

AMENDED IN ASSEMBLY AUGUST 21, 2006

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, 1459, 1459.5,~~ 1460.2, 1474, and 1500.1 to, and to repeal Section 2112 of, the Probate Code, and to amend Sections 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.~~ *children.*

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.~~

This bill would incorporate additional changes to Section 295 of the Welfare and Institutions Code proposed by SB 1667 to become operative only if this bill and SB 1667 are enacted and become effective on or before January 1, 2007, and this bill is enacted last.

This bill would incorporate additional changes to Section 317 of the Welfare and Institutions Code proposed by AB 2480 to become operative only if this bill and AB 2480 are enacted and become effective on or before January 1, 2007, and this bill is enacted last.

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. 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”

1 shall be defined as provided in Section 1903 of the Indian Child
2 Welfare Act.

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

17 (d) If an Indian child is a member of more than one tribe or is
18 eligible for membership in more than one tribe, the court shall
19 make a determination, in writing together with the reasons for it,
20 as to which tribe is the Indian child’s tribe for purposes of the
21 Indian child custody proceeding. The court shall make that
22 determination as follows:

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

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

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

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

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

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

39 (E) Residence on or near one of the tribes’ reservations by the
40 child’s parents, Indian custodian or extended family members.

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

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

4 (H) The child's self identification.

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

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

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

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

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

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

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

36 (b) In all Indian child custody proceedings the court shall
37 consider all of the findings contained in subdivision (a), strive to
38 promote the stability and security of Indian tribes and families,
39 comply with the federal Indian Child Welfare Act, and seek to
40 protect the best interest of the child. Whenever an Indian child is

1 removed from a foster care home or institution, guardianship, or
2 adoptive placement for the purpose of further foster care,
3 guardianship, or adoptive placement, placement of the child shall
4 be in accordance with the Indian Child Welfare Act.

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

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

17 (e) Any Indian child, the Indian child's tribe, or the parent or
18 Indian custodian from whose custody the child has been
19 removed, may petition the court to invalidate an action in an
20 Indian child custody proceeding for foster care, guardianship
21 placement, or termination of parental rights if the action violated
22 Sections 1911, 1912, and 1913 of the Indian Child Welfare Act
23 (25 U.S.C. Sec. 1901 et seq.). Nothing in this section is intended
24 to prohibit, restrict, or otherwise limit any rights under Section
25 1914 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et
26 seq.).

27 177. (a) In an Indian child custody proceeding, the court
28 shall apply Sections 224.2 to 224.6, inclusive, and Sections
29 305.5, 361.31, and 361.7 of the Welfare and Institutions Code,
30 and the following rules from the California Rules of Court, as
31 they read on January 1, 2005:

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

33 (2) Subdivision (i) of Rule 1412.

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

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

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

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

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

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

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

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

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

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

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

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

38 (D) A copy of the petition by which the proceeding was
39 initiated.

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

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

3 (G) A statement of the following:

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

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

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

13 (iv) The potential legal consequences of the proceedings on
14 the future custodial rights of the child's parents or Indian
15 custodians.

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

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

27 (c) Notice shall be sent whenever it is known or there is reason
28 to know that an Indian child is involved, and for every hearing
29 thereafter, including, but not limited to, the hearing at which a
30 final adoption order is to be granted. After a tribe acknowledges
31 that the child is a member or eligible for membership in that
32 tribe, or after the Indian child's tribe intervenes in a proceeding,
33 the information set out in subparagraphs (C), (D), (E), and (G) of
34 paragraph (5) of subdivision (b) need not be included with the
35 notice.

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

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

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

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

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

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

- (1) Be present at the hearing.
- (2) Address the court.
- (3) Request and receive notice of hearings.
- (4) Request to examine court documents relating to the proceeding.
- (5) Present information to the court that is relevant to the proceeding.
- (6) Submit written reports and recommendations to the court.
- (7) Perform other duties and responsibilities as requested or approved by the court.

(c) If more than one tribe requests to participate in a proceeding under subdivision (a), the court may limit

1 participation to the tribe with which the child has the most
2 significant contacts, as determined in accordance with paragraph
3 (2) of subdivision (d) of Section 170.

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

17 (e) This section shall only apply to proceedings involving an
18 Indian child.

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

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

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

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

39 (d) Notwithstanding subdivision (b), if the court finds by a
40 preponderance of the evidence that the person to whom custody

1 may be given is a person described in subdivision (c), this
2 finding shall constitute a finding that the custody is in the best
3 interest of the child and that parental custody would be
4 detrimental to the child absent a showing by a preponderance of
5 the evidence to the contrary.

6 (e) Notwithstanding subdivisions (a) to (d), inclusive, if the
7 child is an Indian child, when an allegation is made that parental
8 custody would be detrimental to the child, before making an
9 order granting custody to a person or persons other than a parent,
10 over the objection of a parent, the court shall apply the
11 evidentiary standards described in subdivisions (d), (e), and (f) of
12 Section 1912 of the Indian Child Welfare Act (25 U.S.C. Sec.
13 1901 et seq.) and Sections 224.6 and 361.7 of the Welfare and
14 Institutions Code and the placement preferences and standards
15 set out in Section 361.31 of the Welfare and Institutions Code
16 and Section 1922 of the Indian Child Welfare Act (25 U.S.C.
17 Sec. 1901 et seq.).

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

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

20 7821. A finding pursuant to this chapter shall be supported by
21 clear and convincing evidence, except as otherwise provided.

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

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

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

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

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

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

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

18 (1) Failing to resume physical care, custody, and control of the
19 child upon the request of the Indian custodian provided that if the
20 Indian custodian is unable to make a request because the parent
21 has failed to keep the Indian custodian apprised of his or her
22 whereabouts and the Indian custodian has made reasonable
23 efforts to determine the whereabouts of the parent without
24 success, there may be evidence of intent to abandon.

25 (2) Failing to substantially comply with any obligations
26 assumed by the parent in his or her agreement with the Indian
27 custodian despite the Indian custodian's objection to the
28 noncompliance.

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

30 7892.5. The court shall not declare an Indian child free from
31 the custody or control of a parent, unless both of the following
32 apply:

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

36 (b) The court finds, supported by evidence beyond a
37 reasonable doubt, including testimony of one or more "qualified
38 expert witnesses" as described in Section 224.5 of the Welfare
39 and Institutions Code, that the continued custody of the child by

1 the parent is likely to result in serious emotional or physical
2 damage to the child.

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

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

6 7907.3. The Interstate Compact on the Placement of Children
7 shall not apply to any placement, sending, or bringing of an
8 Indian child into another state pursuant to a transfer of
9 jurisdiction to a tribal court under Section 1911 of the Indian
10 Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

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

12 8606.5. (a) Notwithstanding any other section in this part,
13 and in accordance with Section 1913 of the Indian Child Welfare
14 Act (25 U.S.C. Sec. 1901 et seq.), consent to adoption given by
15 an Indian child's parent is not valid unless both of the following
16 occur:

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

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

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

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

36 SEC. 9. Section 8616.5 of the Family Code is amended to
37 read:

38 8616.5. (a) The Legislature finds and declares that some
39 adoptive children may benefit from either direct or indirect
40 contact with birth relatives, including the birth parent or parents

1 or an Indian tribe, after being adopted. Postadoption contact
2 agreements are intended to ensure children of an achievable level
3 of continuing contact when contact is beneficial to the children
4 and the agreements are voluntarily entered into by birth relatives,
5 including the birth parent or parents or an Indian tribe, and
6 adoptive parents. Nothing in this section requires all of the listed
7 parties to participate in the development of a postadoption
8 contact agreement in order for the agreement to be entered into.

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

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

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

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

29 (C) Provisions for the sharing of information about the child in
30 the future.

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

34 (c) At the time an adoption decree is entered pursuant to a
35 petition filed pursuant to Section 8714, 8714.5, 8802, 8912, or
36 9000, the court entering the decree may grant postadoption
37 privileges if an agreement for those privileges has been entered
38 into, including agreements entered into pursuant to subdivision
39 (f) of Section 8620. The hearing to grant the adoption petition
40 and issue an order of adoption may be continued as necessary to

1 permit parties who are in the process of negotiating a
2 postadoption agreement to reach a final agreement.

