

# Juvenile Law Issues Meeting

Call In Number: 877.820.7831

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NOVEMBER 7, 2016

12:30-4:00 P.M.

SAN FRANCISCO, CA



JUDICIAL COUNCIL  
OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION  
CENTER FOR FAMILIES, CHILDREN & THE COURTS

## **Juvenile Law: Dual-Status Youth Data Standards Working Group**

### **Background:**

[Assembly Bill 1911](#) requires the Judicial Council to convene a group of stakeholders to define data elements and outcome tracking for youth involved in the dependency and delinquency system and report to the legislature by January 1, 2018. This bill was introduced in response to a report by the State Auditor's Office on implementation of dual status for youth involved in both the child welfare and juvenile justice systems (see <http://www.auditor.ca.gov/pdfs/reports/2015-115.pdf>).

The state auditor's report references the Family and Juvenile Law Advisory Committee as an appropriate body to convene such a group. Staff have solicited interest from Fam/Juv members and contacted organizations representing identified stakeholders to augment Fam/Juv volunteers.

## Assembly Bill No. 1911

### CHAPTER 637

An act to repeal and add Section 241.2 of the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor September 26, 2016. Filed with  
Secretary of State September 26, 2016.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1911, Eggman. Dual status minors.

Existing law requires the probation department and the child welfare services department in each county to jointly develop a written protocol, as specified, to ensure appropriate local coordination in the assessment of a minor who is both a dependent child and a ward of the juvenile court. Existing law requires, whenever a minor appears to be both a dependent child and a ward of the juvenile court, the county probation department and the child welfare services department, pursuant to that jointly developed written protocol, to initially determine which status will serve the best interests of the minor and the protection of society.

Existing law authorizes the probation department and the child welfare services department in a county to create a jointly written protocol to allow the 2 departments to jointly assess and produce a recommendation that the child be designated as a dual status child, as specified. Existing law requires the protocol to include a plan to collect data, and requires the Judicial Council to collect and compile the data. Existing law requires the Judicial Council to prepare an evaluation of the results of the implementation of the protocol, as specified, and to report its findings and any resulting recommendations to the Legislature within 2 years of the date those counties first deem a child to be a dual status child.

This bill would instead require the Judicial Council to convene a committee comprised of stakeholders involved in serving the needs of dependents or wards of the juvenile court, as specified. The bill would require the committee, by January 1, 2018, to develop and report to the Legislature its recommendations to facilitate and enhance comprehensive data and outcome tracking for the state's youth involved in both the child welfare system and the juvenile justice system, and would require the recommendations to include specified information, including standardized definitions related to these youth. The bill would also require the State Department of Social Services, on or before January 1, 2019, to implement a function within the applicable case management system that will enable county child welfare agencies and county probation departments to identify youth described above who are within their counties, and to issue instructions to all counties on the manner in which to completely and consistently track

the involvement of these youth in both the child welfare system and the juvenile justice system.

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

SECTION 1. Section 241.2 of the Welfare and Institutions Code is repealed.

SEC. 2. Section 241.2 is added to the Welfare and Institutions Code, to read:

241.2. (a) The Judicial Council shall convene a committee comprised of stakeholders involved in serving the needs of dependents or wards of the juvenile court, including, but not limited to, judges, probation officers, social workers, youth involved in both the child welfare system and the juvenile justice system, child welfare and juvenile justice attorneys, child welfare and juvenile justice advocates, education officials, and representatives from the State Department of Social Services, county child welfare agencies, and county probation departments. By January 1, 2018, the committee shall develop and report to the Legislature, pursuant to Section 9795 of the Government Code, its recommendations to facilitate and enhance comprehensive data and outcome tracking for the state's youth involved in both the child welfare system and the juvenile justice system. The committee's recommendations shall include, but not be limited to, all of the following:

(1) A common identifier for counties to use to reconcile data across child welfare and juvenile justice systems statewide.

(2) Standardized definitions for terms related to the populations of youth involved in both the child welfare system and the juvenile justice system.

(3) Identified and defined outcomes for counties to track youth involved in both the child welfare system and the juvenile justice system, including, but not limited to, outcomes related to recidivism, health, pregnancy, homelessness, employment, and education.

(4) Established baselines and goals for the identified and defined outcomes specified in paragraph (3).

(5) An assessment as to the costs and benefits associated with requiring all counties to implement the committee's recommendations.

(6) An assessment of whether a single technology system, including, but not limited to, the State Department of Social Services' Child Welfare Services/Case Management System (CWS/CMS) or the Child Welfare Services-New System (CWS-NS), is needed to track youth in the child welfare system and the juvenile justice system.

(b) The State Department of Social Services shall, on or before January 1, 2019, implement a function within the applicable case management system that will enable county child welfare agencies and county probation departments to identify youth involved in both the child welfare system and the juvenile justice system who are within their counties and shall issue instructions to all counties on how to completely and consistently track the

involvement of these youth in both the child welfare system and the juvenile justice system.

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## **Bills with RUPRO Implications**

Listed below are the bills with RUPRO implications that have been enrolled to or signed by the Governor. The full text for these bills can be found at [leginfo.legislature.ca.gov](http://leginfo.legislature.ca.gov). For questions on any of these bills please contact: Alan Herzfeld at (916) 323-3121 or [alan.herzfeld@jud.ca.gov](mailto:alan.herzfeld@jud.ca.gov).

### **[AB 1702 \(Stone D\) Juveniles: dependent children: reunification services](#)**

*Chapter 124, Statutes of 2016*

Summary: Provides that reunification services need not be provided when the court finds that the parent or guardian knowingly participated in, or permitted, the sexual exploitation of the child, as prescribed, except if the parent or guardian demonstrated by a preponderance of the evidence that he or she was coerced into doing so.

