

Title	Juvenile Law: Tribal Customary Adoption (Assem. Bill 1325 ([Cook]; Stats. 2009, ch. 287) (amend Cal. Rules of Court, rules 5.502, 5.690, 5.708, 5.715, 5.720, 5.722, 5.725, 5.726, 5.727, 5.728, 5.730 and 5.740; revise forms JV-300, JV-320, JV-321, JV-327, ADOPT-050, ADOPT-200, ADOPT-210, ADOPT-215, and ADOPT-220)
Summary	This proposal is required to implement Assembly Bill 1325 (Cook; Stats. 2009, ch. 287), which provides authority for courts in juvenile dependency cases to recognize and adopt tribal customary adoption as defined in new Welfare and Institutions Code section 366.24 as the permanent plan for an Indian child. As set out in Welfare and Institutions Code section 366.24, tribal customary adoption is an adoption by or through the custom, traditions, or law of an Indian child's tribe without requiring termination of the parental rights of the child's birth parents. AB 1325 requires the Judicial Council to adopt implementing rules and forms effective July 1, 2010.
Source	Family and Juvenile Law Advisory Committee Hon. Jerilyn L. Borack and Hon. Susan D. Huguenor, Cochairs
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Discussion	<p>Under state and federal law, adoption is the preferred permanent plan for a dependent child who cannot be reunified with his or her parents in a timely manner. Traditionally, legal adoption in California requires the termination of the parental rights of a child's birth parents. Termination of parental rights is a concept that many tribal communities find objectionable. Assembly Bill 1325 makes various amendments to the provisions of the Welfare and Institutions Code¹ to allow, in the case of an Indian child, adoption through the custom, traditions, or law of the child's tribe without requiring termination of parental rights. Implementing the provisions of AB 1325 requires various changes to Judicial Council rules and forms governing the formulation and selection of a permanent plan for an Indian child and for procedures for adopting an Indian child for whom the permanent plan is tribal customary adoption.</p> <p>The committee recommends amendments to rule 5.502 to add definitions relating to tribal customary adoption and amendments to rules relating to concurrent planning, review hearings, the selection</p>

¹ All further code references are to the Welfare and Institutions Code unless otherwise stated.

and implementation hearing, a prospective adoptive parent, the child's consent, and postpermanency review hearings.

Definitions and use of terms

The committee recommends adding to the definitions contained in rule 5.502 definitions for the terms "Consultation with the child's tribe" or "consulted with the child's tribe," "Modification of parental rights," and "Tribal customary adoption" and amending the definition of "Preadoptive parent" to include reference to individuals designated by an Indian child's identified Indian tribe as adoptive parents for the purpose of a tribal customary adoption.

Concurrent planning

The committee recommends amendments to rule 5.690(c) concerning concurrent planning to comply with the requirements of section 358.1 (j), which requires consideration in all evaluations and reports beginning at disposition, in consultation with an Indian child's tribe, of whether tribal customary adoption is an appropriate permanent plan for an Indian child if reunification fails.

Review hearings

The committee recommends amendments to rule 5.708, general review hearing requirements, and rules 5.715, 5.720, and 5.722, requirements for 12-, 18-, and 24- month review hearings, to comply with the requirement added as section 366.21(i)(1)(H) and 366.22(c)(1)(G) in AB 1325 that every assessment prepared for a status review hearing in the case of an Indian child must include discussion of whether tribal customary adoption should be considered, in consultation with the child's identified Indian tribe, as a permanent plan option.

Selection and implementation hearing

The committee recommends amendments to rule 5.725, governing selection of the child's permanent plan. In accordance with the requirements of sections 366.24 and 366.26, as set out in AB 1325, the proposed revisions will recognize that in cases involving Indian children when the child's identified Indian tribe has identified tribal customary adoption as the tribe's preferred permanent plan, tribal customary adoption may be considered by the court as a permanent plan option on a par with other adoptions. As with the proposed amendments contained in rules 5.708, 5.715, 5.720, and 5.722, the committee also recommends similar changes to rule 5.725 to ensure that the child's identified Indian tribe is consulted as to whether tribal customary adoption is an appropriate permanent plan for the child. In

accordance with the procedure contained in new section 366.24, and amended section 366.26, the proposed amendments to rule 5.725 would also allow the court to continue a selection hearing involving a tribal customary adoption for up to 120 days with court discretion to permit a further continuance of up to 60 days in order for the Indian child's identified Indian tribe to complete its own process to issue a tribal customary adoption order. The tribe's customary adoption order would then be filed with the court at least 20 days before the continued hearing. If the tribe does not file the tribal customary adoption order, the court would make new findings and orders and select a new permanent plan for the child.

When the tribe's customary adoption order is filed, sections 366.24(8), (13), (14) provide for it to be examined by the state court at the continued selection and implementation hearing to consider whether it should be granted full faith and credit. If it is granted full faith and credit the agency is authorized to make the tribal customary adoptive placement and sign a tribal customary adoptive placement agreement. Once the final adoption decree has been issued the court shall terminate jurisdiction.

Prospective adoptive parents

The committee recommends changes to rules 5.726, 5.727, and 5.728, which define who qualifies as a prospective adoptive parent and accord certain rights to individuals who qualify as prospective adoptive parents. The proposed changes would recognize that when a child's permanent plan is tribal customary adoption, individuals designated by an Indian child's tribe as the adopting parents, qualify as prospective adoptive parents.

Consent of child not required

The committee recommends changes to rule 5.730 to reflect that, unlike other adoptions, the consent of a child over the age of 12 is not required for a tribal customary adoption. New section 8600.5(a) of the Family Code provides that Part 2 of the Family Code, including section 8602—the section that requires the consent of a child over the age of 12 years to an adoption—does not apply to tribal customary adoption under section 366.24 of the Welfare and Institutions Code. The Assembly Bill analysis, dated April 14, 2009, on page 3, item 13 also describes that the bill “exempts tribal customary adoption from various provisions of the Family Code applicable to adoption generally, including... the requirement that a child over the age of 12 years consent to the adoption.” It should be noted, however, that

section 366.24(c)(7) provides that “[t]he child, birth parents, or Indian custodian and the tribal customary adoptive parents and their counsel, if applicable, may present evidence to the tribe regarding the tribal customary adoption and the child’s best interest.” Further, nothing in AB 1325 alters section 361.31(e), which provides that, where appropriate, the placement preference of an Indian child of sufficient age must be considered. This is consistent with the “Guidelines for State Courts; Indian Child Custody Proceedings” under the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) issued by the Bureau of Indian Affairs. The guidelines provide that the request of a child of sufficient age may be considered in determining the child’s placement. The committee concludes, therefore, that while the consent of a child over the age of 12 is not required for a tribal customary adoption, the wishes of a child are still an important and appropriate factor for the court to consider when determining whether tribal customary adoption is the appropriate permanent plan for an Indian child. The committee has included an advisory comment to the rule that reflects this conclusion.

Postpermanency review hearings

The committee recommends changes to rule 5.740, which deals with hearings subsequent to a permanent plan, to reflect that tribal customary adoption is now among the permanent plans that may be selected for an Indian child.

Interstate compact on the placement of children

AB 1325 makes no specific reference to the interstate compact on the placement of children (“ICPC”). Section 7907.3 of the Family Code says that the ICPC does 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. § 1901 et seq.) In a tribal customary adoption, the tribal court does not take jurisdiction of the case. The committee concludes, therefore, that if an out-of -state placement is identified as the child’s adoptive home for the purposes of a tribal customary adoption, the ICPC would apply to a placement made so long as the child remains a dependent of the juvenile court. The committee invites comments regarding the application of the ICPC.

Child support obligations of biological parents

Section 366.24(c)(10) sets out certain requirements for a tribal customary adoption order. In particular, it states that “[T]he order shall not include any child support obligation from the birth parents or

Indian custodian. There shall be a conclusive presumption that any parental rights or obligations not specified in the tribal customary adoption order shall vest in the tribal customary adoptive parents.” The committee concludes that the statute precludes a local child support enforcement agency from enforcing an action to collect child support against the biological parent of a child who has been adopted under to a tribal customary adoption.

Implementation of AB 1325 also requires revision to a number of forms. The committee recommends changes to mandatory form JV-300, *Notice of Hearing on Selection of a Permanent Plan*, to recognize that tribal customary adoption is among the options that may be selected as a permanent plan for an Indian child.

The committee also recommends changes to mandatory form JV-320, *Orders Under Welfare and Institutions Code Sections 366.26, 727.3, 727.31*, to recognize that tribal customary adoption is a permanency option for an Indian child and authorize the specific procedural requirements in AB 1325 surrounding tribal customary adoption orders.

Form JV-320 was revised in the spring 2009 rules and forms cycle, as part of the proposal titled: “Appellate Procedure: Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases.” That proposal was adopted by the Judicial Council at its October 23, 2009, meeting, with an effective date of July 1, 2010. The current proposal seeks to further amend form JV-320, with a proposed effective date of July 1, 2010. If adopted by the Judicial Council, the proposed version of this form would supersede the version adopted in October and would incorporate the changes from that earlier version.

The committee recommends changes to mandatory forms JV-321, *Request for Prospective Adoptive Parent Designation*, and JV-327, *Prospective Adoptive Parent Designation Order*, to acknowledge that individuals identified by an Indian child’s tribe as adoptive parents through the tribal customary adoption process qualify as prospective adoptive parents.

The committee recommends changes to forms ADOPT-050, *How to Adopt a Child in California*; ADOPT-200, *Adoption Request*; ADOPT-210, *Adoption Agreement*; and ADOPT-215, *Adoption Order*; to include a discussion of and reflect the specific requirements for completion of a tribal customary adoption.

The committee recognizes that implementation of AB 1325 could benefit from the revision of several juvenile forms in addition to those listed here. In particular, the committee has identified three optional forms for future revision: JV-415, *Findings and Orders After Dispositional Hearing*; JV-421, *Dispositional Attachment: Removal From Custodial Parent-Placement With Nonparent*; and JV-445, *Findings and Orders After Postpermanency Hearing-Parental Rights Terminated; Permanent Plan of Adoption*. Since these forms are optional and must be revised in order to comply with Assembly Bill 938 (Committee on Judiciary); (Stats. 2009, ch. 261), which comes into effect January 1, 2011, the committee is recommending that they be revised at that time, in order to avoid the additional expense of revising forms multiple times and to minimize the burden on local courts.

The tribal customary adoption provisions, contained in AB 1325, will sunset January 1, 2014, unless a later enacted statute, that is enacted before January 1, 2014 and deletes or extends that date. As a result of this sunset provision, AB 1325 also contains versions of the relevant sections that will come into effect on January 1, 2014 unless the sunset date has been extended. This makes the text of AB 1325 quite lengthy. For ease of reference we have extracted the main substantive provisions of AB 1325. They are attached at pages 40 –60. The proposed amended rules and revised forms are attached at pages 7 –39.

