

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

9 ~~(1)~~

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

11 ~~(2)~~

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

14 ~~(3)~~

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

21 ~~(4)~~

22 (D) A copy of the petition by which the proceeding was
23 initiated.

24 ~~(5)~~

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

26 ~~(6)~~

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

29 ~~(7)~~

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

33 ~~(A) The right~~

34 (i) *The absolute right of the child's parents, Indian custodians,*
35 *and tribe to intervene in the proceeding.*

36 ~~(B)~~

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

~~(C)~~

(iii) *The right of the child's parents, Indian custodians, and tribe 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~~

(iv) *The potential legal consequences of an adjudication the proceedings on the future custodial and parental rights of the child's parents, legal guardians, or Indian custodians.*

~~(E) A statement that~~

(v) *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 Indian custodians.*

~~(F) A statement that~~

(vi) *That the information contained in the notice, petition, pleading, and other court documents is confidential, so tribal officials shall maintain the confidentiality of the information contained in the notice concerning the particular proceeding and not reveal it to anyone who does not need the information in order to exercise the tribe's rights under the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).*

~~(f)~~

(b) *Notice shall be sent whenever it is known or there is reason to believe the child may be an Indian child know that an Indian child is involved, and for every hearing thereafter, including, but not limited to, the hearing at which a final adoption order is to be granted, unless it is determined that the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) does not apply to the case in accordance with Section 224.3. After a tribe intervenes in a proceeding, the information set out in paragraphs (3), (4), (5) and (7) of subdivision (c) subparagraphs (C), (D), (E), and (G) of paragraph (5) of subdivision (a) need not be included with the notice.*

~~(g)~~

(c) *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) (d).*

~~(h)~~

(d) *No proceeding shall be held until at least 10 days after receipt of notice by the parent, Indian custodian, the tribe, or the*

1 Bureau of Indian Affairs, except for the detention hearing,
2 provided that notice of the detention hearing shall be given as
3 soon as possible after the filing of the petition initiating the
4 proceeding and proof of the notice is filed with the court within
5 10 days after the filing of the petition. With the exception of the
6 detention hearing, the parent, Indian custodian, or the tribe shall,
7 upon request, be granted up to 20 additional days to prepare for
8 that proceeding. Nothing herein shall be construed as limiting the
9 rights of the parent, Indian custodian, or tribe to more than 10
10 days notice when a lengthier notice period is required.

11 (i)

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

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

18 224.3. (a) The court, county welfare department, and the
19 probation department have an affirmative and continuing duty to
20 inquire whether a child for whom a petition under Section 300,
21 601, or 602 is to be, or has been, filed is or may be an Indian
22 child in all dependency proceedings and in any juvenile wardship
23 proceedings if the child is at risk of entering foster care or is in
24 foster care.

25 ~~(b) The court, county welfare department, and the probation~~
26 ~~department shall be deemed to know or have reason to know that~~
27 ~~an Indian child is involved whenever any of the following~~
28 ~~circumstances exist:~~

29 *(b) The circumstances that may provide reason to know the*
30 *child is an Indian child include, but are not limited to, the*
31 *following:*

32 (1) A person having an interest in the child, including the
33 child, an officer of the court, a tribe, an Indian organization, a
34 public or private agency, or a member of the child's extended
35 family provides information suggesting the child is a member of
36 a tribe or eligible for membership in a tribe or one or more of the
37 child's biological parents, grandparents, or great-grandparents
38 are or were a member of a tribe.

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

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

5 (c) If the court, social worker, or probation officer knows or
6 has reason to know that an Indian child is involved, the social
7 worker or probation officer is required to make further inquiry
8 regarding the possible Indian status of the child, and to do so as
9 soon as practicable, by interviewing the parents, Indian
10 custodian, and extended family members to gather the
11 information required in ~~subdivision (e)~~ *paragraph (5) of*
12 *subdivision (a)* of Section 224.2, contacting the Bureau of Indian
13 Affairs and the State Department of Social Services for
14 assistance in identifying the names and contact information of the
15 tribes in which the child may be a member or eligible for
16 membership in and contacting the tribes and any other person
17 that reasonably can be expected to have information regarding
18 the child's membership status or eligibility.

19 (d) If the court, social worker, or probation officer knows or
20 has reason to know that an Indian child is involved, the social
21 worker or probation officer shall provide notice in accordance
22 with ~~subdivision (e)~~ *paragraph (5) of subdivision (a)* of Section
23 224.2.

24 (e) (1) A ~~written~~ determination by an Indian tribe that a child
25 is or is not a member of or eligible for membership in that tribe,
26 or testimony attesting to that status by a person authorized by the
27 tribe to provide that determination, shall be conclusive.
28 Information that the child is not enrolled or eligible for
29 enrollment in the tribe is not determinative of the child's
30 membership status unless the tribe also confirms in writing that
31 enrollment is a prerequisite for membership under tribal law or
32 custom.

33 (2) In the absence of a contrary determination by the tribe, a
34 determination by the Bureau of Indian Affairs that a child is or is
35 not a member of or eligible for membership in that tribe is
36 conclusive.

37 (3) If proper and adequate notice has been provided pursuant
38 to Section 224.2, and neither a tribe nor the Bureau of Indian
39 Affairs has provided a determinative response within 60 days
40 after receiving that notice, the court may determine that the

1 Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) does not
2 apply to the proceedings, provided that the court shall reverse its
3 determination and apply the act if a tribe or the Bureau of Indian
4 Affairs ~~submits written evidence confirming~~ *subsequently*
5 *confirms that* the child is an Indian child.

6 (f) Notwithstanding a determination that the Indian Child
7 Welfare Act does not apply to the proceedings made in
8 accordance with subdivision (e) ~~of this section~~, if the court,
9 social worker, or probation officer subsequently receives any
10 information required under ~~subdivision (e) paragraph (5) of~~
11 *subdivision (a)* of Section 224.2 that was not previously available
12 or included in the notice issued under Section 224.2, the social
13 worker or probation officer shall provide the additional
14 information to any tribes entitled to notice under ~~subdivision (e)~~
15 *paragraph (3) of subdivision (a)* of Section 224.2 and the Bureau
16 of Indian Affairs.

17 SEC. 36. Section 224.4 is added to the Welfare and
18 Institutions Code, to read:

19 224.4. (a) The Indian child's tribe and Indian custodian have
20 the right to intervene at any point in an Indian child custody
21 proceeding.

