

AMENDED IN ASSEMBLY JUNE 26, 2006

AMENDED IN ASSEMBLY JUNE 14, 2006

AMENDED IN SENATE AUGUST 22, 2005

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 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, 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, 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, 306.6, 361.31, and 361.7 to, and to repeal Section 360.6 of, the Welfare and Institutions Code, relating to Indian children, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 678, as amended, Ducheny. Indian children.

Existing federal law, the Indian Child Welfare Act, governs the proceedings for determining the placement of an Indian child when

that child is removed from the custody of his or her parent or guardian. Existing law authorizes tribes recognized under federal law to intervene in these proceedings.

Existing provisions of state law govern child custody proceedings, adoption proceedings, including postadoption contact agreements, dependency proceedings, including termination of parental rights, the voluntary relinquishment of a child by a parent, and guardianship proceedings. Existing law recognizes that the Indian Child Welfare Act applies if the subject of these proceedings is or may be an Indian child and specifies conforming procedures in these cases with regard to the right to notice and intervention accorded the child's tribe and the standard of proof applied in evaluating the evidence submitted, among other things.

This bill would revise, recast, and expand various provisions of state law to, among other things, apply to certain children who do not come within the definition of an Indian child for purposes of the Indian Child Welfare Act, and would provide that a parent, Indian custodian, or tribe may intervene in child custody proceedings involving children with Indian ancestry, as specified. The bill would also authorize a tribe to participate in dependency proceedings involving an Indian child, as specified. The bill would provide that an Indian child's parent's consent to adoption or guardianship is invalid unless it meets specified standards. The bill would specify that if an Indian custodian or biological parent of an Indian child in guardianship proceedings lacks the financial ability to retain counsel and requests that appointment, certain provisions of the Indian Child Welfare Act regarding court-appointed counsel would apply.

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 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.

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:

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

3
4 PART 3. INDIAN CHILDREN
5

6 170. (a) As used in this code, unless the context otherwise
7 requires, the terms “Indian,” “Indian child,” “Indian child’s
8 tribe,” “Indian custodian,” “Indian organization,” “Indian tribe,”
9 “reservation,” and “tribal court” shall be defined as provided in
10 Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec.
11 1901 et seq.).

12 (b) When used in connection with an Indian child custody
13 proceeding, the terms “extended family member” and “parent”
14 shall be defined as provided in Section 1903 of the Indian Child
15 Welfare Act.

16 (c) “Indian child custody proceeding” means a “child custody
17 proceeding” within the meaning of Section 1903 of the Indian
18 Child Welfare Act, including a voluntary or involuntary
19 proceeding that may result in an Indian child’s temporary or
20 long-term foster care or guardianship placement if the parent or
21 Indian custodian cannot have the child returned upon demand,
22 termination of parental rights, or adoptive placement. An “Indian
23 child custody proceeding” does not include a proceeding under
24 this code commenced by the parent of an Indian child to
25 determine the custodial rights of the child’s parents, unless the

1 proceeding involves a petition to declare an Indian child free
2 from the custody or control of a parent or involves a grant of
3 custody to a person or persons other than a parent, over the
4 objection of a parent.

5 (d) If an Indian child is a member of more than one tribe or is
6 eligible for membership in more than one tribe, the court shall
7 make a determination, in writing together with the reasons for it,
8 as to which tribe is the Indian child's tribe for purposes of the
9 Indian child custody proceeding. The court shall make that
10 determination as follows:

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

14 (2) If an Indian child is or becomes a member of more than
15 one tribe, or is not a member of any tribe but is eligible for
16 membership in more than one tribe, the tribe with which the child
17 has the more significant contacts shall be designated as the
18 Indian child's tribe. In determining which tribe the child has the
19 more significant contacts with, the court shall consider, among
20 other things, the following factors:

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

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

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

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

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

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

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

32 (H) The child's self identification.

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

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

39 (1) There is no resource that is more vital to the continued
40 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 Indian child by promoting practices, in accordance with the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and other applicable law, designed to prevent the child's involuntary out-of-home placement and, whenever the placement is necessary or ordered, by placing the child, whenever possible, in a placement that reflects the unique values of the child's tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the child's tribe and tribal community.

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

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

(B) Whether the parental rights of the child's parents have been terminated.

(C) Where the child has resided or been domiciled.

(b) In all Indian child custody proceedings 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) 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 the court to invalidate an action in an Indian child custody proceeding for foster care, guardianship placement, or termination of parental rights if the action violated Sections 1911, 1912, and 1913 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.). Nothing in this section is intended to prohibit, restrict, or otherwise limit any rights under Section 1914 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

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

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

(2) Subdivision (i) of Rule 1412.

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

(c) *This section shall only apply to proceedings involving an Indian child.*

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

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

(1) Notice shall be sent by registered or certified mail with return receipt requested. Additional notice by first-class mail is recommended, but not required.

(2) Notice to the tribe shall be to the tribal chairperson, unless 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, to the extent required by federal law, shall be sent
8 to the Secretary of the Interior's designated agent, the
9 Sacramento Area Director, Bureau of Indian Affairs. If the
10 identity or location of the Indian child's tribe is known, a copy of
11 the notice shall also be sent directly to the Secretary of the
12 Interior unless the Secretary of the Interior has waived that notice
13 in writing and the person responsible for giving notice under this
14 section has filed proof of the waiver 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, if
18 known.

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

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

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

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

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

32 (G) A statement of the following:

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

35 (ii) The right of the child's parents, Indian custodians, and
36 tribe to petition the court to transfer the proceeding to the tribal
37 court of the Indian child's tribe, absent objection by either parent
38 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) The potential legal consequences of the proceedings on
5 the future custodial rights of the child's parents or Indian
6 custodians.

7 (v) That if the parents or Indian custodians are unable to
8 afford counsel, counsel will be appointed to represent the parents
9 or Indian custodians pursuant to Section 1912 of the Indian Child
10 Welfare Act (25 U.S.C. Sec. 1901 et seq.).

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

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

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

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

39 (f) With respect to giving notice to Indian tribes, a party shall
40 be subject to court sanctions if that person knowingly and

1 willfully falsifies or conceals a material fact concerning whether
2 the child is an Indian child, or counsels a party to do so.

3 (g) The inclusion of contact information of any adult or child
4 that would otherwise be required to be included in the
5 notification pursuant to this section, shall not be required if that
6 person is at risk of harm as a result of domestic violence, child
7 abuse, sexual abuse, or stalking.

8 185. (a) In a custody proceeding involving a child who would
9 otherwise be an Indian child based on the definition contained in
10 paragraph (4) of Section 1903 of the federal Indian Child
11 Welfare Act (25 U.S.C. Sec. 1901 et seq.), but is not an Indian
12 child based on status of the child's tribe, as defined in paragraph
13 (8) of Section 1903 of the federal Indian Child Welfare Act (25
14 U.S.C. Sec. 1901 et seq.), the court may permit the tribe from
15 which the child is descended to participate in the proceeding
16 upon request of the tribe.

17 (b) If the court permits a tribe to participate in a proceeding,
18 the tribe may do all of the following, upon consent of the court:

19 (1) Be present at the hearing.

20 (2) Address the court.

21 (3) Request and receive notice of hearings.

22 (4) Request to examine court documents relating to the
23 proceeding.

24 (5) Present information to the court that is relevant to the
25 proceeding.

26 (6) Submit written reports and recommendations to the court.

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

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

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

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

7 *(e) This section shall only apply to proceedings involving an*
8 *Indian child.*

9 SEC. 2. Section 3041 of the Family Code is amended to read:

10 3041. (a) Before making an order granting custody to a
11 person or persons other than a parent, over the objection of a
12 parent, the court shall make a finding that granting custody to a
13 parent would be detrimental to the child and that granting
14 custody to the nonparent is required to serve the best interest of
15 the child. Allegations that parental custody would be detrimental
16 to the child, other than a statement of that ultimate fact, shall not
17 appear in the pleadings. The court may, in its discretion, exclude
18 the public from the hearing on this issue.

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

22 (c) As used in this section, "detriment to the child" includes
23 the harm of removal from a stable placement of a child with a
24 person who has assumed, on a day-to-day basis, the role of his or
25 her parent, fulfilling both the child's physical needs and the
26 child's psychological needs for care and affection, and who has
27 assumed that role for a substantial period of time. A finding of
28 detriment does not require any finding of unfitness of the parents.

29 (d) Notwithstanding subdivision (b), if the court finds by a
30 preponderance of the evidence that the person to whom custody
31 may be given is a person described in subdivision (c), this
32 finding shall constitute a finding that the custody is in the best
33 interest of the child and that parental custody would be
34 detrimental to the child absent a showing by a preponderance of
35 the evidence to the contrary.

36 (e) Notwithstanding subdivisions (a) to (d), inclusive, if the
37 child is an Indian child, when an allegation is made that parental
38 custody would be detrimental to the child, before making an
39 order granting custody to a person or persons other than a parent,
40 over the objection of a parent, the court shall apply the

1 evidentiary standards described in subdivisions (d), (e), and (f) of
2 Section 1912 of the Indian Child Welfare Act (25 U.S.C. Sec.
3 1901 et seq.) and Sections 224.6 and 361.7 of the Welfare and
4 Institutions Code and the placement preferences and standards
5 set out in Section 361.31 of the Welfare and Institutions

6 Code and Section 1922 of the Indian Child Welfare Act (25
7 U.S.C. Sec. 1901 et seq.).

8 SEC. 3. Section 7810 of the Family Code is repealed.

9 SEC. 4. Section 7821 of the Family Code is amended to read:

10 7821. A finding pursuant to this chapter shall be supported by
11 clear and convincing evidence, except as otherwise provided.

12 SEC. 5. Section 7822 of the Family Code is amended to read:

13 7822. (a) A proceeding under this part may be brought where
14 the child has been left without provision for the child's
15 identification by the child's parent or parents or by others or has
16 been left by both parents or the sole parent in the care and
17 custody of another for a period of six months or by one parent in
18 the care and custody of the other parent for a period of one year
19 without any provision for the child's support, or without
20 communication from the parent or parents, with the intent on the
21 part of the parent or parents to abandon the child.

22 (b) The failure to provide identification, failure to provide
23 support, or failure to communicate is presumptive evidence of
24 the intent to abandon. If the parent or parents have made only
25 token efforts to support or communicate with the child, the court
26 may declare the child abandoned by the parent or parents.

27 (c) If the child has been left without provision for the child's
28 identification and the whereabouts of the parents are unknown, a
29 petition may be filed after the 120th day following the discovery
30 of the child and citation by publication may be commenced. The
31 petition may not be heard until after the 180th day following the
32 discovery of the child.

33 (d) If the parent has placed the child for adoption and has not
34 refused to give the required consent to adoption, evidence of the
35 adoptive placement shall not in itself preclude the court from
36 finding an intent on the part of that parent to abandon the child. If
37 the parent has placed the child for adoption and has refused to
38 give the required consent to adoption but has not taken
39 reasonable action to obtain custody of the child, evidence of the

1 adoptive placement shall not in itself preclude the court from
2 finding an intent on the part of that parent to abandon the child.

3 (e) Notwithstanding subdivisions (a), (b), (c), and (d), if the
4 parent of an Indian child has transferred physical care, custody
5 and control of the child to an Indian custodian, that action shall
6 not be deemed to constitute an abandonment of the child, unless
7 the parent manifests the intent to abandon the child by either of
8 the following:

9 (1) Failing to resume physical care, custody, and control of the
10 child upon the request of the Indian custodian provided that if the
11 Indian custodian is unable to make a request because the parent
12 has failed to keep the Indian custodian apprised of his or her
13 whereabouts and the Indian custodian has made reasonable
14 efforts to determine the whereabouts of the parent without
15 success, there may be evidence of intent to abandon.

