IN THE SUPREME COURT OF CALIFORNIA

In re: W. B., Jr., A Person Coming Under The Juvenile Court Law.	)	
THE PEOPLE OF THE STATE OF CALIFORNIA,	)	Supreme Court No. S181638
Plaintiff and Respondent,	)	Court of Appeal No. E047368
v.	)	
W. B., Jr.,	)	Superior Court No. RIJ114127
Defendant and Appellant.	)	

APPEAL FROM THE SUPERIOR COURT OF RIVERSIDE COUNTY
Honorable Christian F. Thierback, Judge

APPELLANT'S REQUEST FOR JUDICIAL NOTICE

JONATHAN E. DEMSON
Attorney at Law
Cal. State Bar No. 167758
1158 26th Street #291
Santa Monica, CA 90403
(888) 827-9153

By Appointment of the Supreme Court, with the assistance of Appellate Defenders, Inc.

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TO THE HONORABLE CHIEF JUSTICE AND THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Appellant respectfully requests, pursuant to Evidence Code sections 452, subdivision (c), and 459, subdivision (a), and rules 8.252(a) and 8.520(g) of the California Rules of Court, that this Court take judicial notice of the following two documents from the legislative history, as provided by the California State Archives, of Senate Bill 678 from the 2005-2006 California State Senate regular legislative session, codified at Welfare and Institutions Code section 224 et seq.:

1. Senate Committee on the Judiciary, Transcript of Informational Hearing on Senate Bill 678, "The Indian Child Welfare Act and Related Compliance Problems," May 17, 2005; and

2. Senate Committee on the Judiciary, Briefing Notes on Senate Bill 678 (2005-2006 Reg. Sess.).

Copies of these documents are attached as Exhibits A & B to the Declaration of Jonathan E. Demson, attached hereto. This request is based on this notice, the attached memorandum of points and authorities, and the attached declaration.

Date: September 20, 2010

Jonathan E. Demson
Attorney at Law
State Bar No. 167758
1158 26th Street #291
Santa Monica, CA 90403
(888) 827-9153

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE

Evidence Code section 459, subdivision (a) provides that the reviewing court "may take judicial notice of any matter specified in Section 452." (Evid. Code, § 459, subd. (a).) Evidence Code section 452, subdivision (c), in turn, provides for permissive judicial notice of "Official acts of the legislative . . . department[] of . . . any state of the United States." (Evid. Code, § 452, subd. (c).)

Appellant respectfully requests that this Court take judicial notice of the attached documents, provided by the California State Archives, related to the legislative history of Welfare and Institutions Code section 224, et seq. (Exhibits A & B.) The issue presented in this case hinges on the statutory interpretation of California's Indian Child Welfare statute, codified at Welfare and Institutions Code section 224 et seq. "Statements in legislative committee reports concerning the statutory objects and purposes which are in accord with a reasonable interpretation of the statute are legitimate aids in determining legislative intent." (*Southern Cal. Gas Co. v. Public Utilities Com.* (1979) 24 Cal.3d 653, 659.) A reviewing court may take judicial notice of legislative history, including legislative committee reports, as official acts of the legislative department. (*Ste. Marie v. Riverside County Regional Park & Open-Space Dist.* (2009) 46 Cal.4th 282, 290-291.) If this Court finds the statutory language of this statute is ambiguous, it may review legislative history to discern its meaning. (*People v. Sinohui* (2002) 28 Cal.4th 205, 211-212.) The documents attached hereto as Exhibits A & B are relevant and may be helpful to this inquiry.

Accordingly, appellant respectfully requests that this Court take judicial notice of the documents attached hereto as Exhibits A & B.

Dated: September 20, 2010

Respectfully Submitted,

JONATHAN E. DEMSON
Attorney for Appellant

DECLARATION OF JONATHAN E. DEMSON

I, JONATHAN E. DEMSON, declare:

1. I am an attorney licensed to practice law in the State of California, and I was appointed by this Court to represent appellant in this matter;

2. As part of my work on this case, I reviewed documents sent to me by the California State Archives related to the legislative history of Senate Bill 678 from the 2005-2006 California State Senate regular legislative session, codified at Welfare and Institutions Code section 224 et seq.;

3. Attached to this declaration as Exhibit A is a true and correct copy of the following document from the legislative history described in paragraph 2, above: Senate Committee on the Judiciary, Transcript of Informational Hearing on Senate Bill 678, "The Indian Child Welfare Act and Related Compliance Problems," May 17, 2005;

4. Attached to this declaration as Exhibit B is a true and correct copy of the following document from the legislative history described in paragraph 2, above: Senate Committee on the Judiciary, Briefing Notes on Senate Bill 678 (2005-2006 Reg. Sess.).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 20, 2010, at Los Angeles, California.

JONATHAN E. DEMSON
Attorney for Appellant

EXHIBIT A

Informational Hearing of the
Senate Judiciary Committee
Senator Joseph L. Dunn, Chair

"The Indian Child Welfare Act and Related Compliance Problems"

May 17, 2005
State Capitol
Sacramento, California

SENATOR JOSEPH L. DUNN: Good afternoon, everybody. Welcome to our informational hearing this afternoon within the Senate Judiciary Committee.

This committee hearing was at the request of Senator Ducheny, in an area that she has followed for many, many years and is one that I know she personally is very passionate about, but also, each and every one of us is concerned about. And so, when the request was made, we of course said, immediately, yes. That's what this hearing is all about.

So, without anything further, let me turn to opening remarks by Senator Ducheny to set the framework as far as what the rest of the hearing that we will see.

Senator Ducheny.

SENATOR DENISE MORENO DUCHENY: Thank you very much, Mr. Chairman. We appreciate the work of the committee and the committee staff in accommodating this hearing and treating this bill in this way. It is a rather substantial bill and complex. And so, I think having the opportunity to air all the different issues in this setting, before the committee takes it up for a vote, is one that hopefully will help us shape this in a way that makes all of the committee comfortable with it. And we appreciate the work of staff in helping to put this together.

As you indicated, Mr. Chairman, several years ago, in a bill that I carried, we recognized at the state level the importance of the Indian Child Welfare Act and

the fact that it in fact needed to be acknowledged in state codes. We were having a problem at that time, frankly, with substantial conflicts in the circuits at the appellate level on interpretation of application of the Indian Child Welfare Act in the context of California; mostly dependency cases and the termination of parental rights situations. Many of these cases were going to the appellate courts, and we had two circuits against two circuits without any real resolution to some of the issues.

We thought that if we codified in the Welfare and Institutions Code at that time the fact that deference needed to be given to the Indian Child Welfare Act and actually define one of the things that was causing a lot of trouble at that time, we said political affiliation with a tribe counts as tribal affiliation. It was a major sticking point in a lot of the courts that were trying to say, *Well, yes, it's an Indian child, but no, they don't really have any connection to the tribe.* They were overruling the tribes' notions of who is an eligible child and what is a citizen child. The tribe actually has the jurisdiction under any U.S. code or anywhere else to decide who its members are, just as we determine as a nation who are our citizens. The tribe has the right to figure out who, in fact, are eligible members for enrollment. So, we codified that, and we've been going along since then.

The Judicial Council has taken some action to implement some things to acknowledge ICWA and to come up with recommendations to courts -- Judicial Council recommendations as opposed to statute. But we still have conflicts in the circuits. We are still seeing a lot of cases arise or notices late or unintentionally sent to the wrong places or not sent. And more often than not in the real world context, the issue becomes traumatic for everybody—child, family, adoptive family, everybody—because it festers too long, and suddenly, something comes up five years down the road. That's when it is the most problematic.

So, what we seek to do is move this process back to the front end, because when everything's done right according to ICWA at the front end of the process, you don't get into that. If you apply ICWA appropriately at the front end of a process, it's our belief that you don't run into as many appellate decisions; you don't have as many Indian children being adopted by non-Indian families and losing their connections to their tribes.

The reason the bill is however many hundred pages it is, is because this is a definitive effort to embed ICWA, if you will, into the codes that deal with children in this state into all of them. Not just in the dependency context of the Welfare and Institutions Code, but also in the Family Code and the Probate Code with respect to guardianship proceedings and other proceedings, whether voluntary or involuntary, that lead to adoption or termination of parental rights. It would still have no impact whatsoever on custodial/parental disputes, the kind that occur in divorce court and paternity suits. When you have a true parent involved in the custody proceeding, that's not the issue. The issue is when you are moving children from parental settings to nonparental settings, and when and how do you do that?

And so, what we have sought to do is amend the Probate and Family Codes to affirm that guardianship and adoption proceedings are subject to ICWA; that Indian parents who cannot afford to hire an attorney are entitled to court-appointed attorneys, just as all parents in our courts are.

Amend the Probate and Family Codes to incorporate by reference the Rule of Court, 1439, which was, in fact, the court's attempt to deal with some of these problems we were seeing in the circuits by listing out requirements. But they are only in a Rule of Court, and our thought is that they ought to be statutory, and that way they would be applied to all juvenile court proceedings.

We want to amend Welfare and Institutions, Probate, and Family Codes to ensure that notice requirements are consistent with ICWA and federal regulations and Rule 1439.

Amend the Welfare and Institutions, Probate, and Family Codes to permit courts to grant standing to an Indian child's tribe, even though the child may not meet the definition of "Indian child" in ICWA. This is a kind of uniquely California issue, and it's one that I'm sure will follow a lot of discussion, but we have many unrecognized tribes in this state, and we have many tribes who are seeking, through what may be 20- and 30- and 40-year court processes and BIA processes, recognition as tribes. One from your own county, Mr. Chairman, just visited me today. They have state recognition but not federal recognition as a tribe. If there

were to be a child that they believe was related to them, how do we deal with that? is kind of the question that's raised by that.

Amend the exceptions to the adoption contained in the Welfare and Institutions Code to protect the unique interests of Indian children, Indian custodians, and relative caregivers.

Amend the Family Code to permit tribes to be parties to post-adoption decrees and involuntary adoptions. They have that opportunity in voluntary adoption cases now. We want to codify it so that in involuntary adoptions, the tribe could do as we do now in many cases with grandparents or others, say. You can get engaged in kind of an agreement afterwards that says, *You have adopted the child, but I still get visitation rights.* I know I've seen it in grandparent cases. I think what we're seeking is the opportunity for the child to continue to have a connection to their tribal heritage, even if they are adopted by a non-Indian family. By agreement, and perhaps in the best interests of the child, they remain in that placement but still have some opportunity to have that connection. We'd like tribes to have the opportunity to enter into those agreements. Often, unfortunately, the adoption is granted with the stipulation that there be such an agreement, and there is difficulty negotiating that agreement afterwards. So, we would ask that the Family Code require reconsideration of proceedings of the finalization of the adoption if the adoptive parents refuse to enter into those discussions, if it was, in fact, part of the original order that they should, but only in that context.

Amend the Welfare and Institutions Code to clarify what ICWA requires in juvenile court and of the county agencies in delinquency cases. Again, a different category, but we're trying to put the same rules in place all the way through the system.

Amend the Welfare and Institutions Code to prohibit a county from calling its own social workers or other employees to serve as expert witnesses for the purposes of terminating parental rights. This comes up only in the ICWA context. You are required to call an expert witness, but often the expert witness may be the same social workers who wrote the report, creating what, in many people's minds, is a conflict of interest.

Amend the Welfare and Institutions Code to affirm that active efforts must be made to prevent the breakup of the Indian family, regardless of some of the state laws that, at the moment, may seem contrary to that.

Amend the Welfare and Institutions Code to affirm that state public policy recognizes exceptions to adoption, and therefore, tribal acts, records, or traditional proceedings establishing alternative placement plans must be afforded full faith and credit when considering placing Indian children in selective permanent plans.

The bottom line through all of this is the opportunity for tribes. It probably needs something else that we haven't put in this bill, and perhaps Social Services could address this. It may in fact need a position in Social Services or somebody that's following this to say, *What are we doing to do active efforts?* Because, in my experience, at least at the trial court level, the biggest problem in this is actually asking all the right questions and finding the tribal connections and then making the effort to find them, to get a response, and also the lack of Indian families that are available for guardianship or perhaps for permanent placement or foster care. And I'm not sure the counties have had resources to actually do the recruiting, if you will, of Indian families to be available for these children on a long-term basis. Then you run into the question of acknowledging the traditional tribal relationships which maybe don't call it foster care. Maybe it's a guardianship, and maybe that is a permanent placement in their culture as opposed to the preference that our codes state for adoption.

So, those are the kinds of things we're trying to get at.

And finally, we would ask that we amend the Welfare and Institutions Code to require that the serious harm finding required under ICWA prior to termination of parental rights be made at the same hearing which the rights are terminated. Right now they're sort of multistage: We find there's harm, and then six months later we come around and terminate rights. If you're going to find there's serious harm, do it when you're terminating the parental rights, and don't create the multistage procedure.

So, that's sort of the, if you will, short summary of the issues that the bill has raised.

We'll start with the two attorneys to my right. Joanne Willis Newton is the senior staff attorney for California Indian Legal Services. She actually drafted this bill, if you can imagine sitting down there and trying to figure out how to do that. And Tim Seward, general counsel for the Washoe Tribe of Nevada and California.

The Washoe Tribe has actually been at the forefront of a lot of the ICWA discussions in this state. They have different rules. They are a multistate tribe, as it were: They have people who live both in Nevada and in California. And so, they have had different rules apply to them in different places, at different times and different counties. They actually have a tribal court. They have one of the best experts on ICWA who is the judge for their court, who does ICWA seminars for judges throughout the country and judicial college, but he is the tribal court judge at Washoe. And so, they have long experience with that. They will do the introductory discussion and then stay around for that.

I would apologize in advance, Mr. Chairman. I may have to run out for five minutes somewhere in the middle of this discussion to go vote in Trans. They're going to call.

SENATOR DUNN: Understood, Senator.

Let's go to Joanne Willis Newton, senior staff attorney, California Indian Legal Services.

Ms. Newton, welcome.

MS. JOANNE WILLIS NEWTON: Good afternoon. Thank you for holding this hearing and for allowing me to come before you.

As Senator Ducheny said, I work at California Indian Legal Services, and we are the nation's oldest Indian legal services, established over 37 years ago. We represent low-income individuals and, also, tribes on matters involving federal Indian law, and one of the areas of most significance to our practice is the Indian Child Welfare Act. And when I say significant, I mean both in terms of the numbers of cases that we handle across the state—we have offices throughout California—but also in terms of the impact that the Act has on Indian families and tribal communities.

I have, in my seven years there, had occasion to witness the value of the Act firsthand when it is applied appropriately and also to witness the detriment when

it is not followed. I have represented tribes throughout counties in Southern California. I have had the opportunity to speak through our intake system and through community education to hundreds of Indian parents and extended family members who are struggling with trying to regain custody of an Indian child. And I've also spoken with tribal representatives and attorneys throughout the state regarding their experiences in other counties that I've not practiced in. So, it is in both my professional capacity and also my personal capacity as an Indian parent that I urge you to accept that the ICWA remains a vital tool to protecting the best interests of Indian children and families, and also to consider SB 678 as a means of improving compliance in the State of California with the Indian Child Welfare Act.

I've been asked to provide a brief introduction to the ICWA and some background about the legislation. My colleague, Mr. Seward, will be supplementing my remarks with additional background information. If I may, I'd like to reserve a few minutes to wrap up after Mr. Seward speaks. Or to answer questions.

SENATOR DUNN: Understood.

MS. NEWTON: I'd like to start by saying the context for the enactment of the Indian Child Welfare Act—and for those of you who are already familiar somewhat with the act, which appears may be the case, and I apologize—but the federal Indian policy has shifted dramatically over the past two hundred years. Beginning around 1950 through the late 1960s was a policy of termination. The federal government was looking to terminate Indian tribes. Senator Ducheny already alluded to the fact that there are numerous tribes in California that were terminated. By termination, that means their status as federally recognized tribes ceased. So, they still continue to exist, but they don't have that federal recognition.

During this era, in 1957, the federal government started an Indian adoption project, and during that first year, they placed 395 children in non-Indian homes for adoption, and many states followed suit.

Beginning in the mid-1970s, Congress established a task force to investigate the problem because there was mounting evidence that these placements were not

in the best interests of Indian children. So, in 1977 they conducted hearings, and among the findings throughout these extensive hearings were that Indian children nationally were three times more likely than non-Indian children to be removed from their families. And about 25 to 35 percent of Indian children, in fact, were subject to removal. In the State of California, the statistics were even more dire: Indian children were eight times more likely than non-Indian children to be placed for adoption, and of those placements, more than 90 percent of them were in non-Indian homes. More significantly, Congress found that these children, these Indian children, frequently suffered serious emotional and psychological problems as adolescents.

SENATOR DUNN: Ms. Newton, can I interrupt for just a second? You may be going to address this later in your comments, but given your experience, I welcome your insight on the "why" to the statement of eight times more likely that you had just uttered. Why?

SENATOR DUCHENY: This is pre-ICWA.

SENATOR DUNN: Right. No, I understand.

MS. NEWTON: I think there are a number of factors that were at play, and this is borne out by testimony as well. One being that state and county workers were often unfamiliar or disapproving of Native American childrearing practices or social standards prevalent on the reservation. Another is that there was a whole history of assimilation from a prior era where Indian children were removed from their families and placed in Indian boarding schools run by the federal government, and as a result of that, they were cut off from their cultures, from their language. They were prohibited from visiting their families for lengthy periods. They lost that connection to traditional childrearing practices and customs and, also, subsequently had adjustment problems that led to substance abuse or other issues.

So, the whole family framework was damaged by the prior assimilation policies of the federal government. So, I think those are a couple of the key factors that led to that situation.

SENATOR DUNN: All right. My apologies for interrupting.

MS. NEWTON: In any event, after these hearings in 1978, Congress acted by enacting the Indian Child Welfare Act. Among the findings that are codified there in Section 1901 of Title 25, the U.S. Code, they found that it is in the interest of Indian children and tribes—and they're intertwined—to maintain a connection and for children to stay and be raised with their extended Indian family within the community.

And I would point out that the State Legislature has agreed with that finding. As Senator Ducheny alluded to, AB 65 passed in 1999, and similar findings are codified now in the Family Code and the Welfare and Institutions Code: Section 360.6 of the Welfare and Institutions Code and Section 7810 of the Family Code.

The ICWA essentially establishes minimum standards for state courts to follow in Indian child custody proceedings. It does not apply to all child custody proceedings, and it does not apply to all Indian children. It applies, essentially, to children who are either members of federally recognized tribes or they are eligible for membership and one of their parents is a member. And the reason for that is U.S. Supreme Court precedents that hold that if you're going to structure a law giving a preference to Indians, it has to be related to a political basis rather than a racial basis.

The child custody proceedings that it applies to are, essentially, all foster care placements, all guardianships, and all terminations of parental rights. In California, in recent years, we have a unique situation where you can have a parental custody dispute under the Family Code where the court can actually award custody to a nonparent over the objection of a parent. So, we have a unique proceeding now in California that also triggers the act and was one of the reasons why the Family Code should be amended.

In any event, the key provisions to the ICWA are the following:

There are a number of provisions relating to jurisdiction. Children who reside on a reservation are under the exclusive jurisdiction of a tribe unless the Congress has delegated jurisdiction to a state. You have a report from me that will explain some of the legal issues about that situation.

SENATOR DUNN: I believe that's this paper right here.

MS. NEWTON: That's correct.