Attachments

Rules 5.502, 5.690, 5.708, 5.715, 5.720, 5.722, 5.725, 5.726, 5.727, 5.728, 5.730 and 5.740 of the California Rules of Court would be amended effective July 1, 2010, to read:

1 **Rule 5.502. Definitions and use of terms**

2
3 Definitions (§§ 202(e), 319, 361, 361.5(a)(3), 366(a)(1)(B), 628.1, 636, 726,
4 727.3(c)(2), 727.4(d); 20 U.S.C. § 1415)

5
6 As used in these rules, unless the context or subject matter otherwise requires:

7
8 (1) – (6) ***

9
10 (7) “Consultation with the child’s tribe” or “consulted with the child’s tribe” in
11 relation to a tribal customary adoption under Welfare and Institutions Code
12 section 366.24 means and includes discussion and communication between
13 the agency and the authorized representative of the child’s tribe regarding the
14 case plan, the child’s placement, and the appropriate permanent plan for the
15 child, including whether or not a tribal customary adoption would be
16 appropriate.

17
18 ~~(7)~~(8)

19
20 ~~(8)~~(9)

21
22 ~~(9)~~(10)

23
24 ~~(10)~~(11)

25
26 ~~(11)~~(12)

27
28 ~~(12)~~(13)

29
30 ~~(13)~~(14)

31
32 ~~(14)~~(15)

33
34 ~~(15)~~(16)

35
36 ~~(16)~~(17)

37

1 ~~(17)~~(18)

2

3 ~~(18)~~(19)

4

5 ~~(19)~~(20)

6

7 (22) “Modification of parental rights” means a modification of parental rights
8 through a tribal customary adoption under Welfare and Institutions Code
9 section 366.24.

10

11 ~~(20)~~(22)

12

13 ~~(21)~~(23)

14

15 ~~(22)~~(24)

16

17 ~~(23)~~(25) “Preadoptive parent” means a licensed foster parent who has been
18 approved to adopt a child by the California State Department of Social
19 Services, when it is acting as an adoption agency, or by a licensed adoption
20 agency, or, in the case of an Indian child for whom tribal customary adoption
21 is the permanent plan, the individual designated by the child’s identified
22 Indian tribe as the prospective adoptive parent.

23

24 ~~(24)~~(26) ***

25

26 ~~(25)~~(27) ***

27

28 ~~(26)~~(28) ***

29

30 ~~(27)~~(29) ***

31

32 ~~(28)~~(30) ***

33

34 ~~(29)~~(31) ***

35

36 ~~(30)~~(32) ***

37

38 ~~(31)~~(33) ***

39

40 ~~(32)~~(34) ***

41

42 ~~(33)~~(35) ***

43

1 (36) “Tribal customary adoption” means adoption by and through the tribal
2 custom, traditions, or law of an Indian child’s tribe and under Welfare and
3 Institutions Code section 366.24. Termination of parental rights is not
4 required to effect a tribal customary adoption.
5

6 **Rule 5.690. General conduct of disposition hearing**

7
8 (a)–(b) ***

9
10 (c) **Case plan (§ 16501.1)**

11
12 Whenever child welfare services are provided, the social worker must
13 prepare a case plan.

14
15 (1) ***

16
17 (2) The court must consider the case plan and must find as follows:

18
19 (A) The social worker solicited and integrated into the case plan the
20 input of the child, the child’s family, the child’s identified Indian
21 tribe, including consultation with the child’s tribe on whether
22 tribal customary adoption as defined in section 366.24 is an
23 appropriate permanent plan for the child if reunification is
24 unsuccessful, and other interested parties; or

25
26 (B) ***

27
28 (3) ***
29

30 **Rule 5.708. General review hearing requirements**

31
32 (a)–(b) ***

33
34 (c) **Reports (§§ 366.05, 366.1, 366.21, 366.22, 366.25)**

35
36 Before the hearing, the social worker must investigate and file a report
37 describing the services offered to the family, progress made, and, if relevant,
38 the prognosis for return of the child to the parent or legal guardian.

39
40 (1) ***

41
42 (2) At least 10 calendar days before the hearing, the social worker must file
43 the report and provide copies to the parent or legal guardian and his or

1 her counsel, to counsel for the child, ~~and~~ to any CASA volunteer, and,
2 in the case of an Indian child, to the child's identified Indian tribe. The
3 social worker must provide a summary of the recommendations to any
4 foster parents, relative caregivers, or certified foster parents who have
5 been approved for adoption.

6
7 (3) ***

8
9 (d)–(f) ***

10
11 (g) **Case plan (§§ 16001.9, 16501.1)**

12
13 The court must consider the case plan submitted for the hearing and must
14 find as follows:

15
16 (1)–(4) ***

17
18 (5) In the case of an Indian child, the agency consulted with the child's
19 tribe and the tribe was actively involved in the development of the case
20 plan and plan for permanent placement, including whether tribal
21 customary adoption is an appropriate permanent plan for the child if
22 reunification is unsuccessful; or

23
24 (6) In the case of an Indian child, the agency did not consult with the
25 child's tribe. If the court makes such a finding, the court must order the
26 agency to consult with the tribe, unless the court finds that the tribe is
27 unable, unavailable, or unwilling to participate; and

28
29 ~~(5)~~ (7) ***

30
31 (h)–(o) ***

32
33 **Rule 5.715. Twelve-month permanency hearing**

34
35 (a) ***

36
37 (b) **Determinations and conduct of hearing (§§ 361.5, 366, 366.1, 366.21)**

38
39 At the hearing, the court and all parties must comply with all relevant
40 requirements and procedures in rule 5.708, General review hearing
41 requirements. The court must make all appropriate findings and orders
42 specified in rule 5.708 and proceed as follows:
43

1 (1)–(4) ***

2
3 (5) If the child is not returned to his or her parent or legal guardian, the
4 court must consider and state, for the record, in-state and out-of-state
5 options for permanent placement, including, in the case of an Indian
6 child, whether:

7
8 (A) The agency has consulted the child’s tribe about tribal customary
9 adoption;

10
11 (B) The child’s tribe concurs with tribal customary adoption; and

12
13 (C) Tribal customary adoption is an appropriate permanent plan for
14 the child.

15
16 **Rule 5.720. Eighteen-month permanency review hearing**

17
18 (a) ***

19
20 (b) **Determinations and conduct of hearing (§§ 361.5, 366.22)**

21
22 At the hearing the court and all parties must comply with all relevant
23 requirements and procedures in rule 5.708, General review hearing
24 requirements. The court must make all appropriate findings and orders
25 specified in rule 5.708 and proceed as follows:

26
27 (1)–(3) ***

28
29 (4) If the child is not returned to his or her parent or legal guardian, the
30 court must consider and state, for the record, in-state and out-of-state
31 options for permanent placement, including, in the case of an Indian
32 child, whether:

33
34 (A) The agency has consulted the child’s tribe about tribal customary
35 adoption;

36
37 (B) The child’s tribe concurs with tribal customary adoption; and

38
39 (C) Tribal customary adoption is an appropriate permanent plan for
40 the child.

41
42 **Rule 5.722. Twenty-four-month subsequent permanency review hearing**

1 (a) ***

2
3 (b) **Determinations and conduct of hearing (§ 366, 366.1, 366.25)**

4
5 At the hearing, the court and all parties must comply with all relevant
6 requirements and procedures in rule 5.708, General review hearing
7 requirements. The court must make all appropriate findings and orders
8 specified in rule 5.708 and proceed as follows:

9
10 (1) – (2) ***

11
12 (3) If the child is not returned to his or her parent or legal guardian, the
13 court must consider and state, for the record, in-state and out-of-state
14 options for permanent placement, including, in the case of an Indian
15 child, whether:

16
17 (A) The agency has consulted the child’s tribe about tribal customary
18 adoption;

19
20 (B) The child’s tribe concurs with tribal customary adoption; and

21
22 (C) Tribal customary adoption is an appropriate permanent plan for
23 the child.

24
25 **Rule 5.725. Selection of permanent plan (§§ 366.26, 727.31)**

26
27 (a)–(c) ***

28
29 (d) **Conduct of hearing**

30
31 At the hearing, the court must state on the record that the court has read and
32 considered the report of petitioner, the report of any CASA volunteer, the
33 case plan submitted for this hearing, any report submitted by the child's
34 caregiver under section 366.21(d), and any other evidence, and must proceed
35 as follows:

36
37 (1) In the case of an Indian child, when, after the agency has consulted
38 with the tribe, the court has, with the concurrence of the tribe,
39 determined that tribal customary adoption is the appropriate permanent
40 plan for the child, order a tribal customary adoption in accordance with
41 section 366.24; or

1 ~~(1)~~(2) Order parental rights terminated and the child, placed for adoption if
2 the court determines, by clear and convincing evidence, that it is likely
3 the child will be adopted, unless:

4
5 (A)– (B) ***

6
7 (C) The court finds a compelling reason to determine that termination
8 would be detrimental to the child because of the existence of one
9 of the following circumstances:

10
11 (i)–(v) ***

12
13 (vi) The child is an Indian child and termination of parental
14 rights would substantially interfere with the child’s
15 connection to his or her tribal community or the child’s
16 tribal membership rights, or the child’s tribe has identified
17 guardianship, long-term foster care with a fit and willing
18 relative, tribal customary adoption, or another planned
19 permanent living arrangement for the child.

20
21 ~~(2)~~(3) ***

22
23 ~~(3)~~(4) ***

24
25 ~~(4)~~(5) If the court finds termination of parental rights to be detrimental to
26 the child for reasons stated in ~~(1)~~(2)(B), the court must state the reasons
27 in writing or on the record.

28
29 ~~(5)~~(6) If termination of parental rights would not be detrimental to the child,
30 but the child is difficult to place for adoption because the child (1) is a
31 member of a sibling group that should stay together; (2) has a
32 diagnosed medical, physical, or mental handicap; or (3) is 7 years of
33 age or older and no prospective adoptive parent is identified or
34 available, the court may, without terminating parental rights, identify
35 adoption as a permanent placement goal and order the public agency
36 responsible for seeking adoptive parents to make efforts to locate an
37 appropriate adoptive family for a period not to exceed 180 days. During
38 the 180-day period, in order to identify potential adoptive parents, the
39 agency responsible for seeking adoptive parents for each child must, to
40 the extent possible, ask each child who is 10 years of age or older and
41 who is placed in out-of-home placement for six months or longer to
42 identify any individuals who are important to the child. The agency
43 may ask any other child to provide that information, as appropriate.

1 After that period the court must hold another hearing and proceed
2 according to (1), (2) or ~~(6)~~ (7).

3
4 ~~(6)~~(7) If the court finds that ~~(1)~~(2)(A) or ~~(1)~~(2)(B) applies, the court must
5 appoint the present custodian or other appropriate person to become the
6 child's legal guardian or must order the child to remain in foster care.