22 (b) Each party to a child custody proceeding involving an
23 Indian child shall have the right to examine all reports or other
24 documents filed with the court upon which any decision with
25 respect to the action may be based. With the exception of the
26 initial petition commencing the proceedings, any report filed in
27 connection with a hearing in an Indian child custody proceeding
28 shall be provided to each party to the proceeding ~~at least 10~~
29 ~~calendar days prior to the hearing, which may be accomplished~~
30 ~~by mailing the report at least 15 calendar days prior to the~~
31 ~~hearing~~ *sufficiently in advance of the hearing to permit the party*
32 *to subpoena persons whose hearsay statements are contained in*
33 *the report and to produce evidence in rebuttal.* The court shall
34 grant a reasonable continuance, not to exceed 20 calendar days,
35 upon request by any party on the ground that the report was not
36 provided at least 10 calendar days prior to the hearing ~~as required~~
37 ~~by this section, which may be accomplished by mailing the report~~
38 *at least 15 days prior to the hearing*, unless the party has
39 expressly waived the requirement that the report be provided
40 ~~within the 10-day period in advance of the hearing~~ or the court

1 finds by clear and convincing evidence that the party's ability to
2 proceed at the hearing is not prejudiced by the lack of timely
3 service of the report.

4 SEC. 37. Section 224.5 is added to the Welfare and
5 Institutions Code, to read:

6 224.5. In an Indian child custody proceeding, the court shall
7 give full faith and credit to the public acts, records, judicial
8 proceedings, and judgments of any Indian tribe applicable to the
9 proceeding.

10 SEC. 38. Section 224.6 is added to the Welfare and
11 Institutions Code, to read:

12 224.6. (a) When testimony of a "qualified expert witness" is
13 required in an Indian child custody proceeding, a "qualified
14 expert witness" may include, but is not limited to, a social
15 worker, sociologist, physician, psychologist, traditional tribal
16 therapist and healer, tribal spiritual leader, tribal historian, or
17 tribal elder, provided the individual is not an employee of the
18 person or agency recommending foster care placement or
19 termination of parental rights.

20 (b) In considering whether to involuntarily place an Indian
21 child in foster care or to terminate the parental rights of the
22 ~~parent of an Indian child, the court shall require that one or more~~
23 ~~qualified expert witnesses with specific knowledge of the Indian~~
24 ~~child's tribe testify regarding that tribe's family organization and~~
25 ~~child-rearing practices, and regarding whether the tribe's culture,~~
26 ~~customs, and laws would support the placement of the child in~~
27 ~~foster care or the termination of parental rights on the grounds~~
28 ~~that custody of the child by the parent or Indian custodian is~~
29 ~~likely to result in serious emotional or physical damage to the~~
30 ~~child.~~

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

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

37 ~~(2) A member of another tribe who is formally recognized by~~
38 ~~the Indian child's tribe as having the knowledge to be a qualified~~
39 ~~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), (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. parent of an Indian child, the court shall:~~

~~(1) Require that a qualified expert witness testify regarding whether custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.~~

~~(2) Consider evidence concerning the prevailing social and cultural standards of the Indian child's tribe, including that tribe's family organization and child-rearing practices.~~

~~(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 tribe or other individual 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.~~

1 (2) *A lay expert having substantial experience in the delivery*
2 *of child and family services to Indians and extensive knowledge*
3 *of the social and cultural standards and child-rearing practices*
4 *of Indian tribes, specifically the Indian child's tribe, if possible.*

5 (3) *A professional person having substantial education and*
6 *experience in Indian child and family services and in the social*
7 *and cultural standards of Indian tribes, specifically, the Indian*
8 *child's tribe, if possible.*

9 (4) *A professional person having substantial education and*
10 *experience in the person's professional specialty. Prior to*
11 *accepting the testimony of a qualified expert witness under this*
12 *paragraph, the court shall document the efforts made to secure a*
13 *qualified expert witness described in paragraphs (1), (2), and*
14 *(3). The efforts shall include, but are not limited to, contacting*
15 *the Indian child's tribe's governing body, that tribe's Indian*
16 *child welfare office, and the tribe's social service office.*

17 (d) *The court may accept a declaration or affidavit from a*
18 *qualified expert witness in lieu of testimony only if the parties*
19 *have so stipulated in writing and the court is satisfied the*
20 *stipulation is made knowingly, intelligently, and voluntarily.*

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

23 290.1. If the probation officer or social worker determines
24 that the child shall be retained in custody, he or she shall
25 immediately file a petition pursuant to Section 332 with the clerk
26 of the juvenile court, who shall set the matter for hearing on the
27 detention hearing calendar. The probation officer or social
28 worker shall serve notice as prescribed in this section.

29 (a) Notice shall be given to the following persons whose
30 whereabouts are known or become known prior to the initial
31 petition hearing:

32 (1) The mother.

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

34 (3) The legal guardian or guardians.

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

36 (5) Any known sibling of the child who is the subject of the
37 hearing if that sibling either is the subject of a dependency
38 proceeding or has been adjudged to be a dependent child of the
39 juvenile court. If the sibling is 10 years of age or older, the
40 sibling, the sibling's caregiver, and the sibling's attorney. If the

1 sibling is under 10 years of age, the sibling's caregiver and the
2 sibling's attorney. However, notice is not required to be given to
3 any sibling whose matter is calendared in the same court on the
4 same day.

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

9 (7) The attorney for the parent or parents, or legal guardian or
10 guardians.

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

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

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

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

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

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

24 (2) The name of the child.

25 (3) A copy of the petition.

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

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

31 SEC. 40. Section 290.2 of the Welfare and Institutions Code
32 is amended to read:

33 290.2. Upon the filing of a petition by a probation officer or
34 social worker, the clerk of the juvenile court shall issue notice, to
35 which shall be attached a copy of the petition, and he or she shall
36 cause the same to be served as prescribed in this section.

37 (a) Notice shall be given to the following persons whose
38 address is known or becomes known prior to the initial petition
39 hearing:

40 (1) The mother.

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

2 (3) The legal guardian or guardians.

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

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

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

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

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

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

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 retained in custody, the notice shall be given
29 to the persons required to be noticed as soon as possible, and at
30 least five days before the hearing, unless the hearing is set to be
31 heard in less than five days in which case notice shall be given at
32 least 24 hours prior to the hearing.