SENATOR DUNN: Okay, good.

MS. NEWTON: There's a question in California—you'll see some information there—about a current case before the 9th Circuit Court of Appeal whether California tribes have exclusive jurisdiction or not. In any event, if they do not have exclusive jurisdiction there, ICWA also provides a process for them to petition to the Secretary of Interior to reassume exclusive jurisdiction over those cases.

For children who are domiciled off the reservation, the state court must transfer the proceedings to tribal court unless a parent objects or unless a state court finds there's good cause not to do so. Also, the state court must decline to exercise jurisdiction if a child was improperly removed from a parent.

With regard to jurisdiction, state courts must also give full faith and credit to tribal acts, records, and judicial proceedings.

The act also allows an Indian parent, Indian custodian, or a tribe to intervene at any point in a proceeding, and it allows them to also receive discovery, in that they can view any documents on which the court is basing its decisions.

They also are entitled to receive notice of all Indian child custody proceedings at least ten days prior to a hearing and to request a continuance of up to twenty days if they need to prepare.

A tribe, an Indian parent, or an Indian custodian has the right to court-appointed counsel if they cannot afford it. And there are a couple of key evidentiary requirements in the act. One is that the party who is seeking a foster care placement or adoption of a child must show that they have made active efforts to reunify the family and that those efforts have proved unsuccessful.

There's also a requirement, whether it's a foster care or guardianship or a termination of parental rights, that the parties seeking that placement must show this continued custody of a child is likely to cause serious emotional or physical harm. And that finding must be supported by the testimony of a qualified expert witness.

One of the most important areas of the ICWA is its placement preferences. It mandates that children be placed with extended family whenever possible, and if not, with other Indian homes.

It also requires that the tribes' prevailing social and cultural standards be the standards that are applied to placement decisions involving Indian children, and it allows tribes to establish their own placement preferences different from those in the act.

With respect to voluntary placements, whether adoption, guardianship, or foster care, the act sets out certain procedures for obtaining valid consent from an Indian parent or custodian and allows for that consent to be withdrawn in certain circumstances.

One of the key enforcement provisions—in fact, the only enforcement provision—is that for certain violations of the ICWA, the tribe, the Indian parent, or the Indian custodian can petition to invalidate the proceedings. Those violations would include notice violations, failure to appoint court-appointed counsel; those types of key substantial rights that are guaranteed by the act.

There are also some recordkeeping provisions that require the state to keep records of placements and to share that information with the Secretary of Interior. And there is a provision that would allow an Indian child upon reaching adulthood to unseal their adoption records.

So, those are sort of the highlights of the act. As you'll see in the paper that you have before you, state law has some provisions in it specific to Indian child custody proceedings, but they are a hodgepodge of provisions, and there's no cohesive statutory framework for courts to be guided in how to deal with an Indian child custody proceeding. The most comprehensive set of standards is found in Rule of Court Rule 1439, but that's applicable only to juvenile courts. So, a probate court doing a guardianship or a family court doing an adoption is not bound to follow those rules and probably wouldn't even be aware of them.

I would like to spend just a moment to point out that other states have addressed this issue in a similar way that we're attempting to do with SB 678, in that they've tried to codify in a more extensive way in their state statutes the requirements of the ICWA. The Iowa Indian Child Welfare Act was passed in 2003,

the tribe would have to go to the county district court to petition for the transfer of jurisdiction of a case over which the county didn't have jurisdiction. That presented procedural difficulties for the tribe, and it presented the judge with a very odd situation. Unfortunately, what wound up happening often is the Tribal Social Services would be disparaged, the tribal government would be disparaged, and sometimes family members. So, one of the things we accomplished in AB 65 was to clarify what "exclusive jurisdiction" meant, and I think Joann has picked up one item that we didn't get down in that, that is included in this legislation.

I'm happy to report now that after the passage of AB 65—and this is really where I believe that the Legislature really can effect a positive change—there was a couple lines provision in there that just stated that if a child was in the custody—we didn't get into how they might be in the custody of the county—that they would be transferred administratively if they resided or were domiciled on the reservation. And there'd be contact between the two social services departments.

That overcame some of the hurdles. The departments are now working well together. They've been working well together for several years. We've had some changes in the district attorney's office and on the court. The relatively new judge up in Alpine County has extended an invitation to meet with our judge, and they'll be doing that shortly. Their district attorney and our tribal prosecutor, who also represents our Social Services Department, are meeting on a periodic basis.

Our judge, when I went to talk to him about what he might testify if he had the opportunity to make it down here today, his primary comment was communication; that it's really about people being able to communicate and the mutual respect at the judicial level.

SENATOR DUNN: I'll just correct one thing. We only get to communication if we have the mutual respect, which is critical. I know in many of the sovereignty discussions I've been in, folks from the state side tend to pretend, but the underlying problem is exactly that one, Mr. Seward, unfortunately.

MR. SEWARD: And I've seen that. We battled with that for years and years.

SENATOR DUCHENY: Alpine County used to be a problem. In fact, one of the things that has occurred in the last few years, in line with the same

discussion, is an MOU between the Washoe Tribe and Alpine County. I think it is the DSS MOU, right?

MR. SEWARD: Yes. We have an MOU. The district attorney that was there during 1999 had issued an edict that there would be no more agreements between the county and the tribe. He issued that in 1999. But, I think it was about three years ago, two, two-and-a-half years ago, we entered into an MOU with the county on the Tribal TANF program. I really credit the State Legislature for helping enable that process. Legislation can truly help in this area, and I think it really helps to clarify what, to many, is a very confusing situation, especially for those who don't deal with it very often. I think to be able to go to the state codes and determine what it is that should be done is a tremendous assistance to anybody practicing in this area.

I think with that I've covered [everything], so I appreciate your holding this hearing.

SENATOR DUNN: All right. Mr. Seward, thank you very, very much.

SENATOR DUCHENY: We'll leave them up here for questions later. Perhaps we can invite Cathy and Teresa. Actually, Anne Smith has been replaced by Teresa Contreras from DSS.

SENATOR DUNN: Right. That's what I have. So, let's bring forward Cathy Senderling, County Welfare Directors Association of California, and Teresa Contreras, ICWA specialist, California Department of Social Services.

Welcome. Come on forward here.

We've got two other witnesses that are listed as well too. For the two additional ones, get ready. As soon as we finish with our first two under this panel, we'll go right to the next two. And then, of course, for anybody who is not on the agenda that's here and would like to offer some testimony, we welcome that as well too.

Let's start with Cathy Senderling, County Welfare Directors Association of California.

MS. CATHY SENDERLING: Thank you, Senator Dunn, and thank you as well to Senator Ducheny and to the staff for putting this together today.

ICWA is an extremely important issue. We take it very seriously, and I want to make that clear up front. Unfortunately, it's also extremely difficult to implement properly. Often, on a case-by-case basis, we see the tragedy and what can happen after that occurs. We think that this makes it an excellent candidate for oversight, for inquiry by the Legislature, and for the kind of legislation that you're considering in your committee.

The county involvement in Indian child welfare cases is early and it's ongoing. That's because, of course, counties do the child welfare services for the state. We act with oversight from the state in all fifty-eight counties. We have an affirmative and continuing duty to inquire as to the Indian status of the children that we bring into our custody. We are required, of course, by both Rule 1439 as well as by the Welfare and Institutions Code, which governs our juvenile welfare system, to make a number of inquiries and then to do noticing and other activities when it is determined that a child may be an Indian child.

Inquiries are required to be made of the child themselves if they're old enough, as well as the parents and other relatives. The parents are asked to complete a form—it's a form that the Judicial Council has put together—at the beginning of every proceeding. When they first appear in court, they're asked to fill out the form, which can make an indication that the child may have Indian heritage and therefore be subject under ICWA.

Parents who are located later in the process—that often does occur, that we may only have one parent that we're aware of. The other parent may step forward or be identified later on, and there again, at that point, they're supposed to be asked to fill out that form to provide information and to be asked about information that could help to identify the child.

All of these efforts are required to be documented, not only in our computer system—the Child Welfare Case Management System—and in the child's case file, but also in reports to the court, which have special sections that deal with ICWA compliance.

Once a child is identified as a possible Indian child, additional requirements then occur. There are notices that are sent not just to the parents, but also to Indian custodians if there is an Indian custodian of the child, to the Bureau of

Indian Affairs if the tribe is not known for the child, and then, if the tribe is known, it would be also sent to the tribe. In the cases of tribes with multiple bands, it would be sent to each band of the tribe.

It's not just a form that gets sent to the tribes. There's a lot of other information that we're also required to send. It's generally a packet that includes things like the birth certificates of the children, a copy of the original court petition that has the allegations for which the child was removed from the home, any paternity judgment orders that might exist, the form that we ask the parent to fill out, as well as any information that we think might assist them in determining the heritage of the child. This may include things like membership information about a grandparent or a great-grandparent. It could include marriage certificates and records. So, it could require some extensive research on the part of the county staff to put that packet together, to make sure that it has enough information for the tribes to be able to consider whether the child is a member or may be eligible for membership.

The attachments are sent repeatedly with the notices. They're required to be sent before every hearing that occurs. The information is only stopped being sent once either the tribe or the Bureau of Indian Affairs confirms whether the child is actually eligible for membership and the court has made a determination that ICWA applies and the tribe has intervened. So, all three of those criteria must be met. If those criteria are not met, we're required to continue sending a lot of information every time before each hearing.

And then there's timeframes, of course, for these notices. If it's being sent to the Bureau of Indian Affairs, for example, it's supposed to be sent 25 days prior to the hearing to give them enough time to take a look; as well as to the tribes at least 10 days before any hearing. And as you heard earlier, a continuance can then be requested of up to 20 days.

The county is also required to ask the court to find at each hearing that the notices were sent timely and is required to provide copies of the forms that were sent, receipts that were sent showing certified mail, any returned receipts with signatures, as well as any correspondence received from the tribes or from the Bureau of Indian Affairs.

Additionally, when the adoption process is started for a child—I know there was a person on the panel from adoptions; I won't go very far into it—but there are additional notices that are required in addition and different from these notices that I've described for the child welfare process.

As you can see, this is a lot of information to ask folks about, to gather up, to send repeatedly; and so, the timeliness of notices is one of the challenges that we face—or lack thereof. The court can be delayed if the notices are not sent timely, and because requests must be made of the court to find that the notices were made timely, if that information does not prove that they were sent timely, the court proceedings could be delayed and re-notices occur so there's enough time for those receiving the notices and those large packets to get through them and decide whether to intervene.

There's, of course, other federal timelines that we're working with here. The Adoptions and Safe Families Act, for example, has requirements about how long we work with families and family maintenance and family reunification efforts before proceeding to the notice of termination of parental rights and then permanency for the child. They have, also, timeframes of 12 months for some children, 6 months for younger children, that we're also working under. So, we've got a lot of competing timeframes that we work with as well and the fact that there's a different number of days required for the Bureau of Indian Affairs notices versus the tribal notices and many bands of the same tribe. It can be difficult to coordinate the sending of all the information. It leads to a number of cases where the courts are delayed or the notices aren't sent timely. It happens far more often than we'd like.

Additionally, when noticing the tribes, there is an interesting Catch-22 that can develop. If the documentation that's sent is incomplete, it can be very difficult for the tribes to determine whether the child is eligible for membership. The tribal membership requirements vary, so there may be back-and-forth.

Interestingly, though, we also run the risk of overwhelming tribes with paper, sending them packets before every noticed hearing. Of course, we need to send that information. I have seen letters from some smaller tribes in Oklahoma, for example, where they said, *Why are you sending us so much paper? We thank*

you for doing due diligence in ICWA, but couldn't you just use a two-page form? And we replied, *No. We're actually required to send you all this information, and you may decide whether to intervene. Let us know if you don't want to intervene, and we can stop sending you the paper.* So, it's kind of an interesting exchange of letters that I saw between one of the smaller bands.

Additionally, misnotification due to incomplete information is always an issue. As indicated before, as well as in the GAO report, if you don't know that a child might be an Indian tribal member, you don't start the rest of the process to do the notices. And so, if there are, for example, a previously absent parent who comes in later in the process, a newly discovered relative that comes forth, if the questions weren't asked timely to begin with and are asked later on, then the proceedings need to stop and start again and are done properly.

There also can be incomplete information that we've got that lead us to misnotification to all of the bands of a tribe or sent to the Bureau of Indian Affairs instead of a tribe when we may not know that a tribe has been recognized or what all the bands are.

So, there's a number of challenges that we face in implementing the act properly, and a lot of it does relate to what you've heard from the other testifiers: a lack of clarity regarding what is required. We've got the Rules of Court. We've got language in statute, and we've got the federal act itself which sometimes use different language and wording. They don't always use the same language and wording, and it can be confusing to figure out which are we supposed to do. So, this idea of clarifying the law and working with the existing Rule of Court and with all of the stakeholders is something that we definitely support.

Just a little bit about some of the . . .

SENATOR DUNN: Let me interrupt for one second. Gloria and I have been exchanging notes back here, back and forth, and what you've just been touching upon leads to a question. I know that each of you deal with it all the time, and I would like to get some quick input. Then we'll get right back to the comments you want to make. And that is, if there is a conflict between the ICWA and the Adoption Safe Families Act, which one wins? Anybody want to comment?

MS. NEWTON: Well, basic principles of statutory interpretation would require that the ICWA take precedence, because there's a general rule that if you have two statutes—one is more specific and one is more general—the specific will govern. So, the ICWA deals specifically with Indian child custody proceedings; whereas, ASFA deals with all child custody proceedings, as well as the federal preemption issue where, if the federal government has legislated in an area, that will trump state law in that area.

SENATOR DUNN: Does anybody, Joanne, do you know, hold a different view to the view you just expressed on this specific question?

MS. NEWTON: Some state court judges.

SENATOR DUNN: Kind of figured.

Ms. Senderling, my apologies.

MS. SENDERLING: No problem.

A number of consequences, of course, and some of them are mechanical, but then going into the broader and emotional consequences of these delays and disruptions. Of course, the process can be delayed. That leads to delay of permanency for children. That can have emotional consequences for the children as well as their family members and the tribes as well.

The need to connect children with their heritage and make sure to preserve those connections is extremely important, and to also move the process along, as required, to be able to decide what happens for a child; to decide a permanent placement for that child. If it's not going to be with their parent, then who can we find? An Indian family, a relative, an extended family member to place the child with. It's important to both keep that process moving and not unnecessarily delay it, while at the same time preserving the heritage and complying with the rules that were put in place for a reason. And the background on the reasons that ICWA was enacted is compelling.

The result of this can also be increased appeals after the fact, after the process has taken place, whether that be an adoptive process, a termination of parental rights, some court decision that later on additional information is brought forward or the timelines and rules weren't complied with. There are a lot of appeals and of overturning court decisions because of lack of compliance of ICWA.

It happens significantly and substantially, and it's one reason that we're here to ask for assistance and to ask to be involved in the process of clarifying the rules and making sure that they're implemented correctly. It's in all of our best interests to make sure that ICWA is properly implemented.

And finally, just some recommendations. I've already mentioned, as has everyone who's testified before me, the need to clarify existing state law and rules, to take a look at how they relate currently to the federal act, and see where there are areas where we use different language, where can we clarify and provide the rules and the instructions to the counties and information to the court on how to rule in these cases.

Senator Ducheny started the process and started the conversation, of course, with AB 65 and with SB 947, and now SB 678 is a much more comprehensive look at it. In some respects it goes beyond ICWA. We've met with the Senator and will continue to do so as the process moves forward to talk with her about connecting with the federal act, using the Rules of Court that have already been enacted as well as existing state statute to take a look at how those pieces fit together.

And certainly, the involvement of all stakeholders is important. The tribes and the state as well as the counties and legislators and the courts are all vital pieces of the puzzle, and if anyone is left out, the whole process could fall down and the same challenges and issues that I've raised could happen again for children in the future. So, having everyone involved in the process, we think is vital.

We have a couple of other suggestions, one which Senator Ducheny mentioned, that we really support, which is the idea of some kind of state level assistance to the counties—a person, a clearinghouse, that might be at DSS or Judicial Council—which could provide assistance with noticing; could provide help with tribal contacts. Right now there's a few lists that we go to, to use and they're different. There's different lists that have different bands and different contact information, and if we use one and we don't look at all of them and cross-reference, we end up missing or sending to people who don't need the notice or not sending it to people who do.

Providing assistance with training and tools that might be needed at the local level to help the social workers when they get involved early in the process to make sure that they ask the questions that need to be asked.

And finally, assistance with recruitment of Indian families as placement options for children, which also was mentioned by the Senator and which we'd love to be a part of. As she mentioned, and we agree, the resources have been very limited for recruitment of all types of placements in foster care. We have a real placement crisis across all types, not just Indian families, but it's especially acute in Indian families, and we'd like to be a part of that solution.

And finally, some kind of a workgroup or advisory committee; again, with broad stakeholder involvement. They could review existing statutes, rules, and forms. Some of the work has already been started with this bill, of course, but there's additional work to be done. You pass legislation and then there's instructions to be done, rules to be followed, forms perhaps to be revised. And so, those kinds of things could be ongoing. And to make recommendations both to the state and Judicial Council as well as to the Legislature about possible future legislation and oversight in this area. That wouldn't necessarily be something that would be one time. We feel that it could be an ongoing fact. And again, we would welcome that and welcome our involvement in that as well as the involvement of all the stakeholders.

With that, I'll conclude, and I'm available for questions.

SENATOR DUNN: Ms. Senderling, thank you very, very much.

Let's go right on to Teresa Contreras, ICWA specialist, California Department of Social Services.

Ms. Contreras.

MS. TERESA CONTRERAS: Good afternoon. I'm Teresa Contreras, and I am not an ICWA specialist.

SENATOR DUNN: Oh, I'm sorry.

MS. CONTRERAS: That's okay. I'm a manager with the Child Protection and Family Support with the California Department of Social Services. Our branch is the branch in which we hold responsibility for oversight in the implementation of the Indian Child Welfare Act through the Department of Social

Services. And I want to thank you, Mr. Dunn, and Senator Ducheny, for inviting us here today to speak about what the department's role is in the implementation of the Indian Child Welfare Act.

There's been a lot of issues that have already been discussed here regarding what the compliance issues are and what the barriers are, and so, I will be speaking to some of the things that we at the Department of Social Services are trying to do to help remove some of those barriers.

The Department of Social Services is the single state agency responsible for child welfare services, and as Cathy already mentioned, the department supervises county administration of those services through policies and regulations and through a quality assurance process. It allocates federal and state funds to counties for the administration of child welfare services. One of the principal goals of the division, which we are under the Child and Family Services Division, is to assure safety, permanence, and well-being for all children, including the Indian children that come to the attention of the child welfare services system.

We work very closely with California tribes, both federally and non-federally recognized tribes here in California. And Joann already talked about the large number of tribes in California that make California unique in that there's not another state with this many tribes, and it creates a lot of complexity in working with those tribes. And we do that work by the participation of tribes with our ICWA workgroup and through contacts of our ICWA specialists. Anne Smith is here in the audience, and because of her personal commitment and because of the work that she's done with the tribes throughout the state, we are made aware of what the issues are.

