# Indian Child Welfare Act
# Legal Update
# 2024

Hon. Shawna Schwarz, Santa Clara County Superior Court
Kenneth D. & Dezi C. substantive information provided by Deputy County Counsel, Braeden Sullivan

**Agenda**

- Backdrop
- Issues that have bubbled up
- Case law and legislation
- Take-aways

## Backdrop

Major Change in Law

- Prior ICWA notice process
- Jan. 2019 – AB3176
- Current process: review of process

Appeals by the numbers

## Issues that Have Bubbled Up

Issues we have seen over the past five years (since change in law)

1) Can a court **CURE** failure of initial inquiry by engaging in a later inquiry?

2) Can a party **SUPPLEMENT** record the record w/ post appeal evidence?

3) Must a parent **CLAIM** heritage on appeal or provide evidence of heritage on appeal?

4) Is failure to **ASK** extended family reversible per se?

5) Does the duty to ask extended relatives depend on the **MECHANISM** by which children were removed?

**Supplementing the record**

Can you supplement the record with post appeal evidence?

Issue: Use CCP 909 to admit additional evidence on appeal, like a par's ICWA-020 form, or a tribe's response.

**Assessing error when inquiry failures**

Is failure to ask extended family reversible per se?

How does the appellate court assess error?

Tests to assess error:

- Presumptive Affirmance Rule: Even if no inquiry, error harmless unless parent asserts Indian ancestry on appeal.
- Automatic Reversal Rule: reversal is required
- Readily Obtainable Information Rule: defect harmless unless record indicates that there was readily obtainable info that would bear meaningfully upon whether child is Indian
- Reason to Believe Rule: defect harmless unless record contains info suggesting reason to believe such that absence of further inquiry was prejudicial. (Dezi C.)

Done differently statewide and division-wide.

**Does mechanism of removal matter regarding inquiry?**

Is failure to ask extended family reversible per se?

The big issue for a while in 2022 and 2023…

- Does the duty to inquire of extended family members apply only when child is removed w/o warrant (ie, by social worker emergency removal??
- Split of opinion re when expanded duty of initial inquiry applies: to all kids, or only to those removed before detention without a warrant.
- Robert F: Removal by WIC 306 (emergency removal by SW) and WIC 340 (protective custody warrant) are fundamentally different. Removal by PCW does not require Dept to inquire of extended rels re ICWA heritage.

Depends on which appellate district, and which division…

# Case Law & Legislation

- Kenneth D.
- Dezi C.
- AB81

## Kenneth D. (2024) 16 Cal.5th 1087

ISSUE: When the initial ICWA inquiry was inadequate, may an appellate court consider postjudgment evidence to conclude the error was harmless?

SHORT ANSWER: No.

FACTS: Agency failed to ask bio father or his family about heritage during case. After appeal filed, Agency inquired of family, was allowed to augment record by Memo. Appellate Court ruled inquiry error was harmless in light of augmented record. Supreme Court granted review.

SUPREME COURT:

- J.T. contends that the Court of Appeal should not have considered the Agency's postjudgment inquiry and should have conditionally remanded the case to the trial court to cure the error.
- Agency asserts that because the additional inquiry is complete, remanding the case to the trial court for further inquiry would be a futile act.
- Court notes that there are differences of opinion re: the standard for reviewing the court's finding of whether the ICWA inquiry was sufficient, but declines to resolve the dispute because everyone concedes the initial inquiry here was inadequate as neither the Agency nor the trial court ever asked J.T. about ICWA prior to terminating parental rights.
- Appellate courts review a trial court's judgment based on the record as it existed at the time of the ruling, as the trial court is best situated to make determinations regarding credibility and assessments of adequacy based on a complete record.
- In order to rely on the Agency's postjudgment report to find the prior failure of inquiry harmless, the appellate court would need to treat the Agency's factual assertions as undisputed. The Court says it cannot do absent exceptional circumstances as the juvenile court must do the fact finding, including reviewing the record, considering additional or competing evidence, and assessing weight and credibility.
- Josaih Z. allows limited postjudgment evidence. Reasoning no relevant here. This would put appellate court in position of factfinding, which is the purview of trial court.
- CCP 909 allows reviewing court to take additional evidence. Supposed to use this sparingly, in exceptional circumstances. ICWA errors are common – not rare – so not exceptional circumstances.
- Judicial notice allows court to augment appellate record. Only applies to materials that were already in the record when the trial court made its order, not documents filed after the trial court's judgment has been appealed. The appellate court can only take judicial notice of evidence not presented to the trial court prior to its judgment in exceptional circumstances (which is not the case here). Additionally, while the court can take judicial notice of the existence of documents in the file, it can only take judicial notice of the *truth of the facts asserted* in documents like orders, findings of fact and conclusions of law, and judgments. Here, the postjudgment memo is not an order or finding that the appellate court can take judicial notice of, it's just an assertion of fact that nobody has had an opportunity to respond to or review.

- **Wouldn't allowing evidence of postjudgment ICWA inquiry to cure defects promote the state's interest in the expeditiousness and finality of juvenile court proceedings?**
    - No. Tribes have a right to intervene and overturn prior judgments for the failure to comply with ICWA. Lack of timely and proper inquiry can undermine expeditious resolution and call into doubt the finality of juvenile court orders.
- Holding: "Where the juvenile court finds that ICWA does not apply based on an inadequate inquiry into a child's native heritage, an appellate court, absent exceptional circumstances, may not consider evidence uncovered during a postjudgment inquiry to conclude the failure to conduct a proper inquiry was harmless."
- Court of Appeals judgment reversed with directions to conditionally reverse juvenile court's order terminating parental rights; remand to juvenile court for compliance with ICWA.

## Dezi C. (2024) 16 Cal.5th 1112

ISSUE: Does child welfare agency's failure to conduct initial inquiry under California's heightened ICWA requirements reversible error?

SHORT ANSWER: Yes.

FACTS: Parents said no Indian heritage at detention hearing, court found it was not ICWA case. At .26 hearing, TPR, no mention of ICWA. Agency has spoken to various relatives throughout case, never asked about ICWA.

APPELLATE COURT

- Mom: Agency failed to inquire of extended family members.
- Court: undisputed that Agency's initial inquiry was deficient. Operative question was whether Agency's defective initial inquiry render[ed] invalid juvenile court's finding that ICWA does not apply.
- Highlights that there are three rules to assess whether defective initial inquiry is harmless.
- Comes up with fourth rule: Defect is harmless unless record contains info suggesting a reason to believe that the child may be an Indian child. Is it reasonably probable that the Juv Ct would have made the same finding had the inquiry be done properly? Answer was yes, affirmed juvenile court.
- Supreme Court granted review.

"HEIGHTENED ICWA REQUIRMENTS"?

Jan. 2007, Cal-ICWA effective. Goal was to increase compliance w/ ICWA. Enhances federal protections.

- **Broader inquiry obligations:** Mandates a more rigorous, affirmative, and continuing duty to inquire, including asking parents, extended family members, and others involved in the child's life about potential Native American heritage.
- **Applicability threshold:** Expands applicability by requiring agencies to investigate even potential Native American heritage earlier in proceedings, often before formal determination of tribal status.
- **Documentation and compliance:** Imposes stricter requirements for documenting efforts to locate and notify tribes, ensuring thorough record-keeping.
- **State-specific enhancements:** incorporates additional procedural safeguards tailored to California's demographics and the large population of Native American tribes in the state, some of which may lack federal recognition but are still considered under California law.
- **Tribal sovereignty:** requires more robust efforts to engage tribes and respect their decisions, reflecting California's commitment to honoring Native American cultural heritage.

**Cal-ICWA Initial Inquiry Requirements**

- When WIC § 300, 601, or 602 petition is filed, Court and the County have affirmative and continuing duty to inquire whether child is or may be Indian child. *WIC § 224.2(a).*
- When child is placed into protective custody, Department must ask the child (if old enough), parents, Indian custodian, legal guardians, extended family members, others wo have an interest in child, and reporting party whether child is or may be Indian child. *WIC § 224.2(b); Cal. Rule of Ct. 5.481(a)(1).*
- Court is also required to ask all participants at their initial court appearances and direct parents to provide additional information if they receive any new information. *WIC § 224.2(c); Cal. Rule of Ct. 5.481(a)(2).*
- "Extended Relatives" are defined in 25 U.S.C. 1903 to include following adult family members: grandparents, siblings (including in-laws), aunts and uncles, nieces and nephews, 1st and 2nd cousins, and stepparents.

**Adequate Initial Inquiry**

"As required by statute, an adequate initial inquiry that reaches beyond parents to extended family members and others facilitates the discovery of Indian identity, and maximizes the chances that potential Indian children are discovered and tribes are notified." (p. 1140)

If agency does not ask every single relative, is the inquiry inadequate? No.

> **"people who are reasonably available to help the agency with its investigation into whether the child has any potential Indian ancestry should be asked."**

**Assessing Adequacy of Initial Inquiry**

- The juvenile court has relatively broad discretion to determine whether the agency's inquiry was adequate, proper, and duly diligent, and that is a fact-specific determination.
- On appeal, the appellate court should review whether the juvenile court's findings that the inquiry was adequate and proper and ICWA does not apply are supported by sufficient evidence, documented in the record as required by Cal. Rule of Ct. 5.481(a)(5).
- Inadequate initial inquiry requires conditional reversal w/ directions to conduct adequate inquiry and include documentation of the inquiry in the record. Trial court determines if inquiry error has been cured.

**Other Dezi C. Issues**

- Does par need to show reason to believe ICWA determination would be different w/ proper initial inquiry?
    - No. Duty of inquiry is agency's.
    - Parents to not need to make any affirmative showing of additional evidence of that further inquiry is likely to establish that the child is an Indian child on appeal.
- Result in gamesmanship, withholding info or waiting to raise ICWA to delay proceedings?
    - Court condemns such tactics, believes there is little incentive for parents to do this.
    - Court presumes counsel representing parents on appeal will raise only nonfrivolous claims.
    - Parties in dependency proceedings may be sanctioned if they knowingly and willfully falsify or conceal material fact concerning whether child is Indian child, or counsel a party to do so. (p. 1149; *see also* WIC 224.3(e).)

## AB81

Overview:

- Approved 9/27/24, takes effect immediately.
- Enhances protections for Native American children and families in CA, strengthens ICWA.
- AB 81 builds on the federal ICWA framework to address historical injustices and prevent the removal of Native children from their communities, reflecting California's commitment to protecting Native rights and preserving cultural identity

Does the requirement to do initial inquiry of extended relatives depend on mechanism of removal?

What about In re Ja.O. (2023) 91 Cal. App. 5th 672? Part of the Robert F. line of cases out of 4th DCA, Div. 2.

> Petition for review after the Court of Appeal affirmed orders in a juvenile dependency proceeding. This case presents the following issue: Does the duty of a child welfare agency to inquire of extended family members and others about a child's potential Indian ancestry apply to children who are taken into custody under a protective custody warrant?
>
> Ja.O. held that WIC 224.2(b) inquiry is not implicated where removal is not by WIC 306. So no need to ask extended relatives because children were removed by PC warrant.
>
> - Supreme Court granted review in In re Ja.O. on July 26, 2023. The case was fully briefed and was expected to be heard by the court by March 2024.
> - On 10/23/24, Supreme Court directed parties to brief the issue addressing the significance on this case, if any, of Assembly Bill No. 81 (2023-2024 Reg. Sess.); responsive briefs by November 26, 2024.
> - Awaiting decision on whether AB81 answers the split of opinion re whether mechanism of removal (SW by 306 vs. 340) matters in terms of inquiry of extended relatives.

AB81 says:

- If a child is … received and maintained in temporary custody of a county welfare department pursuant to paragraph (1) of subdivision (a) of Section 306, or
- taken into or maintained in the temporary custody of a county welfare department pursuant to paragraph (2) of subdivision (a) of Section 306,
- or if they were initially taken into protective custody pursuant to a warrant described in Section 340,
- the county welfare department or county probation department has a duty to inquire of
    - Child, pars, guardian, Indian custodian, extended family members, others who have interest, reporter of abuse
    - Whether child is, or may be, Indian; and where child/pars are domiciled

# Take-aways

- What do we learn from Kenneth D., Dezi C., AB81?
- Quick reminder about a couple of other cases that are imploring us to do better
    - *In re K.T.* (2022) 76 Cal. App. 5th 732
    - *In re Ezequiel G.* (2022) 81 Cal.App. 5th 984
    - *H.A. v. Superior Court* (2024) 101 Cal. App. 5th 956

Kenneth D. and Dezi C.

- No good faith believe children were Indian
- Cases didn't uncover ICWA heritage
- Do these cases move the needle, or are we stuck where we have been?

One glimmer of hope: Dezi C. defines universe of extended family members

- Agency need not cast about to find all rels. Welf. & Inst. Code, § 224.2, does not require the agency to find unknown relatives and others who have an interest in the child, merely to make reasonable inquiries. The operative concept is those **people who are reasonably available** to help the agency with its investigation into whether the child has any potential Indian ancestry should be asked.
- "[E]xtended family member" means "a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent." (25 U.S.C. § 1903(2); see also § 224.1, subd. (c) [adopting ICWA definition of "extended family member"].)
- Adequate initial inquiry that reaches beyond parents to extended family members and others facilitates the discovery of Indian identity, and maximizes the chances that potential Indian children are discovered and tribes are notified.

And remember, this is not that hard…. The work is swift and slight, and does not add measurably to the burden on agencies and courts. According to Dezi C.:

- Agencies are already tasked with investigating the circumstances underlying the child's removal and identifying and locating the child's extended family members (Welf. & Inst. Code, § 309, subds. (a), (e));
- It is a rather simple task to ask those family members about Indian ancestry in this process.
- In fact, courts have characterized the duty of inquiry as slight and swift. the circumstances underlying the child's removal and identifying and locating the child's extended family members (§ 309, subds. (a), (e)); it is a rather simple task to ask those family members about Indian ancestry in this process. In fact, courts have characterized the duty of inquiry as "slight and swift." (*In re S.S.* (2023) 90 Cal.App.5th 694, 698 [307 Cal. Rptr. 3d 308];
- See also *K.H., supra*, 84 Cal.App.5th at p. 619 ["we do not believe that requiring agencies and juvenile courts to ensure fulfillment of the most basic duties of inquiry required under ICWA adds measurably to" burden.
- Emphasize that "the obligation is only one of inquiry and not an absolute duty to ascertain or refute Native American ancestry." (*In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1413 [129 Cal. Rptr. 2d 15].) Agencies are already tasked with investigating on agencies and courts]; *A.R., supra*, 77 Cal.App.5th at p. 207 [delay in finality "need not be a significant one"].)

Regarding the record…

- It's all about the record
- Make findings grounded in record
- If not making actual findings, grounded in/supported by record, no deference
- Say, "here are efforts, they are reasonable."
- Reiterate at .26 Hrg….
- Extent of inquiry is fact specific. For ICWA to apply, need removal and child who is plausibly Indian child.
- So many cases, appears ICWA is forgotten about at .26

**Three more cases:**

*In re K.T.* (3/23/22) 4th Dist., Div. 2 – San Bernardino – 76 Cal.App. 5th, 732

> "We publish our opinion not because the errors that occurred are novel but because they are too common."
>
> "Concerning, especially considering our court's admonishment from nearly a decade ago that we were "well past the stage of '*growing* weary of appeals in which the only error is the [agency's] failure to comply with … ICWA.'"

*In re Ezequiel G.* (2022) 81 Cal.App. 5th 984

> **Everybody has role in getting ICWA right**
>
> Because early identification of Indian children is critical to the proper implementation of the ICWA, the statute must be interpreted in a way that requires all participants—child protective agencies, the parents, all counsel, and the juvenile courts—to work together to determine whether children are Indian children. The child protective agencies and the juvenile courts have a key role to play in this determination.

*H.A. v. Superior Court* (2024) 101 Cal. App. 5th 956

> Finally, because we have received an inordinate number of cases arguing inadequacy of the ICWA inquiry based on the Agency's failure to inquire about possible Indian heritage from relatives and have remanded many such cases for correction of ICWA error, we are compelled to comment upon the omissions of both the parties and the juvenile court, and to provide some direction to all involved in these dependency matters
>
> <u>Parents'/minors' counsel:</u>
>
> - Raise adequacy of inquiry to J.Ct.
> - Non-forfeiture rule is not invitation to sit idly by
> - Promptly bring ICWA issues to ct's attention
>
> <u>Agency:</u>
>
> - No cast about
> - Affirmative, continuing duty
> - Include in reports discussion of efforts to locate, interview
> - Diligently discharge duty, not rely on unsupported opinion
>
> <u>Court:</u>
>
> - Timely perform duties
> - Make findings re applicability
> - Meaningful ICWA analysis on record; meaningful consideration
> - Don't adopt recs w/o comment

# ICWA Inquiry: Reported California Cases 2021 - 2024

## Breakdown of Issues

| Is genetic testing information alone enough to give reason to believe or know? | | | | | | |
|---|---|---|---|---|---|---|
| | **Dist. 1** | **Dist. 2** | **Dist. 3** | **Dist. 4** | **Dist. 5** | **Dist. 6** |
| **Yes** | | | | | | |
| **No** | | *In re J.S.* 2nd DCA Div. 7, 62 Cal.App.5th 678 | | | | |

| Can failure of initial inquiry at the outset of the case be cured by proper inquiry at a later stage in the case? | | | | | | |
|---|---|---|---|---|---|---|
| *Failure of inquiry at the outset of the case does not require reversal of jurisdictional and dispositional findings.* | | | | | | |
| | **Dist. 1** | **Dist. 2** | **Dist. 3** | **Dist. 4** | **Dist. 5** | **Dist. 6** |
| **Yes** | *In re S.H.* 1st DCA Div. 1, 82 Cal.App.5th 166 | *In re Baby Girl M.* 2nd DCA Div. 5, 83 Cal.App.5th 635<br>*In re H.B.,* 2nd DCA, Div. 8, 92 Cal.App.5th 711. | *J.J. V. Superior Court* 3rd DCA, 81 Cal.App.5th 447 | *In re Dominick D.* 4th DCA Div. 2, 82 Cal.App.5th 560<br>*In re T.R.* 4th DCA Div. 2, 87 Cal.App.5th 1140 | | |
| **No** | | | | | | |

| Can ICWA Inquiry be raised post 366.26 via 388 petition? | | | | | | |
|---|---|---|---|---|---|---|
| | **Dist. 1** | **Dist. 2** | **Dist. 3** | **Dist. 4** | **Dist. 5** | **Dist. 6** |
| **Yes** | | | | | | |
| **No** | | *In re. N.F.* 2nd DCA Div 3, 95 Cal. App. 5th 170 | | | | |

# Issues Decided by California Supreme Court in 2024

**Is it permissible to supplement the record with post-appeal evidence of ICWA Inquiry?**

**Generally, no**. Per the California Supreme Court in *In re Kenneth D.* (2024) 16 Cal.5th 1087. Majority holding that "…absent exceptional circumstances, a reviewing court may not generally consider post-judgment evidence to conclude the error was harmless. The sufficiency of an ICWA inquiry must generally be determined by the juvenile court in the first instance."

| | Dist. 1 | Dist. 2 | Dist. 3 | Dist. 4 | Dist. 5 | Dist. 6 |
|---|---|---|---|---|---|---|
| **Yes** | | *In re Allison B.* 2nd DCA Div. 1, 79 Cal. App.5th 214<br>*In re E.L.* 2nd DCA Div.6, 82 Cal.App.5th 597 (Review granted 11/30/2022 S276508. Further action deferred pending Kenneth D.) | *In re Kenneth D.*, 3rd DCA 82 Cal. App.5th 1027(Leave granted 11/30/2022. Fully briefed. Oral argument letter sent 1/29/2024) | | | |
| **No** | | *In re M.B.* 2nd DCA Div. 7, 80 Cal. App.5th 617 | | *In re E.V.* 4th DCA Div. 3, 80 Cal.App.5th 691<br>*In re G.H.* 4th DCA Div. 3, 84 Cal.App.5th 15<br>*In re Ricky R.* 4th DCA Div. 2, 82 Cal.App.5th 671 | *In re E.C.* 5th DCA, 85 Cal.App.5th 123 | |

**Does there need to be some claim or evidence of Indian heritage on appeal?**

**No**. Per the California Supreme Court in *In re Dezi C.* (2024) 16 Cal.5th 1112. Majority holding that when there is an inadequate ICWA inquiry, there did not need to be any claim of Indian heritage or "reason-to-believe" the child might be an Indian child for the appellate court to reverse. "We reject the reason-to-believe rule as flawed. By placing the burden on parents to point to something in the record suggesting there is a reason to believe a child might be an "Indian child," the rule effectively shifts the obligation to conduct the inquiry away from child welfare agencies and courts to the parents."

| | Dist. 1 | Dist. 2 | Dist. 3 | Dist. 4 | Dist. 5 | Dist. 6 |
|---|---|---|---|---|---|---|
| **Yes** | | *In re Ezequiel G.* 2nd DCA Div. 3, 81 Cal.App.5th 984 | | *In re A.C.* 4th DCA Div. 2, 65 Cal.App.5th 1060 | | |
| **No** | | *In re Y.W.* 2nd DCA Div. 7. 70 Cal.App.5th 542<br>*In re H.V.* 2nd DCA Div. 5, 75 Cal.App.5th 433 | | *In re A.R.* 4th DCA Div. 3, Cal.App.5th 197<br>*In re K.T.* 4th DCA Div. 2 76 Cal. App.5th 732 | | |

**Is failure to ask extended family members about Indian ancestry *per se* reversible error?**

**Yes**. Per *In re Dezi C.* (2024) 16 Cal.5th 1112. Majority holding "…that error resulting in an inadequate initial Cal-ICWA inquiry requires conditional reversal with directions for the child welfare agency to comply with the inquiry requirement of Welf. & Inst. Code, § 224.2, document its inquiry in compliance with rule 5.481(a)(5), and when necessary, comply with the notice provision of § 224.3. When a Cal-ICWA inquiry is inadequate, it is impossible to ascertain whether the agency's error is prejudicial. (*Y.W.*, supra, 82 Cal.App.5th at 556; see also *J.C., supra*, 77 Cal.App.5th at 80.) "[U]ntil an agency conducts a proper initial inquiry and makes that information known, it is impossible to know what the inquiry might reveal."

| | Dist. 1 | Dist. 2 | Dist. 3 | Dist. 4 | Dist. 5 | Dist. 6 |
|---|---|---|---|---|---|---|
| **Yes** | | *In re A.C.* 2nd DCA Div. 1, 75 Cal.App.5th 1009<br>*In re A.C.* 2nd DCA Div.5, 86 Cal.App.5th 130<br>*In re Antonio R.* 2nd DCA Div. 7, 76 Cal.App.5th 421<br>*In re H.V.* 2nd DCA Div. 5, 75 Cal. App.5th 433<br>*In re J.C.* 2nd DCA Div. 7, 77 Cal.App.5th 70<br>*In re Y.W.* 2nd DCA Div. 7, 70 Cal.App.5th 542<br>*In J.K.* 2nd DCA Div. 6, 83 Cal.App.5th 498<br>*In re Oscar H.* 2nd DCA Div. 8, 84 Cal.App.5th 933<br>*In re Jayden G.* 2nd DCA Div. 8, 88 Cal.App.5th 301<br>*In re. S.S.* 2nd DCA Div. 8, 90 Cal. App.5th 694. | H.A. v. Superior Court of San Joaquin County, 3rd DCA 2024 WL 1950768 (May 3, 2024) | *In re A.R.* 4th DCA Div. 3, 77 Cal. App.5th 197<br>*In re Benjamin M.* 4th Div. 2, 70 Cal. App.5th 735<br>*In re E.V.* 4th DCA Div. 3, 80 Cal.App.5th 691<br>*In re Ricky R.* 4th DCA Div. 2, 82 Cal.App.5th 671<br>*In re D.B.* 4th DCA Div. 2, 87 Cal.App.5th 239<br>*D.S. v. Superior Court,* 4th DCA Div. 2, 88 Cal.App.5th 383 | *In re E.C.* 5th DCA, 85 Cal.App.5th 123<br>*In re K.H.* 5th DCA, 84 Cal.App.5th 566 | *In. re. I.F.* 6th DCA, 77 Cal. App. 5th 152 |
| **No** | *In re E.W.,* 1st DCA, Div. 2, 91 Cal. App. 5th 314 | *In re Adrian L.* 2nd DCA Div.1, 86 Cal.App.5th 342<br>*In re Darian R.* 2nd DCA Div. 1, 75 Cal.App.5th 502<br>In re Dezi C. 2nd DCA Div. 2, 79 Cal.App.5th 769 (Leave granted.)<br>*In re J.W.* 2nd DCA Div. 8, 81 Cal.App.5th 384<br>*In re M.M.* 2nd DCA Div. 8, 81 Cal.App.5th 61 (REVIEW GRANTED – Further action deferred pending consideration of Dezi C.)<br>*In re. S.S.* 2nd DCA Div. 1, 75 Cal.App.5th 575 | *In re G.A.* 3rd DCA, 81 Cal. App. 5th 355, 81 Cal. App. 5th 355. (Review granted but on hold pending *Dezi C.*)<br>*In Kenneth D.* 3rd DCA, 82 Cal.App.5th 1027 (Review Granted) | *In re Y.M.* 4th DCA Div. 1, 82 Cal. App.5th 901 | | |

# Issues Resolved by California Legislature in 2024

**Does the duty to inquire of extended family members apply only when the child is removed without a warrant?**

**Moot—No**. Welf. & Inst. Code, § 224.2, as amended by Stats.2024, c. 656 (A.B. 81), § 3, eff. Sept. 27, 2024, renders the issue moot and clearly requires inquiry of extended family members in all cases regardless of whether or how child is removed from the home.

| | Dist. 1 | Dist. 2 | Dist. 3 | Dist. 4 | Dist. 5 | Dist. 6 |
|---|---|---|---|---|---|---|
| **Yes** | | | | *In re Robert F.* 4th DCA Div. 2, 90 Cal.App.5th 492 (Review granted July 26, 2023. Further action deferred pending outcome of Ja O.)<br>*In re Ja.O.* 4th DCA Div. 2, 91 Cal.App.5th 672 (Review granted July 26, 2023, S280572)<br>*In re Andres R.* 4th DCA Div. 2, 94 Cal.App.5th 828 (Review Granted November 15, 2023. Further action deferred pending outcome of Ja O.)<br>*In re. D.M.* 4th DCA Div 2, WL2012491 (May 7, 2024) | | |
| **No** | *In re V.C.* 1st DCA Div. 2, 95 Cal.App.5th 251<br>*In re L.B.* 1st DCA Div. 4, 98 Cal.App.5th 512 | | *In re C.L.* 3rd DCA, 96 Cal. App. 5th 377 | *In re Delila D.* 4th DCA Div. 2, 93 Cal.App.5th 953. (Review granted September 27, 2023 further action deferred pending outcome of Ja O.)<br>*In re Samantha F.* 4th DCA, Div 2, E080888 99 Cal. App.5th 1062 | *In re Jerry R.* 5th DCA, 95 Cal.App.5th 388 | |

# IN THE SUPREME COURT OF CALIFORNIA

In re DEZI C. et al., Persons Coming
Under the Juvenile Court Law.

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LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,
Plaintiff and Respondent,
v.
ANGELICA A.,
Defendant and Appellant.

S275578

Second Appellate District, Division Two
B317935

Los Angeles County Superior Court
19CCJP08030A and 19CCJP08030B

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August 19, 2024

Justice Evans authored the opinion of the Court, in which Justices Corrigan, Liu, Kruger, and Jenkins concurred.

Justice Kruger filed a concurring opinion, in which Justice Corrigan concurred.

Justice Groban filed a dissenting opinion, in which Chief Justice Guerrero concurred.

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This opinion follows companion case *In re Kenneth D.*, S276649, also filed this date.

In re DEZI C.

S275578

Opinion of the Court by Evans, J.

In 1978, Congress enacted the Indian Child Welfare Act (ICWA; 25 U.S.C. § 1901 et seq.) to "formalize[] federal policy relating to the placement of Indian children outside the family home." (*In re W.B.* (2012) 55 Cal.4th 30, 40 (*W.B.*).) Under ICWA's state analogue, the California Indian Child Welfare Act (Cal-ICWA), courts and child welfare agencies are charged with "an affirmative and continuing duty to inquire whether a child . . . is or may be an Indian child" in dependency cases. (Welf. & Inst. Code, § 224.2, subd. (a).) Child welfare agencies discharge this state law duty by "asking the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect, whether the child is, or may be, an Indian child and where the child, the parents, or Indian custodian is domiciled."[1] (*Id.*, subd. (b).)

We are tasked with determining whether a child welfare agency's failure to make the statutorily required initial inquiry under California's heightened ICWA requirements constitutes reversible error. California courts have reached differing

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[1] The language of both federal and state law uses the term "Indian." California courts have used alternative terms, such as "American Indian" or "Native American"; we use the term "Indian" throughout to reflect the statutory language but keep the terminology used by the various courts when quoting from their opinions. No disrespect is intended.

conclusions on this issue, and we granted review to resolve this conflict. ICWA and Cal-ICWA are unique statutory schemes that are intended to protect Native American heritage, cultural connections between tribes and children of Native American ancestry, the best interests of Indian children, and the stability and security of Indian tribes and families. (See *In re Isaiah W.* (2016) 1 Cal.5th 1, 7–8 (*Isaiah W.*); 25 U.S.C. § 1902; Welf. & Inst. Code, § 224, subd. (a).) When there is an inadequate inquiry and the record is underdeveloped, it is impossible for reviewing courts to assess prejudice because we simply do not know what additional information will be revealed from an adequate inquiry. We therefore hold that an inadequate Cal-ICWA inquiry requires conditional reversal of the juvenile court's order terminating parental rights with directions to the agency to conduct an adequate inquiry, supported by record documentation. Accordingly, we reverse the judgment of the Court of Appeal with directions to conditionally reverse the order terminating parental rights and remand for further proceedings consistent with our opinion.

## I. FACTUAL AND PROCEDURAL BACKGROUND

Angelica A. (mother) and Luis C. (father) have two children, Dezi C. (born in May 2016) and Joshua C. (born in April 2018). (*In re Dezi C.* (2022) 79 Cal.App.5th 769, 775 (*Dezi C.*).) In 2019, the Los Angeles County Department of Children and Family Services (Department) filed petitions pursuant to Welfare and Institutions Code[2] section 300 seeking to assert dependency jurisdiction over Dezi and Joshua and alleging the minors were at risk of harm in the custody of mother and father

[2] Subsequent statutory references are to the Welfare and Institutions Code unless otherwise specified.

due to the parents' substance abuse and domestic violence issues.

Mother and father completed Parental Notification of Indian Status (ICWA-020) forms prior to the detention hearing, and each indicated, "I have no Indian ancestry as far as I know."

The initial detention hearing was held in December 2019. The court asked the parents about the accuracy of the ICWA-020 forms and whether they had Indian heritage. Mother and father denied having Indian heritage, and the court found this was not an ICWA case. The court ordered the parents to provide the Department with the name, address, and any other identifying information of maternal and paternal relatives but did not explain why this information was necessary.

In February 2020, the juvenile court held a combined jurisdictional and dispositional hearing. It sustained the allegations of the petitions, removed Dezi and Joshua from the custody of their parents, and ordered the Department to provide the parents with family reunification services in accordance with the case plans of each parent.

A six-month review hearing was held in August 2020. At that hearing, the juvenile court concluded mother and father were not in compliance with their case plans, terminated reunification services, and set the matter for a permanency planning hearing pursuant to section 366.26.

At the section 366.26 permanency hearing, held in January 2022, the juvenile court concluded by clear and convincing evidence that the children were adoptable and were likely to be adopted by their paternal grandparents. The court

terminated mother's and father's parental rights. ICWA was not mentioned.

In investigating the allegations underlying the dependency petitions, Department social workers spoke with paternal grandparents, maternal grandparents, father's siblings, mother's siblings, and one of father's cousins. (*Dezi C.*, *supra*, 79 Cal.App.5th at p. 776.) It is undisputed that the social workers did not ask any of these individuals whether mother, father, Dezi, or Joshua had Indian ancestry. (*Ibid.*) This is despite the facts that: mother, father, and the children resided with paternal grandparents before the court asserted jurisdiction over the children and throughout the dependency proceedings, and paternal grandparents were likely to adopt the children; father's cousin appeared at the detention hearing; and maternal grandparents appeared at the adjudication and disposition hearing.

Mother appealed the termination of her parental rights. Her sole contention on appeal was that the Department failed to comply with its duty under ICWA and related California provisions to initially inquire of "extended family members" (§ 224.2, subd. (b)) regarding the children's possible Indian ancestry. The Court of Appeal found it was "undisputed that the Department's initial inquiry was deficient" and thus concluded that the operative question was whether "the Department's defective initial inquiry in this case render[ed] invalid the juvenile court's subsequent finding that ICWA does not apply (and thus render[ed] invalid the court's concomitant order terminating mother's parental rights)?" (*Dezi C.*, *supra*, 79 Cal.App.5th at pp. 776–777.)

The Court of Appeal noted that "California courts have staked out three different rules for assessing whether a defective initial inquiry is harmless." (*Dezi C.*, *supra*, 79 Cal.App.5th at p. 777.) It considered and rejected the rules in favor of its own fourth rule. The Court of Appeal held that if an agency's inquiry is deficient, that defect "is harmless *unless the record contains information suggesting a reason to believe* that the child may be an 'Indian child' within the meaning of ICWA." (*Id.* at p. 779, italics added.) It found this rule "best reconciles the competing policies at issue when an ICWA objection is asserted in later at the final phases of the dependency proceedings" (*id.* at p. 781), while also respecting the California Constitution's requirement that a judgment not be set aside "unless it 'has resulted in a miscarriage of justice.' " (*Id.* at p. 779, citing Cal. Const., art. VI, § 13.) The Court of Appeal also observed that "[w]here, as here, there is no doubt that the Department's inquiry was erroneous . . . we must assess whether it is reasonably probable that the juvenile court would have made the same ICWA finding had the inquiry been done properly." (*Id.* at p. 777, citing *People v. Watson* (1956) 46 Cal.2d 818, 836.)

We granted review. Since that time, a number of Courts of Appeal have weighed in on the split of authority, and we have granted review and deferred further action in some of those matters until after this case is decided. (*In re G.A.* (2022) 81 Cal.App.5th 355, review granted and held Oct. 12, 2022 [following *Dezi C.* rule and concluding error was harmless]; *In re M.M.* (2022) 81 Cal.App.5th 61, review granted and held Oct. 12, 2022 [declining to adopt "reversal per se" approach and finding error harmless under all other standards]; *In re An. L.* (Dec. 8, 2022, B315986) [nonpub. opn.], review granted and held

Mar. 22, 2023; *In re Athena R.* (Dec. 13, 2022, B318751) [nonpub. opn.], review granted and held Mar. 22, 2023; *In re D.D.* (Dec. 8, 2022, B319941) [nonpub. opn.], review granted and held Mar. 1, 2023; *In re E.T.* (Oct. 4, 2022, B315104) [nonpub. opn.], review granted and held Dec. 28, 2022; *In re M.G.* (Oct. 28, 2022, B317366) [nonpub. opn.], review granted and held Jan. 18, 2023; *In re R.T.* (July 6, 2022, B315541) [nonpub. opn.], review granted and held Oct. 12, 2022; *In re Tyler C.* (Feb. 3, 2023, B316341) [nonpub. opn.], review granted and held Apr. 26, 2023; *In re X.R.* (Jan. 31, 2023, B318808) [nonpub. opn.], review granted and held Apr. 12, 2023; *In re Z.C.* (Sept. 26, 2022, C094803) [nonpub. opn.], review granted and held Dec. 28, 2022.)

## II. DISCUSSION

The sole question presented in this case is a narrow one: whether a child welfare agency's failure to make a proper inquiry under California's heightened ICWA requirements constitutes reversible error. This is a question of law that we consider de novo. (*Tansavatdi v. City of Rancho Palos Verdes* (2023) 14 Cal.5th 639, 652.)

### A. Governing Law/ICWA

#### *1. Background of ICWA*

Congress enacted ICWA in 1978 in response to "rising concern in the mid–1970's over the consequences to Indian children, Indian families, and Indian tribes of abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes." (*Mississippi Choctaw Indians Band v. Holyfield* (1989) 490 U.S. 30, 32 (*Holyfield*); see also 25 U.S.C. § 1901(4)

[finding "that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies"].) After congressional investigation spanning several years and encompassing multiple hearings, Congress found that many of the problems resulting in the widespread separation of Indian children were caused by the states, which encouraged the practice and "failed to account for legitimate cultural differences in Indian families." (ICWA Proceedings, 81 Fed.Reg. 38778, 38780 (June 14, 2016); see also *id.* at p. 38781.) State procedures also frequently violated due process. (*Id.* at p. 38781.) The separation of Indian children "contributed to a number of problems, including the erosion of a generation of Indians from Tribal communities, loss of Indian traditions and culture, and long-term emotional effects on Indian children caused by loss of their Indian identity." (*Id.* at p. 38780.)

Based on these findings, in enacting ICWA, Congress declared "that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture . . . ." (25 U.S.C. § 1902.) It also acknowledged "there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children . . ." and "the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing

in Indian communities and families." (25 U.S.C. § 1901(3), (5); see also *Holyfield*, *supra*, 490 U.S. at pp. 35–36.)

ICWA establishes minimum standards for state courts to follow before removing Indian children from their families and placing them in foster care or adoptive homes and does not prohibit states from establishing higher standards. (25 U.S.C. § 1921; 25 C.F.R. § 23.106 (2024); see also *In re Elizabeth M.* (2018) 19 Cal.App.5th 768, 783.) Indeed, ICWA expressly yields to state laws that provide "a higher standard of protection to the rights of the parent or Indian custodian of an Indian child . . . ." (25 U.S.C. § 1921; § 224, subd. (d).)

ICWA gives "Indian tribes concurrent jurisdiction over state court child custody proceedings that involve Indian children living off of a reservation." (*W.B.*, *supra*, 55 Cal.4th at p. 48.) The tribe also has the power to petition the court to invalidate any action taken in a custody proceeding if the action violated ICWA. (25 U.S.C. § 1914; see also § 224, subd. (e).) Thus, when ICWA applies, "the Indian child's tribe shall have a right to intervene at any point" in a proceeding involving the removal of an Indian child from their family. (25 U.S.C. § 1911(c); § 224.4; *In re K.T.* (2022) 76 Cal.App.5th 732, 741.)

*2. Relevant Provisions of ICWA*

The issue of whether ICWA applies in dependency proceedings turns on whether the minor is an Indian child. An "Indian child" is defined as "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (25 U.S.C. § 1903(4).) At the commencement of a child custody proceeding,

the court is obligated to inquire from each participant[3] whether there is a "reason to know" that the child is or may be an Indian child. (25 U.S.C. § 1912(a); 25 C.F.R. § 23.107(a) (2024).) The increased protections of ICWA apply "where the court knows or has reason to know that an Indian child is involved." (25 U.S.C. § 1912(a); 25 C.F.R. § 23.107(b)(2) (2024).)

In 2016, new federal regulations were adopted addressing ICWA compliance. (See ICWA Proceedings, 81 Fed.Reg., *supra*, at p. 38864 [revising 25 C.F.R. § 23 (2016)].) The regulations are binding on state courts, are intended to "improve ICWA implementation," and clearly identify what actions state courts and agencies must undertake to ensure ICWA implementation in child welfare proceedings. (ICWA Proceedings, 81 Fed.Reg, *supra*, at p. 38778.) The regulations urge early compliance with ICWA, as it "promotes the maintenance of Indian families, and the reunification of Indian children with their families whenever possible, and reduces the need for disruption in placements. . . . And early implementation of ICWA's requirements conserves judicial resources by reducing the need for delays, duplication, and appeals." (*Id.* at p. 38779.)

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[3] An implementing federal regulation notes "participant" includes attorneys. (ICWA Proceedings, 81 Fed.Reg., *supra*, at p. 38803.) It also observes that "participants could also include the State agency, parents, the custodian, relatives or trial witnesses, depending on who is involved in the case." (*Ibid.*)

## B. California's Implementation of ICWA (Cal-ICWA)

### *1. Background of Cal-ICWA*

California struggled to comply with ICWA after its passing. California Indian Legal Services (CILS),[4] one of the sponsors of the bill that became Cal-ICWA, expressed concern that "state courts and county agencies in California continue to violate not only the spirit and intent of ICWA, but also its express provisions." (Sen. Judiciary Com., Analysis of Sen. Bill No. 678 (2005–2006 Reg. Sess.) as amended Aug. 22, 2005, p. 6; see also *id.* at p. 7 [CILS noting a "myriad of appellate court decisions involving ICWA" to support contention that "social workers, courts and other parties still have difficulty complying with ICWA's requirements"].) Of particular concern was that tribes were unable "to participate in child custody proceedings because they fail to be properly notified of the proceedings." (*Id.* at p. 6.)

In 2006, the California Legislature passed Senate Bill No. 678 (2005–2006 Reg. Sess.), which "enacted provisions that affirm ICWA's purposes (§ 224, subd. (a)) and mandate compliance with ICWA '[i]n *all* Indian child custody proceedings' (§ 224, subd. (b))." (*Isaiah W.*, *supra*, 1 Cal.5th at p. 9, italics added.) The Legislature's "primary objective" in incorporating these provisions "was to increase compliance with ICWA." (*W.B.*, *supra*, 55 Cal.4th at p. 52; see also Sen. Appropriations Com., Analysis of Sen. Bill No. 678 (2005–2006 Reg. Sess.) as amended Aug. 22, 2005, p. 1; accord, *In re Abbigail A.* (2016) 1 Cal.5th 83, 91 (*Abbigail A.*) ["persistent noncompliance with

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[4] CILS is also amicus curiae in this case.

ICWA led the Legislature in 2006 to 'incorporate[] ICWA's requirements into California statutory law' "].)

*2. Cal-ICWA's Provisions Relating to the Duty of Inquiry*

After the federal ICWA regulations were adopted in 2016, California made conforming amendments to Cal-ICWA, including portions of the Welfare and Institutions Code related to ICWA inquiry and notice requirements. (Assem. Bill No. 3176 (2017-2018 Reg. Sess.); Stats. 2018, ch. 833, §§ 4–7; *In re A.W.* (2019) 38 Cal.App.5th 655, 662, fn. 3.) Among other things, Assembly Bill No. 3176 "revise[d] the specific steps a social worker, probation officer, or court is required to take in making an inquiry of a child's possible status as an Indian child." (Legis. Counsel's Dig., Assem. Bill No. 3176 (2017–2018 Reg. Sess.) p. 1; Stats. 2018, ch. 833.) As a result of this amendment, " 'agencies now have a broader duty of inquiry and a duty of documentation.' " (*In re Jerry R.* (2023) 95 Cal.App.5th 388, 411; § 224.2, subd. (a); see also Cal. Rules of Court, rule 5.481(a).[5])

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[5] References to rules are to the California Rules of Court. The California Constitution directs the Judicial Council to "adopt rules for court administration, practice and procedure." (Cal. Const., art. VI, § 6, subd. (d); see § 265 [concerning rules for juvenile courts].) Rules adopted by the Judicial Council "are entitled to a measure of judicial deference." (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1014; accord, *Abbigail A.*, *supra*, 1 Cal.5th at p. 92.)

Rule 5.481 parallels the inquiry and notice statutes of sections 224.2 and 224.3 and directs courts, court investigators, and agencies to inquire of the child, parents, "Indian custodian, or legal guardians, extended family members, others who have an interest in the child, and where applicable the party

Section 224.2 codifies and expands on ICWA's duty of inquiry to determine whether a child is an Indian child.[6] Agencies and juvenile courts have "an affirmative and continuing duty" in every dependency proceeding to determine whether ICWA applies by inquiring whether a child is or may be an Indian child. (§ 224.2, subd. (a).) This "duty to inquire begins with the initial contact, including, but not limited to, asking the party reporting child abuse or neglect whether the party has any information that the child may be an Indian child." (*Ibid.*; see also rule 5.481(a); *Isaiah W.*, *supra*, 1 Cal.5th at p. 14 ["juvenile court has an affirmative and continuing duty in all dependency proceedings to inquire into a child's Indian status"].)

Section 224.2, subdivision (b) specifies that once a child is placed into the temporary custody of a county welfare department, the duty to inquire "includes, but is not limited to, asking the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect, whether

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reporting child abuse or neglect," whether the child might be an Indian child. (Rule 5.481(a)(1).) Importantly, the rule requires a petitioner in a dependency proceeding on an "ongoing basis [to] include in its filings a detailed description of all inquiries, and further inquiries it has undertaken, and all information received pertaining to the child's Indian status, as well as evidence of how and when this information was provided to the relevant tribes. Whenever new information is received, that information must be expeditiously provided to the tribes." (Rule 5.481(a)(5).)

[6] "Indian child" is defined in the same manner under state law as federal law. (§ 224.1, subd. (a).)

the child is, or may be, an Indian child."[7] (See also rule 5.481(a)(1).) "Extended family member" means "a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent." (25 U.S.C. § 1903(2); see also § 224.1, subd. (c) [adopting ICWA definition of "extended family member"].)

While this duty of inquiry is sometimes referred to as the initial duty of inquiry, this is a bit of a misnomer, as the duty "continues throughout the dependency proceedings." (*In re J.C.* (2022) 77 Cal.App.5th 70, 77 (*J.C.*); see also *In re K.H.* (2022) 84 Cal.App.5th 566, p. 597, fn. 10 (*K.H.*) "[c]ourts have recognized it is somewhat inaccurate to refer to the agency's ' " 'initial duty of inquiry' " ' "].)

When the agency has "reason to believe" that an Indian child is involved, further inquiry regarding the possible Indian status of the child is required. (§ 224.2, subd. (e);[8] see also rule

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[7] We have granted review in *In re Ja.O.* (2023) 91 Cal.App.5th 672 (review granted July 26, 2023, S280572) to decide whether the inquiry duty under section 224.2, subdivision (b) applies to children taken into custody by means of a protective custody warrant (§ 340). That issue is not before us, and we do not comment on the issue here.

[8] The Legislature amended section 224.2, subdivision (e) in 2020 to define "reason to believe," which was previously undefined. (Assem. Bill No. 2944 (2019–2020 Reg. Sess.) § 15, pp. 24–25, eff. Sept. 18, 2020; *K.H.*, *supra*, 84 Cal.App.5th at pp. 595–596; see *In re D.S.* (2020) 46 Cal.App.5th 1041, 1049.) "Reason to believe" means that "the court, social worker, or probation officer has information suggesting that either the parent of the child or the child is a member or may be eligible for membership in an Indian tribe. Information suggesting

5.481(a)(4).) The required further inquiry includes (1) interviewing the parents and extended family members; (2) contacting the Bureau of Indian Affairs (BIA) and State Department of Social Services; and (3) contacting tribes the child may be affiliated with and anyone else that might have information regarding the child's membership or eligibility in a tribe. (§ 224.2, subd. (e)(2)(A)–(C).) At this stage, contact with a tribe "shall, at a minimum, include telephone, facsimile, or electronic mail contact to each tribe's designated agent for receipt of [ICWA] notices," and "sharing information identified by the tribe as necessary for the tribe to make a membership or eligibility determination, as well as information on the current status of the child and the case." (*Id.*, subd. (e)(2)(C).)