16 (2) Failing to substantially comply with any obligations
17 assumed by the parent in his or her agreement with the Indian
18 custodian despite the Indian custodian's objection to the
19 noncompliance.

20 SEC. 6. Section 7892.5 is added to the Family Code, to read:

21 7892.5. The court shall not declare an Indian child free from
22 the custody or control of a parent, unless both of the following
23 apply:

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

27 (b) The court finds, supported by evidence beyond a
28 reasonable doubt, including testimony of one or more "qualified
29 expert witnesses" as described in Section 224.5 of the Welfare
30 and Institutions Code, that the continued custody of the child by
31 the parent is likely to result in serious emotional or physical
32 damage to the child.

33 (c) *This section shall only apply to proceedings involving an*
34 *Indian child.*

35 SEC. 7. Section 7907.3 is added to the Family Code, to read:

36 7907.3. The Interstate Compact on the Placement of Children
37 shall not apply to any placement, sending, or bringing of an
38 Indian child into another state pursuant to a transfer of
39 jurisdiction to a tribal court under Section 1911 of the Indian
40 Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

1 SEC. 8. Section 8606.5 is added to the Family Code, to read:

2 8606.5. (a) Notwithstanding any other section in this part,
3 and in accordance with Section 1913 of the Indian Child Welfare
4 Act (25 U.S.C. Sec. 1901 et seq.), consent to adoption given by
5 an Indian child's parent is not valid unless both of the following
6 occur:

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

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

13 (b) The parent of an Indian child may withdraw his or her
14 consent to adoption for any reason at any time prior to the entry
15 of a final decree of adoption and the child shall be returned to the
16 parent.

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

26 SEC. 9. Section 8616.5 of the Family Code is amended to
27 read:

28 8616.5. (a) The Legislature finds and declares that some
29 adoptive children may benefit from either direct or indirect
30 contact with birth relatives, including the birth parent or parents
31 or an Indian tribe, after being adopted. Postadoption contact
32 agreements are intended to ensure children of an achievable level
33 of continuing contact when contact is beneficial to the children
34 and the agreements are voluntarily entered into by birth relatives,
35 including the birth parent or parents or an Indian tribe, and
36 adoptive parents. Nothing in this section requires all of the listed
37 parties to participate in the development of a post adoption
38 contact agreement in order for the agreement to be entered into.

39 (b) (1) Nothing in the adoption laws of this state shall be
40 construed to prevent the adopting parent or parents, the birth

1 relatives, including the birth parent or parents or an Indian tribe,
2 and the child from voluntarily entering into a written agreement
3 to permit continuing contact between the birth relatives,
4 including the birth parent or parents or an Indian tribe, and the
5 child if the agreement is found by the court to have been entered
6 into voluntarily and to be in the best interests of the child at the
7 time the adoption petition is granted.

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

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

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

19 (C) Provisions for the sharing of information about the child in
20 the future.

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

24 (c) At the time an adoption decree is entered pursuant to a
25 petition filed pursuant to Section 8714, 8714.5, 8802, 8912, or
26 9000, the court entering the decree may grant postadoption
27 privileges if an agreement for those privileges has been entered
28 into, including agreements entered into pursuant to subdivision
29 (f) of Section 8620. The hearing to grant the adoption petition
30 and issue an order of adoption may be continued as necessary to
31 permit parties who are in the process of negotiating a
32 postadoption agreement to reach a final agreement.

33 (d) The child who is the subject of the adoption petition shall
34 be considered a party to the postadoption contact agreement. The
35 written consent to the terms and conditions of the postadoption
36 contact agreement and any subsequent modifications of the
37 agreement by a child who is 12 years of age or older is a
38 necessary condition to the granting of privileges regarding
39 visitation, contact, or sharing of information about the child,
40 unless the court finds by a preponderance of the evidence that the

1 agreement, as written, is in the best interests of the child. Any
2 child who has been found to come within Section 300 of the
3 Welfare and Institutions Code or who is the subject of a petition
4 for jurisdiction of the juvenile court under Section 300 of the
5 Welfare and Institutions Code shall be represented by an attorney
6 for purposes of consent to the postadoption contact agreement.

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

9 (1) After the adoption petition has been granted by the court,
10 the adoption cannot be set aside due to the failure of an adopting
11 parent, a birth parent, a birth relative, an Indian tribe, or the child
12 to follow the terms of this agreement or a later change to this
13 agreement.

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

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

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

1 that the inquiry will not disturb the stability of the child's home
2 to the detriment of the child.

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

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

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

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

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

16 (B) There has been a substantial change of circumstances
17 since the original agreement was executed and approved by the
18 court.

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

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

32 (i) All costs and fees of mediation or other appropriate dispute
33 resolution proceedings shall be borne by each party, excluding
34 the child. All costs and fees of litigation shall be borne by the
35 party filing the action to modify or enforce the agreement when
36 no party has been found by the court as failing to comply with an
37 existing postadoption contact agreement. Otherwise, a party,
38 other than the child, found by the court as failing to comply
39 without good cause with an existing agreement shall bear all the
40 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) Prior to issuing the order of adoption, in an adoption involving an Indian child, the court may ~~modify a prior court order~~, upon a petition of the birth parent, birth relative, or an Indian tribe, *order the parties to engage in family mediation services for the purpose of reaching a postadoption contact agreement* if the prospective adoptive parent fails to negotiate in good faith to enter into a postadoption contact agreement, after having agreed to enter into negotiations, provided that the failure of the parties to reach an agreement is not in and of itself proof of bad faith.

(2) ~~In the circumstances set forth in~~ *Prior to issuing the order of adoption, if the parties fail to negotiate in good faith to enter into a postadoption contact agreement during the negotiations entered into pursuant to and in accordance with* paragraph (1), the court may modify prior orders or issue new orders as necessary to ensure the best interest of the Indian child is met, including, but not limited to, requiring parties to engage in *further* family mediation services for the purpose of reaching a postadoption contact agreement, initiating guardianship proceeding in lieu of adoption, or authorizing a change of adoptive placement for the child.

SEC. 10. Section 8619.5 is added to the Family Code, to read:

8619.5. Whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parent voluntarily consents to termination of his or her parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant that petition unless there is a showing, in a proceeding subject to the provisions of Section 1912 of the Indian Child Welfare Act (25

1 U.S.C. Sec. 1901 et seq.), that the return of custody is not in the
2 best interest of the child.

3 SEC. 11. Section 8620 of the Family Code is amended to
4 read:

5 8620. (a) (1) If a parent is seeking to relinquish a child
6 pursuant to Section 8700 or execute an adoption placement
7 agreement pursuant to Section 8801.3, the department, licensed
8 adoption agency, or adoption service provider, as applicable,
9 shall ask the child and the child's parent or custodian whether the
10 child is, or may be, a member of, or eligible for membership in
11 an Indian tribe or whether the child has been identified as a
12 member of an Indian organization. The department, licensed
13 adoption agency, or adoption service provider, as applicable,
14 shall complete the forms provided for this purpose by the
15 department and shall make this completed form a part of the file.

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

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

22 (B) The name, address, date of birth, and tribal affiliation of
23 the birth parents, maternal and paternal grandparents, and
24 maternal and paternal great-grandparents of the child.

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

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

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

31 (3) (A) The department, licensed adoption agency, or
32 adoption service provider, as applicable, shall send a notice,
33 which shall include information obtained pursuant to paragraph
34 (2) and a request for confirmation of the child's Indian status, to
35 any parent and any custodian of the child, and to any Indian tribe
36 of which the child is, or may be, a member or eligible for
37 membership. If any of the information required under paragraph
38 (2) cannot be obtained, the notice shall indicate that fact.

39 (B) The notice sent pursuant to subparagraph (A) shall
40 describe the nature of the proceeding and advise the recipient of

1 the Indian tribe's right to intervene in the proceeding on its own
2 behalf or on behalf of a tribal member relative of the child.

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

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

15 (d) Any notice sent under this section shall comply with
16 Section 180.

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

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

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

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

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

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

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

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

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

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

SEC. 12. Section 8710 of the Family Code is amended to read:

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

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

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

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

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

3 (b) In the case of an Indian child whose foster parent or
4 parents or other prospective adoptive parents do not fall within
5 the placement preferences established in subdivision (c) or (d) of
6 Section 361.31 of the Welfare and Institutions Code, the foster
7 parent or parents or other prospective adoptive parents shall only
8 be considered if the court finds, supported by clear and
9 convincing evidence, that good cause exists to deviate from these
10 placement preferences.

11 (c) This section does not apply to a child who has been
12 adjudged a dependent of the juvenile court pursuant to Section
13 300 of the Welfare and Institutions Code.

14 SEC. 13. Section 9208 is added to the Family Code, to read:

15 9208. (a) The clerk of the superior court entering a final
16 order of adoption concerning an Indian child shall provide the
17 Secretary of the Interior or his or her designee with a copy of the
18 order within 30 days of the date of the order, together with any
19 information necessary to show the following:

- 20 (1) The name and tribal affiliation of the child.
21 (2) The names and addresses of the biological parents.
22 (3) The names and addresses of the adoptive parents.
23 (4) The identity of any agency having files or information
24 relating to that adoptive placement.

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

28 SEC. 14. Section 9209 is added to the Family Code, to read:

29 9209. (a) Upon application by an Indian individual who has
30 reached the age of 18 years and who was the subject of an
31 adoptive placement, the court which entered the final decree of
32 adoption shall inform that individual of the tribal affiliation, if
33 any, of the individual's biological parents and provide any other
34 information as may be necessary to protect any rights flowing
35 from the individual's tribal relationship, including, but not
36 limited to, tribal membership rights or eligibility for federal or
37 tribal programs or services available to Indians.

38 (b) If the court records contain an affidavit of the biological
39 parent or parents that their identity remain confidential, the court
40 shall inform the individual that the Secretary of the Interior may,

1 upon request, certify to the individual's tribe that the individual's
2 parentage and other circumstances of birth entitle the individual
3 to membership under the criteria established by the tribe.

4 SEC. 15. Section 9210 of the Family Code is amended to
5 read:

6 9210. (a) Except as otherwise provided in subdivisions (b)
7 and (c), a court of this state has jurisdiction over a proceeding for
8 the adoption of a minor commenced under this part if any of the
9 following applies:

10 (1) Immediately before commencement of the proceeding, the
11 minor lived in this state with a parent, a guardian, a prospective
12 adoptive parent, or another person acting as parent, for at least
13 six consecutive months, excluding periods of temporary absence,
14 or, in the case of a minor under six months of age, lived in this
15 state with any of those individuals from soon after birth and there
16 is available in this state substantial evidence concerning the
17 minor's present or future care.

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

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

25 (A) The minor and the minor's parents, or the minor and the
26 prospective adoptive parent, have a significant connection with
27 this state.

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

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

35 (5) It appears that no other state would have jurisdiction under
36 requirements substantially in accordance with paragraphs (1) to
37 (4), inclusive, or another state has declined to exercise
38 jurisdiction on the ground that this state is the more appropriate
39 forum to hear a petition for adoption of the minor, and there is

1 available in this state substantial evidence concerning the minor's
2 present or future care.

3 (b) A court of this state may not exercise jurisdiction over a
4 proceeding for adoption of a minor if at the time the petition for
5 adoption is filed a proceeding concerning the custody or adoption
6 of the minor is pending in a court of another state exercising
7 jurisdiction substantially in conformity with this part, unless the
8 proceeding is stayed by the court of the other state because this
9 state is a more appropriate forum or for another reason.