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

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

19 (1) After the adoption petition has been granted by the court,
20 the adoption cannot be set aside due to the failure of an adopting
21 parent, a birth parent, a birth relative, an Indian tribe, or the child
22 to follow the terms of this agreement or a later change to this
23 agreement.

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

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

32 (f) Upon the granting of the adoption petition and the issuing
33 of the order of adoption of a child who is a dependent of the
34 juvenile court, juvenile court dependency jurisdiction shall be
35 terminated. Enforcement of the postadoption contact agreement
36 shall be under the continuing jurisdiction of the court granting
37 the petition of adoption. The court may not order compliance
38 with the agreement absent a finding that the party seeking the
39 enforcement participated, or attempted to participate, in good
40 faith in mediation or other appropriate dispute resolution

1 proceedings regarding the conflict, prior to the filing of the
2 enforcement action, and that the enforcement is in the best
3 interests of the child. Documentary evidence or offers of proof
4 may serve as the basis for the court's decision regarding
5 enforcement. No testimony or evidentiary hearing shall be
6 required. The court shall not order further investigation or
7 evaluation by any public or private agency or individual absent a
8 finding by clear and convincing evidence that the best interests of
9 the child may be protected or advanced only by that inquiry and
10 that the inquiry will not disturb the stability of the child's home
11 to the detriment of the child.

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

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

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

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

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

25 (B) There has been a substantial change of circumstances
26 since the original agreement was executed and approved by the
27 court.

28 (C) The party seeking the termination or modification has
29 participated, or attempted to participate, in good faith in
30 mediation or other appropriate dispute resolution proceedings
31 prior to seeking court approval of the proposed termination or
32 modification.

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

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

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

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

(1) Prior to issuing the order of adoption, in an adoption involving an Indian child, the court may, 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) 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:

1 8619.5. Whenever a final decree of adoption of an Indian
2 child has been vacated or set aside or the adoptive parent
3 voluntarily consents to termination of his or her parental rights to
4 the child, a biological parent or prior Indian custodian may
5 petition for return of custody and the court shall grant that
6 petition unless there is a showing, in a proceeding subject to the
7 provisions of Section 1912 of the Indian Child Welfare Act (25
8 U.S.C. Sec. 1901 et seq.), that the return of custody is not in the
9 best interest of the child.

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

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

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

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

29 (B) The name, address, date of birth, and tribal affiliation of
30 the birth parents, maternal and paternal grandparents, and
31 maternal and paternal great-grandparents of the child.

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

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

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

38 (3) (A) The department, licensed adoption agency, or
39 adoption service provider, as applicable, shall send a notice,
40 which shall include information obtained pursuant to paragraph

1 (2) and a request for confirmation of the child's Indian status, to
2 any parent and any custodian of the child, and to any Indian tribe
3 of which the child is, or may be, a member or eligible for
4 membership. If any of the information required under paragraph
5 (2) cannot be obtained, the notice shall indicate that fact.

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

10 (b) The department shall adopt regulations to ensure that if a
11 child who is being voluntarily relinquished for adoption, pursuant
12 to Section 8700, is an Indian child, the parent of the child shall be
13 advised of his or her right to withdraw his or her consent and
14 thereby rescind the relinquishment of an Indian child for any
15 reason at any time prior to entry of a final decree of termination
16 of parental rights or adoption, pursuant to Section 1913 of Title
17 25 of the United States Code.

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

22 (d) Any notice sent under this section shall comply with
23 Section 180.

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

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

1 into voluntarily and to be in the best interest of the child at the
2 time the adoption petition is granted.

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

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

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

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

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

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

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

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

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

26 8710. (a) If a child is being considered for adoption, the
27 department or licensed adoption agency shall first consider
28 adoptive placement in the home of a relative or, in the case of an
29 Indian child, according to the placement preferences and
30 standards set out in subdivisions (c), (d), (e), (f), (g), (h), and (i)
31 of Section 361.31 of the Welfare and Institutions Code.
32 However, if a relative is not available, if placement with an
33 available relative is not in the child's best interest, or if
34 placement would permanently separate the child from other
35 siblings who are being considered for adoption or who are in
36 foster care and an alternative placement would not require the
37 permanent separation, the foster parent or parents of the child
38 shall be considered with respect to the child along with all other
39 prospective adoptive parents where all of the following
40 conditions are present:

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

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

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

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

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

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

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

21 9208. (a) The clerk of the superior court entering a final
22 order of adoption concerning an Indian child shall provide the
23 Secretary of the Interior or his or her designee with a copy of the
24 order within 30 days of the date of the order, together with any
25 information necessary to show the following:

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

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

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

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

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

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

35 9209. (a) Upon application by an Indian individual who has
36 reached the age of 18 years and who was the subject of an
37 adoptive placement, the court which entered the final decree of
38 adoption shall inform that individual of the tribal affiliation, if
39 any, of the individual's biological parents and provide any other
40 information as may be necessary to protect any rights flowing

1 from the individual's tribal relationship, including, but not
2 limited to, tribal membership rights or eligibility for federal or
3 tribal programs or services available to Indians.

4 (b) If the court records contain an affidavit of the biological
5 parent or parents that their identity remain confidential, the court
6 shall inform the individual that the Secretary of the Interior may,
7 upon request, certify to the individual's tribe that the individual's
8 parentage and other circumstances of birth entitle the individual
9 to membership under the criteria established by the tribe.

10 SEC. 15. Section 9210 of the Family Code is amended to
11 read:

12 9210. (a) Except as otherwise provided in subdivisions (b)
13 and (c), a court of this state has jurisdiction over a proceeding for
14 the adoption of a minor commenced under this part if any of the
15 following applies:

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

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

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

31 (A) The minor and the minor's parents, or the minor and the
32 prospective adoptive parent, have a significant connection with
33 this state.

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

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

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

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

15 (c) If a court of another state has issued a decree or order
16 concerning the custody of a minor who may be the subject of a
17 proceeding for adoption in this state, a court of this state may not
18 exercise jurisdiction over a proceeding for adoption of the minor,
19 unless both of the following apply:

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

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

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

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

33 1449. (a) As used in this division, unless the context
34 otherwise requires, the terms "Indian," "Indian child," "Indian
35 child's tribe," "Indian custodian," "Indian tribe," "reservation,"
36 and "tribal court" shall be defined as provided in Section 1903 of
37 the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

38 (b) When used in connection with an Indian child custody
39 proceeding, the terms "extended family member" and "parent"

1 shall be defined as provided in Section 1903 of the Indian Child
2 Welfare Act (25 U.S.C. Sec. 1901 et seq.).

3 (c) “Indian child custody proceeding” means a “child custody
4 proceeding” within the meaning of Section 1903 of the Indian
5 Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), including a
6 voluntary or involuntary proceeding that may result in an Indian
7 child’s temporary or long-term foster care or guardianship
8 placement if the parent or Indian custodian cannot have the child
9 returned upon demand, termination of parental rights or adoptive
10 placement.

11 (d) When an Indian child is a member of more than one tribe
12 or is eligible for membership in more than one tribe, the court
13 shall make a determination, in writing together with the reasons
14 for it, as to which tribe is the Indian child’s tribe for purposes of
15 the Indian child custody proceeding. The court shall make that
16 determination as follows:

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

20 (2) If an Indian child is or becomes a member of more than
21 one tribe, or is not a member of any tribe but is eligible for
22 membership in more than one tribe, the tribe with which the child
23 has the more significant contacts shall be designated as the
24 Indian child’s tribe. In determining which tribe the child has the
25 more significant contacts with, the court shall consider, among
26 other things, the following factors:

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

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

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

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

33 (E) The residence on or near one of the tribes’ reservations by
34 the child parents, Indian custodian, or extended family members.

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

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

38 (H) The child’s self-identification.