The sharing of information with tribes at this inquiry stage is distinct from formal ICWA notice, which requires a "reason to know" — rather than a "reason to believe" — that the child is an Indian child. Unlike the term "reason to believe," a "reason to know" exists under any of the following circumstances: "(1) A person having an interest in the child, including the child, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child's extended family informs the court that the child is an Indian child[;] [¶] (2) The residence or domicile of the child, the child's parents, or Indian custodian is on a reservation or in an Alaska Native village[;] [¶] (3) Any participant in the proceeding, officer of the court, Indian tribe, Indian

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membership or eligibility for membership includes, but is not limited to, information that indicates, but does not establish, the existence of one or more of the grounds for reason to know enumerated in paragraphs (1) to (6), inclusive, of subdivision (d)." (§ 224.2, subd. (e)(1).)

organization, or agency informs the court that it has discovered information indicating that the child is an Indian child[;] [¶] (4) The child who is the subject of the proceeding gives the court reason to know [he or she] is an Indian child[;] [¶] (5) The court is informed that the child is or has been a ward of a tribal court[; and] [¶] (6) The court is informed that either parent or the child possess an identification card indicating membership or citizenship in an Indian tribe." (§ 224.2, subd. (d).)

If the inquiry establishes a reason to know an Indian child is involved, notice must be provided to the pertinent tribes. (§ 224.3, subds. (a), (b); 25 U.S.C. § 1912(a).) The notice must include enough information for the tribe to "conduct a meaningful review of its records to determine the child's eligibility for membership" (*In re Cheyanne F.* (2008) 164 Cal.App.4th 571, 576), including the identifying information for the child's biological parents, grandparents, and great-grandparents, to the extent known (§ 224.3, subd. (a)(5)(C); see also *In re Francisco W.* (2006) 139 Cal.App.4th 695, 703 (*Francisco W.*)). "Notice to Indian tribes is central to effectuating ICWA's purpose, enabling a tribe to determine whether the child involved in a dependency proceeding is an Indian child and, if so, whether to intervene in, or exercise jurisdiction over, the matter." (*In re T.G.* (2020) 58 Cal.App.5th 275, 288 (*T.G.*).) In addition, once there is reason to know a child is an Indian child, the juvenile court must find ICWA applies and "treat the minor as an Indian child unless and until it determines that ICWA does not apply." (*In re S.H.* (2022) 82 Cal.App.5th 166, 177; see also § 224.2, subd. (i)(1).)

The juvenile court may alternatively make a finding that an agency's inquiry and due diligence were "proper and adequate," and the resulting record provided no reason to know

the child is an Indian child, so ICWA does not apply. (§ 224.2, subd. (i)(2).) Even if a court makes this finding, an agency and the court have a continuing duty under ICWA, and the court "shall reverse its determination if it subsequently receives information providing reason to believe that the child is an Indian child and order the social worker or probation officer to conduct further inquiry . . . ." (§ 224.2, subd. (i)(2).)

The juvenile court's factual finding that ICWA does not apply is "subject to reversal based on sufficiency of the evidence." (§ 224.2, subd. (i)(2).) Some courts apply a straightforward substantial evidence test when reviewing the juvenile court's conclusion that ICWA does not apply. (*In re Kenneth D.* (Aug. ___, 2024, S276649) ___ Cal.5th ___, ___ [p. 12] (*Kenneth D.*).)[9] "By contrast, other courts have applied 'a hybrid substantial evidence/abuse of discretion standard, reviewing for substantial evidence whether there is reason to know a child is an Indian child, and for abuse of discretion a juvenile court's finding that an agency exercised due diligence and conducted a "proper and adequate" ICWA inquiry.' " (*Ibid.*) As it is undisputed that the Cal-ICWA inquiry in this case was inadequate, we need not decide what standard of review applies to these findings.

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[9] In *Kenneth D.*, also filed today, we consider whether, when the statutorily required inquiry is inadequate, an appellate court may consider postjudgment evidence to conclude the error is harmless. We hold that such evidence may generally not be considered absent exceptional circumstances. (*Kenneth D.*, *supra*, ___ Cal.5th at p. ___ [p. 1].)

### C. The Conflict in the Courts of Appeal Regarding the Standard for Prejudice

Against this legal backdrop, California courts have confronted the standard for whether an error in conducting the Cal-ICWA inquiry is prejudicial. Five rules have developed with respect to this issue. At the strictest end of the conceptual spectrum for assessing prejudicial error is the presumptive affirmance rule. Under this rule, error in the initial Cal-ICWA inquiry is harmless unless a parent can demonstrate on appeal that further inquiry would lead to a different outcome. (See, e.g., *In re A.C.* (2021) 65 Cal.App.5th 1060, 1069 [" 'Where the record below fails to demonstrate and the parents have made no offer of proof or other affirmative assertion of Indian heritage on appeal, a miscarriage of justice has not been established and reversal is not required' "].)

On the opposite end of the spectrum, another line of cases holds that reversal is required if a child welfare agency's initial inquiry is deficient.[10] (See, e.g., *In re Y.W.* (2021) 70 Cal.App.5th 542, 549, 556 (*Y.W.*) [agency's failure to interview mother's biological parents, where adoptive parents knew name of biological father and had contact information for biological aunt, made it impossible to demonstrate prejudice]; see also *In re A.R.* (2022) 77 Cal.App.5th 197, 207 (*A.R.*).) Third, the court in *In re*

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[10] Some courts view this test as treating Cal-ICWA inquiry violations as reversible per se. (See, e.g., *Dezi C.*, *supra*, 79 Cal.App.5th at p. 783; *In re G.H.* (2022) 84 Cal.App.5th 15, 32–33 (*G.H.*); *In re E.V.* (2022) 80 Cal.App.5th 691, 698 (*E.V.*); *Y.W.*, *supra*, 70 Cal.App.5th at p. 556.) The court in *K.H.*, however, found this characterization overstated and instead viewed these cases as laying out a rule of reversal for cases involving records so inadequate "that the error and need for reversal are 'clear.' " (*K.H., supra,* 84 Cal.App.5th at p. 618.)

*Benjamin M.* (2021) 70 Cal.App.5th 735, 744 (*Benjamin M.*) held that a defect in the Cal-ICWA inquiry is harmless unless "the record demonstrates that the agency has not only failed in its duty of initial inquiry, but where the record indicates that there was readily obtainable information that was likely to bear meaningfully upon whether the child is an Indian child."

Subsequently, the Court of Appeal below laid out the " 'reason to believe' rule." (*Dezi C.*, *supra*, 79 Cal.App.5th at p. 779.) Under this rule, "an agency's failure to conduct a proper initial inquiry into a dependent child's American Indian heritage is harmless unless the record contains information suggesting a reason to believe that the child may be an 'Indian child' within the meaning of ICWA, such that the absence of further inquiry was prejudicial to the juvenile court's ICWA finding." (*Ibid.*)

Last, the *K.H.* court concluded prejudice must be assessed from the context of the injury involved, which is the "failure to gather and record the very information the juvenile court needs to ensure accuracy in determining whether further inquiry or notice is required, and whether ICWA does or does not apply." (*K.H.*, *supra*, 84 Cal.App.5th at p. 591.) It noted this injury was not tied to any outcome on the merits and was therefore not amenable to the standard *Watson* likelihood-of-success test to assess prejudice. (*Id.* at p. 609.) It also held that "where the opportunity to gather the relevant information critical to determining whether the child is or may be an Indian child is lost because there has not been adequate inquiry and due diligence, reversal for correction is generally the only effective safeguard." (*Id.* at p. 610.)

### D. The Parties' Positions

Mother argues that we should adopt a reversal per se rule. She maintains an inadequate Cal-ICWA inquiry denies tribes the constitutional due process right to notice, and is therefore structural error requiring reversal per se. Mother also contends that error in conducting the statutorily required inquiry is not amenable to the regular outcome-focused likelihood-of-success test laid out in *Watson*, because the prejudice stemming from the erroneous inquiry is the very failure to obtain the information required to determine whether ICWA applies. Citing to *A.R.*, *supra*, 77 Cal.App.5th at p. 207, mother maintains that because an inadequate inquiry prejudices the rights of the parent, tribe, and child, "[r]eversal per se is the only effective safeguard of the rights ICWA was designed to protect."

Mother alternatively argues that if we do not adopt a per se reversal standard for prejudice, we should adopt the *Benjamin M.* rule, as elaborated by *K.H.* Mother notes both cases focus on the adequacy of the investigation and what an adequate inquiry might have revealed, and both reject *Watson*'s outcome-focused approach to assessing prejudice. In mother's view, "this test would require reversal in every case in which either (1) known, available relatives were not asked about possible Indian ancestry or (2) the parents were not asked if there were any such relatives who could be asked."

The Department disagrees that a per se reversal rule or the *Benjamin M.* rule should apply. It advocates for the reason-to-believe rule laid out by the Court of Appeal below. It argues that the reason-to-believe rule is consistent with the California Constitution's requirement that a judgment not be set aside unless it results in a miscarriage of justice by affecting the

outcome on the juvenile court's ICWA finding, and that this rule best reconciles competing policy considerations at play when ICWA inquiry error is asserted late in the proceedings.

### E. The Failure to Conduct an Adequate Inquiry Requires Conditional Reversal and Remand with Directions To Comply with Cal-ICWA

We hold that error resulting in an inadequate initial Cal-ICWA inquiry requires conditional reversal with directions for the child welfare agency to comply with the inquiry requirement of section 224.2, document its inquiry in compliance with rule 5.481(a)(5), and when necessary, comply with the notice provision of section 224.3. When a Cal-ICWA inquiry is inadequate, it is impossible to ascertain whether the agency's error is prejudicial. (*Y.W.*, *supra*, 82 Cal.App.5th at p. 556; see also *J.C.*, *supra*, 77 Cal.App.5th at p. 80.) "[U]ntil an agency conducts a proper initial inquiry and makes that information known, it is impossible to know what the inquiry might reveal." (*K.H.*, *supra*, 84 Cal.App.5th at p. 617; see also *Benjamin M.*, *supra*, 70 Cal.App.5th at p. 743 [until agency gathers information and makes it known "we cannot know what information an initial inquiry, properly conducted, might reveal"].)

" '[W]hen the validity of a [judgment] depends solely on an unresolved or improperly resolved factual issue which is distinct from [the judgment], such an issue can be determined at a separate post-judgment hearing and if at such hearing the issue is resolved in favor of the [agency], the [judgment] may stand.' " (*People v. Moore* (2006) 39 Cal.4th 168, 176–177; see also *People v. Minor* (1980) 104 Cal.App.3d 194, 199 ["when the trial is free of prejudicial error and the appeal prevails on a challenge which establishes only the existence of an unresolved question which

may or may not vitiate the judgment, appellate courts have, in several instances, directed the trial court to take evidence, resolve the pending question, and take further proceedings giving effect to the determination thus made"].) The limited remand procedure is also appropriate where, as here, the record is insufficient to permit a court to assess prejudice. (See, e.g., *People v. Gaines* (2009) 46 Cal.4th 172, 180–181 [erroneous denial of *Pitchess* motion where trial court failed to review records requires conditional reversal and remand to trial court with directions to review the documents and to allow defendant to demonstrate prejudice from nondisclosure if documents contain relevant information]; see also *People v. Madrigal* (2023) 93 Cal.App.5th 219, 263 [same; "[o]n this record, it is impossible to assess prejudice from the failure to disclose the subpoenaed materials because we do not know what they contain, and the trial court made no record of their contents"].)

In this case, the sole infirmity in the judgment is the failure to conduct an adequate Cal-ICWA inquiry, which renders it impossible to review for prejudice the trial court's implied finding that ICWA does not apply. There is no indication of any error in the dependency proceedings that would justify the outright reversal of the judgment terminating parental rights. Thus, full reversal of the section 366.26 judgment is not warranted; rather, a conditional reversal in order to comply with Cal-ICWA is appropriate. Indeed, conditional reversal appears to be common practice in a number of cases involving inadequate

ICWA inquiries.[11] (See, e.g., *In re K.R.* (2018) 20 Cal.App.5th 701, 709–710 (*K.R.*).)

Upon a conditional reversal, the Department will make additional inquiry and documentation efforts consistent with its duties and the court shall hold a hearing thereafter to determine whether, in light of the outcome of the inquiry as documented, ICWA applies. If the juvenile court determines the inquiry is proper, adequate, and duly diligent and concludes that ICWA does not apply, any inquiry error is cured, and the judgment would be reinstated. (See *Francisco W.*, *supra*, 139 Cal.App.4th at p. 705 [noting limited reversal allows ICWA error to be cured while affording child protection of juvenile court].) In contrast, if the inquiry reveals a reason to know the dependent child is an Indian child, the tribe has been notified (see § 224.3, subd. (a); 19 U.S.C. § 1912), and the tribe determines the child is a member or citizen, or eligible for membership or citizenship, of an Indian tribe (see § 224.1, subd. (b); 25 U.S.C. § 1903(4)), ICWA applies, and the judgment must be reversed.

We reach this conclusion for several reasons. First, ICWA and Cal-ICWA " ' "recognize[] that the tribe has an interest in the child which is distinct from but on a parity with the interest of the parents" ' " and other relatives. (*Isaiah W.*, *supra*, 1 Cal.5th at p. 9; see also *A.R.*, *supra*, 77 Cal.App.5th at p. 204 ["As these [statutes] make clear, the primary parties protected under ICWA are the Native American tribes, whose right to

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[11] The dissent mischaracterizes our conclusion as holding that an inadequate ICWA inquiry is structural error. To the contrary, our holding today is premised on the fact that when an inquiry is inadequate, the record is insufficient to determine whether the error is harmless under *Watson*.

intervene in an appropriate case will likely never be discovered absent the statutorily required inquiry and notice procedures"].) That interest is compromised and cannot be protected if the social service agency and the juvenile court fail to perform their inquiry duties. (See *G.H.*, *supra*, 84 Cal.App.5th at p. 31.) A rule requiring conditional reversal when there is error in an ICWA inquiry acknowledges that the interest at issue belongs to tribes who "have no standing to intervene in a dependency case unless Native American ancestry is *first* uncovered and established, and thus no way of protecting their tribal interests unless child welfare agencies comply with ICWA and then notify the appropriate tribe when the inquiry reveals Native American ancestry." (*A.R.*, *supra*, 77 Cal.App.5th at pp. 201–202, italics added.) Thus, in the context of juvenile dependency appeals raising deficiencies in the ICWA inquiry, an appealing parent "is in effect acting as a surrogate for the tribe in raising compliance issues . . . ." (*K.R.*, *supra*, 20 Cal.App.5th at p. 708.) This is not a conventional scenario in which the harm from error directly and solely affects the appealing party. Conditional reversal to allow inquiry error to be cured best supports the interests of tribes, which are independently protected by ICWA.

Second, this approach best comports with the plain language of the inquiry requirements of section 224.2. As we have seen (*ante*, pt. II.B.2), Cal-ICWA "broadly imposes on social services agencies and juvenile courts (*but not parents*) an 'affirmative and continuing duty to inquire' whether a child in the dependency proceeding 'is or may be an Indian child.' " (*Benjamin M.*, *supra*, 70 Cal.App.5th at pp. 741–742, italics added, quoting § 224.2, subd. (a); see also § 224.2, subds. (b), (c); rule 5.481(a).) " '[T]he burden of coming forward with information to determine whether an Indian child may be

involved and ICWA notice required in a dependency proceeding does not rest entirely — or even primarily — on the child and his or her family.' " (*T.G.*, *supra*, 58 Cal.App.5th at p. 293.) When an inquiry is inadequate, the entities charged with the duty to conduct the inquiry must attempt to cure that error and may not avoid their duty by placing the burden on the parents to demonstrate that the error is prejudicial on an inadequate record.

Third, "ensuring a proper, adequate, and duly diligent inquiry at the initial stage of the compliance process is foundational to fulfilling the purpose underlying ICWA and related California law." (*K.H.*, *supra*, 84 Cal.App.5th at p. 590.) ICWA was enacted to protect tribal integrity and sovereignty in its membership determinations, which is "central to its existence as an independent political community." (*Santa Clara Pueblo v. Martinez* (1978) 436 U.S. 49, 72, fn. 32.) "Tribal membership criteria, classifications of membership, and interpretation of membership laws are unique to each tribe and vary across tribal nations." (*In re Dependency of Z.J.G.* (2020) 196 Wn.2d 152, 176.) Accordingly, only a tribe can determine whether a child is a member of, or eligible for membership in, that tribe (25 C.F.R. § 23.108(a), (b) (2024)), and a court "may not substitute its own determination regarding a child's membership in a [t]ribe, a child's eligibility for membership in a [t]ribe, or a parent's membership in a [t]ribe." (*Id.*, § 23.108(b) (2024); accord, *Isaiah W.*, *supra*, 1 Cal.5th at p. 8.)

While the right to determine a child's Indian ancestry belongs to the tribe, at the initial inquiry stage of proceedings, "the tribe is not present, and the *agency* is charged with obtaining information to make that right meaningful." (*Benjamin M.*, *supra*, 70 Cal.App.5th at p. 745, italics added.)

When an ICWA inquiry is inadequate, a child's potential Indian ancestry is missed, and tribes are prevented from making the final determination that the child is an Indian child. Conditionally reversing to conduct an adequate Cal-ICWA inquiry ensures tribes' important sovereign right to determine whether the child is a member of, or eligible for membership in, the tribe.

Amici curiae CILS and California Tribal Families Coalition (CTFC) note that as a result of forced assimilation policies, "younger generations lack[] knowledge of their Native American ancestry which may only be reclaimed by conducting [a] proper ICWA inquiry with extended family members and others more knowledgeable." (Accord, ICWA Proceedings, 81 Fed.Reg., *supra*, at p. 38780.) Recognizing that parents may not be the best source of information about a child's Indian ancestry, the Legislature expressly mandated that, from the outset, child protective agencies expand their investigation of a child's possible Indian status beyond the child's parents. (§ 224.2, subd. (b); Assem. Bill No. 3176 (2017–2018 Reg. Sess.); Stats. 2018, ch. 833, § 5.) An "agency's inquiry is often the only opportunity to collect . . . information" that the child is or may be an Indian child, and thus "is a critical step in safeguarding the rights ICWA was designed to protect and one that cannot be excused by reviewing courts." (*K.H.*, *supra*, 84 Cal.App.5th at p. 604.) "Although the duty of inquiry is a continuing one [citation], as we have seen in countless cases, . . . if the inquiry is inadequate at the outset, the likelihood that the opportunity to gather relevant information will present itself later in the proceeding declines precipitously." (*Id.* at p. 609.) As required by statute, an adequate initial inquiry that reaches beyond parents to extended family members and others facilitates the discovery of

Indian identity, and maximizes the chances that potential Indian children are discovered and tribes are notified.

Fourth, our holding is supported by the 2016 implementing regulations of ICWA, which promote "compliance with ICWA from the earliest stages of a child-welfare proceeding." (ICWA Proceedings, 81 Fed.Reg., *supra*, at p. 38779.) The regulations emphasize "[i]t is . . . critically important that there be an inquiry into that threshold issue [of whether a child is an Indian child] as soon as possible. If this inquiry is not timely, a child-custody proceeding may not comply with ICWA and thus may deny [ICWA] protections to Indian children and their families. The failure to timely determine if ICWA applies also can generate unnecessary delays, as the court and the parties may need to redo certain processes or findings under the correct standard. This is inefficient for courts and parties, and can create delays and instability in placements for the Indian child." (*Id.* at pp. 38802–38803.) A conditional reversal rule when Cal-ICWA inquiries are inadequate will encourage prompt, complete compliance with ICWA early in the proceedings and avoid delay and duplicative efforts. This will further ICWA and Cal-ICWA's goals of prompt, full compliance with their inquiry requirements, and accommodate the critical interest of dependent children in permanency and stability.

The Court of Appeal expressed concern that reversing whenever an inquiry does not satisfy the requirements of section 224.2 would result in an "endless feedback loop of remand, appeal, and remand" because the statutory duty of inquiry "creates an open-ended universe of stones," and "empowers [an appealing parent] to obtain a remand to question extended family members, then a second remand to question the family babysitter, and then a third remand to question longtime

neighbors, and so on and so on." (*Dezi C.*, *supra*, 79 Cal.App.5th at pp. 784–785.) But our conclusion does not require reversal in all cases in which every possible extended family member has not been asked about the child's Indian ancestry. As mother herself concedes, section 224.2 "does not require the agency to 'find' unknown relatives and others who have an interest in the child, merely to make reasonable inquiries. The operative concept is those people who are reasonably available to help the agency with its investigation into whether the child has any potential Indian ancestry should be asked."

Because it is undisputed that the inquiry in this case was inadequate, we do not have occasion to decide what constitutes an adequate and proper inquiry necessary to satisfy section 224.2. We note, however, that the juvenile court's fact-specific determination that an inquiry is adequate, proper, and duly diligent is "a quintessentially discretionary function" (*In re Ezequiel G.* (2022) 81 Cal.App.5th 984, 1005) subject to a deferential standard of review. (§ 224.2, subd. (i)(2); see also *Kenneth D.*, *supra*, ___ Cal.5th at p. ___ [p. 12].) " 'On a well-developed record, the court has relatively broad discretion to determine whether the agency's inquiry was proper, adequate, and duly diligent on the specific facts of the case. However, the less developed the record, the more limited that discretion necessarily becomes.' " (*Kenneth D.*, *supra*, ___ Cal.5th at p. ___ [p. 13]; see also *In re H.B.* (2023) 92 Cal.App.5th 711, 721.)

If, upon review, a juvenile court's findings that an inquiry was adequate and proper and ICWA does not apply are found to be supported by sufficient evidence and record documentation as required by California law (rule 5.481(a)(5)), there is no error and conditional reversal would not be warranted even if the agency did not inquire of everyone who has an interest in the

child. On the other hand, if the inquiry is inadequate, conditional reversal is required so the agency can cure the error and thereby safeguard the rights of tribes, parents, and the child.

Here, for example, the Department's inquiry extended no further than mother and father, both of whom have longstanding issues with substance use disorder, even though their parents, siblings, and father's cousin were readily available and had been interviewed by the Department regarding the allegations of the dependency petitions. The Department's inquiry falls well short of complying with section 224.2, as it concedes. " 'When, as in this case, the court's implied finding that the agency's inquiry was proper, adequate, and duly diligent rests on a cursory record and a patently insufficient inquiry that is conceded, the only viable conclusion is that the finding is unsupported by substantial evidence and the court's conclusion to the contrary constitutes a clear abuse of discretion.' " (*Kenneth D.*, *supra*, ___ Cal.5th at p. ___ [p. 13]; quoting *K.H.*, *supra*, 84 Cal.App.5th at p. 589.)

According to our dissenting colleagues, we should overcome the inadequate record and assess the juvenile court's implied ICWA finding for prejudice by requiring the appealing parent to make a proffer to the Court of Appeal of extra-record evidence tending to show the child is Indian. Contrary to Cal-ICWA, this would improperly shift the burden of proof to the parents and improperly substitute the reviewing court's "judgment for that of the juvenile court, which is to make those findings in the first instance." (*Kenneth D.*, *supra*, ___ Cal. 5th at p. ___ [p. 15].)

In the dissent's view, since delay "of even a few months" for a juvenile court to conduct the statutorily required inquiry can impact a child, it is appropriate to admit new evidence on appeal under Code of Civil Procedure section 909. (Dis. opn. of Groban, J., *post*, at p. 6; *id.* at p. 7.) We agree with our dissenting colleagues about the importance of prompt resolution of dependency proceedings. However, if delay to comply with the statutory inquiry requirements were a basis to invoke Code of Civil Procedure section 909, the exception would swallow the rule we have laid out in *Kenneth D.* that reviewing courts may not generally consider previously unadmitted evidence for the first time on appeal to conclude initial ICWA inquiry error is harmless. (*Kenneth D.*, *supra*, ___ Cal. 5th at p. ___ [p. 1].) As we also observe in *Kenneth D.*, " 'claims of error under ICWA are not rare and will not typically present the type of exceptional circumstances warranting deviation from the general rule' that appellate courts should not engage in factfinding." (*Kenneth D.*, *supra*, ___ Cal.5th at p. ___ [p. 18].)

Moreover, we have never suggested that when a record is insufficient to ascertain whether error is harmless, we should require an appellant to present new, extra-record evidence pursuant to Code of Civil Procedure section 909 to demonstrate prejudice under *Watson*. None of the cases cited in the dissent allowed the introduction of new evidence on appeal to determine whether the asserted error was prejudicial. (Dis. opn. of Groban, J., *post*, at pp. 9–10.) Nor have we relied on the *absence* of evidence, or the potential for delay in finality, to justify admission of new evidence on appeal under Code of Civil Procedure section 909. It is unclear how the dissent's rationale "could be cabined to the ICWA context, as it would seem to countenance appellate courts' receipt of new evidence in *any*

case involving harmless error review, making consideration of such evidence routine rather than exceptional." (*Kenneth D.*, *supra*, ___ Cal.5th at p. ___ [p. 18].) This would contravene our decision in *Kenneth D.*, as well as our decision in *In re Zeth S.* (2003) 31 Cal.4th 396, 408, in which we rejected the routine acceptance of postjudgment evidence under Code of Civil Procedure section 909 to expedite final resolution of matters.[12]

Juvenile dependency proceedings "involve the well-being of children, [so] considerations such as permanency and stability are of paramount importance. (§ 366.26.)" (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) "We emphatically agree that dependent children have a critical interest in avoiding unnecessary delays to their long-term placement." (*In re A.R.* (2021) 11 Cal.5th 234, 249.) "Because tribes have a right to intervene and even overturn prior judgments for failure to comply with ICWA [citations], the lack of timely and proper inquiry can undermine expeditious resolution and call into doubt the finality of juvenile court orders." (*Kenneth D.*, *supra*, ___ Cal.5th at p. ___ [p. 21].)

Furthermore, it bears emphasis that "the obligation is only one of inquiry and not an absolute duty to ascertain or refute Native American ancestry." (*In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1413.) Agencies are already tasked with investigating the circumstances underlying the child's removal and identifying and locating the child's extended family members (§ 309, subds. (a), (e)); it is a rather simple task to ask

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[12] It should also be noted that prompt, permanent placement is not the only area of critical importance for children in dependency proceedings. Complying with ICWA benefits children by furthering their interests in continued connections to their tribes and preserving their culture. (See *Isaiah W.*, *supra*, 1 Cal.5th at pp. 7–8; 25 U.S.C. § 1902.)

those family members about Indian ancestry in this process. In fact, courts have characterized the duty of inquiry as "slight and swift." (*In re S.S.* (2023) 90 Cal.App.5th 694, 698; see also *K.H.*, *supra*, 84 Cal.App.5th at p. 619 ["we do not believe that requiring agencies and juvenile courts to ensure fulfillment of the most basic duties of inquiry required under ICWA adds measurably to" burden on agencies and courts]; *A.R.*, *supra*, 77 Cal.App.5th at p. 207 [delay in finality "need not be a significant one"].) The parties may also expedite the process of resolving inadequate Cal-ICWA inquiries by stipulating to a conditional reversal and the immediate issuance of the remittitur to give the juvenile court jurisdiction to order ICWA compliance. (See *In re Ricky R.* (2022) 82 Cal.App.5th 671, 683.) We conclude that when a Cal-ICWA inquiry is inadequate, conditional reversal to undertake the simple task of inquiry best balances the weighty interests of Indian children and tribes under ICWA on the one hand, and the interests of dependent children in permanency and stability on the other, because it ensures finality of dependency judgments. (Accord, *Isaiah W.*, *supra*, 1 Cal.5th at p. 15 [" ' "To maintain stability in placements of children in juvenile proceedings, it is preferable to err on the side of giving notice and examining thoroughly whether the juvenile is an Indian child." ' "].) In any event, when a Cal-ICWA inquiry is inadequate, a conditional reversal likely will inject far less delay than per se reversal of the entire judgment.[13]

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[13] The dissent claims our holding ensures children "remain in prolonged legal uncertainty" and, here, delays permanent placement of Dezi and Joshua and does not serve their best interests. (Dis. opn. of Groban, J., *post*, at p. 2; *id.* at p. 27.) But it is agencies who create delays in permanency by failing to

It may be that in many cases, an adequate inquiry will reveal no reason to believe the child is Indian. The dissent notes mother's counsel conceded at oral argument that the likelihood of the tribe actually intervening and removing a child from placement is minimal.[14] ICWA and Cal-ICWA, however, make clear that the inquiry is not concerned with the outcome, but rather with the protection of tribal rights, including the tribes' right to determine whether a child is an Indian child.[15]

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comply with their statutory obligation to conduct a prompt and adequate inquiry. To the extent the dissent worries about the effect of delays in this particular case, there is no evidence in this case that Dezi's and Joshua's placement with their paternal grandparents is at risk. As the dissent concedes, to date, the "paternal grandparents have provided a safe and stable environment and stand ready to permanently adopt them . . . ." (*Id.* at pp. 26–27.) We are also unpersuaded that adopting the dissent's rule would eliminate delays in permanency. Our rule encourages prompt compliance with ICWA and Cal-ICWA and prompt resolution of initial inquiry errors, while honoring the respective roles of the juvenile court as factfinder, and the court of appeal as reviewer of the "judgment based on the record as it existed when the trial court ruled." (*Kenneth D.*, *supra*, ___ Cal.5th at p. ___ [p. 14].)

[14] Even if a child is found to be Indian, but ultimately not placed with a tribe, tribal placement is not ICWA's only goal. Tribal input regarding a child's placement is also a viable goal, particularly when children are placed with foster parents who do not share the children's culture. (See, e.g., § 224.4; rules 5.690(c)(2)(C) & 5.708(f)(7).)

[15] The dissent focuses on the outcome of the inquiry, and characterizes it as "go[ing] to the heart of ICWA . . . ." (Dis. opn. of Groban, J., *post*, at p. 14.) But as we have seen, the outcome is not for us to decide. (*Isaiah W.*, *supra*, 1 Cal.5th at p. 8.) Notice enables the tribe to decide whether a child is Indian "and, if so, whether to intervene in or exercise jurisdiction over the

"[A]bsent a reasonable inquiry at the outset, the opportunity to gather information relevant to the inquiry is often missed entirely." (*K.H.*, *supra*, 84 Cal.App.5th at p. 615.)

It is also true that any finding the trial court makes after remand will be appealable by the parents. As we have noted, however, the juvenile court's finding regarding the adequacy of the inquiry and ICWA's applicability is subject to a deferential standard of review. Further, child welfare agencies can avoid repeated remands by conducting an adequate inquiry as soon as possible and continuing to abide by their statutory inquiry obligations throughout dependency proceedings. Moreover, while a parent will have a right to appeal from any juvenile court order updating its ICWA findings following conditional reversal, that order will not be stayed pending appeal. (§ 395, subd. (a)(1).)

The Department argues that a clear rule of reversal should be rejected because the Legislature did not require automatic Cal-ICWA appeals and did not designate tribes as real parties in interest to dependency proceedings. The fact that the Legislature has not designated specific procedural paths to ensure Cal-ICWA compliance does not mean that compliance with Cal-ICWA can be sidestepped or is unimportant. Without an adequate inquiry, tribes will not know whether a child is an

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proceeding." (*Id.* at p. 5.) It is for that reason that the "*notice* requirement is at the heart of ICWA . . . ." (*In re Antonio R.* (2022) 76 Cal.App.5th 421, 429, italics added (*Antonio R.*).) An adequate initial inquiry at the outset is essential to ensuring that tribes are properly noticed so they may make this final determination.

Indian child and will not receive notice or have standing to intervene in dependency cases.

In sum, when an initial Cal-ICWA inquiry is inadequate, conditional reversal is warranted in order to develop the record and cure the inadequacy. This rule protects the interests of parents, children, and tribes, ensures agencies and courts are complying with their statutorily prescribed duties, and protects the permanency of dependency judgments.

### F. The Department Fails To Persuade that the Reason-to-Believe Rule Should Apply When Cal-ICWA Inquiries Are Inadequate

As we have noted, the Department argues the reason-to-believe rule announced by the Court of Appeal should be adopted because it is consistent with the California Constitution's requirement that a judgment not be set aside unless it results in a miscarriage of justice by affecting the outcome (in this case, the juvenile court's ICWA finding). The dissent also favors the reason-to-believe rule. The Department maintains this rule best reconciles competing policy considerations at play when Cal-ICWA compliance issues are asserted late in the proceedings, including: (1) the interests of dependent children in permanency, (2) the interest in effectuating the rights of Indian tribes by ensuring a determination of whether a child may be an Indian child, (3) the judicial branch's interest in ensuring that the agency gets the message that a proper initial inquiry is critical, and (4) the judicial branch's interest in discouraging parents from engaging in gamesmanship and delaying objections to the adequacy of an inquiry until parental rights have been terminated.

We reject the reason-to-believe rule as flawed. By placing the burden on parents to point to something in the record suggesting there is a reason to believe a child might be an "Indian child," the rule effectively shifts the obligation to conduct the inquiry away from child welfare agencies and courts to the parents. (See *Benjamin M.*, *supra*, 70 Cal.App.5th at p. 743; see also *In re V.C.* (2023) 95 Cal.App.5th 251, 261 [rejecting reason-to-believe rule because it "shifts the duty of developing information on Indian ancestry from the agency to the parents"].) This contravenes the Legislature's intent which, as evinced by section 224.2's plain language and legislative history, is to impose the inquiry obligation on agencies and courts in order to increase compliance with ICWA. (See § 224.2, subds. (a)–(c), (e).)

The dissent contends that shifting the burden to the parents is appropriate under *Watson*. (Dis. opn. of Groban, J., *post*, at pp. 10–11.) The dissent not only ignores that we cannot ascertain whether the error is harmless when an initial Cal-ICWA inquiry is inadequate (see *ante*, at pp. 20–22 & fn. 11), but also that the Legislature charged child welfare agencies with the obligation to conduct an adequate inquiry. It argues that Cal-ICWA contemplates parents will participate in the determination that a child is an Indian child by filling out ICWA-020 forms and notifying the court if subsequent information gives a reason to know the child is Indian. (Dis. opn. of Groban, J., *post*, at pp. 15–16.) Juvenile court forms directing parents to provide information within their possession, however, differs fundamentally from the statutory duty of inquiry, which the Legislature has expressly stated must extend beyond the parents. While the Legislature remains free to amend Cal-ICWA, the duty of inquiry, expressly placed on child

welfare agencies, cannot be shifted to the parents under the current statutory scheme.

In addition, the reason-to-believe rule assumes parents are capable of protecting tribal rights (i.e., that they have sufficient knowledge of their Indian heritage to demonstrate a reason to believe the child might be an Indian child) and are interested in doing so. The Legislature has not embraced this assumption, however, which "overlooks recent findings on the impact this country's decades-long efforts to destroy Indian families and eradicate Indian history and culture, including through abuses of the child welfare system, may have on a family's awareness of its Indian ancestry." (*In re Rylei S.* (2022) 81 Cal.App.5th 309, 321–322 (*Rylei S.*); see also ICWA Proceedings, 81 Fed.Reg., *supra*, at p. 38780.)

Indeed, there are a number of reasons why parents would not be knowledgeable of, or be uninterested in disclosing, their Indian heritage. The "[o]ral transmission of relevant information from generation to generation and the vagaries of translating from Indian languages to English combine to create the very real possibility that a parent's or other relative's identification of the family's tribal affiliation is not accurate." (*T.G.*, *supra*, 58 Cal.App.5th at p. 289.) Further, as amici curiae CILS and CTFC observe, "generations who lived through trauma at the hands of state actors pass a lack of self-identification as Native American to younger generations, leaving only the older family members or extended family members with knowledge of" Indian ancestry. (See also ICWA Proceedings, 81 Fed.Reg., *supra*, at p. 38780.) Parents may simply be estranged from, or have an unfavorable relationship with, extended family. (See, e.g., *G.H.*, *supra*, 84 Cal.App.5th at pp. 30–31.)

"[W]e also cannot assume a parent's interest necessarily aligns with the tribe's interest." (*K.H.*, *supra*, 84 Cal.App.5th at p. 613.) " 'The parents or Indian custodian may be fearful to self-identify, and social workers are ill-equipped to overcome that by explaining the rights a parent or Indian custodian has under the law.' " (*Rylei S.*, *supra*, 81 Cal.App.5th at p. 322.) This is unsurprising. "Native communities have endured a legacy of trauma at the hands of State actors who enacted forced removal and assimilation of their children; therefore, Native families are much more likely to harbor a unique distrust of government workers." (*In re Dependency of G.J.A.* (2021) 197 Wn.2d 868, 905; see also *id.* at p. 906 ["Native families often do not trust child welfare workers"].) " 'Parents may even wish *to avoid* the tribe's participation or assumption of jurisdiction.' " (*Rylei S.*, *supra*, 81 Cal.App.5th at p. 322, italics added.) They "may be less interested in or committed to federal and state policies of protecting the continued existence and integrity of tribes — even perhaps viewing potential tribal involvement consciously or unconsciously as a source of competition for custody." (*G.H.*, *supra*, 84 Cal.App.5th at p. 31; see also *Holyfield*, *supra*, 490 U.S. at pp. 37, 52 [mother gave birth outside of reservation to avoid tribal jurisdiction].) Some parents may even be victims of unscrupulous attorneys seeking to avoid adoption delays. (See *In re Bridget R.* (1996) 41 Cal.App.4th 1483, 1493.) Enforcing the requirement of an adequate inquiry only in cases in which the record affirmatively demonstrates a reason to believe the child is an Indian child decreases the likelihood that child welfare agencies will identify potential Indian children and notify tribes accordingly. As discussed above, an inadequate inquiry denies tribes the opportunity to make membership determinations and intervene in dependency actions when

appropriate. As amici curiae CILS and CTFC point out, it also results in a "bypassing of remedial requirements of the ICWA and a risk to the tribes of losing the next generation of their citizens through the [a]gency's failures."

In addition, by requiring parents to demonstrate in the record that there is a reason to believe the child is an Indian child, the reason-to-believe rule "potentially make[s] enforcement of the tribes' rights dependent on the quality of the parents' effort on appeal." (*A.R.*, *supra*, 77 Cal.App.5th at p. 207.) This is not what the statutory scheme contemplates. As we have seen, Cal-ICWA does not require parents to inquire about the child's Indian ancestry. When a child welfare agency fails to conduct an adequate inquiry, the record of the inquiry is necessarily inadequate. That deficiency may hinder a parent from supporting a claim that a reason to believe Indian ancestry exists. In any event, the duty of inquiry belongs to the agency and may not be shifted to the parent.

The Department and the Court of Appeal maintain that a rule limiting remand to cases in which there is a reason to believe a child is an Indian child "effectuates the rights of the tribes in those instances in which those rights are most likely at risk, which are precisely the cases in which the tribe's potential rights do justify placing the children in a further period of limbo." (*Dezi C.*, *supra*, 79 Cal.App.5th at p. 782.) They also take the position that "by focusing on what is in the record rather than what is not in the record, [the reason-to-believe rule] largely sidesteps the 'how can we know what we don't know' and burden of proof conundrums that animate the automatic reversal and presumptive affirmance rules." (*Ibid.*)

These arguments improperly focus on the outcome of the inquiry — that there is a reason to believe the child is an Indian child — rather than the inquiry itself. As the *K.H.* court observed, "[b]y design, this [reason-to-believe] approach bypasses problems with the agency's and the court's discharge of their duties where the deficiencies lie in the failure to gather information at the initial stage of inquiry. [Citation.] Instead, the rule focuses on information relevant to the *next stage* in the ICWA compliance process — a need for further inquiry *if*, based on the record, there is reason to believe the child is an Indian child [citation], and on prejudice as related to the *court's* ICWA finding [citation]. However, as recent cases demonstrate, following changes in California law over the past few years, errors in the ICWA compliance process very often lie in the lack of an adequate inquiry at the outset and, as we have explained, ensuring adequacy at the outset is essential to ensuring that the protection afforded by ICWA and related law is realized." (*K.H.*, *supra*, 84 Cal.App.5th at p. 615, italics added.) The duty of inquiry is an ongoing one — even if it may also trigger further duties — and cannot be conflated with downstream compliance requirements. (§ 224.2, subd. (a); *J.C.*, *supra*, 77 Cal.App.5th at p. 77 [duty of inquiry " 'begins with the initial contact' [citation] and continues throughout the dependency proceedings"].) Stated differently, the inquiry is not outcome oriented; rather, it is geared to ensuring that tribal heritage is acknowledged and inquired about in dependency cases. Focusing on whether there is information bearing on the outcome of the inquiry *before an adequate inquiry has even been made* frustrates the purpose of ICWA and ignores that "tribes have a compelling, legally protected interest in the inquiry itself." (*A.R.*, *supra*, 77 Cal.App.5th at p. 202.)

The Court of Appeal and the Department make much of the fact that mother failed to raise ICWA and Cal-ICWA compliance issues below and denied Indian ancestry. They emphasize that the reason-to-believe rule will encourage parents to raise objections to ICWA inquiry issues earlier and discourage gamesmanship. It is unclear what a parent stands to gain by purposely withholding information regarding a child's potential Indian ancestry, or intentionally withholding an objection to an inadequate ICWA inquiry, only to raise the information or objection for the first time on appeal. Neither the Court of Appeal nor the Department identify any benefit a parent would receive from appellate delay for ICWA compliance purposes only, and generally a child's placement may not be disturbed during appeal.[16] (See *In re Caden C.* (2021) 11 Cal.5th 614, 630.)

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[16] The dissent maintains the reason a parent would wait to raise the issue of ICWA or Cal-ICWA noncompliance until appeal is that parents will "seek to do anything they can to undo the trial court's termination of parental rights." (Dis. opn. of Groban, J., *post*, at p. 19.) The dissent views raising ICWA or Cal-ICWA error on appeal as "a logical response" to this possibility, and notes that in this case, mother objected for the first time on appeal that the agency did not comply with the duty of inquiry. (*Ibid.*) It also notes that in *S.H.*, *supra*, 82 Cal.App.5th at p. 172, a parent planned to claim Indian ancestry to delay the child's removal from the home. Appealing on the basis of ICWA or Cal-ICWA inquiry error, however, does not change the fact that parental rights have been terminated even if Indian ancestry is discovered. And the dependency process does not stop simply because a claim of Indian ancestry is raised. As the juvenile court in *S.H.* observed when making its

To be sure, if a party seeks to engage in gamesmanship to delay resolution of a case or a minor's permanency, we condemn such tactics. But there appears to be little incentive for parents to engage in such conduct in the first instance, and we will not assume parents are engaging in this tactic or that gamesmanship will occur based on our holding. Given the large number of cases to date involving patent errors with respect to Cal-ICWA inquiries, as well as legislative history expressing concerns about agencies' failures to comply with ICWA (see *ante*, at p. 10), our primary concern is to ensure those agencies — whose very job it is to conduct the inquiry — are not avoiding their duties under Cal-ICWA. (See, e.g., *E.V.*, *supra*, 80 Cal.App.5th at p. 697 ["this particular problem [of errors in required Cal-ICWA inquiries] keeps surfacing in appeals with alarming frequency"].) In addition, "we presume that counsel representing [a parent] in such an appeal would only raise nonfrivolous claims on [their] behalf." (*In re J.K.* (2022) 83 Cal.App.5th 498, 508, fn. 6.) We "also note that with regard to ICWA notices parents in dependency proceedings may be sanctioned if they 'knowingly and willfully falsif[y] or conceal[] a material fact concerning whether the child is an Indian child, or counsel[] a party to do so.' " (*Ibid.*, see also § 224.3, subd. (e).) Thus, the statutory scheme already addresses concerns regarding gamesmanship.

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jurisdictional findings: "I am troubled . . . that the parents somehow wanted to claim Native American ancestry because somehow they [thought] they had a leg up by doing that. I don't know what they thought they would achieve by that." (*S.H.*, *supra*, 82 Cal.App.5th at p. 173.) Moreover, there is no evidence that mother raised ICWA and Cal-ICWA compliance on appeal here to forestall the termination of her parental rights.

Further, there is little indication that the unlikely concern of gamesmanship outweighs, or is on equal footing with, the critical importance of ensuring an adequate and proper inquiry. "Until the inquiry is conducted, and the issue is put to rest, the interests of the Native American tribes have not been adequately protected, and the judgment in this case would remain vulnerable to a potential collateral attack." (*A.R.*, *supra*, 77 Cal.App.5th at p. 202.) As we held in *Isaiah W.*, a parent may "challenge a finding of ICWA's inapplicability in an appeal from the subsequent order, even if [they] did not raise such a challenge in an appeal from the initial order." (*Isaiah W.*, *supra*, 1 Cal.5th at p. 6.) We justified this conclusion in part because ICWA permits its notice requirements to "be enforced *after* the issuance of an order terminating parental rights." (*Id.* at p. 13; see also 25 U.S.C. § 1914.) Accordingly, ICWA findings "are preserved for review *irrespective of any action or inaction on the part of the parent* . . . ." (*K.R.*, *supra*, 20 Cal.App.5th at p. 708, italics added.) Moreover, nothing in the statutory scheme permits the required inquiry to be halted or short circuited when a parent denies Indian ancestry.

Ultimately, the reason-to-believe rule discourages full compliance with Cal-ICWA, does not fully acknowledge the history or realities of many current-day tribal communities, and would risk undermining the legislative intent behind section 224.2.[17] An adequate initial inquiry ensures that Indian

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[17] Approximately 110 of the 574 federally-recognized Indian tribes in the United States are in California. (See Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs, 88 Fed.Reg. 54654 (Aug. 11, 2023) [listing all tribes eligible for BIA services and

children are identified and ICWA and Cal-ICWA are applied even if tribes do not intervene in the proceedings.

For all these reasons, we reject the reason-to-believe rule. Placing the burden on an appealing parent to demonstrate in the record on appeal a reason to believe the child is an Indian child when the record's deficiency is due to the child welfare agency's inadequate inquiry undermines the statutory scheme and weakens a tribe's ability to discover and ultimately assert its interest in its children.

Last, we explain why we find the presumptive affirmance rule and the rule laid out in *Benjamin M.* unpersuasive. The presumptive affirmance rule "has been sharply criticized." (*K.H.*, *supra*, 84 Cal.App.5th at p. 612.) First, the rule contravenes our holding in *Kenneth D.* that absent exceptional circumstances, a reviewing court should not make factual findings and consider new evidence on appeal to conclude the initial inquiry error was harmless. (*Kenneth D.*, *supra*, ___ Cal.5th at pp. ___, ___ [pp. 1, 18].) The rule also "require[s] a parent to make an affirmative representation of Indian ancestry

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funding].) These tribes range from large to very small and have their own governmental structures and processes. (See California Tribal Court-State Court Forum, Frequently Asked Questions: Indian Tribes and Tribal Communities in California, p. 1 <https://www.courts.ca.gov/documents/TribalFAQs.pdf> [as of Aug. 19, 2024]; all Internet citations in this opinion are archived by year, docket number and case name at <http://www.courts.ca.gov/38324.htm>.) In addition, many Indians in California are from out-of-state tribes. (*Id.* at pp. 2–3.) These factors present challenges with ICWA and Cal-ICWA compliance, including notice to, and participation of, tribes, underscoring that ICWA and Cal-ICWA must be enforced regardless of tribal intervention. (See ICWA Proceedings, 81 Fed.Reg., *supra*, at pp. 38782–38783.)

where the [agency's] failure to conduct an adequate inquiry deprived the parent of the very knowledge needed to make such a claim." (*Y.W.*, *supra*, 70 Cal.App.5th at p. 556.) As the Court of Appeal below reasoned in rejecting the rule: "By placing the onus solely on the parent to come forward with a proffer of information likely to be obtained on remand, the presumptive affirmance rule not only embraces finality at the expense of the tribe's interest in ascertaining accurate determinations of the Indian status of dependent children, but does too little to incentivize agencies to conduct proper inquiries because prejudicially deficient [inquiries] will go uncorrected if the parent is unwilling or unable to make a meaningful proffer on appeal." (*Dezi C.*, *supra*, 79 Cal.App.5th at p. 785.)