10 (c) If a court of another state has issued a decree or order
11 concerning the custody of a minor who may be the subject of a
12 proceeding for adoption in this state, a court of this state may not
13 exercise jurisdiction over a proceeding for adoption of the minor,
14 unless both of the following apply:

15 (1) The requirements for modifying an order of a court of
16 another state under this part are met, the court of another state
17 does not have jurisdiction over a proceeding for adoption
18 substantially in conformity with paragraphs (1) to (4), inclusive,
19 of subdivision (a), or the court of another state has declined to
20 assume jurisdiction over a proceeding for adoption.

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

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

27 SEC. 16. Section 1449 is added to the Probate Code, to read:

28 1449. (a) As used in this division, unless the context
29 otherwise requires, the terms "Indian," "Indian child," "Indian
30 child's tribe," "Indian custodian," "Indian tribe," "reservation,"
31 and "tribal court" shall be defined as provided in Section 1903 of
32 the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

33 (b) When used in connection with an Indian child custody
34 proceeding, the terms "extended family member" and "parent"
35 shall be defined as provided in Section 1903 of the Indian Child
36 Welfare Act (25 U.S.C. Sec. 1901 et seq.).

37 (c) "Indian child custody proceeding" means a "child custody
38 proceeding" within the meaning of Section 1903 of the Indian
39 Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), including a
40 voluntary or involuntary proceeding that may result in an Indian

1 child's temporary or long-term foster care or guardianship
2 placement if the parent or Indian custodian cannot have the child
3 returned upon demand, termination of parental rights or adoptive
4 placement.

5 (d) When an Indian child is a member of more than one tribe
6 or is eligible for membership in more than one tribe, the court
7 shall make a determination, in writing together with the reasons
8 for it, as to which tribe is the Indian child's tribe for purposes of
9 the Indian child custody proceeding. The court shall make that
10 determination as follows:

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

14 (2) If an Indian child is or becomes a member of more than
15 one tribe, or is not a member of any tribe but is eligible for
16 membership in more than one tribe, the tribe with which the child
17 has the more significant contacts shall be designated as the
18 Indian child's tribe. In determining which tribe the child has the
19 more significant contacts with, the court shall consider, among
20 other things, the following factors:

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

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

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

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

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

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

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

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

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

38 SEC. 17. Section 1456 is added to the Probate Code, to read:

39 1456. (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 Indian child by promoting practices, in accordance with the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and other applicable law, designed to prevent the child's involuntary out-of-home placement and, whenever such placement is necessary or ordered, by placing the child, whenever possible, in a placement that reflects the unique values of the child's tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the child's tribe and tribal community.

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

(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) 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 the court to invalidate an action in an Indian child custody proceeding 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. 18. 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) In any case in which the petition is a petition for guardianship of the person and the proposed guardian is not the natural parent or Indian custodian of the proposed ward, unless the proposed guardian has been nominated by the natural parents pursuant to Section 1500 and the parents retain the right to have custody of the child returned to them upon demand.

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

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

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

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

(2) Subdivision (i) of Rule 1412.

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

SEC. 19. 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 which the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) applies, as specified in Section 1457.

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

(1) Notice shall be sent by registered or certified mail with return receipt requested. Additional notice by first-class mail is recommended, but not required.

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

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

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

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

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

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

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

7 (D) A copy of the petition.

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

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

11 (G) A statement of the following:

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

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

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

21 (iv) The potential legal consequences of the proceedings on
22 the future custodial rights of the child's parents or Indian
23 custodians.

24 (v) That if the parents or Indian custodians are unable to
25 afford counsel, counsel shall be appointed to represent the
26 parents or Indian custodians pursuant to Section 1912 of the
27 Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

28 (vi) That the information contained in the notice, petition,
29 pleading, and other court documents is confidential, so any
30 person or entity notified shall maintain the confidentiality of the
31 information contained in the notice concerning the particular
32 proceeding and not reveal it to anyone who does not need the
33 information in order to exercise the tribe's rights under the Indian
34 Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

35 (c) Notice shall be sent whenever it is known or there is reason
36 to know that an Indian child is involved, and for every hearing
37 thereafter, including, but not limited to, the hearing at which a
38 final adoption order is to be granted. After a tribe acknowledges
39 that the child is a member or eligible for membership in the tribe,
40 or after the Indian child's tribe intervenes in a proceeding, the

1 information set out in subparagraphs (C), (D), (E), and (G) of
2 paragraph (5) of subdivision (b) need not be included with the
3 notice.

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

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

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

19 (g) The inclusion of contact information of any adult or child
20 that would otherwise be required to be included in the
21 notification pursuant to this section, shall not be required if that
22 person is at risk of harm as a result of domestic violence, child
23 abuse, sexual abuse, or stalking.

24 SEC. 20. Section 1474 is added to the Probate Code, to read:

25 1474. If an Indian custodian or biological parent of an Indian
26 child lacks the financial ability to retain counsel and requests the
27 appointment of counsel in proceedings described in Section
28 1457, the provisions of subsection (b) of Section 1912 of the
29 Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and
30 Section 23.13 of Title 25 of the Code of Federal Regulations are
31 applicable.

32 SEC. 21. Section 1500.1 is added to the Probate Code, to
33 read:

34 1500.1. (a) Notwithstanding any other section in this part,
35 and in accordance with Section 1913 of the Indian Child Welfare
36 Act (25 U.S.C. Sec. 1901 et seq.), consent to nomination of a
37 guardian of the person or of a guardian of the person and the
38 estate given by an Indian child's parent is not valid unless both of
39 the following occur:

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

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

7 (b) The parent of an Indian child may withdraw his or her
8 consent to guardianship for any reason at any time prior to the
9 issuance of letters of guardianship and the child shall be returned
10 to the parent.

11 SEC. 22. Section 1510 of the Probate Code is amended to
12 read:

13 1510. (a) A relative or other person on behalf of the minor,
14 or the minor if 12 years of age or older, may file a petition for the
15 appointment of a guardian of the minor.

16 (b) The petition shall request that a guardian of the person or
17 estate of the minor, or both, be appointed, shall specify the name
18 and address of the proposed guardian and the name and date of
19 birth of the proposed ward, and shall state that the appointment is
20 necessary or convenient.

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

23 (1) The parents of the proposed ward.

24 (2) The person having legal custody of the proposed ward and,
25 if that person does not have the care of the proposed ward, the
26 person having the care of the proposed ward.

27 (3) The relatives of the proposed ward within the second
28 degree.

29 (4) In the case of a guardianship of the estate, the spouse of the
30 proposed ward.

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

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

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

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

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

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

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

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

SEC. 23. Section 1511 of the Probate Code is amended to read:

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

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

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

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

- 1 (1) The spouse named in the petition.
- 2 (2) The relatives named in the petition, except that if the
3 petition is for the appointment of a guardian of the estate only the
4 court may dispense with the giving of notice to any one or more
5 or all of the relatives.
- 6 (3) The person having the care of the proposed ward if other
7 than the person having legal custody of the proposed ward.
- 8 (d) If notice is required by Section 1461 or Section 1542 to be
9 given to the Director of Mental Health or the Director of
10 Developmental Services or the Director of Social Services, notice
11 shall be mailed as so required.
- 12 (e) If the petition states that the proposed ward is receiving or
13 is entitled to receive benefits from the Veterans Administration,
14 notice shall be mailed to the office of the Veterans
15 Administration referred to in Section 1461.5.
- 16 (f) Unless the court orders otherwise, notice shall not be given
17 to any of the following:
- 18 (1) The parents or other relatives of a proposed ward who has
19 been relinquished to a licensed adoption agency.
- 20 (2) The parents of a proposed ward who has been judicially
21 declared free from their custody and control.
- 22 (g) Notice need not be given to any person if the court so
23 orders upon a determination of either of the following:
- 24 (1) The person cannot with reasonable diligence be given the
25 notice.
- 26 (2) The giving of the notice would be contrary to the interest
27 of justice.
- 28 (h) Before the appointment of a guardian is made, proof shall
29 be made to the court that each person entitled to notice under this
30 section either:
- 31 (1) Has been given notice as required by this section.
- 32 (2) Has not been given notice as required by this section
33 because the person cannot with reasonable diligence be given the
34 notice or because the giving of notice to that person would be
35 contrary to the interest of justice.
- 36 (i) If notice is required by Section 1460.2 to be given to an
37 Indian custodian or tribe, notice shall be mailed as so required.
- 38 SEC. 24. Section 1513 of the Probate Code is amended to
39 read:

1 1513. (a) Unless waived by the court, a court investigator,
2 probation officer, or domestic relations investigator may make an
3 investigation and file with the court a report and recommendation
4 concerning each proposed guardianship of the person or
5 guardianship of the estate. Investigations where the proposed
6 guardian is a relative shall be made by a court investigator.
7 Investigations where the proposed guardian is a nonrelative shall
8 be made by the county agency designated to investigate potential
9 dependency. The report for the guardianship of the person shall
10 include, but need not be limited to, an investigation and
11 discussion of all of the following:

12 (1) A social history of the guardian.

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

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

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

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

33 (c) If the investigation finds that any party to the proposed
34 guardianship alleges the minor's parent is unfit, as defined by
35 Section 300 of the Welfare and Institutions Code, the case shall
36 be referred to the county agency designated to investigate
37 potential dependencies. Guardianship proceedings shall not be
38 completed until the investigation required by Sections 328 and
39 329 of the Welfare and Institutions Code is completed and a

1 report is provided to the court in which the guardianship
2 proceeding is pending.

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

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

19 (f) This section does not apply to guardianships resulting from
20 a permanency plan for a dependent child pursuant to Section
21 366.26 of the Welfare and Institutions Code.

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

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

31 SEC. 25. Section 1516.5 of the Probate Code is amended to
32 read:

33 1516.5. (a) A proceeding to have a child declared free from
34 the custody and control of one or both parents may be brought in
35 the guardianship proceeding pursuant to Part 4 (commencing
36 with Section 7800) of Division 12 of the Family Code, if all of
37 the following requirements are satisfied:

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

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

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

8 (A) The child and the birth parent.

9 (B) The child and the guardian, including family members of
10 the guardian.

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

12 (b) The court shall appoint a court investigator or other
13 qualified professional to investigate all factors enumerated in
14 subdivision (a). The findings of the investigator or professional
15 regarding those issues shall be included in the written report
16 required pursuant to Section 7851 of the Family Code.

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

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

23 SEC. 26. Section 1601 of the Probate Code is amended to
24 read:

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

33 SEC. 27. Section 2112 of the Probate Code is repealed.

34 SEC. 28. Section 110 is added to the Welfare and Institutions
35 Code, to read:

36 110. Nothing in this chapter shall be construed as limiting the
37 right of an Indian tribe or Indian organization to establish or
38 operate CASA programs independent of state funding or the
39 discretion of the court to appoint CASAs from those programs in
40 Indian child custody proceedings.

1 SEC. 29. Section 224 is added to the Welfare and Institutions
2 Code, to read:

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

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

19 (2) It is in the interest of an Indian child that the child's
20 membership in the child's Indian tribe and connection to the
21 tribal community be encouraged and protected, regardless of
22 whether the child is in the physical custody of an Indian parent or
23 Indian custodian at the commencement of a child custody
24 proceeding, the parental rights of the child's parents have been
25 terminated, or where the child has resided or been domiciled.

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

36 (c) A determination by an Indian tribe that an unmarried
37 person, who is under the age of 18 years, is either (1) a member
38 of an Indian tribe or (2) eligible for membership in an Indian
39 tribe and a biological child of a member of an Indian tribe shall
40 constitute a significant political affiliation with the tribe and shall

1 require the application of the federal Indian Child Welfare Act to
2 the proceedings.

3 (d) 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 the court to invalidate an action in an
11 Indian child custody proceeding for foster care or guardianship
12 placement or termination of parental rights if the action violated
13 Sections 1911, 1912, and 1913 of the Indian Child Welfare Act.