39 (3) If an Indian child becomes a member of a tribe other than
40 the one designated by the court as the Indian child’s tribe under

1 paragraph (2), actions taken based on the court's determination
2 prior to the child's becoming a tribal member shall continue to be
3 valid.

4 SEC. 17. Section ~~1456~~ 1459 is added to the Probate Code, to
5 read:

6 ~~1456.~~

7 1459. (a) The Legislature finds and declares the following:

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

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

31 (b) In all Indian child custody proceedings, as defined in the
32 federal Indian Child Welfare Act, the court shall consider all of
33 the findings contained in subdivision (a), strive to promote the
34 stability and security of Indian tribes and families, comply with
35 the federal Indian Child Welfare Act, and seek to protect the best
36 interest of the child. Whenever an Indian child is removed from a
37 foster care home or institution, guardianship, or adoptive
38 placement for the purpose of further foster care, guardianship, or
39 adoptive placement, placement of the child shall be in
40 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~~ 1459.5 is added to the Probate Code, to read:

~~1457.~~

1459.5. (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

1 natural parent or Indian custodian does not retain the right to
2 have custody of the child returned to them upon demand.

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

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

9 (2) Subdivision (i) of Rule 1412.

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

14 SEC. 19. Section 1460.2 is added to the Probate Code, to
15 read:

16 1460.2. (a) If the court or petitioner knows or has reason to
17 know that the proposed ward or conservatee may be an Indian
18 child, notice shall comply with subdivision (b) in any case in
19 which the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.)
20 applies, as specified in Section ~~1457~~. 1459.5.

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

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

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

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

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

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

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

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

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

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

15 (D) A copy of the petition.

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

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

19 (G) A statement of the following:

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

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

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

29 (iv) The potential legal consequences of the proceedings on
30 the future custodial rights of the child's parents or Indian
31 custodians.

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

36 (vi) That the information contained in the notice, petition,
37 pleading, and other court documents is confidential, so any
38 person or entity notified shall maintain the confidentiality of the
39 information contained in the notice concerning the particular
40 proceeding and not reveal it to anyone who does not need the

1 information in order to exercise the tribe's rights under the Indian
2 Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

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

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

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

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

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

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

33 1474. If an Indian custodian or biological parent of an Indian
34 child lacks the financial ability to retain counsel and requests the
35 appointment of counsel in proceedings described in Section
36 ~~1457~~, 1459.5, the provisions of subsection (b) of Section 1912 of
37 the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and
38 Section 23.13 of Title 25 of the Code of Federal Regulations are
39 applicable.

1 SEC. 21. Section 1500.1 is added to the Probate Code, to
2 read:

3 1500.1. (a) Notwithstanding any other section in this part,
4 and in accordance with Section 1913 of the Indian Child Welfare
5 Act (25 U.S.C. Sec. 1901 et seq.), consent to nomination of a
6 guardian of the person or of a guardian of the person and the
7 estate given by an Indian child's parent is not valid unless both of
8 the following occur:

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

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

15 (b) The parent of an Indian child may withdraw his or her
16 consent to guardianship for any reason at any time prior to the
17 issuance of letters of guardianship and the child shall be returned
18 to the parent.

19 SEC. 22. Section 1510 of the Probate Code is amended to
20 read:

21 1510. (a) A relative or other person on behalf of the minor,
22 or the minor if 12 years of age or older, may file a petition for the
23 appointment of a guardian of the minor.

24 (b) The petition shall request that a guardian of the person or
25 estate of the minor, or both, be appointed, shall specify the name
26 and address of the proposed guardian and the name and date of
27 birth of the proposed ward, and shall state that the appointment is
28 necessary or convenient.

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

31 (1) The parents of the proposed ward.

32 (2) The person having legal custody of the proposed ward and,
33 if that person does not have the care of the proposed ward, the
34 person having the care of the proposed ward.

35 (3) The relatives of the proposed ward within the second
36 degree.

37 (4) In the case of a guardianship of the estate, the spouse of the
38 proposed ward.

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

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

3 (d) If the proposed ward is a patient in or on leave of absence
4 from a state institution under the jurisdiction of the State
5 Department of Mental Health or the State Department of
6 Developmental Services and that fact is known to the petitioner,
7 the petition shall state that fact and name the institution.

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

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

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

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

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

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

29 1511. (a) Except as provided in subdivisions (f) and (g), at
30 least 15 days before the hearing on the petition for the
31 appointment of a guardian, notice of the time and place of the
32 hearing shall be given as provided in subdivisions (b), (c), (d),
33 and (e) of this section. The notice shall be accompanied by a
34 copy of the petition. The court may not shorten the time for
35 giving the notice of hearing under this section.

36 (b) Notice shall be served in the manner provided in Section
37 415.10 or 415.30 of the Code of Civil Procedure, or in any
38 manner authorized by the court, on all of the following persons:

39 (1) The proposed ward if 12 years of age or older.

1 (2) Any person having legal custody of the proposed ward, or
2 serving as guardian of the estate of the proposed ward.

3 (3) The parents of the proposed ward.

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

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

9 (1) The spouse named in the petition.

10 (2) The relatives named in the petition, except that if the
11 petition is for the appointment of a guardian of the estate only the
12 court may dispense with the giving of notice to any one or more
13 or all of the relatives.

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

16 (d) If notice is required by Section 1461 or Section 1542 to be
17 given to the Director of Mental Health or the Director of
18 Developmental Services or the Director of Social Services, notice
19 shall be mailed as so required.

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

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

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

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

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

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

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

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

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

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

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

7 SEC. 24. Section 1513 of the Probate Code is amended to
8 read:

9 1513. (a) Unless waived by the court, a court investigator,
10 probation officer, or domestic relations investigator may make an
11 investigation and file with the court a report and recommendation
12 concerning each proposed guardianship of the person or
13 guardianship of the estate. Investigations where the proposed
14 guardian is a relative shall be made by a court investigator.
15 Investigations where the proposed guardian is a nonrelative shall
16 be made by the county agency designated to investigate potential
17 dependency. The report for the guardianship of the person shall
18 include, but need not be limited to, an investigation and
19 discussion of all of the following:

20 (1) A social history of the guardian.

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

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

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

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

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

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

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

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

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

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

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

1 1516.5. (a) A proceeding to have a child declared free from
2 the custody and control of one or both parents may be brought in
3 the guardianship proceeding pursuant to Part 4 (commencing
4 with Section 7800) of Division 12 of the Family Code, if all of
5 the following requirements are satisfied:

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

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

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

15 (A) The child and the birth parent.

16 (B) The child and the guardian, including family members of
17 the guardian.

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

19 (b) The court shall appoint a court investigator or other
20 qualified professional to investigate all factors enumerated in
21 subdivision (a). The findings of the investigator or professional
22 regarding those issues shall be included in the written report
23 required pursuant to Section 7851 of the Family Code.

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

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

30 SEC. 26. Section 1601 of the Probate Code is amended to
31 read:

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

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

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

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

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

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

(1) There is no resource that is more vital to the continued existence and integrity of 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 that placement is necessary or ordered, by placing the child, whenever possible, in a placement that reflects the unique values of the child's tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the child's tribe and tribal community.

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

1 adoptive placement, placement of the child shall be in
2 accordance with the Indian Child Welfare Act.

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

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

15 (e) Any Indian child, the Indian child's tribe, or the parent or
16 Indian custodian from whose custody the child has been
17 removed, may petition the court to invalidate an action in an
18 Indian child custody proceeding for foster care or guardianship
19 placement or termination of parental rights if the action violated
20 Sections 1911, 1912, and 1913 of the Indian Child Welfare Act.

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

23 224.1. (a) As used in this division, unless the context
24 otherwise requires, the terms "Indian," "Indian child," "Indian
25 child's tribe," "Indian custodian," "Indian tribe," "reservation,"
26 and "tribal court" shall be defined as provided in Section 1903 of
27 the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

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

32 (c) "Indian child custody proceeding" means a "child custody
33 proceeding" within the meaning of Section 1903 of the Indian
34 Child Welfare Act, including a proceeding for temporary or
35 long-term foster care or guardianship placement, termination of
36 parental rights, preadoptive placement after termination of
37 parental rights, or adoptive placement. "Indian child custody
38 proceeding" does not include a voluntary foster care or
39 guardianship placement if the parent or Indian custodian retains
40 the right to have the child returned upon demand.