7
8 (A)–(E) ***
9

10 ~~(7)~~(8) The court must consider the case plan submitted for this hearing and
11 must find as follows:

12
13 (A)–(B) ***
14

15 (C) In the case of an Indian child, the agency consulted with the
16 child's tribe and the tribe was actively involved in the
17 development of the case plan and plan for permanent placement,
18 including whether tribal customary adoption is an appropriate
19 permanent plan for the child if reunification is unsuccessful; or
20

21 (D) In the case of an Indian child, the agency did not consult with the
22 child's tribe. If the court makes such a finding, the court must
23 order the agency to consult with the tribe, unless the court finds
24 that the tribe is unable, unavailable, or unwilling to participate;
25 and

26
27 ~~(8)~~(9) ***
28

29 ~~(9)~~(10) ***
30

31 **(e) Procedures—~~termination of parental rights~~ adoption**
32

33 (1) The court may not terminate parental rights or order adoption if a
34 review of the prior findings and orders reveals that at each and every
35 prior hearing at which the court was required to consider reasonable
36 efforts or services the court found that reasonable efforts had not been
37 made or that reasonable services had not been offered or provided. If at
38 any prior hearing the court found that reasonable efforts had been made
39 or that reasonable services had been offered or provided, the court may
40 terminate parental rights.

41
42 (2) An order of the court terminating parental rights, ordering adoption
43 under section 366.26, or, in the case of an Indian child, tribal customary

1 adoption under section 366.24 is conclusive and binding on the child,
2 the parent, and all other persons who have been served under the
3 provisions of section 294. The order may not be set aside or modified
4 by the court, except as provided in rules 5.538, 5.540, and 5.542 with
5 regard to orders by a referee.

6
7 (3) If the court declares the child free from custody and control of the
8 parents, the court must at the same time order the child referred to a
9 licensed county adoption agency for adoptive placement. A petition for
10 adoption of the child may be filed and heard in the juvenile court, but
11 may not be granted until the appellate rights of the natural parents have
12 been exhausted.

13
14 (4) In the case of an Indian child for whom tribal customary adoption has
15 been ordered in accordance with section 366.24, the court must
16 continue the hearing for up to 120 days to permit the tribe to complete
17 the process for tribal customary adoption. In its discretion the court
18 may grant a further 60-day continuance.

19
20 (A) No less than 20 days before the date set for the continued hearing,
21 the tribe must file the completed tribal customary adoption order
22 with the court;

23
24 (B) The social worker must file an addendum report with the court at
25 least 7 days before the hearing;

26
27 (C) If the tribe does not file the tribal customary adoption order within
28 the designated time period, the court must make new findings and
29 orders under section 366.26(b) and select a new permanent plan
30 for the child.

31
32 (f)–(h) ***

33
34 **Rule 5.726. Prospective adoptive parent designation (§ 366.26(n))**

35
36 **(a) Request procedure**

37
38 A dependent child's caregiver may be designated as a prospective adoptive
39 parent. The court may make the designation on its own motion or on a
40 request by a caregiver, the child, a social worker, the child's identified Indian
41 tribe or the attorney for any of these parties.
42

1 (1) A request for designation as a prospective adoptive parent may be made
2 at a hearing where parental rights are terminated or a plan of tribal
3 customary adoption is ordered or thereafter, whether or not the child's
4 removal from the home is at issue.

5
6 (2)–(4) ***

7
8 **(b) Criteria for designation as prospective adoptive parent**

9
10 A caregiver must meet the following criteria to be designated as a
11 prospective adoptive parent:

12
13 (1)–(2) ***

14
15 (3) The caregiver has taken at least one step to facilitate the adoption
16 process. Steps to facilitate the adoption process include:

17
18 (A)–(C) ***

19
20 (D) In the case of an Indian child when tribal customary adoption has
21 been identified as the child's permanent plan, the child's
22 identified Indian tribe has designated the caregiver as the
23 prospective adoptive parent;

24
25 ~~(D)~~(E) ***

26
27 ~~(E)~~(F) ***

28
29 ~~(F)~~(G) ***

30
31 ~~(G)~~(H) ***

32
33 ~~(H)~~(I) ***

34
35 (c)–(f) ***

36
37 **Rule 5.727. Proposed removal (§ 366.26(n))**

38
39 **(a) Application of rule**

40
41 This rule applies, after termination of parental rights or, in the case of a tribal
42 customary adoption, modification of parental rights, to the removal by the
43 Department of Social Services (DSS) or a licensed adoption agency of a

1 dependent child from a prospective adoptive parent under rule 5.726(b) or
2 from a caregiver who may meet the criteria for designation as a prospective
3 adoptive parent under rule 5.726(b). This rule does not apply if the caregiver
4 requests the child's removal.
5

6 (b)–(i) ***
7

8 **Rule 5.728. Emergency removal (§ 366.26(n))**
9

10 (a) **Application of rule**
11

12 This rule applies, after termination of parental rights or, in the case of tribal
13 customary adoption, modification of parental rights, to the removal by the
14 Department of Social Services (DSS) or a licensed adoption agency of a
15 dependent child from a prospective adoptive parent under rule 5.726(b) or
16 from a caregiver who may meet the criteria for designation as a prospective
17 adoptive parent under rule 5.726(b) when the DSS or the licensed adoption
18 agency has determined a removal must occur immediately due to a risk of
19 physical or emotional harm. This rule does not apply if the child's removal is
20 carried out at the request of the caregiver.
21

22 (b)–(g) ***
23

24 **Rule 5.730. Adoption**
25

26 (a)–(e) ***
27

28 (f) **Consent**
29

30 (1) At the hearing, each adoptive parent ~~and the child, if 12 years of age or~~
31 ~~older~~, must execute *Adoption Agreement* (form ADOPT-210) in the
32 presence of and with the acknowledgment of the court.
33

34 (2) If the child to be adopted is 12 years of age or older, he or she must
35 also execute *Adoption Agreement* (form ADOPT-210), except in the
36 case of a tribal customary adoption.
37

38 **Advisory Committee Comment**
39

40 Family Code section 8600.5 exempts tribal customary adoption from various provisions of the
41 Family Code applicable to adoptions generally, including section 8602 which requires the consent
42 of a child over the age of 12 for an adoption. However, under Welfare and Institutions Code
43 section 366.24(c)(7), “[t]he child, birth parents, or Indian custodian and the tribal customary
44 adoptive parents and their counsel, if applicable, may present evidence to the tribe regarding

1 tribal customary adoption and the child’s best interest.” Under Welfare and Institutions Code
2 section 317(c), for all children over 4, the attorney for the child must determine the child’s wishes
3 and advise the court of the child’s wishes. Welfare and Institutions Code section 361.31(e)
4 provides that “[w]here appropriate, the placement preference of the Indian child, when of
5 sufficient age, ...shall be considered.” This is consistent with Guideline F-3 of the “Guidelines
6 for State Courts; Indian Child Custody Proceedings” issued by the Bureau of Indian Affairs on
7 November 26, 1979 which recognizes that the request and wishes of a child of sufficient age are
8 important in making an effective placement. The committee concludes, therefore, that while the
9 consent of a child over the age of 12 is not required for a tribal customary adoption, the wishes of
10 a child are still an important and appropriate factor for the court to consider when determining
11 whether tribal customary adoption is the appropriate permanent plan for an Indian child.

12
13 (g) ***

14
15 **Rule 5.740. Hearings subsequent to a permanent plan (§§ 366.26, 366.3, 391)**

16
17 (a) **Review hearings—adoption and guardianship**

18
19 Following an order for termination of parental rights or, in the case of tribal
20 customary adoption, modification of parental rights, or a plan for the
21 establishment of a guardianship under section 366.26, the court must retain
22 jurisdiction and conduct review hearings at least every 6 months to ensure
23 the expeditious completion of the adoption or guardianship.

24
25 (1)–(4) ***

26
27 (b)–(d) ***

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY DRAFT 5 11/24/09 xyz Not Approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
NOTICE OF HEARING ON SELECTION OF A PERMANENT PLAN	CASE NUMBER:

NOTICE TO (name and address):

—IMPORTANT NOTICE—

A hearing under Welfare and Institutions Code section 366.26 has been set for the date and time below. At the hearing the court will terminate parental rights and free the children for adoption, or establish legal guardianship or identified placement with a specific goal. You have the right to be present at this hearing.

1. A hearing will be held

on (date): _____ at (time): _____ in Dept.: _____ Room: _____

located at court address above other (specify address): _____

2. At the hearing, the court will consider the recommendation of the social worker or probation officer and make an order concerning the following children (names):

3. THE SOCIAL WORKER PROBATION OFFICER RECOMMENDS

- a. Termination of parental rights and implementation of a plan of adoption.
- b. Tribal customary adoption.
- c. Establishment of a legal guardianship.
- d. Identified placement _____ with a specific goal (specify): _____

4. TO THE PARENTS, GUARDIANS, AND CHILDREN:

- a. You have the right to be present at the hearing, to present evidence, and to be represented by an attorney. In a dependency matter, the court will appoint an attorney for you if you cannot afford one.
- b. Prior to the hearing, the social worker or probation officer will prepare an assessment report with recommendations. Parents and guardians must be provided with a copy of this report. The social worker's probation officer's report dated: _____ is is not attached.
- c. If the court orders termination of parental rights, the order may be final.
- d. The court will proceed with this hearing whether or not you are present.

Date: _____
(TYPE OR PRINT NAME)

▶

(SIGNATURE OF PETITIONER)

IMPORTANT NOTICE

A hearing under Welfare and Institutions Code section 366.26 has been set for the date and time stated on the other side of this form.

At the hearing the court may:

- Terminate parental rights and free the child for adoption**
or
- Order tribal customary adoption**
or
- Establish legal guardianship**
or
- Place the child in a planned permanent living arrangement.**

You have the right to be present at this hearing and have an attorney represent you.



Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the proceeding. Contact the clerk's office or go to www.courtinfo.ca.gov/forms for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civil Code, § 54.8.)

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> <hr/> <p style="text-align: center;">TELEPHONE NO.: FAX NO. <i>(Optional):</i></p> <p>E-MAIL ADDRESS <i>(Optional):</i></p> <p>ATTORNEY FOR <i>(Name):</i></p>	FOR COURT USE ONLY <h2 style="margin: 0;">DRAFT 5</h2> <h3 style="margin: 0;">11/24/09 xyz</h3> <h2 style="margin: 0;">Not Approved by the Judicial Council</h2>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
ORDERS UNDER WELFARE AND INSTITUTIONS CODE SECTIONS 366.24, 366.26, 727.3, 727.31	CASE NUMBER:

Child's name: Date of birth: Age: Parent's name <i>(if known):</i> <input type="checkbox"/> Mother <input type="checkbox"/> Father Parent's name <i>(if known):</i> <input type="checkbox"/> Mother <input type="checkbox"/> Father

1. a. Hearing date: Time: Dept.: Room:
 b. Judicial officer:
 c. Parties and attorneys present:

2. The court has read and considered the assessment prepared under Welfare and Institutions Code section 366.21(i) or 366.21(c) and the report and recommendation of the social worker probation officer and other evidence.
3. The court has considered the wishes of the child, consistent with the child's age, and all findings and orders of the court are made in the best interest of the child.