14 SEC. 30. Section 224.1 is added to the Welfare and
15 Institutions Code, to read:

16 224.1. (a) As used in this division, unless the context
17 otherwise requires, the terms "Indian," "Indian child," "Indian
18 child's tribe," "Indian custodian," "Indian tribe," "reservation,"
19 and "tribal court" shall be defined as provided in Section 1903 of
20 the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

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

25 (c) "Indian child custody proceeding" means a "child custody
26 proceeding" within the meaning of Section 1903 of the Indian
27 Child Welfare Act, including a proceeding for temporary or
28 long-term foster care or guardianship placement, termination of
29 parental rights, preadoptive placement after termination of
30 parental rights, or adoptive placement. "Indian child custody
31 proceeding" does not include a voluntary foster care or
32 guardianship placement if the parent or Indian custodian retains
33 the right to have the child returned upon demand.

34 (d) If an Indian child is a member of more than one tribe or is
35 eligible for membership in more than one tribe, the court shall
36 make a determination, in writing together with the reasons for it,
37 as to which tribe is the Indian child's tribe for purposes of the
38 Indian child custody proceeding. The court shall make that
39 determination as follows:

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

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

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

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

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

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

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

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

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

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

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

28 SEC. 31. Section 224.2 is added to the Welfare and
29 Institutions Code, to read:

30 224.2. (a) If the court, a social worker, or probation officer
31 knows or has reason to know that an Indian child is involved, any
32 notice sent in an Indian child custody proceeding under this code
33 shall be sent to the minor's parents or legal guardian, Indian
34 custodian, if any, and the minor's tribe and comply with all of the
35 following requirements:

36 (1) Notice shall be sent by registered or certified mail with
37 return receipt requested. Additional notice by first-class mail is
38 recommended, but not required.

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 child's tribe in accordance
4 with subdivision (d) of Section 224.1, after which notice need
5 only be sent to the tribe determined to be the Indian child's tribe.

6 (4) Notice, to the extent required by federal law, shall be sent
7 to the Secretary of the Interior's designated agent, the
8 Sacramento Area Director, Bureau of Indian Affairs. If the
9 identity or location of the parents, Indian custodians, or the
10 minor's tribe is known, a copy of the notice shall also be sent
11 directly to the Secretary of the Interior, unless the Secretary of
12 the Interior has waived the notice in writing and the person
13 responsible for giving notice under this section has filed proof of
14 the waiver 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, if
18 known.

19 (B) The name of the Indian tribe in which the child is a
20 member or may be eligible for membership, if known.

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

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

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

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

32 (G) A statement of the following:

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

35 (ii) The right of the child's parents, Indian custodians, and
36 tribe to petition the court to transfer the proceeding to the tribal
37 court of the Indian child's tribe, absent objection by either parent
38 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) The potential legal consequences of the proceedings on
5 the future custodial and parental rights of the child's parents or
6 Indian custodians.

7 (v) That if the parents or Indian custodians are unable to afford
8 counsel~~in~~, counsel will be appointed to represent the parents or
9 Indian custodians pursuant to Section 1912 of the Indian Child
10 Welfare Act (25 U.S.C. Sec. 1901 et seq.).

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

18 (b) Notice shall be sent whenever it is known or there is reason
19 to know that an Indian child is involved, and for every hearing
20 thereafter, including, but not limited to, the hearing at which a
21 final adoption order is to be granted, unless it is determined that
22 the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) does
23 not apply to the case in accordance with Section 224.3. After a
24 tribe acknowledges that the child is a member or eligible for
25 membership in that tribe, or after a tribe intervenes in a
26 proceeding, the information set out in subparagraphs (C), (D),
27 (E), and (G) of paragraph (5) of subdivision (a) need not be
28 included with the notice.

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

33 (d) 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, except for the detention hearing,
36 provided that notice of the detention hearing shall be given as
37 soon as possible after the filing of the petition initiating the
38 proceeding and proof of the notice is filed with the court within
39 10 days after the filing of the petition. With the exception of the
40 detention hearing, the parent, Indian custodian, or the tribe shall,

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

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

9 (f) The inclusion of contact information of any adult or child
10 that would otherwise be required to be included in the
11 notification pursuant to this section, shall not be required if that
12 person is at risk of harm as a result of domestic violence, child
13 abuse, sexual abuse, or stalking.

14 SEC. 32. Section 224.3 is added to the Welfare and
15 Institutions Code, to read:

16 224.3. (a) The court, county welfare department, and the
17 probation department have an affirmative and continuing duty to
18 inquire whether a child for whom a petition under Section 300,
19 601, or 602 is to be, or has been, filed is or may be an Indian
20 child in all dependency proceedings and in any juvenile wardship
21 proceedings if the child is at risk of entering foster care or is in
22 foster care.

23 (b) The circumstances that may provide reason to know the
24 child is an Indian child include, but are not limited to, the
25 following:

26 (1) A person having an interest in the child, including the
27 child, an officer of the court, a tribe, an Indian organization, a
28 public or private agency, or a member of the child's extended
29 family provides information suggesting the child is a member of
30 a tribe or eligible for membership in a tribe or one or more of the
31 child's biological parents, grandparents, or great-grandparents
32 are or were a member of a tribe.

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

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

39 (c) If the court, social worker, or probation officer knows or
40 has reason to know that an Indian child is involved, the social

1 worker or probation officer is required to make further inquiry
2 regarding the possible Indian status of the child, and to do so as
3 soon as practicable, by interviewing the parents, Indian
4 custodian, and extended family members to gather the
5 information required in paragraph (5) of subdivision (a) of
6 Section 224.2, contacting the Bureau of Indian Affairs and the
7 State Department of Social Services for assistance in identifying
8 the names and contact information of the tribes in which the child
9 may be a member or eligible for membership in and contacting
10 the tribes and any other person that reasonably can be expected to
11 have information regarding the child's membership status or
12 eligibility.

13 (d) If the court, social worker, or probation officer knows or
14 has reason to know that an Indian child is involved, the social
15 worker or probation officer shall provide notice in accordance
16 with paragraph (5) of subdivision (a) of Section 224.2.

17 (e) (1) A determination by an Indian tribe that a child is or is
18 not a member of or eligible for membership in that tribe, or
19 testimony attesting to that status by a person authorized by the
20 tribe to provide that determination, shall be conclusive.
21 Information that the child is not enrolled or eligible for
22 enrollment in the tribe is not determinative of the child's
23 membership status unless the tribe also confirms in writing that
24 enrollment is a prerequisite for membership under tribal law or
25 custom.

26 (2) In the absence of a contrary determination by the tribe, a
27 determination by the Bureau of Indian Affairs that a child is or is
28 not a member of or eligible for membership in that tribe is
29 conclusive.

30 (3) If proper and adequate notice has been provided pursuant
31 to Section 224.2, and neither a tribe nor the Bureau of Indian
32 Affairs has provided a determinative response within 60 days
33 after receiving that notice, the court may determine that the
34 Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) does not
35 apply to the proceedings, provided that the court shall reverse its
36 determination of the inapplicability of the Indian Child Welfare
37 Act and apply the act prospectively if a tribe or the Bureau of
38 Indian Affairs subsequently confirms that the child is an Indian
39 child.

(f) Notwithstanding a determination that the Indian Child Welfare Act does not apply to the proceedings made in accordance with subdivision (e), if the court, social worker, or probation officer subsequently receives any information required under paragraph (5) of subdivision (a) of Section 224.2 that was not previously available or included in the notice issued under Section 224.2, the social worker or probation officer shall provide the additional information to any tribes entitled to notice under paragraph (3) of subdivision (a) of Section 224.2 and the Bureau of Indian Affairs.

SEC. 33. Section 224.4 is added to the Welfare and Institutions Code, to read:

224.4. The Indian child's tribe and Indian custodian have the right to intervene at any point in an Indian child custody proceeding.

SEC. 34. Section 224.5 is added to the Welfare and Institutions Code, to read:

224.5. In an Indian child custody proceeding, the court shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe applicable to the proceeding to the same extent that such entities give full faith and credit to the public acts, records, judicial proceedings, and judgments of any other entity.

SEC. 35. Section 224.6 is added to the Welfare and Institutions Code, to read:

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

(b) In considering whether to involuntarily place an Indian child in foster care or to terminate the parental rights of the parent of an Indian child, the court shall:

(1) Require that a qualified expert witness testify regarding whether continued 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) Persons with the following characteristics are most likely to meet the requirements for a qualified expert witness for purposes of Indian child custody proceedings:

(1) A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and childrearing practices.

(2) Any expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's tribe.

(3) A professional person having substantial education and experience in the area of his or her specialty.

(d) The court or any party may request the assistance of the Indian child's tribe or Bureau of Indian Affairs agency serving the Indian child's tribe in locating persons qualified to serve as expert witnesses.

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

SEC. 36. Section 290.1 of the Welfare and Institutions Code is amended to read:

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

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

(1) The mother.

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

(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

1 proceeding or has been adjudged to be a dependent child of the
2 juvenile court. If the sibling is 10 years of age or older, the
3 sibling, the sibling's caregiver, and the sibling's attorney. If the
4 sibling is under 10 years of age, the sibling's caregiver and the
5 sibling's attorney. However, notice is not required to be given to
6 any sibling whose matter is calendared in the same court on the
7 same day.

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

12 (7) The attorney for the parent or parents, or legal guardian or
13 guardians.

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

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

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

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

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

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

27 (2) The name of the child.

28 (3) A copy of the petition.

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

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

34 SEC. 37. Section 290.2 of the Welfare and Institutions Code
35 is amended to read:

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

1 (a) Notice shall be given to the following persons whose
2 address is known or becomes known prior to the initial petition
3 hearing:

4 (1) The mother.

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

6 (3) The legal guardian or guardians.

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

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

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

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

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

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

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

31 (c) Notice shall be served as follows:

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

37 (2) If the child is not retained in custody, the notice shall be
38 given to those persons required to be noticed at least 10 days
39 prior to the date of the hearing. If any person who is required to
40 be given notice is known to reside outside of the county, the clerk

1 of the juvenile court shall mail the notice and copy of the petition
2 by first-class mail, to that person as soon as possible after the
3 filing of the petition and at least 10 days before the time set for
4 hearing. Failure to respond to the notice is not cause for an arrest
5 or detention. In the instance of a failure to appear after notice by
6 first-class mail, the court shall direct that the notice and copy of
7 the petition be personally served on all persons required to
8 receive the notice and copy of the petition. For these purposes,
9 personal service of the notice and copy of the petition outside of
10 the county at least 10 days before the time set for hearing is
11 equivalent to service by first-class mail. Service may be waived
12 by any person by a voluntary appearance entered in the minutes
13 of the court or by a written waiver of service filed with the clerk
14 of the court at, or prior to, the hearing.

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

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

18 (2) The name of the child.

19 (3) A copy of the petition.

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

23 SEC. 38. Section 291 of the Welfare and Institutions Code is
24 amended to read:

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

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

29 (1) The mother.

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

31 (3) The legal guardian or guardians.

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

33 (5) Any known sibling of the child who is the subject of the
34 hearing if that sibling either is the subject of a dependency
35 proceeding or has been adjudged to be a dependent child of the
36 juvenile court. If the sibling is 10 years of age or older, the
37 sibling, the sibling's caregiver, and the sibling's attorney. If the
38 sibling is under 10 years of age, the sibling's caregiver and the
39 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) Each attorney of record unless counsel of record is present
4 in court when the hearing is scheduled, then no further notice
5 need be given.

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

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

12 (c) Notice shall be served as follows:

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

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

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

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

22 (2) The nature of the hearing.

23 (3) Each section and subdivision under which the proceeding
24 has been initiated.

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

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

28 (6) A statement that:

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

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

33 (C) If the parent, guardian, Indian custodian, or adult relative
34 is indigent and cannot afford an attorney, and desires to be
35 represented by an attorney, the parent, guardian, Indian
36 custodian, or adult relative shall promptly notify the clerk of the
37 juvenile court.