33 (2) If the child is not retained in custody, the notice shall be
34 given to those persons required to be noticed at least 10 days
35 prior to the date of the hearing. If any person who is required to
36 be given notice is known to reside outside of the county, the clerk
37 of the juvenile court shall mail the notice and copy of the petition
38 by first-class mail, to that person as soon as possible after the
39 filing of the petition and at least 10 days before the time set for
40 hearing. Failure to respond to the notice is not cause for an arrest

1 or detention. In the instance of a failure to appear after notice by
2 first-class mail, the court shall direct that the notice and copy of
3 the petition be personally served on all persons required to
4 receive the notice and copy of the petition. For these purposes,
5 personal service of the notice and copy of the petition outside of
6 the county at least 10 days before the time set for hearing is
7 equivalent to service by first-class mail. Service may be waived
8 by any person by a voluntary appearance entered in the minutes
9 of the court or by a written waiver of service filed with the clerk
10 of the court at, or prior to, the hearing.

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

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

14 (2) The name of the child.

15 (3) A copy of the petition.

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

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

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

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

25 (1) The mother.

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

27 (3) The legal guardian or guardians.

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

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

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

1 (7) If there is no parent or guardian residing in California, or if
2 the residence is unknown, then to any adult relative residing
3 within the county or if none, the adult relative residing nearest
4 the court.

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

7 (c) Notice shall be served as follows:

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

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

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

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

17 (2) The nature of the hearing.

18 (3) Each section and subdivision under which the proceeding
19 has been initiated.

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

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

23 (6) A statement that:

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

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

28 (C) If the parent, guardian, Indian custodian, or adult relative
29 is indigent and cannot afford an attorney, and desires to be
30 represented by an attorney, the parent, guardian, Indian
31 custodian, or adult relative shall promptly notify the clerk of the
32 juvenile court.

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

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

40 (7) A copy of the petition.

1 (e) Service of the notice of the hearing shall be given in the
2 following manner:

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

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

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

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

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

21 SEC. 42. Section 292 of the Welfare and Institutions Code is
22 amended to read:

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

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

28 (1) The mother.

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

30 (3) The legal guardian or guardians.

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

32 (5) Any known sibling of the child who is the subject of the
33 hearing if that sibling either is the subject of a dependency
34 proceeding or has been adjudged to be a dependent child of the
35 juvenile court. If the sibling is 10 years of age or older, the
36 sibling, the sibling's caregiver, and the sibling's attorney. If the
37 sibling is under 10 years of age, the sibling's caregiver and the
38 sibling's attorney. However, notice is not required to be given to
39 any sibling whose matter is calendared in the same court on the
40 same day.

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

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

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

7 (d) The notice shall contain a statement regarding the nature of
8 the hearing to be held and any change in the custody or status of
9 the child being recommended by the supervising agency. The
10 notice shall also include a statement that the child and the parent
11 or parents or legal guardian or guardians have a right to be
12 present at the hearing, to be represented by counsel at the hearing
13 and the procedure for obtaining appointed counsel, and to present
14 evidence regarding the proper disposition of the case. The notice
15 shall also state that if the parent or parents or legal guardian or
16 guardians fail to appear, the court may proceed without them.

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

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

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

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

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

30 (1) The mother.

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

32 (3) The legal guardian or guardians.

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

34 (5) Any known sibling of the child who is the subject of the
35 hearing if that sibling either is the subject of a dependency
36 proceeding or has been adjudged to be a dependent child of the
37 juvenile court. If the sibling is 10 years of age or older, the
38 sibling, the sibling's caregiver, and the sibling's attorney. If the
39 sibling is under 10 years of age, the sibling's caregiver and the
40 sibling's attorney. However, notice is not required to be given to

1 any sibling whose matter is calendared in the same court on the
2 same day.

3 (6) In the case of a child removed from the physical custody of
4 his or her parent or legal guardian, the foster parents, relative
5 caregivers, community care facility, or foster family agency
6 having custody of the child. In a case in which a foster family
7 agency is notified of the hearing pursuant to this section, and the
8 child resides in a foster home certified by the foster family
9 agency, the foster family agency shall provide timely notice of
10 the hearing to the child's caregivers.

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

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

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

17 (d) The notice shall contain a statement regarding the nature of
18 the hearing to be held and any change in the custody or status of
19 the child being recommended by the supervising agency. If the
20 notice is to the child, parent or parents, or legal guardian or
21 guardians, the notice shall also advise them of the right to be
22 present, the right to be represented by counsel, the right to
23 request counsel, and the right to present evidence. The notice
24 shall also state that if the parent or parents or legal guardian or
25 guardians fail to appear, the court may proceed without them.

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

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

1 (g) If the social worker or 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. 44. Section 294 of the Welfare and Institutions Code is
5 amended to read:

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

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

11 (1) The mother.

12 (2) The fathers, presumed and alleged.

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

14 (4) 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 (5) The grandparents of the child, if their address is known and
24 if the parent's whereabouts are unknown.

25 (6) All counsel of record.

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

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

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

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

34 (c) (1) Service of the notice shall be completed at least 45
35 days before the hearing date. Service is deemed complete at the
36 time the notice is personally delivered to the person named in the
37 notice or 10 days after the notice has been placed in the mail, or
38 at the expiration of the time prescribed by the order for
39 publication.

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

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

(e) The notice shall contain the following information:

- (1) The date, time, and place of the hearing.
- (2) The right to appear.
- (3) The parents' right to counsel.
- (4) The nature of the proceedings.
- (5) The recommendation of the supervising agency.
- (6) A statement that, at the time of hearing, the court is required to select a permanent plan of adoption, legal guardianship, or long-term foster care for the child.

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

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

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

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

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

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

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

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

18 (A) If the court determines that there has been due diligence in
19 attempting to locate and serve the parent and the probation
20 officer or social worker recommends adoption, service shall be to
21 that parent's attorney of record, if any, by certified mail, return
22 receipt requested. If the parent does not have an attorney of
23 record, the court shall order that service be made by publication
24 of citation requiring the parent to appear at the date, time, and
25 place stated in the citation, and that the citation be published in a
26 newspaper designated as most likely to give notice to the parent.
27 Publication shall be made once a week for four consecutive
28 weeks. Whether notice is to the attorney of record or by
29 publication, the court shall also order that notice be given to the
30 grandparents of the child by first-class mail.