THE COURT FINDS AND ORDERS

4. a. Notice has been given as required by law.
 b. This case involves an Indian child and the court finds that notice has been given to the parents, Indian custodian, Indian child's tribe, and the Bureau of Indian Affairs (BIA) in accordance with Welfare and Institutions Code section 224.2; the original certified mail receipts, return cards, copies of all notices, and any responses to those notices are in the court file.
5. The child is 10 years or older and is not present; the court finds that the child was properly notified of the right to be present, and was given an opportunity to attend.
6. The court takes judicial notice of all prior findings, orders, and judgments in this proceeding.
7. The court previously made a finding denying or terminating reunification services under Welfare and Institutions Code sections 361.5, 366.21, 366.22, 366.25, 727.2, or 727.3, for Parent *(name):* Mother Father
 Parent *(name):* Mother Father

CHILD'S NAME: _____	CASE NUMBER: _____
----------------------------	---------------------------

8. a. There is clear and convincing evidence that it is likely the child will be adopted.
- b. This case involves an Indian child and the court finds by evidence beyond a reasonable doubt, including the testimony of one or more qualified expert witnesses, 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. *(If item 8a or 8b is checked, go to item 9 unless item 10, 11, or 12 is applicable. If item 8a or 8b is not checked, go to item 14 or 15.)* **The fact that the child is not placed in a preadoptive home or with a person or family prepared to adopt the child is not a basis for concluding that the child is unlikely to be adopted.**

9. The parental rights of
- a. Parent (name): _____ Mother Father
- b. Parent (name): _____ Mother Father
- c. Alleged fathers (names): _____
- d. Unknown mother All unknown fathers
are terminated, adoption is the child's permanent plan, and the child is referred to the California Department of Social Services or a local licensed adoption agency for adoptive placement.
- e. **The adoption is likely to be finalized by (date):**
(If item 9 is checked, go to items 16, 17, 18, 19, and 20.)

10. This case involves an Indian child. The parental rights of

a. Parent (name): _____

b. Parent (name): _____

c. Indian custodians (names): _____

d. Alleged fathers (names): _____

e. Unknown mother All unknown fathers

are modified in accordance with the tribal customary adoption order of the _____ tribe, dated _____ and comprising _____ pages, which is accorded full faith and credit and fully incorporated herein. The child is referred to the California Department of Social Services or a local licensed adoption agency for tribal customary adoptive placement in accordance with the tribal customary adoption order.

11. The child is living with a relative who is unable or unwilling to adopt the child because of 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 through legal guardianship. Removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child. *(If item 11 is checked, go to item 15 or 16.)*

12. Termination of parental rights would be detrimental to the child for the following reasons *(If item 12 is checked, check reasons below and go to item 15 or 16):*
- a. The parents or guardians have maintained regular visitation and contact with the child, and the child would benefit from continuing the relationship.
- b. The child is 12 years or older and 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 a permanent family placement if the parents cannot resume custody when residential care is no longer needed.
- d. The child is living with a foster parent or Indian custodian 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. Removal of the child from the physical custody of the foster parent or Indian custodian would be detrimental to the emotional well-being of the child. This clause does not apply to any child who is either
- (1) under the age of 6; or
- (2) a member of a sibling group with at least one child under the age of 6 and the siblings are or should be placed together.

CHILD'S NAME: 	CASE NUMBER:
-----------------------	----------------------

12. e. There would be substantial interference with the child's sibling relationship.
- f. The child is an Indian child and there is a compelling reason for determining that termination of parental rights would not be in the best interest of the child, including, but not limited to:
- (1) 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.
 - (2) The child's tribe has identified guardianship or another permanent plan for the child.

13. Termination of parental rights would not be detrimental to the child, but no adoptive parent has been identified or is available, and the child is difficult to place because the child *(if item 13 is checked, check reasons below and go to item 14)*:
- a. is a member of a sibling group that should stay together.
 - b. has a diagnosed medical, physical, or mental disability.
 - c. is 7 years or older.

14. a. Termination of parental rights is not ordered at this time. Adoption is the permanent placement goal, and efforts are to be made to locate an appropriate adoptive family. A report to the court is due by *(date, not to exceed 180 days from the date of this order)*:
(Do not check in the case of a tribal customary adoption. If item 14a is checked, provide for visitation in items 14b and 14c as appropriate, and go to items 17, 18, 19, 20, and 21.)

- b. Visitation between the child and
- | | | |
|---|---------------------------------|---------------------------------|
| <input type="checkbox"/> Parent <i>(name)</i> : | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> Parent <i>(name)</i> : | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> Legal guardian <i>(name)</i> : | | |
| <input type="checkbox"/> Other <i>(name)</i> : | | |
- is scheduled as follows *(specify)*:

- c. Visitation between the child and *(names)*:
is detrimental to the child's physical or emotional well-being and is terminated.

15. The child's permanent plan is legal guardianship with a specific goal of *(specify)*:
- Adoption
- Dismissal of dependency
- Other *(specify)*:

(Name): _____
is appointed legal guardian of the child, and *Letters of Guardianship* will issue. *(Do not check in case of a tribal customary adoption. If item 15 is checked, provide for visitation in items 15a and 15b as appropriate, and go to item 15c or 15d.)*

- a. Visitation between the child and
- | | | |
|---|---------------------------------|---------------------------------|
| <input type="checkbox"/> Parent <i>(name)</i> : | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> Parent <i>(name)</i> : | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> Legal guardian <i>(name)</i> : | | |
| <input type="checkbox"/> Other <i>(name)</i> : | | |
- is scheduled as follows *(specify)*:

- b. Visitation between the child and *(names)*:
is detrimental to the child's physical or emotional well-being and is terminated.

- c. Dependency Wardship is terminated.

- d. Dependency Wardship is not terminated. The likely date for termination of the dependency or wardship is *(date)*:
(If this item is checked, go to items 17, 18, 19, 20, and 21.)

CHILD'S NAME: _____	CASE NUMBER: _____
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The juvenile court retains jurisdiction of the guardianship under Welfare and Institutions Code section 366.4.

16. a. The child's permanent plan is an identified placement with *(name of placement)*:
with a specific goal of *(specify)*:
- | | |
|---|---|
| (1) <input type="checkbox"/> returning home | (5) <input type="checkbox"/> permanent placement with a fit and willing relative |
| (2) <input type="checkbox"/> adoption | (6) <input type="checkbox"/> a less restrictive foster care setting |
| (3) <input checked="" type="checkbox"/> tribal customary adoption | (7) <input type="checkbox"/> independent living with identification of a caring adult to serve as a lifelong connection |
| (4) <input type="checkbox"/> legal guardianship | |

The child's specific goal is likely to be achieved by *(date)*:

(If item 16a is checked, provide for visitation in items 16b and 16c as appropriate, and go to items 17, 18, 19, 20, and 21.)

- b. Visitation between the child and
- | | | |
|---|---------------------------------|---------------------------------|
| <input type="checkbox"/> Parent <i>(name)</i> : | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> Parent <i>(name)</i> : | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> Legal guardian <i>(name)</i> : | | |
| <input type="checkbox"/> Other <i>(name)</i> : | | |
- is scheduled as follows *(specify)*:

- c. Visitation between child and *(names)*:
is detrimental to the child's physical or emotional well-being and is terminated.

17. The child's placement is necessary.
18. The child's placement is appropriate.
19. The agency has complied with the case plan by making reasonable efforts, including whatever steps are necessary to finalize the permanent plan. If this case involves an Indian child, the court finds that the agency has made active efforts to provide remedial and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have been proven unsuccessful.
20. The services set forth in the case plan include those needed to assist the child age 16 or older in making the transition from foster care to independent living. *(This finding is required only for a child 16 years or older.)*
21. The child remains a dependent ward of the court. *(If this box is checked, go to items 22 and 23 if applicable, and items 24 and 25.)*
22. All prior orders not in conflict with this order will remain in full force and effect.
23. Other *(specify)*:

CHILD'S NAME: _____	CASE NUMBER: _____
------------------------	-----------------------

24. Next hearing date: _____ Time: _____ Dept.: _____ Room: _____
- a. Continued hearing under section 366.26 for receipt of report on attempts to locate an adoptive family
- b. Continued hearing under 366.24(c)(6) for receipt of the tribal customary adoption order.
- c. Six-month postpermanency review

25. The Parent (*name*): _____ Mother Father
- Parent (*name*): _____ Mother Father
- Indian custodian (*name*): _____
- Child
- Other (*name*): _____
- have been advised of their appeal rights (under Cal. Rules of Court, rule 5.590).

Date: _____

JUDICIAL OFFICER

Clerk stamps date here when form is filed.

After filling out this form, bring it to the clerk of the court. If you want to keep an address or telephone number confidential, fill out form JV-322, Confidential Information—Prospective Adoptive Parent, and do not write the address or phone number on this form.

DRAFT 5
11/24/09 xyz

**Not Approved by
the Judicial Council**

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Fill in case number:

Case Number:

- ① Information about the person or persons you want to be designated as prospective adoptive parents:
- a. Name: _____
- b. Name: _____
- c. Address: _____
- d. Phone number: _____

- ② If you are not a person in ①, fill out below.
- a. Name: _____
- b. I am the child child's attorney other
(specify role): _____
- c. Address: _____
- d. Phone number: _____

- ③ If you are not the child's attorney and you know who the child's attorney is, fill out below.
- a. Name of child's attorney: _____
- b. Address of child's attorney: _____
- c. Phone number of child's attorney: _____

- ④ The child is 10 years of age or older. Child's phone number: _____
or Telephone number is confidential.

- ⑤ The child has lived with the person from (date): _____ to the present.
In order for the person in ① to become a prospective adoptive parent, the child must be living with that person now.

- ⑥ Date of Welfare and Institutions Code section 366.26 hearing: _____
The person in ① should not file this form with the court until a Welfare and Institutions Code section 366.26 hearing has been scheduled.

- ⑦ The person in ① is committed to adopting the child.



Clerk stamps date here when form is filed.

DRAFT 3
11/16/09 xyz

**Not Approved by
the Judicial Council**

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Fill in case number:

Case Number:

- ① This order was made:
- a. On the court's own motion
 - b. At the request of
(name): _____
(relationship to the child): _____
 - c. The request was made:
 - (1) Orally at the hearing held on (date): _____
 - (2) In writing by filing form JV-321, *Request for Prospective Adoptive Parent Designation*, on (date): _____

The court finds and orders:

- ② The child's current caregiver or caregivers
(name): _____
(name): _____
- is are designated as the child's prospective adoptive parent or parents because:
- a. The child has lived with the caregiver or caregivers for at least six months
 - b. The child's permanent plan is tribal customary adoption and the tribe has identified the caregiver or caregivers as the child's prospective parent or adoptive parents
 - c. The caregiver or caregivers currently expresses a commitment to adopting the child *and*
 - d. The caregiver or caregivers has taken at least one step to facilitate the adoption.

- ③ The child's current caregiver or caregivers
(name): _____
(name): _____
- does do not qualify as the prospective adoptive parent or parents of the child, and the request for designation as the prospective adoptive parent or parents is denied, because:
- a. The child has not lived with the caregiver or caregivers for at least six months.
 - b. The caregiver or caregivers does not currently express a commitment to adopting the child.
 - c. The caregiver or caregivers has not taken any steps to facilitate the adoption.
 - d. Other (explain): _____

- ④ The court thinks that the request for designation as a prospective adoptive parent will be contested or wants more evidence on the request, and orders a hearing on the request.
- The hearing will be on (date): _____ at (time): _____ a.m. p.m.
in department _____ of the superior court located at: _____

Date: _____

Judge (or Judicial Officer)

ADOPT-050 How to Adopt a Child in California

In California, there are several kinds of adoption. Learn about stepparent/domestic partner adoptions on page 1 and independent, agency, and international adoptions and adoption of an Indian child on page 2.