As we have seen, the rule adopted by the *Benjamin M.* court requires a court to "reverse where the record demonstrates that the agency has not only failed in its duty of initial inquiry, but where the record indicates that there was readily obtainable information that was likely to bear meaningfully upon whether the child is an Indian child." (*Benjamin M.*, *supra*, 70 Cal.App.5th at p. 744.) This rule, however, is "susceptible to being read in different ways, depending on whether courts interpret it broadly or narrowly overall, and depending on how they interpret 'readily obtainable information' and 'likely to bear meaningfully' on the inquiry more specifically." (*K.H.*, *supra*, 84 Cal.App.5th at p. 617.) As a result, this rule is malleable enough to result in inconsistent outcomes. (*Dezi C.*, *supra*, 79 Cal.App.5th at p. 786 [uncertainty and breadth of rule means reviewing courts will debate whether information is readily obtainable]; see also *In re D.B.* (2022) 87 Cal.App.5th 239, 247 [criticizing how the court in *In re Y.M.* (2022) 82 Cal.App.5th 901, 917–918 applied the *Benjamin M.* rule]; *Antonio R.*, *supra*,

76 Cal.App.5th at p. 435 [disagreeing with how *Benjamin M.* rule was applied in *In re S.S.* (2022) 75 Cal.App.5th 575 & *In re Darian R.* (2022) 75 Cal.App.5th 502].)

Moreover, the *Benjamin M.* test collapses the analysis of whether an inquiry is *adequate* into the question of whether an inadequate inquiry is *harmless*. If a child welfare agency fails to obtain meaningful information or pursue meaningful avenues of inquiry — by, for example, failing to discover that a parent was adopted, or failing to inquire further after a parent identified an extended family member with more information about the child's potential Indian ancestry — those facts would be relevant to whether the initial Cal-ICWA inquiry is adequate, not whether the inquiry is prejudicial. The conditional reversal rule we adopt today clearly distinguishes between the separate issues of whether an inquiry is adequate and whether inquiry error is harmless.

**G. Conclusion**

It bears observing that "[t]he required inquiry here could have been conducted in significantly less time than it took to defend this appeal." (*A.R.*, *supra*, 77 Cal.App.5th at p. 202.) Congress and the Legislature have committed to protecting Native American heritage and cultural connections between tribes and children of Native American ancestry. (§ 224; 25 U.S.C. § 1902.) We hold our child welfare agencies and courts to these commitments. We do so by requiring a judgment to be conditionally reversed when error results in an inadequate Cal-

ICWA inquiry. It is only by conditionally reversing that we can ascertain whether error in the inquiry is prejudicial.[18]

## III. DISPOSITION

The Court of Appeal's judgment is reversed with directions to conditionally reverse the order terminating parental rights. The matter is remanded to the juvenile court for compliance with the inquiry and notice requirements of sections 224.2 and 224.3 and the documentation provisions of rule 5.481(a)(5), consistent with this opinion. If the juvenile court thereafter finds a proper and adequate further inquiry and due diligence has been conducted and concludes ICWA does not apply (§ 224.2, subd. (i)(2)), then the court shall reinstate the order terminating parental rights. If the juvenile court concludes

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[18] Because they have reached contrary conclusions on the issue before us, we disapprove *In re A.C.*, *supra*, 65 Cal.App.5th 1060, *In re Rebecca R.* (2006) 143 Cal.App.4th 1426, *In re Benjamin M.*, *supra*, 70 Cal.App.5th 735, *In re Samantha F.* (2024) 99 Cal.App.5th 1062, *In re V.C.*, *supra*, 95 Cal.App.5th 251, *In re Ricky R.*, *supra*, 82 Cal.App.5th 671, *In re S.S.*, *supra*, 75 Cal.App.5th 575, *In re Darian R.*, *supra*, 75 Cal.App.5th 502, *In re A.C.* (2022) 75 Cal.App.5th 1009, *In re Y.M.*, *supra*, 82 Cal.App.5th 901, *In re Adrian L.* (2022) 86 Cal.App.5th 342, *In re D.B.*, *supra*, 87 Cal.App.5th 239, *In re Ezequiel G.*, *supra*, 81 Cal.App.5th 984, *In re G.A.*, *supra*, 81 Cal.App.5th 355, *In re Allison B.* (2022) 79 Cal.App.5th 214, *In re A.M.* (2020) 47 Cal.App.5th 303, *In re Austin J.* (2020) 47 Cal.App.5th 870, and *In re M.M.*, *supra*, 81 Cal.App.5th 61 to the extent they are inconsistent with our opinion.

ICWA applies, then it shall proceed in conformity with ICWA and California implementing provisions. (See 25 U.S.C., § 1912, subd. (a); §§ 224.2, subd. (i)(1); 224.3, 224.4.)

**EVANS, J.**

**We Concur:**

**CORRIGAN, J.**
**LIU, J.**
**KRUGER, J.**
**JENKINS, J.**

In re DEZI C.

S275578

Concurring Opinion by Justice Kruger

California law implementing the federal Indian Child Welfare Act of 1978 (ICWA; 25 U.S.C. § 1901 et seq.) imposes an "affirmative and continuing duty" on a court and relevant agencies to inquire as to whether a child in a dependency proceeding "is or may be an Indian child." (Welf. & Inst. Code, § 224.2, subd. (a).) Depending on the results of this initial inquiry, the relevant authorities may then have an obligation to conduct further inquiry to determine whether the child falls within the ambit of the federal ICWA and its California counterpart (Cal-ICWA). (Welf. & Inst. Code, § 224.2, subd. (e); see also *id.*, subd. (g).)

This case raises an important question concerning Cal-ICWA's initial inquiry requirement. But because the parties have conceded for purposes of this case that the agency failed to perform an adequate initial inquiry, the sole issue before us is "a narrow one: whether a child welfare agency's failure to make a proper inquiry under California's heightened ICWA requirements constitutes reversible error." (Maj. opn., *ante*, at p. 6.) The majority holds that where a child welfare agency failed to make an adequate initial inquiry, a reviewing court must conditionally reverse the juvenile court's order terminating parental rights and remand with instructions to the juvenile court to comply with Cal-ICWA's notice and inquiry requirements. (Maj. opn., *ante*, at pp. 21–22.)

I join the majority in concluding that this rule of conditional reversal follows from the statutory scheme the Legislature set forth in Welfare and Institutions Code section 224.2. I write separately, however, to express my agreement with part II of the dissenting opinion on the threshold question of what constitutes an adequate initial inquiry under Cal-ICWA. Although this question is not squarely presented here, I think it is important to be clear on certain points for purposes of deciding the issue that is currently before us. Specifically, Cal-ICWA does not, as some have assumed, require the juvenile court to leave no stone unturned in an " 'open-ended universe of stones,' " thereby creating ever-widening circles of mandatory inquiry. (Dis. opn. of Groban, J., *post*, at p. 23; accord, maj. opn., *ante*, at pp. 26–27.) Rather, fairly read, the statute requires an initial inquiry that is adequate to reach a reliable conclusion about the applicability of ICWA. This explains why the rule of conditional reversal the majority adopts today will not, as the Court of Appeal had feared, lead to endless rounds of remands for additional inquiry with little or no chance of yielding pertinent information. With this understanding in mind, I agree with my colleagues that the rule the majority announces today makes sense of the Legislature's careful efforts to balance the vital interests at stake in this case and others like it. (Maj. opn., *ante*, at p. 31; accord, dis. opn. of Groban, J., *post*, at pp. 25–26.)

**KRUGER, J.**

**I Concur:**

**CORRIGAN, J.**

In re DEZI C.

S275578

Dissenting Opinion by Justice Groban

Prompt and permanent placement of a child in dependency proceedings is critically important. (*In re Christopher L.* (2022) 12 Cal.5th 1063, 1081–1082 (*Christopher L.*).) The statutory scheme makes clear that courts must "give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements." (Welf. & Inst. Code, § 352, subd. (a)(1) [describing the related context of when a court may grant a continuance].) After reunification efforts have failed, courts must act "reasonably promptly to minimize the time during which the child is in legal limbo. A child has a compelling right to a stable, permanent placement that allows a caretaker to make a full emotional commitment to the child." (*In re Celine R.* (2003) 31 Cal.4th 45, 59 (*Celine R.*).) "[L]engthy and unnecessary delay in providing permanency for children[ is] the very evil the Legislature intended to correct." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 310 (*Marilyn H.*).) Indeed, we have said that even a four-month delay "may not seem a long period of time to an adult, it can be a lifetime to a young child." (*Ibid.*)

I agree with the majority that the Indian Child Welfare Act of 1978 (ICWA; 25 U.S.C. § 1901 et seq.) and California's version of ICWA (Cal-ICWA; Welf. & Inst. Code, § 224 et seq.) protect vital tribal interests. But the majority's rule of automatic conditional reversal where there has been a failure to comply with Cal-ICWA, even if the parents disclaim any tribal membership and even if

there is little possibility that the child may be Indian, fails to balance the equally important goal of achieving a prompt and stable placement for children in crisis. The majority opinion ensures that siblings Dezi C. and Joshua C., and hundreds of other children like them, will remain in prolonged legal uncertainty about who their adoptive parents will be, where they will live, where they will go to school, and whether they will be separated from one another and placed in separate homes. The majority forces Dezi C. and Joshua C. and their paternal grandparents to live with continued uncertainty about their future, even though the record reflects that the grandparents have consistently "provide[d] a safe and stable home environment for Dezi and Joshua," even though the parents have both previously indicated on multiple occasions and under penalty of perjury that they have no Indian ancestry, and even though, as mother's counsel conceded at oral argument, the likelihood of a tribal placement is "minimal." This delay and uncertainty carry the risk of creating further distress and instability for children who have already experienced the trauma of being permanently removed from their parents' care. This delay may also result in prospective adoptive parents deciding to no longer make themselves available as adoptive parents. I dissent to explain why our well-established standard of review for harmlessness of state law error is appropriate, one that allows lower courts to balance the goals of ICWA and Cal-ICWA with the goals of prompt and stable placement for children.

I also write to highlight that the majority does not foreclose — and indeed quite rightly expressly leaves room for — an alternate route that gives appellate courts greater flexibility going forward. Even though the majority, wrongly in my view, adopts a rule requiring automatic conditional reversal when there is error in conducting a Cal-ICWA inquiry, this does not prevent

appellate courts from giving substantial deference to a juvenile court's finding that the inquiry was, in fact, adequate. Though my colleagues deprive appellate courts from taking a commonsense approach where there was a failure to comply with Cal-ICWA at the trial level, appellate courts can still continue to show substantial deference to a juvenile court's finding that the inquiry *actually complied with* Cal-ICWA.

## I. Standard of Prejudice for Cal-ICWA Error

The parties agree that the juvenile court complied with federal ICWA, but not Cal-ICWA. Though the majority largely ignores this distinction, the difference is crucial. Under federal ICWA, the court must ask both participants (i.e., the parents) at the commencement of proceedings "whether the participant knows or has reason to know that the child is an Indian child." (25 C.F.R. § 23.107(a) (2021).) *That happened here*. Prior to the initial detention hearing both parents signed under penalty of perjury ICWA-020 forms indicating that they do not have Indian ancestry. The court then confirmed with the parents at the initial detention hearing that they did not have Indian ancestry. Thus, the Department of Children and Family Services (Department) and juvenile court satisfied the federal ICWA's inquiry requirements. (25 C.F.R. § 23.107(a) (2021).)

The requirements of *Cal-ICWA*, however, impose additional duties of inquiry on a child welfare department, which "includes, but is not limited to," not just asking the parents about Indian ancestry, but also asking the child, the "legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect, whether the child is, or may be, an Indian child and where the child, the parents, or Indian custodian is domiciled." (Welf. & Inst. Code, § 224.2, subd. (b).) In this case, the parties agree the inquiry was

inadequate under Cal-ICWA because the Department and the court did not ask extended family members, meaning adults who are "the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent" (25 U.S.C. § 1903(2); Welf. & Inst. Code, § 224.1, subd. (c)), about Indian ancestry.[1]

Where there has been a violation of state law, the standard of review has been well established for almost 70 years: Under *People v. Watson* (1956) 46 Cal.2d 818 (*Watson*), reversal is appropriate only where the petitioner can show that "it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error." (*Id.* at p. 836.) As we explained in *Watson*, this standard is consistent with our constitutional mandate that "[n]o judgment shall be set aside . . . unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice." (Cal. Const., art. VI, § 13; see *In re Jesusa V.* (2004) 32 Cal.4th 588, 624 (*Jesusa V.*) ["We typically apply a harmless-error analysis when a statutory mandate is disobeyed, except in a narrow category of circumstances when we deem the error reversible per se. This practice derives from article VI, section 13 of the California Constitution"].) The majority offers no plausible explanation as to

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[1] We have granted review in *In re Ja.O.* (2023) 91 Cal.App.5th 672, review granted July 26, 2023, S280572, to decide whether the inquiry duty under Welfare and Institutions Code section 224.2, subdivision (b) applies to children taken into custody by means of a protective custody warrant (Welf. & Inst. Code, § 340). That issue is not presented in this case, and I express no view on it here. In this case, the parties do not dispute that Cal-ICWA applies.

why *Watson* does not apply. Nor does the majority make any attempt to reconcile article VI, section 13 of the California Constitution with its decision. (See *In re Dezi C.* (2022) 79 Cal.App.5th 769, 785 (*Dezi C.*) [The majority's "automatic reversal rule seemingly elevates ICWA above the *constitutional* mandate that reversal is only required when there would be a miscarriage of justice. But it is well settled that constitutional provisions trump statutory law, not the other way around"].)

I would not so lightly dispense with our precedent or our Constitution. Instead, I would apply *Watson* in this case by adopting the Court of Appeal's "reason to believe" standard. (See *Dezi C.*, *supra*, 79 Cal.App.5th at p. 779.) Under the "reason to believe" standard, "an agency's failure to conduct a proper initial inquiry into a dependent child's American Indian heritage is harmless unless the record contains information suggesting a reason to believe that the child may be an 'Indian child' within the meaning of ICWA, such that the absence of further inquiry was prejudicial to the juvenile court's ICWA finding. For this purpose, the 'record' includes both the record of proceedings in the juvenile court and any proffer the appealing parent makes on appeal." (*Ibid.*) This standard appropriately balances the interests of the child in avoiding delay and instability in permanent placement while at the same time requiring reversal if a threshold showing can be made that further ICWA or Cal-ICWA inquiry would be useful. But it avoids condemning children to further delay and instability in cases where there is zero evidence that the child is Indian. "By limiting a remand for further inquiry to those cases in which the record gives the reviewing court a reason to believe that the remand may undermine the juvenile court's ICWA finding, the 'reason to believe' rule effectuates the rights of the tribes in those instances in which those rights are most likely at risk, which are

precisely the cases in which the tribe's potential rights do justify placing the children in a further period of limbo." (*Dezi C.*, at pp. 781–782.)

The majority asserts that it is not holding that an inadequate inquiry is structural error, but rather that the record is insufficient when the inquiry is inadequate to determine whether the error is harmless under *Watson*. (Maj. opn., *ante*, at p. 22, fn. 11.) Though I agree with the majority that "the juvenile court's fact-specific determination that an inquiry is adequate, proper, and duly diligent is 'a quintessentially discretionary function' (*In re Ezequiel G.* (2022) 81 Cal.App.5th 984, 1005) subject to a deferential standard of review" (*id.* at p. 27; see pt. II, *post*), I simply do not understand the majority's assertion that it is not applying a structural error standard in instances where the Cal-ICWA inquiry is, in fact, deemed inadequate. What the majority is doing is clear: in every case where there has been an inadequate inquiry under Cal-ICWA, the majority finds the *Watson* prejudice standard inapplicable, and instead concludes that reversal is required without any attempt to assess prejudice. That is the very essence of a structural error standard.

The majority also argues that it is "impossible to review for prejudice the trial court's implied finding that ICWA does not apply." (Maj. opn., *ante*, at p. 21.) However, here and in *In re Kenneth D.* (August 19, 2024, S276649) ___ Cal.5th ___ (*Kenneth D.*), the majority also rightly acknowledges that Code of Civil Procedure section 909 allows for the submission of postjudgment evidence in exceptional circumstances. (See *Kenneth D.*, at p. ___ [p. 22].) This situation clearly fits the bill: where a delay of even a few months "can be a lifetime to a young child" (*Marilyn H.*, *supra*, 5 Cal.4th at p. 310), then it is appropriate to ask parents to come forward with at least some information showing that there would

be a reason to justify further delay. This requirement need not be onerous — if a parent can proffer any document, or any declaration, tending to show that the child might be Indian, then this would likely be sufficient to require reversal so that further inquiry can be made. But this is the very common sense and practical solution that my colleagues in the majority refuse to embrace. If we are going to delay permanent placement for a child who has already been through an unimaginable trauma — the loss of one or both of his parents as permanent caregivers — we should make sure that there is at least a glimmer of hope that such delay might be beneficial. Imagine a situation on appeal, like this one, where the parents have already submitted signed ICWA forms indicating that they have no Indian ancestry and confirmed as much to the juvenile court. And imagine a situation, like here, where the parents have not adduced one iota of evidence on appeal that they or their children are members of, or eligible for membership in, a federally recognized Indian tribe. Now assume that, after the juvenile court order was final, the Department spoke to all the people required under Cal-ICWA and presented declarations on appeal in which each of these persons stated the child had no Indian ancestry. Would the majority still require reversal? I fear the answer is "yes."

The majority worries that if the interpretation advocated for here were adopted "the exception would swallow the rule we have laid out in *Kenneth D.* that reviewing courts may not generally consider previously unadmitted evidence for the first time on appeal to conclude initial ICWA inquiry error is harmless." (Maj. opn., *ante*, at p. 29, citing *Kenneth D.*, *supra*, ___ Cal.5th at p. ___ [p. 1].) But the facts of these two cases allay this concern. In *Kenneth D.*, the memorandum from the Placer County Department of Health and Human Services presented for postjudgment review

contained conflicting hearsay statements concerning Indian ancestry: "Kenneth D.'s father 'stated that he thought he might have Cherokee ancestry out of Oklahoma' while the paternal grandmother stated the father's statement was 'not accurate' and that she was 'unaware of any Native American Heritage.' " (*Kenneth D.*, *supra*, ___ Cal.5th at p. ___ [p. 1] (conc. opn. of Groban, J.).) On this record, there simply was no basis to conclusively determine that the child was not of Indian descent. The circumstances in *Kenneth D.* simply were not " 'exceptional.' " (*Ibid.*) Conversely, here, as described, both parents signed ICWA forms under penalty of perjury indicating that they did not have Indian ancestry and the court then confirmed with the parents at the initial detention hearing that they did not have Indian ancestry. Code of Civil Procedure section 909 exists for exactly these kinds of exceptional cases and our Courts of Appeal are well equipped to distinguish between unexceptional fact patterns like *Kenneth D.* and exceptional cases like the one presented here.

The majority offers a variety of other reasons for requiring automatic conditional reversal, stating that "Cal-ICWA 'broadly imposes on social services agencies and juvenile courts (*but not parents*) an "affirmative and continuing duty to inquire" ' " (maj. opn., *ante*, at p. 23, original italics); "ICWA was enacted to protect tribal integrity and sovereignty" (*id.* at p. 24); adequate initial inquiry "maximizes the chances that potential Indian children are discovered and tribes are notified" (*id.* at p. 26); and that the ICWA implementing regulations state that early inquiry is " 'critically important' " (*ibid.*). These arguments redound to: "Because we think Cal-ICWA is a very important piece of legislation, and because we think a state actor failed in its duty to follow the law, we are going to require automatic conditional reversal when the statute is violated." But until today, it had been our longstanding

practice to inquire, in accordance with our state Constitution (Cal. Const., art. VI, § 13), whether the violation of a directory statute was prejudicial. (*In re R.L.* (2016) 4 Cal.App.5th 125, 143 [when "a statute does not provide any consequence for noncompliance, the language should be considered directory rather than mandatory"]; *In re C.T.* (2002) 100 Cal.App.4th 101, 111.) "Only in a 'very limited class of cases' has the Court concluded that an error is structural, and 'thus subject to automatic reversal' on appeal." (*Greer v. United States* (2021) 593 U.S. 503, 513.) The majority's resolution of this appeal ignores the way we and lower courts have applied *Watson* in literally thousands of cases.

In every *Watson* case, an important interest is at stake (see cases below involving the rights of a criminal defendant to admit evidence at trial; cases involving the right of a criminal defendant to have a properly instructed jury; and cases involving the statutory right to counsel) and in every case, a state actor has failed to comply with state law. But we do not adopt the automatic reversal rule applied here. Instead, for state law error, we have, for almost seven decades, quite logically gone on to ask if "it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error." (*Watson*, *supra*, 46 Cal.2d at p. 836; see, e.g., *People v. Lewis* (2021) 11 Cal.5th 952, 973 [*Watson* applies to trial court's failure to appoint counsel in hearing on resentencing petition as required by statute]; *People v. Sivongxxay* (2017) 3 Cal.5th 151, 187 [*Watson* applies when the trial court fails to expressly reference the special circumstance allegation in the jury trial waiver colloquy or otherwise fails to seek a separate waiver regarding the allegation, as required by statutes construed in *People v. Memro* (1985) 38 Cal.3d 658, 704]; *People v. Anzalone* (2013) 56 Cal.4th 545, 555 [*Watson* applies to trial court's failure to ask jury foreperson to

affirm verdict as required by Pen. Code § 1149]; *People v. Gutierrez* (2009) 45 Cal.4th 789, 828 [*Watson* applies if the trial court erroneously fails to admit evidence that a victim was the initial aggressor]; *People v. Crayton* (2002) 28 Cal.4th 346, 365 [*Watson* applies to whether an unrepresented defendant would have invoked the right to counsel had he or she been readvised of this right at arraignment, as is required under Pen. Code § 987, subd. (a)]; *People v. Breverman* (1998) 19 Cal.4th 142, 148–149 [*Watson* applies if a trial court has not complied with its sua sponte duty to instruct on all lesser necessarily included offenses supported by the evidence].)

For illustration, in instructional error cases like *Breverman*, this means that we determine what we think the jury would have concluded had it possessed information that was never imparted to it. In cases like *Gutierrez*, we applied *Watson*, even though the jury never heard evidence in the defendant's favor that it should have. Moreover, though this arises in a different context, courts routinely apply a prejudice analysis when an attorney has failed to notify a client of immigration consequences resulting from the plea. (*People v. Vivar* (2021) 11 Cal.5th 510, 529 (*Vivar*).) We do not find the error to be structural, but instead require the defendant to affirmatively come forward with evidence that the plea would be different. (*Ibid.*) Similarly, though again arising in a different context, we routinely apply a prejudice analysis when foreign nationals are not informed, pursuant to the Vienna Convention, of their right to consular notification within two hours of arrest, booking, or detention. (*People v. Vargas* (2020) 9 Cal.5th 793, 832 (*Vargas*).)

While the majority asserts that the "reason to believe" rule is flawed because it "effectively shifts the obligation to conduct the inquiry away from child welfare agencies and courts to the parents"

(maj. opn., *ante*, at p. 35), this is how *Watson* works: even in the face of a blatant and admitted error by a state actor that violated the party's rights, the party still must show that the error made a difference in the outcome. And, in many of these cases requiring a showing of prejudicial error, the party relies on evidence in the record or actually attempts to come forward with new evidence to show prejudice. (See *Vivar*, *supra*, 11 Cal.5th at p. 530 ["In a declaration submitted with his [Penal Code] section 1473.7 motion, Vivar claims he would never have entered this plea had he understood that it would require his deportation"]; *Vargas*, *supra*, 9 Cal.5th at p. 834 [finding defendant had not demonstrated prejudice on a claim, based on evidence presented in a new trial motion, that he was denied due process of law for consular notification violations].) I suppose we could have quite easily concluded in countless of these cases that automatic reversal was required because the statute that was violated " 'broadly imposes' " a duty on the state actor (maj. opn., *ante*, at p. 23); we could have highlighted that the burden to act was imposed on the state and not upon the party (*ibid.*); we could have noted that requiring compliance with the statute that was violated is " 'foundational to fulfilling [its] purpose' " (*id.* at p. 24); and we could have cited to implementing regulations that stated that compliance with the statute is " 'critically important' " (*id.* at p. 26). But that is not what our Constitution requires. (See Cal. Const., art. VI, § 13 ["No judgment shall be set aside . . . unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice"].) Where a state law has been violated, article VI, section 13 makes clear that we do not automatically reverse the judgment, but that we instead ask whether "it is reasonably probable that a result more favorable to the appealing party would have been

reached in the absence of the error." (*Watson*, *supra*, 46 Cal.2d 818 at p. 836; see Cal. Const., art. VI, § 13.) In this way, the majority's automatic conditional reversal rule constitutes a significant departure from our precedent.

The majority attempts to distinguish these cases that require a showing of prejudice by noting that "[n]one of the cases cited in the dissent allowed the introduction of new evidence on appeal to determine whether the asserted error was prejudicial." (Maj. opn., *ante*, at p. 29.) First, it is noteworthy that, in some of these cases, though the evidence was not presented for the first time on appeal, the court did use evidence that was submitted only *after* the trial had concluded in order to determine whether there was prejudicial error. (See *Vivar*, *supra*, 11 Cal.5th at p. 530 [relying upon a declaration submitted with the Pen. Code, § 1473.7 motion]; *Vargas*, *supra*, 9 Cal.5th at p. 834 [relying upon evidence presented in a new trial motion].) Second, in most cases applying *Watson*, we assess prejudice without even permitting the petitioner to submit additional evidence. I do not understand how affording the petitioner the opportunity to produce postjudgment evidence makes the *Watson* standard *less* appropriate here. If anything, allowing a petitioner the right to introduce postjudgment evidence that might support petitioner's position — and requiring the petitioner make only a minimal showing in order to obtain a remand — makes this case an even better candidate for *Watson* review than most. Third, we are not just considering the application of *Watson*, but the California Constitution as well. The majority does not plausibly explain why the mere possibility that an appellate court could invoke Code of Civil Procedure section 909 means that we can now set aside judgments without applying a prejudice analysis. (Cal. Const., art. VI, § 13.)

The majority's conclusion is all the more confounding because we have routinely rejected claims that other state statutory violations in dependency proceedings constitute structural error, explaining that the interest in providing an expedited proceeding to resolve the child's status without further delay "would be thwarted if the proceeding had to be redone without any showing the new proceeding would have a different outcome." (*Jesusa V.*, *supra*, 32 Cal.4th at p. 625.) We stated that "the price that would be paid [by treating error as structural], in the form of needless reversals of dependency judgments, is unacceptably high in light of the strong public interest in prompt resolution of these cases so that the children may receive loving and secure home environments as soon as reasonably possible." (*In re James F.* (2008) 42 Cal.4th 901, 918; see also *In re A.R.* (2021) 11 Cal.5th 234, 249 ["We emphatically agree that dependent children have a critical interest in avoiding unnecessary delays to their long-term placement"]; *Christopher L.*, *supra*, 12 Cal.5th at p. 1081 ["[I]n the dependency context, automatic reversal for errors that do not invariably lead to fundamental unfairness would exact a particularly steep cost. 'There is little that can be as detrimental to a child's sound development as uncertainty over whether he is to remain in his current "home," under the care of his parents or foster parents, especially when such uncertainty is prolonged' "].)

As we said in *Celine R.* in the context of a failure to appoint separate counsel for siblings in an adoption proceeding: "We add another reason criminal cases [and per se reversal] are inapt. In a criminal case, reversal of a criminal judgment is virtually always in the defendant's best interest. The situation in a dependency case is often different. Reversal of an order of adoption, for example, might be *contrary* to the child's best interest because it would delay and might even prevent the adoption. . . . The delay an appellate

reversal causes might be contrary to, rather than in, the child's best interests. Thus, a reviewing court should not mechanically set aside an adoption order because of error in not giving that child separate counsel; the error must be prejudicial under the proper standard before reversal is appropriate." (*Celine R.*, *supra*, 31 Cal.4th at p. 59, original italics.) The majority does not explain its departure from our numerous decisions reaffirming that *Watson*'s standard of review applies to dependency proceedings.

The majority also justifies its automatic reversal rule because ICWA protects the rights of *non*parties, i.e., the tribe. (Maj. opn., *ante*, at p. 24.) But the entire scheme at play here is structured so that other entities — the parents, the Department, and the court — seek to vindicate the rights of the tribe through adequate inquiry. We do not change any of the other applicable rules, e.g., what evidence is admissible, the burden of proof, the relevant statutory deadlines, simply because the rights of a third party (the tribe) may be implicated. The rules are what the rules are. It therefore seems very strange to conclude that though *Watson* has typically provided the standard of review for state law error for almost 70 years, we will dispense with *Watson* because a Cal-ICWA violation might implicate the rights of a non-party. This is especially odd since the *Watson* standard is routinely applied when the rights of a criminal defendant have been violated. Are we prepared to hold that where the statutory rights of a criminal defendant are violated, harmless error review is appropriate, but where the rights of a third-party in a non-criminal proceeding are implicated, then automatic reversal is required? Apparently so.

The majority concedes that it is not "concerned with the outcome" of the inquiry, i.e., whether the child is or may be an Indian child. (Maj. opn., *ante*, at p. 32; see also *id.* at pp. 38–39.) However, the outcome of the inquiry goes to the heart of ICWA,

which, as the majority also emphasizes, is designed " 'to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture . . . .' " (Maj. opn., *ante*, at p. 7, quoting 25 U.S.C. § 1902.) Determining whether the child is or may be an Indian child is a critical step to protecting " 'the best interests of Indian children' " and to promoting " 'the stability and security of Indian tribes and families.' " (*Ibid*.)

Though the majority resists requiring parents to affirmatively come forward with information on appeal involving their Indian ancestry, the entire ICWA structure places affirmative requirements upon parents to assist the court in establishing Indian ancestry. "Because early identification of Indian children is critical to ICWA's proper implementation, we believe the statute must be interpreted in a way that requires *all* participants — child protective agencies, the parents, all counsel, and the juvenile courts — to work together to determine whether children are Indian children." (*In re Ezequiel G., supra,* 81 Cal.App.5th at p. 1002 (*Ezequiel G.*).) "[P]arents are required at their first appearances to fill out ICWA-020 forms in which they declare their Indian status under penalty of perjury, and they are instructed that if they get new information, they must 'let [their] attorney, all the attorneys on the case, and the social worker . . . know immediately.' " (*Id.* at p. 1003, citing Judicial Council of Cal., Form ICWA-020 [rev. Mar. 25, 2020].) Cal-ICWA also requires parents, per court instruction, to notify the court if they receive subsequent information that provides a reason to know the child is an Indian child. (Welf. & Inst. Code, sec. 224.2, subd. (c).) Simply put,

"requiring *all parties* to actively participate in the ICWA inquiry is critical to ensuring that an adequate ICWA investigation is conducted and Indian children are promptly identified at the earliest possible stages of dependency cases." (*Ezequiel G.*, at p. 1003, italics added.) Mandating conditional reversal based on a parent's claim of Cal-ICWA inquiry errors, raised for the first time on appeal and without requiring the parent to present any evidence that the child is or may be an Indian child, "has precisely the opposite effect." (*Ibid.*)

The majority also offers a series of speculative reasons for rejecting the "reason to believe" rule: the parents' knowledge of their ancestry may be hampered by translation issues from Indian languages to English (maj. opn., *ante*, at p. 36); parents may be fearful to self-identify and social workers may be ill-equipped to address these fears (*id.* at p. 37); the parents may view the tribe as competition for custody (*ibid.*); and the parents may be represented by unscrupulous attorneys (*ibid.*). This strikes me as a lot of conjecture about why the parents may be ill-equipped to know if they have Indian ancestry without a word of discussion about whether delay and uncertainty will have a negative impact on the child.[2] It also fails to explain why

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[2] The majority opinion improperly relies on assertions from *In re Rylei S.* (2022) 81 Cal.App.5th 309, 322, which originate in the California ICWA Compliance Task Force's 2017 report to the California Attorney General's Bureau of Children's Justice (Task Force Report). (See maj. opn., *ante*, at p. 37.) This is improper because we *denied* mother's request to take judicial notice of this report, and for good reason. It is not properly subject to judicial notice and was created by "an independent, tribally led entity." (Task Force Report, p. 1.) Unable to quote from the report itself, the majority instead simply quotes from a

parents would be fearful of self-identification during juvenile court proceedings — but not on appeal.

It is of course *possible* that unscrupulous attorneys may represent a parent in a dependency proceeding, or a competent translation may not be obtained in a specific case. But what we do know for sure is that the majority's rule of automatic conditional reversal will *always*, in every single case of reversal, result in a delayed permanent placement for children who have already experienced a great deal of trauma. Delaying permanency for children — leaving them in legal limbo about where they will live, who will raise them, where they will go to school, and whether they will be separated from siblings — will now occur in 100 percent of cases where a child welfare department fails to comply with Cal-ICWA. And this automatic reversal will occur without any inquiry at all regarding whether such delay would actually be in the best interest of the child. "A conditional reversal (or affirmance) of such orders inevitably delays an adoption from proceeding, and in some cases, it may throw an adoption off track entirely if the prospective adoptive family cannot tolerate further delay. In both scenarios, the uncertainty caused by California's ICWA-related statutes negatively affects children who deserve permanence without

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case that quotes from the improperly noticed report. This strikes me as inappropriate. Moreover, even had we taken judicial notice of this report, it bears repeating that "matters of which judicial notice is taken are considered only for their existence, not for the truth of the matters asserted in them." (*In re Marriage of Forrest & Eaddy* (2006) 144 Cal.App.4th 1202, 1209; see *Guarantee Forklift, Inc. v. Capacity of Texas Inc.* (2017) 11 Cal.App.5th 1066, 1075 ["we generally do not take judicial notice of the truth of the matter asserted in such documents"].) The majority opinion violates this settled rule.

undue delay." (*In re H.V.* (2022) 75 Cal.App.5th 433, 442, fn. 5 (dis. opn. of Baker, J.) (*H.V.*).) In fact, "[i]n just the last 12 months, [an automatic reversal] approach to asserted ICWA [and Cal-ICWA] error has resulted in, by our count, appellate courts returning more than 100 dependency cases to the juvenile courts with directions to conduct further ICWA [and Cal-ICWA] inquiries *after* parental rights were terminated. At best, these reversals significantly delay entry of final judgments releasing children for adoption; at worst, they may result in potential adoptive parents deciding not to adopt." (*Ezequiel G.*, *supra*, 81 Cal.App.5th at p. 1001.)[3] I do not understand why we should adopt a rule (automatic conditional reversal) that will *always* create this negative outcome (delay in permanent placement) simply because other problems (like translation issues) *could* arise. The flexible approach adopted by the Court of Appeal accounts for this problem while also comporting with our traditional harmless error standard of review, but the majority errantly, in my view, refuses to embrace it. This refusal is

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[3] The majority takes solace in the fact that "there is no evidence in this case that Dezi's and Joshua's placement with their paternal grandparents is at risk." (Maj. opn., *ante*, at p. 32, fn. 13.) This may be so, but it seems to undervalue the psychological uncertainty placed upon children and their families by the fact that the placement remains temporary and could be undone by a subsequent court determination. And, though the paternal grandparents in this case may be unwavering heretofore in their commitment to permanently adopt these children, today's ruling will sweep much more broadly than just the case of Dezi C. and Joshua C. Other prospective placements, especially in cases where the adoptive parents are not related to the children, may be far more reticent to create lasting bonds, with the prospect of losing the children looming overhead for years on end.

especially heartbreaking given that counsel for appellant mother conceded during oral argument that "the likelihood of the tribe actually intervening and removing a child from placement are very, very, not non-existent, but minimal."

Finally, the majority rejects out of hand the notion that a parent may seek to delay termination of parental rights by waiting until appeal to argue that the ICWA or Cal-ICWA inquiry was inadequate. Counsel for appellant mother argues that appellants can do just that and may assert such error on appeal without having raised the issue previously. (*In re Isaiah W.* (2016) 1 Cal.5th 1, 6, 9, 14–15.) The majority repeatedly asserts that it is "unclear what a parent stands to gain" from waiting to raise the issue and "there appears to be little incentive for parents to engage in such conduct in the first instance." (Maj. opn., *ante*, at pp. 40–41.) But the reasons for a parent waiting to raise the issue of ICWA or Cal-ICWA non-compliance on appeal are quite clear: faced with the unimaginable prospect of losing custody of their child forever, and emboldened by our case law making such an approach perfectly lawful, it is completely understandable for parents to seek to do anything they can to undo the trial court's termination of parental rights. This is not "gamesmanship" (maj. opn., *ante*, at p. 41), but instead a logical response to the possibility of losing custody of one's own child forever. In fact, that is what occurred in this case: "[n]early 30 months into the proceedings and on appeal from the termination of her parental rights, [mother] for the first time object[ed] that the agency did not discharge its statutory duty to 'inquire' of 'extended family members' whether her children might be 'Indian child[ren].' " (*Dezi C.*, *supra*, 79 Cal.App.5th at p. 774.)

Moreover, there *are* published cases describing parents seeking to delay the removal of their children from the home by

claiming Indian heritage. In *In re S.H.* (2022) 82 Cal.App.5th 166, 172 (*S.H.*), the Court of Appeal described a voicemail received by a social worker from the father, who apparently accidentally left his phone on after he completed his intended message. "In the apparent unintended portion of the recording, he discussed with [m]other a plan to claim that the minor had Indian ancestry to delay the Agency's removal of her from the home." (*Ibid.*)

While it is understandable that a parent may seek to forestall such a heartbreaking result as the termination of parental rights, this scenario makes it all the more clear why a rule of automatic conditional reversal is ill advised. Where a parent may be raising Cal-ICWA noncompliance solely to delay termination of parental rights; where there is no evidence at all that the child is or may be an Indian; and where the appealing parent herself or himself may have previously attested (like they did here) that the child has no Indian ancestry, then a rule of automatic reversal makes little sense.

## II. Deference to the Adequacy of Cal-ICWA Inquiry

As described above, there are two ways that appellate courts can appropriately resolve issues related to Cal-ICWA compliance without needlessly delaying the proceedings: The first is by applying a flexible standard for prejudice to determine whether any error in the Cal-ICWA inquiry is harmless. For the reasons described above, I believe my colleagues have missed an opportunity with respect to this pathway. Notably, however, the majority still gives space for a second way that allows appellate courts the sufficient flexibility that is required in handling these complex cases. Rather than focusing on the appropriate standard of review if there was an inadequate inquiry under Cal-ICWA (automatic reversal versus harmless error review), alternatively, appellate courts could simply give appropriate deference to a

juvenile court's findings that the Cal-ICWA inquiry was adequate. Stated differently, if the appellate court concludes there was substantial evidence to support the juvenile court's determination that the Cal-ICWA inquiry was, in fact, *adequate* and ICWA does not apply, then it need not reach the question of whether reversal for Cal-ICWA error is required.

The majority rightly leaves room for this approach, explaining that "the juvenile court's fact-specific determination that an inquiry is adequate, proper, and duly diligent is 'a quintessentially discretionary function' ([*Ezequiel G.*, *supra*,] 81 Cal.App.5th [at p.] 1005) subject to a deferential standard of review" (maj. opn., *ante*, at p. 27); and "[i]f, upon review, a juvenile court's findings that an inquiry was adequate and proper and ICWA does not apply are found to be supported by sufficient evidence and record documentation as required by California law ([Cal. Rules of Court, ]rule 5.481(a)(5)), there is no error and conditional reversal would not be warranted even if the agency did not inquire of everyone who has an interest in the child" (*id.* at pp. 27–28). Because the Department conceded the Cal-ICWA inquiry in this case was inadequate, the parties did not litigate the issue of whether the juvenile court's finding that ICWA does not apply is supported by substantial evidence. I write to expand on what this means for appellate courts going forward.

First, as the majority explains, a juvenile court's finding that the child welfare department met its inquiry requirements under Cal-ICWA is entitled to substantial deference on appeal. (*In re S.R.* (2021) 64 Cal.App.5th 303, 312, 278.) The statutory scheme specifically provides for a sufficiency of the evidence standard for reviewing the adequacy of the inquiry, stating: "If the court makes a finding that proper and adequate further inquiry and due diligence as required in this section have been conducted and there

is no reason to know whether the child is an Indian child, the court may make a finding that the federal [ICWA] does not apply to the proceedings, *subject to reversal based on sufficiency of the evidence*." (Welf. & Inst. Code, § 224.2, subd. (i)(2), italics added.) We normally apply a deferential standard of review in assessing the evidence's sufficiency because " '[c]onflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]' [Citation.] A reversal for insufficient evidence 'is unwarranted unless it appears "that upon no hypothesis whatever is there sufficient substantial evidence to support" ' the jury's verdict." (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

Second, Cal-ICWA itself confers significant discretion on juvenile courts in determining whether an inquiry was adequate. (See *Ezequiel G.*, *supra*, 81 Cal.App.5th at pp. 1006–1007.) In my view, Cal-ICWA does not require an inquiry of every single extended family member and person listed in the statute. Welfare and Institutions Code section 224.2, subdivision (b) requires that the Department "inquire whether [a dependent child] is an Indian child," and then provides that the "[i]nquiry includes, but is not limited to, asking the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect, whether the child is, or may be, an Indian child . . . ." (Welf. & Inst. Code, § 224.2, subd. (b).) An " 'extended family member' " is (unless otherwise defined by an Indian child's tribe) an adult who is "the Indian child's grandparent, aunt or uncle, brother or sister,

brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent." (25 U.S.C. §1903(2); Welf. & Inst. Code, § 224.1, subd. (c) [adopting federal definition].)

I, like other courts which have interpreted the same language, do not read the statute as requiring that an initial Cal-ICWA inquiry be made of every member of a child's extended family, including every first and second cousin, every single niece and nephew, all aunts and uncles, all siblings-in-law, plus every other person who has an interest in the child. (*Ezequiel G.*, *supra*, 81 Cal.App.5th at pp. 1005–1006.) Such a reading is "absurd at best and impossible at worst" (*id.* at p. 1006) and "creates an open-ended universe of stones, the rule ostensibly empowers the party to obtain a remand to question extended family members, then a second remand to question the family babysitter, and then a third remand to question longtime neighbors, and so on and so on." (*Dezi C.*, *supra*, 79 Cal.App.5th at p. 785.) In fact, the majority appears to agree, at least to an extent, emphasizing its holding "does not require reversal in all cases in which every possible extended family member has not been asked about the child's Indian ancestry."[4] (Maj. opn., *ante*, at p. 27.)

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[4] Given the fact that the question of what constitutes adequate notice is not at issue here, this makes it difficult for the majority to provide definitive guidance on this issue. But this unique procedural posture also makes it hard for the juvenile court to know how to proceed with remand instructions "to conduct an adequate inquiry." (Maj. opn., *ante*, at p. 2.) It similarly creates uncertainty for child welfare departments on remand to know what is meant by asking "extended family members and others" as required by statute (*id.* at p. 26), or " 'those people who are reasonably available to help the agency with its investigation' " (*id.* at p. 27), nor does it assist the

The better reading is that the " 'includes, but is not limited to' " language tells us that these are "*examples* of the categories of people a social services agency or court should inquire of." (*In re A.C.* (2022) 86 Cal.App.5th 130, 142 (dis. opn. of Baker, J.); see also *H.V.*, *supra*, 75 Cal.App.5th at p. 440 (dis. opn. of Baker, J.) [Cal-ICWA has "no endpoint" and is "impossible to satisfy in practice"]; *Ezequiel G.*, *supra*, 81 Cal.App.5th at p. 1005 ["The need for a juvenile court to exercise discretion in considering whether an ICWA inquiry is adequate is particularly acute because the scope of the inquiry required by state law is not well defined"].)

Indeed, the list in Welfare and Institutions Code section 224.2, subdivision (b) itself makes clear that the Department need not interview every person listed in this provision in every case. For example, if no one has identified any Indian ancestry, then contacting the proper "Indian custodian" becomes unfeasible. A "legal guardian" may not exist in every case for the Department to contact. The child may not have any nieces or nephews or siblings-in-law, or their nieces or nephews may be infants and therefore impossible to interview. Furthermore, if "the party reporting child abuse or neglect" is someone with only a minimal relationship with the child, like an emergency room doctor at a hospital, then it would make no sense to ask that person about the child's Indian ancestry. (*Ibid.*) Finally, the phrase "others who have an interest in the child," through its use of broad, non-specific language, also

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agencies with understanding the parameters of an inquiry that is meant to be " 'slight and swift' " (*id.* at p. 31). To be clear, I do not suggest that the majority should have tackled these thorny questions. They admittedly are not presented by the petition for review. But the uncertainty created by this procedural posture is nonetheless unfortunate.

suggests itself that courts have discretion in determining exactly who these indeterminate "others" are. (*Ibid.*)

This kind of flexibility in interpreting the requirements of Cal-ICWA is crucial. Imagine a case where the Department had interviewed every single person enumerated by the statute, so assume that the Department interviewed 40 people, and all of them had said the child had no Indian ancestry, but the Department failed to speak to one of the child's eight aunts. Under this hypothetical it would be absurd to conclude that the inquiry was inadequate and automatic conditional reversal was required. Or let us imagine a case involving a child who, with his entire family, recently immigrated from Ukraine, thereby making it highly improbable that the child is a member of, or may be eligible for membership in, a federally recognized Indian tribe. Any court would be hard pressed to find that the Department's inquiry regarding his or her Indian ancestry was inadequate because it did not ask his or her entire extended (Ukrainian) family about Indian descent. The same would be true for a case where the Department had recently completed an adequate Cal-ICWA inquiry for the child's sibling in a different dependency case — it would be illogical to hold that the inquiry was inadequate because the Department failed to recontact all the same extended family members.