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

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

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

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

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

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

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

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

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

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

(H) The child's self-identification.

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

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

224.2. (a) If the court, a social worker, or probation officer knows or has reason to know that an Indian child is involved, any notice sent in an Indian child custody proceeding under this code shall be sent to the minor's parents or legal guardian, Indian

1 custodian, if any, and the minor's tribe and comply with all of the
2 following requirements:

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

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

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

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

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

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

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

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

34 (D) A copy of the petition by which the proceeding was
35 initiated.

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

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

39 (G) A statement of the following:

- 1 (i) The absolute right of the child's parents, Indian custodians,
2 and tribe to intervene in the proceeding.
- 3 (ii) The right of the child's parents, Indian custodians, and
4 tribe to petition the court to transfer the proceeding to the tribal
5 court of the Indian child's tribe, absent objection by either parent
6 and subject to declination by the tribal court.
- 7 (iii) The right of the child's parents, Indian custodians, and
8 tribe to, upon request, be granted up to an additional 20 days
9 from the receipt of the notice to prepare for the proceeding.
- 10 (iv) The potential legal consequences of the proceedings on
11 the future custodial and parental rights of the child's parents or
12 Indian custodians.
- 13 (v) That if the parents or Indian custodians are unable to afford
14 counsel, counsel will be appointed to represent the parents or
15 Indian custodians pursuant to Section 1912 of the Indian Child
16 Welfare Act (25 U.S.C. Sec. 1901 et seq.).
- 17 (vi) That the information contained in the notice, petition,
18 pleading, and other court documents is confidential, so any
19 person or entity notified shall maintain the confidentiality of the
20 information contained in the notice concerning the particular
21 proceeding and not reveal it to anyone who does not need the
22 information in order to exercise the tribe's rights under the Indian
23 Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).
- 24 (b) Notice shall be sent whenever it is known or there is reason
25 to know that an Indian child is involved, and for every hearing
26 thereafter, including, but not limited to, the hearing at which a
27 final adoption order is to be granted, unless it is determined that
28 the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) does
29 not apply to the case in accordance with Section 224.3. After a
30 tribe acknowledges that the child is a member or eligible for
31 membership in that tribe, or after a tribe intervenes in a
32 proceeding, the information set out in subparagraphs (C), (D),
33 (E), and (G) of paragraph (5) of subdivision (a) need not be
34 included with the notice.
- 35 (c) Proof of the notice, including copies of notices sent and all
36 return receipts and responses received, shall be filed with the
37 court in advance of the hearing except as permitted under
38 subdivision (d).
- 39 (d) No proceeding shall be held until at least 10 days after
40 receipt of notice by the parent, Indian custodian, the tribe, or the

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (3) If proper and adequate notice has been provided pursuant
37 to Section 224.2, and neither a tribe nor the Bureau of Indian
38 Affairs has provided a determinative response within 60 days
39 after receiving that notice, the court may determine that the
40 Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) does not

1 apply to the proceedings, provided that the court shall reverse its
2 determination of the inapplicability of the Indian Child Welfare
3 Act and apply the act prospectively if a tribe or the Bureau of
4 Indian Affairs subsequently confirms that the child is an Indian
5 child.

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

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

18 224.4. The Indian child's tribe and Indian custodian have the
19 right to intervene at any point in an Indian child custody
20 proceeding.

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

23 224.5. In an Indian child custody proceeding, the court shall
24 give full faith and credit to the public acts, records, judicial
25 proceedings, and judgments of any Indian tribe applicable to the
26 proceeding to the same extent that such entities give full faith and
27 credit to the public acts, records, judicial proceedings, and
28 judgments of any other entity.

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

31 224.6. (a) When testimony of a "qualified expert witness" is
32 required in an Indian child custody proceeding, a "qualified
33 expert witness" may include, but is not limited to, a social
34 worker, sociologist, physician, psychologist, traditional tribal
35 therapist and healer, tribal spiritual leader, tribal historian, or
36 tribal elder, provided the individual is not an employee of the
37 person or agency recommending foster care placement or
38 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.

1 (a) Notice shall be given to the following persons whose
2 whereabouts are known or become known prior to the initial
3 petition 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, then to any adult relative residing
19 within the county or if none, the adult relative residing nearest
20 the court.

21 (7) The attorney for the parent or parents, or legal guardian or
22 guardians.

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) The notice shall be given as soon as possible after the filing
32 of the petition.

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

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

36 (2) The name of the child.

37 (3) A copy of the petition.

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

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

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

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

(a) Notice shall be given to the following persons whose address is known or becomes 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 proceeding or has been adjudged to be a dependent child of the juvenile court. If the sibling is 10 years of age or older, the sibling, the sibling's caregiver, and the sibling's attorney. If the sibling is under 10 years of age, the sibling's caregiver and the sibling's attorney. However, notice is not required to be given to any sibling whose matter is calendared in the same court on the same day.

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

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

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

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

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

(c) Notice shall be served as follows:

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

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

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

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

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

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

38 (1) The mother.

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

40 (3) The legal guardian or guardians.

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

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

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

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

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

20 (c) Notice shall be served as follows:

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

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

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

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

30 (2) The nature of the hearing.

31 (3) Each section and subdivision under which the proceeding
32 has been initiated.

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

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

36 (6) A statement that:

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

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

1 (C) If the parent, guardian, Indian custodian, or adult relative
2 is indigent and cannot afford an attorney, and desires to be
3 represented by an attorney, the parent, guardian, Indian
4 custodian, or adult relative shall promptly notify the clerk of the
5 juvenile court.

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

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

13 (7) A copy of the petition.

14 (e) Service of the notice of the hearing shall be given in the
15 following manner:

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

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

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

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

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

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

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

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

1 (1) The mother.

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

3 (3) The legal guardian or guardians.

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

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

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

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

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

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

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

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

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

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

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

3 (1) The mother.

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

5 (3) The legal guardian or guardians.

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

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

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

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

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

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

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

39 (e) Service of the notice shall be by first-class mail addressed
40 to the last known address of the person to be noticed or by

1 personal service on the person. Service of a copy of the notice
2 shall be by personal service or by certified mail, return receipt
3 requested, or any other form of notice that is equivalent to
4 service by first-class mail.

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

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

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

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

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

22 (1) The mother.

23 (2) The fathers, presumed and alleged.

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

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

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

36 (6) All counsel of record.

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

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

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

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

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

8 (c) (1) Service of the notice shall be completed at least 45
9 days before the hearing date. Service is deemed complete at the
10 time the notice is personally delivered to the person named in the
11 notice or 10 days after the notice has been placed in the mail, or
12 at the expiration of the time prescribed by the order for
13 publication.

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

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

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

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

31 (2) The right to appear.

32 (3) The parents' right to counsel.

33 (4) The nature of the proceedings.

34 (5) The recommendation of the supervising agency.

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

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

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

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

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

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

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

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

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

(A) If the court determines that there has been due diligence in attempting to locate and serve the parent and the probation officer or social worker recommends adoption, service shall be to that parent's attorney of record, if any, by certified mail, return receipt requested. If the parent does not have an attorney of record, the court shall order that service be made by publication of citation requiring the parent to appear at the date, time, and place stated in the citation, and that the citation be published in a

1 newspaper designated as most likely to give notice to the parent.
2 Publication shall be made once a week for four consecutive
3 weeks. Whether notice is to the attorney of record or by
4 publication, the court shall also order that notice be given to the
5 grandparents of the child, if their identities and addresses are
6 known, by first-class mail.