Stepparent/Domestic Partner Adoptions

If you want to adopt your stepchild or the child of your domestic partner, fill out and file the forms listed below. You can get them from the court clerk or from the California Courts Self-Help Web site: www.courtinfo.ca.gov.

1 Fill out court forms.

- ADOPT-200 Adoption Request This tells the judge about you and the child you are adopting.
- ADOPT-210 Adoption Agreement This tells the judge that you and the child, if over 12, agree to the adoption. Fill it out, but do not sign it until the judge says so.
- ADOPT-215 Adoption Order The judge signs this form if your adoption is approved.

2 Take your forms to court.

Take the completed forms to the court clerk in the county where you live. The court will charge a filing fee. Or, if you have a lawyer or are using an agency, take the forms to them.

3 The social worker writes a report.

In every adoption, a social worker writes a report. This report gives important information to the judge about the adopting parents and the child. The social worker will ask you questions. You may have to fill out forms. The social worker will file the report with the court and send you a copy. When you get the report, ask the clerk for a date for your adoption hearing.

4 Go to court on the date of your hearing.

Bring:

- The child you are adopting
- Form ADOPT-210
- Form ADOPT-215
- A camera, if you want a photo of you and your child with the judge
- Friends/relatives



Independent, Agency, or International Adoptions

If this is an independent, agency, or international adoption, fill out and file the forms below. You can get them from the court clerk or from the California Courts Self-Help Web site: www.courtinfo.ca.gov.

1 Fill out and file court forms.

- | | | | |
|--------------------------|-----------|--------------------|--|
| <input type="checkbox"/> | ADOPT-200 | Adoption Request | This tells the judge about you and the child you are adopting. |
| <input type="checkbox"/> | ADOPT-210 | Adoption Agreement | This tells the judge that you and the child, if over 12, agree to the adoption. Fill it out, but do not sign it until the judge says so. |
| <input type="checkbox"/> | ADOPT-215 | Adoption Order | The judge signs this form if your adoption is approved. |
| <input type="checkbox"/> | ADOPT-230 | Adoption Expenses | This tells the judge about all your adoption expenses. |

2 The social worker writes a report.

In every adoption, a social worker writes a report. This report gives important information to the judge about the adopting parents and the child. The social worker will ask you questions. You may have to fill out forms. The social worker will file the report and send you a copy. When you get the report, ask the clerk for a date for your adoption hearing.

3 Go to court on the date of your hearing.

Bring:

- The child you are adopting
- Form ADOPT-210
- Form ADOPT-215
- Form ADOPT-230
- A camera, if you want a photo of you and your child with the judge
- Friends/relatives

4 Is this an “open” adoption?

If you want your child to have contact with his or her birth family, fill out ADOPT-310, which asks for an open adoption.

5 If you are adopting an Indian child ...

Also fill out and bring:

- Form ADOPT-220 Adoption of Indian Child
- Form ADOPT-225 Parent of Indian Child Agrees to End Parental Rights

If you are adopting through a tribal customary adoption:

- Attach a copy of the tribal customary adoption to *Adoption Request*, ADOPT-200
- Attach a copy of the tribal customary adoption to the *Adoption Order*, ADOPT-215

ADOPT-200 Adoption Request

If you are adopting more than one child, fill out an adoption request for each child.

Clerk stamps date here when form is filed.

DRAFT 4
11/16/09 xyz
Not approved by the
Judicial Council

① Your name (adopting parent):
a. _____
b. _____
Relationship to child: _____
Street address: _____
City: _____ State: _____ Zip: _____
Telephone number: (____) _____
Lawyer (if any): (Name, address, telephone numbers, and State Bar number):

Fill in court name and street address:

Superior Court of California, County of

Fill in case number if known:

Case Number:

② Type of adoption (check one):
 Agency (name): _____
 Joinder has been filed. Joinder will be filed.
 Tribal customary adoption (attach tribal customary adoption order)
 Independent
 International (name of agency): _____
 Stepparent
 Relative

③ Information about the child:
a. The child's new name will be: _____
b. Boy Girl
c. Date of birth: _____ Age: _____
d. Child's address (if different from yours):
Street: _____
City: _____ State: _____ Zip: _____
e. Place of birth (if known):
City: _____
State: _____ Country: _____
f. If the child is 12 or older, does the child agree to the adoption? Yes No
g. Date child was placed in your physical care:

④ Child's name before adoption: (Fill out ONLY if this is an independent, a relative, or a stepparent adoption or a tribal customary adoption.)

⑤ Does the child have a legal guardian? Yes No
If yes, attach a copy of the Letters of Guardianship and fill out below:
a. Date guardianship ordered: _____
b. County: _____
c. Case number: _____

⑥ Is the child a dependent of the court? Yes No
If yes, fill out below:
Juvenile case number: _____
County: _____

(To be completed by the clerk of the superior court if a hearing date is available.)

Hearing Date

Hearing is set for:

→ Date: _____

Time: _____

Dept.: _____ Room: _____

Name and address of court if different from above:

To the person served with this request: If you do not come to this hearing, the judge can order the adoption without your input.



Your name: _____

7 Child may have Indian ancestry: Yes No
If yes, attach Form ADOPT-220, Adoption of Indian Child.

8 Names of birth parents, if known:
 a. Mother: _____
 b. Father: _____

9 **If this is an agency adoption**

a. I have received information about the Adoption Assistance Program Regional Center and about mental health services available through Medi-Cal or other programs. Yes No
 b. All persons with parental rights agree that the child should be placed for adoption by the California Department of Social Services or a licensed adoption agency (Fam. Code, § 8700) and have signed a relinquishment form approved by the California Department of Social Services. Yes No *(if no, list the name and relationship to child of each person who has not signed the consent form):* _____

c. This is a tribal customary adoption under Welfare and Institutions Code section 366.24. Parental rights have been modified under and in accordance with the attached tribal customary adoption order, and the child has been ordered placed for adoption.

10 **If this is an independent adoption**

a. A copy of the Independent Adoptive Placement Agreement, a California Department of Social Services form, is attached. (This is required in most independent adoptions; see Fam. Code, § 8802.)
 b. All persons with parental rights agree to the adoption and have signed the Independent Adoptive Placement Agreement, a California Department of Social Services form. Yes No *(if no, list the name and relationship to child of each person who has not signed the consent form):* _____
 c. I will file promptly with the department or delegated county adoption agency the information required by the department in the investigation of the proposed adoption.

11 **If this is a stepparent adoption**

a. The birth parent (name): _____ has signed a consent will sign a consent
 b. The birth parent (name): _____ has signed a consent will sign a consent
 c. The adopting parents were married on **or** The domestic partnership was registered on (date): _____. *(For court use only. This does not affect social worker's recommendation. There is no waiting period.)*

12 There is no presumed or biological father because the child was conceived by artificial insemination, using semen provided to a medical doctor or a sperm bank. (Fam. Code, § 7613.)

13 **Contact after adoption**

Form ADOPT-310, *Contact After Adoption Agreement*, is attached will not be used
 will be filed at least 30 days before the adoption hearing is undecided at this time
 This is a tribal customary adoption. Postadoption contact is governed by the attached tribal customary adoption order.

14 The consent of the birth mother presumed father is not necessary because *(specify Fam. Code, § 8606 subdivision):* _____

15 A court ended the parental rights of *(attach copy of order)*:
 Name: _____ Relationship to child: _____ on (date) _____
 Name: _____ Relationship to child: _____ on (date) _____



Your name: _____

16 The child is the subject of a tribal customary adoption order under Welf. & Inst. Code, § 366.24, which has modified the parental rights of (*attach a copy of order*):
 Name: _____ Relationship to child: _____ on (date): _____
 Name: _____ Relationship to child: _____ on (date): _____
 Name: _____ Relationship to child: _____ on (date): _____

17 I will ask the court to end the parental rights of (*attach copy of Petition to Terminate Parental Rights or Freedom From Parental Custody, if filed*):
 Name: _____ Relationship to child: _____
 Name: _____ Relationship to child: _____

18 Each of the following persons with parental rights has not contacted his or her child in one year or more. (*Fam. Code, § 8604(b)*) (*Attach copy of Application for Freedom From Parental Custody, if filed.*)
 Name: _____ Relationship to child: _____
 Name: _____ Relationship to child: _____

19 Each of the following persons with parental rights has died:
 Name: _____ Relationship to child: _____
 Name: _____ Relationship to child: _____

20 Suitability for adoption

Each adopting parent:

- a. Is at least 10 years older than the child
- b. Will treat the child as his or her own
- c. Will support and care for the child
- d. Has a suitable home for the child *and*
- e. Agrees to adopt the child

21 I ask the court to approve the adoption and to declare that the adopting parents and the child have the legal relationship of parent and child, with all the rights and duties of this relationship, including the right of inheritance.
 This is a tribal customary adoption. I ask the court to approve the adoption and to declare that the adopting parents and the child have the legal relationship of parent and child, with all of the rights and duties stated in the attached tribal customary adoption order and in accordance with Welf. & Inst. Code, § 366.24.

22 If a lawyer is representing you in this case, he or she must sign here:

Date: _____ *Type or print your name*  _____
Signature of attorney for adopting parents

23 I declare under penalty of perjury under the laws of the State of California that the information in this form is true and correct to my knowledge. This means that if I lie on this form, I am guilty of a crime.

Date: _____ *Type or print your name*  _____
Signature of adopting parent

Date: _____ *Type or print your name*  _____
Signature of adopting parent

ADOPT-210 Adoption Agreement

Clerk stamps date here when form is filed.

DRAFT 7
12/14/09 xyz
not approved by the
Judicial Council

① Your name (adopting parent):
a. _____
b. _____
Relationship to child: _____
Address (skip this if you have a lawyer):
Street: _____
City: _____ State: _____ Zip: _____
Telephone number: (____) _____
Lawyer (if any): (Name, address, telephone number, and State Bar number): _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number if known:

Case Number:

② Child's name before adoption: _____
Child's name after adoption: _____
Date of birth: _____ Age: _____

③ I am the child listed in ② and I agree to the adoption. Sign at the hearing in front of the judge. (Not required in the case of a tribal customary adoption under Welf. & Inst. Code, § 366.24.)

Date: _____
Type or print your name
Signature of child (child must sign at hearing if 12 or older; optional if child is under 12)

④ If there is only **one** adopting parent, read and sign below. Sign at the hearing in front of the judge.

a. I am the adopting parent listed in ①, and I agree that the child will:
(1) Be adopted and treated as my legal child (Fam. Code § 8612(b)) and
(2) Have the same rights as a natural child born to me, including the right to inherit my estate.

Date: _____
Type or print your name
Signature of adopting parent (sign at hearing)

b. I am married to, or the registered domestic partner of, the adopting parent listed in ①, and I agree to his or her adoption of the child.