38 (D) If an attorney is appointed to represent the parent,
39 guardian, Indian custodian, or adult relative, the represented

1 person shall be liable for all or a portion of the costs to the extent
2 of his or her ability to pay.

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

6 (7) A copy of the petition.

7 (e) Service of the notice of the hearing shall be given in the
8 following manner:

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

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

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

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

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

27 SEC. 39. Section 292 of the Welfare and Institutions Code is
28 amended to read:

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

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

34 (1) The mother.

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

36 (3) The legal guardian or guardians.

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

38 (5) Any known sibling of the child who is the subject of the
39 hearing if that sibling either is the subject of a dependency
40 proceeding or has been adjudged to be a dependent child of the

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

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

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

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

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

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

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

29 SEC. 40. Section 293 of the Welfare and Institutions Code is
30 amended to read:

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

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

36 (1) The mother.

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

38 (3) The legal guardian or guardians.

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

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

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

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

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

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

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

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

39 (f) Notice to a foster parent, a relative caregiver, a certified
40 foster parent who has been approved for adoption, or the State

1 Department of Social Services when it is acting as an adoption
2 agency in counties that are not served by a county adoption
3 agency or by a licensed county adoption agency, shall indicate
4 that the person notified may attend all hearings or may submit
5 any information he or she deems relevant to the court in writing.

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

9 SEC. 41. Section 294 of the Welfare and Institutions Code is
10 amended to read:

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

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

16 (1) The mother.

17 (2) The fathers, presumed and alleged.

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

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

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

30 (6) All counsel of record.

31 (7)

32 To any unknown parent by publication, if ordered by the court
33 pursuant to paragraph (2) of subdivision (g).

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

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

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

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

2 (c) (1) Service of the notice shall be completed at least 45
3 days before the hearing date. Service is deemed complete at the
4 time the notice is personally delivered to the person named in the
5 notice or 10 days after the notice has been placed in the mail, or
6 at the expiration of the time prescribed by the order for
7 publication.

8 (2)

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

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

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

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

26 (2) The right to appear.

27 (3) The parents' right to counsel.

28 (4) The nature of the proceedings.

29 (5) The recommendation of the supervising agency.

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

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

35 (1) If the parent is present at the hearing at which the court
36 schedules a hearing pursuant to Section 366.26, the court shall
37 advise the parent of the date, time, and place of the proceedings,
38 their right to counsel, the nature of the proceedings, and the
39 requirement that at the proceedings the court shall select and
40 implement a plan of adoption, legal guardianship, or long-term

1 foster care for the child. The court shall direct the parent to
2 appear for the proceedings and then direct that the parent be
3 notified thereafter by first-class mail to the parent's usual place
4 of residence or business only.

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

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

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

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

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

20 (7) If a parent's identity is known but his or her whereabouts
21 are unknown and the parent cannot, with reasonable diligence, be
22 served in any manner specified in paragraphs (1) to (6),
23 inclusive, the petitioner shall file an affidavit with the court at
24 least 75 days before the hearing date, stating the name of the
25 parent and describing the efforts made to locate and serve the
26 parent.

27 (A) If the court determines that there has been due diligence in
28 attempting to locate and serve the parent and the probation
29 officer or social worker recommends adoption, service shall be to
30 that parent's attorney of record, if any, by certified mail, return
31 receipt requested. If the parent does not have an attorney of
32 record, the court shall order that service be made by publication
33 of citation requiring the parent to appear at the date, time, and
34 place stated in the citation, and that the citation be published in a
35 newspaper designated as most likely to give notice to the parent.
36 Publication shall be made once a week for four consecutive
37 weeks. Whether notice is to the attorney of record or by
38 publication, the court shall also order that notice be given to the
39 grandparents of the child, if their identities and addresses are
40 known, by first-class mail.

1 (B) If the court determines that there has been due diligence in
2 attempting to locate and serve the parent and the probation
3 officer or social worker recommends legal guardianship or
4 long-term foster care, no further notice is required to the parent,
5 but the court shall order that notice be given to the grandparents
6 of the child, if their identities and addresses are known, by
7 first-class mail.

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

11 (g) (1) If the identity of one or both of the parents, or alleged
12 parents, of the child is unknown, or if the name of one or both
13 parents is uncertain, then that fact shall be set forth in the
14 affidavit filed with the court at least 75 days before the hearing
15 date and the court, consistent with the provisions of Sections
16 7665 and 7666 of the Family Code, shall issue an order
17 dispensing with notice to a natural parent or possible natural
18 parent under this section if, after inquiry and a determination that
19 there has been due diligence in attempting to identify the
20 unknown parent, the court is unable to identify the natural parent
21 or possible natural parent and no person has appeared claiming to
22 be the natural parent.

23 (2) After a determination that there has been due diligence in
24 attempting to identify an unknown parent pursuant to paragraph
25 (1) and the probation officer or social worker recommends
26 adoption, the court shall consider whether publication notice
27 would be likely to lead to actual notice to the unknown parent.
28 The court may order publication notice if, on the basis of all
29 information before the court, the court determines that notice by
30 publication is likely to lead to actual notice to the parent. If
31 publication notice to an unknown parent is ordered, the court
32 shall order the published citation to be directed to either the
33 father or mother, or both, of the child, and to all persons claiming
34 to be the father or mother of the child, naming and otherwise
35 describing the child. An order of publication pursuant to this
36 paragraph shall be based on an affidavit describing efforts made
37 to identify the unknown parent or parents. Service made by
38 publication pursuant to this paragraph shall require the unknown
39 parent or parents to appear at the date, time, and place stated in

1 the citation. Publication shall be made once a week for four
2 consecutive weeks.

3 (3) If the court determines that there has been due diligence in
4 attempting to identify one or both of the parents, or alleged
5 parents, of the child and the probation officer or social worker
6 recommends legal guardianship or long-term foster care, no
7 further notice to the parent shall be required.

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

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

17 (k) This section shall also apply to children adjudged wards
18 pursuant to Section 727.31.

19 (l) The court shall state the reasons on the record explaining
20 why good cause exists for granting any continuance of a hearing
21 held pursuant to Section 366.26 to fulfill the requirements of this
22 section.

23 SEC. 42. Section 295 of the Welfare and Institutions Code is
24 amended to read:

25 295. The social worker or probation officer shall give notice
26 of review hearings held pursuant to Section 366.3 in the
27 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.

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

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

9 (8) The alleged father or fathers, but only if the
10 recommendation is to set a new hearing pursuant to Section
11 366.26.

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

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

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

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

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

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

32 SEC. 43. Section 297 of the Welfare and Institutions Code is
33 amended to read:

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

37 (b) Upon the filing of a supplemental petition pursuant to
38 Section 387, the clerk of the juvenile court shall immediately set
39 the matter for hearing within 30 days of the date of the filing, and
40 the social worker or probation officer shall cause notice thereof

1 to be served upon the persons required by, and in the manner
2 prescribed by, Sections 290.1, 290.2, and 291.

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

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

17 SEC. 44. Section 305.5 of the Welfare and Institutions Code
18 is amended to read:

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

34 (b) In the case of an Indian child who is not domiciled or
35 residing within a reservation of an Indian tribe or who resides or
36 is domiciled within a reservation of an Indian tribe that does not
37 have exclusive jurisdiction over child custody proceedings
38 pursuant to Section 1911 or 1918 of Title 25 of the United States
39 Code, the court shall transfer the proceeding to the jurisdiction of
40 the child's tribe upon petition of either parent, the Indian

1 custodian, if any, or the child's tribe, unless the court finds good
2 cause not to transfer. The court shall dismiss the proceeding or
3 terminate jurisdiction only after receiving proof that the tribal
4 court has accepted the transfer of jurisdiction. At the time that the
5 court dismisses the proceeding or terminates jurisdiction, the
6 court shall also make an order transferring the physical custody
7 of the child to the tribal court.

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

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

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

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

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

17 (A) The evidence necessary to decide the case cannot be
18 presented in the tribal court without undue hardship to the parties
19 or the witnesses, and the tribal court is unable to mitigate the
20 hardship by making arrangements to receive and consider the
21 evidence or testimony by use of remote communication, by
22 hearing the evidence or testimony at a location convenient to the
23 parties or witnesses, or by use of other means permitted in the
24 tribal court's rules of evidence or discovery.

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

33 (C) The Indian child is over 12 years of age and objects to the
34 transfer.

35 (D) The parents of the child over five years of age are not
36 available and the child has had little or no contact with the
37 child's tribe or members of the child's tribe.

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

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

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

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

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

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

1 SEC. 45. Section 306.6 is added to the Welfare and
2 Institutions Code, to read:

3 306.6. (a) In a dependency proceeding involving a child who
4 would otherwise be an Indian child, based on the definition
5 contained in paragraph (4) of Section 1903 of the federal Indian
6 Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), but is not an
7 Indian child based on status of the child's tribe, as defined in
8 paragraph (8) of Section 1903 of the federal Indian Child
9 Welfare Act (25 U.S.C. Sec. 1901 et seq.), the court may permit
10 the tribe from which the child is descended to participate in the
11 proceeding upon request of the tribe.

12 (b) If the court permits a tribe to participate in a proceeding,
13 the tribe may do all of the following, upon consent of the court:

14 (1) Be present at the hearing.

15 (2) Address the court.

16 (3) Request and receive notice of hearings.

17 (4) Request to examine court documents relating to the
18 proceeding.

19 (5) Present information to the court that is relevant to the
20 proceeding.

21 (6) Submit written reports and recommendations to the court.

22 (7) Perform other duties and responsibilities as requested or
23 approved by the court.

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

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

1 discretion to permit other interested persons to participate in
2 these or any other proceedings.

3 SEC. 46. Section 317 of the Welfare and Institutions Code is
4 amended to read:

5 317. (a) (1) When it appears to the court that a parent or
6 guardian of the child desires counsel but is presently financially
7 unable to afford and cannot for that reason employ counsel, the
8 court may appoint counsel as provided in this section.

9 (2) When it appears to the court that a parent or Indian
10 custodian in an Indian child custody proceeding desires counsel
11 but is presently unable to afford and cannot for that reason
12 employ counsel, the provisions of subsection (b) of Section 1912
13 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and
14 Section 23.13 of Title 25 of the Code of Federal Regulations are
15 applicable.

16 (b) When it appears to the court that a parent or guardian of
17 the child is presently financially unable to afford and cannot for
18 that reason employ counsel, and the child has been placed in
19 out-of-home care, or the petitioning agency is recommending that
20 the child be placed in out-of-home care, the court shall appoint
21 counsel, unless the court finds that the parent or guardian has
22 made a knowing and intelligent waiver of counsel as provided in
23 this section.

24 (c) Where a child is not represented by counsel, the court shall
25 appoint counsel for the child unless the court finds that the child
26 would not benefit from the appointment of counsel. The court
27 shall state on the record its reasons for that finding. A primary
28 responsibility of any counsel appointed to represent a child
29 pursuant to this section shall be to advocate for the protection,
30 safety, and physical and emotional well-being of the child.
31 Counsel for the child may be a district attorney, public defender,
32 or other member of the bar, provided that the counsel does not
33 represent another party or county agency whose interests conflict
34 with the child's interests. The fact that the district attorney
35 represents the child in a proceeding pursuant to Section 300 as
36 well as conducts a criminal investigation or files a criminal
37 complaint or information arising from the same or reasonably
38 related set of facts as the proceeding pursuant to Section 300 is
39 not in and of itself a conflict of interest. The court may fix the
40 compensation for the services of appointed counsel. The

1 appointed counsel shall have a caseload and training that assures
2 adequate representation of the child. The Judicial Council shall
3 promulgate rules of court that establish caseload standards,
4 training requirements, and guidelines for appointed counsel for
5 children and shall adopt rules as required by Section 326.5 no
6 later than July 1, 2001.