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

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

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

29 (2) After a determination that there has been due diligence in
30 attempting to identify an unknown parent pursuant to paragraph
31 (1) and the probation officer or social worker recommends
32 adoption, the court shall consider whether publication notice
33 would be likely to lead to actual notice to the unknown parent.
34 The court may order publication notice if, on the basis of all
35 information before the court, the court determines that notice by
36 publication is likely to lead to actual notice to the parent. If
37 publication notice to an unknown parent is ordered, the court
38 shall order the published citation to be directed to either the
39 father or mother, or both, of the child, and to all persons claiming
40 to be the father or mother of the child, naming and otherwise

1 describing the child. An order of publication pursuant to this
2 paragraph shall be based on an affidavit describing efforts made
3 to identify the unknown parent or parents. Service made by
4 publication pursuant to this paragraph shall require the unknown
5 parent or parents to appear at the date, time, and place stated in
6 the citation. Publication shall be made once a week for four
7 consecutive weeks.

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

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

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

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

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

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

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

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

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

35 (1) The mother.

36 (2) The presumed father.

37 (3) The legal guardian or guardians.

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

39 (5) Any known sibling of the child who is the subject of the
40 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) The foster parents, relative caregivers, community care
9 facility, or foster family agency having physical custody of the
10 child in the case of a child removed from the physical custody of
11 the parents or legal guardian.

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

14 (8) The alleged father or fathers, but only if the
15 recommendation is to set a new hearing pursuant to Section
16 366.26.

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

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

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

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

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

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

37 *SEC. 42.5. Section 295 of the Welfare and Institutions Code*
38 *is amended to read:*

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

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

6 (1) The mother.

7 (2) The presumed father.

8 (3) The legal guardian or guardians.

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

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

19 (6) The foster parents, ~~Indian custodian~~, relative caregivers,
20 community care facility, or foster family agency having physical
21 custody of the child ~~in the case of~~ *if* a child is removed from the
22 physical custody of the parents or legal guardian. *The person*
23 *notified may attend all hearings and may submit any information*
24 *he or she deems relevant to the court in writing.*

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

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

30 ~~(9) If the court knows or has reason to know that an Indian~~
31 ~~child is involved, then to the Indian custodian and the tribe of~~
32 ~~that child. If the identity or location of the parent or Indian~~
33 ~~custodian and the tribe cannot be determined, notice shall be~~
34 ~~given to the Bureau of Indian Affairs.~~

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

37 (c) The notice of the review hearing shall be served no earlier
38 than 30 days, nor later than 15 days, before the hearing. ~~In the~~
39 ~~case of an Indian child, if notice is given to the Bureau of Indian~~

1 ~~Affairs, the bureau shall have 15 days after receipt to provide the~~
2 ~~requisite notice to the parent or Indian custodian and the tribe.~~

3 (d) ~~(1)~~ The notice of the review hearing shall contain a
4 statement regarding the nature of the hearing to be held, any
5 recommended change in the custody or status of the child, and
6 any recommendation that the court set a new hearing pursuant to
7 Section 366.26 in order to select a more permanent plan.

8 ~~(2) In the case of an Indian child, the notice shall contain a~~
9 ~~statement that the parent or Indian custodian and the tribe have a~~
10 ~~right to intervene at any point in the proceedings. The notice~~
11 ~~shall also include a statement that the parent or Indian custodian~~
12 ~~and the tribe shall, upon request, be granted up to 20 additional~~
13 ~~days to prepare for the proceedings.~~

14 (e) Service of notice shall be by first-class mail addressed to
15 the last known address of the person to be provided notice. In the
16 case of an Indian child, notice shall be by registered mail, return
17 receipt requested.

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

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

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

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

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

38 (c) If a petition for modification has been filed pursuant to
39 Section 388, and it appears that the best interest of the child may
40 be promoted by the proposed change of the order, the recognition

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

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

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

14 305.5. (a) If an Indian child, who is a ward of a tribal court
15 or resides or is domiciled within a reservation of an Indian tribe
16 that has exclusive jurisdiction over child custody proceedings as
17 recognized in Section 1911 of Title 25 of the United States Code
18 or reassumed exclusive jurisdiction over Indian child custody
19 proceedings pursuant to Section 1918 of Title 25 of the United
20 States Code, has been removed by a state or local authority from
21 the custody of his or her parents or Indian custodian, the state or
22 local authority shall provide notice of the removal to the tribe no
23 later than the next working day following the removal and shall
24 provide all relevant documentation to the tribe regarding the
25 removal and the child's identity. If the tribe determines that the
26 child is an Indian child, the state or local authority shall transfer
27 the child custody proceeding to the tribe within 24 hours after
28 receipt of written notice from the tribe of that determination.

29 (b) In the case of an Indian child who is not domiciled or
30 residing within a reservation of an Indian tribe or who resides or
31 is domiciled within a reservation of an Indian tribe that does not
32 have exclusive jurisdiction over child custody proceedings
33 pursuant to Section 1911 or 1918 of Title 25 of the United States
34 Code, the court shall transfer the proceeding to the jurisdiction of
35 the child's tribe upon petition of either parent, the Indian
36 custodian, if any, or the child's tribe, unless the court finds good
37 cause not to transfer. The court shall dismiss the proceeding or
38 terminate jurisdiction only after receiving proof that the tribal
39 court has accepted the transfer of jurisdiction. At the time that the
40 court dismisses the proceeding or terminates jurisdiction, the

1 court shall also make an order transferring the physical custody
2 of the child to the tribal court.

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

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

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

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

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

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

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

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

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

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

36 (4) The burden of establishing good cause to the contrary shall
37 be on the party opposing the transfer. If the court believes, or any
38 party asserts, that good cause to the contrary exists, the reasons
39 for that belief or assertion shall be stated in writing and made
40 available to all parties who are petitioning for the transfer, and

1 the petitioner shall have the opportunity to provide information
2 or evidence in rebuttal of the belief or assertion.

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

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

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

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

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

38 306.6. (a) In a dependency proceeding involving a child who
39 would otherwise be an Indian child, based on the definition
40 contained in paragraph (4) of Section 1903 of the federal Indian

1 Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), but is not an
2 Indian child based on status of the child's tribe, as defined in
3 paragraph (8) of Section 1903 of the federal Indian Child
4 Welfare Act (25 U.S.C. Sec. 1901 et seq.), the court may permit
5 the tribe from which the child is descended to participate in the
6 proceeding upon request of the tribe.

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

- 9 (1) Be present at the hearing.
- 10 (2) Address the court.
- 11 (3) Request and receive notice of hearings.
- 12 (4) Request to examine court documents relating to the
13 proceeding.
- 14 (5) Present information to the court that is relevant to the
15 proceeding.
- 16 (6) Submit written reports and recommendations to the court.
- 17 (7) Perform other duties and responsibilities as requested or
18 approved by the court.

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

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

37 (e) *The court shall, on a case by case basis, make a*
38 *determination if this section is applicable and may request*
39 *information from the tribe, or the entity claiming to be a tribe,*
40 *from which the child is descended for the purposes of making this*

1 *determination, if the child would otherwise be an Indian child*
2 *pursuant to subdivision (a).*

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

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

SEC. 46.5. Section 317 of the Welfare and Institutions Code is amended to read:

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

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

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

(c) ~~Where~~ *If* a child is not represented by counsel, the court shall appoint counsel for the child unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding. A primary responsibility of any counsel appointed to represent a child pursuant to this section shall be to advocate for the protection, safety, and physical and emotional well-being of the child. Counsel for the child may be a district attorney, public defender, or other member of the bar, provided that the counsel does not represent another party or county agency whose interests conflict with the child's *interests*. The fact that the district attorney represents the child in a proceeding pursuant to Section 300 as well as conducts a criminal investigation or files a

1 criminal complaint or information arising from the same or
2 reasonably related set of facts as the proceeding pursuant to
3 Section 300 is not in and of itself a conflict of interest. The court
4 may fix the compensation for the services of appointed counsel.
5 The appointed counsel shall have a caseload and training that
6 ~~assures~~ ensures adequate representation of the child. The Judicial
7 Council shall promulgate rules of court that establish caseload
8 standards, training requirements, and guidelines for appointed
9 counsel for children and shall adopt rules as required by Section
10 326.5 no later than July 1, 2001.