Date: _____
Type or print your name
Signature of spouse or registered domestic partner (maybe signed before hearing)



Your name: _____

Case Number: _____

5 If there are **two** adopting parents, read and sign below. Sign at the hearing in front of the judge.

We are the adopting parents listed in ①, and we agree that the child will:

- (a) Be adopted and treated as our legal child (*Fam. Code. § 8612(b)*) and
- (b) Have the same rights as a natural child born to us, including the right to inherit our estate.

I am in agreement with the other parent's adoption of the child.

Date: _____
Type or print your name

▶ _____
Signature of adopting parent (sign at hearing)

I am in agreement with the other parent's adoption of the child.

Date: _____
Type or print your name

▶ _____
Signature of adopting parent (sign at hearing)

6 If this is a tribal customary adoption, read and sign below. Sign at the hearing in front of the judge.

I/we are the adopting parents listed in ①, and I/we agree that the child will:

- a. Be adopted and treated as my/our legal child (*Fam. Code. § 8612(b)*) and
- b. Have the same rights and duties stated in the tribal customary adoption order dated _____ (copy attached).

If two adopting parents, we are each in agreement with the other parent's adoption of the child.

Date: _____
Type or print your name

▶ _____
Signature of adopting parent (sign at hearing)

Date: _____
Type or print your name

▶ _____
Signature of adopting parent (sign at hearing)

7 For stepparent adoptions only:

If you are the legal parent of the child listed in ②, read and sign below. Sign at the hearing in front of the judge.

I am the legal parent of the child and am the spouse or registered domestic partner of the adopting parent listed in ①, and I agree to his or her adoption of my child.

Date: _____
Type or print your name

▶ _____
Signature of adopting parent (sign at hearing)

8 Executed:

Date: _____

▶ _____
Judge (or Judicial Officer)

ADOPT-215 Adoption Order

Clerk stamps date here when form is filed.

DRAFT 9
12/14/09 xyz
Not approved by the
Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Fill in case number if known:

Case Number:

① Your name (*adopting parent*):
a. _____
b. _____
Relationship to child: _____
Address: _____
Street: _____
City: _____ State: _____ Zip: _____
Daytime telephone number: (____) _____
Lawyer (*if any*): (*Name, address, telephone number, and State Bar number*): _____

② Type of adoption: (*Check one*)
 Agency (*name*): _____
 Independent
 International (*name of agency*): _____
 Relative
 Stepparent
 Tribal Customary Adoption (*name of agency*): _____

③ Child's name after adoption:
First Name: _____ Middle Name: _____ Last Name: _____
Date of birth: _____ Age: _____
Place of birth: _____
City: _____ State: _____ Country: _____

④ Name of adoption agency (*if any*): _____

⑤ Hearing date: _____
Dept.: _____ Div.: _____ Rm.: _____ Judge: _____
Clerk's office telephone number: (____) _____

⑥ People present at the hearing:
 Adopting parents Lawyer for adopting parents
 Child Child's lawyer
 Parent keeping parental rights (stepparent/domestic partner): _____
 Other people present (*list each name and relationship to child*):
a. _____
b. _____

If there are more names, attach a sheet of paper, write "ADOPT-215, Item 6" at the top, and list the additional names and each person's relationship to child.

Judge will fill out section below.

⑦ The judge finds that the child (*check all that apply*):
a. Is 12 or older and agrees to the adoption
b. Is under 12

Your name: _____

c. This is a tribal customary adoption and the child's consent is not required.

- 8 The judge has reviewed the report and other documents and evidence and finds that each adopting parent:
 - a. Is at least 10 years older than the child
 - b. Will treat the child as his or her own
 - c. Will support and care for the child
 - d. Has a suitable home for the child *and*
 - e. Agrees to adopt the child

- 9 This case is a relative adoption petitioned under Family Code section 8714.5.
 - The adopting relative The child, who is 12 or older, has requested that the child's name before adoption be listed on this order. (*Fam. Code, § 8714.5(g).*)
 The child's name before adoption was:
 First Name: _____ Middle Name: _____ Last Name: _____

- 10 The child is an Indian child. The judge finds that this adoption meets the placement requirements of the Indian Child Welfare Act and that there is good cause to give preference to these adopting parents. The clerk will fill out 14 below.

- 11 The judge approves the *Contact After Adoption Agreement* (ADOPT-310)
 - As submitted As amended on ADOPT-310

12 This is a tribal customary adoption, The tribal customary adoption order of the _____ tribe dated _____ containing _____ pages and attached hereto is fully incorporated into this order of adoption.

- 13 The judge believes the adoption is in the child's best interest and orders this adoption. The child's name after adoption will be:

First Name: _____ Middle Name: _____ Last Name: _____

The adopting parent or parents and the child are now parent and child under the law, with all the rights and duties of the parent-child relationship, or in the case of a tribal customary adoption all the rights and duties set out in the tribal customary adoption order and Welfare and Institutions Code, section 366.24.

Date: _____

Judge (or Judicial Officer)

Clerk will fill out section below.

14 **Clerk's Certificate of Mailing**

For the adoption of an Indian child, the Clerk certifies:

I am not a party to this adoption. I placed a filed copy of:

- ADOPT-200, *Adoption Request* ADOPT-220, *Adoption of Indian Child*
- ADOPT-215, *Adoption Order* ADOPT-310, *Contact After Adoption Agreement*

in a sealed envelope, marked "Confidential" and addressed to:

Chief, Division of Social Services
 Bureau of Indian Affairs
 1849 C Street, NW
 Mail Stop 310-SIB
 Washington, DC 20240

The envelope was mailed by U.S. mail, with full postage, from:

Place: _____ on (date): _____

Date: _____ Clerk, by: _____, Deputy

ADOPT-220

Adoption of Indian Child

Case Number: _____

This form is attached to Adoption Request (ADOPT-200).

① Your name or names (*adopting parent or parents*):

a. _____

b. _____

Relationship to child: _____

Your address (*skip this if you have a lawyer*):

Street: _____

City: _____ State: _____ Zip: _____

Your phone #: _____

Your lawyer (*if you have one*): (*Name, address, phone #, and State Bar #*):

Federal law says the state courts must send a copy of all adoption orders for an Indian child to the Secretary of the Interior within 30 days. The state court must also send the following information. *Please complete the rest of the form.*

② Indian child's name: _____

Date of birth: _____ Age: _____

③ Indian child's tribe (or tribe child is eligible for): _____

Enrollment #: _____ *Check here if you do not know.*

Check here if tribe does not have an enrollment number.

④ Indian child's biological mother (*name*): _____

Address: _____

City: _____ State: _____ Zip: _____

Check here if you do not know.

The biological mother attaches her request that her identity remain confidential.

⑤ Indian child's biological father (*name*): _____

Address: _____

City: _____ State: _____ Zip: _____

Check here if you do not know.

The biological father attaches his request that his identity remain confidential.



Case Number: _____

Your name(s): _____

6 Indian child's biological Indian grandmother(s) (name(s); include maiden name(s) if you know them):

 Check here if you do not know.

7 Indian child's biological Indian grandfather(s) (names):

 Check here if you do not know.

8 Name of any agency with information about this adoption: _____

9 Other people with information about the Indian child's ancestry:	
Name	Relationship to Child
a. _____	_____
b. _____	_____
c. _____	_____

10 Parental rights (check all that apply):

a. A court ended parental rights on (date): _____

b. Parental rights were modified under a tribal customary adoption order on (date): _____

c. Parent(s) voluntarily agreed in writing to end their parental rights.

(1) ADOPT-225 will be recorded in front of a judge and filed with the court before the adoption hearing on (date): _____

(2) ADOPT-225 was recorded in front of a judge and is attached to ADOPT-200 (Adoption Request).

(3) ADOPT-225 was signed at least 10 days after the birth date of the Indian child.

d. A judge has certified that he or she fully explained the terms and consequences of the parents' agreement to end parental rights and that the parent(s) understood.

(1) This certificate was filed with the court on (date): _____; OR

(2) This certificate is attached to ADOPT-200 or will be filed before the adoption hearing.

11 Note: The court will notify the American Indian tribe of the child's adoption.

EXCERPTS OF AB 1325

SECTION 1. Section 8600.5 is added to the Family Code, to read:

8600.5. (a) Tribal customary adoption as defined in Section 366.24 of the Welfare and Institutions Code and as applied to Indian Children who are dependents of the court, does not apply to this part.

(b) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 4. Section 358.1 of the Welfare and Institutions Code is amended to read:

358.1. Each social study or evaluation made by a social worker or child advocate appointed by the court, required to be received in evidence pursuant to Section 358, shall include, but not be limited to, a factual discussion of each of the following subjects:

(j) For an Indian child, in consultation with the Indian child's tribe, whether tribal customary adoption is an appropriate permanent plan for the child if reunification is unsuccessful.

SEC. 6. Section 361.5 of the Welfare and Institutions Code is amended to read:

(f) If the court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall, at the dispositional hearing, that shall include a permanency hearing, determine if a hearing under Section 366.26 shall be set in order to determine whether adoption, guardianship, or long-term foster care, or in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption, is the most appropriate plan for the child, and shall consider in-state and out-of-state placement options. If the court so determines, it shall conduct the hearing pursuant to Section 366.26 within 120 days after the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a).

The court may continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child.

(g) (1) Whenever a court orders that a hearing shall be held pursuant to Section 366.26, including, when, in consultation with the child's tribe, tribal customary adoption is

recommended, it shall direct the agency supervising the child and the licensed county adoption agency, 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, to prepare an assessment that shall include:

(G) In the case of an Indian child, in addition to subparagraphs (A) to (F), inclusive, an assessment of the likelihood that the child will be adopted, when, in consultation with the child's tribe, a customary tribal adoption, as defined in Section 366.24, is recommended. If tribal customary adoption is recommended, the assessment shall include an analysis of both of the following:

- (i) Whether tribal customary adoption would or would not be detrimental to the Indian child and the reasons for reaching that conclusion.
- (ii) Whether the Indian child cannot or should not be returned to the home of the Indian parent or Indian custodian and the reasons for reaching that conclusion.

SEC. 8. Section 366.21 of the Welfare and Institutions Code is amended to read:

(i) (1) Whenever a court orders that a hearing pursuant to Section 366.26, including, when, in consultation with the child's tribe, tribal customary adoption is recommended, shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, 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, to prepare an assessment that shall include:

(H) In the case of an Indian child, in addition to subparagraphs (A) to (G), inclusive, an assessment of the likelihood that the child will be adopted, when, in consultation with the child's tribe, a customary tribal adoption, as defined in Section 366.24, is recommended. If tribal customary adoption is recommended, the assessment shall include an analysis of both of the following:

- (i) Whether tribal customary adoption would or would not be detrimental to the Indian child and the reasons for reaching that conclusion.
- (ii) Whether the Indian child cannot or should not be returned to the home of the Indian parent or Indian custodian and the reasons for reaching that conclusion.

SEC. 10. Section 366.22 of the Welfare and Institutions Code is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian...