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

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

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

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

(h) 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.

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

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

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

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

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

(1) The mother.

(2) The presumed father.

(3) The legal guardian or guardians.

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

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

(6) The foster parents, relative caregivers, community care facility, or foster family agency having physical custody of the

1 child in the case of a child removed from the physical custody of
2 the parents or legal guardian.

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

5 (8) The alleged father or fathers, but only if the
6 recommendation is to set a new hearing pursuant to Section
7 366.26.

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

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

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

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

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

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

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

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

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

39 (c) If a petition for modification has been filed pursuant to
40 Section 388, and it appears that the best interest of the child may

1 be promoted by the proposed change of the order, the recognition
2 of a sibling relationship, or the termination of jurisdiction, the
3 court shall order that a hearing be held and shall give prior
4 notice, or cause prior notice to be given, to the social worker or
5 probation officer and to the child's attorney of record, or if there
6 is no attorney of record for the child, to the child, and his or her
7 parent or parents or legal guardian or guardians in the manner
8 prescribed by Section 291 unless a different manner is prescribed
9 by the court.

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

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

15 305.5. (a) If an Indian child, who is a ward of a tribal court
16 or resides or is domiciled within a reservation of an Indian tribe
17 that has exclusive jurisdiction over child custody proceedings as
18 recognized in Section 1911 of Title 25 of the United States Code
19 or reassumed exclusive jurisdiction over Indian child custody
20 proceedings pursuant to Section 1918 of Title 25 of the United
21 States Code, has been removed by a state or local authority from
22 the custody of his or her parents or Indian custodian, the state or
23 local authority shall provide notice of the removal to the tribe no
24 later than the next working day following the removal and shall
25 provide all relevant documentation to the tribe regarding the
26 removal and the child's identity. If the tribe determines that the
27 child is an Indian child, the state or local authority shall transfer
28 the child custody proceeding to the tribe within 24 hours after
29 receipt of written notice from the tribe of that determination.

30 (b) In the case of an Indian child who is not domiciled or
31 residing within a reservation of an Indian tribe or who resides or
32 is domiciled within a reservation of an Indian tribe ~~who~~ *that* does
33 not have exclusive jurisdiction over child custody proceedings
34 pursuant to Section 1911 or 1918 of Title 25 of the United States
35 Code, the court shall transfer the proceeding to the jurisdiction of
36 the child's tribe upon petition of either parent, the Indian
37 custodian, if any, or the child's tribe, unless the court finds good
38 cause not to transfer. The court shall dismiss the proceeding or
39 terminate jurisdiction only after receiving proof that the tribal
40 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 parties or witnesses, or by use of other means permitted in the tribal court's rules of evidence or discovery.~~

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

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

(2) Good cause not to transfer the proceeding may exist if:

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

(B) The proceeding was at an advanced stage when the petition to transfer was received and the petitioner did not file the petition within a reasonable time after receiving notice of the proceeding, provided the notice complied with Section 224.2. It shall not be considered an unreasonable delay for a party to wait until reunification efforts have failed and reunification services have been terminated before filing a petition to transfer.

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

1 (4) *The burden of establishing good cause to the contrary*
2 *shall be on the party opposing the transfer. If the court believes,*
3 *or any party asserts, that good cause to the contrary exists, the*
4 *reasons for that belief or assertion shall be stated in writing and*
5 *made available to all parties who are petitioning for the transfer,*
6 *and the petitioner shall have the opportunity to provide*
7 *information or evidence in rebuttal of the belief or assertion.*

8 (5) *Nothing in this section or Section 1911 or 1918 of Title 25*
9 *of the United States Code shall be construed as requiring a tribe*
10 *to petition the Secretary of the Interior to reassume jurisdiction*
11 *pursuant to Section 1918 of Title 25 of the United States Code*
12 *prior to exercising jurisdiction over a proceeding transferred*
13 *under subdivision (b).*

14 (d) *An Indian child's domicile or place of residence is*
15 *determined by that of the parent, guardian, or Indian custodian*
16 *with whom the child maintained his or her primary place of*
17 *abode at the time the Indian child custody proceedings were*
18 *initiated.*

19 (e) If any petitioner in an Indian child custody proceeding has
20 improperly removed the child from the custody of the parent or
21 Indian custodian or has improperly retained custody after a visit
22 or other temporary relinquishment of custody, the court shall
23 decline jurisdiction over the petition and shall immediately return
24 the child to his or her parent or Indian custodian, unless returning
25 the child to the parent or Indian custodian would subject the child
26 to a substantial and immediate danger or threat of danger.

27 (f) Nothing in this section shall be construed to prevent the
28 emergency removal of an Indian child who is a ward of a tribal
29 court or resides or is domiciled within a reservation of an Indian
30 tribe, but is temporarily located off the reservation, from a parent
31 or Indian custodian or the emergency placement of the child in a
32 foster home or institution in order to prevent imminent physical
33 damage or harm to the child. The state or local authority shall
34 ~~insure~~ ensure that the emergency removal or placement
35 terminates immediately when the removal or placement is no
36 longer necessary to prevent imminent physical damage or harm
37 to the child and shall expeditiously initiate an Indian child
38 custody proceeding, transfer the child to the jurisdiction of the
39 Indian child's tribe, or restore the child to the parent or Indian
40 custodian, as may be appropriate.

1 SEC. 48. Section 317 of the Welfare and Institutions Code is
2 amended to read:

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

8 (b) When it appears to the court that a parent, Indian
9 custodian, or guardian of the child is presently financially unable
10 to afford and cannot for that reason employ counsel, and the
11 child has been placed in out-of-home care, or the petitioning
12 agency is recommending that the child be placed in out-of-home
13 care, the court shall appoint counsel, unless the court finds that
14 the parent, Indian custodian, or guardian has made a knowing
15 and intelligent waiver of counsel as provided in this section.

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

39 (d) The counsel appointed by the court shall represent the
40 parent, guardian, Indian custodian, or child at the detention

1 hearing and at all subsequent proceedings before the juvenile
2 court. Counsel shall continue to represent the parent, guardian,
3 Indian custodian, or child unless relieved by the court upon the
4 substitution of other counsel or for cause. The representation
5 shall include representing the parent, guardian, Indian custodian,
6 or the child in termination proceedings and in those proceedings
7 relating to the institution or setting aside of a legal guardianship.