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

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

1 a child in a dependency proceeding is not required to assume the
2 responsibilities of a social worker and is not expected to provide
3 nonlegal services to the child. The court shall take whatever
4 appropriate action is necessary to fully protect the interests of the
5 child.

6 (f) Either the child or the counsel for the child, with the
7 informed consent of the child if the child is found by the court to
8 be of sufficient age and maturity to so consent, *which shall be*
9 *presumed, subject to rebuttal by clear and convincing evidence,*
10 *if the child is over 12 years of age,* may invoke the
11 psychotherapist-client privilege, physician-patient privilege, and
12 clergyman-penitent privilege; and if the child invokes the
13 privilege, counsel may not waive it, but if counsel invokes the
14 privilege, the child may waive it. Counsel shall be holder of these
15 privileges if the child is found by the court not to be of sufficient
16 age and maturity to so consent. For the sole purpose of fulfilling
17 his or her obligation to provide legal representation of the child,
18 counsel for a child shall have access to all records with regard to
19 the child maintained by a health care facility, as defined in
20 Section 1545 of the Penal Code, health care providers, as defined
21 in Section 6146 of the Business and Professions Code, a
22 physician and surgeon or other health practitioner, as defined in
23 *former* Section 11165.8 of the Penal Code, *as that section read*
24 *on January 1, 2000,* or a child care custodian, as defined in
25 *former* Section 11165.7 of the Penal Code, *as that section read*
26 *on January 1, 2000.* Notwithstanding any other law, counsel
27 shall be given access to all records relevant to the case which are
28 maintained by state or local public agencies. All information
29 requested from a child protective agency regarding a child who is
30 in protective custody, or from a child's guardian ad litem, shall
31 be provided to the child's counsel within 30 days of the request.

32 (g) In a county of the third class, if counsel is to be provided to
33 a child at county expense other than by counsel for the agency,
34 the court shall first utilize the services of the public defender
35 prior to appointing private counsel, to provide legal counsel.
36 Nothing in this subdivision shall be construed to require the
37 appointment of the public defender in any case in which the
38 public defender has a conflict of interest. In the interest of justice,
39 a court may depart from that portion of the procedure requiring

1 appointment of the public defender after making a finding of
2 good cause and stating the reasons therefor on the record.

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

14 SEC. 47. Section 360.6 of the Welfare and Institutions Code
15 is repealed.

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

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

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

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

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

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

39 (5) The child is placed into a planned permanent living
40 arrangement pursuant to paragraph (3) of subdivision (g) of

1 Section 366.21, Section 366.22, or Section 366.26, at which time
2 the foster parent, relative caretaker, or nonrelative extended
3 family member as defined in Section 362.7, has the right to
4 represent the child in educational matters pursuant to Section
5 56055 of the Education Code.

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

18 If the court is unable to appoint a responsible adult to make
19 educational decisions for the child and paragraphs (1) to (5),
20 inclusive, do not apply, and the child has either been referred to
21 the local educational agency for special education and related
22 services, or has a valid individualized education program, the
23 court shall refer the child to the local educational agency for
24 appointment of a surrogate parent pursuant to Section 7579.5 of
25 the Government Code.

26 If the court cannot identify a responsible adult to make
27 educational decisions for the child, the appointment of a
28 surrogate parent as defined in subdivision (a) of Section 56050 of
29 the Education Code is not warranted, and there is no foster parent
30 to exercise the authority granted by Section 56055 of the
31 Education Code, the court may, with the input of any interested
32 person, make educational decisions for the child.

33 All educational and school placement decisions shall seek to
34 ensure that the child is in the least restrictive educational
35 programs and has access to the academic resources, services, and
36 extracurricular and enrichment activities that are available to all
37 pupils. In all instances, educational and school placement
38 decisions shall be based on the best interests of the child.

39 (b) Subdivision (a) does not limit the ability of a parent to
40 voluntarily relinquish his or her child to the State Department of

1 Social Services or to a licensed county adoption agency at any
2 time while the child is a dependent child of the juvenile court, if
3 the department or agency is willing to accept the relinquishment.

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

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

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

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

39 (4) The minor or a sibling of the minor has been sexually
40 abused, or is deemed to be at substantial risk of being sexually

1 abused, by a parent, guardian, or member of his or her household,
2 or other person known to his or her parent, and there are no
3 reasonable means by which the minor can be protected from
4 further sexual abuse or a substantial risk of sexual abuse without
5 removing the minor from his or her parent or guardian, or the
6 minor does not wish to return to his or her parent or guardian.

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

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

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

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

32 (d) The court shall make a determination as to whether
33 reasonable efforts were made to prevent or to eliminate the need
34 for removal of the minor from his or her home or, if the minor is
35 removed for one of the reasons stated in paragraph (5) of
36 subdivision (c), whether it was reasonable under the
37 circumstances not to make any of those efforts, or, in the case of
38 an Indian child custody proceeding, whether active efforts as
39 required in Section 361.7 were made and that these efforts have

1 proved unsuccessful. The court shall state the facts on which the
2 decision to remove the minor is based.

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

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

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

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

13 361.31. (a) In any case in which an Indian child is removed
14 from the physical custody of his or her parents or Indian
15 custodian pursuant to Section 361, the child's placement shall
16 comply with this section.

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

27 (1) A member of the child's extended family, as defined in
28 Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec.
29 1901 et seq.).

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

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

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

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

1 (1) A member of the child's extended family, as defined in
2 Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec.
3 1901 et seq.).

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

5 (3) Another Indian family.

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

13 (e) Where appropriate, the placement preference of the Indian
14 child, when of sufficient age, or parent shall be considered. In
15 applying the preferences, a consenting parent's request for
16 anonymity shall also be given weight by the court or agency
17 effecting the placement.

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

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

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

38 (i) When no preferred placement under subdivision (b), (c), or
39 (d) is available, active efforts shall be made to place the child
40 with a family committed to enabling the child to have extended

1 family visitation and participation in the cultural and ceremonial
2 events of the child's tribe.

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

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

12 SEC. 50. Section 361.7 is added to the Welfare and
13 Institutions Code, to read:

14 361.7. (a) Notwithstanding Section 361.5, a party seeking an
15 involuntary foster care placement of, or termination of parental
16 rights over, an Indian child shall provide evidence to the court
17 that active efforts have been made to provide remedial services
18 and rehabilitative programs designed to prevent the breakup of
19 the Indian family and that these efforts have proved unsuccessful.

20 (b) What constitutes active efforts shall be assessed on a
21 case-by-case basis. The active efforts shall be made in a manner
22 that takes into account the prevailing social and cultural values,
23 conditions, and way of life of the Indian child's tribe. Active
24 efforts shall utilize the available resources of the Indian child's
25 extended family, tribe, tribal and other Indian social service
26 agencies, and individual Indian caregiver service providers.

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

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

35 366. (a) (1) The status of every dependent child in foster
36 care shall be reviewed periodically as determined by the court
37 but no less frequently than once every six months, as calculated
38 from the date of the original dispositional hearing, until the
39 hearing described in Section 366.26 is completed. The court shall

1 consider the safety of the child and shall determine all of the
2 following:

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

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

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

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

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

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

28 (III) If the siblings are not placed together in the same home,
29 why the siblings are not placed together and what efforts are
30 being made to place the siblings together, or why those efforts
31 are not appropriate.

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

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

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

38 (ii) The factors the court may consider in making a
39 determination regarding the nature of the child's sibling
40 relationships may include, but are not limited to, whether the

1 siblings were raised together in the same home, whether the
2 siblings have shared significant common experiences or have
3 existing close and strong bonds, whether either sibling expresses
4 a desire to visit or live with his or her sibling, as applicable, and
5 whether ongoing contact is in the child's best emotional interests.

6 (E) The extent of progress which has been made toward
7 alleviating or mitigating the causes necessitating placement in
8 foster care.