(c) (1) Whenever a court orders that a hearing pursuant to Section 366.26, including when a tribal customary adoption is recommended, shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, 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, to prepare an assessment that shall include:

(G) In the case of an Indian child, in addition to subparagraphs (A) to (F), inclusive, an assessment of the likelihood that the child will be adopted, when, in consultation with the child's tribe, a customary tribal adoption, as defined in Section 366.24, is recommended. If tribal customary adoption is recommended, the assessment shall include an analysis of both of the following:

(i) Whether tribal customary adoption would or would not be detrimental to the Indian child and the reasons for reaching that conclusion.

(ii) Whether the Indian child cannot or should not be returned to the home of the Indian parent or Indian custodian and the reasons for reaching that conclusion.

SEC. 12. Section 366.24 is added to the Welfare and Institutions Code, to read:

366.24. (a) For purposes of this section, "tribal customary adoption" means adoption by and through the tribal custom, traditions, or law of an Indian child's tribe. Termination of parental rights is not required to effect the tribal customary adoption.

(b) Whenever an assessment is ordered pursuant to Section 361.5, 366.21, 366.22, 366.25, or 366.26 for Indian children, the assessment shall address the option of tribal customary adoption.

(c) For purposes of Section 366.26, in the case of tribal customary adoptions, all of the following apply:

(1) The child's tribe or the tribe's designee shall conduct a tribal customary adoptive home study prior to final approval of the tribal customary adoptive placement.

(A) Where a tribal designee is conducting the home study, the designee shall do so in consultation with the Indian child's tribe. The designee may include a licensed county adoption agency, the State Department of Social Services when it is acting as an adoption agency in counties not served by a county adoption agency, or a California licensed adoption agency. Any tribal designee must be an entity authorized to request a search of the Child Abuse Central Index and, if necessary, a check of any other state's child abuse

and neglect registry and authorized to request a search for state or federal level criminal offender records information through the Department of Justice.

(B) The standard for the evaluation of the prospective adoptive parents' home shall be the prevailing social and cultural standard of the child's tribe. The home study shall include an evaluation of the background, safety and health information of the adoptive home, including the biological, psychological and social factors of the prospective adoptive parent or parents and an assessment of the commitment, capability and suitability of the prospective adoptive parent or parents to meet the child's needs.

(2) In all cases, an in-state check of the Child Abuse Central Index and, if necessary, a check of any other state's child abuse and neglect registry shall be conducted. If the tribe chooses a designee to conduct the home study, the designee shall perform a check of the Child Abuse Central Index pursuant to Section 1522.1 of the Health and Safety Code as it applies to prospective adoptive parents and persons over 18 years of age residing in their household. If the tribe conducts its own home study, the agency that has the placement and care responsibility of the child shall perform the check.

(3) In all cases prior to final approval of the tribal customary adoptive placement, a state and federal criminal background check through the Department of Justice shall be conducted on the prospective tribal customary adoptive parents and of persons over 18 years of age residing in their household. If the tribe chooses a designee to conduct the home study, the designee shall perform the state and federal criminal background checks. If the tribe conducts its own home study, the agency that has the placement and care responsibility of the child, shall perform the state and federal criminal background check. An individual who is the subject of the check may be provided, by the entity performing the background check, a copy of his or her state or federal level criminal offender record information search response as provided to that entity by the Department of Justice if the entity has denied a criminal background clearance based on this information and the individual makes a written request to the entity for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in his or her written request. The entity shall retain a copy of the individual's written request and the response and date provided.

(4) If federal or state law provides that tribes may conduct all required background checks for prospective adoptive parents, the tribally administered background checks shall satisfy the requirements of this section, so long as the standards for the background checks are the same as those applied to all other prospective adoptive parents in the State of California.

(5) Under no circumstances shall final approval be granted for an adoptive placement in any home if the prospective adoptive parent or any adult living in the prospective tribal customary adoptive home has any of the following:

(A) A felony conviction for child abuse or neglect, spousal abuse, crimes against a child, including child pornography, or a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault and battery. For purposes of

this subdivision, crimes involving violence means those violent crimes contained in clause (i) of subparagraph (A) and subparagraph (B), or paragraph (1) of, subdivision (g) of Section 1522 of the Health and Safety Code.

(B) A felony conviction that occurred within the last five years for physical assault, battery, or a drug-related offense.

(6) If the tribe identifies tribal customary adoption as the permanent placement plan for the Indian child, the court may continue the selection and implementation hearing governed by Section 366.26 for a period not to exceed 120 days to permit the tribe to complete the process for tribal customary adoption and file with the court a tribal customary adoption order evidencing that a tribal customary adoption has been completed. The tribe shall file with the court the tribal customary adoption order no less than 20 days prior to the date set by the court for the continued selection and implementation hearing. The department shall file with the court the addendum selection and implementation hearing court report no less than seven days prior to the date set by the court for the continued selection and implementation hearing. The court shall have discretion to grant an additional continuance to the tribe for filing a tribal customary adoption order up to, but not exceeding, 60 days. If the child's tribe does not file the tribal customary adoption order within the designated time period, the court shall make new findings and orders pursuant to subdivision (b) of Section 366.26 and this subdivision to determine the best permanent plan for the child.

(7) The child, birth parents, or Indian custodian and the tribal customary adoptive parents and their counsel, if applicable, may present evidence to the tribe regarding the tribal customary adoption and the child's best interest.

(8) Upon the court affording full faith and credit to the tribal customary adoption order and the tribe's approval of the home study, the child shall be eligible for tribal customary adoptive placement. The agency that has placement and care responsibility of the child shall be authorized to make a tribal customary adoptive placement and sign a tribal customary adoptive placement agreement and, thereafter, shall sign the adoption assistance agreement pursuant to subdivision (g) of Section 16120. The prospective adoptive parent or parents desiring to adopt the child may then file the petition for adoption. The agency shall supervise the adoptive placement for a period of six months unless either of the following circumstances exists:

(A) The child to be adopted is a foster child of the prospective adoptive parents whose foster care placement has been supervised by an agency before the signing of the adoptive placement agreement in which case the supervisory period may be shortened by one month for each full month that the child has been in foster care with the family.

(B) The child to be adopted is placed with a relative with whom they have an established relationship.

(9) All licensed public adoption agencies shall cooperate with and assist the department in devising a plan that will effectuate the effective and discreet transmission to tribal customary adoptees or prospective tribal customary adoptive parents of pertinent medical information reported to the department or the licensed public adoption agency, upon the request of the person reporting the medical information.

(A) A licensed public adoption agency may not place a child for tribal customary adoption unless a written report on the child's medical background and, if available, the medical background on the child's biological parents, so far as ascertainable, has been submitted to the prospective tribal customary adoptive parents and they have acknowledged in writing the receipt of the report.

(B) The report on the child's background shall contain all known diagnostic information, including current medical reports on the child, psychological evaluations, and scholastic information, as well as all known information regarding the child's developmental history.

(10) The tribal customary adoption order shall include, but not be limited to, a description of (A) the modification of the legal relationship of the birth parents or Indian custodian and the child, including contact, if any, between the child and the birth parents or Indian custodian, responsibilities of the birth parents or Indian custodian, and the rights of inheritance of the child and (B) the child's legal relationship with the tribe. The order shall not include any child support obligation from the birth parents or Indian custodian. There shall be a conclusive presumption that any parental rights or obligations not specified in the tribal customary adoption order shall vest in the tribal customary adoptive parents.

(11) Prior consent to a permanent plan of tribal customary adoption of an Indian child shall not be required of an Indian parent or Indian custodian whose parental relationship to the child will be modified by the tribal customary adoption.

(12) After the prospective adoptive parent or parents desiring to adopt the child have filed the adoption petition, the agency that has placement, care and responsibility for the child shall submit to the court, a full and final report of the facts of the proposed tribal customary adoption. The requisite elements of the final court report shall be those specified for court reports in the department's regulations governing agency adoptions.

(13) Notwithstanding any other provision of law, after the tribal customary adoption order has been issued and afforded full faith and credit by the state court, the tribal customary adoptive parents shall have all of the rights and privileges afforded to, and are subject to all the duties of, any other adoptive parent or parents pursuant to the laws of this state.

(14) Consistent with Section 366.3, after the tribal customary adoption has been afforded full faith and credit and a final adoption decree has been issued, the court shall terminate its jurisdiction over the Indian child.

(15) Nothing in this section is intended to prevent the transfer of those proceedings to a tribal court where transfer is otherwise permitted under applicable law.

(d) The following disclosure provisions shall apply to tribal customary adoptions:

(1) The petition, agreement, order, report to the court from any investigating agency, and any power of attorney filed in a tribal customary adoption proceeding is not open to inspection by any person other than the parties to the proceeding and their attorneys and the department, except upon the written authority of the judge of the juvenile court. A judge may not authorize anyone to inspect the petition, agreement, order, report to the

court from any investigating agency, and any power of attorney except in exceptional circumstances and for good cause approaching the necessitous.

(2) Except as otherwise permitted or required by statute, neither the department nor any licensed adoption agency shall release information that would identify persons who receive, or have received, tribal customary adoption services. However, employees of the department and licensed adoption agencies shall release to the State Department of Social Services any requested information, including identifying information, for the purpose of recordkeeping and monitoring, evaluation, and regulation of the provision of tribal customary adoption services.

(3) The department and any licensed adoption agency may, upon written authorization for the release of specified information by the subject of that information, share information regarding a prospective tribal customary adoptive parent or birth parent with other social service agencies, including the department and other licensed adoption agencies, or providers of health care as defined in Section 56.05 of the Civil Code.

(4) Notwithstanding any other law, the department and any other licensed adoption agency may furnish information relating to a tribal customary adoption petition or to a child in the custody of the department or any licensed public adoption agency to the juvenile court, county welfare department, public welfare agency, private welfare agency licensed by the department, provider of foster care services, potential adoptive parents, or provider of health care as defined in Section 56.05 of the Civil Code, if it is believed the child's welfare will be promoted thereby.

(5) The department and any licensed adoption agency may make tribal customary adoption case records, including identifying information, available for research purposes, provided that the research will not result in the disclosure of the identity of the child or the parties to the tribal customary adoption to anyone other than the entity conducting the research.

(e) This section shall remain operative only to the extent that compliance with its provisions does not conflict with federal law as a condition of receiving funding under Title IV-E or the federal Social Security Act (42 U.S.C. Sec. 670 et seq.).

(f) The Judicial Council shall adopt rules of court and necessary forms required to implement tribal customary adoption as a permanent plan for dependent Indian children. The Judicial Council shall study California's tribal customary adoption provisions and their affects on children, birth parents, adoptive parents, Indian custodians, tribes, and the court, and shall report all of its findings to the Legislature on or before January 1, 2013. The report shall include, but not be limited to, the following:

(1) The number of families served and the number of completed tribal customary adoptions.

(2) The length of time it takes to complete a tribal customary adoption.

(3) The challenges faced by social workers, court, and tribes in completing tribal customary adoptions.

(4) The benefits or detriments to Indian children from a tribal customary adoption.

(g) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 13. Section 366.25 of the Welfare and Institutions Code is amended to read:

366.25. (a) (1) When a case has been continued pursuant to subdivision (b) of Section 366.22, the subsequent permanency review hearing shall occur within 24 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian. The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. At the subsequent permanency review hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal to the extent that the criminal record is substantially related to the welfare of the child or parent or legal guardian's ability to exercise custody and control regarding his or her child provided that the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

(2) Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that return would be detrimental. If the child is not returned to his or her parents or legal guardian, the court shall consider and state for the record, in-state and out-of-state options for the child's permanent placement. If the child is placed out of the state, the court shall make a determination whether the out-of-state placement continues to be appropriate and in best interests of the child.