In sum, in reviewing a juvenile court's Cal-ICWA findings for abuse of discretion, I believe "a proper application of the governing substantial evidence standard of appellate review mitigates some of the flaws in the statutory scheme." (*H.V.*, *supra*, 75 Cal.App.5th at p. 441 (dis. opn. of Baker, J.).) I further believe "the focus of the court's analysis should not be on the number of individuals interviewed, but on whether the agency's [Cal-ICWA] inquiry has yielded reliable information about a child's possible tribal affiliation." (*Ezequiel G.*, *supra*, 81 Cal.App.5th at p. 1009; accord,

*In re E.W.* (2023) 91 Cal.App.5th 314, 322.) In order to appropriately balance the importance of Cal-ICWA compliance with the best interest of children in the dependency system, appellate courts should bear in mind that a juvenile court's finding that Cal-ICWA inquiry was satisfied and that ICWA does not apply is entitled to substantial deference and that the requirements imposed by Cal-ICWA are flexible.[5]

**III. Conclusion**

This case is a prime example of why adhering to our traditional review of claims of state law error on appeal is necessary. Dependency proceedings were initiated when Dezi C. was three and a half years old and her brother, Joshua C. was one and a half years of age. The children are now over eight and six years old. They have spent most of their short lives in the dependency system. The juvenile court sustained allegations that the minors were at risk of harm in the custody of mother and father

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[5] Furthermore, though the instant case presents an appeal from an order terminating parental rights, other cases may arise in the context of an interlocutory appeal, where dependency proceedings are still ongoing. (See, e.g., *S.H.*, *supra*, 82 Cal.App.5th at pp. 171, 179; *In re Baby Girl M.* (2022) 83 Cal.App.5th 635, 638.) In such a case, some Court of Appeal decisions find that because the Department has a *continuing* duty of inquiry and because, unlike the present case, there will necessarily be further dependency proceedings in the juvenile court, reversal based upon a prior failure to adequately inquire as to Indian ancestry may be unnecessary. (See *S.H.*, at p. 179 ["So long as proceedings are ongoing and all parties recognize the *continuing* duty of ICWA inquiry," then "disturbing an early order in a dependency proceeding is not required where, as here, the court, counsel, and the Agency are aware of incomplete ICWA inquiry"].) Though this fact pattern is neither presented nor decided here, this may be another way to avoid needless reversal in cases involving such a procedural posture.

due to the parents' substance abuse and domestic violence issues. Their paternal grandparents have provided a safe and stable environment and stand ready to permanently adopt them, but the majority today ensures that this crucial permanent placement will again be delayed. The instability and uncertainty caused by removing Dezi C. and Joshua C. from their parents and delaying permanent placement with their paternal grandparents does not serve the best interest of the children. Today, this court strays from its previous repeated and rightful admonitions that a "child has a compelling right to a stable, permanent placement that allows a caretaker to make a full emotional commitment to the child" (*Celine R.*, *supra*, 31 Cal.4th at p. 59) and that although even a four-month delay "may not seem a long period of time to an adult, it can be a lifetime to a young child." (*Marilyn H.*, *supra*, 5 Cal.4th at p. 310.) It also diverges from our constitutional mandate that no judgment shall be set aside unless the error complained of has resulted in a miscarriage of justice. (Cal. Const. art. VI, § 13.) Both parents here signed ICWA forms under penalty of perjury indicating that they do not have Indian ancestry and after years of litigation, there has never been a glimmer of evidence to suggest that the children are Indian. Nonetheless, because the Department failed to ask additional family members about the children's ancestry, my colleagues invoke a rule of automatic conditional reversal that is wholly inconsistent with the way in which California courts have assessed state law error for almost seven decades. In the process, the majority forgoes a far more practical approach that would avoid automatic reversal but allow for reversal if there were a minimal showing that further inquiry might be useful. And the majority takes this approach even though the mother's own counsel admits that this delay will likely be for naught, conceding at oral argument that the likelihood of a child in

these circumstances having Indian ancestry and being placed with a tribe is "minimal." The majority's formulaic approach needlessly condemns these children and others like them to more uncertainty, more instability, and more trauma. I dissent.

**GROBAN, J.**

**I Concur:**
**GUERRERO, C. J.**

*See next page for addresses and telephone numbers for counsel who argued in Supreme Court.*

**Name of Opinion** In re Dezi C.

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**Procedural Posture** (see XX below)
**Original Appeal**
**Original Proceeding**
**Review Granted (published)** XX 79 Cal.App.5th 769
**Review Granted (unpublished)**
**Rehearing Granted**

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**Opinion No.** S275578
**Date Filed:** August 19, 2024

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**Court:** Superior
**County:** Los Angeles
**Judge:** Robin R. Kesler

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# IN THE SUPREME COURT OF CALIFORNIA

In re KENNETH D., a Person Coming Under the Juvenile Court Law.

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PLACER COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES,
Plaintiff and Respondent,
v.
J.T.,
Defendant and Appellant.

S276649

Third Appellate District
C096051

Placer County Superior Court
53005180

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August 19, 2024

Justice Corrigan authored the opinion of the Court, in which Chief Justice Guerrero and Justices Liu, Kruger, Groban, Jenkins, and Evans concurred.

Justice Groban filed a concurring opinion, in which Chief Justice Guerrero concurred.

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This opinion precedes companion case *In re Dezi C.*, S275578, also filed this date.

In re KENNETH D.

S276649

Opinion of the Court by Corrigan, J.

The federal Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq.; ICWA) and California implementing law require juvenile dependency courts and appropriate agencies to inquire into a child's native heritage and to notify a relevant tribe if there exists "reason to know that an Indian child is involved . . . ." (25 U.S.C. § 1912(a); see Welf. & Inst. Code, §§ 224.2, 224.3, subd. (a).) The question here is, when the required initial inquiry was inadequate, may an appellate court consider *postjudgment* evidence to conclude the error was harmless?

We hold that, absent exceptional circumstances, a reviewing court may not generally consider postjudgment evidence to conclude the error was harmless. The sufficiency of an ICWA inquiry must generally be determined by the juvenile court in the first instance. Because no exceptional circumstances exist here, the Court of Appeal's consideration of previously unadmitted evidence on appeal was error. In *In re Dezi C.* (_____, 2024, S275578) ___ Cal.5th ___ (*Dezi C.*), also filed today, we address the appropriate standard of harmless error review where the inquiry into a child's native heritage was inadequate, and conclude that a judgment must be conditionally reversed when error results in an inadequate ICWA inquiry. (*Dezi C.*, at p. ___ [p. 38.]) Here, as in *Dezi C.*, there is no dispute that the inquiry below was inadequate. We reverse the Court of Appeal's judgment with directions to conditionally reverse the

juvenile court's order terminating parental rights and remand for compliance with ICWA and California implementing statutes.

## I. BACKGROUND

Born eight weeks prematurely, minor Kenneth D. (Kenneth) tested positive for amphetamine and syphilis shortly after his delivery. His mother, C.B. (mother) admitted using methamphetamine throughout her pregnancy, including three days before his birth. Mother had given birth under similar circumstances in 2016 and that son was removed from her custody. At the time of Kenneth's birth, mother had been living with T.D., who was also suspected of drug use. The Placer County Department of Health and Human Services (the department) filed a juvenile dependency petition to remove Kenneth from the custody of mother and T.D. (Welf. & Inst. Code, § 300, subds. (b)(1), (j).)

The initial detention report by the department indicated mother was not sure whether T.D. or another man, B.F., was Kenneth's father. The department asked mother and T.D. about their potential native heritage. Mother stated she might have native ancestry on her father's side through a tribe from Kentucky, though she was not an enrolled member. T.D. indicated he might have Cherokee ancestry on his mother's side.[1] At the detention hearing, however, both mother and T.D. denied having any native heritage and the juvenile court found ICWA did not apply. Kenneth was placed into the department's temporary custody.

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[1] The department made similar inquiries of B.F.

Paternity testing revealed that neither T.D. nor B.F. was Kenneth's biological father. J.T. (J.T. or father) was later confirmed as being Kenneth's parent. The next hearing a month later occurred before the results of J.T.'s paternity test had been received. The juvenile court recognized T.D. as the presumed father, noting he had submitted a voluntary declaration of paternity and his name appeared as the father on Kenneth's birth certificate. Kenneth was adjudged a dependent and removed from the parents' custody, with visitation and reunification services ordered. The court found ICWA did not apply. The court did not initially offer services to J.T. but indicated the matter could be placed back on calendar if testing confirmed his paternity. The court did not ask about J.T.'s potential native heritage. After receiving the paternity test result, the department could not locate father and he was not present during a court hearing for a three-month review.

At the six-month review hearing, the juvenile court terminated reunification services for mother and T.D. and set the matter for a termination of parental rights hearing. (Welf. & Inst. Code, § 366.26.) J.T. was present at that time and requested a continuance, explaining that his attorney was not available. He told the court he would request reunification services and amendment of Kenneth's birth certificate. The court denied a continuance and instead instructed father to file a petition to modify or terminate jurisdiction. (Welf. & Inst. Code, § 388.) Again, without inquiry of J.T., the court found ICWA did not apply.

The department recommended the parental rights of mother and T.D., as well as father, be terminated and Kenneth be cleared for adoption by his foster family. The department's report indicated it had contacted the maternal grandmother,

who said her family did not have any native heritage. The department also contacted T.D.'s mother, who indicated the same. Neither J.T. nor his family was contacted as to possible native heritage. At the termination hearing, father stated his counsel again could not attend. He did not object to termination of his rights but did seek visitation. The juvenile court terminated parental rights and approved the adoption plan for Kenneth. The court made no mention of ICWA. Father filed a notice of appeal.

On April 29, 2022, before the filing of an opening brief in the Court of Appeal, the department requested that the appellate court augment the record on appeal. The motion attached an April 27 memo describing the department's postjudgment efforts to comply with ICWA. The memo indicated the department contacted father on April 21, 2022. He "stated that he thought he might have Cherokee ancestry out of Oklahoma" and suggested contacting his mother for further information. That same day, the department did so. J.T.'s mother denied that J.T. had native heritage. Instead, she reported that "all of their family comes from Mexico." She said she had "completed a blood DNA ancestry test which came back stating that they had Native Heritage." She explained that "all of her family is actually from Culicán Sinaloa, Mexico," identified her parents, and stated both of *her* paternal grandparents were born in Mexico. She was unaware of any Native American heritage and assumed her DNA test results were due to her Mexican ancestry. The memo further reported the department had contacted someone at the federal Bureau of Indian Affairs (BIA), who confirmed that, though the grandmother's DNA findings indicated native ancestry, her other relatives were from Mexico and thus not federally

recognized under ICWA. (See *post*, at p. 8, fn. 3.) According to the BIA, unless the grandmother knew the name of the tribe or is registered with one, the child is not considered an Indian child. Based on this information, the memo then asserted the department had no reason to know Kenneth is an Indian child. It requested that the Court of Appeal find ICWA was properly noticed and did not apply. The memo had been filed with the juvenile court on April 28, 2022, the day before the motion to augment in the Court of Appeal. The Court of Appeal granted the motion.

The only issues raised by J.T. on appeal were the failure to comply with the inquiry and notice provisions of ICWA and the significance of that failure. (See Welf. & Inst. Code, § 224 et seq.; Cal. Rules of Court, rule 5.480 et seq.) In a published opinion, the Court of Appeal concluded any error was harmless in light of the augmented record. (See *In re Kenneth D.* (2022) 82 Cal.App.5th 1027, 1034–1035.)

We granted father's petition for review. The sole issue before us is whether the Court of Appeal properly considered postjudgment evidence in concluding that any ICWA error was harmless. We begin with the relevant portions of ICWA and the state implementing scheme.

## II. DISCUSSION

### A. *Duty of Inquiry and Notice under ICWA and California Implementing Law*

"In 1978, Congress enacted the Indian Child Welfare Act (ICWA) out of concern that 'an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies.' [Citation.] Congress found that many of

these children were being 'placed in non-Indian foster and adoptive homes and institutions,' and that the States had contributed to the problem by 'fail[ing] to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.' [Citation.] [These state actions] harmed not only Indian parents and children, but also Indian tribes." (*Haaland v. Brackeen* (2023) 599 U.S. 255, 265.)

"At the heart of the ICWA are its provisions concerning jurisdiction over Indian child custody proceedings." (*Mississippi Choctaw Indian Band v. Holyfield* (1989) 490 U.S. 30, 36.) As relevant here, "[i]n any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe . . . ." (25 U.S.C. § 1911(b).) "Various other provisions of ICWA Title I set procedural and substantive standards for those child custody proceedings that do take place in state court. The procedural safeguards include requirements concerning notice and appointment of counsel; parental and tribal rights of intervention and petition for invalidation of illegal proceedings; procedures governing voluntary consent to termination of parental rights; and a full faith and credit obligation in respect to tribal court decisions." (*Mississippi Choctaw Indian Band*, at p. 36.) ICWA also describes a preference for placement of Indian children with their extended families, members of their tribe, or other Indian families. (See 25 U.S.C. § 1915; *Haaland v. Brackeen, supra,* 599 U.S. at pp. 266–268.)

"The minimum standards established by ICWA include the requirement of notice to Indian tribes in any involuntary proceeding in state court to place a child in foster care or to terminate parental rights 'where the court knows or has reason to know that an Indian child is involved.' " (*In re Isaiah W.* (2016) 1 Cal.5th 1, 8 (*Isaiah W.*); see 25 U.S.C. § 1912(a); 25 C.F.R. § 23.11 (2024).) The tribe has a right to "intervene at any point in the proceeding" to invalidate a prior order of placement or termination of parental rights made in violation of ICWA. (25 U.S.C. § 1911(c); see 25 U.S.C. § 1914; see also Welf. & Inst. Code, § 224.4; Cal. Rules of Court, rule 5.487(a).) The notice requirements "facilitate a determination of whether the child is an Indian child under ICWA" and "ensure[] that an Indian tribe is aware of its right to intervene in or, where appropriate, exercise jurisdiction over a child custody proceeding involving an Indian child." (*Isaiah W.*, at p. 8.)

"In 2006, our Legislature enacted provisions that affirm ICWA's purposes [citation] and mandate compliance with ICWA." (*Isaiah W., supra,* 1 Cal.5th at p. 9; see *In re W.B.* (2012) 55 Cal.4th 30, 52; see also Welf. & Inst. Code, § 224 et seq.; Cal. Rules of Court, rule 5.480 et seq.) After passage of new federal regulations in 2016, California made additional amendments to portions of the Welfare and Institutions Code related to ICWA notice and inquiry requirements. (Stats. 2018, ch. 833, §§ 2–8; Stats. 2020, ch. 104, § 15.)

The protective provisions of ICWA turn on a determination of whether a minor is an "Indian child" as defined

by statute.[2] "A determination by an Indian tribe that a child is or is not a member of, or eligible for membership in, that tribe, or testimony attesting to that status by a person authorized by the tribe to provide that determination, shall be conclusive." (Welf. & Inst. Code, § 224.2, subd. (h); see Cal. Rules of Court, rule 5.481(b)(4); 25 C.F.R. § 23.108 (2024).) Of course, a tribe may only make such determination, or exercise its right of intervention, if it is made aware of the ongoing proceedings. Accordingly, the scheme requires the appropriate tribe be notified when the court or county welfare agency has *reason to know* the child is Indian.[3] (Welf. & Inst. Code, § 224.3, subd. (a); see 25 U.S.C. § 1912(a); 25 C.F.R. § 23.111(a) (2024).)

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[2] An " 'Indian child' " is defined as an unmarried minor who "is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe" (25 U.S.C. § 1903(4)). An " 'Indian tribe' " is defined as "any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary [of the Interior] because of their status as Indians . . ." (25 U.S.C. § 1903(8); see Welf. & Inst. Code, § 224.1, subd. (a).). For simplicity we use the term "tribe" to include all the groups identified as eligible to receive federal services. (See 25 C.F.R. § 83.6(a) (2024) [duty to publish list of eligible tribes annually]; 88 Fed.Reg. 2112 (Jan. 12, 2023) [2023 list].)

[3] Welfare and Institutions Code section 224.2, subdivision (d) lists several instances creating a reason to know a child is Indian. These include that the child, a person having an interest in the child, any participant in the proceedings, an officer of the court, or a representative of a tribe indicates the child is Indian; the child resides on a reservation or has been a ward of a tribal court; or the child or parent has identification indicating tribal membership or citizenship. (Welf. & Inst. Code, § 224.2, subd. (d)(1)–(6); see Cal. Rules of Court, rule 5.481(b).)

Fulfilling the notification duty requires sufficient inquiry into the child's native heritage. "The court, county welfare department, and the probation department have an affirmative and continuing duty to inquire whether a child . . . [facing a dependency or delinquency proceeding] is or may be an Indian child." (Welf. & Inst. Code, § 224.2, subd. (a); see Cal. Rules of Court, rule 5.481(a).) California's statutory scheme imposes a duty of initial inquiry on both the department and the court. The department's duty arises when a report of abuse or neglect is made and/or when the county takes the child into its temporary custody.[4] (Welf. & Inst. Code, § 224.2, subds. (a), (b).) The inquiry "includes, but is not limited to, asking the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect, whether the child is, or may be, an Indian child and where the child, the parents, or Indian custodian is domiciled." (Welf. & Inst. Code, § 224.2, subd. (b).)[5]

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[4] We have granted review in *In re Ja.O.* (2023) 91 Cal.App.5th 672, review granted July 26, 2023, S280572, to decide whether the inquiry duty under Welfare and Institutions Code section 224.2, subdivision (b) applies to children taken into custody by means of a protective custody warrant (Welf. & Inst. Code, § 340). That issue is not before us, and we express no view on it here.

[5] A parent includes "any biological parent . . . of an Indian child" (25 U.S.C. § 1903(9)). An extended family member is "defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent." (25 U.S.C. § 1903(2); see Welf. & Inst. Code, § 224.1, subd. (c).)

Then, on the first appearance upon a petition, "the court shall ask each participant present in the hearing whether the participant knows or has reason to know that the child is an Indian child." (Welf. & Inst. Code, § 224.2, subd. (c); see Cal. Rules of Court, rule 5.481(a)(2); 25 C.F.R. § 23.107(a) (2024).)

A duty of *further* inquiry exists when "the court, social worker, or probation officer has *reason to believe* that an Indian child is involved in a proceeding, but does not have sufficient information to determine that there is reason to know that the child is an Indian child . . . ." (Welf. & Inst. Code, § 224.2, subd. (e), italics added.) There is reason to believe a child is Indian when there exists "information suggesting that either the parent of the child or the child is a member or may be eligible for membership in an Indian tribe." (Welf. & Inst. Code, § 224.2, subd. (e)(1); see *id.*, subd. (d).) Further inquiry includes, but is not limited to, interviewing the parents and extended family members, contacting the BIA and the State Department of Social Services for assistance, and contacting the relevant tribe and "any other person that may reasonably be expected to have information regarding the child's membership, citizenship status, or eligibility." (Welf. & Inst. Code, § 224.2, subd. (e)(2)(C); see *id.*, subd. (e)(2); Cal. Rules of Court, rule 5.481(a)(4).)

If proper inquiry reveals information creating reason to know a minor is an "Indian child," the relevant tribe must be notified, and "the court shall treat the child as an Indian child unless and until the court determines on the record and after review of the report of due diligence . . . and a review of the copies of notice, return receipts, and tribal responses . . . that the child does not meet the definition of an Indian child . . . ." (Welf. & Inst. Code, § 224.2, subd. (i)(1); see Cal. Rules of Court,

rule 5.481(b)(3); 25 C.F.R. § 23.107(b) (2024).) Otherwise, "[i]f the court makes a finding that proper and adequate further inquiry and due diligence as required in this section have been conducted and there is no reason to know whether the child is an Indian child, the court may make a finding that . . . [ICWA] does not apply to the proceedings, subject to reversal based on sufficiency of the evidence." (Welf. & Inst. Code, § 224.2, subd. (i)(2); see Cal. Rules of Court, rule 5.481(b)(3)(A).) Further, if a court or party subsequently receives information suggesting a reason to believe the child is Indian, the court must order further inquiry. (Welf. & Inst. Code, § 224.2, subd. (i)(2).)

### B. *Appellate Review of Determination That ICWA Does Not Apply and Consideration of Postjudgment Evidence*

Here, the Court of Appeal recognized "the abject failure of the Department and juvenile court to inquire as to father's possible Native American heritage . . . ." (*In re Kenneth D., supra,* 82 Cal.App.5th at p. 1034.) The department does not disagree but argues any failure of inquiry at the trial court level was cured by its later, postjudgment interview of father and the paternal grandmother. The department asserts its inquiry provided "conclusive information" that "father does not have any Native American heritage," and ICWA does not apply. Based on this assertion, the department urges a remand to the juvenile court for further ICWA inquiry would "be a futile act." Father counters the Court of Appeal could not properly consider the department's postjudgment inquiry and the proper remedy is a conditional remand to the juvenile court. We agree with father.

We turn to standards of appellate review. As noted, the Welfare and Institutions Code[6] provides that "[i]f the court makes a finding that proper and adequate further inquiry and due diligence as required in this section have been conducted and there is no reason to know whether the child is an Indian child, the court may make a finding that [ICWA] does not apply to the proceedings, subject to reversal based on sufficiency of the evidence." (§ 224.2, subd. (i)(2).) In reviewing a conclusion that ICWA does not apply, some courts have applied a standard substantial evidence test, "which requires us to determine if reasonable, credible evidence of solid value supports the court's" ICWA finding. (*In re A.M.* (2020) 47 Cal.App.5th 303, 314; see *D.S. v. Superior Court* (2023) 88 Cal.App.5th 383, 390; *In re M.M.* (2022) 81 Cal.App.5th 61, 70, review granted Oct. 12, 2022, S276099.) By contrast, other courts have used a hybrid standard, reviewing for substantial evidence whether there is reason to know a minor is an Indian child, and reviewing a finding of due diligence and proper inquiry for abuse of discretion. (See *In re E.C.* (2022) 85 Cal.App.5th 123, 143–144; *In re K.H.* (2022) 84 Cal.App.5th 566, 600–602; see also *In re Caden C., supra,* 11 Cal.5th at pp. 639–641.)

We need not resolve here which standard applies as no one disputes the inquiry conducted below was inadequate and, thus, that the court's ICWA finding lacked adequate support. As noted, with regard to J.T.'s heritage, the trial court never made any inquiry of its own nor did it find that the department's inquiry was proper and sufficient. We characterize the trial court's finding as implicit because, without such a finding, its

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[6] Subsequent statutory references will be to the Welfare and Institutions Code unless noted.

obligation would have been to order further inquiry to ensure that the appropriate tribe had notice and was given the opportunity to intervene before the court terminated parental rights and approved the adoption plan. Even accounting for the initial confusion as to the identity of Kenneth's father, paternity testing eventually brought J.T. within the definition of "parent" under ICWA. (See § 224.1, subd. (c); 25 U.S.C. § 1903(9).) At that point, both the department and the court were required to ask J.T. about his potential native heritage. (See § 224.2, subds. (b), (c); see also Cal. Rules of Court, rule 5.481(a)(2).)

"On a well-developed record, the court has relatively broad discretion to determine whether the agency's inquiry was proper, adequate, and duly diligent on the specific facts of the case. However, the less developed the record, the more limited that discretion necessarily becomes. When, as in this case, the court's implied finding that the agency's inquiry was proper, adequate, and duly diligent rests on a cursory record and a patently insufficient inquiry that is conceded, the only viable conclusion is that the finding is unsupported by substantial evidence and the court's conclusion to the contrary constitutes a clear abuse of discretion." (*In re K.H., supra,* 84 Cal.App.5th at p. 589; see *In re E.C., supra,* 85 Cal.App.5th at pp. 156–157.) Such is the case here. (See *In re K.H.,* at pp. 605–606; *In re Ricky R.* (2022) 82 Cal.App.5th 671, 679–680 (*Ricky R.*).) Similarly here, on this cursory record, where the parties do not dispute that the ICWA inquiry was inadequate, we agree it cannot stand.

The department does not argue that the inquiry made *before* termination of parental rights was adequate. Instead, it asserts the postjudgment inquiry rendered any error harmless. We reject the contention.

Ordinarily, appellate courts review a trial court's judgment based on the record as it existed when the trial court ruled. (*In re Zeth S.* (2003) 31 Cal.4th 396, 405 (*Zeth S.*).) It is ultimately within the purview of the juvenile court to make determinations of credibility and assessments of adequacy because it is uniquely positioned to reach these conclusions based on its familiarity with the case and those involved. The department's assertion that its postjudgment report rendered any prior failure of inquiry harmless "necessarily requires that we treat the factual assertions therein as undisputed, which we cannot do" because, absent exceptional circumstances, "[t]his type of factfinding is precisely what must occur in the juvenile court in the first instance [citation], where additional and possibly competing evidence may be offered; and the court, on a more fully developed record, will assess weight and credibility as appropriate, and make its factual findings." (*In re E.C., supra,* 85 Cal.App.5th at p. 150; see *In re G.H.* (2022) 84 Cal.App.5th 15, 32–33; *Ricky R., supra,* 82 Cal.App.5th at p. 682.)

Our conclusion is fully consistent with *Zeth S., supra,* 31 Cal.4th 396 and *In re Josiah Z.* (2005) 36 Cal.4th 664 (*Josiah Z.*), neither of which involved ICWA. In *Zeth S.*, the minor's counsel advocated for termination and represented that the maternal grandfather was ready and willing to adopt. Over the mother's objection, the juvenile court terminated parental rights and approved adoption as the permanent plan. (*Zeth S.*, at p. 403.) On the mother's appeal, the minor's appellate counsel submitted a letter brief stating counsel had conducted her own investigation of the minor's current circumstances and found Zeth did well when the mother visited him, the mother had assumed primary caretaking duties during these visits, and the

maternal grandfather " 'felt pressure to adopt [the minor] and preferred to become [the minor's] legal guardian.' " (*Ibid.*) The minor's appellate counsel joined with the mother in arguing parental rights should not have been terminated. After supplemental briefing, the Court of Appeal reversed based, in part, on appellate counsel's letter. (*Id.* at p. 404.) *Zeth S.* reversed, noting "[i]t has long been the general rule and understanding that 'an appeal reviews the correctness of a judgment as of the time of its rendition, upon a record of matters which were before the trial court for its consideration,' " and "[t]here is no blanket exception to the general rule for juvenile dependency appeals." (*Id.* at p. 405.) The court reasoned that "[t]he chief problem with the Court of Appeal's approach, however well intentioned it was, is that it effectively substitutes the reviewing court's own post hoc determination of whether termination of parental rights remains in the minor's best interests for the legislatively mandated determination that follows when the comprehensive juvenile dependency statutory scheme is dutifully adhered to in the trial court. . . . The statutory scheme does not authorize a reviewing court to substitute its own judgment as to what is in the child's best interests for the trial court's determination in that regard, reached pursuant to the statutory scheme's comprehensive and controlling provisions." (*Id.* at pp. 409–410, fn. omitted.) Similarly here, California's comprehensive scheme implementing ICWA contemplates the juvenile court will make the threshold determinations as to adequate inquiry and reason to know. A reviewing court's determination that a postjudgment ICWA inquiry was sufficient substitutes its judgment for that of the juvenile court, which is to make those findings in the first instance.

In *Josiah Z.*, the minors were put in a nonrelative placement after the juvenile court terminated parental rights. The minors' counsel challenged the placement, arguing the children should have been placed with the paternal grandparents. The juvenile court found no abuse of discretion in the placement, noting the grandparents' criminal record. The minors appealed. (*Josiah Z., supra,* 36 Cal.4th at p. 672.) As relevant here, *Josiah Z.* addressed whether appellate counsel had authority to move to dismiss the minors' appeal based on counsel's own assessment of what was in their best interests. In concluding counsel could so move, *Josiah Z.* rejected the argument "that hearing a motion to dismiss the appeal based on appellate counsel's best-interests assessment would violate the proscription against consideration of postjudgment evidence on appeal" under *Zeth S.* (*Id.* at p. 676.) Although cautioning that "an appellate court should not consider postjudgment evidence going to the merits of an appeal and introduced for the purposes of attacking the trial courts judgment," *Josiah Z.* suggested that "the generally applicable appellate rules authorize such a motion [to dismiss], and appellate courts routinely consider limited postjudgment evidence in the context of such motions." (*Ibid.*) Whether a child should be permitted to abandon a challenge to the trial court ruling is a limited question "distinct from the broader issues resolved by the trial court." (*Ibid.*) In this context, *Josiah Z.* concluded consideration of postjudgment evidence expedited proceedings and promoted finality.

The reasoning of *Josiah Z.* does not apply here. That case turned on whether parties could properly dismiss their own appeal based on a reassessment of current circumstances by appellate counsel. Dismissing an appeal in such a case would not place an appellate court in the position of usurping the

factfinding function generally given to the juvenile court. By contrast here, the complete failure to inquire about father's native heritage would necessitate reversal for further investigation but for the Court of Appeal's consideration of the department's postjudgment inquiry evidence and its own assessment that this evidence was credible and sufficient. As *In re E.C.* reasoned, "[w]hile we recognize that the Department is seeking to shore up the juvenile court's judgment rather than undermine it [citation], this distinction does not overcome the general proscription against routinely accepting postjudgment evidence to resolve issues raised on appeal, absent exceptional circumstances not present here . . . ." (*In re E.C., supra,* 85 Cal.App.5th at p. 150.)

The department asserts Code of Civil Procedure section 909 supports its position. That provision states: "In all cases where trial by jury is not a matter of right or where trial by jury has been waived, the reviewing court may make factual determinations contrary to or in addition to those made by the trial court. The factual determinations may be based on the evidence adduced before the trial court either with or without the taking of evidence by the reviewing court. The reviewing court may for the purpose of making the factual determinations or for any other purpose in the interests of justice, take additional evidence of or concerning facts occurring at any time prior to the decision of the appeal, and may give or direct the entry of any judgment or order and may make any further or other order as the case may require. This section shall be liberally construed to the end among others that, where feasible, causes may be finally disposed of by a single appeal and without further proceedings in the trial court except where in the

interests of justice a new trial is required on some or all of the issues."

We cautioned in *Zeth S.* that, although this provision generally authorizes appellate courts to make factual determinations in nonjury cases, such authority " 'should be exercised sparingly,' " and " '[a]bsent exceptional circumstances, no such findings should be made.' " (*Zeth S., supra,* 31 Cal.4th at p. 405, quoting *Tyrone v. Kelley* (1973) 9 Cal.3d 1, 13, italics omitted.) As one court observed, "claims of error under ICWA are not rare and will not typically present the type of exceptional circumstances warranting deviation from the general rule" that appellate courts should not engage in factfinding. (*In re K.H., supra,* 84 Cal.App.5th at p. 612.) Indeed, if we accept the department's position, it is unclear how it could be cabined to the ICWA context, as it would seem to countenance appellate courts' receipt of new evidence in *any* case involving harmless error review, making consideration of such evidence routine rather than exceptional. Cases have properly rejected application of Code of Civil Procedure section 909 to an appellate inquiry of whether ICWA was properly complied with. (See *In re E.C., supra,* 85 Cal.App.5th at p. 135; *In re G.H., supra,* 84 Cal.App.5th at pp. 32–33; *Ricky R., supra,* 82 Cal.App.5th at p. 682.)

We have applied Code of Civil Procedure section 909 when warranted. For example, in *In re D.P.* (2023) 14 Cal.5th 266, we held the father's appeal from the juvenile court's finding of dependency jurisdiction was mooted by that court's later termination of jurisdiction while the appeal was pending. Nevertheless, we remanded the matter to the Court of Appeal to "allow Father [the opportunity] to introduce additional evidence in support of discretionary review if appropriate," citing Code of

Civil Procedure section 909. (*In re D.P.*, at p. 287.) Unlike the present case, however, the additional evidence contemplated in *D.P.* pertained not to the underlying merits of the issue on appeal, i.e., whether the juvenile court properly exercised dependency jurisdiction, but to the collateral issue of whether the Court of Appeal should exercise its discretion in deciding a technically moot case. Although we affirm that appellate factfinding under Code of Civil Procedure section 909 is proper when exceptional circumstances are shown, such circumstances have not been demonstrated here.[7]

The department makes no effort to establish this case involved exceptional circumstances warranting appellate factfinding under Code of Civil Procedure section 909. Instead, it repeatedly asserts its postjudgment memo should be considered because it provided "conclusive information showing that father does not have any Native American heritage . . . ."

However, the nature of this evidence only highlights why it should be presented to the juvenile court rather than for the first time on appeal. The department's interview of paternal grandmother suggested she believed that any native heritage reflected in a DNA test derived from her Mexican ancestry. Whether the paternal grandmother's explanation should be credited, as well as whether the department's efforts constituted "proper and adequate further inquiry and due diligence" (§ 224.2, subd. (i)(2)), are determinations the statutory scheme

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[7] We need not further discuss here what circumstances might be sufficiently exceptional to permit an appellate court to invoke Code of Civil Procedure section 909. We urge, however, that any receipt of postjudgment evidence and appellate factfinding should be exercised sparingly lest the exception swallow the rule.

contemplated should be made by the juvenile court in the first instance. At most, the department's proffer provided additional evidence from which the juvenile court could have determined whether an adequate inquiry into Kenneth's native heritage had been made, which, in turn, would have bolstered a conclusion that there was no reason to know Kenneth was an Indian child. Absent exceptional circumstances not present here, evidence on those issues should be presented to the juvenile court in the first instance for that court's determinations regarding the adequacy of the inquiry and whether ICWA applies under these circumstances.

Evidence of a postjudgment inquiry also is not a proper subject of augmentation or judicial notice. A reviewing court may order the appellate record augmented to include "[a]ny document filed or lodged in the case in superior court . . . ." (Cal. Rules of Court, rule 8.155(a)(1)(A).) However, "[a]ugmentation does not function to supplement the record with materials not before the trial court" when it made its order. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3; *Ricky R., supra,* 82 Cal.App.5th at p. 681.) Although the department lodged its memo with the juvenile court, it did so only after that court's judgment, when the case was already on appeal. "The augmentation procedure cannot be used to bring up matters occurring during the pendency of the appeal because those matters are outside the superior court record." (*In re K.M.* (2015) 242 Cal.App.4th 450, 456.) Similar reasoning applies to judicial notice requests: " 'Reviewing courts generally do not take judicial notice of evidence not presented to the trial court' absent exceptional circumstances." (*Haworth v. Superior Court* (2010) 50 Cal.4th 372, 379, fn. 2; see Evid. Code, §§ 452, subd. (d), 453.) As discussed, no exceptional circumstances appear

here. Further, a court " ' "may take judicial notice of the existence of each document in a court file, but can only take judicial notice of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgments." ' " (*People v. Franklin* (2016) 63 Cal.4th 261, 280.) The department's postjudgment memo did not constitute such a document.

Contrary to the department's suggestion, routinely allowing evidence of postjudgment ICWA inquiry to cure defects in the inquiry performed before judgment would not promote "the state's strong interest in the expeditiousness and finality of juvenile dependency proceedings . . . ." (*Zeth S., supra,* 31 Cal.4th at p. 412; see *Josiah Z., supra,* 36 Cal.4th at p. 676.) As we have noted, "Indian tribes have interests protected by ICWA that are separate and distinct from the interests of parents of Indian children." (*Isaiah W., supra,* 1 Cal.5th at p. 13.) "The relevant rights under ICWA belong to Indian tribes and they have a statutory right to receive notice where an Indian child may be involved so that they may make that determination." (*In re K.H., supra,* 84 Cal.App.5th at p. 591.) Because tribes have a right to intervene and even overturn prior judgments for failure to comply with ICWA (see Welf. & Inst. Code, § 224.4; 25 U.S.C. §§ 1911(c), 1914), the lack of timely and proper inquiry can undermine expeditious resolution and call into doubt the finality of juvenile court orders. (See *In re A.R.* (2022) 77 Cal.App.5th 197, 208.) Further, routinely having an appellate court consider these questions in the first instance, as opposed to the juvenile court, which is more familiar with all the relevant circumstances, only increases the chances of an erroneous finding that a sufficient inquiry has been conducted. We disapprove *In re Allison B.* (2022) 79 Cal.App.5th 214, 218–220

and *In re A.B.* (2008) 164 Cal.App.4th 832, 843 to the extent they suggest that an appellate court may routinely consider these questions in the first instance.

We emphasize the narrowness of our holding. Where the juvenile court finds that ICWA does not apply based on an inadequate inquiry into a child's native heritage, an appellate court, absent exceptional circumstances, may not consider evidence uncovered during a postjudgment inquiry to conclude the failure to conduct a proper inquiry was harmless.

In sum, the Court of Appeal below properly concluded the required inquiry into a child's native heritage did not satisfy statutory mandates. Because exceptional circumstances were not present here, the reviewing court should not have gone on to consider evidence of the department's postjudgment inquiry to conclude the error was harmless. Consistent with our decision in *Dezi C.*, *supra*, ___ Cal.5th ___, we reverse the judgment here and order a conditional remand to the juvenile court for a proper inquiry and further proceedings. (See *In re C.L.* (2023) 96 Cal.App.5th 377, 392; *In re V.C.* (2023) 95 Cal.App.5th 251, 262–263.) Nothing we say here undermines the authority conferred by Code of Civil Procedure section 909 when exceptional circumstances have been established.

## III. DISPOSITION

The Court of Appeal's judgment is reversed with directions to conditionally reverse the juvenile court's order terminating parental rights. The matter is to be remanded to the juvenile court for compliance with the inquiry and notice requirements of sections 224.2 and 224.3. If the juvenile court thereafter finds a proper and adequate inquiry, conducted with due diligence, has taken place and there is no reason to know minor is an

Indian child, making ICWA inapplicable, (§ 224.2, subd. (i)(2)), the court shall reinstate the order terminating parental rights. If the juvenile court concludes ICWA applies, it shall proceed in conformity with ICWA and California implementing provisions. (See 25 U.S.C. § 1912(a); Welf. & Inst. Code, §§ 224.2, subd. (i)(1), 224.3, 224.4.)

**CORRIGAN, J.**

**We Concur:**

**GUERRERO, C. J.**
**LIU, J.**
**KRUGER, J.**
**GROBAN, J.**
**JENKINS, J.**
**EVANS, J.**

In re KENNETH D.

S276649

Concurring Opinion by Justice Groban

I agree with the majority that the Court of Appeal improperly considered postjudgment evidence in order to find that error in complying with the Indian Child Welfare Act of 1978 was harmless. (ICWA; 25 U.S.C. § 1901 et seq.) The majority rightly acknowledges "that appellate factfinding under Code of Civil Procedure section 909 is proper when exceptional circumstances are shown." (Maj. opn., *ante*, at p. 19.)[1] I concur that, on the facts of this case, "exceptional circumstances" have not been demonstrated here. (*Ibid*.) The memorandum from the Placer County Department of Health and Human Services (department) presented for postjudgment review contained conflicting hearsay statements concerning Kenneth D.'s Indian ancestry: Kenneth D.'s father "stated that he thought he might have Cherokee ancestry out of Oklahoma" while the paternal grandmother stated the father's statement was "not accurate" and that she was "unaware of any Native American Heritage." As the majority explains, this kind of conflicting evidence "should be presented to the juvenile court in the first instance for that court's determinations regarding the adequacy of the inquiry and whether ICWA applies under these circumstances." (*Id*. at p. 20.) The circumstances of this case are not

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[1] Subsequent unspecified statutory references are to the Code of Civil Procedure.

" 'exceptional.' " (*In re Zeth S.* (2003) 31 Cal.4th 396, 405, italics omitted (*Zeth S.*).)

The majority also rightly emphasizes "the narrowness of our holding" (maj. opn., *ante*, at p. 22) and clarifies that "[n]othing we say here undermines the authority conferred by . . . section 909 when exceptional circumstances have been established" (*ibid.*). I write separately to make clear that section 909 continues to be a vehicle to admit postjudgment evidence in the appropriate case.[2]

Future cases may present circumstances that are more exceptional than those presented here, thereby making reliance on postjudgment evidence appropriate. For example, in *In re A.B.* (2008) 164 Cal.App.4th 832 (*A.B.*), the Court of Appeal found exceptional circumstances existed to augment the record with a copy of the mother's ICWA form that disclaimed any Indian heritage. (*Id.* at p. 843.) Similarly, in *In re E.L.* (2022) 82 Cal.App.5th 597, after the mother completed and signed an ICWA form stating that she may be part of the Tohono O'odham Nation, the Court of Appeal granted the prospective adoptive parent's request to augment the record with letters from the Tohono O'odham Nation confirming that the mother's children were *not* members of the tribe for the purposes of ICWA. (*E.L.*, at p. 608.) One can envision other examples that would qualify

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[2] I also write separately in the opinion issuing today *In re Dezi C.* (August 19, 2024, S275578) ___ Cal.5th ___ (*Dezi C.*). My dissenting opinion in *Dezi C.* explains that I would apply *People v. Watson* (1956) 46 Cal.2d 818 by adopting the Court of Appeal's harmless error standard, rather than adopting the majority's automatic conditional reversal rule for ICWA error. I note there that section 909 continues to be a viable vehicle to deal with the unique circumstances presented there.

as " 'exceptional.' " (*Zeth S., supra,* 31 Cal.4th at p. 405, italics omitted.) Imagine, for example, a situation where the department submits declarations explaining that both parents were native to a European country and had recently emigrated from that country, thereby making it essentially impossible that the child had American Indian ancestry. There may also be cases where the Court of Appeal allows for supplemental briefing and the opportunity for oral argument related to an ICWA inquiry (e.g., *In re Allison B.* (2022) 79 Cal.App.5th 214, 219 (*Allison B.*)) and the opposing party does not contest, or even affirmatively admits, the accuracy of postjudgment evidence demonstrating that the child is not of Indian descent. There may also be instances where a party presents postjudgment evidence that allows the Court of Appeal to determine that the party claiming noncompliance with ICWA has brought the appeal solely for purposes of delay. (Cf. *In re A.R.* (2022) 77 Cal.App.5th 197, 207 ["If Mother has brought this appeal for the purposes of achieving delay, as county counsel suggests, we condemn such tactics"].) There may also be situations where the specific circumstances of the parent or child present a more compelling case for expedited resolution, e.g., there is evidence that further delay may cause the child to lose a beneficial, permanent placement. (See *In re Christopher L.* (2022) 12 Cal.5th 1063, 1081 [" 'There is little that can be as detrimental to a child's sound development as uncertainty over whether he is to remain in his current "home," under the care of

his parents or foster parents, especially when such uncertainty is prolonged' "].)[3]

I also agree with the majority that the department's postjudgment memorandum does not constitute a proper use of judicial notice. (Maj. opn., *ante*, at pp. 20–21.) As the majority notes, " ' "Reviewing courts generally do not take judicial notice of evidence not presented to the trial court" absent exceptional circumstances.' " (*Id.* at p. 20, quoting *Haworth v. Superior*

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[3] The majority cites with approval several cases that refused to admit postjudgment material pursuant to section 909. (Maj. opn., *ante*, at p. 18, citing *In re E.C.* (2022) 85 Cal.App.5th 123, 135; *In re G.H.* (2022) 84 Cal.App.5th 15, 32–33; *In re Ricky R.* (2022) 82 Cal.App.5th 671, 682.) I note that these postjudgment materials, like the materials here, appear to contain *contested* information from hearsay sources. For instance, in *Ricky R.*, the department sought consideration of a declaration stating "that the social worker spoke to maternal grandmother and maternal aunt in June 2022, and both of them reported no Indian ancestry." (*Ricky R.*, *supra*, 82 Cal.App.5th at p. 680.) However, that same declaration also reported that the social worker contacted the paternal grandmother and paternal great-grandmother and they reported that paternal great-great-grandparents had stated that "the family was " ' "part Indian," ' " but the paternal grandmother and paternal great-grandmother "could not remember which tribe." (*Ibid.*) As the majority correctly concludes, this kind of disputed information does not provide the kind of " 'exceptional circumstances' " contemplated by section 909. (*Zeth S., supra,* 31 Cal.4th at p. 405, italics omitted.) The majority also disapproves *Allison B.*, *supra*, 79 Cal.App.5th at pages 218–220 and *A.B.*, *supra*, 164 Cal.App.4th at page 843 "to the extent they suggest that an appellate court may routinely consider these questions in the first instance." (Maj. opn., *ante*, at p. 22.) I agree that the use of section 909 should not be " 'routine[]' " (*Allison B.,* at p. 219; see *A.B.*, at p. 841), but I do not read the majority as deciding that the specific use of section 909 based on the narrow facts presented in those cases was improper.

*Court* (2010) 50 Cal.4th 372, 379, fn. 2.) However, court documents, such as an ICWA form signed under penalty of perjury, may qualify as a court record under Evidence Code section 452, subdivision (d). (See *A.B., supra*, 164 Cal.App.4th at p. 839; *In re Z.N.* (2009) 181 Cal.App.4th 282, 298–301.) Similarly, one might envision a situation where there was a recent or contemporaneous dependency case involving a *sibling with the same parents*. (See *A.B.,* at p. 839; *Z.N.*, at p. 301.) If court documents revealed a comprehensive ICWA inquiry was recently performed in the *sibling's* proceeding, it may be appropriate to take judicial notice of those documents on appeal.

In sum, courts reviewing ICWA determinations must balance two sometimes competing interests: ICWA establishes the laudatory goal of "ensuring that the issue of Native American ancestry is addressed in every case [so] that we can ensure the collective interests of the Native American tribes will be protected." (*In re E.V.* (2022) 80 Cal.App.5th 691, 697.) However, courts must also ensure the prompt resolution of dependency proceedings in order to achieve "a stable, permanent placement that allows a caretaker to make a full emotional commitment to the child." (*In re Celine R.* (2003) 31 Cal.4th 45, 59.) There are likely to be exceptional future cases where uncontroverted, postjudgment evidence reveals that the child is not of Indian descent. In such instances, it is appropriate for the appellate court to rely upon section 909 to consider that information. This will allow appellate courts to avoid a situation whereby a beneficial, permanent placement for a child is delayed so that the dependency court can engage in needless additional inquiry as to the child's ICWA status. Where even a four-month delay in dependency proceedings "can be a lifetime to a young child" (*In re Marilyn H.* (1993) 5 Cal.4th

295, 310), courts should avoid unnecessary delay in cases where clear postjudgment evidence demonstrates that additional ICWA inquiry would be pointless. The majority does not foreclose the use of section 909 in such an exceptional case.

**GROBAN, J.**

**I Concur:**
**GUERRERO, C. J.**

*See next page for addresses and telephone numbers for counsel who argued in Supreme Court.*

**Name of Opinion** In re Kenneth D.

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**Procedural Posture** (see XX below)
**Original Appeal**
**Original Proceeding**
**Review Granted (published)** XX 82 Cal.App.5th 1027
**Review Granted (unpublished)**
**Rehearing Granted**

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**Court:** Superior
**County:** Placer
**Judge:** Colleen M. Nichols

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# AB-81 Indian children: child custody proceedings. (2023-2024)

**As Amends the Law Today**

**SECTION 1.** Section 224 of the Welfare and Institutions Code is amended to read:

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

*(1) Federally recognized tribes are sovereign nations with inherent rights to self-governance. Federally recognized tribes have the sole authority to determine their tribal membership or citizenship, and this includes the right to regulate domestic relations involving their members or citizens. The federal government recognizes its trust relationship with federally recognized tribes and the unique political status of federally recognized tribes and their members or citizens. It is the policy of the State of California to support, protect, and uplift inherent tribal sovereignty. Tribes have been protecting and caring for their children from time immemorial. The State of California is committed to protecting essential tribal relations and the political status of federally recognized tribes by recognizing a tribe's right to protect the health, safety, and welfare of its members or citizens.*

~~(1)~~ *(2)* There is no resource that is more vital to the continued existence and integrity of Indian tribes than their children, and the State of California has an interest in protecting Indian ~~children who are members or citizens of, or are eligible for membership or citizenship in, an Indian tribe.~~ *children, as defined in subdivision (b) of Section 224.1. Child welfare and juvenile justice data demonstrates that Indian children involved in the child welfare and juvenile justice systems have better outcomes when they are connected to their family, extended family, tribe, Indian community, and culture.* The state is committed to protecting the essential tribal relations and best interest of an Indian child by promoting practices, in accordance with the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.) and other applicable state and federal law, designed to prevent ~~the child's~~ *their* involuntary out-of-home placement and, whenever that placement is ~~necessary or ordered,~~ *necessary,* by placing the child, whenever possible, in a placement that reflects the unique values of the child's tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the child's tribe and tribal community.

~~(2)~~ *(3)* It is in the interest of an Indian child that the child's membership or citizenship in the child's Indian tribe and connection to the tribal community be encouraged and protected, regardless of whether the child is in the physical custody of an Indian parent or Indian custodian at the commencement of an Indian child custody proceeding, the parental rights of the child's parents have been terminated, or where the child has resided or been domiciled.