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

34 (f) Either the child or the counsel for the child, with the
35 informed consent of the child if the child is found by the court to
36 be of sufficient age and maturity to so consent, may invoke the
37 psychotherapist-client privilege, physician-patient privilege, and
38 clergyman-penitent privilege; and if the child invokes the
39 privilege, counsel may not waive it, but if counsel invokes the
40 privilege, the child may waive it. Counsel shall be holder of these

1 privileges if the child is found by the court not to be of sufficient
2 age and maturity to so consent. For the sole purpose of fulfilling
3 his or her obligation to provide legal representation of the child,
4 counsel for a child shall have access to all records with regard to
5 the child maintained by a health care facility, as defined in
6 Section 1545 of the Penal Code, health care providers, as defined
7 in Section 6146 of the Business and Professions Code, a
8 physician and surgeon or other health practitioner as defined in
9 Section 11165.8 of the Penal Code or a child care custodian, as
10 defined in Section 11165.7 of the Penal Code. Notwithstanding
11 any other law, counsel shall be given access to all records
12 relevant to the case which are maintained by state or local public
13 agencies. All information requested from a child protective
14 agency regarding a child who is in protective custody, or from a
15 child's guardian ad litem, shall be provided to the child's counsel
16 within 30 days of the request.

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

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

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

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

3 360.8. (a) When a proceeding under this chapter involves a
4 child who has Indian ancestry but who is not an Indian child, and
5 the proceeding would otherwise be an Indian child custody
6 proceeding, the court may recognize the tribe from which the
7 child is descended and grant standing to participate as a party in
8 the proceeding upon the request of a tribe.

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

12 (1) Be present at the hearing.

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

21 (3) Address the court.

22 (4) Receive notice of hearings.

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

24 (6) Present evidence.

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

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

28 (c) If more than one tribe requests intervention under
29 subdivision (a), the court may limit intervention to the tribe with
30 which the child has the most significant contacts, as determined
31 in accordance with paragraph (2) of subdivision (d) of Section
32 170 of the Family Code.

33 (d) This section is intended to assist the court in making
34 decisions that are in the best interest of the child involved by
35 permitting a tribe, in the circumstances set out in subdivision (a),
36 to inform the court and parties to the proceeding about placement
37 options for the child within the child's extended family or the
38 tribal community, services and programs available to the child
39 and the child's parents as Indians, and other unique interests the
40 child or the child's parents may have as Indians. This section

1 shall not be construed to make the Indian Child Welfare Act (25
2 U.S.C. Sec. 1901 et seq.), or any state law implementing the
3 Indian Child Welfare Act, applicable to the proceedings, or to
4 limit the court's discretion to permit other interested persons to
5 participate in these or any other proceedings.

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 *circumstances listed in paragraphs (1) to (5),*
32 *inclusive, and, in an Indian child custody proceeding, paragraph*
33 *(6):*

34 (1) There is a substantial danger to the physical health, safety,
35 protection, or physical or emotional well-being of the minor or
36 would be if the minor were returned home, and there are no
37 reasonable means by which the minor's physical health can be
38 protected without removing the minor from the minor's parents'
39 or guardians' physical custody. The fact that a minor has been
40 adjudicated a dependent child of the court pursuant to

subdivision (e) of Section 300 shall constitute prima facie evidence that the minor cannot be safely left in the custody of the parent or guardian with whom the minor resided at the time of injury. The court shall consider, as a reasonable means to protect the minor, the option of removing an offending parent or guardian from the home. The court shall also consider, as a reasonable means to protect the minor, allowing a nonoffending parent or guardian to retain custody as long as that parent or guardian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm.

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

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

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

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

~~(6) In the case of an Indian child,~~ *an Indian child custody proceeding, continued* custody of the child by the parent or Indian custodian is likely to result in serious emotional or

1 physical damage to the child, and that finding is supported by
2 testimony of a “qualified expert witness” ~~as defined in Section~~
3 ~~224.6 as described in Section 224.6.~~

4 (A) *Stipulation by the parent, Indian custodian, or the Indian*
5 *child’s tribe, or failure to object, may waive the requirement of*
6 *producing evidence of the likelihood of serious damage only if*
7 *the court is satisfied that the party has been fully advised of the*
8 *requirements of the Indian Child Welfare Act (25 U.S.C. Sec.*
9 *1901 et seq.), and has knowingly, intelligently, and voluntarily*
10 *waived them.*

11 (B) *Failure to meet non-Indian family and child-rearing*
12 *community standards, or the existence of other behavior or*
13 *conditions that meet the removal standards of this section, will*
14 *not support an order for placement in the absence of the finding*
15 *in this paragraph.*

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

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

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

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

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

36 361.31. (a) In any case in which an Indian child is removed
37 from the physical custody of his or her parents or Indian
38 custodian pursuant to Section 361, the child’s placement shall
39 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 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.

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

(c) In any adoptive placement of an Indian child, preference shall be given to a 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 the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

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

(3) Another Indian family.

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

(d) Notwithstanding the placement preferences listed in subdivisions (b) and (c), if a different order of placement preference is established by the child's tribe, the court or agency effecting the placement shall follow the order of preference established by the tribe ~~or in the agreement~~, *so long as the placement is the least restrictive setting appropriate to the particular needs of the child as provided in subdivision (b).*

(e) Where appropriate, the placement preference of the Indian child, *when of sufficient age*, or parent shall be considered. In applying the preferences, a consenting parent's request for anonymity shall also be given weight by the court or agency effecting the placement. Unless there is clear and convincing evidence that placement within the order of preference applicable

1 under subdivision (b), (c), or (d) would be harmful to the Indian
2 child, consideration of the preference of the Indian child or
3 parent or a parent's request for anonymity shall not be a basis for
4 placing an Indian child outside of the applicable order of
5 preference. *The burden of establishing harm to the Indian child*
6 *shall be on the party requesting a variation or deviation from the*
7 *preferences.*

8 (f) The prevailing social and cultural standards of the Indian
9 community in which the parent or extended family members of
10 an Indian child reside, or with which the parent or extended
11 family members maintain social and cultural ties, or the
12 prevailing social and cultural standards of the Indian child's tribe
13 shall be applied in meeting the placement preferences under this
14 section. A determination of the applicable prevailing social and
15 cultural standards ~~shall be confirmed~~ *may be confirmed by the*
16 *Indian child's tribe or by the testimony or other documented*
17 *support of qualified expert witnesses a qualified expert witness,*
18 *as defined in subdivision (c) of Section 224.6, who is*
19 *knowledgeable regarding the social and cultural standards of the*
20 *Indian child's tribe.*

21 (g) Any person or court involved in the placement of an Indian
22 child shall use the services of the Indian child's tribe, whenever
23 available through the tribe, in seeking to secure placement within
24 the order of placement preference established in this section and
25 in the supervision of the placement.