### **[AB 1735 \(Waldron R\) Dissolution of marriage: bifurcated judgement: service](#)**

*Chapter 67, Statutes of 2016*

Summary: In bifurcated dissolution cases, allows for service of process on an attorney of a represented party to be sufficient, unless there have been no filings in the case for six months after the entry of the bifurcated judgement, in which case service must also be on the party.

### **[AB 1849 \(Gipson D\) Foster youth: transition to independent living: health insurance coverage](#)**

*Passed by the Assembly and Senate and enrolled to the Governor*

Summary: Requires a 90-day transition plan to include information on a minor or nonminor's eligibility for and/or enrollment in Medi-Cal health insurance programs.

### **[AB 1911 \(Eggman D\) Dual status minors](#)**

*Passed by the Assembly and Senate and enrolled to the Governor*

Summary: Requires the Judicial Council to convene a stakeholder working group to develop and report to the Legislature its recommendations to facilitate and enhance comprehensive data and outcome tracking for the state's youth involved in both the child welfare system and the juvenile justice system.

### **[AB 1945 \(Stone D\) Juveniles: sealing of records](#)**

*Passed by the Assembly and Senate and enrolled to the Governor*

Summary: Allows a child welfare agency of a county responsible for the supervision and placement of a minor or nonminor dependent to access a record that has been ordered sealed for the limited purpose of determining an appropriate placement or service.

**AB 2005 (Ridley-Thomas D) Juveniles: out-of-state placement**

*Passed by the Assembly and Senate and enrolled to the Governor*

**Summary:** Restricts a court from placing a minor in an out of state placement, unless the court finds, in writing and by clear and convincing evidence, that the case plan demonstrates that the out-of-state placement is the most appropriate and is in the best interests of the minor and that in-state facilities or programs have been considered and are unavailable or inadequate to meet the needs and best interests of the minor.

**AB 2872 (Patterson R) Children**

*Passed by the Assembly and Senate and enrolled to the Governor*

**Summary:** Allows an otherwise sealed juvenile case file to be inspected by a court-appointed investigator, acting within the scope of investigative duties of an active case, for the purpose of conducting a stepparent adoption, access to juvenile case files.

**SB 253 (Monning D) Juveniles: psychotropic medication**

*Passed by the Assembly and Senate and enrolled to the Governor*

**Summary:** Commencing January 1, 2018, requires that an order authorizing the administration of psychotropic medications to a dependent child or a delinquent child in foster care be granted only upon the court's determination that the administration of the medication is in the best interest of the child and that specified requirements have been met, including a requirement that the prescribing physician confirms that all appropriate laboratory screenings or tests have been performed or ordered for the child, as specified. Under specified circumstances, the bill would prohibit the court from authorizing the administration of psychotropic medications to a child under those provisions, unless a preauthorization review is obtained from a child psychiatrist or behavioral pediatrician, as specified. The bill would impose additional requirements on the court to implement these provisions and to conduct review hearings, as specified. The bill would require the child's social worker to submit a report to the court prior to any review hearing, to include information from the child, the child's caregiver, the public health nurse, and the court-appointed special advocate. By increasing the duties of county social workers, the bill would impose a state-mandated local program. The bill would authorize psychotropic medication to be administered in an emergency without court authorization. The bill would require court authorization to be sought as soon as practical thereafter, but in no case more than 2 court days after emergency administration of the psychotropic medication. The bill would require the Judicial Council to adopt rules of court and develop appropriate forms to implement these provisions by January 1, 2018.

**SB 1060 (Leno D) Postadoption contact: siblings of dependent children or wards**

*Passed by the Assembly and Senate and enrolled to the Governor*

**Summary:** Requires a county placement agency to convene a meeting with a dependent, the dependent's sibling or siblings. The prospective adoptive parent or parents, and a facilitator, for the purpose of deciding whether to voluntarily execute a postadoption sibling contact agreement. Further requires the court to inquire about the status and results of this meeting at the first six-month review hearing.

**SB 1255 (Moorloch R) Dissolution of marriage: date of separation**

*Chapter 114, Statutes of 2016*

**Summary:** Define “date of separation” for purposes of the Family Code to mean the date that a complete and final break in the marital relationship has occurred, as evidenced by the spouse’s expression of his or her intent to end the marriage and conduct that is consistent with that intent. Directs a court to take into account all relevant evidence in determining the date of separation. Specifies that it is the intent of the Legislature to abrogate the decisions in *In re Marriage of Davis* (2015) 61 Cal.4th 846 and *In re Marriage of Norviel* (2002) 102 Cal.App.4th 1152.

**SB 1336 (Jackson D) Dependent children: investigation: relatives**

*Passed by the Assembly and Senate and enrolled to the Governor*

**Summary:** Requires a court to make a finding as to whether the social worker has exercised due diligence in conducting an investigation identify, locate, and notify a child’s relatives whenever a child is removed from a parent or guardian's custody, and specifies the factors to consider in making that determination.





## JUDICIAL COUNCIL OF CALIFORNIA

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### MEMORANDUM

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Date	Action Requested
October 28, 2016	Please review
To	Deadline
Family and Juvenile Law Advisory Committee	n/a
From	Contact
Kerry Doyle	Kerry Doyle CFCC 415-865-8791 phone kerry.doyle@jud.ca.gov
Subject	
Psychotropic Medication--Cleanup Proposal	

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Effective July 1, 2016, the Judicial Council amended rule 5.640 of the California Rules of Court, approved two optional forms, adopted two mandatory forms, revised four forms, and revised and renumbered one form to conform to recent statutory changes to the requirements for court authorization of psychotropic medication for foster children enacted by Senate Bill 238 (Mitchell; Stats. 2015, ch. 534).