7 (d) The counsel appointed by the court shall represent the
8 parent, guardian, or child at the detention hearing and at all
9 subsequent proceedings before the juvenile court. Counsel shall
10 continue to represent the parent, guardian, or child unless
11 relieved by the court upon the substitution of other counsel or for
12 cause. The representation shall include representing the parent,
13 guardian, or the child in termination proceedings and in those
14 proceedings relating to the institution or setting aside of a legal
15 guardianship.

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

1 appropriate action is necessary to fully protect the interests of the
2 child.

3 (f) Either the child or the counsel for the child, with the
4 informed consent of the child if the child is found by the court to
5 be of sufficient age and maturity to so consent, may invoke the
6 psychotherapist-client privilege, physician-patient privilege, and
7 clergyman-penitent privilege; and if the child invokes the
8 privilege, counsel may not waive it, but if counsel invokes the
9 privilege, the child may waive it. Counsel shall be holder of these
10 privileges if the child is found by the court not to be of sufficient
11 age and maturity to so consent. For the sole purpose of fulfilling
12 his or her obligation to provide legal representation of the child,
13 counsel for a child shall have access to all records with regard to
14 the child maintained by a health care facility, as defined in
15 Section 1545 of the Penal Code, health care providers, as defined
16 in Section 6146 of the Business and Professions Code, a
17 physician and surgeon or other health practitioner as defined in
18 Section 11165.8 of the Penal Code or a child care custodian, as
19 defined in Section 11165.7 of the Penal Code. Notwithstanding
20 any other law, counsel shall be given access to all records
21 relevant to the case which are maintained by state or local public
22 agencies. All information requested from a child protective
23 agency regarding a child who is in protective custody, or from a
24 child's guardian ad litem, shall be provided to the child's counsel
25 within 30 days of the request.

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

36 (h) In a county of the third class, if counsel is to be appointed
37 for a parent or guardian at county expense, the court shall first
38 utilize the services of the alternate public defender, prior to
39 appointing private counsel, to provide legal counsel. Nothing in
40 this subdivision shall be construed to require the appointment of

1 the alternate public defender in any case in which the public
2 defender has a conflict of interest. In the interest of justice, a
3 court may depart from that portion of the procedure requiring
4 appointment of the alternate public defender after making a
5 finding of good cause and stating the reasons therefor on the
6 record.

7 SEC. 47. Section 360.6 of the Welfare and Institutions Code
8 is repealed.

9 SEC. 48. Section 361 of the Welfare and Institutions Code is
10 amended to read:

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

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

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

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

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

32 (5) The child is placed into a planned permanent living
33 arrangement pursuant to paragraph (3) of subdivision (g) of
34 Section 366.21, Section 366.22, or Section 366.26, at which time
35 the foster parent, relative caretaker, or nonrelative extended
36 family member as defined in Section 362.7, has the right to
37 represent the child in educational matters pursuant to Section
38 56055 of the Education Code.

39 An individual who would have a conflict of interest in
40 representing the child may not be appointed to make educational

1 decisions. For purposes of this section, “an individual who would
2 have a conflict of interest,” means a person having any interests
3 that might restrict or bias his or her ability to make educational
4 decisions, including, but not limited to, those conflicts of interest
5 prohibited by Section 1126 of the Government Code, and the
6 receipt of compensation or attorneys’ fees for the provision of
7 services pursuant to this section. A foster parent may not be
8 deemed to have a conflict of interest solely because he or she
9 receives compensation for the provision of services pursuant to
10 this section.

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

19 If the court cannot identify a responsible adult to make
20 educational decisions for the child, the appointment of a
21 surrogate parent as defined in subdivision (a) of Section 56050 of
22 the Education Code is not warranted, and there is no foster parent
23 to exercise the authority granted by Section 56055 of the
24 Education Code, the court may, with the input of any interested
25 person, make educational decisions for the child.

26 All educational and school placement decisions shall seek to
27 ensure that the child is in the least restrictive educational
28 programs and has access to the academic resources, services, and
29 extracurricular and enrichment activities that are available to all
30 pupils. In all instances, educational and school placement
31 decisions shall be based on the best interests of the child.

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

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

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

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

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

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

32 (4) The minor or a sibling of the minor has been sexually
33 abused, or is deemed to be at substantial risk of being sexually
34 abused, by a parent, guardian, or member of his or her household,
35 or other person known to his or her parent, and there are no
36 reasonable means by which the minor can be protected from
37 further sexual abuse or a substantial risk of sexual abuse without
38 removing the minor from his or her parent or guardian, or the
39 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 an Indian child custody proceeding, continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, and that finding is supported by testimony of a “qualified expert witness” as described in Section 224.6.

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

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

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

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

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

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

6 SEC. 49. Section 361.31 is added to the Welfare and
7 Institutions Code, to read:

8 361.31. (a) In any case in which an Indian child is removed
9 from the physical custody of his or her parents or Indian
10 custodian pursuant to Section 361, the child's placement shall
11 comply with this section.

12 (b) Any foster care or guardianship placement of an Indian
13 child, or any emergency removal of a child who is known to be,
14 or there is reason to know that the child is, an Indian child shall
15 be in the least restrictive setting which most approximates a
16 family situation and in which the child's special needs, if any,
17 may be met. The child shall also be placed within reasonable
18 proximity to the child's home, taking into account any special
19 needs of the child. Preference shall be given to the child's
20 placement with one of the following, in descending priority
21 order:

22 (1) A member of the child's extended family, as defined in
23 Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec.
24 1901 et seq.).

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

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

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

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

35 (1) A member of the child's extended family, as defined in
36 Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec.
37 1901 et seq.).

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

39 (3) Another Indian family.

(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, 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.

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

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

(h) The court may determine that good cause exists not to follow placement preferences applicable under subdivision (b), (c), or (d) in accordance with subdivision (e).

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

(j) The burden of establishing the existence of good cause not to follow placement preferences applicable under subdivision (b),

(c), or (d) shall be on the party requesting that the preferences not be followed.

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

SEC. 50. 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.

(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.~~

(c) No foster care placement or guardianship may be ordered in the proceeding in the absence of a determination, supported by

1 clear and convincing evidence, including testimony of a qualified
2 expert witness, as defined in Section 224.6, that the continued
3 custody of the child by the parent or Indian custodian is likely to
4 result in serious emotional or physical damage to the child.

5 SEC. 51. Section 366 of the Welfare and Institutions Code is
6 amended to read:

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

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

16 (B) The extent of the agency's compliance with the case plan
17 in making reasonable efforts, or, in the case of an Indian child,
18 active efforts as described in Section 361.7, to return the child to
19 a safe home and to complete any steps necessary to finalize the
20 permanent placement of the child, including efforts to maintain
21 relationships between a child who is 10 years of age or older and
22 who has been in an out-of-home placement for six months or
23 longer, and individuals other than the child's siblings who are
24 important to the child, consistent with the child's best interests.

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

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

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

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

39 (III) If the siblings are not placed together in the same home,
40 why the siblings are not placed together and what efforts are

1 being made to place the siblings together, or why those efforts
2 are not appropriate.

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

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

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

9 (ii) The factors the court may consider in making a
10 determination regarding the nature of the child's sibling
11 relationships may include, but are not limited to, whether the
12 siblings were raised together in the same home, whether the
13 siblings have shared significant common experiences or have
14 existing close and strong bonds, whether either sibling expresses
15 a desire to visit or live with his or her sibling, as applicable, and
16 whether ongoing contact is in the child's best emotional interests.

17 (E) The extent of progress which has been made toward
18 alleviating or mitigating the causes necessitating placement in
19 foster care.

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

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

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

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

35 (e) The implementation and operation of the amendments to
36 subparagraph (B) of paragraph (1) of subdivision (a) enacted at
37 the 2005–06 Regular Session shall be subject to appropriation
38 through the budget process and by phase, as provided in Section
39 366.35.

1 SEC. 52. Section 366.26 of the Welfare and Institutions Code
2 is amended to read:

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

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

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

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

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

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

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

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

28 (A) The parents have maintained regular visitation and contact
29 with the child and the child would benefit from continuing the
30 relationship.

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

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

38 (D) The child is living with a relative, foster parent, or Indian
39 custodian who is unable or unwilling to adopt the child because
40 of exceptional circumstances, that do not include an

1 unwillingness to accept legal or financial responsibility for the
2 child, but who is willing and capable of providing the child with
3 a stable and permanent environment and the removal of the child
4 from the physical custody of his or her relative, foster parent, or
5 Indian custodian would be detrimental to the emotional
6 well-being of the child. This subparagraph does not apply to any
7 child who is living with a nonrelative and who is either (i) under
8 six years of age or (ii) a member of a sibling group where at least
9 one child is under six years of age and the siblings are, or should
10 be, permanently placed together. For purposes of an Indian child,
11 “relative” shall include an “extended family member” as defined
12 in the Indian Child Welfare Act (25 U.S.C. Sec. 1903(2)).

13 (E) There would be substantial interference with a child’s
14 sibling relationship, taking into consideration the nature and
15 extent of the relationship, including, but not limited to, whether
16 the child was raised with a sibling in the same home, whether the
17 child shared significant common experiences or has existing
18 close and strong bonds with a sibling, and whether ongoing
19 contact is in the child’s best interest, including the child’s
20 long-term emotional interest, as compared to the benefit of legal
21 permanence through adoption.

22 (F) The child is an Indian child and there is a compelling
23 reason for determining that termination of parental rights would
24 not be in the best interest of the child, including, but not limited
25 to:

26 (i) Termination of parental rights would substantially interfere
27 with the child’s connection to his or her tribal community or the
28 child’s tribal membership rights.

29 (ii) The child’s tribe has identified guardianship, long-term
30 foster care with a fit and willing relative, or another planned
31 permanent living arrangement for the child.

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

36 (2) The court shall not terminate parental rights if:

37 (A) At each hearing at which the court was required to
38 consider reasonable efforts or services, the court has found that
39 reasonable efforts were not made or that reasonable services were
40 not offered or provided.

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

2 (i) At the hearing terminating parental rights, the court has
3 found that active efforts were not made as required in Section
4 361.7.

5 (ii) The court does not make a determination at the hearing
6 terminating parental rights, supported by evidence beyond a
7 reasonable doubt, including testimony of one or more “qualified
8 expert witnesses” as defined in Section 224.6, that the continued
9 custody of the child by the parent is likely to result in serious
10 emotional or physical damage to the child.

11 (3) If the court finds that termination of parental rights would
12 not be detrimental to the child pursuant to paragraph (1) and that
13 the child has a probability for adoption but is difficult to place for
14 adoption and there is no identified or available prospective
15 adoptive parent, the court may identify adoption as the
16 permanent placement goal and without terminating parental
17 rights, order that efforts be made to locate an appropriate
18 adoptive family for the child within a period not to exceed 180
19 days. During this 180-day period, the public agency responsible
20 for seeking adoptive parents for each child shall, to the extent
21 possible, ask each child who is 10 years of age or older, to
22 identify any individuals, other than the child’s siblings, who are
23 important to the child, in order to identify potential adoptive
24 parents. The public agency may ask any other child to provide
25 that information, as appropriate. During the 180-day period, the
26 public agency shall, to the extent possible, contact other private
27 and public adoption agencies regarding the availability of the
28 child for adoption. During the 180-day period, the public agency
29 shall conduct the search for adoptive parents in the same manner
30 as prescribed for children in Sections 8708 and 8709 of the
31 Family Code. At the expiration of this period, another hearing
32 shall be held and the court shall proceed pursuant to paragraph
33 (1) or (3) of subdivision (b). For purposes of this section, a child
34 may only be found to be difficult to place for adoption if there is
35 no identified or available prospective adoptive parent for the
36 child because of the child’s membership in a sibling group, or the
37 presence of a diagnosed medical, physical, or mental handicap,
38 or the child is the age of seven years or more.