As a Public Law 280 state, the fact that states have concurrent jurisdiction with the tribes creates challenges in the relationship with tribes. Obviously, the largest issue is the issue of tribal sovereignty, and that plays a significant role in our relationships. But, the department has taken a proactive position to address the many tribal concerns that have historically been barriers to the state/tribal relationship and has implemented various strategies to address identified barriers and challenges. One of them is establishing two ICWA positions within the department because, while the department has been committed to addressing the

issues and working with the tribes since the inception of the Indian Child Welfare Act in the late 1970s, we've lacked the resources that could be dedicated and focused to the issues and to promote the understanding and implementation of ICWA and to seek to protect the best interests of Indian children that come to our attention.

The Indian child welfare specialist is the department's point of contact for ICWA issues. They have become a major source to county child welfare agencies, probation agencies, and to tribes and tribal organizations. We get numerous inquiries on a weekly basis regarding the implementation of ICWA, regarding interpretations of ICWA, requests for training and technical assistance regarding the implementation and compliance with ICWA. And I would say that this is the one resource that we have received numerous compliments from tribal representatives; that this assistance has made a positive difference in the outcomes for Indian children.

One of the things that we've done to try to facilitate understanding of the Indian Child Welfare Act is an All County Information Notice—and I did bring that notice with me, and I'd be happy to make it available.

SENATOR DUNN: Just leave it with the sergeant over here when you're finished, Ms. Contreras.

MS. CONTRERAS: This All County Information Notice answers a lot of the frequently asked questions regarding ICWA and the implementation.

The department seeks to inform counties and tribal representatives about how to best resolve some of the issues. One of the ways that we've also attempted to address the complex nature of dealing with ICWA is to establish the ICWA workgroup that Tim referenced earlier in his discussion. This workgroup has been in existence now for a number of years and has identified problems. It raises problems to the departments, and not only raises issues and barriers, but has made specific recommendations for solutions that can be achieved together. Some of the specific accomplishments that I will be talking about, as I tell you more about the kinds of things that we're working on in the department, are things that have come about as a result of that workgroup and the recommendations that have come forth in that. The establishment of the ICWA specialist positions in the

department were established because of the concerns that our ICWA representatives have expressed to us and the need to have a liaison.

Some of the other accomplishments have been: the development of the department's ICWA training curriculum; a contract with the Judicial Council for the provision of technical assistance to judges and judicial staff on the implementation of ICWA; the development of new forms to be used for ICWA noticing purposes; development of recommended revisions to our Division 31 regulations regarding ICWA; and the development of specific outcomes relative to ICWA in our 636 outcomes and accountability process.

The other thing that has come about as the result of the partnership that we've developed with tribes is a recognition of the need to provide a voice for tribes in all of our work in the child welfare system. So, we have included representation of our tribal partners in our stakeholders process for the child welfare redesign, or child welfare improvements that I'm sure that you've heard much about through these committees, and to ensure that we've included ICWA compliance in our outcomes and accountability process. And also, to work with us on our California Social Work Education Center that has been developing a core curriculum for training of new social workers so that folks that are going to be doing this work understand what the ICWA compliance requirements are.

We've also been working on state/tribal agreements. Child welfare services are currently provided by either the local child social services agency or probation agency. Some tribes intervene pursuant to ICWA as their resources allow them, and clearly, providing available and appropriate state and federal resources would enhance tribal efforts to intervene. We think that allowing the tribes to take responsibility through a state/tribal agreement would help maintain tribal sovereignty and to help them address local issues.

ICWA allows the states to enter into agreements and to pass through Title IV-E funds through these agreements. Tribes are not currently funded directly by the federal government to receive IV-E funding, so they are forced to enter into state/tribal agreements with us. It's been a complex process because of the sovereignty issues, but we are continuing to negotiate state/tribal agreements with the Washoe Tribe of California and Nevada, and we've recently begun negotiations

with the Karuk Tribe to allow them to provide child welfare service for Indian children. Our ultimate goal is that the federal government would provide IV-E funding directly to tribes as it already does for Title IV-B.

The department has supported and strengthened the intent of ICWA in its statutes and regulation. Division 31 regulations summarize the key provisions of ICWA and provide procedures based on ICWA. Our ICWA Subcommittee has recommended that we incorporate some of those provisions of ICWA in the body of our Division 31 regulations.

We are in the final stages, through the assistance of our ICWA subgroup, in finalizing those regulation changes. We think that this will help counties focus on ICWA throughout the entire child welfare process and not overlook it. The way our Division 31 regulations stand right now, ICWA is at the back of the book. It's not incorporated in how the Division 31 regulations provide instructions to social workers about how to deal with child welfare cases. So, by incorporating those ICWA instructions throughout Division 31, we think that it will make clear to the social workers what the ICWA requirements are and what their responsibilities are in carrying out the ICWA requirements.

The other thing that the department is doing, and has done for a number of years now, is to support an annual ICWA conference hosted by California tribes. This annual ICWA conference is designed to enhance the changing roles of tribes by seeking and establishing new and positive partnerships between tribes and the federal and state local governments that will benefit all Indian children. The responsibility for the organization of the conference, providing the leadership for the conference, has now been given to the tribal communities, and the department continues to support that financially. We think that this conference is an important opportunity to better educate and expose service providers, judges, attorneys, tribal leaders, social service and probation agency personnel in the provisions of ICWA. It's a longstanding conference and is very well attended, and I think it continues to promote new and positive partnerships between tribes and state and county government.

One of the other things that the department is doing—again, with the assistance of the ICWA workgroup and through a contract with Sonoma State

University—is developing an ICWA training curriculum. Actually, the curriculum is completed, and that curriculum focuses on the historical basis and purpose of ICWA: the essential elements of compliance with the act, the role of tribes and tribal representatives, and child custody proceedings.

Additionally, we've developed a handbook on ICWA that includes sources of information and support to aid in the implementation of the act. It serves as a resource guide that we provide to all training participants. So far we've conducted seven ICWA trainings statewide since we entered into that contract a couple of years ago, and each of these trainings are hosted by a local tribe or tribal organization. More than 500 county child welfare and probation staff, juvenile court judges, referees, commissioners, county councils, and tribal representatives have attended these trainings.

Recently, another issue that has been raised by our ICWA workgroup has been the need to focus these trainings on delinquency cases and to provide training to probation officers. So, that's something that we are now undertaking through the assistance of our ICWA workgroup. And working with probation departments, we have revised the existing ICWA training curriculum to better address probation practice. So far, five regional trainings have been conducted utilizing this probation-specific curriculum.

Lastly, I would think that the most significant thing that the department has done is to enter into a contract with Judicial Council, Administrative Office of the Courts, on a project that we've entitled ICWA Full Compliance Project. Again, through the discussions with our ICWA workgroup and other tribal representatives throughout the state and with county child welfare services staff, we've identified a need to strengthen the role of the courts in implementing ICWA at the local level. Thus we've contracted with Judicial Council to improve the understanding of, and compliance with, ICWA by judges and court staff. We just entered into that contract with Judicial Council, and we look forward to the training that will be done. Training and technical assistance will be tailored to the needs of local county and regional issues.

So, as you can see from this list of efforts that are being implemented by the department, we're very committed to the continued efforts that will promote the understanding and importance of ICWA.

We want to thank the committee for inviting us to come before you to discuss the role of the department and working with California tribes; many of them that are represented here today and that we've been working with for a number of years.

Our department director spoke with me yesterday and wanted me to share with you that he is very, very committed to the implementation of ICWA and promoting the compliance with ICWA in the work that we're doing in our department.

Thank you.

SENATOR DUNN: Thank you very much.

Let's go on to our next two witnesses. They are Liz Elgin DeRouen from the Indian Child and Family Preservation Program, and Brandie Taylor, vice-spokeswoman, Santa Ysabel Band of Diegueno Indians.

Welcome, the two of you, and let us start with Ms. DeRouen.

MS. LIZ ELGIN DeROUEN: Thank you.

I was sitting there taking notes, thinking what I prepared probably is a little insufficient, simply because I heard some other issues that I had not heard before. But, in any event, I did prepare a statement.

My name is Liz Elgin DeRouen, and I'm an Indian child welfare advocate. I'm here representing the interests of Dry Creek Rancheria Band of Pomo Indians, the Stewarts Point Rancheria Kashia Band, Coyote Valley Band of Pomo Indians, Sherwood Valley Band, Cahto Indians of Laytonville Rancheria, Elem Indian Colony, and Manchester-Pt. Arena Band of Pomo Indians.

These seven tribes are located in Mendocino, Sonoma, and Lake Counties. They comprise a program entitled Indian Child and Family Preservation Program. We are a program centrally located in Mendocino County, in the city of Ukiah. We have two satellite offices in Laytonville on the reservation and an additional office in Santa Rosa, which is Sonoma County.

Due to all the previous testimony that you heard before, I'll try not to restate and duplicate some of the comments. However, I would like to stress the importance and the necessity to comply with the Indian Child Welfare Act.

I sit before you today to testify with regard to the noncompliance issues that still exist, even with this twenty-five-year-old law. In my experiences, both as a tribal chairwoman of the Dry Creek Rancheria Band of Pomo Indians and also as an Indian child welfare advocate for thirteen years, I can say that the compliance issues have not been resolved. I can tell you that as a tribal leader and as an advocate, I'm constantly there communicating with my community. I communicate with other officials in a government-to-government and state/tribal relationship, and I can tell you that there are many issues yet to be resolved.

I can tell you and testify to you today that the priorities of concern that I have that I would like to stress are the coordination of efforts in the comprehensive array of services that are not being recognized. You heard some of the testimony with regard to the lawyers that represented portions of active efforts and what active efforts mean. I don't know if you really, truly understand it, and I don't know if it's really been explained or whether or not the Department of Social Services could explain that. However, active efforts to me and to community people mean those culturally relevant and appropriate services that should be made available, documented, and recorded in case records and reports so that the courts know exactly that there was full compliance with active effort portions of reunification plans. These families need to be afforded cultural-appropriate services and programs designed to prevent the breakup of the Indian family, and that's just not happening.

I can tell you in my experience both as an expert witness in dozens of counties and in hundreds of cases, as well as hundreds of cases that we do courtesy modernization for tribes outside of our state and outside of our county, that we've entered into memorandums of agreements entitling us to come in and represent those interests on behalf of tribes that don't have the available funds or ability to get there themselves. So, they've delegated us by tribal resolution to go represent their interests.

We can tell you that a lot of compliance issues as they relate to noticing still exists. I heard just previously before coming up here that there's an ongoing effort to make sure that all of these documents are included in packets that are then received by tribes. I can tell you, I've never received a packet that was fully filled out; that contained birth certificates, that contained death certificates, that contained any lineal information as far as what tribes need in order to verify enrollment. I've never received that. And as a tribal chairwoman, I definitely would make sure that those things are in our record so that we can be able to determine eligible membership right off the bat, and we are active in doing that.

The Dry Creek Rancheria is a tribe which consists of about 800-plus members. It's a small tribe. We have a small land base in a small community. However, we're very active in making sure that we answer and address all of our noticing and we respond to those timely.

On behalf of the seven tribes that I work for, they all have authorized us, through tribal resolutions, to act on their behalf. We've also seen a lot of inconsistencies in the coordinated efforts with regard to investigations on reservations. We have many on-reservation investigation issues primarily in Lake County, primarily in Mendocino County, where law enforcement and Child Protective Services are not coordinating with tribal representatives. They're not coordinating with Indian child welfare agencies or programs. There is a complete failure to coordinate just the allegations portions of investigations. We are not receiving some of the reports. We are not receiving some of the information that we are entitled to. We operate and control and govern self-determined programs on reservations. We are mandated reporters, and we, in turn, are not receiving some of the paperwork necessary in order for us to protect our own children in our own communities.

I can tell you that in Marin, in Shasta County, in Contra Costa County, and also Lake County, we have a failure of—and I'm not sure at what level, other than maybe the documentation portion of it with the department in asking the question. We have many cases that we receive multiple volumes where we have ongoing child welfare matters that have been ongoing for a number of years. No documentation that the question was ever asked: Are you Indian? Is any member

of your family Indian? Do you think you could be eligible for membership in a tribe? We don't see any evidence of that. I don't see any consistency, also, in any of the court records as it relates to the tribes that I've represented interests on behalf of, that verify or document that these are ICWA-controlled proceedings.

The judge that I started out working for in Sonoma County, Judge Arnold Rosenfeld, because we were hearing so many inconsistencies with its application in Sonoma County, he prompted and encouraged an Indian child welfare roundtable. He basically directed all parties to come to his courtroom and sit down and talk about some of the communication barriers. We did just that thirteen years ago. As a result of that, we created an ICWA Roundtable and a working protocol.

We tried to duplicate that in Lake and in Mendocino Counties with not much success. We have a hesitancy from department people, social workers, to coordinate efforts with us with regard to investigations. We understand there's some concerns as it relates to liability and confidentiality. However, we have tribal people specifically asking and requesting that Indian child welfare workers be present during those proceedings, and they have not been afforded that right.

I'd like to say that I am hopeful. I am hopeful with regard to sitting down at the table and working out a solution. I think Senate Bill 678 attempts to do that. It attempts to create material and amend material and also update material that is very necessary in the full compliance of Indian child welfare. And I am very hopeful that whatever you hear today, we are still willing to participate. We are still very active in our communities, and we are in full support of working out some type of an agreement, whether that be government-to-government protocols or whether that be state/tribal agreements. We are here basically to just inform you that there are still some issues. Financially—that's not really some of the major concerns, but in some of the smaller tribes, I do still see that.

So, I'm available for any questions, but I'll let Brandie address you.

SENATOR DUNN: Sorry for my acknowledging—he's already departed. We had former Senator John Burton who had just walked in and was listening for a moment. So, that's what I was doing. I didn't mean to imply any disrespect whatsoever.

Ms. Taylor.

MS. BRANDIE TAYLOR: Hello. My name's Brandie Taylor, and I'm the vice-chairwoman of the Santa Ysabel Reservation. We're part of the Kumeyaay Nation, which consists of twelve tribes down in Southern California. My tribe, as well, has about 800 members. We're located in the mountains of San Diego.

I sit here not only as the vice-chairwoman of my tribe and elected for a four-year term, but I sit here as the granddaughter of a once foster child that was in the system.

My grandfather is Robert Osuna and my great-grandmother is Eloisa LaChappa, and she died right after giving birth to my grandfather's youngest brother Eddie. Back in the twenties when this happened, the system believed that a father could not raise seven children on the reservation, so they took all seven children and put them down in San Diego. The kids were separated and sent to different non-Indian homes. The majority of them actually were African American homes in downtown San Diego. By chance, my grandfather was seven years old at the time, and he remembered the whole time he was in the city where he was from and how he knew that that's not where he belonged, and he wanted to go back.

So, by chance, when he turned eighteen, he did go back to the reservation and he met my grandmother, also from Santa Ysabel. Her name's Virginia Pablo. They ended up getting married and having kids. But my grandfather still had that trauma and that pain in him, and it went down to my mother, who then became a caseworker for Indian child welfare for about twenty-five years, too—one of the longest standing in California—and it trickled down to also her children, which I'm one of them and my other sister, who is also now an Indian child welfare caseworker. So, that's why I'm sitting here before you is that my family has been affected by this.

It's good to hear testimony from other agencies and departments, but when you grow up in a family like that and you're in tribal government, it's a totally different perspective completely. And I know Liz knows what I'm talking about too.

I know the Washoe Tribe actually has a really good tribal court system that's set up, and I know that the inner-tribal court of Southern California, which consists of about eighteen tribes, are trying to start our own tribal court as well,

(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 224.11. (h) The child's self identification.	award of custody to someone other than a parent over the objection of a parent (as is now permitted under § 3041 of the Family Code). The bill goes on to clarify how to determine which tribe is the "Indian child's tribe" when the child is a member or eligible for membership in more than one tribe. Section 1903(5) merely states that you look to the tribe with which the child has the more significant contacts. Subdivision (d) of this Family Code provision gives guidance to the court on how to determine which child has the more significant contacts. The criteria listed are taken verbatim from the BIA Guidelines, B.2. Determination of Indian Child's Tribe, paragraph (c).
SEC. 2. Section 175 is added to the Family Code , to read: 175. (a) The Legislature finds and declares the following: (1) There is no resource that is more vital to the continued existence and integrity of recognized Indian tribes than their children, and the State of California has an interest in protecting Indian children who are members of, or are eligible for membership in, an Indian tribe. **The state is committed to protecting the essential tribal relations and best interest of an Indian child by promoting practices, in accordance with the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and other applicable law, designed to prevent the child's involuntary out-of-home placement and, whenever the placement is necessary or ordered, by placing the child, whenever possible, in a placement that reflects the unique values of the child's tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the child's tribe and tribal community.** (2) It is in the interest of an Indian child that the child's membership in the child's Indian tribe and connection to the tribal community be encouraged and protected, **regardless of whether:** **(A) The child is in the physical custody of an Indian parent or Indian custodian at the commencement of a child custody proceeding.** **(B) The parental rights of the child's parents have been terminated.**	Section 175 is a revision and renumbering of § 7810, introduced into the Family Code by AB 65 in 1999. A renumbering is needed because it moves the provision to the "Preliminary Provisions and Definitions" division of the Family Code, rather than in the adoption-specific part it had been in (Part 4 of Division 12). This change will help ensure the provision is applied not only to termination of parental rights proceedings but also to proceedings involving an award of custody to a non-parent over a parent's objection. The revisions to the current language of § 7810 are bolded at left for ease of reference and include: In order to strengthen the provision as a protection against application of the "existing Indian family" exception, a second sentence is added to subdivision (a)(1) to and subdivision (a)(2) is expanded on. This language is taken from the Iowa Indian Child Welfare Act (232B Iowa Code § 232B.2). A second sentence is added to subdivision (b), which is a restatement of §1916(b) of the ICWA.

website

verify

rule of court

Check to disseverate tribal interests when tribe doesn't intervene?

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

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

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

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

(2) In any case in which this code or other applicable state or federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child, or the Indian child's tribe, than the rights provided under the Indian Child Welfare Act, the court shall apply the higher standard. (e) Any Indian child, the Indian child's tribe, or the parent or Indian custodian from whose custody the child has been removed, may petition any court of competent jurisdiction to invalidate an action in an Indian child custody proceeding involving the child if the action violated Sections 1911, 1912, and 1913 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

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

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

Subdivision (d)(1) is a clarification and codification of existing legal doctrines, i.e., the federal preemption doctrine resulting in ICWA superseding conflicting or inconsistent state law and the general rule of statutory construction that a more specific statute (i.e., ICWA) prevails over a general one (i.e., ASFA).

Subdivision (d)(2) is a restatement of § 1921 of the ICWA.

Subdivision (e) is a restatement of § 1914 of the ICWA.

Counterparts in the Probate Code and Welf. & Inst. Code are introduced in this bill by sections 20 and 29 respectively.

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2 fed [redacted] laws, how can we declare which one applies? Look at notes when Congress passed 2nd law

Section 180 is a new provision spelling out the notice requirements of § 1912(a) of the ICWA and 25 C.F.R. § 23.11. The purpose of codifying these requirements in state law is to help reduce the number of cases that are

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

(1) Notice shall be sent by registered or certified mail with return receipt requested, and additional notice by first-class mail is recommended. Stress in rule & comm. too

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

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

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

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

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

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

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

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

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

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

(G) A statement listing the rights of the child's parents, Indian custodians, and tribes. The rights shall include all of the

appealed and invalidated for notice violations.