*(b) Despite the passage of the federal Indian Child Welfare Act of 1978, Senate Bill 678 (Stats. 2006, Ch. 838), and Assembly Bill 3176 (Stats. 2018, Ch. 833), California continues to experience inconsistent implementation of the Indian Child Welfare Act and its related state law protections, thus continuing the harm and breakup of Indian families. Variation in practice undermines tribal sovereignty, furthers destructive impacts on tribes and tribal communities, puts the lives of Indian children and families at disproportionate risk for multiple adverse outcomes, and fails to address systemic racism.*

*(c) It is the intent of the Legislature to create a comprehensive act to protect and preserve Indian families in California and to aid in improving implementation of applicable state and federal laws. This act will retain California's heightened standards, protections, and services and supports for Indian children. This act shall hereafter be known as the California Indian Child Welfare Act and shall include all provisions in this code, the Family Code, Health and Safety Code, and the Probate Code involving an Indian child to maintain clarity and consistency in provisions with application to Indian children, as defined in subdivision (b) of Section 224.1.*

*Existing provisions, and any future amendments to provisions, applicable to Indian children in this code, the Family Code, the Health and Safety Code, or the Probate Code, or amending or creating programs designed to support tribes or tribal organizations, Indian children, and parents or Indian custodians of Indian children, as these terms are defined in Section 224.1, in their participation in Indian child custody proceedings shall be considered part of the California Indian Child Welfare Act.*

~~(b)~~ *(d)* In all Indian child custody proceedings, as defined in the federal Indian Child Welfare Act *and subdivision (d) of Section 224.1,* the court shall consider all of the findings contained in subdivision (a), strive to promote the stability and security of Indian tribes and families, comply with the federal Indian Child Welfare Act of 1978 and other applicable federal law, and *shall* seek to protect the best interest of the child. Whenever an Indian child is removed from a foster care home or institution, guardianship, or adoptive placement for the purpose of further foster care, guardianship, or adoptive placement, placement of the child shall be in accordance with the federal Indian Child Welfare Act of 1978 and other applicable state and federal law.

~~(c)~~ *(e)* A determination by an Indian tribe that an unmarried person, who is under the age of 18 years, is either (1) a member or citizen of an Indian tribe or (2) eligible for membership or citizenship in an Indian tribe and a biological child of a member or citizen of an Indian tribe shall constitute a significant political affiliation with the tribe and shall require the application of the federal Indian Child Welfare Act of 1978 and other applicable state and federal law to the proceedings.

*(f) (1) In any proceeding in which the federal Indian Child Welfare Act of 1978 applies, the Indian child's tribe shall have the right to examine all reports or other documents filed with the court, including, but not limited to, the reports or other documents upon which any decision to place the Indian child in the custody of someone other than a parent or Indian custodian, or terminate parental rights, will be based.*

*(2) In any proceeding in which the federal Indian Child Welfare Act of 1978 applies where the Indian child's tribe does not formally intervene, representatives of the Indian child's tribe described in subdivision (f) of Section 827 shall have the right to inspect the case file, as described in subdivision (e) of Section 827, and representatives of the Indian child's tribe as described in paragraph (5) of subdivision (a), and in subdivision (f), of Section 827 have the right to copies of documents contained in and information related to the juvenile case file, subject to any other confidentiality laws.*

~~(d)~~ *(g)* In any case in which this code or other applicable state or federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child, or the Indian child's tribe, than the rights provided under the federal Indian Child Welfare Act of 1978, the court shall apply the higher standard.

~~(e)~~ *(h)* Any Indian child, the Indian child's tribe, or the parent or Indian custodian from whose custody the child has been removed, may petition the court to invalidate an action in an Indian child custody proceeding for foster care or guardianship placement or termination of parental rights if the action violated Section 1911, 1912, or 1913 of the federal Indian Child Welfare Act of 1978.

**SEC. 2.** Section 224.1 of the Welfare and Institutions Code is amended to read:

**224.1.** (a) As used in this division, unless the context requires otherwise, the ~~terms "Indian," "Indian child," "Indian custodian," "Indian tribe," "reservation," and "tribal court" shall be defined as provided in Section 1903 of the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).~~ *following definitions shall apply:*

*(1) "Indian" means any person who is a member or citizen of an Indian tribe, as defined in paragraph (4), or who is an Alaska Native and a member or citizen of a Regional Corporation as defined in Section 1606 of Title 43 of the United States Code.*

*(2) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control have been transferred by the parent of that child.*

*(3) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians.*

*(4) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village as defined in subdivision (c) of Section 1602 of Title 43 of the United States Code.*

*(5) "Reservation" has the same meaning as "Indian country" as defined in Section 1151 of Title 18 of the United States Code, and any lands that are not covered under Section 1151 and the title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation.*

*(6) "Tribal court" means a court with jurisdiction over child custody proceedings, and that is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe that is vested with authority over child custody proceedings.*

*(b) As used in this division, the term "Indian child" means all of the following:*

*(1) Any unmarried person who is under 18 years of age and who is either of the following:*

*(A) A member or citizen of an Indian tribe.*

*(B) Eligible for membership or citizenship in an Indian tribe and is a biological child of a member or citizen of an Indian tribe.*

~~(b)~~ *(2)* As used in connection with an Indian child custody proceeding, *as defined in subdivision (d), brought in a juvenile court,* the term "Indian child" also means an unmarried person who is 18 years of age or over, but under 21 years of age, who is a member *or citizen* of an Indian tribe or eligible for membership *or citizenship* in an Indian tribe and is the biological child of a member *or citizen* of an Indian tribe, and who is under the jurisdiction of the ~~dependency~~ *juvenile* court, unless that person or their attorney elects not to be considered an Indian child for purposes of the Indian child custody proceeding. All Indian child custody proceedings involving persons 18 years of age and older shall be conducted in a manner that respects the person's status as a legal adult.

(c) As used in connection with an Indian child custody proceeding, ~~the terms "extended family member" and "parent" shall be defined as provided in Section 1903 of the federal Indian Child Welfare Act.~~ *as defined in subdivision (d), the following definitions shall apply:*

*(1) "Extended family member" has the same meaning as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached 18 years of age and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.*

*(2) "Parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom.*

(d) (1) "Indian child custody proceeding" means a hearing *other than an emergency proceeding under Section 319,* during a juvenile court proceeding brought under this code, *including, but not limited to, any hearing pursuant to Section 366.26,* or a proceeding under the Probate Code or the Family Code, involving an Indian child, ~~other than an emergency proceeding under Section 319,~~ that may culminate in one of the following outcomes:

(A) Foster care placement, which includes removal of an Indian child from their parent, parents, or Indian custodian for placement in a foster home, institution, ~~or~~ the home of a guardian or conservator, ~~in~~ *or anyone other than one of the child's parents, as defined in paragraph (2) of subdivision (c), or the child's Indian custodian, in* which the parent or Indian custodian may not have the child returned upon demand, but in which parental rights have not been terminated. Foster care placement *includes placement in the home of a legal guardian under the provisions of the Family Code, Probate Code, and the Welfare and Institutions Code. Foster care placement* does not include an emergency placement of an Indian child pursuant to Section 309, as long as the emergency proceeding requirements set forth in Section 319 are met.

(B) Termination of parental rights, which includes any action involving an Indian child resulting in the termination of the parent-child relationship.

(C) Preadoptive placement, which includes the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to, or in lieu of, adoptive placement.

(D) Adoptive placement, which includes the permanent placement of an Indian child for adoption, *or a tribal customary adoption as described in Section 366.24,* including any action resulting in a final decree of adoption.

(E) If a child is placed in foster care or another out-of-home placement as a result of a status offense, that status offense proceeding is considered an Indian child custody proceeding.

(2) "Indian child custody proceeding" does not include a voluntary foster care or guardianship placement if the parent or Indian custodian retains the right to have the child returned upon demand.

(e) (1) "Indian child's tribe" means the Indian tribe in which an Indian child is a member or citizen or eligible for membership or citizenship, or in the case of an Indian child who is a member or citizen of, or eligible for membership or citizenship in, more than one tribe, the Indian tribe with which the Indian child has the more significant contacts.

(2) In the case of an Indian child who meets the definition of "Indian child" through more than one tribe, deference should be given to the tribe of which the Indian child is already a member or citizen, unless otherwise agreed to by the tribes.

(3) If an Indian child meets the definition of "Indian child" through more than one tribe because the child is a member or citizen of more than one tribe or the child is not a member or citizen but is eligible for membership or citizenship in more than one tribe, the court shall provide the tribes the opportunity to determine which tribe shall be designated as the Indian child's tribe.

(4) If the tribes are able to reach an agreement, the agreed-upon tribe shall be designated as the Indian child's tribe.

(5) If the tribes are unable to reach an agreement, the court shall designate as the Indian child's tribe, the tribe with which the Indian child has the more significant contacts, taking into consideration all of the following:

(A) Preference of the parents for membership *or citizenship* of the child.

(B) Length of past domicile or residence on or near the reservation of each tribe.

(C) Tribal membership *or citizenship* of the child's custodial parent or Indian custodian.

(D) Interest asserted by each tribe in the child custody proceeding.

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

(F) Self-identification by the child, if the child is of sufficient age and capacity to meaningfully self-identify.

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

(7) A determination of the Indian child's tribe for purposes of the federal Indian Child Welfare Act *and pursuant to these provisions for purposes of an Indian child custody proceeding, as defined in subdivision (d),* does not constitute a determination for any other purpose.

(f) "Active efforts" means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with their family. If an agency is involved in an Indian child custody proceeding, active efforts shall involve assisting the parent, parents, or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts shall be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and shall be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and tribe. *When an agency knows a child is an Indian child or has reason to know a child is an Indian child as described in subdivision (d) of Section 224.2, active efforts shall start upon receipt of a referral regarding the Indian child or upon first contact with the Indian child or family, whichever is earlier. Whenever a county child welfare agency is required to make reasonable efforts or provide reasonable reunification services, in any case involving an Indian child, those efforts and services shall meet the standard of active efforts described in this subdivision.* Active efforts shall be tailored to the facts and circumstances of the case and may include, but are not limited to, any of the following:

(1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal.

(2) Identifying appropriate ~~services~~ *services, including services offered pursuant to Chapter 7 (commencing with Section 16585) of Part 4 of Division 9* and helping the parents overcome barriers, including actively assisting the

parents in obtaining those services.

(3) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues.

(4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members *regarding possible placements and* to provide family structure and support for the Indian child and the Indian child's parents.

(5) Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's tribe.

(6) Taking steps to keep siblings together whenever possible.

(7) Supporting regular visits with parents or Indian custodians in the most natural setting possible, as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child.

(8) Identifying community resources, including housing, financial assistance, transportation, mental health and substance abuse services, and peer support services, and actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources.

(9) Monitoring progress and participation in services.

(10) Considering alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available.

(11) Providing postreunification services and monitoring.

(g) "Assistant Secretary" means the Assistant Secretary of the Bureau of Indian Affairs.

(h) "Bureau of Indian Affairs" means the Bureau of Indian Affairs of the Department of the Interior.

(i) "Continued custody" means physical custody or legal custody or both, under any applicable tribal law or tribal custom or state law, that a parent or Indian custodian already has or had at any time in the past. The biological mother of an Indian child is deemed to have had custody of the Indian child.

(j) "Custody" means physical custody or legal custody or both, under any applicable tribal law or tribal custom or state law.

(k) "Domicile" means either of the following:

(1) For a parent, Indian custodian, or legal guardian, the place that a person has been physically present and that the person regards as home. This includes a person's true, fixed, principal, and permanent home, to which that person intends to return and remain indefinitely even though the person may be currently residing elsewhere.

(2) For an Indian child, the domicile of the Indian child's parents, Indian custodian, or legal guardian. In the case of an Indian child whose parents are not married to each other, the domicile of the Indian child means the domicile of the Indian child's custodial parent.

(l) "Emergency proceeding" for purposes of juvenile dependency proceedings is the initial petition hearing held pursuant to Section 319.

(m) "Indian foster home" means a foster home where one or more of the licensed or approved foster parents is an Indian as defined in ~~Section 3 of the federal Indian Child Welfare Act of 1978.~~ *paragraph (1) of subdivision (a).*

(n) "Involuntary proceeding" means an Indian child custody proceeding in which the parent does not consent of their free will to the foster care, preadoptive, or adoptive placement, or termination of parental rights. "Involuntary proceeding" also means an Indian child custody proceeding in which the parent consents to the foster care, preadoptive, or adoptive placement, under threat of removal of the child by a state court or agency.

(o) "Status offense" means an offense that would not be considered criminal if committed by an adult, including, but not limited to, school truancy and incorrigibility.

(p) "Upon demand" means, in the case of an Indian child, the parent or Indian custodian may regain physical custody during a voluntary proceeding simply upon verbal request, without any delay, formalities, or contingencies.

(q) "Voluntary proceeding" means an Indian child custody ~~proceeding~~ *proceeding, as defined in subdivision (d),* that is not an involuntary proceeding, ~~including, but not limited to, a proceeding for foster care, preadoptive or adoptive placement that either parent, both parents,~~ *where both parents have,* or the Indian custodian has, of their free will, without a threat of removal by a state agency, consented to ~~for the~~ *the placement of the* Indian child, or a proceeding for voluntary termination of parental rights.

(r) "Tribally approved home" means a home that has been licensed or approved by an Indian child's tribe, or a tribe or tribal organization designated by the Indian child's tribe, for foster care or adoptive placement of an Indian child using standards established by the child's tribe pursuant to Section 1915 of the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et ~~seq.).~~ *seq.) and as described by Section 10553.12.* A tribally approved home is not required to be licensed or approved by the state or county and is equivalent to a state-licensed or county-licensed or approved home, including an approved resource family home. Background check requirements for foster care or adoptive placement as required by Sections 1522 and 1522.1 of the Health and Safety Code shall apply to a tribally approved home.

**SEC. 3.** Section 224.2 of the Welfare and Institutions Code is amended to read:

**224.2.** (a) The court, county welfare department, and the probation department have an affirmative and continuing duty to inquire whether a child for whom a petition under Section 300, 601, or 602 may be or has been filed, is or may be an Indian child. ~~The duty to inquire begins with the initial contact, including, but not limited to, asking the party reporting child abuse or neglect whether the party has any information that the child may be an Indian child.~~

*(b) (1) The duty to inquire begins for a county when first contacted regarding a child, including, but not limited to, asking a party reporting child abuse or neglect whether the party has any information that the child may be an Indian child, and upon a county department's first contact with the child or the child's family, including extended family members as defined in paragraph (1) of subdivision (c) of Section 224.1. At the first contact with the child and each family member, including extended family members, the county welfare department or county probation department has a duty to inquire whether that child is or may be an Indian child.*

~~(b)~~ *(2)* If a child is placed into the temporary custody of a county *probation department pursuant to Section 307, or received and maintained in temporary custody of a county* welfare department pursuant to ~~Section 306 or county probation~~ *paragraph (1) of subdivision (a) of Section 306, or taken into or maintained in the temporary custody of a county welfare* department pursuant to ~~Section 307,~~ *paragraph (2) of subdivision (a) of Section 306, or if they were initially taken into protective custody pursuant to a warrant described in Section 340,* the county welfare department or county probation department has a duty to inquire whether that child is an Indian child. Inquiry includes, but is not limited to, asking the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect, whether the child is, or may be, an Indian child and where the child, the parents, or Indian custodian is domiciled.

(c) ~~At the first appearance in court of each party,~~ *For a court presiding over any juvenile proceeding that could result in placement of an Indian child with someone other than a parent or Indian custodian, including proceedings where the parents or Indian custodian have voluntarily consented to placement of the child, the duty to inquire begins at the first hearing on a petition. At the commencement of the hearing,* the court shall ask each ~~participant present in the hearing whether the participant knows or has~~ *party to the proceeding and all other interested persons present whether the child is, or may be, an Indian child, whether they know or have* reason to know that the child is an Indian ~~child. The~~ *child, and where the child, the parents, or Indian custodian are domiciled, as defined in Section 224.1. Inquiry shall also be made at the first appearance in court of each party or interested person who was not present at the first hearing on the petition. The inquiry and responses shall occur on the record. The* court shall instruct the parties *and persons present* to inform the court if they subsequently receive information that provides reason to know the child ~~is~~ *is, or may be,* an Indian child.

(d) There is reason to know a child involved in a proceeding is an Indian child under any of the following circumstances:

(1) A person having an interest in the child, including the child, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child's extended family informs the court that the child is an Indian child.

(2) The residence or domicile of the child, the child's parents, or Indian custodian is on a reservation or in an Alaska Native ~~village.~~ *village, as defined in subdivision (c) of Section 1602 of Title 43 of the United State Code.*

(3) Any participant in the proceeding, officer of the court, Indian tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child.

(4) The child who is the subject of the proceeding gives the court reason to know that the child is an Indian child.

(5) The court is informed that the child is or has been a ward of a tribal court.

(6) The court is informed that either parent or the child possess an identification card indicating membership or citizenship in an Indian tribe.

(e) If the court, social worker, or probation officer has reason to believe that an Indian child is involved in a proceeding, but does not have sufficient information to determine that there is reason to know that the child is an Indian child, the court, social worker, or probation officer shall make further inquiry regarding the possible Indian status of the child, and shall make that inquiry as soon as practicable.

(1) There is reason to believe a child involved in a proceeding is an Indian child whenever the court, social worker, or probation officer has information suggesting that either the parent of the child or the child is a member or *citizen, or* may be eligible for membership *or citizenship,* in an Indian tribe. Information suggesting membership or eligibility for membership includes, but is not limited to, information that indicates, but does not establish, the existence of one or more of the grounds for reason to know enumerated in paragraphs (1) to (6), inclusive, of subdivision (d).

(2) When there is reason to believe the child is an Indian child, further inquiry is necessary to help the court, social worker, or probation officer determine whether there is reason to know a child is an Indian child. Further inquiry includes, but is not limited to, all of the following:

(A) Interviewing the parents, Indian custodian, and extended family members to gather the information required in paragraph (5) of subdivision (a) of Section 224.3.

(B) Contacting the Bureau of Indian Affairs and the State Department of Social Services for assistance in identifying the names and contact information of the tribes in which the child may be a ~~member,~~ *member* or *citizen, or* eligible for membership *or citizenship* in, and contacting the tribes and any other person that may reasonably be expected to have information regarding the child's membership status or eligibility.

(C) Contacting the tribe or tribes and any other person that may reasonably be expected to have information regarding the child's membership, citizenship status, or eligibility. Contact with a tribe shall, at a minimum, include telephone, facsimile, or electronic mail contact to each tribe's designated agent for receipt of notices under the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.). Contact with a tribe shall include sharing information identified by the tribe as necessary for the tribe to make a membership or *citizenship* eligibility determination, as well as information on the current status of the child and the case.

(f) If there is reason to know, as set forth in subdivision (d), that the child is an Indian child, the party seeking foster care placement *with someone other than a parent or Indian custodian* shall provide notice in accordance with ~~paragraph (5) of subdivision (a) of~~ Section 224.3.

(g) If there is reason to know the child is an Indian child, but the court does not have sufficient evidence to determine that the child is or is not an Indian child, the court shall confirm, by way of a report, declaration, or testimony included in the record that the agency or other party used due diligence to identify and work with all of the tribes of which there is reason to know the child may be a ~~member,~~ *member* or *citizen, or* eligible for ~~membership,~~ *membership or citizenship,* to verify whether the child is in fact a member or whether a biological parent is a member and the child is eligible for ~~membership.~~ *membership or citizenship.*

(h) A determination by an Indian tribe that a child is or is not a member *or citizen* of, or eligible for membership *or citizenship* in, that tribe, or testimony attesting to that status by a person authorized by the tribe to provide that determination, shall be conclusive. Information that the child is not enrolled, or is not eligible for enrollment in, the tribe is not determinative of the child's membership *or citizenship* status unless the tribe also confirms in writing that enrollment is a prerequisite for membership *or citizenship* under tribal law or custom.

(i) (1) When there is reason to know that the child is an Indian child, the court shall treat the child as an Indian child unless and until the court determines on the record and after review of the report of due diligence as

described in subdivision ~~(g),~~ *(h),* and a review of the copies of notice, return receipts, and tribal responses required pursuant to Section 224.3, that the child does not meet the definition of an Indian child as used in Section 224.1 and the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.).

(2) If the court makes a finding that proper and adequate further inquiry and due diligence as required in this section have been conducted and there is no reason to know whether the child is an Indian child, the court may make a finding that the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.) does not apply to the proceedings, subject to reversal based on sufficiency of the evidence. The court shall reverse its determination if it subsequently receives information providing reason to believe that the child is an Indian child and order the social worker or probation officer to conduct further inquiry ~~pursuant to~~ *as described in* Section 224.3.

(j) Notwithstanding a determination that the federal Indian Child Welfare Act of 1978 does not apply to the proceedings, if the court, social worker, or probation officer subsequently receives any information required by Section 224.3 that was not previously available or included in the notice issued under Section 224.3, the party seeking placement shall provide the additional information to any tribes entitled to notice under Section 224.3 and to the Secretary of the Interior's designated agent.

(k) Notwithstanding any other provision, an Indian child's tribe may participate by telephone, or other remote appearance options, in proceedings in which the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.) may apply. The method of appearance may be determined by the court consistent with court capacity and contractual obligations, and taking into account the capacity of the tribe, as long as a method of effective remote appearance and participation sufficient to allow the tribe to fully exercise its rights is provided. Fees shall not be charged for court appearances established under this subdivision conducted in whole or in part by remote means.

**SEC. 4.** Section 224.3 of the Welfare and Institutions Code is amended to read:

**224.3.** (a) If the court, a social worker, or probation officer knows or has reason to know, as described in subdivision (d) of Section 224.2, that an Indian child is involved, notice pursuant to Section 1912 of the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.) shall be provided for hearings that may culminate in an order for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement, as described in paragraph (1) of subdivision (d) of Section 224.1. The notice shall be sent to the minor's parents or legal guardian, Indian custodian, if any, and the child's tribe. Copies of all notices sent shall be served on all parties to the dependency proceeding and their attorneys. Notice shall comply with all of the following requirements:

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

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

(3) Notice of all Indian child custody hearings shall be sent by the party seeking placement of the child to all of the following:

(A) All tribes of which the child may be a member or citizen, or eligible for membership or citizenship, unless either of the following occur:

(i) A tribe has made a determination that the child is not a member or citizen, or eligible for membership or citizenship.

(ii) The court makes a determination as to which tribe is the child's tribe in accordance with subdivision (e) of Section 224.1, after which notice need only be sent to the Indian child's tribe.

(B) The child's parents.

(C) The child's Indian custodian.

(4) Notice, to the extent required by federal law, shall be sent to the Secretary of the Interior's designated agent.

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

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

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

(C) All names known of the Indian child's biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married, and former names or aliases, as well as their current and former addresses, birth dates, places of birth and death, tribal ~~enrollment~~ *enrollment, membership, or citizenship* information of other direct lineal ancestors of the child, and any other identifying information, if known.

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

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

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

(G) The information regarding the time, date, and any location of any scheduled hearings.

(H) A statement of all of the following:

(i) The name of the petitioner and the name and address of the petitioner's attorney.

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

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

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

(v) The potential legal consequences of the proceedings on the future custodial and parental rights of the child's parents or Indian custodians.

(vi) That if the parents or Indian custodians are unable to afford counsel, counsel will be appointed to represent the parents or Indian custodians pursuant to Section 1912 of the federal Indian Child Welfare Act of 1978.

(vii) In accordance with Section 827, the information contained in the notice, petition, pleading, and other court documents is confidential. Any person or entity notified shall maintain the confidentiality of the information contained in the notice concerning the particular proceeding and not reveal that information to anyone who does not need the information in order to exercise the tribe's rights under the federal Indian Child Welfare Act of 1978.

(b) Notice shall be sent whenever it is known or there is reason to know that an Indian child is involved, and for every hearing that may culminate in an order for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement, as described in paragraph (1) of subdivision (d) of Section 224.1, unless it is determined that the federal Indian Child Welfare Act of 1978 does not apply to the case in accordance with Section 224.2. After a tribe acknowledges that the child is a member of, or eligible for membership in, that tribe, or after a tribe intervenes in a proceeding, the information set out in subparagraphs (C), (D), (E), and (H) of paragraph (5) of subdivision (a) need not be included with the notice.

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

(d) A proceeding shall not be held until at least 10 days after receipt of notice by the parent, Indian custodian, the tribe, or the Bureau of Indian Affairs, except for a hearing held pursuant to Section 319, provided that notice of the hearing held pursuant to Section 319 shall be given as soon as possible after the filing of the petition to declare the Indian child a dependent child. Notice to tribes of the hearing pursuant to Section 319 shall be consistent with the requirements for notice to parents set forth in Sections 290.1 and 290.2. With the exception of the hearing held pursuant to Section 319, the parent, Indian custodian, or tribe shall, upon request, be granted up to 20 additional days to prepare for that proceeding. This subdivision does not limit the rights of the parent, Indian custodian, or tribe to more than 10 days' notice when a lengthier notice period is required by law.

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

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

(g) For any hearing that does not meet the definition of an Indian child custody proceeding set forth in *subdivision (d) of* Section 224.1, or is not an emergency proceeding, notice to the child's parents, Indian custodian, and tribe shall be sent in accordance with Sections 292, 293, and 295.

**SEC. 5.** Section 224.4 of the Welfare and Institutions Code is amended to read:

**224.4.** The Indian child's tribe and Indian ~~custodian~~ *custodian, as defined in Section 224.1,* have the right to intervene at any point in an Indian child custody proceeding.

**SEC. 6.** Section 224.5 of the Welfare and Institutions Code is amended to read:

**224.5.** In an Indian child custody proceeding, *as defined in subdivision (d) of Section 224.1,* the court shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe applicable to the proceeding to the same extent that such entities give full faith and credit to the public acts, records, judicial proceedings, and judgments of any other ~~entity.~~ *entity regardless of whether the Indian child's tribe exercises the right to intervene under Section 224.4.*

**SEC. 7.** Section 224.6 of the Welfare and Institutions Code is amended to read:

**224.6.** (a) When testimony of a "qualified expert witness" is required in an Indian child custody proceeding, a "qualified expert witness" shall be qualified to testify regarding whether continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and shall be qualified to testify to the prevailing social and cultural standards of the Indian child's tribe. A person may be designated by the child's tribe as qualified to testify to the prevailing social and cultural standards of the Indian child's tribe. The individual may not be an employee of the person or agency recommending foster care ~~placement~~ *placement, preadoptive placement, adoptive placement, adoption,* or termination of parental rights.

(b) In considering whether to remove an Indian child from the custody of a parent or Indian custodian or to terminate the parental rights of the parent of an Indian child, the court shall do both of the following:

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

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

(c) Persons with the following characteristics are most likely to meet the requirements for a qualified expert witness for purposes of Indian child custody proceedings:

(1) A person designated by the Indian child's tribe as being qualified to testify to the prevailing social and cultural standards of the Indian child's tribe.

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

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

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

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

***SEC. 8.*** *Section 224.7 is added to the Welfare and Institutions Code, to read:*

***224.7.*** *The State Department of Social Services may establish and administer programs designed to facilitate tribal participation in Indian child custody proceedings, as defined in subdivision (d) of Section 224.1, including, but not limited to, the programs described by Sections 10553.1 through 10553.25, inclusive. Administration of these programs shall be coordinated as described in Section 16500.9, in conjunction with other relevant divisions within the department.*

**SEC. 9.** Section 306 of the Welfare and Institutions Code is amended to read:

**306.** (a) Any social worker in a county welfare department, or in an Indian tribe that has entered into an agreement pursuant to Section 10553.1 while acting within the scope of ~~his or her~~ *their* regular duties under the direction of the juvenile court and pursuant to subdivision (b) of Section 272, may do all of the following:

(1) Receive and maintain, pending investigation, temporary custody of a child who is described in Section 300, and who has been delivered by a peace officer.

(2) Take into and maintain temporary custody of, without a warrant, a child who has been declared a dependent child of the juvenile court under Section 300 or who the social worker has reasonable cause to believe is a person described in subdivision (b) or (g) of Section 300, and the social worker has reasonable cause to believe that the child has an immediate need for medical care or is in immediate danger of physical or sexual abuse or the physical environment poses an immediate threat to the child's health or safety.

(b) Upon receiving temporary custody of a ~~child,~~ *child pursuant to subdivision (a),* the county welfare department shall inquire pursuant to Section 224.2, whether the child is *or may be* an Indian child.

(c) If it is known or if there is reason to know the child is an Indian child, any county social worker in a county welfare department may take into custody, and maintain temporary custody of, without a warrant, the Indian child if removing the child from the physical custody of ~~his or her~~ *their* parent, parents, or Indian custodian is necessary to prevent imminent physical damage or harm to the Indian child. The temporary custody shall be considered an emergency removal under ~~Section~~ *subdivision (g) of Section 305.5 and Section* 1922 of the federal Indian Child Welfare Act *of 1978* (25 U.S.C. Sec. ~~1922).~~ *1901 et seq.).*

(d) If a county social worker takes *an Indian child into* or maintains an Indian child ~~into~~ *in* temporary custody under subdivision (a), and the social worker knows or has reason to believe the Indian child is already a ward of a tribal court, or resides or is domiciled within a reservation of an Indian tribe that has exclusive jurisdiction over child custody proceedings as recognized in Section ~~1911 of Title 25 of the United States Code,~~ *305.5* or reassumed exclusive jurisdiction over Indian child custody ~~proceedings pursuant to Section 1918 of Title 25 of the United States Code, the~~ *proceedings, the* county welfare agency shall notify the tribe that the child was taken into temporary custody no later than the next working day and shall provide all relevant documentation to the tribe regarding the temporary custody and the child's identity. If the tribe determines that the child is an Indian child who is already a ward of a tribal court or who is subject to the tribe's exclusive jurisdiction, the county welfare agency shall transfer custody of the child to the tribe within 24 hours after learning of the tribe's determination.

(e) If the social worker is unable to confirm that an Indian child is a ward of a tribal court or subject to the exclusive jurisdiction of an Indian tribe as described in subdivision (d), or is unable to transfer custody of the Indian child to the child's tribe, prior to the expiration of the period permitted by subdivision (a) of Section 313 for filing a petition to declare the Indian child a dependent of the juvenile court, the county welfare agency shall file the petition. The county welfare agency shall inform the state court in its report for the hearing pursuant to Section 319, that the Indian child may be a ward of a tribal court or subject to the exclusive jurisdiction of the child's tribe. If the child welfare agency receives confirmation that an Indian child is a ward of a tribal court or subject to the exclusive jurisdiction of the Indian child's tribe between the time of filing a petition and the initial petition hearing, the agency shall inform the state court, provide a copy of the written confirmation, if any, and move to dismiss the petition. This subdivision does not prevent the court from authorizing a state or local agency to maintain temporary custody of the Indian child for a period not to exceed 30 days in order to arrange for the Indian child to be placed in the custody of the child's tribe.

(f) Before taking a child into custody, a social worker shall consider whether the child may remain safely in ~~his or her~~ *their* residence. The consideration of whether the child may remain safely at home shall include, but not be limited to, the following factors:

(1) Whether there are any reasonable services available to the worker which, if provided to the child's parent, guardian, caretaker, or to the child would eliminate the need to remove the child from the custody of ~~his or her~~

*their* parent, guardian, Indian custodian, or other caretaker.

(2) Whether a referral to public assistance pursuant to Chapter 2 (commencing with Section 11200) of Part 3, Chapter 7 (commencing with Section 14000) of Part 3, Chapter 1 (commencing with Section 17000) of Part 5, and Chapter 10 (commencing with Section 18900) of Part 6, of Division 9 would eliminate the need to take temporary custody of the child. If those services are available they shall be utilized.

(3) Whether a nonoffending caretaker can provide for and protect the child from abuse and neglect and whether the alleged perpetrator voluntarily agrees to withdraw from the residence, withdraws from the residence, and is likely to remain withdrawn from the residence.

(4) If it is known or there is reason to know the child is an Indian child, the county social worker shall make active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family prior to removal from the custody of a parent or parents or Indian custodian unless emergency removal is necessary to prevent imminent physical damage or harm to the Indian child.

**SEC. 10.** Section 306.6 of the Welfare and Institutions Code is amended to read:

**306.6.** (a) In a dependency proceeding involving a child who would otherwise be an Indian child, based on the definition contained in ~~paragraph (4) of Section 1903 of the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.),~~ *subdivision (b) of Section 224.1,* but is not an Indian child based on ~~status of the child's tribe, as defined in paragraph (8) of Section 1903 of the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), the~~ *the child's Indian tribe not having federal recognition, as described by paragraph (4) of subdivision (a) of Section 224.1, the* court may permit the tribe from which the child is descended to participate in the proceeding upon request of the tribe.

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

(1) Be present at the ~~hearing.~~ *hearing or appear remotely as authorized by subdivision ( l) of Section 224.2.*

(2) Address the court.

(3) Request and receive notice of hearings.

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

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

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

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

(c) If more than one tribe requests to participate in a proceeding under subdivision (a), the court may limit participation to the tribe with which the child has the most significant contacts, as determined in accordance with ~~paragraph (2) of subdivision (d) of Section 170 of the Family Code.~~ *the provisions for determining an Indian child's tribe contained in subdivision (e) of Section 224.1.*

(d) This section is intended to assist the court in making decisions that are in the best interest of the child by permitting a tribe in the circumstances set out in subdivision (a) to inform the court and parties to the proceeding about placement options for the child within the child's extended family or the tribal community, services and programs available to the child and the child's parents as Indians, and other unique interests the child or the child's parents may have as Indians. This section shall not be construed to make the Indian Child Welfare Act *of 1978* (25 U.S.C. Sec. 1901 et seq.), or any state law implementing the Indian Child Welfare ~~Act,~~ *Act of 1978,* applicable to the proceedings, or to limit the court's discretion to permit other interested persons to participate in these or any other proceedings.

(e) The court shall, on a case-by-case basis, make a determination if this section is applicable and may request information from the tribe, or the entity claiming to be a tribe, from which the child is descended for the purposes of making this determination, if the child would otherwise be an Indian child pursuant to subdivision (a).

**SEC. 11.** Section 315 of the Welfare and Institutions Code is amended to read:

**315.** If a child has been taken into custody under this article and not released to a parent or guardian, the juvenile court shall hold a hearing (which shall be referred to as a "detention hearing") to determine whether the child shall be further detained. This hearing shall be held as soon as possible, but not later than the expiration of the next judicial day after a petition to declare the child a dependent child has been filed. If the hearing is not held within the period prescribed by this section, the child shall be released from custody. In the case of an Indian child, the hearing pursuant to Section 319 shall be considered an emergency removal under ~~Section~~ *subdivision (g) of Section 305.5 of this code and Section* 1922 of the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. ~~1922).~~ *1901 et seq.).*

**SEC. 12.** Section 317 of the Welfare and Institutions Code is amended to read:

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

(2) When it appears to the court that a parent or Indian custodian in an Indian child custody proceeding desires counsel but is presently unable to afford and cannot for that reason employ counsel, the ~~provisions of Section 1912(b) of Title 25 of the United States Code and Section 23.13 of Title 25 of the Code of Federal Regulations shall apply.~~ *court shall appoint counsel for the parent or Indian custodian.*

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

(c) (1) If a child or nonminor dependent is not represented by counsel, the court shall appoint counsel for the child or nonminor dependent, unless the court finds that the child or nonminor dependent would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) A primary responsibility of counsel appointed to represent a child or nonminor dependent pursuant to this section shall be to advocate for the protection, safety, and physical and emotional well-being of the child or nonminor dependent.

(3) Counsel may be a district attorney, public defender, or other member of the bar, provided that ~~he or she does~~ *they do* not represent another party or county agency whose interests conflict with the child's or nonminor dependent's interests. The fact that the district attorney represents the child or nonminor dependent in a proceeding pursuant to Section 300 as well as conducts a criminal investigation or files a criminal complaint or information arising from the same or reasonably related set of facts as the proceeding pursuant to Section 300 is not in and of itself a conflict of interest.

(4) The court may fix the compensation for the services of appointed counsel.

(5) (A) The appointed counsel shall have a caseload and training that ensures adequate representation of the child or nonminor dependent. The Judicial Council shall promulgate rules of court that establish caseload standards, training requirements, and guidelines for appointed counsel for children and shall adopt rules as required by Section 326.5 no later than July 1, 2001.

(B) The training requirements imposed pursuant to subparagraph (A) shall include instruction on both of the following:

(i) Cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home care.

(ii) The information described in subdivision (d) of Section 16501.4.

(d) Counsel shall represent the parent, guardian, child, or nonminor dependent at the detention hearing and at all subsequent proceedings before the juvenile court. Counsel shall continue to represent the parent, guardian, child, or nonminor dependent unless relieved by the court upon the substitution of other counsel or for cause. The representation shall include representing the parent, guardian, or the child in termination proceedings and in those proceedings relating to the institution or setting aside of a legal guardianship. On and after January 1, 2012, in the case of a nonminor dependent, as described in subdivision (v) of Section 11400, no representation by counsel shall be provided for a parent, unless the parent is receiving court-ordered family reunification services.

(e) (1) Counsel shall be charged in general with the representation of the child's interests. To that end, counsel shall make or cause to have made any further investigations that ~~he or she deems~~ *they deem* in good faith to be reasonably necessary to ascertain the facts, including the interviewing of witnesses, and shall examine and cross-examine witnesses in both the adjudicatory and dispositional hearings. Counsel may also introduce and examine ~~his or her~~ *their* own witnesses, make recommendations to the court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the child. When counsel is appointed to represent a nonminor dependent, counsel is charged with representing the wishes of the nonminor dependent except when advocating for those wishes conflicts with the protection or safety of the nonminor dependent. If the court finds that a nonminor dependent is not competent to direct counsel, the court shall appoint a guardian ad litem for the nonminor dependent.

(2) If the child is four years of age or older, counsel shall interview the child to determine the child's wishes and assess the child's well-being, and shall advise the court of the child's wishes. Counsel shall not advocate for the return of the child if, to the best of ~~his or her~~ *their* knowledge, return of the child conflicts with the protection and safety of the child.

(3) Counsel shall investigate the interests of the child beyond the scope of the juvenile proceeding, and report to the court other interests of the child that may need to be protected by the institution of other administrative or judicial proceedings. Counsel representing a child in a dependency proceeding is not required to assume the responsibilities of a social worker, and is not expected to provide nonlegal services to the child.

(4) (A) At least once every year, if the list of educational liaisons is available on the ~~Internet Web site~~ *internet website* for the State Department of Education, both of the following shall apply:

(i) Counsel shall provide ~~his or her~~ *their* contact information to the educational liaison, as described in subdivision (c) of Section 48853.5 of the Education Code, of each local educational agency serving counsel's foster child clients in the county of jurisdiction.

(ii) If counsel is part of a firm or organization representing foster children, the firm or organization may provide its contact information in lieu of contact information for the individual counsel. The firm or organization may designate a person or persons within the firm or organization to receive communications from educational liaisons.

(B) The child's caregiver or other person holding the right to make educational decisions for the child may provide the contact information of the child's attorney to the child's local educational agency.

(C) Counsel for the child and counsel's agent may, but are not required to, disclose to an individual who is being assessed for the possibility of placement pursuant to Section 361.3 the fact that the child is in custody, the alleged reasons that the child is in custody, and the projected likely date for the child's return home, placement for adoption, or legal guardianship. Nothing in this paragraph shall be construed to prohibit counsel from making other disclosures pursuant to this subdivision, as appropriate.

(5) Nothing in this subdivision shall be construed to permit counsel to violate a child's attorney-client privilege.

(6) The changes made to this subdivision during the 2011–12 Regular Session of the Legislature by the act adding subparagraph (C) of paragraph (4) and paragraph (5) are declaratory of existing law.

(7) The court shall take whatever appropriate action is necessary to fully protect the interests of the child.

(f) Either the child or counsel for the child, with the informed consent of the child if the child is found by the court to be of sufficient age and maturity to consent, which shall be presumed, subject to rebuttal by clear and convincing evidence, if the child is over 12 years of age, may invoke the psychotherapist-client privilege, physician-patient privilege, and clergyman-penitent privilege. If the child invokes the privilege, counsel may not waive it, but if counsel invokes the privilege, the child may waive it. Counsel shall be the holder of these privileges if the child is found by the court not to be of sufficient age and maturity to consent. For the sole purpose of fulfilling ~~his or her~~ *their* obligation to provide legal representation of the child, counsel shall have access to all records with regard to the child maintained by a health care facility, as defined in Section 1545 of the Penal Code, health care providers, as defined in Section 6146 of the Business and Professions Code, a physician and surgeon or other health practitioner, as defined in former Section 11165.8 of the Penal Code, as that section read on January 1, 2000, or a ~~child care~~ *childcare* custodian, as defined in former Section 11165.7 of the Penal Code, as that section read on January 1, 2000. Notwithstanding any other law, counsel shall be given access to all records relevant to the case that are maintained by state or local public agencies. All

information requested from a child protective agency regarding a child who is in protective custody, or from a child's guardian ad litem, shall be provided to the child's counsel within 30 days of the request.

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

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

**SEC. 13.** Section 319 of the Welfare and Institutions Code is amended to read:

**319.** (a) At the initial petition hearing, the court shall review the report described in subdivision (b) and examine the child's parents, guardians, Indian custodian, or other persons having relevant knowledge and hear the relevant evidence as the child, the child's parents or guardians, the child's Indian custodian, the petitioner, the Indian child's tribe, or their counsel desires to present. The court may examine the child, as provided in Section 350.

(b) The social worker shall report to the court on the reasons why the child has been removed from the parent's, guardian's, or Indian custodian's physical custody, the need, if any, for continued detention, the available services and the referral methods to those services that could facilitate the return of the child to the custody of the child's parents, guardians, or Indian custodian, and whether there are any relatives who are able and willing to take temporary physical custody of the child. The report shall also include information regarding any short-term or long-term harms, or both short-term and long-term harms, to the child that may result from their removal from the custody of their parent, guardian, or Indian custodian, including, but not limited to, the information specified in subparagraph (A) of paragraph (2) of subdivision (c), the placement options, including an assessment of the least disruptive alternatives to returning the child to the custody of their parent, guardian, or Indian custodian, including compliance with the placement preferences set forth in Section 361.31 in the case of an Indian child, and measures that may be available to alleviate disruption and minimize the harms of removal. If it is known or there is reason to know the child is an Indian child, the report shall also include all of the following:

(1) A statement of the risk of imminent physical damage or harm to the Indian child and any evidence that the emergency removal or placement continues to be necessary to prevent the imminent physical damage or harm to the child.

(2) The steps taken to provide notice to the child's parents, custodians, and tribe about the hearing pursuant to this section.

(3) If the child's parents and Indian custodians are unknown, a detailed explanation of what efforts have been made to locate and contact them, including contact with the appropriate Bureau of Indian Affairs regional director.

(4) The residence and the domicile of the Indian child.

(5) If either the residence or the domicile of the Indian child is believed to be on a reservation or in an Alaska Native village, the name of the tribe affiliated with that reservation or village.

(6) The tribal affiliation of the child and of the parents or Indian custodians.

(7) A specific and detailed account of the circumstances that caused the Indian child to be taken into temporary custody.

(8) If the child is believed to reside or be domiciled on a reservation in which the tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made and that are being made to contact the tribe and transfer the child to the tribe's jurisdiction.

(9) A statement of the efforts that have been taken to assist the parents or Indian custodians so the Indian child may safely be returned to their custody.

(10) The steps taken to consult and collaborate with the tribe and the outcome of that consultation and collaboration.

(c) (1) The court shall order the release of the child from custody unless a prima facie showing has been made that the child comes within Section 300, the court finds that continuance in the parent's or guardian's home is contrary to the child's welfare, and any of the following circumstances exist:

(A) There is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means by which the child's physical or emotional health may be protected without removing the child from the parent's or guardian's physical custody.

(B) There is substantial evidence that a parent, guardian, or custodian of the child is likely to flee the jurisdiction of the court, and, in the case of an Indian child, fleeing the jurisdiction will place the child at risk of imminent physical damage or harm.

(C) The child has left a placement in which the child was placed by the juvenile court.

(D) The child indicates an unwillingness to return home, if the child has been physically or sexually abused by a person residing in the home.

(2) (A) The court shall determine whether less disruptive alternatives to removal were considered by the agency, such as factors related to the impact of removal on the child, including, but not limited to, the following:

(i) A description of the relationship between the child and their parents, guardians, or Indian custodians, based on the child's perspective, and the child's response to removal and, where developmentally appropriate, their perspective on removal.

(ii) The relationship between the child and any siblings.

(iii) The relationship between the child and other members of the household.

(iv) Any disruption to the child's schooling, social relationships, and physical or emotional health that may result from placement out of the home, and in the case of an Indian child, any impact on the child's connection to their tribe, extended family members, and tribal community.

(B) If the court finds that removal is necessary under paragraph (1), the court shall, in a written order or on the record, set forth all of the following:

(i) The basis for its findings and the evidence relied on.

(ii) Its determination regarding the child's placement, including whether it complies with the placement preferences set forth in Section 361.31 and less disruptive alternatives.

(iii) Include any orders necessary to alleviate any disruption or harm to the child resulting from removal.

(C) Nothing in this paragraph permits a child to be released to a parent, legal guardian, or Indian custodian, or to be placed in an unsafe placement, due solely to the court determining the child was not offered less disruptive alternatives.

(d) If the court knows or there is reason to know the child is an Indian child, the court may only detain the Indian child if it also finds that detention is necessary to prevent imminent physical damage or harm. The court shall state on the record the facts supporting this finding.

(e) (1) If the hearing pursuant to this section is continued pursuant to Section 322 or for any other reason, the court shall find that the continuance of the child in the parent's or guardian's home is contrary to the child's welfare at the initial petition hearing or order the release of the child from custody.

(2) If the court knows or has reason to know the child is an Indian child, the hearing pursuant to this section may not be continued beyond 30 days unless the court finds all of the following:

(A) Restoring the child to the parent, parents, or Indian custodian would subject the child to imminent physical damage or harm.

(B) The court is unable to transfer the proceeding to the jurisdiction of the appropriate Indian tribe.

(C) It is not possible to initiate an Indian child custody proceeding as defined in Section 224.1.

(f) (1) The court shall also make a determination on the record, referencing the social worker's report or other evidence relied upon, as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from their home, pursuant to subdivision (b) of Section 306, and whether there are available services that would prevent the need for further detention. Services to be considered for purposes of making this determination are case management, counseling, emergency shelter care, emergency in-home caretakers, out-of-home respite care, teaching and demonstrating homemakers, parenting training, transportation, and any other child welfare services authorized by the State Department of Social Services pursuant to Chapter 5 (commencing with Section 16500) of Part 4 of Division 9. The court shall also review whether the social worker has considered whether a referral to public assistance services pursuant to Chapter 2 (commencing with Section 11200) and Chapter 7 (commencing with Section 14000) of Part 3 of, Chapter 1 (commencing with Section 17000) of Part 5 of, and Chapter 10 (commencing with Section 18900) of Part 6 of, Division 9 would have eliminated the need to take temporary custody of the child or would prevent the need for further detention. This determination shall apply to each child individually, and the considerations shall be tailored to the individual child.

(2) If the court knows or has reason to know the child is an Indian child, the court shall also determine whether the county welfare department made active efforts to provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian family. The court shall order the county welfare department to initiate or continue services or programs pending disposition pursuant to Section 358.

(3) If the child can be returned to the custody of their parent, guardian, or Indian custodian through the provision of those services, the court shall place the child with their parent, guardian, or Indian custodian and order that the services shall be provided. If the child cannot be returned to the physical custody of their parent or guardian, the court shall determine if there is a relative who is able and willing to care for the child, and has been assessed pursuant to Section 361.4.

(4) In order to preserve the bond between the child and the parent and to facilitate family reunification, the court shall consider whether the child can be returned to the custody of their parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with their parent. The fact that the parent is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with their parent shall not be, for that reason alone, prima facie evidence of substantial danger. The court shall specify the factual basis for its conclusion that the return of the child to the custody of their parent would pose a substantial danger or would not pose a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child.

(g) If a court orders a child detained, the court shall state the facts on which the decision is based, specify why the initial removal was necessary, reference the social worker's report or other evidence relied upon to make its determination whether continuance in the home of the parent or legal guardian is contrary to the child's welfare, order temporary placement and care of the child to be vested with the county child welfare department pending the hearing held pursuant to Section 355 or further order of the court, and order services to be provided as soon as possible to reunify the child and their family, if appropriate.