26 ~~(h) Except as otherwise provided in subdivision (e), the court~~
27 ~~may only~~ *The court may* determine that good cause exists not to
28 follow placement preferences applicable under subdivision (b),
29 (c), or (d) *in accordance with subdivision (e) or when there is*
30 *clear and convincing evidence that a of one of the following:*

31 (1) A diligent search has been completed for families meeting
32 the preference criteria and no suitable placement is available.
33 ~~When~~

34 (2) *The extraordinary physical or emotional needs of the*
35 *Indian child as established by a qualified expert witness.*

36 (i) *When no preferred placement under subdivision (b), (c), or*
37 *(d) is available, active efforts shall be made to place the child*
38 *with a family committed to enabling the child to have extended*
39 *family visitation and participation in the cultural and ceremonial*
40 *events of the child's tribe.*

1 (†)

2 (j) *The burden of establishing the existence of good cause not*
3 *to follow placement preferences applicable under subdivision*
4 *(b), (c), or (d) shall be on the party requesting that the*
5 *preferences not be followed.*

6 (k) A record of each foster care placement or adoptive
7 placement of an Indian child shall be maintained in perpetuity by
8 the State Department of Social Services. The record shall
9 document the active efforts to comply with the applicable order
10 of preference specified in this section.

11 SEC. 53. Section 361.4 of the Welfare and Institutions Code
12 is amended to read:

13 361.4. (a) Prior to placing a child in the home of a relative, or
14 the home of any prospective guardian or other person who is not
15 a licensed or certified foster parent, the county social worker
16 shall visit the home to ascertain the appropriateness of the
17 placement.

18 (b) Whenever a child may be placed in the home of a relative,
19 or the home of any prospective guardian or other person who is
20 not a licensed or certified foster parent, the court or county social
21 worker placing the child shall cause a state and federal level
22 criminal records check to be conducted by an appropriate
23 governmental agency through the California Law Enforcement
24 Telecommunications System (CLETS) pursuant to Section
25 16504.5. The criminal records check shall be conducted with
26 regard to all persons over the age of 18 years living in the home,
27 and on any other person over the age of 18 years, other than
28 professionals providing professional services to the child, known
29 to the placing entity who may have significant contact with the
30 child, including any person who has a familial or intimate
31 relationship with any person living in the home. A criminal
32 records check may be conducted pursuant to this section on any
33 person over the age of 14 years living in the home who the
34 county social worker believes may have a criminal record.
35 Within five judicial days following the criminal records check
36 conducted through the California Law Enforcement
37 Telecommunications System, the social worker shall ensure that
38 a fingerprint clearance check of the relative and any other person
39 whose criminal record was obtained pursuant to this subdivision
40 is initiated through the Department of Justice to ensure the

1 accuracy of the criminal records check conducted through the
2 California Law Enforcement Telecommunications System and
3 shall review the results of any criminal records check to assess
4 the safety of the home. The Department of Justice shall forward
5 fingerprint requests for federal level criminal history information
6 to the Federal Bureau of Investigation pursuant to this section.

7 (c) Whenever a child may be placed in the home of a relative,
8 or a prospective guardian or other person who is not a licensed or
9 certified foster parent, the county social worker shall cause a
10 check of the Child Abuse Index pursuant to subdivision (a) of
11 Section 11170 of the Penal Code to be requested from the
12 Department of Justice. The Child Abuse Index check shall be
13 conducted on all persons over the age of 18 years living in the
14 home.

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

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

29 (3) (A) A county may issue a criminal records exemption only
30 if that county has been granted permission by the Director of
31 Social Services to issue criminal records exemptions. The county
32 may file a request with the Director of Social Services seeking
33 permission for the county to establish a procedure to evaluate and
34 grant appropriate individual criminal records exemptions for
35 persons described in subdivision (b). The director shall grant or
36 deny the county's request within 14 days of receipt. The county
37 shall evaluate individual criminal records in accordance with the
38 standards and limitations set forth in paragraph (1) of subdivision
39 (g) of Section 1522 of the Health and Safety Code, and in no

1 event shall the county place a child in the home of a person who
2 is ineligible for an exemption under that provision.

3 (B) The department shall monitor county implementation of
4 the authority to grant an exemption under this paragraph to
5 ensure that the county evaluates individual criminal records and
6 allows or disallows placements according to the standards set
7 forth in paragraph (1) of subdivision (g) of Section 1522 of the
8 Health and Safety Code.

9 (4) The department shall conduct an evaluation of the
10 implementation of paragraph (3) through random sampling of
11 county exemption decisions.

12 (5) The State Department of Social Services shall not evaluate
13 or grant criminal records exemption requests for persons
14 described in subdivision (b), unless the exemption request is
15 made by an Indian tribe pursuant to subdivision (f).

16 (6) If a county has not requested, or has not been granted,
17 permission by the State Department of Social Services to
18 establish a procedure to evaluate and grant criminal records
19 exemptions, the county may not place a child into the home of a
20 person described in subdivision (b) if any person residing in the
21 home has been convicted of a crime other than a minor traffic
22 violation, except as provided in subdivision (f).

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

26 (f) Upon request from an Indian tribe, the State Department of
27 Social Services shall evaluate an exemption request, if needed, to
28 allow placement into an Indian home that the tribe has designated
29 for placement under the Indian Child Welfare Act (25 U.S.C.
30 Sec. 1901 et seq.) that would otherwise be barred under this
31 section. However, if the county with jurisdiction over the child
32 that is the subject of the tribe's request has established an
33 approved procedure pursuant to paragraph (3) of subdivision (d),
34 the tribe may request that the county evaluate the exemption
35 request. Once a tribe has elected to have the exemption request
36 reviewed by either the State Department of Social Services or the
37 county, the exemption decision may only be made by that entity.
38 Nothing in this subdivision limits the duty of a county social
39 worker to evaluate the home for placement or to gather
40 information needed to evaluate an exemption request.