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

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

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

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

24 (e) The implementation and operation of the amendments to
25 subparagraph (B) of paragraph (1) of subdivision (a) enacted at
26 the 2005–06 Regular Session shall be subject to appropriation
27 through the budget process and by phase, as provided in Section
28 366.35.

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

31 366.26. (a) This section applies to children who are adjudged
32 dependent children of the juvenile court pursuant to subdivision
33 (c) of Section 360. The procedures specified herein are the
34 exclusive procedures for conducting these hearings; Part 2
35 (commencing with Section 3020) of Division 8 of the Family
36 Code is not applicable to these proceedings. Section 8714.7 of
37 the Family Code is applicable and available to all dependent
38 children meeting the requirements of that section, if the
39 postadoption contact agreement has been entered into
40 voluntarily. For children who are adjudged dependent children of

1 the juvenile court pursuant to subdivision (c) of Section 360, this
2 section and Sections 8604, 8605, 8606, and 8700 of the Family
3 Code and Chapter 5 (commencing with Section 7660) of Part 3
4 of Division 12 of the Family Code specify the exclusive
5 procedures for permanently terminating parental rights with
6 regard to, or establishing legal guardianship of, the child while
7 the child is a dependent child of the juvenile court.

8 (b) At the hearing, which shall be held in juvenile court for all
9 children who are dependents of the juvenile court, the court, in
10 order to provide stable, permanent homes for these children, shall
11 review the report as specified in Section 361.5, 366.21, or
12 366.22, shall indicate that the court has read and considered it,
13 shall receive other evidence that the parties may present, and then
14 shall make findings and orders in the following order of
15 preference:

16 (1) Terminate the rights of the parent or parents and order that
17 the child be placed for adoption and, upon the filing of a petition
18 for adoption in the juvenile court, order that a hearing be set. The
19 court shall proceed with the adoption after the appellate rights of
20 the natural parents have been exhausted.

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

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

27 (4) Order that the child be placed in long-term foster care,
28 subject to the periodic review of the juvenile court under Section
29 366.3.

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

32 (c) (1) If the court determines, based on the assessment
33 provided as ordered under subdivision (i) of Section 366.21 or
34 subdivision (b) of Section 366.22, and any other relevant
35 evidence, by a clear and convincing standard, that it is likely the
36 child will be adopted, the court shall terminate parental rights and
37 order the child placed for adoption. The fact that the child is not
38 yet placed in a preadoptive home nor with a relative or foster
39 family who is prepared to adopt the child, shall not constitute a
40 basis for the court to conclude that it is not likely the child will

1 be adopted. A finding under subdivision (b) or paragraph (1) of
2 subdivision (e) of Section 361.5 that reunification services shall
3 not be offered, under subdivision (e) of Section 366.21 that the
4 whereabouts of a parent have been unknown for six months or
5 that the parent has failed to visit or contact the child for six
6 months or that the parent has been convicted of a felony
7 indicating parental unfitness, or, under Section 366.21 or 366.22,
8 that the court has continued to remove the child from the custody
9 of the parent or guardian and has terminated reunification
10 services, shall constitute a sufficient basis for termination of
11 parental rights unless the court finds a compelling reason for
12 determining that termination would be detrimental to the child
13 due to one or more of the following circumstances:

14 (A) The parents have maintained regular visitation and contact
15 with the child and the child would benefit from continuing the
16 relationship.

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

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

24 (D) The child is living with a relative, foster parent, or Indian
25 custodian who is unable or unwilling to adopt the child because
26 of exceptional circumstances, that do not include an
27 unwillingness to accept legal or financial responsibility for the
28 child, but who is willing and capable of providing the child with
29 a stable and permanent environment and the removal of the child
30 from the physical custody of his or her relative, foster parent, or
31 Indian custodian would be detrimental to the emotional
32 well-being of the child. This subparagraph does not apply to any
33 child who is living with a nonrelative and who is either (i) under
34 six years of age or (ii) a member of a sibling group where at least
35 one child is under six years of age and the siblings are, or should
36 be, permanently placed together. For purposes of an Indian child,
37 “relative” shall include an “extended family member” as defined
38 in the Indian Child Welfare Act (25 U.S.C. Sec. 1903(2)).

39 (E) There would be substantial interference with a child’s
40 sibling relationship, taking into consideration the nature and

1 extent of the relationship, including, but not limited to, whether
2 the child was raised with a sibling in the same home, whether the
3 child shared significant common experiences or has existing
4 close and strong bonds with a sibling, and whether ongoing
5 contact is in the child's best interest, including the child's
6 long-term emotional interest, as compared to the benefit of legal
7 permanence through adoption.

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

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

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

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

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

23 (A) At each hearing at which the court was required to
24 consider reasonable efforts or services, the court has found that
25 reasonable efforts were not made or that reasonable services were
26 not offered or provided.

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

28 (i) At the hearing terminating parental rights, the court has
29 found that active efforts were not made as required in Section
30 361.7.

31 (ii) The court does not make a determination at the hearing
32 terminating parental rights, supported by evidence beyond a
33 reasonable doubt, including testimony of one or more "qualified
34 expert witnesses" as defined in Section 224.6, that the continued
35 custody of the child by the parent is likely to result in serious
36 emotional or physical damage to the child.

37 (3) If the court finds that termination of parental rights would
38 not be detrimental to the child pursuant to paragraph (1) and that
39 the child has a probability for adoption but is difficult to place for
40 adoption and there is no identified or available prospective

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

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

39 (B) If the child is living with a relative or a foster parent who
40 is willing and capable of providing a stable and permanent

1 environment, but not willing to become a legal guardian, the
2 child shall not be removed from the home if the court finds the
3 removal would be seriously detrimental to the emotional
4 well-being of the child because the child has substantial
5 psychological ties to the relative caretaker or foster parents.

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

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

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

32 (d) The proceeding for the appointment of a guardian for a
33 child who is a dependent of the juvenile court shall be in the
34 juvenile court. If the court finds pursuant to this section that legal
35 guardianship is the appropriate permanent plan, it shall appoint
36 the legal guardian and issue letters of guardianship. The
37 assessment prepared pursuant to subdivision (g) of Section 361.5,
38 subdivision (i) of Section 366.21, and subdivision (b) of Section
39 366.22 shall be read and considered by the court prior to the
40 appointment, and this shall be reflected in the minutes of the

1 court. The person preparing the assessment may be called and
2 examined by any party to the proceeding.

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

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

24 (1) In accordance with subdivision (c) of Section 317, if a
25 child before the court is without counsel, the court shall appoint
26 counsel unless the court finds that the child would not benefit
27 from the appointment of counsel. The court shall state on the
28 record its reasons for that finding.

29 (2) If a parent appears without counsel and is unable to afford
30 counsel, the court shall appoint counsel for the parent, unless this
31 representation is knowingly and intelligently waived. The same
32 counsel shall not be appointed to represent both the child and his
33 or her parent. The public defender or private counsel may be
34 appointed as counsel for the parent.

35 (3) Private counsel appointed under this section shall receive a
36 reasonable sum for compensation and expenses, the amount of
37 which shall be determined by the court. The amount shall be paid
38 by the real parties in interest, other than the child, in any
39 proportions the court deems just. However, if the court finds that

1 any of the real parties in interest are unable to afford counsel, the
2 amount shall be paid out of the general fund of the county.

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

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

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

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

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

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

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

26 (B) After testimony in chambers, the parent or parents of the
27 child may elect to have the court reporter read back the testimony
28 or have the testimony summarized by counsel for the parent or
29 parents.

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

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

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

36 (j) If the court, by order or judgment, declares the child free
37 from the custody and control of both parents, or one parent if the
38 other does not have custody and control, the court shall at the
39 same time order the child referred to the State Department of
40 Social Services or a licensed adoption agency for adoptive

1 placement by the agency. However, a petition for adoption may
2 not be granted until the appellate rights of the natural parents
3 have been exhausted. The State Department of Social Services or
4 licensed adoption agency shall be responsible for the custody and
5 supervision of the child and shall be entitled to the exclusive care
6 and control of the child at all times until a petition for adoption is
7 granted, except as specified in subdivision (n). With the consent
8 of the agency, the court may appoint a guardian of the child, who
9 shall serve until the child is adopted.