39 (4) (A) If the court finds that adoption of the child or
40 termination of parental rights is not in the best interest of the

1 child, because one of the conditions in subparagraph (A), (B),
2 (C), (D), (E), or (F) of paragraph (1) or in paragraph (2) applies,
3 the court shall either order that the present caretakers or other
4 appropriate persons shall become legal guardians of the child or
5 order that the child remain in long-term foster care. Legal
6 guardianship shall be considered before long-term foster care, if
7 it is in the best interests of the child and if a suitable guardian can
8 be found. A child who is 10 years of age or older, shall be asked
9 to identify any individuals, other than the child's siblings, who
10 are important to the child, in order to identify potential guardians.
11 The agency may ask any other child to provide that information,
12 as appropriate.

13 (B) If the child is living with a relative or a foster parent who
14 is willing and capable of providing a stable and permanent
15 environment, but not willing to become a legal guardian, the
16 child shall not be removed from the home if the court finds the
17 removal would be seriously detrimental to the emotional
18 well-being of the child because the child has substantial
19 psychological ties to the relative caretaker or foster parents.

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

24 (5) If the court finds that the child should not be placed for
25 adoption, that legal guardianship shall not be established, and
26 that there are no suitable foster parents except exclusive-use
27 homes available to provide the child with a stable and permanent
28 environment, the court may order the care, custody, and control
29 of the child transferred from the county welfare department to a
30 licensed foster family agency. The court shall consider the
31 written recommendation of the county welfare director regarding
32 the suitability of the transfer. The transfer shall be subject to
33 further court orders.

34 The licensed foster family agency shall place the child in a
35 suitable licensed or exclusive-use home that has been certified by
36 the agency as meeting licensing standards. The licensed foster
37 family agency shall be responsible for supporting the child and
38 providing appropriate services to the child, including those
39 services ordered by the court. Responsibility for the support of
40 the child shall not, in and of itself, create liability on the part of

1 the foster family agency to third persons injured by the child.
2 Those children whose care, custody, and control are transferred
3 to a foster family agency shall not be eligible for foster care
4 maintenance payments or child welfare services, except for
5 emergency response services pursuant to Section 16504.

6 (d) The proceeding for the appointment of a guardian for a
7 child who is a dependent of the juvenile court shall be in the
8 juvenile court. If the court finds pursuant to this section that legal
9 guardianship is the appropriate permanent plan, it shall appoint
10 the legal guardian and issue letters of guardianship. The
11 assessment prepared pursuant to subdivision (g) of Section 361.5,
12 subdivision (i) of Section 366.21, and subdivision (b) of Section
13 366.22 shall be read and considered by the court prior to the
14 appointment, and this shall be reflected in the minutes of the
15 court. The person preparing the assessment may be called and
16 examined by any party to the proceeding.

17 (e) The proceeding for the adoption of a child who is a
18 dependent of the juvenile court shall be in the juvenile court if
19 the court finds pursuant to this section that adoption is the
20 appropriate permanent plan and the petition for adoption is filed
21 in the juvenile court. Upon the filing of a petition for adoption,
22 the juvenile court shall order that an adoption hearing be set. The
23 court shall proceed with the adoption after the appellate rights of
24 the natural parents have been exhausted. The full report required
25 by Section 8715 of the Family Code shall be read and considered
26 by the court prior to the adoption and this shall be reflected in the
27 minutes of the court. The person preparing the report may be
28 called and examined by any party to the proceeding. It is the
29 intent of the Legislature, pursuant to this subdivision, to give
30 potential adoptive parents the option of filing in the juvenile
31 court the petition for the adoption of a child who is a dependent
32 of the juvenile court. Nothing in this section is intended to
33 prevent the filing of a petition for adoption in any other court as
34 permitted by law, instead of in the juvenile court.

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

38 (1) In accordance with subdivision (c) of Section 317, if a
39 child before the court is without counsel, the court shall appoint
40 counsel unless the court finds that the child would not benefit

1 from the appointment of counsel. The court shall state on the
2 record its reasons for that finding.

3 (2) If a parent appears without counsel and is unable to afford
4 counsel, the court shall appoint counsel for the parent, unless this
5 representation is knowingly and intelligently waived. The same
6 counsel shall not be appointed to represent both the child and his
7 or her parent. The public defender or private counsel may be
8 appointed as counsel for the parent.

9 (3) Private counsel appointed under this section shall receive a
10 reasonable sum for compensation and expenses, the amount of
11 which shall be determined by the court. The amount shall be paid
12 by the real parties in interest, other than the child, in any
13 proportions the court deems just. However, if the court finds that
14 any of the real parties in interest are unable to afford counsel, the
15 amount shall be paid out of the general fund of the county.

16 (g) The court may continue the proceeding for a period of time
17 not to exceed 30 days as necessary to appoint counsel, and to
18 enable counsel to become acquainted with the case.

19 (h) (1) At all proceedings under this section, the court shall
20 consider the wishes of the child and shall act in the best interests
21 of the child.

22 (2) In accordance with Section 349, the child shall be present
23 in court if the child or the child's counsel so requests or the court
24 so orders. If the child is 10 years of age or older and is not
25 present at a hearing held pursuant to this section, the court shall
26 determine whether the minor was properly notified of his or her
27 right to attend the hearing and inquire as to the reason why the
28 child is not present.

29 (3) (A) The testimony of the child may be taken in chambers
30 and outside the presence of the child's parent or parents, if the
31 child's parent or parents are represented by counsel, the counsel
32 is present, and any of the following circumstances exists:

33 (i) The court determines that testimony in chambers is
34 necessary to ensure truthful testimony.

35 (ii) The child is likely to be intimidated by a formal courtroom
36 setting.

37 (iii) The child is afraid to testify in front of his or her parent or
38 parents.

39 (B) After testimony in chambers, the parent or parents of the
40 child may elect to have the court reporter read back the testimony

1 or have the testimony summarized by counsel for the parent or
2 parents.

3 (C) The testimony of a child also may be taken in chambers
4 and outside the presence of the guardian or guardians of a child
5 under the circumstances specified in this subdivision.

6 (i) (1) Any order of the court permanently terminating
7 parental rights under this section shall be conclusive and binding
8 upon the child, upon the parent or parents and upon all other
9 persons who have been served with citation by publication or
10 otherwise as provided in this chapter. After making the order, the
11 juvenile court shall have no power to set aside, change, or modify
12 it, except as provided in paragraph (2), but nothing in this section
13 shall be construed to limit the right to appeal the order.

14 (2) A child who has not been adopted after the passage of at
15 least three years from the date the court terminated parental
16 rights and for whom the court has determined that adoption is no
17 longer the permanent plan may petition the juvenile court to
18 reinstate parental rights pursuant to the procedure prescribed by
19 Section 388. The child may file the petition prior to the
20 expiration of this three-year period if the State Department of
21 Social Services or licensed adoption agency that is responsible
22 for custody and supervision of the child as described in
23 subdivision (j) and the child stipulate that the child is no longer
24 likely to be adopted. A child over 12 years of age shall sign the
25 petition in the absence of a showing of good cause as to why the
26 child could not do so. If it appears that the best interests of the
27 child may be promoted by reinstatement of parental rights, the
28 court shall order that a hearing be held and shall give prior
29 notice, or cause prior notice to be given, to the social worker or
30 probation officer and to the child's attorney of record, or, if there
31 is no attorney of record for the child, to the child, and the child's
32 tribe, if applicable, by means prescribed by subdivision (c) of
33 Section 297. The court shall order the child or the social worker
34 or probation officer to give prior notice of the hearing to the
35 child's former parent or parents whose parental rights were
36 terminated in the manner prescribed by subdivision (f) of Section
37 294 where the recommendation is adoption. The juvenile court
38 shall grant the petition if it finds by clear and convincing
39 evidence that the child is no longer likely to be adopted and that
40 reinstatement of parental rights is in the child's best interest. If

1 the court reinstates parental rights over a child who is under 12
2 years of age and for whom the new permanent plan will not be
3 reunification with a parent or legal guardian, the court shall
4 specify the factual basis for its findings that it is in the best
5 interest of the child to reinstate parental rights. This subdivision
6 is intended to be retroactive and applies to any child who is under
7 the jurisdiction of the juvenile court at the time of the hearing
8 regardless of the date parental rights were terminated.

9 (j) If the court, by order or judgment, declares the child free
10 from the custody and control of both parents, or one parent if the
11 other does not have custody and control, the court shall at the
12 same time order the child referred to the State Department of
13 Social Services or a licensed adoption agency for adoptive
14 placement by the agency. However, a petition for adoption may
15 not be granted until the appellate rights of the natural parents
16 have been exhausted. The State Department of Social Services or
17 licensed adoption agency shall be responsible for the custody and
18 supervision of the child and shall be entitled to the exclusive care
19 and control of the child at all times until a petition for adoption is
20 granted, except as specified in subdivision (n). With the consent
21 of the agency, the court may appoint a guardian of the child, who
22 shall serve until the child is adopted.

23 (k) Notwithstanding any other provision of law, the
24 application of any person who, as a relative caretaker or foster
25 parent, has cared for a dependent child for whom the court has
26 approved a permanent plan for adoption, or who has been freed
27 for adoption, shall be given preference with respect to that child
28 over all other applications for adoptive placement if the agency
29 making the placement determines that the child has substantial
30 emotional ties to the relative caretaker or foster parent and
31 removal from the relative caretaker or foster parent would be
32 seriously detrimental to the child's emotional well-being.

33 As used in this subdivision, "preference" means that the
34 application shall be processed and, if satisfactory, the family
35 study shall be completed before the processing of the application
36 of any other person for the adoptive placement of the child.

37 (l) (1) An order by the court that a hearing pursuant to this
38 section be held is not appealable at any time unless all of the
39 following apply:

1 (A) A petition for extraordinary writ review was filed in a
2 timely manner.

3 (B) The petition substantively addressed the specific issues to
4 be challenged and supported that challenge by an adequate
5 record.

6 (C) The petition for extraordinary writ review was summarily
7 denied or otherwise not decided on the merits.

8 (2) Failure to file a petition for extraordinary writ review
9 within the period specified by rule, to substantively address the
10 specific issues challenged, or to support that challenge by an
11 adequate record shall preclude subsequent review by appeal of
12 the findings and orders made pursuant to this section.

13 (3) The Judicial Council shall adopt rules of court, effective
14 January 1, 1995, to ensure all of the following:

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

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

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

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

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

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

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

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

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

3 (n) (1) Notwithstanding Section 8704 of the Family Code or
4 any other provision of law, the court, at a hearing held pursuant
5 to this section or anytime thereafter, may designate a current
6 caretaker as a prospective adoptive parent if the child has lived
7 with the caretaker for at least six months, the caretaker currently
8 expresses a commitment to adopt the child, and the caretaker has
9 taken at least one step to facilitate the adoption process. In
10 determining whether to make that designation, the court may take
11 into consideration whether the caretaker is listed in the
12 preliminary assessment prepared by the county department in
13 accordance with subdivision (i) of Section 366.21 as an
14 appropriate person to be considered as an adoptive parent for the
15 child and the recommendation of the State Department of Social
16 Services or licensed adoption agency.

17 (2) For purposes of this subdivision, steps to facilitate the
18 adoption process include, but are not limited to, the following:

19 (A) Applying for an adoption homestudy.

20 (B) Cooperating with an adoption homestudy.

21 (C) Being designated by the court or the licensed adoption
22 agency as the adoptive family.

23 (D) Requesting de facto parent status.

24 (E) Signing an adoptive placement agreement.