As an illustration of the scope of this problem, it should be noted that prior to 2000 there were only 5 non-published appellate decisions concerning the ICWA, but since then there have been at least 270 such cases, almost all involving notice violations. (There has been a similar explosion in the number of published appellate decisions addressing ICWA: 21 prior to 2000 and 43 since, the vast majority of the latter involving notice violations.

The information required by 25 C.F.R. § 23.11 to be provided with the notice, listed in subdivision (b)(5), is extensive. To alleviate this burden, subdivision (b)(6) allows for abbreviated notice after a tribe has intervened in the proceeding. This is consistent with *In re Krystle D.* (1994) 30 Cal.App.4th 1778.

Subdivision (b)(6) also stresses that notice is required for each and every hearing, right on through to finalization of an adoption. This is an attempt to remedy an ongoing problem of tribes not receiving notices of hearings after parental rights have been terminated, even though they have intervened and may have been receiving notices before, and, in particular, not receiving notice of the hearings to finalize an adoption.

Subdivision (b)(7) is added to codify the requirement that proof of notice and any responses received from a tribe or the BIA must be filed with the court, as held in *In re H.A.* (2002) 103 Cal.App.4th 1206, 1215 and *In re Marinna J.* (2001) 90 Cal.App.4th 731.

Subdivision (b)(9) authorizes sanctions to be imposed against any individual who knowingly misrepresents a child's Indian status or who counsels someone to. This is intended to discourage parents, their attorneys, and social workers from hiding information about a child's Indian status to avoid the application of the ICWA. At the same

make clear that if it known

following:

(i) The right to intervene in the proceeding.

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

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

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

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

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

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

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

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

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

time, it will address a concern sometimes expressed by county counsel or social workers in response to the increase in appellate cases that false claims of Indian ancestry are now being raised to delay cases. This provision is similar, although not as severe as subdivisions (g) and (h) of the Family Code § 8620 which permit the court to impose civil penalties of $10,000 - $20,000 for such misrepresentations in the context of voluntary adoptions.

Counterparts are introduced in the Probate Code and the Welf. & Inst. Code by sections 23 and 31 of the bill.

an Indian child, or counsels a party to do so.

SEC. 4. Section 3040 of the Family Code is amended to read:

3040. (a) Custody should be granted in the following order of preference according to the best interest of the child as provided in Sections 3011 and 3020: (1) To both parents jointly pursuant to Chapter 4 (commencing with Section 3080) or to either parent. In making an order granting custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent, consistent with Section 3011 and 3020, and shall not prefer a parent as custodian because of that parent's sex. The court, in its discretion, may require the parents to submit to the court a plan for the implementation of the custody order.

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

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

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

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

SEC. 5. Section 3041 of the Family Code is amended to read:

3041. (a) Before making an order granting custody to a person or persons other than a parent, over the objection of a parent, the court shall make a finding that granting custody to a parent would be detrimental to the child and that granting custody to the nonparent is required to serve the best interest of the child. Allegations that parental custody would be detrimental to the child, other than a

Section 3040 of the Family Code sets out the placement preferences in a general family law case. The bill adds subdivision (c) to direct the court, in an Indian child custody proceeding, to apply the ICWA placement preferences and standards to be codified in the Welf. & Inst. Code by this bill. This amendment would not affect the preference for placement with both or either parents set out in subdivision (a) as it only applies in cases where custody is to be awarded to someone other than a parent over the objection of a parent.

Could this affect a child already adopted and new parents divorce or death tribe could intervene if even award to anyone besides 2 parents then tribe could intervene

Section 3041 permits courts to award custody to someone other than a parent in a family law case, over the objection of a parent. Such a proceeding triggers the ICWA when an Indian child is involved. Subdivision (e) is added by the bill to direct the court to apply the ICWA in such cases as well as the provisions of the Welf. & Inst. Code and Rules of Court implementing the ICWA.

statement of that ultimate fact, shall not appear in the pleadings. The court may, in its discretion, exclude the public from the hearing on this issue.(b) Subject to subdivision (d), a finding that parental custody would be detrimental to the child shall be supported by clear and convincing evidence.

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

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

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

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

(2) Rule 1412, subdivision (i).

(3) Rule 1439.

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

3041.3. (a) Before making an order granting custody to a person or persons other than a parent, over the objection of a parent, if a

Same as last page

Even though a child may not meet the strict definition of AIndian child@ within the act, the child=s best interests may be served by affording the child's tribe standing in the proceedings. This section is aimed at cases involving

proceeding involves a child who is not an Indian child, the court may recognize the child's tribe and grant standing to participate as a party in the proceeding either of the following applies: (1) The child is not eligible for membership in his or her tribe but is the biological grandchild of a member of the tribe or resides or is domiciled within the boundaries of an Indian reservation. (2) The child or his or her biological parent or grandparent is a member of a tribe that is not recognized as eligible for the services provided to Indians by the Secretary of the Interior but the tribe, band, or nation is recognized as an Indian tribe by any state or local governmental entity or by Canada or any of its provinces. (b) If the court recognizes the child is tribe and grants standing to the tribe to participate as a party to the proceeding, the tribe may do all of the following: (1) Be present at the hearing. (2) Be represented by retained counsel or a representative of the tribe designated by the tribe to intervene on behalf of the tribe, provided that when the tribe appears as a party by a representative of the tribe, the name of the representative and a statement of authorization for that individual to appear on behalf of the tribe shall be submitted to the court in the form of a tribal resolution or other document evidencing an official act of the tribe. (3) Address the court. (4) Receive notice of hearings. (5) Examine all court documents relating to the proceeding. (6) Present evidence. (7) Submit written reports and recommendations to the court. (8) Perform other duties and responsibilities as requested or approved by the court.	children who are Indian but who do not meet the ICWA definition of "Indian child". This occurs when a child is descended from a federally-recognized Indian tribe but is not eligible for membership under his/her tribe's laws. It also occurs when a child's tribe does not meet the ICWA definition of tribe, i.e., when the tribe is not eligible for federal programs or services available to Indians. In California alone, there are 38 tribes who were "terminated" or no longer recognized by the Federal government. Other tribes not eligible for programs or services provided by the U.S government include tribes in Canada (e.g., In re Wanomi P. (1990) 216 Cal.App.3d 156, 264 Cal.Rptr.623 [ICWA does confer rights on Canadian tribes]). This provision is not intended to broaden the application of the ICWA, but rather to give standing to tribes in these circumstances to participate in the proceedings as specified. The manner in which the tribe may participate is drawn from paragraph (i)(2) of Rule 1412, which sets out the rights the court may grant a tribal representative in an Indian child custody proceeding when the Indian child's tribe has not intervened. To clarify the intent of this provision, it is proposed to amend the provision as follows: SEC. 6. Section ~~3041.3~~ 185 is added to the Family Code, to read: ~~3041.3.~~ 185. (a) ~~Before making an order granting custody to a person or persons other than a parent, over the objection of a parent, if~~ If a custody proceeding involves a child who has Indian ancestry but who is not an Indian child, and the proceeding would otherwise be an Indian child custody proceeding, the court ~~may~~ shall recognize the ~~child's~~ tribe from which the child is descended and grant standing to participate as a party in the proceeding upon the request of the tribe, when either of the following applies: (1) The tribe is recognized as eligible for the services

dropped before but may suggested again

provided to Indians by the Secretary of the Interior but the child is not eligible for membership in his or her tribe but is the biological grandchild of a member of the tribe or resides or is domiciled within the boundaries of an Indian reservation or is eligible for services provided to descendants of the tribe by the tribe.

(2) The child or his or her biological parent or grandparent is a member of a tribe that is not recognized as eligible for the services provided to Indians by the Secretary of the Interior but the tribe, band, or nation is recognized as an Indian tribe by any state or local governmental entity or by Canada ~~or any of its provinces~~ or Mexico or any state, province or territory in those countries.

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

(1) Be present at the hearing.

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

(3) Address the court.

(4) Receive notice of hearings.

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

(6) Present evidence.

	(7) Submit written reports and recommendations to the court. (8) Perform other duties and responsibilities as requested or approved by the court. (c) If more than one tribe requests intervention under subdivision (a), the court may limit intervention to the tribe with which the child has the most significant contacts. In determining which tribe the child has the most significant contacts with, the court may consider, among other things, the factors in paragraph (2) of subdivision (d) of Section 170. (d) This section is intended to assist the court in making decisions that are in the best interest of the child involved by permitting a tribe in the circumstances set out in subdivision (a) to inform the court and parties to the proceeding about placement options for the child within the child's extended family or the tribal community, services and programs available to the child and the child's parents as Indians, and other unique interests the child or the child's parents may have as Indians. This section shall not be construed to make the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.), or any state law implementing the Indian Child Welfare Act, applicable to the proceedings, or to limit the court's discretion to permit interested persons to participate in other proceedings.
SEC. 7. Section 7810 of the Family Code is repealed. ~~7810. (a) The Legislature finds and declares the following: (1) There is no resource that is more vital to the continued existence and integrity of recognized Indian tribes than their children, and the State of California has an interest in protecting Indian children who are members of, or are eligible for membership in, an Indian tribe.~~	See comments on Section 2 of the bill.

~~(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.~~

~~(b) In all Indian child custody proceedings, as defined in the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), 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.~~

~~(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 (25 U.S.C. Sec. 1901 et seq.) to the proceedings.~~

SEC. 8. Section 7821 of the Family Code is amended to read:

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

This section sets out the standard of proof applicable to proceedings to declare a minor free from parental custody and control (i.e., to terminate parental rights). The qualifier "except as otherwise provided" is added to be consistent with Section 10 of the bill, which affirms that the standard of proof in an Indian child custody proceeding is beyond a reasonable doubt when it comes to the finding of serious emotional or physical damage required to terminate parental rights.

SEC. 9. Section 7822 of the Family Code is amended to read:

7822. (a) A proceeding under this part may be brought where the child has been left without provision for the child's identification by the child's parent or parents or by others or has been left by both parents or the sole parent in the care and custody of another for a period of six months or by one parent in the care and custody of the other parent for a period of one year without any provision for the child's support, or without communication from the parent or parents, with the intent on the part of the parent or parents to abandon the child. (b) The failure to provide identification, failure to provide support, or failure to communicate is presumptive evidence

Section 7822 of the Family Code allows a proceeding to terminate parental rights to be brought when a child is abandoned and goes on to define under what circumstances a child will be determined to be abandoned. In some cases, Indian children are removed from their parents because the parent has left the child in another's care even though such custody arrangements are customary in many tribal cultures and recognized under the ICWA as Indian custodianships. Subdivision (e) is added to affirm that a parent who transfers care, custody and control of an Indian child to an Indian custodian is not

of the intent to abandon. If the parent or parents have made only token efforts to support or communicate with the child, the court may declare the child abandoned by the parent or parents. (c) If the child has been left without provision for the child's identification and the whereabouts of the parents are unknown, a petition may be filed after the 120th day following the discovery of the child and citation by publication may be commenced. The petition may not be heard until after the 180th day following the discovery of the child. (d) If the parent has placed the child for adoption and has not refused to give the required consent to adoption, evidence of the adoptive placement shall not in itself preclude the court from finding an intent on the part of that parent to abandon the child. If the parent has placed the child for adoption and has refused to give the required consent to adoption but has not taken reasonable action to obtain custody of the child, evidence of the adoptive placement shall not in itself preclude the court from finding an intent on the part of that parent to abandon the child. *(e) Notwithstanding subdivisions (a), (b), (c), and (d), if the parent of an Indian child has transferred physical care, custody and control of the child to an Indian custodian, that action shall not be deemed to constitute an abandonment of the child.*	deemed to have abandoned their child.
SEC. 10. Section 7892.5 is added to the Family Code , to read: 7892.5. The court shall not declare an Indian child free from the custody or control of both parents, or one parent if the other no longer has custody and control, unless both of the following apply: (a) The court finds, supported by clear and convincing evidence, that active efforts were made in accordance with Section 361.7 of the Welfare and Institutions Code. (b) The court finds, supported by evidence beyond a reasonable doubt, including testimony of one or more "qualified expert witnesses" as defined in Section 224.5 of the Welfare and Institutions Code, that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child.	This new section is added to the Part 4 of the Family Code dealing with termination of parental rights to remind the court of the evidentiary standards required in Indian child custody proceedings by the ICWA.
SEC. 11. Section 7907.3 is added to the Family Code , to read: 7907.3. The Interstate Compact on the Placement of Children shall	The Interstate Compact on Placement of Children is adopted and set out in Family Code §§ 7900 – 7901.

not apply to any placement, sending, or bringing of an Indian child into another state pursuant to a transfer of jurisdiction to a tribal court under Section 1911 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).	Sections 7902 – 7912 give further definition to the Compact. The Compact applies to placement of children out-of-state where the sending state retains jurisdiction over the proceedings. Section 11 adds a new provision that clarifies that a transfer of jurisdiction to an out-of-state tribe does not trigger the application of the Compact. (This is so because the sending state does not retain jurisdiction.) This amendment does not affect application of the Compact to placements of Indian children outside the state when the state court retains jurisdiction over the case.
SEC. 12. Section 8616.5 of the Family Code is amended to read: 8616.5. (a) The Legislature finds and declares that some adoptive children may benefit from either direct or indirect contact with birth relatives, including the birth parent or parents *or an Indian tribe* , after being adopted. Postadoption contact agreements are intended to ensure children of an achievable level of continuing contact when contact is beneficial to the children and the agreements are voluntarily entered into by birth relatives, including the birth parent or parents, *an Indian tribe,* and adoptive parents.(b) (1) Nothing in the adoption laws of this state shall be construed to prevent the adopting parent or parents, the birth relatives, including the birth parent or parents, *an Indian tribe,* and the child from voluntarily entering into a written agreement to permit continuing contact between the birth relatives, including the birth parent or parents, *the Indian tribe,* and the child if the agreement is found by the court to have been entered into voluntarily and to be in the best interests of the child at the time the adoption petition is granted. (2) Except as provided in paragraph (3), the terms of any postadoption contact agreement executed under this section shall be limited to, but need not include, all of the following: (A) Provisions for visitation between the child and a birth parent or parents and other birth relatives, including siblings, and the child's Indian tribe if the case is governed by the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.). (B) Provisions for future contact between a birth parent or	Subdivision (b) of section 8615.5 of the Family Code, dealing with postadoption agreements, was amended in 2004 by SB 1357, effective January 1, 2005, to affirm that a postadoption agreement could provide for future contact and visitation between the Indian child and the child's Indian tribe. These amendments in subdivisions (a), (b) , (e) and (k) are proposed to clarify that the tribe itself can be a party to these agreements. Subdivision (c), which authorizes the court to grant postadoption privileges at the time the adoption decree is entered, if the parties have entered into a postadoption agreement, is amended to affirm that the court has discretion to continue the hearing to provide the parties with additional time to finalize a postadoption agreement. This amendment is not specific to Indian child custody proceedings. Subdivision (l) is added to provide a remedy when prospective adoptive parents who have testified as to their willingness to enter into a postadoption agreement subsequently refuse to negotiate such an agreement in good faith. This provision is not specific to Indian child custody proceedings.

look at this section closely

parents or other birth relatives, including siblings, or both, *or the Indian tribe* and the child or an adoptive parent, or both, and in cases governed by the Indian Child Welfare Act, the child's Indian tribe. (C) Provisions for the sharing of information about the child in the future. (3) The terms of any postadoption contact agreement shall be limited to the sharing of information about the child, unless the child has an existing relationship with the birth relative. (c) At the time an adoption decree is entered pursuant to a petition filed pursuant to Section 8714, 8714.5, 8802, 8912, or 9000, the court entering the decree may grant postadoption privileges if an agreement for those privileges has been entered into, including agreements entered into pursuant to subdivision (f) of Section 8620. *The hearing to grant the adoption petition and issue an order of adoption may be continued as necessary to permit parties who are in the process of negotiating a postadoption agreement to reach a final agreement.* (d) The child who is the subject of the adoption petition shall be considered a party to the postadoption contact agreement. The written consent to the terms and conditions of the postadoption contact agreement and any subsequent modifications of the agreement by a child who is 12 years of age or older is a necessary condition to the granting of privileges regarding visitation, contact, or sharing of information about the child, unless the court finds by a preponderance of the evidence that the agreement, as written, is in the best interests of the child. Any child who has been found to come within Section 300 of the Welfare and Institutions Code or who is the subject of a petition for jurisdiction of the juvenile court under Section 300 of the Welfare and Institutions Code shall be represented by an attorney for purposes of consent to the postadoption contact agreement. (e) A postadoption contact agreement shall contain the following warnings in bold type: (1) After the adoption petition has been granted by the court, the adoption cannot be set aside due to the failure of an adopting parent, a birth parent, a birth relative, *an Indian tribe,* or the child to follow the terms of this agreement or a later change to this agreement.	

(2) A disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the adoption and shall not serve as a basis for orders affecting the custody of the child. (3) A court will not act on a petition to change or enforce this agreement unless the petitioner has participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings to resolve the dispute. (f) Upon the granting of the adoption petition and the issuing of the order of adoption of a child who is a dependent of the juvenile court, juvenile court dependency jurisdiction shall be terminated. Enforcement of the postadoption contact agreement shall be under the continuing jurisdiction of the court granting the petition of adoption. The court may not order compliance with the agreement absent a finding that the party seeking the enforcement participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings regarding the conflict, prior to the filing of the enforcement action, and that the enforcement is in the best interests of the child. Documentary evidence or offers of proof may serve as the basis for the court's decision regarding enforcement. No testimony or evidentiary hearing shall be required. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear and convincing evidence that the best interests of the child may be protected or advanced only by that inquiry and that the inquiry will not disturb the stability of the child's home to the detriment of the child. (g) The court may not award monetary damages as a result of the filing of the civil action pursuant to subdivision (e) of this section. (h) A postadoption contact agreement may be modified or terminated only if either of the following occurs: (1) All parties, including the child if the child is 12 years of age or older at the time of the requested termination or modification, have signed a modified postadoption contact agreement and the agreement is filed with the court that granted the petition of adoption. (2) The court finds all of the following: (A) The termination or modification is necessary to serve the best	

interests of the child.