(h) (1) (A) If the child is not released from custody, the court may order the temporary placement of the child in any of the following for a period not to exceed 15 judicial days:

(i) The home of a relative, ~~an~~ *or a nonrelative* extended family member, as defined in Section ~~224.1 and Section 1903 of the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.), or a nonrelative~~ *362.7, or, in the case of an Indian child, an* extended family member, as defined in ~~Section 362.7,~~ *paragraph (1) of subdivision (c) of Section 224.1,* that has been assessed pursuant to Section 361.4.

(ii) The approved home of a resource family, as described in Section 16519.5, or a home licensed or approved by the Indian child's tribe.

(iii) An emergency shelter or other suitable licensed place.

(iv) A place exempt from licensure designated by the juvenile court.

(B) A youth homelessness prevention center licensed by the State Department of Social Services pursuant to Section 1502.35 of the Health and Safety Code shall not be a placement option pursuant to this section.

(C) If the court knows or has reason to know that the child is an Indian child, the Indian child shall be detained in a home that complies with the placement preferences set forth in Section 361.31 and in the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.), unless the court finds good cause exists pursuant to Section 361.31 not to follow the placement preferences. If the court finds good cause not to follow the placement preferences for detention, this finding does not affect the requirement that a diligent search be made for a subsequent placement within the placement preferences.

(2) Relatives shall be given preferential consideration for placement of the child. As used in this section, "relative" means an adult who is related to the child 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 these persons, even if the marriage was terminated by death or dissolution.

(3) When placing in the home of a relative, ~~an~~ *nonrelative extended family member, or, in the case of an Indian child, an* extended family member, as defined in ~~Section 224.1 and Section 1903 of the federal Indian Child Welfare Act of 1978, or nonrelative extended family member,~~ *paragraph (1) of subdivision (c) of Section 224.1,* the court shall consider the recommendations of the social worker based on the assessment pursuant to Section 361.4 of the home of the relative, extended family member, or nonrelative extended family member, including the results of a criminal records check and prior child abuse allegations, if any, before ordering that the child be placed with a relative or nonrelative extended family member. The court may authorize the placement of a child on a temporary basis in the home of a relative, regardless of the status of any criminal record exemption or resource family approval, if the court finds that the placement does not pose a risk to the health and safety of the child. The court shall order the parent to disclose to the social worker the names, residences, and any known identifying information of any maternal or paternal relatives of the child. The social worker shall initiate the assessment pursuant to Section 361.3 of any relative to be considered for continuing placement.

(i) In the case of an Indian child, any order detaining the child pursuant to this section shall be considered an emergency removal ~~within the meaning of Section 1922 of the federal Indian Child Welfare Act of 1978.~~ *under subdivision (g) of Section 305.5.* The emergency proceeding shall terminate if the child is returned to the custody of the parent, parents, or Indian custodian, the child has been transferred to the custody and jurisdiction of the child's tribe, or the agency or another party to the proceeding recommends that the child be removed from the physical custody of their parent or parents or Indian custodian pursuant to Section 361 or 361.2.

(j) (1) At the initial hearing upon the petition filed in accordance with subdivision (c) of Rule 5.520 of the California Rules of Court or anytime thereafter up until the time that the minor is adjudged a dependent child of the court or a finding is made dismissing the petition, the court may temporarily limit the right of the parent or guardian to make educational or developmental services decisions for the child and temporarily appoint a responsible adult to make educational or developmental services decisions for the child if all of the following conditions are found:

(A) The parent or guardian is unavailable, unable, or unwilling to exercise educational or developmental services rights for the child.

(B) The county placing agency has made diligent efforts to locate and secure the participation of the parent or guardian in educational or developmental services decisionmaking.

(C) The child's educational and developmental services needs cannot be met without the temporary appointment of a responsible adult.

(2) If the court limits the parent's educational rights under this subdivision, the court shall determine whether there is a responsible adult who is a relative, nonrelative extended family member, or other adult known to the child and who is available and willing to serve as the child's educational representative before appointing an educational representative or surrogate who is not known to the child.

(3) If the court cannot identify a responsible adult to make educational decisions for the child and the appointment of a surrogate parent, as defined in subdivision (a) of Section 56050 of the Education Code, is not warranted, the court may, with the input of any interested person, make educational decisions for the child. If the child is receiving services from a regional center, the provision of any developmental services related to the court's decision shall be consistent with the child's individual program plan and pursuant to the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)). If the court cannot identify a responsible adult to make developmental services decisions for the child, the court may, with the input of any interested person, make developmental services decisions for the child. If the court makes educational or

developmental services decisions for the child, the court shall also issue appropriate orders to ensure that every effort is made to identify a responsible adult to make future educational or developmental services decisions for the child.

(4) A temporary appointment of a responsible adult and temporary limitation on the right of the parent or guardian to make educational or developmental services decisions for the child shall be specifically addressed in the court order. An order made under this section shall expire at the conclusion of the hearing held pursuant to Section 361 or upon dismissal of the petition. Upon the entering of disposition orders, additional needed limitation on the parent's or guardian's educational or developmental services rights shall be addressed pursuant to Section 361.

(5) This section does not remove the obligation to appoint surrogate parents for students with disabilities who are without parental representation in special education procedures, as required by state and federal law, including Section 1415(b)(2) of Title 20 of the United States Code, Section 56050 of the Education Code, Section 7579.5 of the Government Code, and Rule 5.650 of the California Rules of Court.

(6) If the court appoints a developmental services decisionmaker pursuant to this section, the developmental services decisionmaker shall have the authority to access the child's information and records pursuant to subdivision (u) of Section 4514 and paragraph (23) of subdivision (a) of Section 5328, and to act on the child's behalf for the purposes of the individual program plan process pursuant to Sections 4646, 4646.5, and 4648 and the fair hearing process pursuant to Chapter 7 (commencing with Section 4700) of Division 4.5, and as set forth in the court order.

(k) For a placement made on or after October 1, 2021, each temporary placement of the child pursuant to subdivision (h) in a short-term residential therapeutic program shall comply with the requirements of Section 4096 and be reviewed by the court pursuant to Section 361.22.

(l) For a placement made on or after July 1, 2022, each temporary placement of the child pursuant to subdivision (h) in a community treatment facility shall comply with the requirements of Section 4096 and be reviewed by the court pursuant to Section 361.22.

**SEC. 14.** Section 361 of the Welfare and Institutions Code is amended to read:

**361.** (a) (1) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent, guardian, or Indian custodian and shall by its order clearly and specifically set forth all those limitations. Any limitation on the right of the parent, guardian, or Indian custodian to make educational or developmental services decisions for the child shall be specifically addressed in the court order. The limitations may not exceed those necessary to protect the child. If the court specifically limits the right of the parent, guardian, or Indian custodian to make educational or developmental services decisions for the child, or, for the nonminor dependent, if the court finds the appointment of a developmental services decisionmaker to be in the best interests of the nonminor dependent, the court shall at the same time appoint a responsible adult to make educational or developmental services decisions for the child or nonminor dependent until one of the following occurs:

(A) The minor reaches 18 years of age, unless the child or nonminor dependent chooses not to make educational or developmental services decisions for ~~himself~~ *themselves,* or ~~herself, or~~ is deemed by the court to be incompetent.

(B) Another responsible adult is appointed to make educational or developmental services decisions for the minor pursuant to this section.

(C) The right of the parent, guardian, or Indian custodian to make educational or developmental services decisions for the minor is fully restored.

(D) A successor guardian or conservator is appointed.

(E) The child is placed into a planned permanent living arrangement pursuant to paragraph (5) of subdivision (g) of Section 366.21, Section 366.22, Section 366.26, or subdivision (i) of Section 366.3, at which time, for educational decisionmaking, the foster parent, relative caretaker, or nonrelative extended family member as defined in Section 362.7, has the right to represent the child in educational matters pursuant to Section 56055 of the Education Code, and for decisions relating to developmental services, unless the court specifies otherwise, the foster parent, relative caregiver, or nonrelative extended family member of the planned permanent living

arrangement has the right to represent the child or nonminor dependent in matters related to developmental services.

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

(3) Regardless of the person or persons currently holding the right to make educational decisions for the child, a foster parent, relative caregiver, nonrelated extended family member, or resource family shall retain rights and obligations regarding accessing and maintaining health and education information pursuant to Sections 49069.3 and 49076 of the Education Code and Section 16010 of this code.

(4) (A) If the court limits the parent's, guardian's, or Indian custodian's educational rights pursuant to this subdivision, the court shall determine whether there is a responsible adult who is a relative, nonrelative extended family member, or other adult known to the child who is available and willing to serve as the child's educational representative before appointing an educational representative or surrogate who is not known to the child.

(B) If the court cannot identify a responsible adult who is known to the child and available to make educational decisions for the child, subparagraphs (A) to (E), inclusive, of paragraph (1) do not apply, and the child has either been referred to the local educational agency for special education and related services, or has a valid individualized education program, the court shall refer the child to the local educational agency for appointment of a surrogate parent pursuant to Section 7579.5 of the Government Code.

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

(5) (A) If the court appoints a developmental services decisionmaker pursuant to this section, ~~he or she~~ *they* shall have the authority to access the child's or nonminor dependent's information and records pursuant to subdivision (u) of Section 4514 and paragraph (23) of subdivision (a) of Section 5328, and to act on the child's or nonminor dependent's behalf for the purposes of the individual program plan process pursuant to Sections 4646, 4646.5, and 4648 and the fair hearing process pursuant to Chapter 7 (commencing with Section 4700) of Division 4.5, and as set forth in the court order.

(B) If the court cannot identify a responsible adult to make developmental services decisions for the child or nonminor dependent, the court may, with the input of any interested person, make developmental services decisions for the child or nonminor dependent. If the child is receiving services from a regional center, the provision of any developmental services related to the court's decision must be consistent with the child's or nonminor dependent's individual program plan and pursuant to the provisions of the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)).

(6) All educational and school placement decisions shall seek to ensure that the child is in the least restrictive educational programs and has access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils. In all instances, educational and school placement decisions shall be based on the best interests of the child. If an educational representative or surrogate is appointed for the child, the representative or surrogate shall meet with the child, shall investigate the child's educational needs and whether those needs are being met, and shall, prior to each review hearing held under this article, provide information and recommendations concerning the child's educational needs to the child's social worker, make written recommendations to the court, or attend the hearing and participate in those portions of the hearing that concern the child's education.

(7) Nothing in this section in any way removes the obligation to appoint surrogate parents for students with disabilities who are without parental representation in special education procedures as required by state and federal law, including Section 1415(b)(2) of Title 20 of the United States Code, Section 56050 of the Education Code, Section 7579.5 of the Government Code, and Rule 5.650 of the California Rules of Court.

(b) (1) Subdivision (a) does not limit the ability of a parent to voluntarily relinquish ~~his or her~~ *their* child to the State Department of Social Services, to a county adoption agency, or to a licensed private adoption agency at any time while the child is the subject of a petition to declare ~~him~~ *them,* or ~~her, or~~ is, a dependent child of the juvenile court, if the department, county adoption agency, or licensed private adoption agency is willing to accept the relinquishment.

(2) When accepting the relinquishment of a child described in paragraph (1), the department or a county adoption agency shall comply with Section 8700 of the Family Code and, within five court days of accepting the relinquishment, shall file written notice of that fact with the court and all parties to the case and their counsel.

(3) When accepting the relinquishment of a child described in paragraph (1), a licensed private adoption agency shall comply with Section 8700 of the Family Code and, within 10 court days of accepting the relinquishment, shall file or allow another party or that party's counsel to file with the court one original and five copies of a request to approve the relinquishment. The clerk of the court shall file the request under seal, subject to examination only by the parties and their counsel or by others upon court approval. If the request is accompanied by the written agreement of all parties, the court may issue an ex parte order approving the relinquishment. Unless approved pursuant to that agreement, the court shall set the matter for hearing no later than 10 court days after filing, and shall provide notice of the hearing to all parties and their counsel, and to the licensed private adoption agency and its counsel. The licensed private adoption agency and any prospective adoptive parent or parents named in the relinquishment shall be permitted to attend the hearing and participate as parties regarding the strictly limited issue of whether the court should approve the relinquishment. The court shall issue an order approving or denying the relinquishment within 10 court days after the hearing.

(4) Nothing in this subdivision suspends the requirements for voluntary ~~adoptive placement under~~ *consent to adoption under Section 8606.5 of the Family Code or adoptive placement or consent to termination of parental rights under Section 1913 of* the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.).

(c) A dependent child shall not be taken from the physical custody of ~~his or her~~ *their* parents, guardian or guardians, or Indian custodian with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following circumstances listed in paragraphs (1) to (5), inclusive, and, where it is known or there is reason to know that the child is an Indian child, as defined by Section 224.1, paragraph (6):

(1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's, guardian's, or Indian custodian's physical custody. The fact that a minor has been adjudicated a dependent child of the court pursuant to subdivision (e) of Section 300 shall constitute prima facie evidence that the minor cannot be safely left in the physical custody of the parent, guardian, or Indian custodian with whom the minor resided at the time of injury. The court shall consider, as a reasonable means to protect the minor, each of the following:

(A) The option of removing an offending parent, guardian, or Indian custodian from the home.

(B) Allowing a nonoffending parent, guardian, or Indian custodian to retain physical custody as long as that parent, guardian, or Indian custodian presents a plan acceptable to the court demonstrating that ~~he or she~~ *they* will be able to protect the child from future harm.

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

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

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

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

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

(A) For purposes of this paragraph, stipulation by the parent, Indian custodian, or the Indian child's tribe, or failure to object, may waive the requirement of producing evidence of the likelihood of serious damage only if the court is satisfied that the party has been fully advised of the requirements ~~of~~ *under this paragraph and under subdivision (e) of Section 1912 of* the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.), and has knowingly, intelligently, and voluntarily waived them.

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

(d) A dependent child shall not be taken from the physical custody of ~~his or her~~ *their* parents, guardian, or Indian custodian with whom the child did not reside at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence that there would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child for the parent, guardian, or Indian custodian to live with the child or otherwise exercise the parent's, guardian's, or Indian custodian's right to physical custody, and there are no reasonable means by which the child's physical and emotional health can be protected without removing the child from the child's parent's, guardian's, or Indian custodian's physical custody.

(e) The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from ~~his or her~~ *their* home or, if the minor is removed for one of the reasons stated in paragraph (5) of subdivision (c), whether it was reasonable under the circumstances not to make any of those efforts, or, where it is known or there is reason to know that the child is an Indian child, as defined by Section 224.1, whether active efforts, as defined by Section 224.1 and as required in Section 361.7 were made and that these efforts have proved unsuccessful. The court shall state the facts on which the decision to remove the minor is based.

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

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

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

**SEC. 15.** Section 361.2 of the Welfare and Institutions Code is amended to read:

**361.2.** (a) If a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child. The fact that the parent is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with their parent shall not be, for that reason alone, prima facie evidence that placement with that parent would be detrimental.

(b) If the court places the child with that parent, the court may do any of the following:

(1) Order that the parent become legal and physical custodian of the child. The court may also provide reasonable visitation by the noncustodial parent. The court shall then terminate its jurisdiction over the child. The custody order shall continue unless modified by a subsequent order of the superior court. The order of the juvenile court shall be filed in any domestic relation proceeding between the parents.

(2) Order that the parent assume custody subject to the jurisdiction of the juvenile court and require that a home visit be conducted within three months. In determining whether to take the action described in this

paragraph, the court shall consider any concerns that have been raised by the child's current caregiver regarding the parent. After the social worker conducts the home visit and files their report with the court, the court may then take the action described in paragraph (1), (3), or this paragraph. However, this paragraph does not imply that the court is required to take the action described in this paragraph as a prerequisite to the court taking the action described in either paragraph (1) or (3).

(3) Order that the parent assume custody subject to the supervision of the juvenile court. In that case the court may order that reunification services be provided to the parent or guardian from whom the child is being removed, or the court may order that services be provided solely to the parent who is assuming physical custody in order to allow that parent to retain later custody without court supervision, or that services be provided to both parents, in which case the court shall determine, at review hearings held pursuant to Section 366, which parent, if either, shall have custody of the child.

(c) The court shall make a finding, either in writing or on the record, of the basis for its determination under subdivisions (a) and (b).

(d) Part 6 (commencing with Section 7950) of Division 12 of the Family Code shall apply to the placement of a child pursuant to paragraphs (1) and (2) of subdivision (e).

(e) If the court orders removal pursuant to Section 361, the court shall order the care, custody, control, and conduct of the child to be under the supervision of the social worker who may place the child in any of the following:

(1) The home of a noncustodial parent, as described in subdivision (a), regardless of the parent's immigration status.

(2) The approved home of a relative, or the home of a ~~relative~~ *relative, or in the case of an Indian child, an extended family member as defined in paragraph (1) of subdivision (c) of Section 224.1,* who has been assessed pursuant to Section 361.4 and is pending approval pursuant to Section 16519.5, regardless of the relative's immigration status.

(3) The approved home of a nonrelative extended family member, as defined in Section 362.7, or the home of a nonrelative extended family member who has been assessed pursuant to Section 361.4 and is pending approval pursuant to Section 16519.5.

(4) The approved home of a resource family, as defined in Section 16519.5, or a home that is pending approval pursuant to paragraph (1) of subdivision (e) of Section 16519.5.

(5) A foster home considering first a foster home in which the child has been placed before an interruption in foster care, if that placement is in the best interest of the child and space is available.

(6) If it is known or there is reason to know that the child is an Indian child, as defined by Section 224.1, a home or facility in accordance with the placement preferences contained in Section 361.31 and the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

(7) A suitable licensed community care facility, except a youth homelessness prevention center licensed by the State Department of Social Services pursuant to Section 1502.35 of the Health and Safety Code.

(8) With a foster family agency, as defined in subdivision (g) of Section 11400 and paragraph (4) of subdivision (a) of Section 1502 of the Health and Safety Code, to be placed in a suitable family home certified or approved by the agency, with prior approval of the county placing agency.

(9) A community care facility licensed as a group home for children vendored by a regional center pursuant to Section 56004 of Title 17 of the California Code of Regulations or a short-term residential therapeutic program, as defined in subdivision (ad) of Section 11400 of this code and paragraph (18) of subdivision (a) of Section 1502 of the Health and Safety Code. A child of any age who is placed in a community care facility licensed as a group home for children vendored by a regional center or a short-term residential therapeutic program shall have a case plan that indicates that placement is for purposes of providing short-term, specialized, and intensive treatment for the child, the case plan specifies the need for, nature of, and anticipated duration of this treatment, pursuant to paragraph (2) of subdivision (d) of Section 16501.1, and the case plan includes transitioning the child to a less restrictive environment and the projected timeline by which the child will be transitioned to a less restrictive environment. Any placement longer than six months shall be documented consistent with paragraph (3) of subdivision (a) of Section 16501.1 and, unless subparagraph (A) or (B) applies to the child, shall be

approved by the deputy director or director of the county child welfare department no less frequently than every six months.

(A) A child under six years of age shall not be placed in a community care facility licensed as a group home for children vendored by a regional center or a short-term residential therapeutic program except under the following circumstances:

(i) If the facility meets the applicable regulations adopted under Section 1530.8 of the Health and Safety Code and standards developed pursuant to Section 11467.1 of this code, and the deputy director or director of the county child welfare department has approved the case plan.

(ii) The short-term, specialized, and intensive treatment period shall not exceed 120 days, unless the county has made progress toward or is actively working toward implementing the case plan that identifies the services or supports necessary to transition the child to a family setting, circumstances beyond the county's control have prevented the county from obtaining those services or supports within the timeline documented in the case plan, and the need for additional time pursuant to the case plan is documented by the caseworker and approved by a deputy director or director of the county child welfare department.

(iii) To the extent that placements pursuant to this paragraph are extended beyond an initial 120 days, the requirements of clauses (i) and (ii) shall apply to each extension. In addition, the deputy director or director of the county child welfare department shall approve the continued placement no less frequently than every 60 days.

(iv) In addition, if a case plan indicates that placement is for purposes of providing family reunification services, the facility shall offer family reunification services that meet the needs of the individual child and their family, permit parents, guardians, or Indian custodians to have reasonable access to their children 24 hours a day, encourage extensive parental involvement in meeting the daily needs of their children, and employ staff trained to provide family reunification services. In addition, one of the following conditions exists:

(I) The child's parent, guardian, or Indian custodian is also under the jurisdiction of the court and resides in the facility.

(II) The child's parent, guardian, or Indian custodian is participating in a treatment program affiliated with the facility and the child's placement in the facility facilitates the coordination and provision of reunification services.

(III) Placement in the facility is the only alternative that permits the parent, guardian, or Indian custodian to have daily 24-hour access to the child in accordance with the case plan, to participate fully in meeting all of the daily needs of the child, including feeding and personal hygiene, and to have access to necessary reunification services.

(B) A child who is 6 to 12 years of age, inclusive, may be placed in a community care facility licensed as a group home for children vendored by a regional center or a short-term residential therapeutic program under the following conditions:

(i) The deputy director of the county welfare department shall approve the case prior to initial placement.

(ii) The short-term, specialized, and intensive treatment period shall not exceed six months, unless the county has made progress or is actively working toward implementing the case plan that identifies the services or supports necessary to transition the child to a family setting, circumstances beyond the county's control have prevented the county from obtaining those services or supports within the timeline documented in the case plan, and the need for additional time pursuant to the case plan is documented by the caseworker and approved by a deputy director or director of the county child welfare department.

(iii) To the extent that placements pursuant to this paragraph are extended beyond an initial six months, the requirements of this subparagraph shall apply to each extension. In addition, the deputy director or director of the county child welfare department shall approve the continued placement no less frequently than every 60 days.

(10) Any child placed in a short-term residential therapeutic program shall be either of the following:

(A) A child who has been assessed as meeting one of the placement requirements set forth in subdivisions (b) and (h) of Section 11462.01.

(B) A child under six years of age who is placed with their minor parent or for the purpose of reunification pursuant to clause (iv) of subparagraph (A) of paragraph (9).

(11) The home of a relative in which the juvenile court has authorized placement, regardless of the status of any criminal record exemption or resource family approval, if the court has found that the placement does not pose a risk to the health and safety of the child.

(12) This subdivision does not allow a social worker to place any dependent child outside the United States, except as specified in subdivision (f).

(f) (1) A child under the supervision of a social worker pursuant to subdivision (e) shall not be placed outside the United States prior to a judicial finding that the placement is in the best interest of the child, except as required by federal law or treaty.

(2) The party or agency requesting placement of the child outside the United States shall carry the burden of proof and shall show, by clear and convincing evidence, that placement outside the United States is in the best interest of the child.

(3) In determining the best interest of the child, the court shall consider, but not be limited to, all of the following factors:

(A) Placement with a relative.

(B) Placement of siblings in the same home.

(C) Amount and nature of any contact between the child and the potential guardian or caretaker.

(D) Physical and medical needs of the dependent child.

(E) Psychological and emotional needs of the dependent child.

(F) Social, cultural, and educational needs of the dependent child.

(G) Specific desires of any dependent child who is 12 years of age or older.

(4) If the court finds that a placement outside the United States is, by clear and convincing evidence, in the best interest of the child, the court may issue an order authorizing the social worker to make a placement outside the United States. A child subject to this subdivision shall not leave the United States prior to the issuance of the order described in this paragraph.

(5) For purposes of this subdivision, "outside the United States" shall not include the lands of any federally recognized American Indian tribe or Alaskan Natives.

(6) This subdivision shall not apply to the placement of a dependent child with a parent pursuant to subdivision (a).

(g) (1) If the child is taken from the physical custody of the child's parent, guardian, or Indian custodian and unless the child is placed with relatives, the child shall be placed in foster care in the county of residence of the child's parent, guardian, or Indian custodian in order to facilitate reunification of the family.

(2) If there are no appropriate placements available in the parent's, guardian's, or Indian custodian's county of residence, a placement may be made in an appropriate place in another county, preferably a county located adjacent to the parent's, guardian's, or Indian custodian's community of residence.

(3) This section does not require multiple disruptions of the child's placement corresponding to frequent changes of residence by the parent, guardian, or Indian custodian. In determining whether the child should be moved, the social worker shall take into consideration the potential harmful effects of disrupting the placement of the child and the parent's, guardian's, or Indian custodian's reason for the move.

(4) If it has been determined that it is necessary for a child to be placed in a county other than the ~~child's~~ *child's,* parent's, guardian's, or Indian custodian's county of residence, the specific reason the out-of-county placement is necessary shall be documented in the child's case plan. If the reason the out-of-county placement is necessary is the lack of resources in the sending county to meet the specific needs of the child, those specific resource needs shall be documented in the case plan.

(5) If it has been determined that a child is to be placed out of county either in a group home for children vendored by a regional center or a short-term residential therapeutic program, or with a foster family agency for subsequent placement in a certified foster family home, and the sending county is to maintain responsibility for supervision and visitation of the child, the sending county shall develop a plan of supervision and visitation that specifies the supervision and visitation activities to be performed and specifies that the sending county is responsible for performing those activities. In addition to the plan of supervision and visitation, the sending county shall document information regarding any known or suspected dangerous behavior of the child that indicates the child may pose a safety concern in the receiving county. Upon implementation of the statewide child welfare information system, the plan of supervision and visitation, as well as information regarding any known or suspected dangerous behavior of the child, shall be made available to the receiving county upon placement of the child in the receiving county. If placement occurs on a weekend or holiday, the information shall be made available to the receiving county on or before the end of the next business day.

(6) If it has been determined that a child is to be placed out of county and the sending county plans that the receiving county shall be responsible for the supervision and visitation of the child, the sending county shall develop a formal agreement between the sending and receiving counties. The formal agreement shall specify the supervision and visitation to be provided the child, and shall specify that the receiving county is responsible for providing the supervision and visitation. The formal agreement shall be approved and signed by the sending and receiving counties prior to placement of the child in the receiving county. In addition, upon completion of the case plan, the sending county shall provide a copy of the completed case plan to the receiving county. The case plan shall include information regarding any known or suspected dangerous behavior of the child that indicates the child may pose a safety concern to the receiving county.

(h) (1) Subject to paragraph (2), if the social worker must change the placement of the child and is unable to find a suitable placement within the county and must place the child outside the county, the placement shall not be made until the social worker has served written notice on the parent, guardian, Indian custodian, the child's tribe, the child's attorney, and, if the child is 10 years of age or older, on the child, at least 14 days prior to the placement, unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given. The notice shall state the reasons that require placement outside the county. The child or parent, guardian, Indian custodian, or the child's tribe may object to the placement not later than seven days after receipt of the notice and, upon objection, the court shall hold a hearing not later than five days after the objection and prior to the placement. The court shall order out-of-county placement if it finds that the child's particular needs require placement outside the county.

(2) (A) The notice required prior to placement, as described in paragraph (1), may be waived if the child and family team has determined that the identified placement is in the best interest of the child, no member of the child and family team objects to the placement, and the child's attorney has been informed of the intended placement and has no objection, and, if applicable, the Indian custodian or child's tribe has been informed of the intended placement and has no objection.

(B) If the child is transitioning from a temporary shelter care facility, as described in Section 11462.022, and all of the circumstances set forth in subparagraph (A) do not exist, the county shall provide oral notice to the child's parents, guardian, Indian custodian, the child's tribe, the child's attorney, and, if the child is 10 years of age or older, to the child no later than one business day after the determination that out-of-county placement is necessary and the circumstances in subparagraph (A) do not exist. The oral notice shall state the reasons that require placement outside the county and shall be immediately followed by written notice stating the reasons. The child, parent, guardian, Indian custodian, or tribe may object to the placement not later than seven days after oral notice is provided and, upon objection, the court shall hold a hearing not later than two judicial days after the objection is made. The court may authorize that the child remain in the temporary shelter care facility pending the outcome of the hearing. The court shall order out-of-county placement if it finds that the child's particular needs require placement outside the county. This subparagraph does not preclude placement of the child without prior notice if the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given.

(i) If the court has ordered removal of the child from the physical custody of the child's parents pursuant to Section 361, the court shall consider whether the family ties and best interest of the child will be served by granting visitation rights to the child's grandparents. The court shall clearly specify those rights to the social worker.

(j) If the court has ordered removal of the child from the physical custody of the child's parents pursuant to Section 361, the court shall consider whether there are any siblings under the court's jurisdiction, or any

nondependent siblings in the physical custody of a parent subject to the court's jurisdiction, the nature of the relationship between the child and their siblings, the appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002, and the impact of the sibling relationships on the child's placement and planning for legal permanence.

(k) (1) An agency shall ensure placement of a child in a home that, to the fullest extent possible, best meets the day-to-day needs of the child. A home that best meets the day-to-day needs of the child shall satisfy all of the following criteria:

(A) The child's caregiver is able to meet the day-to-day health, safety, and well-being needs of the child.

(B) The child's caregiver is permitted to maintain the least restrictive family setting that promotes normal childhood experiences and that serves the day-to-day needs of the child.

(C) The child is permitted to engage in reasonable, age-appropriate day-to-day activities that promote normal childhood experiences for the foster child.

(2) The foster child's caregiver shall use a reasonable and prudent parent standard, as defined in paragraph (2) of subdivision (a) of Section 362.04, to determine day-to-day activities that are age appropriate to meet the needs of the child. This section does not permit a child's caregiver to permit the child to engage in day-to-day activities that carry an unreasonable risk of harm, or subject the child to abuse or neglect.

**SEC. 16.** Section 361.3 of the Welfare and Institutions Code is amended to read:

**361.3.** (a) In any case in which a child is removed from the physical custody of ~~his or her~~ *their* parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative, regardless of the relative's immigration status. In determining whether placement with a relative is appropriate, the county social worker and court shall consider, but shall not be limited to, consideration of all the following factors:

(1) The best interest of the child, including special physical, psychological, educational, medical, or emotional needs.

(2) The wishes of the parent, the relative, and child, if appropriate.

(3) The provisions of Part 6 (commencing with Section 7950) of Division 12 of the Family Code regarding relative placement.

(4) Placement of siblings and half siblings in the same home, unless that placement is found to be contrary to the safety and well-being of any of the siblings, as provided in Section 16002.

(5) The good moral character of the relative and any other adult living in the home, including whether any individual residing in the home has a prior history of violent criminal acts or has been responsible for acts of child abuse or neglect.

(6) The nature and duration of the relationship between the child and the relative, and the relative's desire to care for, and to provide legal permanency for, the child if reunification is unsuccessful.

(7) The ability of the relative to do the following:

(A) Provide a safe, secure, and stable environment for the child.

(B) Exercise proper and effective care and control of the child.

(C) Provide a home and the necessities of life for the child.

(D) Protect the child from ~~his or her~~ *their* parents.

(E) Facilitate court-ordered reunification efforts with the parents.

(F) Facilitate visitation with the child's other relatives.

(G) Facilitate implementation of all elements of the case plan.

(H) (i) Provide legal permanence for the child if reunification fails.

(ii) However, any finding made with respect to the factor considered pursuant to this subparagraph and pursuant to subparagraph (G) shall not be the sole basis for precluding preferential placement with a relative.

(I) Arrange for appropriate and safe ~~child care,~~ *childcare,* as necessary.

(8) (A) The safety of the relative's home. For a relative to be considered appropriate to receive placement of a child under this section on an emergency basis, the relative's home shall first be assessed pursuant to the process and standards described in Section 361.4.

(B) In this regard, the Legislature declares that a physical disability, such as blindness or deafness, is no bar to the raising of children, and a county social worker's determination as to the ability of a disabled relative to exercise care and control should center upon whether the relative's disability prevents ~~him or her~~ *them* from exercising care and control. The court shall order the parent to disclose to the county social worker the names, residences, and any other known identifying information of any maternal or paternal relatives of the child. This inquiry shall not be construed, however, to guarantee that the child will be placed with any person so identified. The county social worker shall initially contact the relatives given preferential consideration for placement to determine if they desire the child to be placed with them. Those desiring placement shall be assessed according to the factors enumerated in this subdivision. The county social worker shall document these efforts in the social study prepared pursuant to Section 358.1. The court shall authorize the county social worker, while assessing these relatives for the possibility of placement, to disclose to the relative, as appropriate, the fact that the child is in custody, the alleged reasons for the custody, and the projected likely date for the child's return home or placement for adoption or legal guardianship. However, this investigation shall not be construed as good cause for continuance of the dispositional hearing conducted pursuant to Section 358.

(b) In any case in which more than one relative requests preferential consideration pursuant to this section, each relative shall be considered under the factors enumerated in subdivision (a). Consistent with the legislative intent for children to be placed immediately with a relative, this section does not limit the county social worker's ability to place a child in the home of a relative or a nonrelative extended family member pending the consideration of other relatives who have requested preferential consideration.

(c) For purposes of this section:

(1) "Preferential consideration" means that the relative seeking placement shall be the first placement to be considered and investigated.

(2) "Relative" means an adult who is related to the child 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 these persons even if the marriage was terminated by death or dissolution.

(d) Subsequent to the hearing conducted pursuant to Section 358, whenever a new placement of the child must be made, consideration for placement shall again be given as described in this section to relatives who have not been found to be unsuitable and who will fulfill the child's reunification or permanent plan requirements. In addition to the factors described in subdivision (a), the county social worker shall consider whether the relative has established and maintained a relationship with the child.

(e) If the court does not place the child with a relative who has been considered for placement pursuant to this section, the court shall state for the record the reasons placement with that relative was denied.

(f) (1) With respect to a child who satisfies the criteria set forth in paragraph (2), the department and any licensed adoption agency may search for a relative and furnish identifying information relating to the child to that relative if it is believed the child's welfare will be promoted thereby.

(2) Paragraph (1) shall apply if both of the following conditions are satisfied:

(A) The child was previously a dependent of the court.

(B) The child was previously adopted and the adoption has been disrupted, set aside pursuant to Section 9100 or 9102 of the Family Code, or the child has been released into the custody of the department or a licensed adoption agency by the adoptive parent or parents.

(3) As used in this subdivision, "relative" includes a member of the child's birth family and nonrelative extended family members, regardless of whether the parental rights were terminated, provided that both of the following are true:

(A) No appropriate potential caretaker is known to exist from the child's adoptive family, including nonrelative extended family members of the adoptive family.

(B) The child was not the subject of a voluntary relinquishment by the birth parents pursuant to Section 8700 of the Family Code or Section 1255.7 of the Health and Safety Code.

*(g) Placement of an Indian child shall comply with the placement preferences set forth in Section 361.31.*

**SEC. 17.** Section 361.31 of the Welfare and Institutions Code is amended to read:

**361.31.** (a) If an Indian child is removed from the physical custody of ~~his or her~~ *their* parents or Indian custodian pursuant to Section 361, the child's placement shall comply with this section. The placement shall be analyzed each time there is a change in placement.

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

(1) A member of the child's extended family, as defined in ~~Section~~ *subdivision (c) of Section 224.1 and Section* 1903 of the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.).

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

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

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

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

(1) A member of the child's extended family, as defined in ~~Section~~ *subdivision (c) of Section 224.1 and Section* 1903 of the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.).

(2) Other members or citizens of the child's *Indian* tribe.

(3) Another Indian family.

(d) Notwithstanding the placement preferences listed in subdivisions (b) and (c), if a different order of placement preference is established by the child's *Indian* tribe, the court ~~or~~ *shall give full faith and credit to the preference established by the tribe, as they would to the laws of another state under United States Constitution, and the* agency effecting the placement shall follow ~~the~~ *that* order of ~~preference established by the tribe,~~ *preference,* so long as the placement is the least restrictive setting appropriate to the particular needs of the child as provided in subdivision (b).

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

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

(g) Any ~~person or court~~ *person, county welfare agency, or probation department* involved in the placement of an Indian child shall *conduct a diligent search for placements that meet the placement preferences and* use the services of the Indian child's tribe, whenever available through the tribe, in seeking to secure placement within the order of placement preference established in this section and in the supervision of the placement. *The responsibility for seeking a placement consistent with subdivision (b), (c), and (d) shall remain with the person, county welfare agency, or probation department seeking the placement.*

(h) If a party asserts that good cause not to follow the placement preferences exists, the reason for that assertion shall be stated orally on the record or provided in writing to the parties to the Indian child custody proceeding and the court.

(i) The party seeking departure from the placement preferences shall bear the burden of proving by clear and convincing evidence that there is good cause to depart from the placement preferences.

(j) A state court's determination of good cause to depart from the placement preferences shall be made on the record or in writing and shall be based on one or more of the following considerations:

(1) The request of one or both of the Indian child's parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference.

(2) The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made.

(3) The presence of a sibling attachment that can be maintained only through a particular placement.

(4) The extraordinary physical, mental, or emotional needs of the Indian child, including specialized treatment services that may be unavailable in the community where families who meet the placement preferences live.

(5) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted. For purposes of this paragraph, the standard for determining whether a placement is unavailable shall conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

(k) A placement shall not depart from the preferences based on the socioeconomic status of any placement relative to another placement.

(l) A placement shall not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a nonpreferred placement that was made in violation of the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.).

(m) A record of each foster care placement or adoptive placement of an Indian child shall be maintained in perpetuity by the State Department of Social Services. The record shall document the active efforts to comply with the applicable order of preference specified in this section, and shall be made available within 14 days of a request by the child's tribe.

**SEC. 18.** Section 361.4 of the Welfare and Institutions Code is amended to read:

**361.4.** (a) Prior to making the emergency placement of a child pursuant to subdivision (d) of Section 309 or Section 361.45, the county welfare department shall do all of the following:

(1) Conduct an in-home inspection to assess the safety of the home and the ability of the relative or nonrelative extended family member to care for the child's needs.

(2) Cause a state-level criminal records check to be conducted by an appropriate government agency through the California Law Enforcement Telecommunications System (CLETS) pursuant to Section 16504.5 for all of the following:

(A) All persons over 18 years of age living in the home of the relative or nonrelative extended family member seeking emergency placement of the child, excluding any person who is a nonminor dependent, as defined in subdivision (v) of Section 11400.

(B) At the discretion of the county welfare department, any other person over 18 years of age known to the department to be regularly present in the home, other than professionals providing professional services to the child.

(C) At the discretion of the county welfare department, any person over 14 years of age living in the home who the department believes may have a criminal record. This subparagraph shall not apply to a child under the jurisdiction of the juvenile court.

(3) Conduct a check of allegations of prior child abuse or neglect concerning the relative or nonrelative extended family member and other adults in the home.

(b) (1) If CLETS information obtained pursuant to paragraph (2) of subdivision (a) indicates that the person has no criminal record, the child may be placed in the home on an emergency basis.

(2) If the CLETS information obtained pursuant to paragraph (2) of subdivision (a) indicates that the person has been convicted of an offense described in subparagraph (B) or (D) of paragraph (2) of subdivision (g) of Section 1522 of the Health and Safety Code, the child shall not be placed in the home unless a criminal record exemption has been granted using the exemption criteria specified in paragraph (2) of subdivision (g) of Section 1522 of the Health and Safety Code.

(3) Notwithstanding paragraph (2), a child may be placed on an emergency basis if the CLETS information obtained pursuant to paragraph (2) of subdivision (a) indicates that the person has been convicted of an offense not described in subclause (II) of clause (i) of subparagraph (B) of paragraph (2) of subdivision (g) of Section 1522 of the Health and Safety Code, pending a criminal record exemption decision based on live scan fingerprint results if all of the following conditions are met:

(A) The conviction does not involve an offense against a child.

(B) The deputy director or director of the county welfare department, or their designee, determines that the placement is in the best interests of the child.

(C) No party to the case objects to the placement.

(4) If the CLETS information obtained pursuant to paragraph (2) of subdivision (a) indicates that the person has been arrested for any offense described in paragraph (2) of subdivision (e) of Section 1522 of the Health and Safety Code, the child shall not be placed on an emergency basis in the home until the investigation required by paragraph (1) of subdivision (e) of Section 1522 of the Health and Safety Code has been completed and the deputy director or director of the county welfare department, or their designee, and the court have considered the investigation results when determining whether the placement is in the best interests of the child.

(5) If the CLETS information obtained pursuant to paragraph (2) of subdivision (a) indicates that the person has been convicted of an offense described in subparagraph (A) of paragraph (2) of subdivision (g) of Section 1522 of the Health and Safety Code, the child shall not be placed in the home on an emergency basis.

(6) Notwithstanding paragraphs (2) and (5), or the placement recommendation of the county placing agency, the court may authorize the placement of a child on an emergency basis in the home of a relative, regardless of the status of any criminal record exemption or resource family approval, if the court finds that the placement does not pose a risk to the health and safety of the child.

(c) Within 10 calendar days following the criminal records check conducted through the CLETS or ~~five~~ *5* business days of making the emergency placement, whichever is sooner, the social worker shall ensure that a fingerprint clearance check of the relative or nonrelative extended family member and any other person whose criminal record was obtained pursuant to this section is initiated through the Department of Justice to ensure the accuracy of the criminal records check conducted through the CLETS and ensure criminal record clearance of the relative or nonrelative extended family member and all adults in the home pursuant to subparagraph (A) of paragraph (2) of subdivision (d) of Section 16519.5 and any associated written directives or regulations.

(d) An identification card from a foreign consulate or foreign passport shall be considered a valid form of identification for conducting a criminal records check pursuant to this section.

*(e) Notwithstanding any other law, a federally recognized tribe or tribal organization, as defined in subdivision (d) of Section 10553.12, is authorized, but not required, to approve homes for the purpose of the emergency placement of an Indian child as defined in Section 224.1, if the federally recognized tribe or tribal organization provides written confirmation to the county agency that all steps required under subdivisions (a) and (b) have been completed. An emergency placement for an Indian child approved by a federally recognized tribe or tribal organization shall be eligible for the same funding afforded any other emergency placement approved by a county agency, including, but not limited to, funding under Sections 11402, 11461.3, and 11461.36.*

**SEC. 19.** Section 366.21 of the Welfare and Institutions Code is amended to read:

**366.21.** (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Sections 294 and 295, notice of the hearing shall be provided pursuant to Section 293.

(c) At least 10 calendar days before the hearing, the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable them to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, including, but not limited to, efforts to maintain relationships between a child who is 10 years of age or older and has been in out-of-home placement for six months or longer and individuals who are important to the child, consistent with the child's best interests; the progress made; and, where relevant, the prognosis for return of the child to the physical custody of their parent or legal guardian; and shall make their recommendation for disposition. If the child is a member of a sibling group described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, the report and recommendation may also take into account those factors described in subdivision (e) relating to the child's sibling group. If the recommendation is not to return the child to a parent or legal guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or legal guardian, counsel for the child, and any court-appointed child advocate with a copy of the report, including their recommendation for disposition, at least 10 calendar days before the hearing. The report may be served pursuant to Section 212.5. In the case of a child removed from the physical custody of their parent or legal guardian, the social worker shall, at least 10 calendar days before the hearing, provide a summary of their recommendation for disposition to any foster parents, relative caregivers, and certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, community care facility, or foster family agency having the physical custody of the child. The social worker shall include a copy of the Judicial Council's Caregiver Information Form (JV-290) with the summary of their recommendation to the child's foster parents, relative caregivers, or foster parents approved for adoption, in the caregiver's primary language when available, along with information on how to file the form with the court. The form and summary of the recommendation may be served electronically pursuant to Section 212.5.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or a foster family agency that may result in the return of the child to the physical custody of their parent or legal guardian, or in adoption or the creation of a legal guardianship, or in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption, the facility or agency shall file with the court a report, or a Judicial Council's Caregiver Information Form (JV-290), containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, the foster parent, relative caregiver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, may file with the court a report containing their recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) (1) At the review hearing held 6 months after the initial dispositional hearing, but no later than 12 months after the date the child entered foster care as determined in Section 361.49, whichever occurs earlier, after considering the admissible and relevant evidence, the court shall order the return of the child to the physical custody of their parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to their 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 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 the parent's or guardian's ability to exercise custody and control regarding their child, provided the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The court shall also consider whether the child can be returned to the custody of their parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with their parent. The fact that the parent is enrolled in a certified substance abuse treatment facility shall not be, for that reason alone, prima facie evidence of detriment. 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; and shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which they availed themselves of services provided, taking into account the particular barriers to a minor parent or a nonminor dependent parent, or an incarcerated, institutionalized, detained, or deported parent's or legal guardian's access to those court-mandated services and ability to maintain contact with their child.

(2) Regardless of whether the child is returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and, when relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of their parent or legal guardian. The court shall also inform the parent or legal guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case in which, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

(3) If the child was under three years of age on the date of the initial removal, or is a member of a sibling group described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under three years of age on the date of initial removal or is a member of a sibling group described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, may be returned to their parent or legal guardian within ~~six~~ *6* months or that reasonable services have not been provided, ~~the~~ *or, in the case of an Indian child, active efforts as defined in subdivision (f) of Section 224.1 have not been made, the* court shall continue the case to the 12-month permanency hearing.

(4) For the purpose of placing and maintaining a sibling group together in a permanent home, the court, in making its determination to schedule a hearing pursuant to Section 366.26 for some or all members of a sibling group, as described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, shall review and consider the social worker's report and recommendations. Factors the report shall address, and the court shall consider, may include, but need not be limited to, whether the sibling group was removed from parental care as a group, the closeness and strength of the sibling bond, the ages of the siblings, the appropriateness of maintaining the sibling group together, the detriment to the child if sibling ties are not maintained, the likelihood of finding a permanent home for the sibling group, whether the sibling group is currently placed together in a preadoptive home or has a concurrent plan goal of legal permanency in the same home, the wishes of each child whose age and physical and emotional condition permits a meaningful response, and the best interests of each child in the sibling group. The court shall specify the factual basis for its finding that it is in the best interests of each child to schedule a hearing pursuant to Section 366.26 within 120 days for some or all of the members of the sibling group.

(5) If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. The court shall take into account any particular barriers to a parent's ability to maintain contact with their child due to the parent's incarceration, institutionalization, detention by the United States Department of Homeland Security, or deportation. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

(6) If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (b) of Section 361.2.

(7) In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or legal guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

(8) If the child is not returned to their parent or legal guardian, the court shall determine by clear and convincing evidence whether reasonable services that were designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child have been provided or offered to the parent or legal ~~guardian.~~ *guardian, and, in the case of an Indian child, whether the agency has made active efforts, as defined in Section 224.1, to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.* The court shall order that those services be initiated, continued, or terminated.

(f) (1) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to Section 361.49. At the permanency hearing, the court shall determine the permanent plan for the child, which shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. After

considering the relevant and admissible evidence, the court shall order the return of the child to the physical custody of their parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to their 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.

(A) At the permanency 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 the parent's or legal guardian's ability to exercise custody and control regarding their 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 court shall also determine by clear and convincing evidence whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal ~~guardian.~~ *guardian, and, in the case of an Indian child, whether the agency has made active efforts, as defined in Section 224.1, to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.*

(B) The court shall also consider whether the child can be returned to the custody of their parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with their parent. The fact that the parent is enrolled in a certified substance abuse treatment facility shall not be, for that reason alone, prima facie evidence of detriment.

(C) 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 they availed themselves of services provided, taking into account the particular barriers to a minor parent or a nonminor dependent parent, or an incarcerated, institutionalized, detained, or deported parent's or legal guardian's access to those court-mandated services and ability to maintain contact with their child, and shall make appropriate findings pursuant to subdivision (a) of Section 366.

(D) For each youth 16 years of age and older, the court shall also determine whether services have been made available to assist them in making the transition from foster care to successful adulthood.