Staff has received information about how these forms are functioning now that they are in use and is seeking feedback from the Family and Juvenile Law Advisory Committee on the issues below, and any other issues you've encountered, in anticipation of a proposal in the Spring 2017 comment cycle.

#### **1. Information gathering**

Are judges getting the information they need to grant or deny applications for psychotropic medication? Are the forms being filled out adequately by the prescribing physicians? By the social workers or probation officers? Is the judge receiving the opinion of the child? Is the judge receiving input from the caregivers?

#### **2. Parental authorization**

The parental authorization process is unclear and should be discussed by this committee.

Staff has received a question from one county regarding whether the JV-220 process is required when all parties agree the parents can consent to psychotropic medication. Section 369.5 is silent as to the process for the juvenile court to issue an order delegating the authority to a parent.<sup>1</sup> Rule 5.640(e), however, requires that the court first consider an application and attachments and review the case file.<sup>2</sup>

Another potential issue for discussion is how long the delegation of authority lasts, and under what conditions. What if, for example, when the order is made, the child is on one straightforward medication but later on a group home wants to administer 3 medications?

### **3. Deadlines for serving notice of application**

Rules 5.640(c)(8)(a)-(D) and 5.640(c)(8)(E) do not specify deadlines for serving *Proof of Notice of Application* (form JV-221) on the other parties. Should deadlines be written into the rule or should this be established by local rule or protocol?

### **4. Notice to child**

Rule 5.640(c)(10) requires the clerk of the court to provide notice of a hearing on the application to a dependent child if the child is 12 years of age or older. This is in contrast to the requirements in Welfare and Institutions Code sections 290.1, 290.2, 291, 292, and 293 which require notice of detention, jurisdictional, and status review hearings to a child who is 10 years of age or older. Should rule 5.640 be amended to adjust the age at which a child must be noticed consistent with all other hearing types?

### **5. Cleanup**

Since the forms have been implemented, staff has become aware of the necessity to clean-up portions of the rule and forms. In most part this is necessitated by *Prescribing Physician's Statement, Request to Continue—Attachment* (form JV-220(B)). As the committee may recall, this form was created after the public comment period to address the concerns from physicians and physician groups that *Prescribing Physician's Statement—Attachment* (form JV-220(A)) was too long and would take too long to complete. In response to these comments, the committee created a shortened form for a request to continue the same medication by the same physician that completed the most recent JV-220(A). References to this form, however, were not completely inserted into rule 5.640. Most notably, it was not added to subdivision (h) which

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<sup>1</sup> Section 369.5 does require that this delegation be upon making findings on the record that the parent poses no danger to the child and has the capacity to authorize psychotropic medications.

<sup>2</sup> The findings required by rule 5.640 are broader than those required by section 369.5. The rule requires the court to find 1) that the parent poses no danger to the child, and 2) the parent has the capacity to understand the request and the information provided and to authorize the administration of psychotropic medication to the child, consistent with the best interest of the child.

requires that a copy of the order and the last two pages of form JV-220(A) be provided to the caregiver. It was also not included on *Order Regarding Application for Psychotropic Medication* (form JV-223) as evidence the judge relied on, and there is not an instruction on the order to provide the last two pages of form JV-220(B) to the caregiver. Additionally, one court has pointed out that it is possible that more than one *Input on Application for Psychotropic Medication* (form JV-222) could be submitted, but there is only space to enter one form JV-222 on form JV-223 (order form) as evidence on which the court relied.

Additionally, *Proof of Notice of Application* (form JV-221) is a mandatory form that currently omits several of the documents that must be provided to the various parties when making an application for psychotropic medication. It also allows the applicant to explain how the caregiver was given information on how to obtain copies of the required forms, but rule 5.640(c)(8)(A)(iv)-(v) does not state that the caregiver can be given “information about how to obtain a copy of the forms” as an alternative to a blank copy of the forms.



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### MEMORANDUM

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Date	Action Requested
October 26, 2016	Please Review
To	Deadline
Family and Juvenile Law Advisory Committee	N/A
From	Contact
Nicole Giacinti, Attorney Center for Family Children & the Courts	Nicole Giacinti, Center for Families, Children & the Courts 415-865-7598 phone nicole.giacinti@jud.ca.gov
Subject	
Forms proposal – Juveniles: Title IV-E Findings and Orders	

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During the October 20, 2016, Family and Juvenile Law Advisory Committee (committee) conference call, staff discussed a possible proposal to revise 15 juvenile law forms (JV-320, JV430, JV-433, JV-435, JV-438, JV-440, JV-442, JV-443, JV-445, JV-446, JV-455, JV-457, JV-672, JV-674 and JV-678). All 15 of the forms to be revised relate to the findings and orders required after status review hearings for children in out of home placement. Of the 15 forms to be revised, 12 of them relate to dependency cases and 3 of them relate to delinquency cases. Staff is proposing these revision based on requests from various counties to update the forms or provide them with updated findings and orders that reflect recent legislative changes.

During the conference call, committee members expressed concern about tackling such an involved proposal during the Winter cycle and it was decided that if the proposal goes forward, it should be in the Spring cycle. Committee members also questioned whether it is necessary to revise the findings and orders forms and requested additional information on how counties use the Judicial Council juvenile law findings and orders forms.

Members also volunteered to provide local forms or templates to staff. The forms we received are attached.