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

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

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

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

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

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

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

(A) When the prospective adoptive

before or after finalized - not clear

parent expressed a willingness to enter into a postadoption agreement prior to or during the proceedings to terminate parental rights or free the child from parental custody and control or prior to a birth parent giving consent to the adoption. *(B) Parental rights are terminated or a petition for freedom from parental custody and control is granted at least in part because of said willingness.* *(C) The prospective adoptive parent fails to negotiate a postadoption agreement in good faith.*	) & this seems okay
(2) In the circumstances set out in paragraph (1) the court may modify prior orders or issue new orders as necessary to ensure the best interest of the child are met, including, but not limited to, requiring the parties to engage in family mediation services for the purpose of reaching a postadoption agreement, initiating guardianship proceedings in lieu of an adoption, or authorizing a change of adoptive placement for the child.	
SEC. 13. Section 8619.5 is added to the Family Code , to read: 8619.5. Whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parent voluntary consents to termination of his or her parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant that petition unless there is a showing, in a proceeding subject to the provisions of Section 1912 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), that the return of custody is not in the best interest of the child.	This section affirms the requirements of § 1916(a) of the ICWA.) See if really in ICWA ☆
SEC. 14. Section 8620 of the Family Code is amended to read: 8620. (a) (1) If a parent is seeking to relinquish a child pursuant to Section 8700 or execute an adoption placement agreement pursuant to Section 8801.3, the department, licensed adoption agency, or adoption service provider, as applicable, shall ask the child and the child's parent or custodian whether the child is, or may be, a member of, or eligible for membership in an Indian tribe or whether the child has been identified as a member of an Indian organization. The department, licensed adoption agency, or adoption service provider, as applicable, shall complete the forms provided for this	Section 8620 of the Family Code was added in 2003 by SB 947 to include specific notice requirements in voluntary adoption cases. (The ICWA's notice requirements only expressly apply in involuntary proceedings, but ICWA advocates have long argued that the right to notice is implicit in voluntary adoption proceedings because tribes have the express right to intervene in such proceedings at any time.) This proposed amendment would harmonize the notice

purpose by the department and shall make this completed form a part of the file.(2) If there is any oral or written information that indicates that the child is, or may be, an Indian child, the department, licensed adoption agency, or adoption service provider, as applicable, shall obtain the following information: (A) The name of the child involved, and the actual date and place of birth of the child. (B) The name, address, date of birth, and tribal affiliation of the birth parents, maternal and paternal grandparents, and maternal and paternal great-grandparents of the child. (C) The name and address of extended family members of the child who have a tribal affiliation. (D) The name and address of the Indian tribes or Indian organizations of which the child is, or may be, a member. (E) A statement of the reasons why the child is, or may be, an Indian. (3) (A) The department, licensed adoption agency, or adoption service provider, as applicable, shall send a notice, which shall include information obtained pursuant to paragraph (2) and a request for confirmation of the child's Indian status, to any parent and any custodian of the child, and to any Indian tribe of which the child is, or may be, a member or eligible for membership. If any of the information required under paragraph (2) cannot be obtained, the notice shall indicate that fact. (B) The notice sent pursuant to subparagraph (A) shall describe the nature of the proceeding and advise the recipient of the Indian tribe's right to intervene in the proceeding on its own behalf or on behalf of a tribal member relative of the child. (b) The department shall adopt regulations to ensure that if a child who is being voluntarily relinquished for adoption, pursuant to Section 8700, is an Indian child, the parent of the child shall be advised of his or her right to withdraw his or her consent and thereby rescind the relinquishment of an Indian child for any reason at any time prior to entry of a final decree of termination of parental rights or adoption, pursuant to Section 1913 of Title 25 of the United States Code. (c) If a child who is the subject of an adoption proceeding after being relinquished for adoption pursuant to Section 8700, is an Indian child, the child's Indian tribe may intervene in that	requirements in voluntary adoption proceedings with the notice requirements in Section 3 of the bill. Subdivision (i) is deleted because subdivision (a) of Section 170, added by Section 1 of the bill, makes this definition section redundant.

petition is granted.

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

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

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

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

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

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

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

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

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

SEC. 15. Section 8710 of the Family Code is amended to read:

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

Section 8710 of the Family Code establishes a general preference for adoptive placements with relatives. The amendments proposed in subdivisions (a) and (b) remind the court that in Indian child custody proceedings it must apply the adoptive placement preferences and standards of the ICWA, unless good cause exists not to do so. This amendment also requires that a good cause finding be supported by clear and convincing evidence, which is consistent with the lesser standard of proof used in the Act but is an issue not expressly addressed in the Act.

respect to the child along with all other prospective adoptive parents where all of the following conditions are present: ~~(a)~~

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

~~(b)~~

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

~~(c)~~

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

~~(d)~~

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

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

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

SEC. 16. Section 9208 is added to the Family Code , to read:

9208. (a) The clerk of the superior court entering a final order of adoption concerning an Indian child shall provide the Secretary of the Interior or his or her designee with a copy of the order within 30 days of the date of the order, together with any information necessary to show the following:(1) The name and tribal affiliation of the child.

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

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

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

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

This section reiterates the requirements of § 1951(a) of the ICWA.

check reference

SEC. 17. Section 9209 is added to the Family Code , to read:

9209. (a) Upon application by an Indian individual who has reached the age of 18 years and who was the subject of an adoptive placement, the court which entered the final decree of adoption shall inform that individual of the tribal affiliation, if any, of the individual's biological parents and provide any other information as may be necessary to protect any rights flowing from the individual's tribal relationship, including, but not limited to, tribal membership rights or eligibility for federal or tribal programs or services available to Indians. (b) If the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include that affidavit with the other information.

This section reiterates the requirements of § 1917 and § 1951(b) of the ICWA.

Check reference ★

may still want to clarify in ICWA

SEC. 18. Section 9210 of the Family Code is amended to read:

9210. (a) Except as otherwise provided in subdivisions (b) and (c), a court of this state has jurisdiction over a proceeding for the adoption of a minor commenced under this part if any of the following applies: (1) Immediately before commencement of the proceeding, the minor lived in this state with a parent, a guardian, a prospective adoptive parent, or another person acting as parent, for at least six consecutive months, excluding periods of temporary absence, or, in the case of a minor under six months of age, lived in this state with any of those individuals from soon after birth and there is available in this state substantial evidence concerning the minor's present or future care.

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

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

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

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

Subdivision (d) of this section is added to recognize that a tribal courts having jurisdiction over a child custody proceeding should be treated as courts of other states for the purposes of determining whether the California courts should exercise jurisdiction when proceedings are pending or occurred in another jurisdiction.

(4) The minor and the prospective adoptive parent are physically present in this state and the minor has been abandoned or it is necessary in an emergency to protect the minor because the minor has been subjected to or threatened with mistreatment or abuse or is otherwise neglected. (5) It appears that no other state would have jurisdiction under requirements substantially in accordance with paragraphs (1) to (4), inclusive, or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to hear a petition for adoption of the minor, and there is available in this state substantial evidence concerning the minor's present or future care. (b) A court of this state may not exercise jurisdiction over a proceeding for adoption of a minor if at the time the petition for adoption is filed a proceeding concerning the custody or adoption of the minor is pending in a court of another state exercising jurisdiction substantially in conformity with this part, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for another reason. *For purposes of this subdivision, "a court of another state" includes, in the case of an Indian child, a "tribal court" as defined in Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).* (c) If a court of another state has issued a decree or order concerning the custody of a minor who may be the subject of a proceeding for adoption in this state, a court of this state may not exercise jurisdiction over a proceeding for adoption of the minor, unless both of the following apply: (1) The requirements for modifying an order of a court of another state under this part are met, the court of another state does not have jurisdiction over a proceeding for adoption substantially in conformity with paragraphs (1) to (4), inclusive, of subdivision (a), or the court of another state has declined to assume jurisdiction over a proceeding for adoption. (2) The court of this state has jurisdiction under this section over the proceeding for adoption. SEC. 19. Section 1449 is added to the Probate Code , to read: 1449. (a) As used in this division, unless the context otherwise requires, the terms "Indian," "Indian child," "Indian child's tribe,"	See comments on Section 1 of the bill.

"Indian custodian," "Indian tribe," "reservation," and "tribal court" shall be defined as provided in Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.). (b) When used in connection with an Indian child, the terms "extended family member" and "parent" shall be defined as provided in Section 1903 of the Indian Child Welfare Act. (c) "Indian child custody proceeding" means a "child custody proceeding" within the meaning of Section 1903 of the Indian Child Welfare Act, including a voluntary or involuntary proceeding that may result in an Indian child's temporary or long-term foster care or guardianship placement if the parent or Indian custodian cannot have the child returned upon demand, termination of parental rights or adoptive placement. (d) When an Indian child is a member of more than one tribe or is eligible for membership in more than one tribe, the court shall make a determination, in writing together with the reasons for it, as to which tribe is the Indian child's tribe as follows: (1) If the Indian child is or becomes a member of only one tribe, that tribe shall be designated as the Indian child's tribe, even though the child is eligible for membership in another tribe. (2) If an Indian child is or becomes a member of more than one tribe, or is not a member of any tribe but is eligible for membership 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)The 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 224.11. (h) The child's self-identification.	

SEC. 20. Section 1456 is added to the Probate Code , to read:

1456. (a) The Legislature finds and declares the following: (1) There is no resource that is more vital to the continued existence and integrity of recognized Indian tribes than their children, and the State of California has an interest in protecting Indian children who are members of, or are eligible for membership in, an Indian tribe. The state is committed to protecting the essential tribal relations and best interest of an Indian child by promoting practices, in accordance with the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and other applicable law, designed to prevent the child's involuntary out-of-home placement and, whenever such placement is necessary or ordered, by placing the child, whenever possible, in a placement that reflects the unique values of the child's tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the child's tribe and tribal community.

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

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

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

See comments on Section 2 of the bill, but note that with respect to the Probate Code, this is a new addition to the Code, not simply a renumbering of an existing provision. The absence of this provision from the Probate Code appears to have been an oversight when AB 65 was adopted in 1999.

the application of the federal Indian Child Welfare Act to the proceedings. (d) (1) If the Indian Child Welfare Act applies to a proceeding under this code, to the extent that this code or the Adoption and Safe Families Act of 1999 (P.L. No. 105-89) are inconsistent or in conflict with the Indian Child Welfare Act, the provisions of the Indian Child Welfare Act shall prevail. (2) In any case in which this code or other applicable state or federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child, or the Indian child's tribe, than the rights provided under the Indian Child Welfare Act, the court shall apply the higher state or federal standard. (e) Any Indian child, the Indian child's tribe, or the parent or Indian custodian from whose custody the child has been removed, may petition any court of competent jurisdiction to invalidate an action in an Indian child custody proceeding involving the child if the action violated Sections 1911, 1912, and 1913 of the Indian Child Welfare Act.	
SEC. 21. Section 1457 is added to the Probate Code , to read: 1457. (a) If the court or petitioner knows or has reason to know that the proposed ward may be an Indian child, 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: (1) In any case in which the petition is a petition for guardianship of the person and the proposed guardian is not the natural parent or Indian custodian of the proposed ward, unless the proposed guardian has been nominated by the natural parents pursuant to Section 1500 and the parents retain the right to have custody of the child returned to them upon demand. (2) To a proceeding to have an Indian child declared free from the custody and control of one or both parents brought in a guardianship proceeding. (3) In any case in which the petition is a petition for conservatorship of the person of a minor whose marriage has been dissolved, the proposed conservator is seeking physical custody of the minor, the proposed conservator is not the natural parent or Indian custodian of the proposed conservatee and the natural parent	This section clarifies what specific guardianship and conservatorship proceedings under the Probate Code will trigger application of the ICWA and incorporates the Welf. & Inst. Code and Rules of Court provisions implementing the ICWA into the Probate Code by reference.

or Indian custodian does not retain the right to have custody of the child returned to them upon demand. (b) When the Indian Child Welfare Act applies to a proceeding under this division, the court shall apply Sections 224.2 to 224.6, inclusive, and Sections 305.5, 361.31, and 361.7 of the Welfare and Institutions Code, and the following rules from the California Rules of Court, as they read on January 1, 2005: (1) Rule 1410, subdivision (b)(7). (2) Rule 1412, subdivision (i). (3) Rule 1439. SEC. 22. Section 1458 is added to the Probate Code , to read: 1458. (a) If a proceeding under this division involves a child who is not an Indian child, the court may recognize the child's tribe and grant standing to participate as a party to the proceeding if either of the following applies:(1) The child is not eligible for membership in his or her tribe but is the biological grandchild of a member of the tribe or resides or is domiciled within the boundaries of an Indian reservation. (2) The child or his or her biological parent or grandparent is a member of a tribe that is not recognized as eligible for the services provided to Indians by the Secretary of the Interior but the tribe, band, or nation is recognized as an Indian tribe by any state or local governmental entity or by Canada or any of its provinces. (b) If the court recognizes the child's tribe and grants standing to the tribe to participate as a party to the proceeding, the tribe may do all of the following: (1) Be present at the hearing. (2) Be represented by retained counsel or a representative of the tribe designated by the tribe to intervene on behalf of the tribe, provided that when the tribe appears as a party by a representative of the tribe, the name of the representative and a statement of authorization for that individual to appear on behalf of the tribe shall be submitted to the court in the form of a tribal resolution or other document evidencing an official act of the tribe. (3) Address the court. (4) Receive notice of hearings. (5) Examine all court documents relating to the proceeding. (6) Present evidence.	See comments regarding Section 6 of the bill.

(7) Submit written reports and recommendations to the court. (8) Perform other duties and responsibilities as requested or approved by the court. SEC. 23. Section 1460.2 is added to the Probate Code , to read: 1460.2. (a) If the court or petitioner knows or has reason to know that the proposed ward may be an Indian child, notice shall comply with subdivision (b) in any case in which the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) applies, as specified in Section 1457. (b) Any notice sent under this section shall be sent to the minor's parent or legal guardian, Indian custodian, if any, and the Indian child's tribe, and shall comply with all of the following requirements: (1) Notice shall be sent by registered or certified mail with return receipt requested, and additional notice by first-class mail is recommended. (2) Notice to the tribe shall be to the tribal chairperson, unless the tribe has designated another agent for service. (3) Notice shall be sent to all tribes of which the child may be a member or eligible for membership until the court makes a determination as to which tribe is the Indian child's tribe in accordance with subdivision (d) of Section 1448, after which notice need only be sent to the tribe determined to be the Indian child's tribe. (4) Notice shall be sent to the Secretary of the Interior's designated agent, the Sacramento Area Director, Bureau of Indian Affairs. When the identity of the tribe of which the child may be a member or eligible for membership is unknown, the notice provided to the Bureau of Indian Affairs shall serve as substitute notice to the child's tribe. If the identity or location of the Indian child's tribe is known, a copy of the notice shall also be sent directly to the Secretary of the Interior if that notice is required under federal law. (5) The notice shall include all of the following information: (A) The name, birthdate, and birthplace of the Indian child. (B) The name of any Indian tribe in which the child is a member or may be eligible for membership. (C) All names known of the Indian child's biological parents, grandparents and great-grandparents or Indian custodians, including	See comments regarding Section 3 of the bill.

maiden, married and former names or aliases, as well as their current and former addresses, birthdates, places of birth and death, tribal enrollment numbers, any other identifying information. (D) A copy of the petition. (E) A copy of the child's birth certificate, if available. (F) The location, mailing address, and telephone number of the court and all parties notified pursuant to this section. (G) A statement listing the rights of the child's parents, Indian custodians, and tribes, including all of the following: (i) The right to intervene in the proceeding. (ii) The right to petition the court to transfer the proceeding to the tribal court of the Indian child's tribe, absent objection by either parent and subject to declination by the tribal court. (iii) The right to, upon request, be granted up to an additional 20 days from the receipt of the notice to prepare for the proceeding. (iv) A statement of the potential legal consequences of an adjudication on the future custodial rights of the child's parents or Indian custodians. (v) A statement that if the parents or Indian custodians are unable to afford counsel in an involuntary proceeding, counsel shall be appointed to represent the parents or custodians. (vi) A statement that the information contained in the notice, petition, pleading, and other court documents is confidential. (6) Notice shall be sent whenever there is reason to believe the child may be an Indian child, and for every hearing thereafter, including, but not limited to, the hearing at which a final adoption order is to be granted. After a tribe intervenes in a proceeding, the information required pursuant to paragraphs (3), (4), (5), and (7) need not be included with notice. (7) Proof of the notice, including copies of notices sent and all return receipts and responses received, shall be filed with the court in advance of the hearing except as permitted under subdivision (h). (8) No proceeding shall be held until at least 10 days after receipt of notice by the parent, Indian custodian, the tribe or the Bureau of Indian Affairs, except for the detention hearing, provided that notice of the detention hearing shall be given as soon as possible after the filing of the petition initiating the proceeding and proof of the notice is filed with the court within 10 days after the filing of the petition. With the exception of the detention	

hearing, the parent, Indian custodian or the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceeding. Nothing herein shall be construed as limiting the rights of the parent, Indian custodian, or tribe to more than 10-days' notice when the lengthier notice period is required. (9) With respect to giving notice to Indian tribes, a party shall be subject to court sanctions if that person knowingly and willfully falsifies or conceals a material fact concerning whether the child is an Indian child, or counsels a party to do so.	
SEC. 24. Section 1474 is added to the Probate Code , to read: 1474. (a) If an Indian custodian or biological parent of an Indian child lacks the financial ability to retain counsel and requests the appointment of counsel, the court shall, at or before the time of the hearing, appoint the public defender or private counsel to represent the interest of the person in proceedings described in Part 2 (commencing with Section 1500). (b) If the court appoints counsel under subdivision (a), the county shall pay the sum to that counsel.	Subdivision (a) reiterates the requirements of § 1912(b) of the ICWA that an Indian custodian or parent be appointed counsel in an Indian child custody proceeding. Subdivision (b) puts the obligation on the county to pay for such counsel. Although ICWA puts the obligation on the Secretary of the Interior to pay for counsel where state law makes no provision for court-appointed counsel, in practice such funds are not available.
SEC. 25. Section 1510 of the Probate Code is amended to read: 1510. (a) A relative or other person on behalf of the minor, or the minor if 12 years of age or older, may file a petition for the appointment of a guardian of the minor. (b) The petition shall request that a guardian of the person or estate of the minor, or both, be appointed, shall specify the name and address of the proposed guardian and the name and date of birth of the proposed ward, and shall state that the appointment is necessary or convenient. (c) The petition shall set forth, so far as is known to the petitioner, the names and addresses of all of the following: (1) The parents of the proposed ward. (2) The person having legal custody of the proposed ward and, if that person does not have the care of the proposed ward, the person having the care of the proposed ward. (3) The relatives of the proposed ward within the second degree. (4) In the case of a guardianship of the estate, the spouse of the proposed ward. (5) Any person nominated as guardian for the proposed ward under	This section adds paragraph (6) to subdivision (c) of Section 1510 regarding guardianship petitions. It requires that the petition, in the case of an Indian child, state the name of any Indian custodian and the proposed ward's tribe. Subdivision (i) is also added to require that the petition state if the child is or may be an Indian child. These requirements are consistent with those already required in the case of juvenile dependency petitions.

Section 1500 or 1501. *(6) In the case of a guardianship of the person involving an Indian child, any Indian custodian and the proposed ward's tribe.* (d) If the proposed ward is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services and that fact is known to the petitioner, the petition shall state that fact and name the institution. (e) The petition shall state, so far as is known to the petitioner, whether or not the proposed ward is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the proposed ward. (f) If the petitioner has knowledge of any pending adoption, juvenile court, marriage dissolution, domestic relations, custody, or other similar proceeding affecting the proposed ward, the petition shall disclose the pending proceeding. (g) If the petitioners have accepted or intend to accept physical care or custody of the child with intent to adopt, whether formed at the time of placement or formed subsequent to placement, the petitioners shall so state in the guardianship petition, whether or not an adoption petition has been filed. (h) If the proposed ward is or becomes the subject of an adoption petition, the court shall order the guardianship petition consolidated with the adoption petition. *(i) If the proposed ward is or may be an Indian child, the petition shall state that fact.* SEC. 26. Section 1511 of the Probate Code is amended to read: 1511. (a) Except as provided in subdivisions (f) and (g), at least 15 days before the hearing on the petition for the appointment of a guardian, notice of the time and place of the hearing shall be given as provided in subdivisions (b), (c), (d), and (e) of this section. The notice shall be accompanied by a copy of the petition. The court may not shorten the time for giving the notice of hearing under this section.(b) Notice shall be served in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure, or in any manner authorized by the court, on all of the following persons: (1) The proposed ward if 12 years of age or older.	Section 1511 of the Probate Code sets out the general notice requirements in guardianship cases. Subdivision (i) is added to remind the court of the special requirements set out in Section 23 of the bill for giving notice in an Indian child custody proceeding.