(2) Regardless of whether the child is returned to their 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 the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366. If the child is not returned to their parent or legal guardian, the court shall consider, and state for the record, in-state and out-of-state placement options. 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 the best interests of the child.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in subparagraph (A), (B), or (C) of paragraph (1) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or legal guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to ~~six~~ *6* months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of their parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of their parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal ~~guardian.~~ *guardian, or in the case of an Indian child, that active efforts as defined in subdivision (f) of Section 224.1 have not been made by the agency.* For purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of their parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of their treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and

special needs.

(i) For purposes of this subdivision, the court's decision to continue the case based on a finding or substantial probability that the child will be returned to the physical custody of their parent or legal guardian is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interests of the child.

(ii) The court shall inform the parent or legal guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.26 may be instituted. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or legal ~~guardian.~~ *guardian, or, in the case of an Indian child, that the agency has made active efforts, as defined in Section 224.1, to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.*

(2) Continue the case for up to ~~six~~ *6* months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of their parent or legal guardian, if the parent has been arrested and issued an immigration hold, detained by the United States Department of Homeland Security, or deported to their country of origin, and the court determines either that there is a substantial probability that the child will be returned to the physical custody of their parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal ~~guardian.~~ *guardian, or, in the case of an Indian child, that active efforts, as defined in Section 224.1, have not been made.*

(3) For purposes of paragraph (2), in order to find a substantial probability that the child will be returned to the physical custody of their parent or legal guardian and safely maintained in the home within the extended period of time, the court shall find all of the following:

(A) The parent or legal guardian has consistently and regularly contacted and visited with the child, taking into account any particular barriers to a parent's ability to maintain contact with their child due to the parent's arrest and receipt of an immigration hold, detention by the United States Department of Homeland Security, or deportation.

(B) The parent or legal guardian has made significant progress in resolving the problems that led to the child's removal from the home.

(C) The parent or legal guardian has demonstrated the capacity or ability both to complete the objectives of their treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

(4) Order that a hearing be held within 120 days, pursuant to Section 366.26, but only if the court does not continue the case to the permanency planning review hearing and there is clear and convincing evidence that reasonable services have been provided or offered to the parents or legal ~~guardians.~~ *guardians, or in the case of an Indian child, that the agency has made active efforts, as defined in Section 224.1, to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.* On and after January 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered if the child is a nonminor dependent, unless the nonminor dependent is an Indian child and tribal customary adoption is recommended as the permanent plan.

(5) Order that the child remain in foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interests of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship as of the hearing date. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency that adoption is not in the best interests of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and shall not preclude a different recommendation at a later date if the child's circumstances change. On and after January 1, 2012, the nonminor dependent's legal status as an adult is in and of itself a compelling reason not to hold a hearing pursuant to Section 366.26. The court may order that a nonminor dependent who otherwise is eligible pursuant to Section 11403 remain in a planned, permanent living arrangement.

(A) The court shall make factual findings identifying any barriers to achieving the permanent plan as of the hearing date. When the child is under 16 years of age, the court shall order a permanent plan of return home,

adoption, tribal customary adoption in the case of an Indian child, legal guardianship, or placement with a fit and willing relative, as appropriate. When the child is 16 years of age or older, or is a nonminor dependent, and no other permanent plan is appropriate at the time of the hearing, the court may order another planned permanent living arrangement, as described in paragraph (2) of subdivision (i) of Section 16501.

(B) If the court orders that a child who is 10 years of age or older remain in 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.

(C) If the child is not returned to their parent or legal guardian, the court shall consider, and state for the record, in-state and out-of-state options for 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 the best interests of the child.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the 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 pending the hearing unless it finds that visitation would be detrimental to the child. The court shall make any other appropriate orders to enable the child to maintain relationships with individuals, other than the child's siblings, who are important to the child, consistent with the child's best interests. When the court orders a termination of reunification services to the parent or legal guardian, it shall also order that the child's caregiver receive the child's birth certificate in accordance with Sections 16010.4 and 16010.5. Additionally, when the court orders a termination of reunification services to the parent or legal guardian, it shall order, when appropriate, that a child who is 16 years of age or older receive their birth certificate.

(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 county adoption agency, or the State Department of Social Services when it is acting as an adoption agency, to prepare an assessment that shall include:

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

(B) A review of the amount of and nature of any contact between the child and their parents or legal guardians and other members of their 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 purpose of this subparagraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

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

(ii) The evaluation pursuant to clause (i) shall include, but is not limited to, providing a copy of the complete health and education summary as required under Section 16010, including the name and contact information of the person or persons currently holding the right to make educational decisions for the child.

(iii) In instances where it is determined that disclosure pursuant to clause (ii) of the contact information of the person or persons currently holding the right to make educational decisions for the child poses a threat to the health and safety of that individual or those individuals, that contact information shall be redacted or withheld from the evaluation.

(D) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, including the 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 guardian is a relative of the minor, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3 and in Section 361.4.

(E) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the degree of attachment of the child to the prospective relative guardian or adoptive parent, the relative's or adoptive parent's strong commitment to caring permanently for the child, the motivation for seeking adoption or guardianship, a statement from the child concerning placement and the adoption or guardianship, and whether the child, if over 12 years of age, has been consulted about the proposed relative guardianship arrangements, unless the child's age or physical, emotional, or other condition precludes their meaningful response, and if so, a description of the condition.

(F) A description of efforts to be made to identify a prospective adoptive parent or legal guardian, including, but not limited to, child-specific recruitment and listing on an adoption exchange within the state or out of the state.

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

(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 tribal customary 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) Regardless of their immigration status, 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. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, as provided for in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, the relative caregiver shall be informed about the terms and conditions of the negotiated agreement pursuant to Section 11387 and shall agree to its execution prior to the hearing held pursuant to Section 366.26. A copy of the executed negotiated agreement shall be attached to the assessment.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with an approved relative caregiver, and juvenile court dependency is subsequently dismissed, the minor shall be eligible for aid under the Kin-GAP Program, as provided for in Article 4.5 (commencing with Section 11360) or Article 4.7 (commencing with Section 11385), as applicable, of Chapter 2 of Part 3 of Division 9.

(k) 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. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, as provided for in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, "relative" as used in this section has the same meaning as "relative" as defined in subdivision (c) of Section 11391.

(l) For purposes of this section, evidence of any of the following circumstances shall not, in and of itself, be deemed a failure to provide or offer reasonable services:

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

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

(3) 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.

**SEC. 20.** 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 in this section are the exclusive procedures for conducting these hearings. The procedures in Part 2 (commencing with Section 3020) of Division 8 of the Family Code are 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,~~ *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~~ *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 permanently placed with a fit and willing relative, subject to the periodic review of the juvenile court under Section 366.3.

(7) Order that the child remain in foster care, subject to the conditions described in paragraph (4) of subdivision (c) and the periodic review of the juvenile court under Section 366.3.

In choosing among the alternatives in this subdivision, 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)~~ *(c)* 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~~ *child does* 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 their 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,"~~ *member"* as defined in *Section 224.1 and Section 1903 of* the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. ~~1903(2)).~~ *1901 et seq.).*

(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,~~ *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~~ *environment,* and the removal of the child from the physical custody of their foster parent or Indian custodian would be detrimental to the emotional well-being of the child. This clause does not apply to ~~any~~ *a* 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~~ *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 their tribal community or the child's tribal membership rights.

(II) The child's tribe has identified guardianship, foster care with a fit and willing relative, tribal customary adoption, or another planned permanent living arrangement for the child.

(III) The child is a nonminor dependent, and the nonminor and the nonminor's tribe have identified tribal customary adoption for the nonminor.

(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 older.

(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,~~ *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 order that the present caretakers or other appropriate persons shall become legal guardians of the child, or, in the case of an Indian child, consider a tribal customary adoption pursuant to Section 366.24. Legal guardianship shall be considered before continuing the child in foster care under any other permanent ~~plan,~~ *plan* if it is in the best interests of the child and if a suitable guardian can be found. If the child continues in foster care, the court shall make factual findings identifying ~~any~~ barriers to achieving adoption, tribal customary adoption in the case of an Indian child, legal guardianship, or placement with a fit and willing relative as of the date of the hearing. A child who is 10 years of age or ~~older,~~ *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~~ *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) (i) If the child is living with an approved relative who is willing and capable of providing a stable and permanent ~~environment,~~ *environment* but not willing to become a legal guardian as of the hearing date, the court shall order a permanent plan of placement with a fit and willing relative, and 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.

(ii) If the child is living with a nonrelative caregiver who is willing and capable of providing a stable and permanent ~~environment,~~ *environment* but not willing to become a legal guardian as of the hearing date, the court shall order that the child remain in foster care with a permanent plan of return home, adoption, legal guardianship, or placement with a fit and willing relative, as appropriate. If the child is 16 years of age or older, or a nonminor dependent, and no other permanent plan is appropriate at the time of the hearing, the court may order another planned permanent living arrangement, as described in paragraph (2) of subdivision (i) of Section 16501. Regardless of the age of the child, 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 caregiver.

(iii) If the child is living in a group home or, on or after January 1, 2017, a short-term residential therapeutic program, the court shall order that the child remain in foster care with a permanent plan of return home, adoption, tribal customary adoption in the case of an Indian child, legal guardianship, or placement with a fit and willing relative, as appropriate. If the child is 16 years of age or older, or a nonminor dependent, and no other permanent plan is appropriate at the time of the hearing, the court may order another planned permanent living arrangement, as described in paragraph (2) of subdivision (i) of Section 16501.

(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, that placement with a fit and willing relative is not appropriate as of the hearing date, and that there are no suitable foster parents except certified family homes or resource families of a foster family agency 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 certified family home that has been certified by the agency as meeting licensing standards or with a resource family approved by the agency. 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 conducted 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 (c) 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 assessment may also include the naming of a prospective successor guardian, if one is identified. In the event of the incapacity or death of the appointed guardian, the named successor guardian may be assessed and appointed pursuant to this section. 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 conducted 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) (A) 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 a plan of adoption is not currently suitable, 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.

(B) Notwithstanding any other law, an adoption case file, including a juvenile case file, as defined in subdivision (e) of Section 827, may be inspected and copied by the department for the purpose of completing the duties pursuant to this paragraph.

(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 their 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,~~ *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 their 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,~~ *parents* if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

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

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

(iii) The child is afraid to testify in front of their 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~~ *An* 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, county adoption agency, 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, county adoption agency, or 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, county adoption agency, 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) (1) Notwithstanding any other 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.

(2) 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.

(i) If a party is present at the time of the making of the order, the notice shall be made orally to the party.

(ii) If the party is not present at the time of making the order, the notice shall be made by the clerk of the court by first-class mail to the last known address of a party or by electronic service pursuant to Section 212.5. If the notice is for a hearing at which the social worker will recommend the termination of parental rights, the notice may be electronically served pursuant to Section 212.5, but only in addition to service of the notice by first-class mail.

(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 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, county adoption agency, 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 ~~homestudy.~~ *home study.*

(B) Cooperating with an adoption ~~homestudy.~~ *home study.*

(C) Being designated by the court or the 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, county adoption agency, or 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, the child, if the child is 10 years of age or older, and, where it is known or there is reason to know that the child is an Indian child, as defined by Section 224.1, the child's tribe, 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, the child's tribe, 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),~~ *(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~~ *interest. 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, county adoption agency, 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,~~ *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, county adoption agency, or 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) When an Indian child is removed from the home of a prospective adoptive parent pursuant to this section, the placement preferences contained in Section 361.31 and the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.) apply to the subsequent placement of the child.

(8) 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.

**SEC. 21.** Section 706.6 of the Welfare and Institutions Code is amended to read:

**706.6.** (a) Services to minors are best provided in a framework that integrates service planning and delivery among multiple service systems, including the mental health system, using a team-based approach, such as a child and family team. A child and family team brings together individuals that engage with the child or youth and family in assessing, planning, and delivering services. Use of a team approach increases efficiency, and thus reduces cost, by increasing coordination of formal services and integrating the natural and informal supports available to the child or youth and family.

(b) (1) For the purposes of this section, "child and family team" has the same meaning as in paragraph (4) of subdivision (a) of Section 16501.

(2) In its development of the case plan, the probation agency shall consider and document any recommendations of the child and family team, as defined in paragraph (4) of subdivision (a) of Section 16501. The agency shall document the rationale for any inconsistencies between the case plan and the child and family team recommendations.

(c) A case plan prepared as required by Section 706.5 shall be submitted to the court. It shall either be attached to the social study or incorporated as a separate section within the social study. The case plan shall include, but not be limited to, the following information:

(1) A description of the circumstances that resulted in the minor being placed under the supervision of the probation department and in foster care.

(2) Documentation of the preplacement assessment of the minor's and family's strengths and service needs showing that preventive services have been provided, and that reasonable efforts to prevent out-of-home placement have been made. The assessment shall include the type of placement best equipped to meet those needs.

(3) (A) A description of the type of home or institution in which the minor is to be placed, and the reasons for that placement decision, including a discussion of the safety and appropriateness of the placement, including the recommendations of the child and family team, if available.

(B) An appropriate placement is a placement in the least restrictive, most family-like environment that promotes normal childhood experiences, in closest proximity to the minor's home, that meets the minor's best interests and special needs.

(4) Effective January 1, 2010, to ensure the educational stability of the child while in foster care, both of the following:

(A) Information providing assurances that the placement agency has taken into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement.

(B) Information providing assurances that the placement agency has coordinated with appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement, or, if remaining in that school is not in the best interests of the child, that the placement agency and the local educational agency are to provide immediate and appropriate enrollment in a new school and provide all of the child's educational records to the new school.

(5) Specific time-limited goals and related activities designed to enable the safe return of the minor to the minor's home, or in the event that return to the minor's home is not possible, activities designed to result in permanent placement or emancipation. Specific responsibility for carrying out the planned activities shall be assigned to one or more of the following:

(A) The probation department.

(B) The minor's parent or parents or legal guardian or guardians, as applicable.

(C) The minor.

(D) The foster parents or licensed agency providing foster care.

(6) The projected date of completion of the case plan objectives and the date services will be terminated.

(7) (A) Scheduled visits between the minor and the minor's family and an explanation if no visits are made.

(B) Whether the child has other siblings, and, if any siblings exist, all of the following:

(i) The nature of the relationship between the child and the child's siblings.

(ii) The appropriateness of developing or maintaining the sibling relationships under Section 16002.

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

(iv) If the siblings are not placed together, all of the following:

(I) The frequency and nature of the visits between the siblings.

(II) If there are visits between the siblings, whether the visits are supervised or unsupervised. If the visits are supervised, a discussion of the reasons why the visits are supervised, and what needs to be accomplished in order for the visits to be unsupervised.

(III) If there are visits between the siblings, a description of the location and length of the visits.

(IV) Any plan to increase visitation between the siblings.

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

(vi) The continuing need to suspend sibling interaction, if applicable, under subdivision (c) of Section 16002.

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

(8) (A) When placement is made in a resource family home, short-term residential therapeutic program, or other children's residential facility that is either a substantial distance from the home of the minor's parent or legal guardian or out of state, the case plan shall specify the reasons why the placement is the most appropriate and is in the best interest of the minor.

(B) When an out-of-state residential facility placement is recommended or made, the case plan shall comply with Section 727.1 of this code and Section 7911.1 of the Family Code. In addition, the case plan shall include documentation that the county placing agency has satisfied Section 16010.9. The case plan also shall address what in-state services or facilities were used or considered and why they were not recommended.

(9) If applicable, efforts to make it possible to place siblings together, unless it has been determined that placement together is not in the best interest of one or more siblings.

(10) A schedule of visits between the minor and the probation officer, including a monthly visitation schedule for those children placed in short-term residential therapeutic programs or out-of-state residential facilities, as defined in subdivision (b) of Section 7910 of the Family Code.

(11) Health and education information about the minor, school records, immunizations, known medical problems, and any known medications the minor may be taking, names and addresses of the minor's health and educational providers; the minor's grade level performance; assurances that the minor's placement in foster care takes into account proximity to the school in which the minor was enrolled at the time of placement; and other relevant health and educational information.

(12) When out-of-home services are used and the goal is reunification, the case plan shall describe the services that were provided to prevent removal of the minor from the home, those services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail.

(13) (A) For a permanency planning hearing, an updated recommendation for a permanent plan for the minor. The identified permanent plan for a minor under 16 years of age shall be return home, adoption, legal guardianship, or placement with a fit and willing relative. The case plan shall identify any barriers to achieving legal permanence and the steps the agency will take to address those barriers.

(B) If, after considering reunification, adoptive placement, legal guardianship, or permanent placement with a fit and willing relative the probation officer recommends placement in a planned permanent living arrangement for a minor 16 years of age or older, the case plan shall include documentation of a compelling reason or reasons why termination of parental rights is not in the minor's best interest. For purposes of this subdivision, a "compelling reason" shall have the same meaning as in subdivision (c) of Section 727.3. The case plan shall also identify the intensive and ongoing efforts to return the minor to the home of the parent, place the minor for adoption, establish a legal guardianship, or place the minor with a fit and willing relative, as appropriate. Efforts shall include the use of technology, including social media, to find biological family members of the minor.

(14) For each review hearing, an updated description of the services that have been provided to the minor under the plan and an evaluation of the appropriateness and effectiveness of those services.

(15) A statement that the parent or legal guardian and the minor have had an opportunity to participate in the development of the case plan, to review the case plan, to sign the case plan, and to receive a copy of the plan, or an explanation of why the parent, legal guardian, or minor was not able to participate or sign the case plan.

(16) For a minor in out-of-home care who is 14 years of age or older, a written description of the programs and services, which will help the minor prepare for the transition from foster care to successful adulthood.

(17) On and after the date required by paragraph (9) of subdivision (h) of Section 11461:

(A) The minor's tier, if applicable, as determined by the IP-CANS assessment for purposes of the Tiered Rate Structure under subdivision (h) of Section 11461.

(B) If applicable, the plan to meet the minor's Immediate Needs, as defined in paragraph (2) of subdivision (c) of Section 16562, using funding made available for that purpose.

(C) The strengths building activities the minor is engaged in, or desires to be engaged in, a brief description of the strengths building goals identified in the IP-CANS, and the Spending Plan Report, as defined in subdivision (c) of Section 16565, for a minor eligible for the Strengths Building Child and Family Determination Program established in Section 16565.

(d) The following shall apply:

(1) The agency selecting a placement shall consider, in order of priority:

(A) Placement with relatives, nonrelated extended family members, and tribal members.

(B) Foster family homes and certified homes or resource families of foster family agencies.

(C) Treatment and intensive treatment certified homes or resource families of foster family agencies, or multidimensional treatment foster homes or therapeutic foster care homes.

(D) Group care placements in the following order:

(i) Short-term residential therapeutic programs.

(ii) Group homes vendored by a regional center.

(iii) Community treatment facilities.

(iv) Out-of-state residential facilities as authorized by subdivision (b) of Section 727.1.

*(2) In an Indian child custody proceeding as defined in subdivision (d) of Section 224.1, the placement shall comply with the placement preferences set forth in Section 361.31.*

~~(2)~~ *(3)* Although the placement options shall be considered in the preferential order specified in paragraph (1), the placement of a child may be with any of these placement settings in order to ensure the selection of a safe placement setting that is in the child's best interests and meets the child's special needs.

~~(3)~~ *(4)* (A) A minor may be placed into a community care facility licensed as a short-term residential therapeutic program, as defined in subdivision (ad) of Section 11400, provided the case plan indicates that the placement is for the purposes of providing short-term, specialized, intensive, and trauma-informed treatment for the minor, the case plan specifies the need for, nature of, and anticipated duration of this treatment, and the case plan includes transitioning the minor to a less restrictive environment and the projected timeline by which the minor will be transitioned to a less restrictive environment.

(B) On and after October 1, 2021, within 30 days of the minor's placement in a short-term residential therapeutic program, and, on and after July 1, 2022, within 30 days of the minor's placement in a community treatment facility, the case plan shall document all of the following:

(i) The reasonable and good faith effort by the probation officer to identify and include all required individuals in the child and family team.

(ii) All contact information for members of the child and family team, as well as contact information for other relatives and nonrelative extended family members who are not part of the child and family team.

(iii) Evidence that meetings of the child and family team, including the meetings related to the determination required under Section 4096, are held at a time and place convenient for the family.

(iv) If reunification is the goal, evidence that the parent from whom the minor or nonminor dependent was removed provided input on the members of the child and family team.

(v) Evidence that the determination required under Section 4096 was conducted in conjunction with the child and family team.

(vi) The placement preferences of the minor or nonminor dependent and the child and family team relative to the determination and, if the placement preferences of the minor or nonminor dependent or the child and family team are not the placement setting recommended by the qualified individual conducting the determination, the reasons why the preferences of the team or minor or nonminor dependent were not recommended.

(C) Following the court review required pursuant to Section 727.12, the case plan shall document the court's approval or disapproval of the placement.

(D) When the minor or nonminor dependent has been placed in a short-term residential therapeutic program or a community treatment facility for more than 12 consecutive months or 18 nonconsecutive months, or, in the case of a minor who has not attained 13 years of age, for more than ~~six~~ *6* consecutive or nonconsecutive months, the case plan shall include both of the following:

(i) Documentation of the information submitted to the court pursuant to subparagraph (B) of paragraph (1) of subdivision (c) of Section 706.5.

(ii) Documentation that the chief probation officer of the county probation department, or their designee, has approved the continued placement of the minor or nonminor dependent in the setting.

(E) (i) On and after October 1, 2021, prior to discharge from a short-term residential therapeutic program, and, on and after July 1, 2022, prior to discharge from a community treatment facility, the case plan shall include a description of the type of in-home or institution-based services to encourage the safety, stability, and appropriateness of the next placement, including the recommendations of the child and family team, if available.

(ii) A plan, developed in collaboration with the short-term residential therapeutic program or community treatment facility, as applicable, for the provision of discharge planning and family-based aftercare support pursuant to Section 4096.6.

**SEC. 22.** Section 727 of the Welfare and Institutions Code is amended to read:

**727.** (a) (1) If a minor or nonminor is adjudged a ward of the court on the ground that the minor or nonminor is a person described by Section 601 or 602, the court may make any reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the minor or nonminor, including medical treatment, subject to further order of the court.

(2) In the discretion of the court, a ward may be ordered to be on probation without supervision of the probation officer. The court, in so ordering, may impose on the ward any and all reasonable conditions of behavior as may be appropriate under this disposition. A minor or nonminor who has been adjudged a ward of the court on the basis of the commission of any of the offenses described in subdivision (b) or paragraph (2) of subdivision (d) of Section 707, Section 459 of the Penal Code, or subdivision (a) of Section 11350 of the Health and Safety Code, shall not be eligible for probation without supervision of the probation officer. A minor or nonminor who has been adjudged a ward of the court on the basis of the commission of an offense involving the sale or possession for sale of a controlled substance, except misdemeanor offenses involving marijuana, as specified in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, or of an offense in violation of Section 32625 of the Penal Code, shall be eligible for probation without supervision of the probation officer only if the court determines that the interests of justice would best be served and states reasons on the record for that determination.

(3) In all other cases, the court shall order the care, custody, and control of the minor or nonminor to be under the supervision of the probation officer.

(4) It is the responsibility, pursuant to Section 672(a)(2)(B) of Title 42 of the United States Code, of the probation agency to determine the appropriate placement for the ward once the court issues a placement order. In determination of the appropriate placement for the ward, the probation officer shall consider any recommendations of the child and family. *In an Indian child custody proceeding as defined in subdivision (d) of Section 224.1, the provisions of Section 361.31 shall apply.* The probation agency may place the minor or nonminor in any of the following:

(A) The approved home of a relative or the approved home of a nonrelative, extended family ~~member,~~ *member* as defined in Section ~~362.7.~~ *362.7, or, in an Indian child custody proceeding, an extended family member as defined in paragraph (1) of subdivision (c) of Section 224.1.* If a decision has been made to place the minor in the home of a relative, the court may authorize the relative to give legal consent for the minor's medical, surgical, and dental care and education as if the relative caregiver were the custodial parent of the minor.

(B) A foster home, the approved home of a resource ~~family,~~ *family* as defined in Section 16519.5, *a tribally approved home as described by subdivision (r) of Section 224.1 and Section 10553.12,* or a home or facility ~~in accordance with~~ *as described in Section 361.31 and Section 105 of* the federal Indian Child Welfare Act *of 1978* (25 U.S.C. Sec. ~~1901 et seq.).~~ *1915).*

(C) A suitable licensed community care facility, as identified by the probation officer, except a youth homelessness prevention center licensed by the State Department of Social Services pursuant to Section 1502.35 of the Health and Safety Code.

(D) A foster family agency, as defined in subdivision (g) of Section 11400 and paragraph (4) of subdivision (a) of Section 1502 of the Health and Safety Code, in a suitable certified family home or with a resource family.

(E) A minor or nonminor dependent may be placed in a group home vendored by a regional center pursuant to Section 56004 of Title 17 of the California Code of Regulations or a short-term residential therapeutic program, as defined in subdivision (ad) of Section 11400 and paragraph (18) of subdivision (a) of Section 1502 of the Health and Safety Code. The placing agency shall also comply with requirements set forth in paragraph (9) of subdivision (e) of Section 361.2, that includes, but is not limited to, authorization, limitation on length of stay, extensions, and additional requirements related to minors. For youth 13 years of age ~~and~~ *or* older, the chief probation officer of the county probation department, or their designee, shall approve the placement if it is longer than 12 months, and no less frequently than every 12 months thereafter.

(F) (i) A minor adjudged a ward of the juvenile court shall be entitled to participate in age-appropriate extracurricular, enrichment, and social activities. A state or local regulation or policy shall not prevent, or create barriers to, participation in those activities. Each state and local entity shall ensure that private agencies that provide foster care services to wards have policies consistent with this section and that those agencies promote and protect the ability of wards to participate in age-appropriate extracurricular, enrichment, and social activities. A short-term residential therapeutic program or a group home administrator, a facility manager, or their responsible designee, and a caregiver, as defined in paragraph (1) of subdivision (a) of Section 362.04, shall use a reasonable and prudent parent standard, as defined in paragraph (2) of subdivision (a) of Section 362.04, in determining whether to give permission for a minor residing in foster care to participate in extracurricular, enrichment, and social activities. A short-term residential therapeutic program or a group home administrator, a facility manager, or their responsible designee, and a caregiver shall take reasonable steps to determine the appropriateness of the activity taking into consideration the minor's age, maturity, and developmental level. For every minor placed in a setting described in subparagraphs (A) through (E), inclusive, age-appropriate extracurricular, enrichment, and social activities shall include access to computer technology and the internet.

(ii) A short-term residential therapeutic program or a group home administrator, facility manager, or their responsible designee, is encouraged to consult with social work or treatment staff members who are most familiar with the minor at the group home or short-term residential therapeutic program in applying and using the reasonable and prudent parent standard.

(G) For nonminors, an approved supervised independent living setting, as defined in Section 11400, including a residential housing unit certified by a licensed transitional housing placement provider.

(5) The minor or nonminor shall be released from juvenile detention upon an order being entered under paragraph (3), unless the court determines that a delay in the release from detention is reasonable pursuant to Section 737.

(b) (1) To facilitate coordination and cooperation among agencies, the court may, at any time after a petition has been filed, after giving notice and an opportunity to be heard, join in the juvenile court proceedings any agency that the court determines has failed to meet a legal obligation to provide services to a minor, for whom a petition has been filed under Section 601 or 602, to a nonminor, as described in Section 303, or to a nonminor dependent, as defined in subdivision (v) of Section 11400. In any proceeding in which an agency is joined, the court shall not impose duties upon the agency beyond those mandated by law. The purpose of joinder under this section is to ensure the delivery and coordination of legally mandated services to the minor. The joinder shall not be maintained for any other purpose. Nothing in this section shall prohibit agencies that have received notice of the hearing on joinder from meeting prior to the hearing to coordinate services.

(2) The court has no authority to order services unless it has been determined through the administrative process of an agency that has been joined as a party, that the minor, nonminor, or nonminor dependent is eligible for those services. With respect to mental health assessment, treatment, and case management services pursuant to an individualized education program developed pursuant to Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of Division 4 of Title 2 of the Education Code, the court's determination shall be limited to whether the agency has complied with that chapter.

(3) For the purposes of this subdivision, "agency" means any governmental agency or any private service provider or individual that receives federal, state, or local governmental funding or reimbursement for providing services directly to a child, nonminor, or nonminor dependent.

(c) If a minor has been adjudged a ward of the court on the ground that the minor is a person described in Section 601 or 602, and the court finds that notice has been given in accordance with Section 661, and if the

court orders that a parent or guardian shall retain custody of that minor either subject to or without the supervision of the probation officer, the parent or guardian may be required to participate with that minor in a counseling or education program, including, but not limited to, parent education and parenting programs operated by community colleges, school districts, or other appropriate agencies designated by the court.

(d) (1) The juvenile court may direct any reasonable orders to the parents and guardians of the minor who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out subdivisions (a), (b), and (c), including orders to appear before a county financial evaluation officer, to ensure the minor's regular school attendance, and to make reasonable efforts to obtain appropriate educational services necessary to meet the needs of the minor.

(2) If counseling or other treatment services are ordered for the minor, the parent, guardian, or foster parent shall be ordered to participate in those services, unless participation by the parent, guardian, or foster parent is deemed by the court to be inappropriate or potentially detrimental to the minor.

(e) The court may, after receipt of relevant testimony and other evidence from the parties, affirm or reject the placement determination. If the court rejects the placement determination, the court may instruct the probation department to determine an alternative placement for the ward, or the court may modify the placement order to an alternative placement recommended by a party to the case after the court has received the probation department's assessment of that recommendation and other relevant evidence from the parties.

**SEC. 23.** Section 727.1 of the Welfare and Institutions Code is amended to read:

**727.1.** (a) If the court orders the care, custody, and control of the minor to be under the supervision of the probation officer for foster care placement pursuant to subdivision (a) of Section 727, the decision regarding choice of placement, pursuant to Section 706.6, shall be based upon selection of a safe setting that is the least restrictive or most family-like, and the most appropriate setting that meets the individual needs of the minor and is available, in proximity to the parent's home, consistent with the selection of the environment best suited to meet the minor's special needs and best interests. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code. *In an Indian child custody proceeding, the selection shall comply with the placement preferences set forth in Section 361.31.*

(b) Unless otherwise authorized by law, the court shall not order the placement of a minor who is adjudged a ward of the court on the basis that the ward is a person described by either Section 601 or 602 in an out-of-state residential facility, as defined in subdivision (b) of Section 7910 of the Family Code, unless the court finds, in its order of placement and based on evidence presented by the county probation department, that all of the following conditions are met:

(1) The out-of-state residential facility is licensed or certified for the placement of children by an agency of the state in which the ward will be placed.

(2) The out-of-state residential facility has been certified by the State Department of Social Services or is exempt from that certification, pursuant to Section 7911.1 of the Family Code.

(3) On and after July 1, 2021, the county probation department has fulfilled its responsibilities as set forth in Sections 4096 and 16010.9.

(4) The court has reviewed the documentation of any required assessment, technical assistance efforts, or recommendations and finds that in-state facilities or programs are unavailable or inadequate to meet the needs of the ward.

(c) If, upon inspection, the probation officer of the county in which the minor is adjudged a ward of the court determines that the out-of-state facility or program is not in compliance with the standards required under paragraph (2) of subdivision (b) or has an adverse impact on the health and safety of the minor, the probation officer may temporarily remove the minor from the facility or program. The probation officer shall promptly inform the court of the minor's removal, and shall return the minor to the court for a hearing to review the suitability of continued out-of-state placement. The probation officer shall, within one business day of removing the minor, notify the State Department of Social Services' Compact Administrator, and, within five working days, submit a written report of the findings and actions taken.

(d) The court shall review each of these placements for compliance with the requirements of subdivision (b) at least once every six months.

(e) The county shall not be entitled to receive or expend any public funds for the placement of a minor in an out-of-state group home or short-term residential therapeutic program, unless the conditions of subdivisions (b) and (d) are met.

(f) Notwithstanding any other law, on and after July 1, 2022, the court shall not order or approve any new placement of a minor by a county probation department in an out-of-state residential facility, as defined in subdivision (b) of Section 7910 of the Family Code, except for placements described in subdivision (h) of Section 7911.1 of the Family Code.

(g) Notwithstanding any other law, the court shall order any minor placed out of state by a county probation department in an out-of-state residential facility, as defined in subdivision (b) of Section 7910 of the Family Code, to be returned to California no later than January 1, 2023, except for placements described in subdivision (h) of Section 7911.1 of the Family Code.

**SEC. 24.** Section 727.4 of the Welfare and Institutions Code is amended to read:

**727.4.** (a) (1) Notice of any hearing pursuant to Section 727, 727.2, or 727.3 shall be served by the probation officer to the minor, the minor's parent or guardian, any adult provider of care to the ~~minor~~ *minor,* including, but not limited to, foster parents, relative caregivers, preadoptive parents, resource family, community care facility, or foster family agency, and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, by personal service on those persons, or by electronic service pursuant to Section 212.5, not earlier than 30 days nor later than 15 days preceding the date of the hearing. The notice shall contain a statement regarding the nature of the status review or permanency planning hearing and any change in the custody or status of the minor being recommended by the probation department. The notice shall also include a statement informing the foster parents, relative caregivers, or preadoptive parents that ~~he or she~~ *they* may attend all hearings or may submit any information ~~he or she deems~~ *they deem* relevant to the court in writing. The foster parents, relative caregiver, and preadoptive parents are entitled to notice and opportunity to be heard but need not be made parties to the proceedings. Proof of notice shall be filed with the court.

(2) If the court or probation officer knows or has reason to know that the minor is or may be an Indian child, any notice sent under this section shall comply with the requirements of Section ~~224.2.~~ *224.3.*

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

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

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

(1) "Foster care" means residential care provided in any of the settings described in Section 11402 or 11402.01.

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

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

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

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

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

(C) If at the time the wardship petition was filed, the minor was a dependent of the juvenile court and in out-of-home placement, then the "date of entry into foster care" is the earlier of the date the juvenile court made a

finding of abuse or neglect, or 60 days after the date on which the child was removed from ~~his or her~~ *their* home.

(5) "Reasonable efforts" means:

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

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

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

(D) In ~~child custody proceedings involving an Indian child, "reasonable efforts" shall also include~~ *an Indian child custody proceeding, as defined in subdivision (d) of Section 224.1, "reasonable efforts" includes all of the efforts described in subparagraphs (B) and (C), but they shall include all of the standards and requirements specified for* "active efforts" as defined in ~~Section~~ *subdivision (f) of Section 224.1 and as required by Section* 361.7.

(6) "Relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," "grand," or the spouse of any of these persons even if the marriage was terminated by death or dissolution. "Relative" shall also include an "extended family member" as defined in ~~the federal Indian Child Welfare Act (25 U.S.C. Sec. 1903(2)).~~ *Section 224.1.*

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

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

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

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

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

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

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

**SEC. 25.** Section 10553.12 of the Welfare and Institutions Code is amended to read:

**10553.12.** (a) Notwithstanding any other law, a federally recognized tribe is authorized, but not required, to license or approve a home for the purpose of foster or adoptive placement of an Indian ~~child pursuant to the federal Indian Child Welfare Act (25 U.S.C. Sec. 1915).~~ *child.*

(b) An Indian child, as defined ~~by subdivisions (a) and (b) of Section 224,~~ *in Section 224.1,* who has been removed pursuant to Section 361, from the custody of their parents or Indian custodian may be placed in a tribally approved home, as defined in subdivision (r) of Section ~~224.1, pursuant to Section 1915 of the federal Indian Child Welfare Act.~~ *224.1.*

(c) To facilitate the availability of tribally approved homes that have been fully approved in accord with federal law, including completion of required background checks pursuant to Section 8712 of the Family Code, a tribe or tribal organization may request from the Department of Justice federal and state summary criminal history information and Child Abuse Central Index Information pursuant to paragraph (8) of subdivision (b) of Section 11170 of the Penal Code regarding a prospective foster parent or adoptive parent, an adult who resides or is employed in the home of an applicant, a person who has a familial or intimate relationship with a person living in the home of an applicant, or an employee of the child welfare agency who may have contact with children.

(d) As used in this section, a "tribal organization" means an entity designated by a federally recognized tribe as authorized to approve homes consistent with the federal Indian Child Welfare Act for the purpose of placing an

Indian child into foster or adoptive care, including the authority to conduct criminal record and child abuse background checks of, and grant exemptions to, individuals who are prospective foster parents or adoptive parents, an adult who resides or is employed in the home of an applicant for approval, a person who has a familial or intimate relationship with a person living in the home of an applicant, or an employee of the tribal organization who may have contact with children.

(e) A county social worker may place an Indian child in a tribally approved home without having to conduct a separate background check, upon certification by the tribe or tribal organization of the following:

(1) The tribe or tribal organization has completed a criminal record background check in accord with the standards set forth in Section 1522 of the Health and Safety Code, and a Child Abuse Central Index Check pursuant to Section 1522.1 of the Health and Safety Code, with respect to each of the individuals described in subdivision (c).

(2) The tribe or tribal organization has agreed to report to a county child welfare agency responsible for a child placed in the tribally approved home, within 24 hours of notification to the tribe or tribal organization by the Department of Justice, of any subsequent state or federal arrest or disposition notification provided pursuant to Section 11105.2 of the Penal Code involving an individual associated with the tribally approved home where an Indian child is placed.

(3) If the tribe or tribal organization in its certification states that the individual was granted a criminal record exemption, the certification shall specify that the exemption was evaluated in accord with the standards and limitations set forth in paragraph (2) of subdivision (g) of Section 1522 of the Health and Safety Code and was not granted to an individual ineligible for an exemption under that provision.

(f) Tribal home approvals conducted in compliance with this section are not subject to resource family approval requirements.

**SEC. 26.** Section 10553.13 of the Welfare and Institutions Code is amended to read:

**10553.13.** (a) (1) The Tribally Approved Homes Compensation Program is hereby established to provide funding, as described in this section, to eligible Indian tribes to assist in funding the costs associated with recruiting and approving homes for the purpose of foster or adoptive placement of an Indian child ~~pursuant to the federal Indian Child Welfare Act,~~ as described in Section 10553.12. Funding is limited to eligible Indian tribes as described in subdivision (b).

(2) Subject to an appropriation in the annual Budget Act for the express purpose described in paragraph (1), the department shall provide each eligible Indian tribe, as described in subdivision (b), an annual allocation of seventy-five thousand dollars ($75,000) for the purpose described in paragraph (1). If the annual Budget Act provides for an allocation of more than seventy-five thousand dollars ($75,000) per eligible *Indian* tribe, then each eligible *Indian* tribe shall receive an adjusted allocation within and for that same fiscal year. The adjusted allocation shall be based on a methodology considering the number of Indian children in foster care or prospective adoptive placements through the juvenile court. The allocation methodology and the implementation plan shall be established by the department in government-to-government consultation with tribes no later than June 30, 2023. The department shall provide an update to legislative staff and stakeholders on the progress of implementation of this section, preferably by January 1, 2023, but no later than February 1, 2023.

(3) For purposes of this section, the following definitions apply:

(A) "Department" means the State Department of Social Services.

(B) "Indian tribe" means any federally recognized Indian tribe located in California or with lands that extend into California.

(b) To be eligible for an allocation of funds under this section, an Indian tribe shall enter into an agreement with the department pursuant to subdivision (a) of Section 10553.1 or in accordance with Section ~~1919 of Title 25 of the United States Code.~~ *109 of the Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1919).* An Indian tribe may designate another entity to administer the allocation of funds on ~~a~~ *the Indian* tribe's behalf upon designation by the *Indian* tribe for this purpose. An Indian tribe that seeks funding pursuant to this section shall submit a letter of interest to the department each year by a deadline established by the department through government-to-government consultation with *Indian* tribes. The agreement shall contain, but not be limited to, the following terms:

(1) A timeline for the distribution of funds by the department.

(2) A description of how the *Indian* tribe will administer the funds.

(3) A description of the *Indian* tribe's staffing needs to administer the program, including recruitment, retention, and training.

(4) The estimated number of homes the *Indian* tribe will assess and potentially approve for foster or adoptive placement per year.

(5) The number of existing foster or prospective adoptive homes approved by the *Indian* tribe, if applicable.

(6) A description of the existing or planned recruitment activities and processes that will be developed, including meeting criminal background check requirements.

(7) If the *Indian* tribe plans to designate another entity to administer the funds, the name of that entity.

(c) An Indian tribe that receives funding pursuant to this section shall submit a progress report to the department. The progress report shall be submitted to the department on or before September 1 following the close of the fiscal year in which the *Indian* tribe received an allocation. The progress report shall include all of the following information for the fiscal year that was funded:

(1) A description of how the *Indian* tribe administered the funds.

(2) A description of how the funds were used to meet the *Indian* tribe's staffing needs to administer the program, including recruitment, retention, and training.

(3) The number of homes the *Indian* tribe assessed and approved for foster or adoptive placement for the fiscal year the funds were allocated.

(4) The number of existing foster or prospective adoptive homes approved by the *Indian* tribe, if applicable.

(5) A description of the existing or planned recruitment activities and processes that were developed, including meeting the criminal background check requirements.

(d) The department shall annually provide to the budget committees of the Legislature a report summarizing the information and data provided by the Indian tribes in their progress reports to the department. The annual report shall be submitted to the budget committees no later than January 31 following the close of the fiscal year covered by the tribe's progress reports. The report shall include, but be not be limited to, all of the following:

(1) The total amount of funds allocated by the department for the program.

(2) The number of *Indian* tribes that received an allocation of funds during the fiscal year and the amount of funds allocated to each *Indian* tribe.

(3) A summary of the data submitted to the department by the *Indian* tribes pursuant to paragraphs (1) to (3), inclusive, of subdivision (c).

(e) The department shall seek federal approvals or waivers necessary to claim federal reimbursement under Title IV-E of the federal Social Security Act (42 U.S.C. Sec. 670 et seq.) in order to maximize funding for the purpose described in this section.

(f) An agreement entered into pursuant to this section may be revoked by either party upon a 180-day written notice to the other party.

(g) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may issue written guidance to implement, interpret, or make specific this section without taking any regulatory action.

**SEC. 27.** Section 11391 of the Welfare and Institutions Code is amended to read:

**11391.** For purposes of this article, the following definitions shall apply:

(a) "Kinship Guardianship Assistance Payments (Kin-GAP)" means the aid provided on behalf of children eligible for federal financial participation under Section 671(a)(28) of Title 42 of the United States Code in kinship care under the terms of this article.

(b) "Kinship guardian" means a person who meets both of the following criteria:

(1) The person has been appointed the legal guardian of a dependent child pursuant to Section 366.26 or Section 360 or a ward of the juvenile court pursuant to subdivision (d) of Section 728.

(2) The person is a relative of the child.

(c) "Relative," subject to federal approval of amendments to the state plan, means any of the following:

(1) An adult who is related to the child 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.

(2) An adult who meets the definition of an approved, nonrelated extended family member, as described in Section 362.7.

(3) An adult who is either a member of the Indian child's tribe, or an Indian custodian, as defined in Section ~~1903(6) of Title 25 of the United States Code.~~ *224.1.*

(4) An adult who is the current foster parent of a child under the juvenile court's jurisdiction, who has established a significant and family-like relationship with the child, and the child and the county child welfare agency, probation department, Indian tribe, consortium of tribes, or tribal organization that has entered into an agreement pursuant to Section 10553.1 identify this adult as the child's permanent connection.

(5) An adult who meets the definition of an extended family member as described in Section ~~1903 of the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.).~~ *224.1.*

(d) "Sibling" means a child related to the identified eligible child by blood, adoption, or affinity through a common legal or biological parent.

(e) "Approved home of the prospective relative guardian" means either of the following:

(1) The home of a relative who has been approved as a resource family home pursuant to Section 16519.5 of this code, or Section 1517 of the Health and Safety Code.

(2) The home of a relative who has been approved as a tribally approved home, as defined in subdivision (r) of Section 224.1.

**SEC. 28.** Section 11401 of the Welfare and Institutions Code is amended to read:

**11401.** Aid in the form of AFDC-FC shall be provided under this chapter on behalf of any child under 18 years of age, and to any nonminor dependent who meets the conditions of any of the following subdivisions:

(a) The child has been relinquished, for purposes of adoption, to a licensed adoption agency, or the department, or the parental rights of either or both of the child's parents have been terminated after an action under the Family Code has been brought by a licensed adoption agency or the department, provided that the licensed adoption agency or the department, if responsible for placement and care, provides to those children all services as required by the department to children in foster care.

(b) The child has been removed from the physical custody of the child's parent, relative, or guardian as a result of a voluntary placement agreement or a judicial determination that continuance in the home would be contrary to the child's welfare and that, if the child was placed in foster care, reasonable efforts were made, consistent with Chapter 5 (commencing with Section 16500) of Part 4, to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return to the child's home, and any of the following applies:

(1) The child has been adjudged a dependent child of the court on the grounds that the child is a person described by Section 300.

(2) The child has been adjudged a ward of the court on the grounds that the child is a person described by Sections 601 and 602, or the child or nonminor is under the transition jurisdiction of the juvenile court pursuant to Section 450.

(3) The child has been detained under a court order, pursuant to Section 319 or 636, that remains in effect.

(4) The child's or nonminor's dependency jurisdiction, or transition jurisdiction pursuant to Section 450, has resumed pursuant to Section 387, or subdivision (a), (e), or (f) of Section 388.

(c) The child has been voluntarily placed by the child's parent or guardian pursuant to Section 11401.1.

(d) The child is living in the home of a nonrelated legal guardian, or the nonminor is living in the home of a former nonrelated legal guardian.

(e) The child is a nonminor dependent who is placed pursuant to a mutual agreement as set forth in subdivision (u) of Section 11400, under the placement and care responsibility of the county child welfare services department, an Indian tribe that entered into an agreement pursuant to Section 10553.1, or the county probation department, or the child is a nonminor dependent reentering foster care placement pursuant to a voluntary agreement, as set forth in subdivision (z) of Section 11400.

(f) The child has been placed in foster care ~~under~~ *consistent with* the federal Indian Child Welfare ~~Act.~~ *Act of 1978 (25 U.S.C. Sec. 1901 et seq.).* Sections 11402, 11404, and 11405 shall not be construed as limiting payments to *an* Indian ~~children,~~ *child,* as defined in *subdivision (b) of Section 224.1 and Section 1903 of* the federal Indian Child Welfare ~~Act,~~ *Act of 1978,* placed in accordance with that ~~act.~~ *act and the provisions of Section 361.31.*

(g) To be eligible for federal financial participation, the conditions described in paragraph (1), (2), (3), or (4) shall be satisfied:

(1) (A) The child meets the conditions of subdivision (b).

(B) The child has been deprived of parental support or care for any of the reasons set forth in Section 11250.

(C) The child has been removed from the home of a relative as defined in Section 233.90(c)(1) of Title 45 of the Code of Federal Regulations, as amended.

(D) The requirements of Sections 671 and 672 of Title 42 of the United States Code, as amended, have been met.

(2) (A) The child meets the requirements of subdivision (h).

(B) The requirements of Sections 671 and 672 of Title 42 of the United States Code, as amended, have been met.

(C) This paragraph shall be implemented only if federal financial participation is available for the children described in this paragraph.

(3) (A) The child has been removed from the custody of the child's parent, relative, or guardian as a result of a voluntary placement agreement or a judicial determination that continuance in the home would be contrary to the child's welfare and that, if the child was placed in foster care, reasonable efforts were made, consistent with Chapter 5 (commencing with Section 16500) of Part 4, to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return to the child's home, or the child is a nonminor dependent who satisfies the removal criteria in Section 472(a)(2)(A)(i) of the federal Social Security Act (42 U.S.C. Sec. 672 (a)(2)(A)(i)) and agrees to the placement and care responsibility of the placing agency by signing the voluntary reentry agreement, as set forth in subdivision (z) of Section 11400, and any of the following applies:

(i) The child has been adjudged a dependent child of the court on the grounds that the child is a person described by Section 300.