Staff sought input from other CFCC colleagues on the Judicial Resources and Technical Assistance (JRTA) team to gather the requested information. AS you may be aware, CFCC attorneys on the JRTA team visit each county in California annually or biennially. During these visits, the JRTA attorney reviews case files of children who are in out of home care in the dependency and delinquency systems. During a file review, the JRTA attorney reviews all the documents in the file, including the findings and orders. The JRTA attorney closely reviews the findings and orders for compliance with title IV-E regulations, as well as state law.

Information provided by the JRTA team indicates that the following counties use the judicial councils forms to document their findings and orders:

Calaveras – delinquency and dependency  
El Dorado – dependency  
Solano - dependency  
Amador – delinquency  
Inyo – dependency and delinquency  
San Joaquin – delinquency  
Marin – delinquency  
San Mateo – delinquency  
Tuolumne – delinquency  
Tehama – delinquency  
Nevada – dependency  
Lassen – dependency and delinquency  
San Luis Obispo – dependency and delinquency  
Santa Clara – delinquency for some review hearings  
Sonoma – delinquency  
Siskiyou – delinquency  
Tulare – delinquency  
Glenn – dependency  
Santa Barbara – dependency  
Merced – delinquency  
Mendocino – dependency  
Yuba – dependency

It appears that these counties use the forms as templates for their finding and order documents:

San Mateo – template for dependency  
Napa – templates for both dependency and delinquency  
Sonoma - templates for both dependency and delinquency

Fresno – templates for delinquency

Plumas – templates for both dependency and delinquency, in the process of switching to use the forms.

Santa Clara – template for delinquency

Sonoma – template for dependency

San Diego – template for dependency

Tulare – template for dependency

Sutter – template for dependency and delinquency

Lake – template for dependency

Yuba – template for delinquency

Colusa – template for dependency

Los Angeles – template for dependency and delinquency

The forms to be revised were originally created to help ensure courts were accurately documenting the findings and orders required by Title IV-E and the Welfare and Institutions Code for children in out of home placement. The 12 dependency forms were last revised in 2011, while the 3 delinquency forms were last revised in 2012. While over the last 5 years there have been changes to the findings and orders related to out of home placement cases, the recent implementation of Senate Bill 794 (Comm. On Human Services; Stats. 2015, ch. 425) requires that these forms be revised. SB 794 had a significant impact on the findings and orders required in juvenile dependency and delinquency cases. Specifically, the legislation did away with planned permanent living arrangements for children under 16 years of age and imposed additional findings and order requirements on the court for all children in out of home placement. The additional findings and orders requirements are aimed at ensuring that permanency is achieved more quickly for children in out of home care and require the court to make findings regarding the barriers to achieving permanence for the child, among other things.

In addition to the legal changes necessitating these form revisions, the timing is right because many courts are moving to new case management systems. Moving to these new case management systems requires inputting all the findings and orders information for each hearing type. Thus, revising these forms at this time will allow courts moving to new case management systems to input the correct information one time, rather than updating the incorrect information at a later time.

The statutory changes implemented by SB 794 can be broken into four main topic areas:

1. Findings related to probation/child welfare's efforts to locate family members must be made at permanency hearings where reunification services were terminated and every hearing until the child achieves permanency. The proposed finding is: "The county agency has/has not made diligent efforts to locate an appropriate relative with whom

[name] could be placed. Each relative whose name has been submitted to the department has/has not been evaluated.”

2. The court must now consider whether probation/child welfare has made ongoing and intensive efforts to achieve permanency for children 16 and older. The proposed finding is: “The child is 16 years or older and the agency has/has not made the following ongoing and intensive efforts to return the child to a safe home or finalize the permanent plan (describe): \_\_\_\_.”
3. Planned permanent living arrangements are not available for children under 16 but other permanent plans have been added. The proposed finding is as follows:

“It is ordered that:

- a. The child’s permanent plan is placement with (name): \_\_a fit and willing relative. The likely date by which the child’s permanent plan will be achieved is (specify date):\_\_\_\_.
- b. The child remain in foster care with a permanent plan of (specify):
  - i. Return home.
  - ii. Adoption.
  - iii. Tribal customary adoption.
  - iv. Legal guardianship.
  - v. The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child’s best interest, and the child is ordered placed in another planned permanent living arrangement with a goal of return home, legal guardianship, placement with a relative, emancipation, or \_\_\_\_.The likely date by which the permanent plan will be achieved is \_\_/\_\_/\_\_.
- c. The court finds that the barriers to achieving the child’s permanent plan are: [describe].

**For Children 16 and older placed in another planned permanent living arrangement:**

- d. The court asked the child where he/she wants to live and the child provided the following information: [describe].
- e. The court has considered the evidence before it and finds that another planned permanent living arrangement is still the best permanent plan because [describe].
- f. The compelling reasons why the other permanent plan options are not in the [name of the child] best interests are [describe]:”

4. Lastly, probation/child welfare must be independent living planning for children who are in out of home placement beginning at age 14, rather than age 16.

This proposal raises several considerations which are discussed in the ITC and also mentioned below. The ITC will be revised to reflect the committee's final decision on these issues.