(2) Any person having legal custody of the proposed ward, or serving as guardian of the estate of the proposed ward. (3) The parents of the proposed ward. (4) Any person nominated as a guardian for the proposed ward under Section 1500 or 1501. (c) Notice shall be given by mail sent to their addresses stated in the petition, or in any manner authorized by the court, to all of the following: (1) The spouse named in the petition. (2) The relatives named in the petition, except that if the petition is for the appointment of a guardian of the estate only the court may dispense with the giving of notice to any one or more or all of the relatives. (3) The person having the care of the proposed ward if other than the person having legal custody of the proposed ward. (d) If notice is required by Section 1461 or Section 1542 to be given to the Director of Mental Health or the Director of Developmental Services or the Director of Social Services, notice shall be mailed as so required. (e) If the petition states that the proposed ward is receiving or is entitled to receive benefits from the Veterans Administration, notice shall be mailed to the office of the Veterans Administration referred to in Section 1461.5. (f) Unless the court orders otherwise, notice shall not be given to any of the following: (1) The parents or other relatives of a proposed ward who has been relinquished to a licensed adoption agency. (2) The parents of a proposed ward who has been judicially declared free from their custody and control. (g) Notice need not be given to any person if the court so orders upon a determination of either of the following: (1) The person cannot with reasonable diligence be given the notice. (2) The giving of the notice would be contrary to the interest of justice. (h) Before the appointment of a guardian is made, proof shall be made to the court that each person entitled to notice under this section either: (1) Has been given notice as required by this section.	

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

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

SEC. 27. Section 1601 of the Probate Code is amended to read:

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

Section 1601 of the Probate Code is amended to include Indian custodians and tribes in the list of persons who may petition to terminate a guardianship.

SEC. 28. Section 2112 of the Probate Code is repealed.

~~2112. With respect to a guardianship or conservatorship proceedings to which Title 25 of the United States Code (Indians) applies, the provisions of this division are subject to the provisions of Title 25 and, to the extent inconsistent with Title 25, are superseded by that title.~~

This section, which was intended to affirm that ICWA applied to probate guardianships but was too often ignored by courts because it fails to specify what proceedings ICWA applies to, is repealed because the application of ICWA to Probate Code proceedings is clarified in Section 21 of the bill.

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

See comments on Section 2 of the bill.

Section 224 is a revision and renumbering of § 360.6, introduced into the Welf. & Inst. Code by AB 65 in 1999. A renumbering is needed because it moves the provision to the general provisions applicable to Indian child custody proceedings, rather than in the dependency provisions it had been in. This change will help ensure the provision is applied not only to dependency cases but delinquency cases as well.

culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the child's tribe and tribal community. (2) It is in the interest of an Indian child that the child's membership in the child's Indian tribe and connection to the tribal community be encouraged and protected, regardless of whether or not the child is in the physical custody of an Indian parent or Indian custodian at the commencement of a child custody proceeding, the parental rights of the child's parents have been terminated, or the child has resided or been domiciled on an Indian reservation. (b) In all Indian child custody proceedings, as defined in the federal Indian Child Welfare Act the court shall consider all of the findings contained in subdivision (a), strive to promote the stability and security of Indian tribes and families, comply with the federal Indian Child Welfare Act, and seek to protect the best interest of the child. Whenever an Indian child is removed from a foster care home or institution, guardianship, or adoptive placement for the purpose of further foster care, guardianship, or adoptive placement, placement of the child shall be in accordance with the Indian Child Welfare Act. (c) A determination by an Indian tribe that an unmarried person, who is under the age of 18 years, is either (1) a member of an Indian tribe or (2) eligible for membership in an Indian tribe and a biological child of a member of an Indian tribe shall constitute a significant political affiliation with the tribe and shall require the application of the federal Indian Child Welfare Act to the proceedings. (d) (1) If the Indian Child Welfare Act applies to a child custody proceeding under this code, to the extent that this code or the Adoption and Safe Families Act of 1999 (P.L. 105-89) are inconsistent or in conflict with the Indian Child Welfare Act, the provisions of the Indian Child Welfare Act shall prevail. (2) In any case in which this code or other applicable state or federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child, or the Indian child's tribe, than the rights provided under the Indian Child Welfare Act, the court shall apply the higher standard. (e) Any Indian child, the Indian child's tribe, or the parent or Indian custodian from whose custody the child has been removed, may	

petition any court of competent jurisdiction to invalidate an action in an Indian child custody proceeding involving the child if the action violated Sections 1911, 1912, and 1913 of the Indian Child Welfare Act. SEC. 30. Section 224.1 is added to the Welfare and Institutions Code , to read: 224.1. (a) As used in this division, unless the context otherwise requires, the terms "Indian," "Indian child," "Indian child's tribe," "Indian custodian," "Indian tribe," "reservation," and "tribal court" shall be defined as provided in Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.). (b) As used in connection with an Indian child custody proceeding, the terms "extended family member" and "parent" shall be defined as provided in Section 1903 of the Indian Child Welfare Act. (c) "Indian child custody proceeding" means a "child custody proceeding" within the meaning of Section 1903 of the Indian Child Welfare Act, including a voluntary or involuntary proceeding that may result in an Indian child's temporary or long-term foster care or guardianship placement if the parent or Indian custodian cannot have the child returned upon demand, termination of parental rights or adoptive placement. (d) If an Indian child is a member of more than one tribe or is eligible for membership in more than one tribe, the court shall make a determination, in writing together with the reasons for it, as to which tribe is the Indian child's tribe as follows: (1) If the Indian child is or becomes a member of only one tribe, that tribe shall be designated as the Indian child's tribe, even though the child is eligible for membership in another tribe. (2) If an Indian child is or becomes a member of more than one tribe, or is not a member of any tribe but is eligible for membership in more than one tribe, the tribe with which the child 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.	See comments on Section 1 of the bill.

(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 224.11. (H) The child's self identification. SEC. 31. Section 224.2 is added to the Welfare and Institutions Code , to read: 224.2. 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 custodian, if any, and the minor's tribe and comply with all of the following requirements: (a) Notice shall be sent by registered or certified mail with return receipt requested, and additional notice by first-class mail is recommended. (b) Notice to the tribe shall be to the tribal chairperson, unless the tribe has designated another agent for service. (c) Notice shall be sent to all tribes of which the child may be a member or eligible for membership. (d) Notice shall be sent to the Secretary of the Interior's designated agent, the Sacramento Area Director, Bureau of Indian Affairs. When the identity of the tribe of which the child may be a member or eligible for membership in is unknown, the notice provided to the Bureau of Indian Affairs will serve as substitute notice to the child's tribe. If the identity or location of the parents, Indian custodians, or the minor's tribe is known, a copy of the notice shall also be sent directly to the Secretary of the Interior if the notice is required under federal law. (e) In addition to the information specified in other sections of this article, notice shall include all of the following information: (1) The name, birthdate, and birthplace of the Indian child. (2) The name of the Indian tribe in which the child is a member or may be eligible for membership. (3) All names known of the Indian child's biological parents,	See comments on Section 3 of the bill.

grandparents, and great-grandparents, or Indian custodians, including maiden, married and former names or aliases, as well as their current and former addresses, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information. (4) A copy of the petition by which the proceeding was initiated. (5) A copy of the child's birth certificate, if available. (6) The location, mailing address, and telephone number of the court and all parties notified pursuant to this section. (7) A statement listing the rights of the child's parents or legal guardians, Indian custodians, and tribes. The rights shall include all of the following: (A) The right to intervene in the proceeding. (B) The right to petition the court to transfer the proceeding to the tribal court of the Indian child's tribe, absent objection by either parent and subject to declination by the tribal court. (C) The right to, upon request, be granted up to an additional 20 days from the receipt of the notice to prepare for the proceeding. (D) A statement of the potential legal consequences of an adjudication on the future custodial rights of the child's parents, legal guardians, or Indian custodians. (E) A statement that if the parents or Indian custodians are unable to afford counsel in an involuntary proceeding, counsel will be appointed to represent the parents or custodians. (F) A statement that the information contained in the notice, petition, pleading, and other court documents is confidential. (f) Notice shall be sent whenever there is reason to believe the child may be an Indian child, and for every hearing thereafter, including, but not limited to, the hearing at which a final adoption order is to be granted. After a tribe intervenes in a proceeding, the information set out in paragraphs (3), (4), (5) and (7) of subdivision (e) need not be included with notice. (g) Proof of the notice, including copies of notices sent and all return receipts and responses received, shall be filed with the court in advance of the hearing except as permitted under subdivision (h). (h) No proceeding shall be held until at least 10 days after receipt of notice by the parent, Indian custodian, the tribe, or the Bureau of Indian Affairs, except for the detention hearing, provided that notice of the detention hearing shall be given as soon as possible after the filing of the petition initiating the proceeding	

and proof of the notice is filed with the court within 10 days after the filing of the petition. With the exception of the detention hearing, the parent, Indian custodian, or the tribe shall, upon request, be granted up to 20 additional days to prepare for that proceeding. Nothing herein shall be construed as limiting the rights of the parent, Indian custodian or tribe to more than 10 days notice when the lengthier notice period is required. (i) With respect to giving notice to Indian tribes, a party shall be subject to court sanctions if that person knowingly and willfully falsifies or conceals a material fact concerning whether the child is an Indian child, or counsels a party to do so. SEC. 32. Section 224.3 is added to the Welfare and Institutions Code , to read: 224.3. (a) The court, county welfare department, and the probation department have an affirmative and continuing duty to inquire whether a child for whom a petition under Section 300, 601, or 602 is to be, or has been, filed is or may be an Indian child in all dependency proceedings and in any juvenile wardship proceedings if the child is at risk of entering foster care or is in foster care. (b) The court, county welfare department, and the probation department shall be deemed to know or have reason to know that an Indian child is involved whenever any of the following circumstances exist: (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. (3) The child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the Indian Health Service. (c) If the court, social worker, or probation officer knows or has reason to know that an Indian child is involved, the social worker or probation officer is required to make further inquiry regarding	This section is added to the Welf. & Inst. Code to improve compliance with the notice requirements of the Act by providing guidelines on how to comply with the duty to determine if a child is an Indian child and to provide a clear point at which the court can make a determination that ICWA does not apply. Much of this provision is drawn from the expanded requirements of paragraphs (d) and (f) of Rule 1439 of the Rule of Court, as amended effective January 1, 2005. Some differences are as follows: Subdivision (c) requires social workers/probation officers to also interview extended family members to help determine if a child is Indian. It also requires that all interviews be completed "as soon as practicable." It also requires the social worker/probation officer to contact the BIA and State Department of Social Services for assistance in identifying the child's tribe, and to contact the tribe and "any other person that reasonably can be expected to have information regarding the child's membership status or eligibility." Paragraph 3 of subdivision (e) requires the court to reverse a determination that the Indian Child Welfare Act does not apply and apply the act prospectively (not retroactively) if a tribe or the BIA submits written evidence confirming the child's membership status.

the possible Indian status of the child, and to do so as soon as practicable, by interviewing the parents, Indian custodian, and extended family members to gather the information required in Section 298, contacting the Bureau of Indian Affairs and the State Department of Social Services for assistance in identifying the names and contact information of the tribes in which the child may be a member or eligible for membership in and contacting the tribes and any other person that reasonably can be expected to have information regarding the child's membership status or eligibility. (d) If the court, social worker, or probation officer knows or has reason to know that an Indian child is involved, the social worker or probation officer shall provide notice in accordance with Section 298. (e) (1) A written determination by an Indian tribe that a child is or is not a member of or eligible for membership in that tribe, or testimony attesting to such status by a person authorized by the tribe to provide that determination, shall be conclusive. Information that the child is not enrolled or eligible for enrollment in the tribe is not determinative of the child's membership status unless the tribe also confirms in writing that enrollment is a prerequisite for membership under tribal law or custom. (2) In the absence of a contrary determination by the tribe, a determination by the Bureau of Indian Affairs that a child is or is not a member of or eligible for membership in that tribe is conclusive. (3) If proper and adequate notice has been provided pursuant to Section 224.1, and neither a tribe nor the Bureau of Indian Affairs has provided a determinative response within 60 days after receiving that notice, the court may determine the child is not an Indian child and that the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) does not apply to the proceedings, provided that the court shall reverse its determination and apply the act prospectively if a tribe or the Bureau of Indian Affairs submits written evidence confirming the child is an Indian child. (f) Notwithstanding a determination that the Indian Child Welfare Act does not apply to the proceedings made in accordance with subdivision (e) of this section, if the court, social worker, or probation officer subsequently receives any information required under subdivision (e) of Section 224.2 that was not previously	Subdivision (f) requires notice to be given, even after a determination that ICWA doesn't apply, if information required to be given to the Tribe but not previously known or available becomes available.

available or included in the notice issued under Section 224.2, the social worker or probation officer shall provide the additional information to any tribes entitled to notice under subdivision (c) of Section 224.2 and the Bureau of Indian Affairs.

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

224.4. (a) The Indian child's tribe and Indian custodian have the right to intervene at any point in an Indian child custody proceeding. (b) Each party to a child custody proceeding involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to the action may be based. With the exception of the initial petition commencing the proceedings, any report filed in connection with a hearing in an Indian child custody proceeding shall be provided to each party to the proceeding at least 10 calendar days prior to the hearing, which may be accomplished by mailing the report at least 15 calendar days prior to the hearing. The court shall grant a reasonable continuance, not to exceed 20 calendar days, upon request by any party on the ground that the report was not provided at least 10 calendar days prior to the hearing as required by this section, unless the party has expressly waived the requirement that the report be provided within the 10-day period or the court finds by clear and convincing evidence that the party's ability to proceed at the hearing is not prejudiced by the lack of timely service of the report.

This section reiterates the requirements of §§ 1911(c) and 1912(c) of the ICWA. Subdivision (b) expands on the ICWA by expressly requiring that reports filed with the court be provided to the tribe at least 10 days prior to the hearing, except for detention reports which are not available so far in advance. This is to avoid the ongoing problem of tribes (and other parties) not being provided with the reports until the day of the hearing. The allowance for a 20-day continuance when reports are not received in time is not an expansion but is rather a restatement of § 1912(a) of the ICWA.

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

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

This section is a restatement of § 1911(d) of the ICWA.

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

224.6. (a) When testimony of a "qualified expert witness" is required in an Indian child custody proceeding, a "qualified expert witness" may include, but is not limited to, a social worker,

This section clarifies who qualifies as a "qualified expert witness" for the purpose of providing testimony that the continued custody by the parent is likely to result in serious physical or emotional harm to the Indian child. Such testimony is required by § 1912 (e) and (f) of the

sociologist, physician, psychologist, traditional tribal therapist and healer, spiritual leader, historian, or elder, provided the individual is not an employee of the person or agency recommending 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 require that qualified expert witnesses with specific knowledge of the child's Indian tribe testify regarding that tribe's family organization and child-rearing practices, and regarding whether the tribe's culture, customs, and laws would support the placement of the child in foster care or the termination of parental rights on the grounds that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

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

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

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

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

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

(5) A professional person having substantial education and experience in the person's professional specialty and having extensive knowledge of the customs, traditions, and values of the Indian child's tribe as the customs, traditions, and values pertain to family organization and child-rearing practices. Prior to accepting the testimony of a qualified expert witness, the court shall document the efforts made to secure a qualified expert witness described in paragraphs (1), (2), (3) and (4). The efforts shall

ICWA prior to foster care placement or termination of parental rights. The ICWA does not define expert witness, but definitions are set out in the BIA Guidelines (D.4) and subparagraph (a)(10) of Rule 1439.

The language here is stronger than that in the BIA Guidelines or the Rule of Court in that it requires the expert to have specific knowledge of the Indian child's tribe. It also requires the court to document the efforts made to secure a qualified expert witness and such efforts must include contacting the child's tribe and tribal agencies. This effectively overrules *In re Krystle D.* (1994) 30 Cal.App.4th 1778, 1801-1803, which held that expert witnesses need not possess special knowledge of Indian ways of life and is consistent with the BIA Guidelines and the Rule of Court.

This provision is drawn from 232B.10 of the Iowa Indian Child Welfare Act.

verify?

Subdivision (a) also goes beyond the Guidelines and the Rule of Court by prohibiting employees of the person or agency recommending termination of parental rights of foster care placement from acting as the qualified expert – in ongoing problem in many counties.

include, but are not limited to, contacting the Indian child's tribe's governing body, that tribe's Indian child welfare office, and the tribe's social service office.

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

290.1. If the probation officer or social worker determines that the child shall be retained in custody, he or she shall immediately file a petition pursuant to Section 332 with the clerk of the juvenile court, who shall set the matter for hearing on the detention hearing calendar. The probation officer or social worker shall serve notice as prescribed in this section.(a) Notice shall be given to the following persons whose whereabouts are known or become known prior to the initial petition hearing:

(1) The mother.

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

(3) The legal guardian or guardians.

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

(5) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency 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, then to any adult relative residing within the county or if none, the adult relative residing nearest the court.

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

(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.

Sections 36 – 43 of the bill contain amendments to the general notice provisions of the Welf. & Inst. Code. Although these provisions were added by SB 1956 in 2002 and were an attempt to set out the ICWA notice requirements, they did not include the additional requirements set out in 25 C.F.R. § 23.11 and fell short of their goal to improve compliance with the notice requirements (as evidenced by the steady rate of notice appeals since these provisions were enacted). The references to notice in Indian child custody proceedings are deleted throughout and replaced with a single cross-reference to the new notice provision set out in Section 31 of the bill.

~~(10) If the court knows or has reason to know that an Indian child is involved, then to the Indian custodian and the tribe of that child. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Bureau of Indian Affairs.~~

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

(c) The notice shall be given as soon as possible after the filing of the petition. ~~In the case of an Indian child, if notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.~~

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

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

(2) The name of the child.

(3) A copy of the petition.

~~(e) Service of the notice shall be written or oral. If the person being served cannot read, notice shall be given orally. In the case of an Indian child, notice to the Bureau of Indian Affairs, if necessary, shall be by registered mail, return receipt requested.~~

Should first 2 sections remain?

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. ~~(10) If the court knows or has reason to know that an Indian child is involved, then to the Indian custodian and the tribe of that child. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Bureau of Indian Affairs.~~ (b) No notice is required for a parent whose parental rights have been terminated. (c) Notice shall be served as follows: (1) If the child is retained in custody, the notice shall be given to the persons required to be noticed as soon as possible, and at least five days before the hearing, unless the hearing is set to be heard in less than five days in which case notice shall be given at least 24 hours prior to the hearing. (2) If the child is not retained in custody, the notice shall be given to those persons required to be noticed at least 10 days prior to the date of the hearing. If any person who is required to be given notice is known to reside outside of the county, the clerk of the juvenile court shall mail the notice and copy of the petition by first-class mail, to that person as soon as possible after the filing of the petition and at least 10 days before the time set for hearing. Failure to respond to the notice is not cause for an arrest or detention. In the instance of a failure to appear after notice by first-class mail, the court shall direct that the notice and copy of	

the petition be personally served on all persons required to receive the notice and copy of the petition. For these purposes, personal service of the notice and copy of the petition outside of the county at least 10 days before the time set for hearing is equivalent to service by first-class mail. Service may be waived by any person by a voluntary appearance entered in the minutes of the court or by a written waiver of service filed with the clerk of the court at, or prior to, the hearing.