(3) If the child is not returned to a parent or legal guardian at the subsequent permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, or, in the case of an Indian child, tribal customary adoption, guardianship, or long-term foster care is the most appropriate plan for the child. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, including a recommendation by 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, that there is a compelling reason, as described in paragraph (3) of subdivision (g) of Section 366.21, for determining that a hearing held under Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption or, in the case of an Indian child, tribal customary adoption, and has no one willing to accept legal guardianship, then the court may, only under these circumstances, order that the child remain in foster care. If the court orders that a child who is 10 years of age or older remain in long-term foster care, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained. The hearing shall be held no later than 120 days from the date of the subsequent permanency review hearing. The court shall also order termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have been offered or provided to the parent or legal guardian. For purposes of this subdivision, evidence of any of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to make and finalize a permanent placement for the child if efforts to reunify fail.

(C) Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(b) (1) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, 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, to prepare an assessment that shall include:

(A) Current search efforts for an absent parent or parents.

(B) A review of the amount of, and nature of, any contact between the child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purposes of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(C) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(D) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, including a prospective tribal customary adoptive parent, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and

responsibilities of adoption and guardianship. If a proposed legal guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(E) The relationship of the child to any identified prospective adoptive parent or legal guardian, including a prospective tribal customary adoptive parent, the duration and character of the relationship, the motivation for seeking adoption or legal guardianship, and a statement from the child concerning placement and the adoption or legal guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(F) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(G) In the case of an Indian child, in addition to subparagraphs (A) to (F), inclusive, an assessment of the likelihood that the child will be adopted, when, in consultation with the child's tribe, a customary tribal adoption, as defined in Section 366.24, is recommended. If tribal customary adoption is recommended, the assessment shall include an analysis of both of the following:

(i) Whether tribal customary adoption would or would not be detrimental to the Indian child and the reasons for reaching that conclusion.

(ii) Whether the Indian child cannot or should not be returned to the home of the Indian parent or Indian custodian and the reasons for reaching that conclusion.

(2) (A) A relative caregiver's preference for legal guardianship over adoption, if it is due to circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, shall not constitute the sole basis for recommending removal of the child from the relative caregiver for purposes of adoptive placement.

(B) A relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption.

(c) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, and juvenile court dependency is subsequently dismissed, the relative shall be eligible for aid under the Kin-GAP Program, as provided for in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(d) As used in this section, "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," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(e) The implementation and operation of subdivision (a) enacted at the 2005–06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

(f) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted

SEC. 15. 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 (d) 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 8616.5 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 (d) 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, which 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, 366.22, or 366.25, 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) Order, without termination of parental rights, the plan of tribal customary adoption, as described in Section 366.24, through tribal custom, traditions, or law of the Indian child's tribe, and upon the court affording the tribal customary adoption order full faith and credit at the continued selection and implementation hearing, order that a hearing be set pursuant to paragraph (2) of subdivision (e).
- (3) Appoint a relative or relatives with whom the child is currently residing as legal guardian or guardians for the child, and order that letters of guardianship issue.
- (4) On making a finding under paragraph (3) of subdivision (c), identify adoption or tribal customary adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.
- (5) Appoint a nonrelative legal guardian for the child and order that letters of guardianship issue.
- (6) 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, subdivision (b) of Section 366.22, or subdivision (b) of Section 366.25, 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. Under these circumstances, the court shall terminate parental rights unless either of the following applies:

(A) The child is living with a relative who is unable or unwilling to adopt the child because of 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 through legal guardianship, and the removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child. For purposes of an Indian child, “relative” shall include an “extended family member,” as defined in the federal Indian Child Welfare Act (25 U.S.C. Sec. 1903(2)).

(B) 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:

(i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

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

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

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

(v) 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.

(vi) 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:

(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, tribal customary adoption, or another planned permanent living arrangement for the child.

(C) For purposes of subparagraph (B), in the case of tribal customary adoptions, Section 366.24 shall apply.

(D) If the court finds that termination of parental rights would be detrimental to the child pursuant to clause (i), (ii), (iii), (iv), (v), or (vi), it shall state its reasons in writing or on the record.

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

(A) At each 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, the court has found that active efforts were not made as required in Section 361.7.

(ii) The court does not make 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.

(iii) The court has ordered tribal customary adoption pursuant to Section 366.24.

(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 the state or out of the state, 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, 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), (2), (3), (5), or (6) 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 seven years of age 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 clause (i), (ii), (iii), (iv), (v), or (vi) of subparagraph (B) 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 order that the child remain in long-term foster care, or, in the case of an Indian child, consider a tribal customary adoption pursuant to Section 366.24. 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, 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 or, in the case of an Indian child, prospective tribal customary adoptive parents. 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, subdivision (b) of Section 366.22, and subdivision (b) of Section 366.25 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) (1) 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.

(2) In the case of an Indian child, if the Indian child's tribe has elected a permanent plan of tribal customary adoption, the court, upon receiving the tribal customary adoption order will afford the tribal customary adoption order full faith and credit to the same extent that the court would afford full faith and credit to the public acts, records, judicial proceedings, and judgments of any other entity. Upon a determination that the tribal customary adoption order may be afforded full faith and credit, consistent with Section 224.5, the court shall thereafter order a hearing to finalize the adoption be set upon the filing of the adoption petition. The prospective tribal customary adoptive parents and the child who is the subject of the tribal customary adoption petition shall appear before the court for the finalization hearing. The court shall thereafter issue an order of adoption pursuant to Section 366.24.

(3) If a child who is the subject of a finalized tribal customary adoption shows evidence of a developmental disability or mental illness as a result of conditions existing before the tribal customary adoption to the extent that the child cannot be relinquished to a licensed adoption agency on the grounds that the child is considered unadoptable, and of which condition the tribal customary adoptive parent or parents had no knowledge or notice before the entry of the tribal customary adoption order, a petition setting forth those facts may be filed by the tribal customary adoptive parent or parents with the juvenile court that granted the tribal customary adoption petition. If these facts are proved to the

satisfaction of the juvenile court, it may make an order setting aside the tribal customary adoption order. The set aside petition shall be filed within five years of the issuance of the tribal customary adoption order. The court clerk shall immediately notify the child's tribe and the department in Sacramento of the petition within 60 days after the notice of filing of the petition. The department shall file a full report with the court and shall appear before the court for the purpose of representing the child. Whenever a final decree of tribal customary adoption has been vacated or set aside, the child shall be returned to the custody of the county in which the proceeding for tribal customary adoption was finalized. The biological parent or parents of the child may petition for return of custody. The disposition of the child after the court has entered an order to set aside a tribal customary adoption shall include consultation with the child's tribe.

(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 a period of time 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 exists:

(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) (1) 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 juvenile court shall have no power to set aside, change, or modify it, except as provided in paragraph (2), but nothing in this section shall be construed to limit the right to appeal the order.

(2) A tribal customary adoption order evidencing that the Indian child has been the subject of a tribal customary adoption shall be afforded full faith and credit and shall have the same force and effect as an order of adoption authorized by this section. The rights and obligations of the parties as to the matters determined by the Indian child's tribe shall be binding on all parties. A court shall not order compliance with the order absent a finding that the party seeking the enforcement participated, or attempted to participate, in good faith, in family mediation services of the court or dispute resolution through the tribe regarding the conflict, prior to the filing of the enforcement action.

(3) A child who has not been adopted after the passage of at least three years from the date the court terminated parental rights and for whom the court has determined that adoption is no longer the permanent plan may petition the juvenile court to reinstate parental rights pursuant to the procedure prescribed by Section 388. The child may file the petition prior to the expiration of this three-year period if the State Department of Social Services or licensed adoption agency that is responsible for custody and supervision of the child as described in subdivision (j) and the child stipulate that the child is no longer likely to be adopted. A child over 12 years of age shall sign the petition in the absence of a showing of good cause as to why the child could not do so. If it appears that the best interests of the child may be promoted by reinstatement of parental rights, 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 the child's tribe, if applicable, by means prescribed by subdivision (c) of Section 297. The court shall order the child or the social worker or probation officer to give prior notice of the hearing to the child's former parent or parents whose parental rights were terminated in the manner prescribed by subdivision (f) of Section 294 where the recommendation is adoption. The juvenile court shall grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interest. If the court reinstates parental rights over a child who is under 12 years of age and for whom the new permanent plan will not be reunification with a parent or legal guardian, the court shall specify the factual basis for its findings

that it is in the best interest of the child to reinstate parental rights. This subdivision is intended to be retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.

(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, or declares the child eligible for tribal customary adoption, 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, except in the case of a tribal customary adoption where there is no termination of parental rights, 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 or tribal customary adoption is granted, except as specified in subdivision (n). 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 apply:

(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, 366.22, and 366.25 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.

(n) (1) Notwithstanding Section 8704 of the Family Code or any other provision of law, the court, at a hearing held pursuant to this section or anytime thereafter, may designate a current caretaker as a prospective adoptive parent if the child has lived with the caretaker for at least six months, the caretaker currently expresses a commitment to adopt the child, and the caretaker has taken at least one step to facilitate the adoption process.

In determining whether to make that designation, the court may take into consideration whether the caretaker is listed in the preliminary assessment prepared by the county department in accordance with subdivision (i) of Section 366.21 as an appropriate person to be considered as an adoptive parent for the child and the recommendation of the State Department of Social Services or licensed adoption agency.

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

(A) Applying for an adoption home study.

(B) Cooperating with an adoption home study.

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

(D) Requesting de facto parent status.

(E) Signing an adoptive placement agreement.

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

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

(H) Attending classes required of prospective adoptive parents.

(3) Prior to a change in placement and as soon as possible after a decision is made to remove a child from the home of a designated prospective adoptive parent, the agency shall notify the court, the designated prospective adoptive parent or the current caretaker, if that caretaker would have met the threshold criteria to be designated as a prospective

adoptive parent pursuant to paragraph (1) on the date of service of this notice, the child's attorney, and the child, if the child is 10 years of age or older, of the proposal in the manner described in Section 16010.6.

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

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

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

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

(4) Notwithstanding paragraph (3), if the State Department of Social Services or a licensed adoption agency determines that the child must be removed from the home of the caretaker who is or may be a designated prospective adoptive parent immediately, due to a risk of physical or emotional harm, the agency may remove the child from that home and is not required to provide notice prior to the removal. However, as soon as possible and not longer than two court days after the removal, the agency shall notify the court,

the caretaker who is or may be a designated prospective adoptive parent, the child's attorney, and the child, if the child is 10 years of age or older, of the removal. Within five court days or seven calendar days, whichever is longer, of the date of notification of the removal, the child, the child's attorney, or the caretaker who is or may be a designated prospective adoptive parent may petition for, or the court on its own motion may set, a noticed hearing pursuant to paragraph (3). The court may, for good cause, extend the filing period.

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

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

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

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

(p) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.