1. Should a finding be included that documents whether the child has an order for psychotropic medications and the next date for the hearing on that order? While such a finding is not directly required by legislation, there has been keen interest on the subject from the legislature and the public. Including such a finding on the findings and orders forms may provide the courts with a way to keep track of those children who have orders for psychotropic medication. The proposed finding would be a checkbox finding and read: "The child does/does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on \_\_\_\_."
2. Should the *Eighteen-Month Permanency Attachment Reunification Services Continued*, form JV-443, include a finding that reunification services are being extended to 24 months because reasonable reunification services were not provided? The enumerated exceptions to the 18 month time limit on reunification services set forth in Welf. and Inst. Code section 366.22(b) (parent has made progress in substance abuse treatment, has recently been released from incarceration, institutionalization, or the custody of the department of homeland security) do not include child welfare's failure to provide reasonable services; however, recent case law, specifically *In re J.E.*, A147724, reiterating that the court has the discretion to continue reunification services to 24 months suggests that such a finding may be warranted. Suggested language for a finding that reunification services are extended to 24 months for failure to provide reasonable services is: "The court finds reasonable reunification services have not been provided. Based on this finding and other relevant factors, including the likelihood of success of further reunification services and the child's need for a prompt resolution of dependency status, the court finds good cause to continue reunification services to \_\_\_\_."
3. When the California legislature implemented the revisions to 42 U.S.C. section 675 that lowered the age requirement for independent living planning from 16 to 14, it neglected to implement the revisions for delinquent youth. In other words, according to the federal statute both dependent and delinquent youth in out of home placement at the age of 14 should receive independent living planning services and those efforts should be documented in the child's case plan; however, the Welfare and Institutions Code only lowered the age for dependent youth. Should the findings and orders reflect compliance with 42 U.S.C. section 675 by revising the independent living finding on the delinquency forms to require the court to consider whether children 14 and older are receiving



independent living planning services? The proposed checkbox finding reads: “The child is 14 years or older. The services set forth in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.”

#### Attachments

1. Invitation to Comment entitled “Juvenile Law: Title IV-E Findings and Orders.”
2. Finding and Order Forms used by Place County.
3. Proposed revised Judicial Council form, JV-320.
4. Proposed revised Judicial Council form, JV-430.
5. Proposed revised Judicial Council form, JV-433.
6. Proposed revised Judicial Council form, JV-435.
7. Proposed revised Judicial Council form, JV-438.
8. Proposed revised Judicial Council form, JV-440.
9. Proposed revised Judicial Council form, JV-442.
10. Proposed revised Judicial Council form, JV-443.
11. Proposed revised Judicial Council form, JV-445.
12. Proposed revised Judicial Council form, JV-446.
13. Proposed revised Judicial Council form, JV-455.
14. Proposed revised Judicial Council form, JV-457.
15. Proposed revised Judicial Council form, JV-672.
16. Proposed revised Judicial Council form, JV-674.
17. Proposed revised Judicial Council form, JV-678.

# JUDICIAL COUNCIL OF CALIFORNIA

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[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT

[ItC prefix as assigned]-\_\_

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Title	Action Requested
Juvenile Law: Title IV-E Findings & Orders	Please Review
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms JV-320, JV430, JV-433, JV-435, JV-438, JV-440, JV-442, JV-443, JV-445, JV-446, JV-455, JV-457, JV-672, JV-674 and JV-678	September 1, 2017
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Nicole Giacinti
Hon. Jerilyn L. Borack, Cochair	<a href="mailto:nicole.giacinti@jud.ca.gov">nicole.giacinti@jud.ca.gov</a>
Hon. Mark A. Juhas, Cochair	(415) 865-7598

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### Executive Summary and Origin

The Family and Juvenile Law Advisory Committee recommends revising 15 optional juvenile law forms to bring them into compliance with Senate Bill 794 (Comm. On Human Services; Stats 2015, ch. 425). Senate Bill 794 implemented significant changes to the findings and orders that are required during review hearings for children in out of home placement.

### Background

The 15 forms proposed for revision were originally created in 2006 as part of a large package of optional forms designed to assist the courts in documenting required findings and orders in out of home placement cases. These forms are put to a variety of uses by the courts. Some courts use the forms to document all findings and orders, others have programmed the findings and orders from the forms into their case management systems, and some courts use them as a template to create their own local findings and order documents. Forms JV-320, JV430, JV-433, JV-435, JV-438, JV-440, JV-442, JV-443, JV-445, JV-446, JV-455, and JV-457 were last revised in 2011; while forms JV-672, JV-674, and JV-678 were last revised in 2012. In 2015, the legislature passed SB 794, which implemented large scale change to the findings and orders required in out of home placement cases for dependent and delinquent youth. Specifically, SB 794 revised Family Code section 7950 and Welfare and Institutions Code sections 362.04, 362.05, 366, 366.21, 366.22, 366.25, 366.26, 366.3, 366.31, 706.5, 706.6, 727.2, 727.3, 10618.6, 11386, 11400, 16002, 16501, and 16501.1. One of the most significant changes implemented by SB 794 was the narrowing of planned permanent living arrangements as a catch-all option for children in

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

out of home placement. In addition to modifying the permanent plan options available to probation and child welfare, SB 794 requires the court to make a variety of additional findings and orders aimed at achieving permanency more quickly for children. During the five years since the last revision of the bulk of these forms other bills have made minor modifications to the findings and orders; this revision also captures those minor changes. Revising the forms listed above will ensure that they contain accurate, current information courts can rely on when making findings and order related to out of home placement cases.