~~(3) In the case of an Indian child, if notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.~~

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

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

(2) The name of the child.

(3) A copy of the petition.

~~(e) In the case of an Indian child, notice to the Bureau of Indian Affairs, if necessary, shall be by registered mail, return receipt requested.~~

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

291. After the initial petition hearing, the clerk of the court shall cause the notice to be served in the following manner:(a) Notice of the hearing shall be given to the following persons:

(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) Each attorney of record unless counsel of record is present in court when the hearing is scheduled, then no further notice need be given. (7) If there is no parent or guardian residing in California, or if the residence is unknown, then to any adult relative residing within the county or if none, the adult relative residing nearest the court. ~~(8) If the court knows or has reason to know that an Indian child is involved, then to the Indian custodian and the tribe of that child. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Bureau of Indian Affairs.~~ (b) No notice is required for a parent whose parental rights have been terminated. (c) Notice shall be served as follows: (1) If the child is detained, the notice shall be given to the persons required to be noticed as soon as possible, and at least five days before the hearing, unless the hearing is set less than five days and then at least 24 hours prior to the hearing. (2) If the child is not detained, the notice shall be given to those persons required to be noticed at least 10 days prior to the date of the hearing. ~~(3) In the case of an Indian child, notice is to be given no less than 10 days before the hearing. If notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.~~ (d) The notice shall include all of the following: (1) The name and address of the person notified. (2) The nature of the hearing. (3) Each section and subdivision under which the proceeding has been initiated. (4) The date, time, and place of the hearing. (5) The name of the child upon whose behalf the petition has been brought. (6) A statement that: (A) If they fail to appear, the court may proceed without them. (B) The child, parent, guardian, Indian custodian, or adult relative to whom notice is required to be given is entitled to have	

an attorney present at the hearing.

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

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

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

(7) A copy of the petition.

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

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

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

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

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

~~(4) In the case of an Indian child, notice shall be by registered mail, return receipt requested.~~

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

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

292. The social worker or probation officer shall give notice of the review hearing held pursuant to Section 364 in the following manner:(a) Notice of the hearing shall be given to the following persons:

(1) The mother.

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

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

~~(7) If the court knows or has reason to know that an Indian child is involved, then to the Indian custodian and the tribe of that child. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Bureau of Indian Affairs.~~

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

(c) The notice of the hearing shall be served not earlier than 30 days, nor later than 15 days, before the hearing. ~~In the case of an Indian child, if notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.~~

(d) ~~(1)~~ – The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the child being recommended by the supervising agency. The notice shall also include a statement that the child and the parent or parents or legal guardian or guardians have a right to be present

at the hearing, to be represented by counsel at the hearing and the procedure for obtaining appointed counsel, and to present evidence regarding the proper disposition of the case. The notice shall also state that if the parent or parents or legal guardian or guardians fail to appear, the court may proceed without them.

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

(e) ~~(1)~~ – Service of the notice shall be by personal service, by first-class mail, or by certified mail, return receipt requested, addressed to the last known address of the person to be noticed.

~~(2) In the case of an Indian child, notice shall be by registered mail, return receipt requested.~~

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

293. The social worker or probation officer shall give notice of the review hearings held pursuant to Section 366.21 or 366.22 in the following manner: (a) Notice of the hearing shall be given to the following persons:

(1) The mother.

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

(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) In the case of a child removed from the physical custody of his or her parent or legal guardian, the foster parents, relative caregivers, community care facility, or foster family agency having

custody of the child. In a case in which a foster family agency is notified of the hearing pursuant to this section, and the child resides in a foster home certified by the foster family agency, the foster family agency shall provide timely notice of the hearing to the child's caregivers.

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

~~(8) If the court knows or has reason to know that an Indian child is involved, then to the Indian custodian and the tribe of that child. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Bureau of Indian Affairs.~~

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

(c) The notice of hearing shall be served not earlier than 30 days, nor later than 15 days, before the hearing. ~~In the case of an Indian child, if notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. This subdivision does not affect the tribe's right to intervene at any point in the proceedings.~~

(d) ~~(1)~~ – The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the child being recommended by the supervising agency. If the notice is to the child, parent or parents, or legal guardian or guardians, the notice shall also advise them of the right to be present, the right to be represented by counsel, the right to request counsel, and the right to present evidence. The notice shall also state that if the parent or parents or legal guardian or guardians fail to appear, the court may proceed without them.

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

(e) ~~(1)~~ – Service of the notice shall be by first-class mail addressed to the last known address of the person to be noticed or by personal service on the person. Service of a copy of the notice shall

be by personal service or by certified mail, return receipt requested, or any other form of notice that is equivalent to service by first-class mail.

~~(2) In the case of an Indian child, notice shall be by registered mail, return receipt requested.~~

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

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

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

(1) The mother.

(2) The fathers, presumed and alleged.

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

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

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

(6) All counsel of record.

~~(7) If the court knows or has reason to know that an Indian child is involved, then to the Indian custodian and the tribe of that child. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Bureau of Indian Affairs.~~

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

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

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

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

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

(2) ~~– In the case of an Indian child, notice to the Indian custodian and the tribe shall be completed at least 10 days before the hearing.~~

~~(3) In the case of an Indian child, if notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.~~

~~(4)~~ – Service of notice in cases where publication is ordered shall be completed at least 30 days before the date of the hearing.

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

(e) The notice shall contain the following information:

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

(2) The right to appear.

(3) The parents' right to counsel.

(4) The nature of the proceedings.

(5) The recommendation of the supervising agency.

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

~~(7) In the case of an Indian child, the notice shall contain a statement that the parent or Indian custodian and the tribe have a right to intervene at any point in the proceedings. The notice shall also include a statement that the parent or Indian custodian and the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceedings.~~

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

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

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

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

(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 the parent's 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 newspaper designated as most likely to give notice to the parent. Publication shall be made once a week for four consecutive weeks. Whether notice is to the attorney of record or by publication, the court shall also order that notice be given to the grandparents of the child by first-class mail. (B) 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 legal guardianship or long-term foster care, no further notice is required to the parent, but the court shall order that notice be given to the grandparents of the child by first-class mail. (C) In any case where the residence of the parent becomes known, notice shall immediately be served upon the parent as provided for in either paragraph (2), (3), (4), (5), or (6). (8) If the identity of one or both of the parents, or alleged parents, of the child is unknown, or if the name of one or both parents is uncertain, then that fact shall be set forth in the affidavit and the court, if ordering publication, shall order the published citation to be directed to either the father or mother, or both, of the child, and to all persons claiming to be the father or mother of the child, naming and otherwise describing the child. (g) Notice to the child and all counsel of record shall be by first-class mail. (h) ~~In the case of an Indian child, notice to the tribe shall be by registered mail, return receipt requested.~~ ~~(i)~~ – Notwithstanding subdivision (a), if the attorney of record	

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

~~(j)~~

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

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

295. The social worker or probation officer shall give notice of review hearings held pursuant to Section 366.3 in the following manner: (a) Notice of the hearing shall be given to the following persons:

(1) The mother.

(2) The presumed father.

(3) The legal guardian or guardians.

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

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

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

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

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

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

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

(c) The notice of the review hearing shall be served no earlier than 30 days, nor later than 15 days, before the hearing. ~~In the case of an Indian child, if notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.~~

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

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

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

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

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

297. (a) Notice required for an initial petition filed pursuant to Section 300 is applicable to a subsequent petition filed pursuant to Section 342.(b) Upon the filing of a supplemental petition pursuant to Section 387, the clerk of the juvenile court shall immediately set the matter for hearing within 30 days of the date of the filing, and the social worker or probation officer shall cause notice thereof to be served upon the persons required by, and in the

manner prescribed by, Sections 290.1, 290.2, and 291.

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

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

305.5. (a) ~~Where~~ *If* an Indian child, who *is a ward of a tribal court or* resides or is domiciled within a reservation of an Indian tribe that has *exclusive jurisdiction over child custody proceedings as recognized in Section 1911 of Title 25 of the United States Code or* reassumed exclusive jurisdiction over Indian child custody proceedings pursuant to Section 1918 of Title 25 of the United States Code, has been removed by a state or local authority from the custody of his or her parents or Indian custodian, the state or local authority shall provide notice of the removal to the tribe no later than the next working day following the removal and shall provide all relevant documentation to the tribe regarding the removal and the child's identity. If the tribe determines that the child is an Indian child, the state or local authority shall transfer the child custody proceeding to the tribe within 24 hours after receipt of written notice from the tribe of that determination. (b) ~~As used in this section, the terms "Indian child" and "Indian child custody proceedings" shall be defined as provided in the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.)~~ *In the case of an Indian child who is not domiciled or residing within a reservation of an Indian tribe or who resides or is domiciled within a reservation of an Indian tribe who does not have exclusive jurisdiction over child custody proceedings pursuant to Section 1911 or 1918 of Title 25 of the United States Code, the court shall*

This provision is intended to clarify the jurisdictional provisions of the ICWA, without settling the issue pending before the 9th Circuit Court of Appeals in Doe v. Mann as to whether Public Law 280 gave the state of California concurrent jurisdiction over child custody proceedings involving Indian children residing in California Indian country (or, put another way, whether California tribes retain exclusive jurisdiction despite PL-280).

Subdivision (a) is amended to clarify that a tribe may have exclusive jurisdiction over an Indian child not because it reassumed such jurisdiction under ICWA but because it never lost it. Even without addressing whether California tribes retain exclusive jurisdiction, there are circumstances under which a child may be in California but still be domiciled or reside on an out-of-state reservation of a tribe that is not subject to Public Law 280.

Subdivision (b) is amended by deleting the definition section, which is rendered redundant by Section 30 of the bill, and adding guidelines for transferring jurisdiction to tribes when the tribe does not have exclusive jurisdiction, as permitted by § 1911(b) of the ICWA. This provision expands upon the ICWA by authorizing transfer of jurisdiction not only in cases where a child is not

transfer such proceeding to the jurisdiction of the child's tribe upon petition of either parent, the Indian custodian, if any, or the child's tribe, unless the court finds good cause not to transfer. The court shall dismiss the proceeding or terminate jurisdiction only after receiving proof that the tribal court has accepted the transfer .

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

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

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

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

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

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

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

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

SEC. 45. Section 317 of the Welfare and Institutions Code is

domiciled or residing on a reservation but also in cases where the child is domiciled or residing on a reservation of a tribe that may not be recognized as having exclusive jurisdiction (e.g., tribes in Public Law 280 states).

Subdivision (c) is added to clarify when good cause exists not to transfer a case under subdivision (b). This subdivision is drawn from the BIA Guidelines (C.3) and 232B.5 of the Iowa Indian Child Welfare Act.

Subdivision (d) is added to clarify how domicile or residence is determined and is consistent with *Mississippi Band of Choctaw v. Holyfield* (1989) 490 U.S. 30.

Subdivision (e) is a restatement of § 1920 of the ICWA.

This section is amended to clarify that the indigent Indian

amended to read:

317. (a) When it appears to the court that a parent , *Indian custodian,* 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. (b) When it appears to the court that a parent , *Indian custodian,* 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, unless the court finds that the parent , *Indian custodian,* or guardian has made a knowing and intelligent waiver of counsel as provided in this section.

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

(d) The counsel appointed by the court shall represent the parent, guardian, *Indian custodian,* or child at the detention hearing and at all subsequent proceedings before the juvenile court. Counsel shall continue to represent the parent , *guardian,*

custodian is also entitled to court-appointed counsel in an Indian child custody proceeding under § 1912(b) of the ICWA.

Indian custodian, or child unless relieved by the court upon the substitution of other counsel or for cause. The representation shall include representing the parent , *guardian, Indian custodian,* or the child in termination proceedings and in those proceedings relating to the institution or setting aside of a legal guardianship. (e) The counsel for the child shall be charged in general with the representation of the child's interests. To that end, the counsel shall make or cause to have made any further investigations that he or she deems in good faith to be reasonably necessary to ascertain the facts, including the interviewing of witnesses, and he or she shall examine and cross-examine witnesses in both the adjudicatory and dispositional hearings. He or she may also introduce and examine his or her own witnesses, make recommendations to the court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the child. In any case in which the child is four years of age or older, counsel shall interview the child to determine the child's wishes and to assess the child's well-being, and shall advise the court of the child's wishes. Counsel for the child shall not advocate for the return of the child if, to the best of his or her knowledge, that return conflicts with the protection and safety of the child. In addition counsel shall investigate the interests of the child beyond the scope of the juvenile proceeding and report to the court other interests of the child that may need to be protected by the institution of other administrative or judicial proceedings. The attorney representing a child in a dependency proceeding is not required to assume the responsibilities of a social worker and is not expected to provide nonlegal services to the child. The court shall take whatever appropriate action is necessary to fully protect the interests of the child. (f) Either the child or the counsel for the child, with the informed consent of the child if the child is found by the court to be of sufficient age and maturity to so consent, may invoke the psychotherapist-client privilege, physician-patient privilege, and clergyman-penitent privilege; and if the child invokes the privilege, counsel may not waive it, but if counsel invokes the privilege, the child may waive it. Counsel shall be holder of these privileges if the child is found by the court not to be of sufficient age and	

maturity to so consent. For the sole purpose of fulfilling his or her obligation to provide legal representation of the child, counsel for a child shall have access to all records with regard to the child maintained by a health care facility, as defined in Section 1545 of the Penal Code, health care providers, as defined in Section 6146 of the Business and Professions Code, a physician and surgeon or other health practitioner as defined in Section 11165.8 of the Penal Code or a child care custodian, as defined in Section 11165.7 of the Penal Code. Notwithstanding any other law, counsel shall be given access to all records relevant to the case which are maintained by state or local public agencies. All information requested from a child protective agency regarding a child who is in protective custody, or from a child's guardian ad litem, shall be provided to the child's counsel within 30 days of the request.

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

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

SEC. 46. Section 360.6 of the Welfare and Institutions Code is repealed.

~~360.6. (a) The Legislature finds and declares the following:(1)~~

See comments relating to Section 29 of the bill.

~~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.~~

~~(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.~~

~~(b) In all Indian child custody proceedings, as defined in the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), 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.~~

~~(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.~~

SEC. 47. Section 360.8 is added to the Welfare and Institutions Code , to read:

360.8. (a) When a proceeding under this chapter involves a child who is Indian but who does not meet the definition of "Indian child" in the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), the court may recognize the child's tribe and grant standing to participate as a party in the proceeding. The tribe may: (1) Be present at the hearing.

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

(3) Address the court.

(4) Receive notice of hearings.

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

See comments relating to Section 6 of the bill.

(6) Present evidence. (7) Submit written reports and recommendations to the court. (8) Perform other duties and responsibilities as requested or approved by the court. (b) Subdivision (a) applies when either: (1) The child is not eligible for membership in his or her tribe but is the biological grandchild of a member of the tribe or resides or is domiciled within the boundaries of an Indian reservation. (2) The child or his or her biological parent or grandparent is a member of a tribe that is not recognized as eligible for the services provided to Indians by the Secretary of the Interior. Those tribes include, but are not limited to, any tribe, band, or nation recognized as an Indian tribe by any state or local government agency or by Canada or any of its provinces.	
SEC. 48. Section 361 of the Welfare and Institutions Code is amended to read: 361. (a) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations. Any limitation on the right of the parent or guardian to make educational decisions for the child shall be specifically addressed in the court order. The limitations may not exceed those necessary to protect the child. If the court specifically limits the right of the parent or guardian to make educational decisions for the child, the court shall at the same time appoint a responsible adult to make educational decisions for the child until one of the following occurs: (1) The minor reaches 18 years of age, unless the child chooses not to make educational decisions for himself or herself, or is deemed by the court to be incompetent. (2) Another responsible adult is appointed to make educational decisions for the minor pursuant to this section. (3) The right of the parent or guardian to make educational decisions for the minor is fully restored. (4) A successor guardian or conservator is appointed. (5) The child is placed into a planned permanent living arrangement pursuant to paragraph (3) of subdivision (g) of Section	Section 361 of the Welf. & Inst. Code sets out the findings a court must make before removed from his or her parents in a dependency proceeding. Paragraph (6) of subdivision (c) is added and subdivision (d) amended to remind the court that in an Indian child custody proceeding there are two additional findings that need to be made under § 1912(d) and (e) of the ICWA.

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

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

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

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

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

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

(1) There is a substantial danger to the physical health, safety,

protection, or physical or emotional well-being of the minor or would be if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parents' or guardians' physical custody. The fact that a minor has been adjudicated a dependent child of the court pursuant to subdivision (e) of Section 300 shall constitute prima facie evidence that the minor cannot be safely left in the custody of the parent or guardian with whom the minor resided at the time of injury. The court shall consider, as a reasonable means to protect the minor, the option of removing an offending parent or guardian from the home. The court shall also consider, as a reasonable means to protect the minor, allowing a nonoffending parent or guardian to retain custody as long as that parent or guardian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm.

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

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

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

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

whereabouts of the parent is unknown and reasonable efforts to locate him or her have been unsuccessful.

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

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

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

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

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

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

361.31. (a) In any case in which an Indian child is removed from the physical custody of his or her parents or Indian custodian pursuant to Section 361, the child's placement shall comply with this section. (b) Any emergency removal, foster care, or guardianship placement of an Indian child shall be in the least restrictive setting which most approximates a family situation and in which the child's special needs, if any, may be met. The child shall also be placed within reasonable proximity to the child's home, taking into account any special needs of the child. Preference shall be given to the child's placement with one of the following, in descending priority order:

(1) A member of the child's extended family, as defined in Section

This section reiterates the placement preferences and standards required by § 1915 of the Act. In addition: Subdivision (f) requires confirmation that the tribe's prevailing social and cultural standards required to be considered under § 1915(d) of the ICWA have been taken into consideration, as verified by a qualified expert witness. This is an expansion of the role of the qualified expert witness, but since their testimony is required for foster care placements for other purposes, it should not be an onerous burden.

Subdivision (g) is added to affirmatively require agencies or courts involved in the placement of Indian children to use tribal services to try to secure a preferred placement

1903 of Title 25 of the United States Code. (2) A foster home licensed, approved, or specified by the child's tribe. (3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority. (4) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs. (c) In any adoptive placement of an Indian child, preference shall be given to a placement with one of the following, in descending priority order: (1) A member of the child's extended family, as defined in Section 1903 of Title 25 of the United States Code. (2) Other members of the child's tribe. (3) Another Indian family. (4) A non-Indian family approved by the Indian child's tribe. (d) Notwithstanding the placement preferences listed in subdivisions (b) and (c), if a different order of placement preference is established by the child's tribe, the court or agency effecting the placement shall follow the order of preference established by the tribe or in the agreement. (e) Where appropriate, the placement preference of the Indian child or parent shall be considered. In applying the preferences, a consenting parent's request for anonymity shall also be given weight by the court or agency effecting the placement. Unless there is clear and convincing evidence that placement within the order of preference applicable under subdivision (b), (c) or (d) would be harmful to the Indian child, consideration of the preference of the Indian child or parent or a parent's request for anonymity shall not be a basis for placing an Indian child outside of the applicable order of preference. (f) The prevailing social and cultural standards of the Indian community in which the parent or extended family members of an Indian child reside, or with which the parent or extended family members maintain social and cultural ties, or the prevailing social and cultural standards of the Indian child's tribe shall be applied in meeting the placement preferences under this section. A determination of the applicable prevailing social and cultural standards shall be confirmed by the testimony or other documented support of qualified	for the child and to assist in supervision of the placement, when such services are available. Subdivision (h) is added to clarify what evidence is needed to support a finding that good cause exists to deviate from the ICWA placement preferences. It also requires that active efforts be made to secure a placement with a family who is committed to enabling the child to have a connection with her extended family and tribe. These latter two subdivisions are drawn from the Iowa Indian Child Welfare Act. Subdivision (i) reiterates the requirements of § 1915(c) of the ICWA.

expert witnesses.