10 (k) Notwithstanding any other provision of law, the
11 application of any person who, as a relative caretaker or foster
12 parent, has cared for a dependent child for whom the court has
13 approved a permanent plan for adoption, or who has been freed
14 for adoption, shall be given preference with respect to that child
15 over all other applications for adoptive placement if the agency
16 making the placement determines that the child has substantial
17 emotional ties to the relative caretaker or foster parent and
18 removal from the relative caretaker or foster parent would be
19 seriously detrimental to the child's emotional well-being.

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

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

27 (A) A petition for extraordinary writ review was filed in a
28 timely manner.

29 (B) The petition substantively addressed the specific issues to
30 be challenged and supported that challenge by an adequate
31 record.

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

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

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

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

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

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

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

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

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

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

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

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

29 (n) (1) Notwithstanding Section 8704 of the Family Code or
30 any other provision of law, the court, at a hearing held pursuant
31 to this section or anytime thereafter, may designate a current
32 caretaker as a prospective adoptive parent if the child has lived
33 with the caretaker for at least six months, the caretaker currently
34 expresses a commitment to adopt the child, and the caretaker has
35 taken at least one step to facilitate the adoption process. In
36 determining whether to make that designation, the court may take
37 into consideration whether the caretaker is listed in the
38 preliminary assessment prepared by the county department in
39 accordance with subdivision (i) of Section 366.21 as an
40 appropriate person to be considered as an adoptive parent for the

1 child and the recommendation of the State Department of Social
2 Services or licensed adoption agency.

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

5 (A) Applying for an adoption homestudy.

6 (B) Cooperating with an adoption homestudy.

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

9 (D) Requesting de facto parent status.

10 (E) Signing an adoptive placement agreement.

11 (F) Engaging in discussions regarding a postadoption contact
12 agreement.

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

16 (H) Attending classes required of prospective adoptive
17 parents.

18 (3) Prior to a change in placement and as soon as possible after
19 a decision is made to remove a child from the home of a
20 designated prospective adoptive parent, the agency shall notify
21 the court, the designated prospective adoptive parent or the
22 current caretaker, if that caretaker would have met the threshold
23 criteria to be designated as a prospective adoptive parent
24 pursuant to paragraph (1) on the date of service of this notice, the
25 child's attorney, and the child, if the child is 10 years of age or
26 older, of the proposal in the manner described in Section
27 16010.6.

28 (A) Within five court days or seven calendar days, whichever
29 is longer, of the date of notification, the child, the child's
30 attorney, or the designated prospective adoptive parent may file a
31 petition with the court objecting to the proposal to remove the
32 child, or the court, upon its own motion, may set a hearing
33 regarding the proposal. The court may, for good cause, extend
34 the filing period. A caretaker who would have met the threshold
35 criteria to be designated as a prospective adoptive parent
36 pursuant to paragraph (1) on the date of service of the notice of
37 proposed removal of the child may file, together with the petition
38 under this subparagraph, a petition for an order designating the
39 caretaker as a prospective adoptive parent for purposes of this
40 subdivision.

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

(C) A determination by the court that the caretaker is a designated prospective adoptive parent pursuant to paragraph (1) or subparagraph (B) does not make the caretaker a party to the dependency proceeding nor does it confer on the caretaker any standing to object to any other action of the department or licensed adoption agency, unless the caretaker has been declared a de facto parent by the court prior to the notice of removal served pursuant to paragraph (3).

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

(4) Notwithstanding paragraph (3), if the State Department of Social Services or a licensed adoption agency determines that the child must be removed from the home of the caretaker who is or may be a designated prospective adoptive parent immediately, due to a risk of physical or emotional harm, the agency may remove the child from that home and is not required to provide

1 notice prior to the removal. However, as soon as possible and not
2 longer than two court days after the removal, the agency shall
3 notify the court, the caretaker who is or may be a designated
4 prospective adoptive parent, the child's attorney, and the child, if
5 the child is 10 years of age or older, of the removal. Within five
6 court days or seven calendar days, whichever is longer, of the
7 date of notification of the removal, the child, the child's attorney,
8 or the caretaker who is or may be a designated prospective
9 adoptive parent may petition for, or the court on its own motion
10 may set, a noticed hearing pursuant to paragraph (3). The court
11 may, for good cause, extend the filing period.

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

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

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

22 (o) The implementation and operation of the amendments to
23 paragraph (3) of subdivision (c) and subparagraph (A) of
24 paragraph (4) of subdivision (c) enacted at the 2005-06 Regular
25 Session shall be subject to appropriation through the budget
26 process and by phase, as provided in Section 366.35.

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

29 727.4. (a) (1) Notice of any hearing pursuant to Section 727,
30 727.2, or 727.3 shall be mailed by the probation officer to the
31 minor, the minor's parent or guardian, any adult provider of care
32 to the minor including, but not limited to, foster parents, relative
33 caregivers, preadoptive parents, community care facility, or
34 foster family agency, and to the counsel of record if the counsel
35 of record was not present at the time that the hearing was set by
36 the court, by first-class mail addressed to the last known address
37 of the person to be notified, or shall be personally served on
38 those persons, not earlier than 30 days nor later than 15 days
39 preceding the date of the hearing. The notice shall contain a
40 statement regarding the nature of the status review or

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

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

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

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

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

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

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

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

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

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

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

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

17 (5) “Reasonable efforts” means:

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

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

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

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

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

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

1 (A) A judicial officer, in a courtroom, recorded by a court
2 reporter.

3 (B) An administrative panel, provided that the hearing is a
4 status review hearing and that the administrative panel meets the
5 following conditions:

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

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

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

16 (iv) The findings of the administrative review panel shall be
17 submitted to the juvenile court for the court's approval and shall
18 become part of the official court record.

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

21 10553.1. (a) Notwithstanding any other provision of law, the
22 director may enter into an agreement, in accordance with Section
23 1919 of Title 25 of the United States Code, with any California
24 Indian tribe or any out-of-state Indian tribe regarding the care
25 and custody of Indian children and jurisdiction over Indian child
26 custody proceedings, including, but not limited to, agreements
27 that provide for orderly transfer of jurisdiction on a case-by-case
28 basis, for exclusive tribal or state jurisdiction, or for concurrent
29 jurisdiction between the state and tribes.

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

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

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

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

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

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

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

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

28 16507.4. (a) Notwithstanding any other provisions of this
29 chapter, voluntary family reunification services shall be provided
30 without fee to families who qualify, or would qualify if
31 application had been made therefor, as recipients of public
32 assistance under the Aid to Families with Dependent Children
33 program. If the family is not qualified for aid, voluntary family
34 reunification services may be utilized, provided that the county
35 seeks reimbursement from the parent or guardian on a statewide
36 sliding scale according to income as determined by the State
37 Department of Social Services and approved by the Department
38 of Finance.

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

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

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

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

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

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

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

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

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

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

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

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

13 SEC. 57. (a) Section 42.5 of this bill incorporates
14 amendments to Section 295 of the Welfare and Institutions Code
15 proposed by both this bill and Senate Bill 1667. It shall only
16 become operative if (1) both bills are enacted and become
17 effective on or before January 1, 2007, (2) each bill amends
18 Section 295 of the Welfare and Institutions Code, and (3) this bill
19 is enacted after Senate Bill 1667, in which case Section 42 of this
20 bill shall not become operative.

21 (b) Section 46.5 of this bill incorporates amendments to
22 Section 317 of the Welfare and Institutions Code proposed by
23 both this bill and Assembly Bill 2480. It shall only become
24 operative if (1) both bills are enacted and become effective on or
25 before January 1, 2007, (2) each bill amends Section 317 of the
26 Welfare and Institutions Code, and (3) this bill is enacted after
27 Assembly Bill 2480, in which case Section 46 of this bill shall not
28 become operative.