## **The Proposal**

To ensure conformance with the statutory changes to the findings and orders implemented by SB 794, the Family and Juvenile Law Advisory Committee proposes the following forms revisions:

1. Amendments to Family Code section 7950 mandate that the court making a finding regarding the department's efforts to locate relatives at the permanency hearing where reunification services are terminated and every hearing thereafter.
  - Revise form JV-433 to include the relative search finding in proposed item number 9.
  - Revise form JV-445 to include the relative search finding in proposed item number 14a.
  - Revise form JV-674 to include the relative search finding in proposed item 14b(4).
  - Revise form JV-678 to include the relative search finding in proposed item 10.
2. Amendments to Welfare and Institutions Code sections 366(a)(1)(B) and 727.2 require the court to determine whether the child welfare agency has made ongoing and intensive efforts to achieve permanency for children 16 or older.
  - Revise form JV-440 to include an ongoing and intensive efforts finding in proposed item 11.
  - Revise form JV-445 to include an ongoing and intensive efforts finding in proposed item 13.
  - Revise form JV-446 to include an ongoing and intensive efforts finding in proposed item 17.
  - Revise form JV-455 to include an ongoing and intensive efforts finding in proposed item 11.
  - Revise form JV-674 to include an ongoing and intensive efforts finding in proposed item 10a.
  - Revise form JV-678 to include an ongoing and intensive efforts finding in proposed item 11a.
3. Amendments to Welfare and Institutions Code sections 366(a)(2), 366.21(g)(5)(A), 366.22(a)(3), 366.25(a)(3), 366.26, 366.3(h), 727.2 and 727.3 change the permanent plan options available to children in out of home placement and require the court to make additional findings regarding the agency's efforts to achieve permanency for the child.
  - Revise form JV-320 to include the newly implemented permanent plan options in proposed item 16a.

- Revise form JV-433 to include the newly implemented permanent plan options in proposed item 13 and to include the new findings related to children 16 and older in proposed item 14.
  - Revise form JV-438 to include the newly implemented permanent plan options in proposed item 10 and to include the new findings related to children 16 and older in proposed item 11.
  - Revise form JV-442 to include the newly implemented permanent plan options in proposed item 9 and to include the new findings related to children 16 and older in proposed item 10.
  - Revise form JV-446 to include the newly implemented permanent plan options in proposed item 28 and to include the new findings related to children 16 and older in proposed item 29.
  - Revise form JV-457 to include the newly implemented permanent plan options in proposed item 8 and to include the new findings related to children 16 and older in proposed item 9.
  - Revise proposed new item 14 in form JV-672 to reflect new plan options.
  - Revise form JV-674 to include the newly implemented permanent plan options in proposed item 15 and to include the new findings related to children 16 and older in item 17.
  - Revise form JV-678 to include the newly implemented permanent plan options in proposed item 14 and to include the new findings related to children 16 and older in item 17.
4. Amendments to Welfare and Institutions Code section 366.22(b) require the court to consider barriers faced by minor or nonminor parents when deciding whether continue reunification services to 24 months.
- Revise form JV-443 to include proposed item 6a3., which requires the court to consider minor and nonminor parents
5. Amendments to the United States Code, title 42, section 675 and to Welfare and Institutions Code section 366.3(e)(10) require that children age 14 and older in out of home placement receive services to help them achieve successful adulthood.
- Revise form JV-320 to update this finding in proposed item 20.
  - Revise form JV-430 to update this finding in proposed item 20.
  - Revise form JV-435 to update this finding in proposed item 20.
  - Revise form JV-440 to update this finding in proposed item 21.
  - Revise form JV-445 to update this finding in proposed item 20.
  - Revise form JV-446 to update this finding in proposed item 26.
  - Revise form JV-455 to update this finding in proposed item 21.
  - Revise form JV-672 to update this finding in proposed item 15.
  - Revise form JV-674 to update this finding in proposed item 18.
  - Revise form JV-678 to update this finding in proposed item 18.
6. Welfare and Institutions Code section 727.3 sets forth the time limits on reunification services for parents. This code section was not changed by SB 794 but the time limits on reunification services for parents of delinquent youth are currently not clearly delineated.

Revising the findings and orders to be more straightforward will ensure legally accurate findings

- Revise proposed item 14 on form JV-674 to clarify when services are continued or terminated.
- Revised proposed items 5 on form JV-678.

### **Alternatives Considered**

The committee considered addressing recent legislative changes to the required findings and orders through trainings and technical assistance; however, many courts have asked for revised findings and orders documents that reflect the recent legal changes. In addition, this seems to be an opportune time to revise the findings and orders since many courts are moving to new case management systems. Revising the findings and orders now means that courts will input the new findings and orders along with all the other information that has to be entered into the case management system. The committee recognizes that the proposal is to revise a large number of forms and, while the statutory changes implemented by SB 794 went into effect in January 2016, this proposal could be pushed to the spring cycle.

The committee also considered not including the finding regarding psychotropic medications on the forms. While there is no statutory requirement that the findings and order forms contain this finding, the committee believes that it will be useful for the courts and parties to have information regarding psychotropic medication orders on the finding and orders forms.

Consideration was also given to excluding the finding on the 18 month status review form that authorizes 24 months of services when reasonable services have not been provided. However, in light of recent case law, the committee believes that this finding should be included to make the form as accurate as possible.

Finally, the committee also considered whether to revise the independent living finding on the juvenile delinquency findings and order forms. The committee acknowledges that the 600 section of the Welfare and Institutions Code was not revised to reflect the changes to the federal legislation, which now requires that children in out of home placement who are 14 and older – rather than 16 and older – receive independent living planning. The committee believes, however, that the federal legislatures’ intent that this revision apply to both dependent and delinquent youth was clear.