(ii) The child has been adjudged a ward of the court on the grounds that the child is a person described by Sections 601 and 602 or the child or nonminor is under the transition jurisdiction of the juvenile court, pursuant to Section 450.

(iii) The child has been detained under a court order, pursuant to Section 319 or 636, that remains in effect.

(iv) The child's or nonminor's dependency jurisdiction, or transition jurisdiction pursuant to Section 450, has resumed pursuant to Section 387, or subdivision (a), (e), or (f) of Section 388.

(B) The child has been placed in an eligible foster care placement, as set forth in Section 11402.

(C) The requirements of Sections 671 and 672 of Title 42 of the United States Code have been satisfied.

(D) This paragraph shall be implemented only if federal financial participation is available for the children described in this paragraph.

(4) With respect to a nonminor dependent, in addition to meeting the conditions specified in paragraph (1), the requirements of Section 675(8)(B) of Title 42 of the United States Code have been satisfied. With respect to a former nonminor dependent who reenters foster care placement by signing the voluntary reentry agreement, as set forth in subdivision (z) of Section 11400, the requirements for AFDC-FC eligibility of Section 672(a)(3)(A) of Title 42 of the United States Code are satisfied based on the nonminor's status as a child-only case, without regard to the parents, legal guardians, or others in the assistance unit in the home from which the nonminor was originally removed.

(h) The child meets all of the following conditions:

(1) The child has been adjudged to be a dependent child or ward of the court on the grounds that the child is a person described in Section 300, 601, or 602.

(2) The child's parent also has been adjudged to be a dependent child or nonminor dependent of the court on the grounds that the child's parent is a person described by Section 300, 450, 601, or 602 and is receiving benefits under this chapter.

(3) The child is placed in the same licensed or approved foster care facility in which the child's parent is placed and the child's parent is receiving reunification services with respect to that child.

**SEC. 29.** Section 11461.36 of the Welfare and Institutions Code is amended to read:

**11461.36.** (a) It is the intent of the Legislature to provide support to emergency caregivers, as defined in subdivision (c), who care for children and nonminor dependents before approval of an application under the Resource Family Approval ~~Program.~~ *Program or a tribally approved home.*

(b) For placements made on and after July 1, 2018, each county shall provide a payment equivalent to the resource family basic level rate of the home-based family care rate structure, pursuant to Section 11463, to an emergency caregiver on behalf of a child or nonminor dependent placed in the home of the caregiver pursuant to subdivision (d) of Section 309, Section 361.45, Section 727.05, or clause (i) of subparagraph (A) of paragraph (1) of subdivision (h) of Section 319, or based on a compelling reason pursuant to subdivision (e) of Section 16519.5, subject to the availability of state and federal funds pursuant to subdivision (e), if all of the following criteria are met:

(1) The child or nonminor dependent is not otherwise eligible for AFDC-FC or the Approved Relative Caregiver Funding Program, pursuant to Section 11461.3, while placed in the home of the emergency caregiver.

(2) The child or nonminor dependent resides in California.

(3) The emergency caregiver has signed and submitted to the county an application for resource family ~~approval.~~ *approval or has initiated a tribally approved home process.*

(4) An application for the Emergency Assistance Program has been completed.

(c) For purposes of this section, an "emergency caregiver" means an individual who has a pending resource family application filed with an appropriate agency on or after July 1, 2018, and who meets one of the following requirements:

(1) The individual has been assessed pursuant to Section 361.4.

(2) The individual has successfully completed the home environment assessment portion of the resource family approval pursuant to paragraph (2) of subdivision (d) of Section 16519.5.

(d) The beginning date of aid for payments made pursuant to subdivision (b) shall be the date of placement.

(e) Funding for payments made pursuant to subdivision (b) shall be as follows:

(1) For emergency or compelling reason placements made during the 2018–19 fiscal year:

(A) Payments shall be made to an emergency caregiver through the Emergency Assistance Program included in the state's Temporary Assistance for Needy Families block grant.

(B) The county shall be solely responsible for the nonfederal share of cost.

(C) Notwithstanding subparagraphs (A) and (B), if the child or nonminor dependent is determined to be ineligible for the Emergency Assistance Program included in the state's Temporary Assistance for Needy Families block

grant, 70 percent of the cost of emergency payments made to the emergency caregiver shall be funded by the department and 30 percent shall be funded by the county.

(D) Notwithstanding subparagraphs (A), (B), and (C), payments required to be provided pursuant to subdivision (b) shall not be eligible for the federal or state share of cost upon approval or denial of the resource family application, consistent with subdivision (g), beyond 180 days, or, if the conditions of subparagraph (E) are met, beyond 365 days, whichever occurs first.

(E) The federal and state share of payment made pursuant to this paragraph shall be available beyond 180 days of payments, and up to 365 days of payments, if all of the following conditions are met:

(i) On a monthly basis, the county has documented good cause for the delay in approving the resource family application that is outside the direct control of the county, which may include delays in processing background check clearances or exemptions, medical examinations, or delays that are based on the needs of the family.

(ii) On a monthly basis, the deputy director or director of the county child welfare department, or their designee, has been notified of the delay in approving the resource family application and that notification is documented in the resource family approval file.

(iii) On a monthly basis, the county provides to the department a list of the resource family applications that have been pending for more than 90 days and the reason for the delays.

(2) For emergency or compelling reason placements made during the 2019–20 fiscal year:

(A) Payments shall be made to an emergency caregiver through the Emergency Assistance Program included in the state's Temporary Assistance for Needy Families block grant.

(B) The county shall be solely responsible for the nonfederal share of cost.

(C) Notwithstanding subparagraphs (A) and (B), if the child or nonminor dependent is determined to be ineligible for the Emergency Assistance Program included in the state's Temporary Assistance for Needy Families block grant, 70 percent of the cost of emergency payments made to the emergency caregiver shall be funded by the department and 30 percent shall be funded by the county.

(D) Notwithstanding subparagraphs (A), (B), and (C), payments required to be provided pursuant to subdivision (b) shall not be eligible for the federal or state share of cost upon approval or denial of the resource family application, consistent with subdivision (g), or beyond 120 days, whichever occurs first.

(E) The federal and state share of payment made pursuant to this paragraph shall be available beyond 120 days of payments, and up to 365 days of payments, if all of the following conditions are met:

(i) On a monthly basis, the county has documented good cause for the delay in approving the resource family application that is outside the direct control of the county, which may include delays in processing background check clearances or exemptions, medical examinations, or delays that are based on the needs of the family.

(ii) On a monthly basis, the deputy director or director of the county child welfare department, or their designee, or the chief probation officer, or their designee, as applicable, has been notified of the delay in approving the resource family application and that notification is documented in the resource family approval file.

(iii) On a monthly basis, the county provides to the department a list of the resource family applications that have been pending for more than 120 days and the reason for the delays.

(3) For emergency or compelling reason placements made during the 2020–21 fiscal year:

(A) Payments shall be made to an emergency caregiver through the Emergency Assistance Program included in the state's Temporary Assistance for Needy Families block grant.

(B) The county shall be solely responsible for the nonfederal share of cost.

(C) Notwithstanding subparagraphs (A) and (B), if the child or nonminor dependent is determined to be ineligible for the Emergency Assistance Program included in the state's Temporary Assistance for Needy Families block grant, 70 percent of the cost of emergency payments made to the emergency caregiver shall be funded by the department and 30 percent shall be funded by the county.

(D) Notwithstanding subparagraphs (A), (B), and (C), payments required to be provided pursuant to subdivision (b) shall not be eligible for the federal or state share of cost upon approval or denial of the resource family

application, consistent with subdivision (g), or beyond 120 days, whichever occurs first.

(E) The federal and state share of payment made pursuant to this paragraph shall be available beyond 120 days of payments, and up to 365 days of payments, if all of the following conditions are met:

(i) On a monthly basis, the county has documented good cause for delay in approving the resource family application that is outside the direct control of the county, which may include delays in processing background check clearances or exemptions, medical examinations, or delays that are based on the needs of the family.

(ii) On a monthly basis, the deputy director or director of the county child welfare department, or their designees, or the chief probation officer, or their designee, as applicable, has been notified of the delay in approving the resource family application and that notification is documented in the resource family approval file.

(iii) On a monthly basis, the county provides to the department a list of the resource family applications that have been pending for more than 120 days and the reasons for the delays.

(F) The 365-day payment limitation pursuant to subparagraph (E) and accompanying rules and regulations is suspended through June 30, 2021, subject to guidance from the State Department of Social Services.

(4) For emergency or compelling reason placements made during the 2021–22 fiscal year:

(A) Payments shall be made to an emergency caregiver through the Emergency Assistance Program included in the state's Temporary Assistance for Needy Families block grant.

(B) The county shall be solely responsible for the nonfederal share of cost.

(C) Notwithstanding subparagraphs (A) and (B), if the child or nonminor dependent is determined to be ineligible for the Emergency Assistance Program included in the state's Temporary Assistance for Needy Families block grant, 70 percent of the cost of emergency payments made to the emergency caregiver shall be funded by the department and 30 percent shall be funded by the county.

(D) Notwithstanding subparagraphs (A), (B), and (C), payments required to be provided pursuant to subdivision (b) shall not be eligible for the federal or state share of cost upon approval or denial of the resource family application, consistent with subdivision (g), or beyond 120 days, whichever occurs first.

(E) Notwithstanding subparagraph (D), the federal and state share of payment made pursuant to this paragraph shall be available beyond 120 days of payments, and up to 365 days of payments, if all of the following conditions are met:

(i) On a monthly basis, the county has documented good cause for delay in approving the resource family application that is outside the direct control of the county, which may include delays in processing background check clearances or exemptions, medical examinations, or delays that are based on the needs of the family.

(ii) On a monthly basis, the deputy director or director of the county child welfare department, or their designees, or the chief probation officer, or their designee, as applicable, has been notified of the delay in approving the resource family application and that notification is documented in the resource family approval file.

(iii) On a monthly basis, the county provides to the department a list of the resource family applications that have been pending for more than 120 days and the reasons for the delays.

(5) For emergency or compelling reason placements made during the 2022–23 fiscal year, and each fiscal year thereafter:

(A) Payments shall be made to an emergency caregiver through the Emergency Assistance Program included in the state's Temporary Assistance for Needy Families block grant.

(B) The county shall be solely responsible for the nonfederal share of cost.

(C) Notwithstanding subparagraphs (A) and (B), if the child or nonminor dependent is determined to be ineligible for the Emergency Assistance Program included in the state's Temporary Assistance for Needy Families block grant, 70 percent of the cost of the emergency payments made to the emergency caregiver shall be funded by the department and 30 percent shall be funded by the county.

(D) Notwithstanding subparagraphs (A), (B), and (C), payments required to be provided pursuant to subdivision (b) shall not be eligible for the federal or state share of cost upon approval or denial of the resource family application, consistent with subdivision (g), or beyond 120 days, whichever occurs first.

(E) Notwithstanding subparagraph (D), the federal and state share of payment made pursuant to this paragraph shall be available beyond 120 days of payments, and up to 365 days of payments, if all of the following conditions are met:

(i) On a monthly basis, the county has documented good cause for delay in approving the resource family application that is outside the direct control of the county due to processing background check clearances or exemptions or medical examinations, delays in home or grounds improvements that are outside the control of the family or county, completion of specialized or individualized training required of the family that are beyond the basic resource family approval requirements, delays related to changes in the home environment resulting in the need for a new assessment, delays related to the time commitments required of the caregiver as a result of the child's placement into foster care, delays as a result of the applicant exercising due process rights, or delays that are based on the needs of the family.

(ii) On a monthly basis, the deputy director or director of the county child welfare department, or their designees, or the chief probation officer, or their designee, as applicable, has been notified of the delay in approving the resource family application and that notification is documented in the resource family approval file.

(iii) On a monthly basis, the county provides to the department a list of the resource family applications that have been pending for more than 120 days, the reasons for the delays, and documentation supporting the good cause determination.

(f) On and after the date required by paragraph (9) of subdivision (h) of Section 11461, and notwithstanding the rate described in subdivisions (b) and (l), the rate paid to an emergency caregiver on behalf of a child or nonminor dependent placed with the emergency caregiver shall be equivalent to, and paid in the same manner as, the rate developed pursuant to the Tiered Rate Structure, as established in paragraph (4) of subdivision (h) of Section 11461.

(g) (1) If the application for resource family approval is approved, the funding source for the placement shall be changed to AFDC-FC or the Approved Relative Caregiver Funding Program, as appropriate and consistent with existing eligibility requirements.

(2) If the application for resource family approval is denied, eligibility for funding pursuant to this section shall be terminated.

(h) A county shall not be liable for any federal disallowance or penalty imposed on the state as a result of a county's action in reliance on the state's instruction related to implementation of this section.

(i) (1) For the 2018–19 and 2019–20 fiscal years, the department shall determine, on a county-by-county basis, whether the timeframe for the resource family approval process resulted in net assistance costs or net assistance savings for assistance payments, pursuant to this section.

(2) For the 2018–19 and 2019–20 fiscal years, the department shall also consider, on a county-by-county basis, the impact to the receipt of federal Title IV-E funding that may result from implementation of this section.

(3) The department shall work with the California State Association of Counties to jointly determine the timeframe for subsequent reviews of county costs and savings beyond the 2019–20 fiscal year.

(j) (1) The department shall monitor the implementation of this section, including, but not limited to, tracking the usage and duration of Emergency Assistance Program payments made pursuant to this section and evaluating the duration of time a child or nonminor dependent is in a home pending resource family approval.

(2) The department may request information or data necessary to oversee the implementation of this section until data collection is available through automation. Pending the completion of automation, information or data collected manually shall be determined in consultation with the County Welfare Directors Association of California.

(k) An appropriation shall not be made pursuant to Section 15200 for purposes of implementing this section.

(l) (1) On and after July 1, 2019, each county shall provide a payment equivalent to the resource family basic level rate of the home-based family care rate structure, pursuant to Section 11463, on behalf of an Indian child, as defined in subdivision (a) of Section 224.1, placed in the home of the caregiver who is pending approval as a tribally approved home, as defined in subdivision (r) of Section 224.1, if all of the following criteria are met:

(A) The placement is made pursuant to subdivision (d) of Section 309, Section 361.45, Section 727.05, or clause (i) of subparagraph (A) of paragraph (1) of subdivision (h) of Section 319.

(B) The caregiver has been assessed pursuant to Section 361.4.

(C) The child is not otherwise eligible for AFDC-FC or the Approved Relative Caregiver Funding Program, pursuant to Section 11461.3, while placed in the home of the caregiver.

(D) The child resides in California.

(E) The tribe or tribal agency has initiated the process for the home to become tribally approved.

(F) An application for the Emergency Assistance Program has been completed by the placing agency.

(2) The beginning date of aid for payments made pursuant to this subdivision shall be the date of placement.

(3) The funding source for the placement shall be changed to AFDC-FC or the Approved Relative Caregiver Funding Program, as appropriate and consistent with existing eligibility requirements, when the caregiver is approved as a tribally approved home. If the approval is denied, payments made pursuant to this subdivision shall cease.

(4) Subdivision (e) and subdivisions (h) to (k), inclusive, shall apply to payments made pursuant to this subdivision.

(m) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement and administer this section through an all-county letter or similar instructions, which shall include instructions regarding the eligibility standards for emergency assistance until regulations are adopted.

**SEC. 30.** Section 11462.022 of the Welfare and Institutions Code is amended to read:

**11462.022.** (a) Upon meeting the licensure requirements pursuant to Section 1530.8 of the Health and Safety Code, a county child welfare agency operating a temporary shelter care facility, as defined in Section 1530.8 of the Health and Safety Code, shall comply with this section.

(b) Prior to detaining the child in the temporary shelter care facility, the child welfare agency shall make reasonable efforts, consistent with current law, to place the child with a relative, tribal member, nonrelative extended family member, ~~or in a licensed, certified, approved or tribally approved foster family home or approved resource family.~~ *approved resource family, or in the case of an Indian child, an extended family member as described in paragraph (1) of subdivision (c) of Section 224.1 or a tribally approved home as described in subdivision (r) of Section 224.1 and in Section 10553.12.* When the child welfare agency has reason to believe that the child is or may be an Indian child, the agency shall make active efforts to comply with the federal Indian Child Welfare Act placement preferences, as required by ~~subdivision (k) of~~ Section 361.31.

(c) A child may be detained or placed in a temporary shelter care facility only for the duration necessary to enable the county placing agency to perform the required assessments and to appropriately place the child.

(d) Upon admission, the temporary shelter care facility shall provide each child with health, mental health, and developmental screenings, as applicable. Commencing when a child is admitted into a temporary shelter care facility, and continuing until the child's discharge from the facility, the county welfare agency shall continuously strive to identify and place the child in an appropriate licensed or approved home or facility.

(e) The temporary shelter care facility shall ensure that the following services, at a minimum, are identified in the facility's plan of operation and are available to children detained at the facility:

(1) Medical, developmental, behavioral, and mental health assessments based on the information obtained through the screenings required pursuant to subdivision (d).

(2) Based on the screening, assessments, and other information obtained about the child, identification of the appropriate placement resources that meet the child's needs.

(3) Trauma-informed services and interventions.

(4) Crisis intervention services.

(5) Care and supervision provided by trauma-informed trained and qualified staff.

(6) Referrals to and coordination with service providers who can meet the medical, developmental, behavioral, or mental health needs of the child identified upon admission.

(7) Educational services to ensure the child's educational progress, including efforts to maintain the child in ~~his or her~~ *their* school of origin if practical.

(8) Visitation services, including the ability to provide court-ordered, supervised visitation.

(9) Structured indoor and outdoor activities, including recreational and social programs.

(10) Transportation and other forms of support to ensure, to the extent possible, the child's ability to attend and participate in important milestone events.

(11) Mentorship and peer support-type programs.

(f) (1) In no case shall the detention or placement in a temporary shelter care facility exceed 10 calendar days. For any stay that exceeds 10 calendar days, the child welfare agency shall submit a written report to the department, within 24 hours of an overstay, that shall include a description of the reasons and circumstances for the child's overstay, and shall be signed by the county child welfare agency director or ~~his or her~~ *their* designee. The department may choose not to issue a citation to the county for a violation of the 10-day placement limit when, based on the information contained in the report, the overstay is reasonable and the county is complying with subdivision (d).

(2) The child welfare agency may permit any child or youth to access assessment and other services described in subdivision (d) or (e) while in an out-of-home placement.

(3) To ensure the protection of children placed in temporary shelter care facilities, the child welfare agency shall separate children placed in temporary shelter care facilities pursuant to subdivision (b) from children returning to the shelter due to a failed placement, when possible, when circumstances warrant that separation. Temporary shelters shall staff as necessary to adequately supervise children to ensure an appropriate environment for all children present.

(g) At the request of the county, the department shall provide technical assistance necessary for the implementation of this section.

(h) The department, in consultation with the counties, shall provide a report to the Legislature no later than January 1, 2021, that shall include the number of children and youth served by temporary shelter care facilities, characteristics of children detained in these facilities, and whether there is a continued need for the licensing and operation of temporary shelter care facilities.

**SEC. 31.** Section 16500.9 of the Welfare and Institutions Code is amended to read:

**16500.9.** The department shall establish one full-time position, within the office of the director, to assist counties *and the department* in complying with the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and related state laws, regulations, ~~and~~ rules of ~~court.~~ *court, and state guidance.* This assistance shall include, but not be limited to, all of the following:

(a) Acting as a clearinghouse for up-to-date information regarding tribes within and outside of the state.

(b) Providing ~~information~~ *information, technical assistance,* and support regarding ~~the requirements of~~ laws, regulations, ~~and rules of court in juvenile dependency cases involving a child who is subject to the federal Indian Child Welfare Act.~~ *rules of court, and state guidance applicable to Indian child custody proceedings and related matters.*

(c) ~~Providing~~ *In coordination with other divisions within the department, providing* or coordinating training and technical assistance for counties regarding the requirements described in subdivision (b).

**SEC. 32.** Section 16501.1 of the Welfare and Institutions Code is amended to read:

**16501.1.** (a) (1) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(2) The Legislature further finds and declares that a case plan ensures that the child receives protection and safe and proper care and case management, and that services are provided to the child and parents or other caretakers, as appropriate, in order to improve conditions in the parent's home, to facilitate the safe return of

the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care.

(3) The agency shall consider and document the recommendations of the child and family team, as defined in Section 16501, if any are available. The agency shall document the rationale for any inconsistencies between the case plan and the child and family team recommendations.

(b) (1) A case plan shall be based upon the principles of this section, the Integrated Practice-Child and Adolescent Needs and Strengths (IP-CANS) assessment, and the input from the child and family team.

(2) The case plan shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made. *In the case of an Indian child, as defined in subdivision (b) of Section 224.1, the case plan shall also document that the county agency made active efforts, as described in subdivision (f) of Section 224.1, to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.* Preplacement services may include intensive mental health services in the home or a community setting and the reasonable efforts made to prevent out-of-home placement.

(3) In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concerns.

(4) Upon a determination pursuant to paragraph (1) of subdivision (e) of Section 361.5 that reasonable services will be offered to a parent who is incarcerated in a county jail or state prison, detained by the United States Department of Homeland Security, or deported to their country of origin, the case plan shall include information, to the extent possible, about a parent's incarceration in a county jail or the state prison, detention by the United States Department of Homeland Security, or deportation during the time that a minor child of that parent is involved in dependency care.

(5) Reasonable services shall be offered or provided to make it possible for a child to return to a safe home environment, unless, pursuant to subdivisions (b) and (e) of Section 361.5, the court determines that reunification services shall not be provided. *In the case of an Indian child, as defined in subdivision (b) of Section 224.1, the agency shall make active efforts, as described in subdivision (f) of Section 224.1, to reunite an Indian child with their family.*

(6) If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(c) If out-of-home placement is used to attain case plan goals, the case plan shall consider the recommendations of the child and family team.

(d) (1) The case plan shall include a description of the type of home or institution in which the child is to be placed, and the reasons for that placement decision. The decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive family setting that promotes normal childhood experiences and the most appropriate setting that meets the child's individual needs and is available, in proximity to the parent's home, in proximity to the child's school, and consistent with the selection of the environment best suited to meet the child's special needs and best interests. The selection shall consider, in order of priority, placement with relatives, nonrelative extended family members, and tribal members; foster family homes, resource families, and approved or certified homes of foster family agencies; followed by intensive services for foster care homes; or multidimensional treatment foster care homes or therapeutic foster care homes; group care placements in the order of short-term residential therapeutic programs, group homes, community treatment facilities, and out-of-state residential treatment pursuant to Part 5 (commencing with Section 7900) of Division 12 of the Family Code.

(2) If a short-term residential therapeutic program placement is selected for a child or nonminor dependent, the case plan shall indicate the needs, including the needs as identified by the qualified individual pursuant to subdivision (g) of Section 4096, of the child or nonminor dependent that necessitate this placement, the plan for transitioning the child or nonminor dependent to a less restrictive environment, and the projected timeline by which the child or nonminor dependent will be transitioned to a less restrictive environment, and the plan for aftercare services for at least six months postdischarge to a family-based setting, as required by Section 4096.6. The six months postdischarge requirement is inapplicable to the Medi-Cal component of the aftercare services, which shall be provided for the length of time the child needs specialty mental health services based on medical

necessity criteria and other state and federal requirements. This section of the case plan shall be reviewed and updated at least semiannually.

(A) The case plan for placements in a group home, or commencing January 1, 2017, in a short-term residential therapeutic program, shall indicate that the county has taken into consideration Section 16010.8.

(B) (i) After January 1, 2017, a child and family team meeting as described in Section 16501 shall be convened by the county placing agency for the purpose of identifying the supports and services needed to achieve permanency and enable the child or youth to be placed in the least restrictive family setting that promotes normal childhood experiences.

(ii) Child and family teams shall be provided written or electronic information developed by the department describing services and activities, including specialized permanency services, shown to be effective in achieving and sustaining permanency for all children, youth, and nonminor dependents.

(C) On and after October 1, 2021, within 30 days of placement in a short-term residential therapeutic program, and, on and after July 1, 2022, within 30 days of placement in a community treatment facility, the case plan shall document all of the following:

(i) The reasonable and good faith effort by the social worker to identify and include all required individuals in the child and family team.

(ii) All contact information for members of the child and family team, as well as contact information for other relatives and nonrelative extended family members who are not part of the child and family team.

(iii) Evidence that meetings of the child and family team, including the meetings related to the determination required under Section 4096, are held at a time and place convenient for the family.

(iv) If reunification is the goal, evidence that the parent from whom the child was removed provided input on the members of the child and family team.

(v) Evidence that the determination required under subdivision (g) of Section 4096 was conducted in conjunction with the child and family team.

(vi) The placement preferences of the child or nonminor dependent and the child and family team relative to the determination and, if the placement preferences of the child or nonminor dependent or the child and family team are not the placement setting recommended by the qualified individual conducting the determination, the reasons why the preferences of the team or the child or nonminor dependent were not recommended.

(D) Following the court review pursuant to Section 361.22, the case plan shall document the court’s approval or disapproval of the placement.

(E) When the child or nonminor dependent has been placed in a short-term residential therapeutic program or a community treatment facility, as applicable, for more than 12 consecutive months or 18 nonconsecutive months, or, in the case of a child who has not attained 13 years of age, for more than 6 consecutive or nonconsecutive months, the case plan shall include both of the following:

(i) Documentation of the information submitted to the court pursuant to subdivision (l) of Section 366.1, subdivision (k) of Section 366.3, or paragraph (4) of subdivision (b) of Section 366.31, as applicable.

(ii) Documentation that the deputy director or director of the county child welfare department has approved the continued placement of the child or nonminor dependent in the setting.

(F) On and after October 1, 2021, prior to discharge from a short-term residential therapeutic program, and, on and after July 1, 2022, prior to discharge from a community treatment facility, the case plan shall include both of the following:

(i) A description of the type of in-home or institution-based services to encourage the safety, stability, and appropriateness of the next placement, including the recommendations of the child and family team, if available.

(ii) A plan, developed in collaboration with the short-term residential therapeutic program or community treatment facility, as applicable, for the provision of discharge planning and family-based aftercare support pursuant to Section 4096.6.

(3) On or after January 1, 2012, for a nonminor dependent, as defined in subdivision (v) of Section 11400, who is receiving AFDC-FC benefits and who is up to 21 years of age pursuant to Section 11403, in addition to the above requirements, the selection of the placement, including a supervised independent living placement, as described in subdivision (w) of Section 11400, shall also be based upon the developmental needs of young adults by providing opportunities to have incremental responsibilities that prepare a nonminor dependent to transition to successful adulthood. If admission to, or continuation in, a group home or short-term residential therapeutic program placement is being considered for a nonminor dependent, the group home or short-term residential therapeutic program placement approval decision shall include a youth-driven, team-based case planning process, as defined by the department, in consultation with stakeholders. The case plan shall consider the full range of placement options, and shall specify why admission to, or continuation in, a group home or short-term residential therapeutic program placement is the best alternative available at the time to meet the special needs or well-being of the nonminor dependent, and how the placement will contribute to the nonminor dependent's transition to successful adulthood. The case plan shall specify the treatment strategies that will be used to prepare the nonminor dependent for discharge to a less restrictive family setting that promotes normal childhood experiences, including a target date for discharge from the group home or short-term residential therapeutic program placement. The placement shall be reviewed and updated on a regular, periodic basis to ensure that continuation in the group home or short-term residential therapeutic program placement remains in the best interests of the nonminor dependent and that progress is being made in achieving case plan goals leading to successful adulthood. The group home or short-term residential therapeutic program placement planning process shall begin as soon as it becomes clear to the county welfare department or probation office that a foster child in group home or short-term residential therapeutic program placement is likely to remain in group home or short-term residential therapeutic program placement on their 18th birthday, in order to expedite the transition to a less restrictive family setting that promotes normal childhood experiences, if the child becomes a nonminor dependent. The case planning process shall include informing the youth of all of the options, including, but not limited to, admission to or continuation in a group home or short-term residential therapeutic program placement.

(4) Consideration for continuation of existing group home placement for a nonminor dependent under 19 years of age may include the need to stay in the same placement in order to complete high school. After a nonminor dependent either completes high school or attains their 19th birthday, whichever is earlier, continuation in or admission to a group home placement is prohibited unless the nonminor dependent satisfies the conditions of paragraph (5) of subdivision (b) of Section 11403, and group home placement functions as a short-term transition to the appropriate system of care. Treatment services provided by the group home placement to the nonminor dependent to alleviate or ameliorate the medical condition, as described in paragraph (5) of subdivision (b) of Section 11403, shall not constitute the sole basis to disqualify a nonminor dependent from the group home placement.

(5) In addition to the requirements of paragraphs (1) to (4), inclusive, and taking into account other statutory considerations regarding placement, the selection of the most appropriate home that will meet the child's special needs and best interests shall also promote educational stability by taking into consideration proximity to the child's school of origin, and school attendance area, the number of school transfers the child has previously experienced, and the child's school matriculation schedule, in addition to other indicators of educational stability that the Legislature hereby encourages the State Department of Social Services and the State Department of Education to develop.

(e) A written case plan shall be completed within a maximum of 60 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from their home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Sections 364, 366, 366.3, and 366.31, and the hearing conducted pursuant to Section 366.26, but no less frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(1) It is the intent of the Legislature that extending the maximum time available for preparing a written case plan from 30 to 60 days will afford caseworkers time to actively engage families, and to solicit and integrate into the case plan the input of the child and the child's family, as well as the input of relatives and other interested parties.

(2) The extension of the maximum time available for preparing a written case plan from 30 to 60 days shall be effective 90 days after the date that the department gives counties written notice that necessary changes have

been made to the Child Welfare Services/Case Management System (CWS/CMS) to account for the 60-day timeframe for preparing a written case plan.

(f) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(g) The case plan shall be developed considering the recommendations of the child and family team, as follows:

(1) The case plan shall be based upon an assessment of the circumstances that required child welfare services intervention. The child shall be involved in developing the case plan as age and developmentally appropriate.

(2) The case plan shall identify specific goals and the appropriateness of the planned services in meeting those goals. *In the case of an Indian child, as defined in subdivision (b) of Section 224.1, the child's tribe shall be included in the child and family team pursuant to subparagraph (B) of paragraph (4) of subdivision (a) of Section 16501 and shall be consulted in development of the case plan.*

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the placement agency contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services. If the child has been placed in foster care out of state, the county social worker or probation officer, or a social worker or probation officer on the staff of the agency in the state in which the child has been placed, shall visit the child in a foster family home or the home of a relative, consistent with federal law and in accordance with the department's approved state plan. If a child is placed in an out-of-state residential facility, as defined in paragraph (2) of subdivision (b) of Section 7910 of the Family Code, pursuant to Section 361.21 or 727.1, visits shall be conducted at least monthly, pursuant to Section 16516.5. At least once every six months, at the time of a regularly scheduled placement agency contact with the foster child, and at each placement change, the child's social worker or probation officer shall inform the child, the care provider, and the child and family team, if applicable, of the child's rights as a foster child, as specified in Section 16001.9, and shall provide a written copy of the rights to the child as part of the explanation. The social worker or probation officer shall provide the information to the child in a manner appropriate to the age or developmental level of the child. The social worker or probation officer shall document in the case plan that they have informed the child of, and have provided the child with a written copy of, the child's rights.

(5) (A) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(B) Information regarding any court-ordered visitation between the child and the natural parents or legal guardians, and the terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(6) When out-of-home placement is made, the case plan shall include provisions for the development and maintenance of sibling relationships as specified in subdivisions (b), (c), and (d) of Section 16002. If appropriate, when siblings who are dependents of the juvenile court are not placed together, the social worker for each child, if different, shall communicate with each of the other social workers and ensure that the child's siblings are informed of significant life events that occur within their extended family. Unless it has been determined that it is inappropriate in a particular case to keep siblings informed of significant life events that occur within the extended family, the social worker shall determine the appropriate means and setting for disclosure of this information to the child commensurate with the child's age and emotional well-being. These significant life events shall include, but shall not be limited to, the following:

(A) The death of an immediate relative.

(B) The birth of a sibling.

(C) Significant changes regarding a dependent child, unless the child objects to the sharing of the information with their siblings, including changes in placement, major medical or mental health diagnoses, treatments, or hospitalizations, arrests, and changes in the permanent plan.

(7) If out-of-home placement is made in a foster family home, resource family home, group home, or other childcare institution that is either a substantial distance from the home of the child's parent or out of state, the case plan shall specify the reasons why that placement is in the best interest of the child. When an out-of-state residential facility placement is recommended or made, the case plan shall, in addition, specify compliance with Section 16010.9 of this code and Section 7911.1 of the Family Code.

(8) A case plan shall ensure the educational stability of the child while in foster care and shall include both of the following:

(A) An assurance that the placement takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement.

(B) An assurance that the placement agency has coordinated with the person holding the right to make educational decisions for the child and appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement or, if remaining in that school is not in the best interests of the child, assurances by the placement agency and the local educational agency to provide immediate and appropriate enrollment in a new school and to provide all of the child's educational records to the new school.

(9) (A) If out-of-home services are used, or if parental rights have been terminated and the case plan is placement for adoption, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(B) Information regarding the schedule and frequency of the visits between the child and siblings, as well as any court-ordered terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(10) If out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail. The plan shall also consider in-state and out-of-state placements, the importance of developing and maintaining sibling relationships pursuant to Section 16002, and the desire and willingness of the caregiver to provide legal permanency for the child if reunification is unsuccessful.

(11) If out-of-home services are used, the child has been in care for at least 12 months, and the goal is not adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A determination completed or updated within the past 12 months by the department when it is acting as an adoption agency or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(12) (A) Parents and legal guardians shall have an opportunity to review the case plan, and to sign it whenever possible, and then shall receive a copy of the plan. In a voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan. Commencing January 1, 2012, for nonminor dependents, as defined in subdivision (v) of Section 11400, who are receiving AFDC-FC or CalWORKs assistance and who are up to 21 years of age pursuant to Section 11403, the transitional independent living case plan, as set forth in subdivision (y) of Section 11400, shall be developed with, and signed by, the nonminor.

(B) Parents and legal guardians shall be advised that, pursuant to Section 1228.1 of the Evidence Code, neither their signature on the child welfare services case plan nor their acceptance of any services prescribed in the child welfare services case plan shall constitute an admission of guilt or be used as evidence against the parent or legal guardian in a court of law. However, they shall also be advised that the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan may be used in any hearing held pursuant to Section 366.21, 366.22, or 366.25 of this code as evidence.

(13) (A) A child shall be given a meaningful opportunity to participate in the development of the case plan and state their preference for foster care placement. A child who is 12 years of age or older and in a permanent placement shall also be given the opportunity to review the case plan, sign the case plan, and receive a copy of the case plan.

(B) For a child who receives a copy of the case plan pursuant to subparagraph (A) and who speaks a primary language other than English, the case plan shall be translated and provided to the child in their primary language.

(14) The case plan shall be included in the court report, and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan. If out-of-home services are used with the goal of family reunification, the case plan shall consider and describe the application of subdivision (b) of Section 11203.

(15) (A) If the case plan has as its goal for the child a permanent plan of adoption, legal guardianship, or another planned permanent living arrangement, it shall include a statement of the child's wishes regarding their permanent placement plan and an assessment of those stated wishes. The agency shall also include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the child with an adoptive family, an appropriate and willing relative, or a legal guardian, and to finalize the adoption or legal guardianship. At a minimum, the documentation shall include child-specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption. Regardless of whether the child has been freed for adoption, documentation shall include a description of any barriers to achieving legal permanence and the steps the agency will take to address those barriers. If a child has been in care for three years or more, the documentation shall include a description of the specialized permanency services used or, if specialized permanency services have not been used, a statement explaining why the agency chose not to provide these services. If the plan is for kinship guardianship, the case plan shall document how the child meets the kinship guardianship eligibility requirements.

(B) Specific elements of specialized permanency services may be included in the case plan as needed to meet the permanency needs of the individual child or nonminor dependent.

(C) When the child is 16 years of age or older and is in another planned permanent living arrangement, the case plan shall identify the intensive and ongoing efforts to return the child to the home of the parent, place the child for adoption, place the child for tribal customary adoption in the case of an Indian child, establish a legal guardianship, or place the child nonminor dependent with a fit and willing relative, as appropriate. Efforts shall include the use of technology, including social media, to find biological family members of the child.

(16) (A) (i) For a child who is 14 or 15 years of age, the case plan shall include a written description of the programs and services that will help the child, consistent with the child's best interests, to prepare for the transition from foster care to successful adulthood. The description may be included in the document described in subparagraph (A) of paragraph (18).

(ii) When appropriate, for a child who is 16 years of age or older and, commencing January 1, 2012, for a nonminor dependent, the case plan shall include the transitional independent living plan (TILP), a written description of the programs and services that will help the child, consistent with the child's best interests, to prepare for the transition from foster care to successful adulthood, and, in addition, whether the youth has an in-progress application pending for Title XVI Supplemental Security Income benefits or for special immigrant juvenile status or other applicable application for legal residency and an active dependency case is required for that application. For a child who speaks a primary language other than English, the TILP shall be translated into their primary language. When appropriate, for a nonminor dependent, the transitional independent living case plan, as described in subdivision (y) of Section 11400, shall include the TILP, a written description of the programs and services that will help the nonminor dependent, consistent with their best interests, to prepare for transition from foster care and assist the youth in meeting the eligibility criteria set forth in paragraphs (1) to (5), inclusive, of subdivision (b) of Section 11403. If applicable, the case plan shall describe the individualized supervision provided in the supervised independent living placement as defined in subdivision (w) of Section 11400. The case plan shall be developed with the child or nonminor dependent and individuals identified as important to the child or nonminor dependent, and shall include steps the agency is taking to ensure that the child or nonminor dependent achieves permanence, including maintaining or obtaining permanent connections to caring and committed adults.

(B) During the 90-day period prior to the participant attaining 18 years of age or older as the state may elect under Section 475(8)(B)(iii) of the federal Social Security Act (42 U.S.C. Sec. 675(8)(B)(iii)), whether during that period foster care maintenance payments are being made on the child's behalf or the child is receiving benefits or services under Section 477 of the federal Social Security Act (42 U.S.C. Sec. 677), a caseworker or other appropriate agency staff or probation officer and other representatives of the participant, as appropriate,

shall provide the youth or nonminor dependent with assistance and support in developing the written 90-day transition plan, that is personalized at the direction of the child, information as detailed as the participant elects that shall include, but not be limited to, options regarding housing, health insurance, education, local opportunities for mentors and continuing support services, and workforce supports and employment services, a power of attorney for health care, and information regarding the advance health care directive form. Information provided regarding health insurance options shall include verification that the eligible youth or nonminor dependent is enrolled in Medi-Cal and a description of the steps that have been or will be taken by the youth's social worker or probation officer to ensure that the eligible youth or nonminor dependent is transitioned into the Medi-Cal program for former foster youth upon case closure with no interruption in coverage and with no new application being required, as provided in Section 14005.28.

(C) For youth 14 years of age or older, the case plan shall include documentation that a consumer credit report was requested annually from each of the three major credit reporting agencies at no charge to the youth and that any results were provided to the youth. For nonminor dependents, the case plan shall include documentation that the county assisted the nonminor dependent in obtaining their reports. The case plan shall include documentation of barriers, if any, to obtaining the credit reports. If the consumer credit report reveals any accounts, the case plan shall detail how the county ensured the youth received assistance with interpreting the credit report and resolving any inaccuracies, including any referrals made for the assistance.

(17) For youth 14 years of age or older and nonminor dependents, the case plan shall be developed in consultation with the youth. At the youth's option, the consultation may include up to two members of the case planning team who are chosen by the youth and who are not foster parents of, or caseworkers for, the youth. The agency, at any time, may reject an individual selected by the youth to be a member of the case planning team if the agency has good cause to believe that the individual would not act in the youth's best interest. One individual selected by the youth to be a member of the case planning team may be designated to be the youth's adviser and advocate with respect to the application of the reasonable and prudent parent standard to the youth, as necessary.

(18) For youth in foster care 14 years of age or older and nonminor dependents, the case plan shall include both of the following:

(A) A document that describes the youth's rights with respect to education, health, visitation, and court participation, the right to be annually provided with copies of their credit reports at no cost while in foster care pursuant to Section 10618.6, and the right to stay safe and avoid exploitation.

(B) A signed acknowledgment by the youth that they have been provided a copy of the document and that the rights described in the document have been explained to the youth in an age-appropriate manner.

(19) The case plan for a child or nonminor dependent who is, or who is at risk of becoming, the victim of commercial sexual exploitation, shall document the services provided to address that issue.

(20) For a youth in foster care 10 years of age or older who is in junior high, middle, or high school, or a nonminor dependent enrolled in high school, the case plan shall be reviewed annually, and updated as needed, to indicate that the case management worker has verified that the youth or nonminor dependent received comprehensive sexual health education that meets the requirements established in Chapter 5.6 (commencing with Section 51930) of Part 28 of Division 4 of Title 2 of the Education Code, through the school system. The case plan shall document either of the following:

(A) For a youth in junior high or middle school, either that the youth has already received this instruction during junior high or middle school, or how the county will ensure that the youth receives the instruction at least once before completing junior high or middle school if the youth remains under the jurisdiction of the dependency court during this timeframe.

(B) For a youth or nonminor dependent in high school, either that the youth or nonminor dependent already received this instruction during high school, or how the county will ensure that the youth or nonminor dependent receives the instruction at least once before completing high school if the youth or nonminor dependent remains under the jurisdiction of the dependency court during this timeframe.

(21) (A) For a youth in foster care 10 years of age or older or a nonminor dependent, the case plan shall be updated annually to indicate that the case management worker has done all of the following:

(i) Informed the youth or nonminor dependent that they may access age-appropriate, medically accurate information about reproductive and sexual health care, including, but not limited to, unplanned pregnancy

prevention, abstinence, use of birth control, abortion, and the prevention and treatment of sexually transmitted infections.

(ii) Informed the youth or nonminor dependent, in an age- and developmentally appropriate manner, of their right to consent to sexual and reproductive health care services and their confidentiality rights regarding those services.

(iii) Informed the youth or nonminor dependent how to access reproductive and sexual health care services and facilitated access to that care, including by assisting with any identified barriers to care, as needed.

(B) This paragraph shall not be construed to affect any applicable confidentiality law.

(22) For a child who is 16 years of age or older and for a nonminor dependent, the case plan shall identify the person or persons, who may include the child's high school counselor, Court-Appointed Special Advocate, guardian, or other adult, who shall be responsible for assisting the child or nonminor dependent with applications for postsecondary education and related financial aid, unless the child or nonminor dependent states that they do not want to pursue postsecondary education, including career or technical education. If, at any point in the future, the child or nonminor dependent expresses that they wish to pursue postsecondary education, the case plan shall be updated to identify an adult individual responsible for assisting the child or nonminor dependent with applications for postsecondary education and related financial aid.

(23) On and after the date required by paragraph (9) of subdivision (h) of Section 11461, the case plan shall include all of the following:

(A) The child's or nonminor dependent's tier, as determined by the IP-CANS assessment for purposes of the Tiered Rate Structure pursuant to subdivision (h) of Section 11461.

(B) If applicable, the plan to meet the child or nonminor dependent's immediate needs, as defined in paragraph (2) of subdivision (c) of Section 16562, using funding made available for that purpose.

(C) The strengths building activities that the child or nonminor ~~dependant~~ *dependent* is engaged in, or desires to be engaged in, as defined in Section 16565, for a child or nonminor dependent eligible for the Strengths Building Child and Family Determination Program established in Section 16565 and the spending plan report, as provided by the spending plan manager.

(h) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings, the child's current caregiver, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. This section does not require or prohibit the social worker's facilitation, transportation, or supervision of visits between the child and their siblings.

(i) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan forms until the Child Welfare Services/Case Management System (CWS/CMS) is implemented on a statewide basis.

(j) When a child is 10 years of age or older and has been in out-of-home placement for six months or longer, the case plan shall include an identification of individuals, other than the child's siblings, who are important to the child and actions necessary to maintain the child's relationships with those individuals, provided that those relationships are in the best interest of the child. The social worker or probation officer shall ask every child who is 10 years of age or older and who has been in out-of-home placement for six months or longer to identify individuals other than the child's siblings who are important to the child, and may ask any other child to provide that information, or may seek that information from the child and family team, as appropriate. The social worker or probation officer shall make efforts to identify other individuals who are important to the child, consistent with the child's best interests.

(k) The child's caregiver shall be provided a copy of a plan outlining the child's needs and services. The nonminor dependent's caregiver shall be provided with a copy of the nonminor's TILP.

(l) Each county shall ensure that the total number of visits made by caseworkers on a monthly basis to children in foster care during a federal fiscal year is not less than 95 percent of the total number of those visits that would occur if each child were visited once every month while in care and that the majority of the visits occur in the residence of the child. The county child welfare and probation departments shall comply with data reporting requirements that the department deems necessary to comply with the federal Child and Family Services

Improvement Act of 2006 (Public Law 109-288) and the federal Child and Family Services Improvement and Innovation Act (Public Law 112-34).

(m) The implementation and operation of the amendments to subdivision (i) 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.

**SEC. 33.** Section 16504.6 of the Welfare and Institutions Code is amended to read:

**16504.6.** The State Department of Social Services shall evaluate a request from an Indian tribe to exempt a crime that is exemptible under Section 1522 of the Health and Safety Code, if needed, to allow placement into an Indian home that the tribe has designated for placement under *Section 361.31 and* the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.). However, the tribe may request that the county with jurisdiction over the child evaluate the exemption request. Once a tribe has elected to have the exemption request reviewed by either the State Department of Social Services or the county, the exemption decision may only be made by that entity. Nothing in this section limits the duty of a county social worker to evaluate the home for placement or to gather information needed to evaluate an exemption request.

**SEC. 34.** Section 16507.5 of the Welfare and Institutions Code is amended to read:

**16507.5.** (a) (1) When a minor is separated, or is in the process of being separated, from the minor's family under the provisions of a voluntary placement agreement, the county welfare department or a licensed private or public adoption agency social worker shall make any and all reasonable and necessary provisions for the care, supervision, custody, conduct, maintenance, and support of the minor, including medical treatment.

(2) Responsibility for placement and care of the minor shall be with the social worker who may place the minor in any of the following:

(A) The home of a relative or the home of a nonrelative extended family member, as described in Section 362.7, that has been assessed pursuant to Section ~~361.4.~~ *361.4 or, in the case of an Indian child, an extended family member as described by paragraph (1) of subdivision (c) of Section 224.1.*

(B) The home of a resource family, as defined in Section 16519.5.

(C) A suitable licensed community care facility.

(D) With a foster family agency to be placed in a suitable licensed home or other family home which has been certified by the agency as meeting licensing standards.

(E) ~~A home or~~ *In the case of an Indian child, a tribally approved home as described by subdivision (r) of Section 224.1 and Section 10553.12 or a home or* facility in accordance with the ~~federal Indian Child Welfare Act.~~ *placement preferences described in Section 361.31.*

(b) The granting of a community care license or approval status does not entitle the caregiver to the placement of a specific child or children. Placement is based on the child's needs and best interests.

***SEC. 35.*** *If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.*

***SEC. 36.*** *This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:*

*Indian children continue to be disproportionately represented in California's child welfare system and new research shows that tribes being involved in dependency cases can reduce a child's time in state care. These amendments are urgently needed to reinforce the state's commitment to protecting essential tribal relations by recognizing a tribe's right to protect the health, safety, and welfare of its citizens. Additionally, a uniform name for the provisions of California state law integrating the federal Indian Child Welfare Act is needed.*