25 (F) Engaging in discussions regarding a postadoption contact
26 agreement.

27 (G) Working to overcome any impediments that have been
28 identified by the State Department of Social Services and the
29 licensed adoption agency.

30 (H) Attending classes required of prospective adoptive
31 parents.

32 (3) Prior to a change in placement and as soon as possible after
33 a decision is made to remove a child from the home of a
34 designated prospective adoptive parent, the agency shall notify
35 the court, the designated prospective adoptive parent or the
36 current caretaker, if that caretaker would have met the threshold
37 criteria to be designated as a prospective adoptive parent
38 pursuant to paragraph (1) on the date of service of this notice, the
39 child's attorney, and the child, if the child is 10 years of age or

1 older, of the proposal in the manner described in Section
2 16010.6.

3 (A) Within five court days or seven calendar days, whichever
4 is longer, of the date of notification, the child, the child's
5 attorney, or the designated prospective adoptive parent may file a
6 petition with the court objecting to the proposal to remove the
7 child, or the court, upon its own motion, may set a hearing
8 regarding the proposal. The court may, for good cause, extend
9 the filing period. A caretaker who would have met the threshold
10 criteria to be designated as a prospective adoptive parent
11 pursuant to paragraph (1) on the date of service of the notice of
12 proposed removal of the child may file, together with the petition
13 under this subparagraph, a petition for an order designating the
14 caretaker as a prospective adoptive parent for purposes of this
15 subdivision.

16 (B) A hearing ordered pursuant to this paragraph shall be held
17 as soon as possible and not later than five court days after the
18 petition is filed with the court or the court sets a hearing upon its
19 own motion, unless the court for good cause is unable to set the
20 matter for hearing five court days after the petition is filed, in
21 which case the court shall set the matter for hearing as soon as
22 possible. At the hearing, the court shall determine whether the
23 caretaker has met the threshold criteria to be designated as a
24 prospective adoptive parent pursuant to paragraph (1), and
25 whether the proposed removal of the child from the home of the
26 designated prospective adoptive parent is in the child's best
27 interest, and the child may not be removed from the home of the
28 designated prospective adoptive parent unless the court finds that
29 removal is in the child's best interest. If the court determines that
30 the caretaker did not meet the threshold criteria to be designated
31 as a prospective adoptive parent on the date of service of the
32 notice of proposed removal of the child, the petition objecting to
33 the proposed removal filed by the caretaker shall be dismissed. If
34 the caretaker was designated as a prospective adoptive parent
35 prior to this hearing, the court shall inquire into any progress
36 made by the caretaker towards the adoption of the child since the
37 caretaker was designated as a prospective adoptive parent.

38 (C) A determination by the court that the caretaker is a
39 designated prospective adoptive parent pursuant to paragraph (1)
40 or subparagraph (B) does not make the caretaker a party to the

1 dependency proceeding nor does it confer on the caretaker any
2 standing to object to any other action of the department or
3 licensed adoption agency, unless the caretaker has been declared
4 a de facto parent by the court prior to the notice of removal
5 served pursuant to paragraph (3).

6 (D) If a petition objecting to the proposal to remove the child
7 is not filed, and the court, upon its own motion, does not set a
8 hearing, the child may be removed from the home of the
9 designated prospective adoptive parent without a hearing.

10 (4) Notwithstanding paragraph (3), if the State Department of
11 Social Services or a licensed adoption agency determines that the
12 child must be removed from the home of the caretaker who is or
13 may be a designated prospective adoptive parent immediately,
14 due to a risk of physical or emotional harm, the agency may
15 remove the child from that home and is not required to provide
16 notice prior to the removal. However, as soon as possible and not
17 longer than two court days after the removal, the agency shall
18 notify the court, the caretaker who is or may be a designated
19 prospective adoptive parent, the child's attorney, and the child, if
20 the child is 10 years of age or older, of the removal. Within five
21 court days or seven calendar days, whichever is longer, of the
22 date of notification of the removal, the child, the child's attorney,
23 or the caretaker who is or may be a designated prospective
24 adoptive parent may petition for, or the court on its own motion
25 may set, a noticed hearing pursuant to paragraph (3). The court
26 may, for good cause, extend the filing period.

27 (5) Except as provided in subdivision (b) of Section 366.28, an
28 order by the court issued after a hearing pursuant to this
29 subdivision shall not be appealable.

30 (6) Nothing in this section shall preclude a county child
31 protective services agency from fully investigating and
32 responding to alleged abuse or neglect of a child pursuant to
33 Section 11165.5 of the Penal Code.

34 (7) The Judicial Council shall prepare forms to facilitate the
35 filing of the petitions described in this subdivision, which shall
36 become effective on January 1, 2006.

37 (o) The implementation and operation of the amendments to
38 paragraph (3) of subdivision (c) and subparagraph (A) of
39 paragraph (4) of subdivision (c) enacted at the 2005-06 Regular

1 Session shall be subject to appropriation through the budget
2 process and by phase, as provided in Section 366.35.

3 SEC. 53. Section 727.4 of the Welfare and Institutions Code
4 is amended to read:

5 727.4. (a) (1) Notice of any hearing pursuant to Section 727,
6 727.2, or 727.3 shall be mailed by the probation officer to the
7 minor, the minor's parent or guardian, any adult provider of care
8 to the minor including, but not limited to, foster parents, relative
9 caregivers, preadoptive parents, community care facility, or
10 foster family agency, and to the counsel of record if the counsel
11 of record was not present at the time that the hearing was set by
12 the court, by first-class mail addressed to the last known address
13 of the person to be notified, or shall be personally served on
14 those persons, not earlier than 30 days nor later than 15 days
15 preceding the date of the hearing. The notice shall contain a
16 statement regarding the nature of the status review or
17 permanency planning hearing and any change in the custody or
18 status of the minor being recommended by the probation
19 department. The notice shall also include a statement informing
20 the foster parents, relative caregivers, or preadoptive parents that
21 he or she may attend all hearings or may submit any information
22 he or she deems relevant to the court in writing. The foster
23 parents, relative caregiver, and preadoptive parents are entitled to
24 notice and opportunity to be heard but need not be made parties
25 to the proceedings. Proof of notice shall be filed with the court.

26 (2) If the court or probation officer knows or has reason to
27 know that the minor is or may be an Indian child, any notice sent
28 under this section shall comply with the requirements of Section
29 224.2.

30 (b) At least 10 calendar days prior to each status review and
31 permanency planning hearing, after the hearing during which the
32 court orders that the care, custody and control of the minor to be
33 under the supervision of the probation officer for placement
34 pursuant to subdivision (a) of Section 727, the probation officer
35 shall file a social study report with the court, pursuant to the
36 requirements listed in Section 706.5.

37 (c) The probation department shall inform the minor, the
38 minor's parent or guardian, and all counsel of record that a copy
39 of the social study prepared for the hearing will be available 10

1 days prior to the hearing and may be obtained from the probation
2 officer.

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

5 (1) “Foster care” means residential care provided in any of the
6 settings described in Section 11402.

7 (2) “At risk of entering foster care” means that conditions
8 within a minor’s family may necessitate his or her entry into
9 foster care unless those conditions are resolved.

10 (3) “Preadoptive parent” means a licensed foster parent who
11 has been approved for adoption by the State Department of
12 Social Services when it is acting as an adoption agency or by a
13 licensed adoption agency.

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

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

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

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

33 (5) “Reasonable efforts” means:

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

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

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

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

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

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

17 (A) A judicial officer, in a courtroom, recorded by a court
18 reporter.

19 (B) An administrative panel, provided that the hearing is a
20 status review hearing and that the administrative panel meets the
21 following conditions:

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

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

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

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

35 SEC. 54. Section 10553.1 of the Welfare and Institutions
36 Code is amended to read:

37 10553.1. (a) Notwithstanding any other provision of law, the
38 director may enter into an agreement, in accordance with Section
39 1919 of Title 25 of the United States Code, with any California
40 Indian tribe or any out-of-state Indian tribe regarding the care

1 and custody of Indian children and jurisdiction over Indian child
2 custody proceedings, including, but not limited to, agreements
3 that provide for orderly transfer of jurisdiction on a case-by-case
4 basis, for exclusive tribal or state jurisdiction, or for concurrent
5 jurisdiction between the state and tribes.

6 (b) (1) An agreement under subdivision (a) regarding the care
7 and custody of Indian children shall provide for the delegation to
8 the tribe or tribes of the responsibility that would otherwise be
9 the responsibility of the county for the provision of child welfare
10 services or assistance payments under the AFDC-FC program, or
11 both.

12 (2) An agreement under subdivision (a) concerning the
13 provision of child welfare services shall ensure that a tribe meets
14 current service delivery standards provided for under Chapter 5
15 (commencing with Section 16500) of Part 4, and provides the
16 local matching share of costs required by Section 10101.

17 (3) An agreement under subdivision (a) concerning assistance
18 payments under the AFDC-FC program shall ensure that a tribe
19 meets current foster care standards provided for under Article 5
20 (commencing with Section 11400) of Chapter 2 of Part 3, and
21 provides the local matching share of costs required by Section
22 15200.

23 (c) Upon the implementation date of an agreement authorized
24 by subdivision (b), the county that would otherwise be
25 responsible for providing the child welfare services or AFDC-FC
26 payments specified in the agreement as being provided by the
27 tribe shall no longer be subject to that responsibility to children
28 served under the agreement.

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

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

37 (f) Implementation of an agreement under subdivision (a) may
38 not be construed to impose liability upon, or to require
39 indemnification by, the participating county or the State of

1 California for any act or omission performed by an officer, agent,
2 or employee of the participating tribe pursuant to this section.

3 SEC. 55. Section 16507.4 of the Welfare and Institutions
4 Code is amended to read:

5 16507.4. (a) Notwithstanding any other provisions of this
6 chapter, voluntary family reunification services shall be provided
7 without fee to families who qualify, or would qualify if
8 application had been made therefor, as recipients of public
9 assistance under the Aid to Families with Dependent Children
10 program. If the family is not qualified for aid, voluntary family
11 reunification services may be utilized, provided that the county
12 seeks reimbursement from the parent or guardian on a statewide
13 sliding scale according to income as determined by the State
14 Department of Social Services and approved by the Department
15 of Finance.

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

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

23 (2) There is a written agreement between the county welfare
24 department and the parent or guardian specifying the terms of the
25 voluntary placement. The State Department of Social Services
26 shall develop a form for voluntary placement agreements which
27 shall be used by all counties. The form shall indicate that foster
28 care under the Aid to Families with Dependent Children program
29 is available to those children.

30 (3) In the case of an Indian child, in accordance with Section
31 1913 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et
32 seq.), the following criteria are met:

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

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

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

4 (c) In the case of a voluntary placement pending
5 relinquishment, a county welfare department shall have the
6 option of delegating to a licensed private adoption agency the
7 responsibility for placement by the county welfare department. If
8 such a delegation occurs, the voluntary placement agreement
9 shall be signed by the county welfare department, the child's
10 parent or guardian, and the licensed private adoption agency.

11 (d) The State Department of Social Services shall amend its
12 plan pursuant to Part E (commencing with Section 670) of
13 Subchapter IV of Chapter 7 of Title 42 of the United States Code
14 in order to conform to mandates of Public Law 96-272 for federal
15 financial participation in voluntary placements.

16 SEC. 56. If the Commission on State Mandates determines
17 that this act contains costs mandated by the state, reimbursement
18 to local agencies and school districts for those costs shall be
19 made pursuant to Part 7 (commencing with Section 17500) of
20 Division 4 of Title 2 of the Government Code.

21 SEC. 57. This act is an urgency statute necessary for the
22 immediate preservation of the public peace, health, or safety
23 within the meaning of Article IV of the Constitution and shall go
24 into immediate effect. The facts constituting the necessity are:

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