### **Implementation Requirements, Costs, and Operational Impacts**

This proposal will result in minimal printing costs and may result in a temporary increase in employee labor for those courts that need to reprogram existing case management systems. On the other hand, it will likely result in a statewide savings because courts will not have to devote employee resources to developing legally accurate forms. Instead, these revised forms will be provided to courts statewide.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- In light of the number of forms to be revised, should this proposal be slated for the spring cycle, rather than the winter cycle to give the committee more time to go through the forms and proposed revisions?
- Would it be useful to include an additional finding that documents whether the child has a psychological medications order and sets forth the next hearing date on that order on the findings and orders forms?
- Should the *Eighteen-Month Permanency Attachment Reunification Services Continued*, form JV-443, include a finding that reunification services are being extended to 24 months when the court finds that reasonable services have not been provided?
- United States Code, title 42, section 675 was amended to require independent living planning begin for children who are in out of home placement at age 14 or older, rather than 16 or over; however, the Welfare and Institutions Code was amended only to require that dependent youth receive independent living planning at 14. Should the findings and orders that relate to delinquent youth also be revised to require independent living planning for children who are in out of home placement at 14 years or older?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would six months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### Attachments and Links

1. Proposed revised Judicial Council form, JV-320.
2. Proposed revised Judicial Council form, JV-430.
3. Proposed revised Judicial Council form, JV-433.
4. Proposed revised Judicial Council form, JV-435.
5. Proposed revised Judicial Council form, JV-438.
6. Proposed revised Judicial Council form, JV-440.
7. Proposed revised Judicial Council form, JV-442.
8. Proposed revised Judicial Council form, JV-443.
9. Proposed revised Judicial Council form, JV-445.

10. Proposed revised Judicial Council form, JV-446.
11. Proposed revised Judicial Council form, JV-455.
12. Proposed revised Judicial Council form, JV-457.
13. Proposed revised Judicial Council form, JV-672.
14. Proposed revised Judicial Council form, JV-674.
15. Proposed revised Judicial Council form, JV-678.

# PLACER COUNTY SUPERIOR COURT – JUVENILE DEPENDENCY MODIFICATION FINDINGS AND ORDER (WI§300)

<b>In the Matter of</b>  A Person Coming Within the Juvenile Court Law	<b>Case No:</b>
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**THE COURT ORDERS:**

**NOTICE:**

- Notice has been given as required by law.
- The identity/whereabouts of the child's  Mother  Father  Legal Guardian is/are unknown and reasonable efforts have been made to ascertain his/her whereabouts and/or identity.
- The  Mother  Father  Legal Guardian has received timely notice of the hearing and has willfully failed to appear.
- The child is/may be an Indian child and notice has been provided as provided by law with proof of such notice filed with the court.

**PLACEMENT:**  Temporary

- The child is hereby placed in the care, custody and control of the Department of Health and Human Services (DHHS) for placement: In a suitable and approved:  Foster Home/Foster Family Agency  Group home  Relative Home  NREFM  \_\_\_\_\_.
- The child is hereby placed in the home of the  Mother  Father  Guardian(s), who shall maintain custody of the child subject to the supervision of the DHHS.  Parent(s)  Guardian(s) shall be required to participate in the Child Welfare services or other services provided by a designated agency.
- DHHS is granted discretion to place the child with  Mother  Father  Guardian  Relative  NREFM  \_\_\_\_\_ under the supervision of the DHHS. Parent(s)/Guardian(s) shall be required to participate in the Child Welfare services or other services provided by a designated agency.
- Placement order above includes Wraparound services in accordance with WI§ 18250, 18251, and 18252. The child and family shall cooperate with the wraparound services and providers.

**VISITATION:**  Temporary  Extended Visitation

- Visitation between the child and  Mother  Father  Legal Guardian  \_\_\_\_\_ shall be:
  - Supervised by  DHHS  relative/NREFM  residential treatment facility.
  - Monitoring by NREFM/Foster Parent/Extended Family  Group Monitoring
  - Supervised by \_\_\_\_\_.
  - Unsupervised  in a public place  including overnight visits.
  - After consultation with minor's counsel  After consultation with the Tribe
- DHHS is granted discretion to adjust frequency and duration above the minimum ordered.
- DHHS is granted discretion to allow/transition visits between the child and  Mother  Father  Legal Guardian
  - Supervised by relative/NREFM \_\_\_\_\_  by residential treatment facility
  - Supervised by \_\_\_\_\_.
  - Monitoring by NREFM/Foster Parent/Extended Family  Group Monitoring
  - Unsupervised  in a public place  including overnight visits.
  - After consultation with minor's counsel  After consultation with the Tribe
- Visitation between the child and  Mother  Father  Guardian  is denied. Detriment to the child is found.
- DHHS is granted discretion to increase duration and frequency of visits.
- DHHS is granted discretion to allow telephone calls  Supervised  Unsupervised
- Visitations shall not be forced with  Mother  Father

**OTHER ORDERS:**

- CASA** Appointed
- Educational rights** of the  Mother  Father  Guardian are:  terminated/suspended
- The Court makes this order in the best interests of the child.
- \_\_\_\_\_ is appointed as a surrogate parent to make all educational decisions on behalf of the child. DHHS is directed to prepare Judicial Council Form JV-535 and submit it to the Court for filing.
- Except as specifically modified herein, all previous orders remain in full force and effect.

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• **The court advises all parties regarding confidentiality of the proceedings and documents.**

Dated : \_\_\_\_\_

\_\_\_\_\_  
Judge/Commissioner of the Superior Court



# PLACER COUNTY SUPERIOR COURT - JUVENILE DEPENDENCY CONTINUANCE OR SETTING FINDINGS AND ORDER (WI§300)

<b>In the Matter of</b>  A Person Coming Within the Juvenile Court Law	<b>Case No:</b>
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**THE COURT ORDERS:**

**NOTICE:**

- Notice has been given as required by law.
- The identity/whereabouts of the child's  Mother  Father  Legal Guardian is/are unknown and reasonable efforts have been made to ascertain his/her whereabouts and/or identity.
- The  Mother  Father  Legal Guardian has received timely notice of the hearing and has willfully failed to appear.