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

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

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

SEC. 50. Section 361.4 of the Welfare and Institutions Code is amended to read:

361.4. (a) Prior to placing a child in the home of a relative, or the home of any prospective guardian or other person who is not a licensed or certified foster parent, the county social worker shall visit the home to ascertain the appropriateness of the placement. (b) Whenever a child may be placed in the home of a relative, or the home of any prospective guardian or other person who is not a licensed or certified foster parent, the court or county social worker placing the child shall cause a state and federal level criminal records check to be conducted by an appropriate governmental agency through the California Law Enforcement Telecommunications System (CLETS) pursuant to Section 16504.5. The criminal records check shall be conducted with regard to all persons over the age of 18 years living in the home, and on any other person over the age of 18 years, other than professionals providing professional services to the child, known to the placing entity who may have significant contact with the

Section 361.4 of the Welf. & Inst. Code establishes the criteria and procedures for granting criminal records exemptions, which is necessary in order to place a child in the home of a person with a criminal history and available upon request by a tribe. This amendment would delete the sunset provision contained in subdivision (g).

child, including any person who has a familial or intimate relationship with any person living in the home. A criminal records check may be conducted pursuant to this section on any person over the age of 14 years living in the home who the county social worker believes may have a criminal record. Within five judicial days following the criminal records check conducted through the California Law Enforcement Telecommunications System, the social worker shall ensure that a fingerprint clearance check of the relative and any other person whose criminal record was obtained pursuant to this subdivision is initiated through the Department of Justice to ensure the accuracy of the criminal records check conducted through the California Law Enforcement Telecommunications System and shall review the results of any criminal records check to assess the safety of the home. The Department of Justice shall forward fingerprint requests for federal level criminal history information to the Federal Bureau of Investigation pursuant to this section. (c) Whenever a child may be placed in the home of a relative, or a prospective guardian or other person who is not a licensed or certified foster parent, the county social worker shall cause a check of the Child Abuse Index pursuant to subdivision (a) of Section 11170 of the Penal Code to be requested from the Department of Justice. The Child Abuse Index check shall be conducted on all persons over the age of 18 years living in the home. (d) (1) If the criminal records check indicates that the person has no criminal record, the county social worker and court may consider the home of the relative, prospective guardian, or other person who is not a licensed or certified foster parent for placement of a child. (2) If the criminal records check indicates that the person has been convicted of a crime that would preclude licensure under Section 1522 of the Health and Safety Code, the child may not be placed in the home, unless a criminal records exemption has been granted by the county, based on substantial and convincing evidence to support a reasonable belief that the person with the criminal conviction is of such good character as to justify the placement and not present a risk of harm to the child pursuant to paragraph (3). (3) (A) A county may issue a criminal records exemption only if that county has been granted permission by the Director of Social Services to issue criminal records exemptions. The county may file a	

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

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

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

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

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

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

(f) Upon request from an Indian tribe, the State Department of Social Services shall evaluate an exemption request, if needed, to allow placement into an Indian home that the tribe has designated for placement under the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) that would otherwise be barred under this section. However, if the county with jurisdiction over the child that is the subject of

the tribe's request has established an approved procedure pursuant to paragraph (3) of subdivision (d), the tribe may request that the county evaluate the exemption request. Once a tribe has elected to have the exemption request reviewed by either the State Department of Social Services or the county, the exemption decision may only be made by that entity. Nothing in this subdivision limits the duty of a county social worker to evaluate the home for placement or to gather information needed to evaluate an exemption request.

~~(g) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.~~

SEC. 51. Section 361.7 is added to the Welfare and Institutions Code , to read:

361.7. (a) Notwithstanding Section 361.5, a party seeking an involuntary foster care placement of, or termination of parental rights over, an Indian child shall provide evidence to the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. The court shall not order the placement or termination, unless the evidence of active efforts shows there has been a vigorous and concerted level of casework beyond the level that typically constitutes reasonable efforts as defined in Section 727.4. Reasonable efforts shall not be construed to be active efforts. The active efforts shall be made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe. Active efforts shall utilize the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregivers. Active efforts shall include, but are not limited to, all of the following: (1) A request to the Indian child's tribe to convene traditional and customary support and resolution actions or services.

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

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

This section is added to the Welf. & Inst. Code to clarify what constitutes "active efforts" to reunify the Indian family under § 1912(d) of the ICWA. This provision would affirm that this ICWA requirement supersedes inconsistent state law and have the effect of overturning In re Letitia V. v. Superior Court (2000) 81 Cal.App.4th 1009 (the court may deny reunification services when substantial but unsuccessful efforts have been recently been made in another proceeding).

The language here is drawn from the Oregon Department of Human Services' regulations, Section 413-070-0160.

The "clear and convincing evidence" standard is consistent with In re Michael G. (1998) 63 Cal.App.4th 700.

verify

CWDA - but should they say don't file if they can't follow the placements then get overturned later

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

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

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

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

SEC. 52. Section 366 of the Welfare and Institutions Code is amended to read:

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

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

(C) Whether there should be any limitation on the right of the parent or guardian to make educational decisions for the child. That limitation shall be specifically addressed in the court order and may not exceed those necessary to protect the child. Whenever the court specifically limits the right of the parent or guardian to make

Section 366 sets out the circumstances the court must consider at review hearings, including whether the agency has made reasonable efforts to reunify the family. Subdivision (a)(1)(B) is amended by the bill to direct the court to apply the "active efforts" standard required by the ICWA.

Same as 1st page

educational decisions for the child, the court shall at the same time appoint a responsible adult to make educational decisions for the child pursuant to Section 361. (D) (i) Whether the child has other siblings under the court's jurisdiction, and, if any siblings exist, all of the following: (I) The nature of the relationship between the child and his or her siblings. (II) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002. (III) If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate. (IV) If the siblings are not placed together, the frequency and nature of the visits between siblings. (V) The impact of the sibling relationships on the child's placement and planning for legal permanence. (VI) The continuing need to suspend sibling interaction, if applicable, pursuant to subdivision (c) of Section 16002. (ii) The factors the court may consider in making a determination regarding the nature of the child's sibling relationships may include, but are not limited to, whether the siblings were raised together in the same home, whether the siblings have shared significant common experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interests. (E) The extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care. (2) The court shall project a likely date by which the child may be returned to and safely maintained in the home or placed for adoption, legal guardianship, or in another planned permanent living arrangement. (b) Subsequent to the hearing, periodic reviews of each child in foster care shall be conducted pursuant to the requirements of Sections 366.3 and 16503. (c) If the child has been placed out of state, each review described in subdivision (a) and any reviews conducted pursuant to Sections 366.3 and 16503 shall also address whether the out-of-state	

placement continues to be the most appropriate placement selection and in the best interests of the child.

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

SEC. 53. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.(b) At the hearing, that shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

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

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the

Section 366.26 deals with the Permanency Planning Hearing (or Selection and Implementation Hearing), at which the court selects a permanent plan of long-term foster care, guardianship or adoption for the child and, if adoption is selected, terminates parental rights.

Subdivision (c)(1)(A) is amended to include Indian custodians within the meaning of "guardian" for the purpose of applying the exception to adoption for when a child has a beneficial relationship with a parent or guardian.

Subdivision (c)(1)(D) is amended and (c)(1)(F) added to create an exception to adoption for when the child is living with a relative who is willing and capable of providing the child with a stable and permanent placement and the removal of the child would be detrimental to the child. The term "relative" is clarified as including "extended family members" in the case of an Indian child custody proceeding.

Subdivision (c)(1)(E) establishes an exception to adoption when it would substantially interfere with a sibling relationship. This is amended by the bill to require the court to consider the benefit to the child of establishing and maintaining a sibling relationship when the child's removal and lack of contact with siblings prevented the child from establishing such a relationship. This amendment would narrow the ruling in *In re Celine R.* (2003) 41 Cal.4th 45

Subdivision (c)(1)(G) is added to create an exception to adoption for Indian children when there is a compelling reason not to. The Acompelling reason@ is a general

child within a period not to exceed 180 days.

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

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

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

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

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship. *"Guardians" shall include an "Indian custodian" as defined in the Indian Child Welfare Act (25 U.S.C. 1903(6))* .

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

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

exception to adoption permitted under the ASFA. 42 U.S.C. ' 675(5)(E)(i). Two examples of compelling reasons are included: when the termination of parental rights would substantially interfere with the child's connection to his or her tribal community or tribal membership rights, or when the child's tribe has identified an alternative permanent plan. This latter exception reflects language in the regulations implementing the ASFA, which provides that a compelling reason to order a permanent plan other than adoption, guardianship or permanent placement with a fit and willing relative may include Athe Tribe has identified another planned permanent living arrangement.@ 45 C.F.R. ' 1356.21(h)(3)(iii).

Subdivision (c)(2) is amended to direct the court to make the evidentiary findings required by the ICWA prior to termination of parental rights. Subparagraph (B)(ii) requires the findings to be made at the 366.26 hearing, which has the effect of overruling *In re Matthew Z.* (2000) 80 Cal.App.4th 545. In *Matthew Z.*, the court held that the finding of serious physical or emotional harm need not be made at the 366.26 hearing if it had been made at the hearing setting the 366.26 hearing and the hearing had not been rendered stale by changed circumstances or the passage of a period of time significantly longer than 120 days, despite the clear wording of 25 U.S.C. § 1912(f) requiring that such a finding be made in the proceeding terminating parental rights. The Matthew Z. ruling is problematic for many tribes who, due to lack of resources, often do not intervene with counsel until reunification has failed and the 366.26 hearing has been set.

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

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

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

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

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

this is broader than Indian children don't need to change everything, just add relative def.

OK - Sep. & I.C.

(i) Termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights. *(ii) The child's tribe has identified guardianship, long-term foster care with a fit and willing relative, or another planned permanent living arrangement for the child.* If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), ~~or~~ (E), *(F) or (G),* it shall state its reasons in writing or on the record. (2) The court shall not terminate parental rights ~~if at~~ *unless:* *(A)* At each ~~and every~~ hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were ~~not~~ made or that reasonable services were ~~not~~ offered or provided. *(B) In the case of an Indian child:* *(i) At the hearing terminating parental rights and at each prior hearing at which the court was required to consider active efforts or services the court has found, supported by clear and convincing evidence, that active efforts were made in accordance with Section 361.7.* *(ii) The court has made a determination at the hearing terminating parental rights, supported by evidence beyond a reasonable doubt, including testimony of one or more "qualified expert witnesses" as defined in Section 224.6, that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child.* (3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents	

for each child shall, to the extent possible, ask each child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more. (4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), ~~or~~ (E) , *(F), or (G)* of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. A child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate. (B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal	

would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

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

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

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

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

proceeding. (e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court. (f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows: (1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel 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. (2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent. (3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount	

shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

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

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

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

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

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

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

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

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

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

(j) If the court, by order or judgment, declares the child free

from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

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

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

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

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

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

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

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the

findings and orders made pursuant to this section.

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

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

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

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

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

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

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

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

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

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

SEC. 54. Section 727.4 of the Welfare and Institutions Code is amended to read:

727.4. (a) *(1)* Notice of any hearing pursuant to Section 727, 727.2, or 727.3 shall be mailed by the probation officer to the minor, the minor's parent or guardian, any adult provider of care to the minor including, but not limited to,

Section 727.4 sets out the notice requirements in juvenile delinquency proceedings. Subdivision (a)(1) is amended to direct the court to comply with the notice requirements set out in Section 31 of the Bill.

foster parents, relative caregivers, preadoptive parents, community care facility, or foster family agency , and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date of the hearing. The notice shall contain a statement regarding the nature of the status review or permanency planning hearing and any change in the custody or status of the minor being recommended by the probation department. The notice shall also include a statement informing the foster parents, relative caregivers, or preadoptive parents that he or she may attend all hearings or may submit any information he or she deems relevant to the court in writing. The foster parents, relative caregiver, and preadoptive parents are entitled to notice and opportunity to be heard but need not be made parties to the proceedings. Proof of notice shall be filed with the court. *(2) If the court or probation officer knows or has reason to know that the minor may be an Indian child, any notice sent under this section shall comply with the requirements of Section 224.2.* (b) At least 10 calendar days prior to each status review and permanency planning hearing, after the hearing during which the court orders that the care, custody and control of the minor to be under the supervision of the probation officer for placement pursuant to subdivision (a) of Section 727, the probation officer shall file a social study report with the court, pursuant to the requirements listed in Section 706.5. (c) The probation department shall inform the minor, the minor's parent or guardian, and all counsel of record that a copy of the social study prepared for the hearing will be available 10 days prior to the hearing and may be obtained from the probation officer. (d) As used in Article 15 (commencing with Section 625) to Article 18 (commencing with Section 725), inclusive: (1) "Foster care" means residential care provided in any of the settings described in Section 11402. (2) "At risk of entering foster care" means that conditions within a minor's family may necessitate his or her entry into foster care unless those conditions are resolved. (3) "Preadoptive parent" means a licensed foster parent who has	Subdivision (d)(5), which defines "reasonable efforts," is amended by adding subparagraph (D) to direct the court to apply the "active efforts" standard required by the ICWA. Subdivision (d)(6), which defines "relative," is amended to include "extended family member" as defined by ICWA.

been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency. (4) "Date of entry into foster care" means the date that is 60 days after the date on which the minor was removed from his or her home, unless one of the exceptions below applies: (A) If the minor is detained pending foster care placement, and remains detained for more than 60 days, then the date of entry into foster care means the date the court adjudges the minor a ward and orders the minor placed in foster care under the supervision of the probation officer. (B) If, before the minor is placed in foster care, the minor is committed to a ranch, camp, school, or other institution pending placement, and remains in that facility for more than 60 days, then the "date of entry into foster care" is the date the minor is physically placed in foster care. (C) If at the time the wardship petition was filed, the minor was a dependent of the juvenile court and in out-of-home placement, then the "date of entry into foster care" is the earlier of the date the juvenile court made a finding of abuse or neglect, or 60 days after the date on which the child was removed from his or her home. (5) "Reasonable efforts" means: (A) Efforts made to prevent or eliminate the need for removing the minor from the minor's home ~~—;—~~ . (B) Efforts to make it possible for the minor to return home, including, but not limited to, case management, counseling, parenting training, mentoring programs, vocational training, educational services, substance abuse treatment, transportation, and therapeutic day services ~~—; and—~~ . (C) Efforts to complete whatever steps are necessary to finalize a permanent plan for the minor. *(D) In child custody proceedings involving an Indian child, shall also include "active efforts" as defined in Section 361.7.* (6) "Relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," "grand," or the spouse of any of these persons even if the marriage was terminated by death or dissolution. *"Relative" shall also include an*	

"extended family member" as defined in the Indian Child Welfare Act (25 U.S.C. Sec. 1903(2)). (7) "Hearing" means a noticed proceeding with findings and orders that are made on a case-by-case basis, heard by either of the following: (A) A judicial officer, in a courtroom, recorded by a court reporter. (B) An administrative panel, provided that the hearing is a status review hearing and that the administrative panel meets the following conditions: (i) The administrative review shall be open to participation by the minor and parents or legal guardians and all those persons entitled to notice under subdivision (a). (ii) The minor and his or her parents or legal guardians receive proper notice as required in subdivision (a). (iii) The administrative review panel is composed of persons appointed by the presiding judge of the juvenile court, the membership of which shall include at least one person who is not responsible for the case management of, or delivery of services to, the minor or the parents who are the subjects of the review. (iv) The findings of the administrative review panel shall be submitted to the juvenile court for the court's approval and shall become part of the official court record. SEC. 55. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.	

This section is added to the Welf. & Inst. Code to clarify what constitutes "active efforts" to reunify the Indian family under § 1912(d) of the ICWA. This provision would affirm that this ICWA requirement supersedes inconsistent state law and have the effect of overturning *In re Letitia V. v. Superior Court* (2000) 81 Cal.App.4th 1009 (the court may deny reunification services when substantial but unsuccessful efforts have recently been made in another proceeding).

The language here is drawn from the Oregon's Department of Human Services' regulations, Section 413-070-0160 (see arcweb.sos.state.or.us/rules/OARS_400/OAR_413/413_070.html).

The "clear and convincing evidence" standard is consistent with *In re Michael G.* (1998) 63 Cal.App.4th 700.

DECLARATION OF SERVICE

In re: W. B., Jr. Supreme Court No. S181638

I hereby declare that I am a citizen of the United States, am over eighteen years of age, and am not a party in the above-entitled action. I reside in the County of Los Angeles and my business address is 1158 26th Street #291, Santa Monica, CA 90403.

On September 20, 2010, I served the attached document described as APPELLANT'S REQUEST FOR JUDICIAL NOTICE on the parties in the above-named case by enclosing true copies of the document in sealed envelopes with postage fully prepaid thereon. I then delivered the envelopes to the U.S. Postal Service in Los Angeles, California, addressed as follows:

Office of the Attorney General
110 West "A" Street, Suite 1100
P.O. Box 85266-5299
San Diego, CA 92186-5266

Office of the District Attorney
Appeals & Writ Division
3960 Orange Street
Riverside, CA 92501

Michael Burns, Esq.
Juvenile Defense Panel
9991 County Farm Road
Riverside, CA 92503

Appellate Defenders, Inc.
555 West Beech Street, Suite 300
San Diego, CA 92101

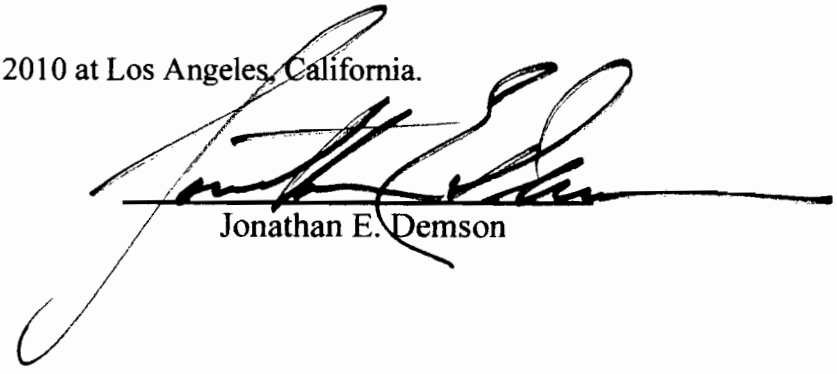
Office of the Clerk of the Court
Court of Appeal of California
Fourth Appellate District, Division Two
3389 Twelfth Street
Riverside, CA 92501

Clerk of the Superior Court
Riverside Juvenile Court
9991 County Farm Road
Riverside, CA 92503

I mailed an additional copy to appellant W.B., Jr.

I, Jonathan E. Demson, declare under penalty of perjury that the foregoing is true and correct.

Executed on September 20, 2010 at Los Angeles, California.



Jonathan E. Demson