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

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

(b) What constitutes active efforts shall be assessed on a case-by-case basis. The active efforts shall be made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe. Active efforts shall utilize the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers. Active efforts may include, but are not limited to, the following:

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

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

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

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

(5) Exhaustion of all tribally appropriate family preservation 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)~~

(c) 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. 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 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. 56. Section 366.26 of the Welfare and Institutions Code
5 is amended to read:

6 366.26. (a) This section applies to children who are adjudged
7 dependent children of the juvenile court pursuant to subdivision
8 (c) of Section 360. The procedures specified herein are the
9 exclusive procedures for conducting these hearings; Part 2
10 (commencing with Section 3020) of Division 8 of the Family
11 Code is not applicable to these proceedings. Section 8714.7 of
12 the Family Code is applicable and available to all dependent
13 children meeting the requirements of that section, if the
14 postadoption contact agreement has been entered into
15 voluntarily. For children who are adjudged dependent children of
16 the juvenile court pursuant to subdivision (c) of Section 360, this
17 section and Sections 8604, 8605, 8606, and 8700 of the Family
18 Code and Chapter 5 (commencing with Section 7660) of Part 3
19 of Division 12 of the Family Code specify the exclusive
20 procedures for permanently terminating parental rights with
21 regard to, or establishing legal guardianship of, the child while
22 the child is a dependent child of the juvenile court.

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

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

36 (2) On making a finding under paragraph (3) of subdivision
37 (c), identify adoption as the permanent placement goal and order
38 that efforts be made to locate an appropriate adoptive family for
39 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 (B) A child 12 years of age or older objects to termination of
34 parental rights.

35 (C) The child is placed in a residential treatment facility,
36 adoption is unlikely or undesirable, and continuation of parental
37 rights will not prevent finding the child a permanent family
38 placement if the parents cannot resume custody when residential
39 care is no longer needed.

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

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption. When a child's removal and subsequent lack of contact with siblings has prevented the child from establishing or maintaining sibling relationships, the court ~~shall may~~ consider the potential benefit of establishing and maintaining sibling relationships ~~when—applying—this subparagraph determining whether termination of parental rights would be detrimental to the child.~~

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

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

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 *not* made or that reasonable services were
15 *not* 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 not made as required in Section 361.7.~~

22 (ii) The court ~~has made~~ *does not make* a determination at the
23 hearing terminating parental rights, supported by evidence
24 beyond a reasonable doubt, including testimony of one or more
25 "qualified expert witnesses" as defined in Section 224.6, that *the*
26 *continued* custody of the child by the parent is likely to result in
27 serious 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

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

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), (E), (F), or (G) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. 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, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial 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:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

SEC. 57. Section 727.4 of the Welfare and Institutions Code is amended to read:

727.4. (a) (1) Notice of any hearing pursuant to Section 727, 727.2, or 727.3 shall be mailed by the probation officer to the minor, the minor's parent or guardian, any adult provider of care to the minor including, but not limited to, foster parents, relative caregivers, preadoptive parents, community care facility, or foster family agency, and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days

1 preceding the date of the hearing. The notice shall contain a
2 statement regarding the nature of the status review or
3 permanency planning hearing and any change in the custody or
4 status of the minor being recommended by the probation
5 department. The notice shall also include a statement informing
6 the foster parents, relative caregivers, or preadoptive parents that
7 he or she may attend all hearings or may submit any information
8 he or she deems relevant to the court in writing. The foster
9 parents, relative caregiver, and preadoptive parents are entitled to
10 notice and opportunity to be heard but need not be made parties
11 to the proceedings. Proof of notice shall be filed with the court.

12 (2) If the court or probation officer knows or has reason to
13 know that the minor is or may be an Indian child, any notice sent
14 under this section shall comply with the requirements of Section
15 224.2.

16 (b) At least 10 calendar days prior to each status review and
17 permanency planning hearing, after the hearing during which the
18 court orders that the care, custody and control of the minor to be
19 under the supervision of the probation officer for placement
20 pursuant to subdivision (a) of Section 727, the probation officer
21 shall file a social study report with the court, pursuant to the
22 requirements listed in Section 706.5.

23 (c) The probation department shall inform the minor, the
24 minor's parent or guardian, and all counsel of record that a copy
25 of the social study prepared for the hearing will be available 10
26 days prior to the hearing and may be obtained from the probation
27 officer.

28 (d) As used in Article 15 (commencing with Section 625) to
29 Article 18 (commencing with Section 725), inclusive:

30 (1) "Foster care" means residential care provided in any of the
31 settings described in Section 11402.

32 (2) "At risk of entering foster care" means that conditions
33 within a minor's family may necessitate his or her entry into
34 foster care unless those conditions are resolved.

35 (3) "Preadoptive parent" means a licensed foster parent who
36 has been approved for adoption by the State Department of
37 Social Services when it is acting as an adoption agency or by a
38 licensed adoption agency.

(4) “Date of entry into foster care” means the date that is 60 days after the date on which the minor was removed from his or her home, unless one of the exceptions below applies:

(A) If the minor is detained pending foster care placement, and remains detained for more than 60 days, then the date of entry into foster care means the date the court adjudges the minor a ward and orders the minor placed in foster care under the supervision of the probation officer.

(B) If, before the minor is placed in foster care, the minor is committed to a ranch, camp, school, or other institution pending placement, and remains in that facility for more than 60 days, then the “date of entry into foster care” is the date the minor is physically placed in foster care.

(C) If at the time the wardship petition was filed, the minor was a dependent of the juvenile court and in out-of-home placement, then the “date of entry into foster care” is the earlier of the date the juvenile court made a finding of abuse or neglect, or 60 days after the date on which the child was removed from his or her home.

(5) “Reasonable efforts” means:

(A) Efforts made to prevent or eliminate the need for removing the minor from the minor’s home.

(B) Efforts to make it possible for the minor to return home, including, but not limited to, case management, counseling, parenting training, mentoring programs, vocational training, educational services, substance abuse treatment, transportation, and therapeutic day services.

(C) Efforts to complete whatever steps are necessary to finalize a permanent plan for the minor.

(D) In child custody proceedings involving an Indian child, “reasonable efforts” shall also include “active efforts” as defined in Section 361.7.

(6) “Relative” means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship including stepparents, stepsiblings, and all relatives whose status is preceded by the words “great,” “great-great,” “grand,” or the spouse of any of these persons even if the marriage was terminated by death or dissolution. “Relative” shall also include an “extended family member” as defined in the Indian Child Welfare Act (25 U.S.C. Sec. 1903(2)).

1 (7) “Hearing” means a noticed proceeding with findings and
2 orders that are made on a case-by-case basis, heard by either of
3 the following:

4 (A) A judicial officer, in a courtroom, recorded by a court
5 reporter.

6 (B) An administrative panel, provided that the hearing is a
7 status review hearing and that the administrative panel meets the
8 following conditions:

9 (i) The administrative review shall be open to participation by
10 the minor and parents or legal guardians and all those persons
11 entitled to notice under subdivision (a).

12 (ii) The minor and his or her parents or legal guardians receive
13 proper notice as required in subdivision (a).

14 (iii) The administrative review panel is composed of persons
15 appointed by the presiding judge of the juvenile court, the
16 membership of which shall include at least one person who is not
17 responsible for the case management of, or delivery of services
18 to, the minor or the parents who are the subjects of the review.

19 (iv) The findings of the administrative review panel shall be
20 submitted to the juvenile court for the court’s approval and shall
21 become part of the official court record.

22 SEC. 58. Section 10553.1 of the Welfare and Institutions
23 Code is amended to read:

24 10553.1. (a) Notwithstanding any other provision of law, the
25 director may enter into an agreement, in accordance with Section
26 1919 of Title 25 of the United States Code, with any California
27 Indian tribe or any out-of-state Indian tribe regarding the care
28 and custody of Indian children and jurisdiction over Indian child
29 custody proceedings, including, but not limited to, agreements
30 that provide for orderly transfer of jurisdiction on a case-by-case
31 basis, for exclusive tribal or state jurisdiction, or for concurrent
32 jurisdiction between the state and tribes.

33 (b) (1) An agreement under subdivision (a) regarding the care
34 and custody of Indian children shall provide for the delegation to
35 the tribe or tribes of the responsibility that would otherwise be
36 the responsibility of the county for the provision of child welfare
37 services or assistance payments under the AFDC-FC program, or
38 both.

39 (2) An agreement under subdivision (a) concerning the
40 provision of child welfare services shall ensure that a tribe meets

1 current service delivery standards provided for under Chapter 5
2 (commencing with Section 16500) of Part 4, and provides the
3 local matching share of costs required by Section 10101.

4 (3) An agreement under subdivision (a) concerning assistance
5 payments under the AFDC-FC program shall ensure that a tribe
6 meets current foster care standards provided for under Article 5
7 (commencing with Section 11400) of Chapter 2 of Part 3, and
8 provides the local matching share of costs required by Section
9 15200.

10 (c) Upon the implementation date of an agreement authorized
11 by subdivision (b), the county that would otherwise be
12 responsible for providing the child welfare services or AFDC-FC
13 payments specified in the agreement as being provided by the
14 tribe shall no longer be subject to that responsibility to children
15 served under the agreement.

16 (d) Upon the effective date of an agreement authorized by
17 subdivision (b), the tribe shall comply with fiscal reporting
18 requirements specified by the department for federal and state
19 reimbursement child welfare or AFDC-FC services.

20 (e) An Indian tribe that is a party to an agreement under
21 subdivision (a), shall, in accordance with the agreement, be
22 eligible to receive allocations of child welfare services funds
23 pursuant to Section 10102.

24 (f) Implementation of an agreement under subdivision (a) may
25 not be construed to impose liability upon, or to require
26 indemnification by, the participating county or the State of
27 California for any act or omission performed by an officer, agent,
28 or employee of the participating tribe pursuant to this section.

29 SEC. 59. Section 16507.4 of the Welfare and Institutions
30 Code is amended to read:

31 16507.4. (a) Notwithstanding any other provisions of this
32 chapter, voluntary family reunification services shall be provided
33 without fee to families who qualify, or would qualify if
34 application had been made therefor, as recipients of public
35 assistance under the Aid to Families with Dependent Children
36 program. If the family is not qualified for aid, voluntary family
37 reunification services may be utilized, provided that the county
38 seeks reimbursement from the parent or guardian on a statewide
39 sliding scale according to income as determined by the State

1 Department of Social Services and approved by the Department
2 of Finance.

3 (b) An out-of-home placement of a minor without adjudication
4 by the juvenile court may occur only when all of the following
5 conditions exist:

6 (1) There is a mutual decision between the child's parent or
7 guardian and the county welfare department in accordance with
8 regulations promulgated by the State Department of Social
9 Services.

10 (2) There is a written agreement between the county welfare
11 department and the parent or guardian specifying the terms of the
12 voluntary placement. The State Department of Social Services
13 shall develop a form for voluntary placement agreements which
14 shall be used by all counties. The form shall indicate that foster
15 care under the Aid to Families with Dependent Children program
16 is available to ~~such~~ those children.

17 (3) In the case of an Indian child, in accordance with Section
18 1913 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et
19 seq.), the following criteria are met:

20 (A) The parent or Indian custodian's consent to the voluntary
21 out-of-home placement is executed in writing at least 10 days
22 after the child's birth and recorded before a judge.

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

27 (C) A parent of an Indian child may withdraw his or her
28 consent for any reason at any time and the child shall be returned
29 to the parent.

30 (c) In the case of a voluntary placement pending
31 relinquishment, a county welfare department shall have the
32 option of delegating to a licensed private adoption agency the
33 responsibility for placement by the county welfare department. If
34 such a delegation occurs, the voluntary placement agreement
35 shall be signed by the county welfare department, the child's
36 parent or guardian, and the licensed private adoption agency.

37 (d) The State Department of Social Services shall amend its
38 plan pursuant to Part E (commencing with Section 670) of
39 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. 60. If the Commission on State Mandates determines
4 that this act contains costs mandated by the state, reimbursement
5 to local agencies and school districts for those costs shall be
6 made pursuant to Part 7 (commencing with Section 17500) of
7 Division 4 of Title 2 of the Government Code.

8 SEC. 61. This act is an urgency statute necessary for the
9 immediate preservation of the public peace, health, or safety
10 within the meaning of Article IV of the Constitution and shall go
11 into immediate effect. The facts constituting the necessity are:

12 In order to clarify the scope of the Indian Child Welfare Act
13 for purposes of applying those provisions in this state, it is
14 necessary that the act take effect immediately.