**MATTER SET FOR CONTESTED HEARING BEYOND STATUTORY TIME**

**CONTINUANCE REQUEST BY:**

- Department of Health and Human Services (DHHS)  Mother  Father  Legal Guardian  Minor
- Court on the Court's Motion  
for  Jurisdiction  Disposition  Review  WI§366.26  Other\_\_\_\_\_

**REASONS FOR REQUEST:**

- Notice of the hearing was not provided to a party.
- The child is or may be an Indian child and notice of the proceeding and the right to intervene was not provided as required by law.
- Social Worker's report was filed late  was not filed
- The  Mother  Father  Legal Guardian  Minor did not receive the report within a time frame to adequately review and read the report.
- The nature and allegations in the case require additional time to conduct an investigation and prepare a report.
- Additional investigation and/or interview and/or information needs to be assembled.
- Parties need additional time to meet and confer
  
- First appearance for  Mother  Father  Legal Guardian  Minor
- Substitution of Counsel  New Counsel either appointed or appeared
- Counsel needs additional time to prepare for the matter
- Emergency issues with  Mother  Father  Legal Guardian  Minor
- Counsel or party not available today due to sickness, death or other reason acceptable by the Court
- Necessary and material witnesses are unavailable before the date set
- Calendar Congestion, first available date for all parties set
- Discovery to parties still pending
- Other factual basis:

**COURT GRANTS REQUEST TO CONTINUE HEARING AND/OR THE SETTING OF A CONTESTED HEARING:**

- The Court **waives written notice** and finds good cause to entertain the oral motion for continuance of hearing.
- The Court finds the reasons set for above to be **Good Cause** to grant the request for continuance of the hearing.
- The Court finds the reasons set for above to be **Exceptional Circumstances** to grant the request for continuance of the **disposition hearing beyond 60 days of the detention/initial hearing.**
  - Pursuant to section WI§352, the Court finds the continuance in this case is not contrary to the Minor's best interest. The Court has considered the Minor's need for prompt resolution, the need for the Minor to have a stable living environment and the damage to a minor of prolonged temporary placements.
  
- The  Mother  Father\_\_\_\_\_  Legal Guardian  Minor waives further written notice for the new date.

**NEXT DATE:** \_\_\_\_\_

- Except as specifically modified herein, all previous orders remain in full force and effect.

- **The court advises all parties regarding confidentiality of the proceedings and documents.**

Dated : \_\_\_\_\_

\_\_\_\_\_  
Judge/Commissioner of the Superior Court

# PLACER COUNTY SUPERIOR COURT – JUVENILE DEPENDENCY DETENTION FINDINGS AND ORDER (WI§300)

<b>In the Matter of</b>	<b>Case No:</b>
A Person Coming Within the Juvenile Court Law	<b>DETENTION FINDINGS AND ORDER (WI§300)</b>

The Court has read and considered the Social Worker's report, dated \_\_\_\_\_, which is received into evidence. After examination of the Social Worker's report and all other evidence presented at the detention hearing, good cause appearing therefore,

**THE COURT FINDS AND ORDERS:**

**NOTICE:**

- Notice has been given as required by law.
- The identity/whereabouts of the child's  Mother  Father  Legal Guardian is/are unknown and reasonable efforts have been made to ascertain his/her whereabouts and/or identity.
- The  Mother  Father  Legal Guardian has received timely notice of the hearing and has willfully failed to appear.
- Legal residence is found to be in  Placer  \_\_\_\_\_ County, California.

**ATTORNEY/CASE APPOINTMENT:**

- |   |                                 |                                 |                                |
|---|---------------------------------|---------------------------------|--------------------------------|
| K. Burdick is appointed to represent      | <input type="checkbox"/> Mother | <input type="checkbox"/> Father | <input type="checkbox"/> Child |
| R. Bowman is appointed to represent       | <input type="checkbox"/> Mother | <input type="checkbox"/> Father | <input type="checkbox"/> Child |
| W. Heidelberger is appointed to represent | <input type="checkbox"/> Mother | <input type="checkbox"/> Father | <input type="checkbox"/> Child |
| D. Oldziewski is appointed to represent   | <input type="checkbox"/> Mother | <input type="checkbox"/> Father | <input type="checkbox"/> Child |

- \_\_\_\_\_ appointed to represent \_\_\_\_\_
- \_\_\_\_\_ appointed to represent \_\_\_\_\_ as GAL
- The child's attorney is also appointed as CAPTA guardian ad litem, per CRC§5.662 & WI§326.5.
- CASA Appointed

**FINDINGS AND ORDERS:**

- There is a prima facie showing that the child is a person described by WI§300.

**Grounds for detention exist in that:**

- Continuation in the home of the  Mother  Father  Legal guardian is contrary to the child's welfare.
- There are no reasonable means to protect the child's physical or emotional health without removing the child from the  Mother's  Father's  Legal guardian's physical custody and
  - There is substantial danger to the physical health of the child
  - The child is suffering severe emotional damage.
  - The child is a dependent of the Juvenile Court who has left court ordered placement.
  - There is substantial evidence that a parent/guardian of the child is likely to flee to avoid the jurisdiction of the Court.
  - The petition alleges a person residing in the home has physically or sexually abused the child and the child is unwilling to return home.

- Reasonable  and active efforts (I.C.W.A.) have been made to prevent or eliminate the need for removal of the child from the home and there are no available services which would prevent the need for further detention.

- The child is detained from the home of the:  Mother \_\_\_\_\_  Father \_\_\_\_\_  \_\_\_\_\_
- The child is temporarily placed in the care, custody and control of the Placer County Department of Health and Human Services (DHHS) pending Disposition or further Court Order in a suitable and approved:
  - Shelter/Receiving Home  Foster Home/Foster Family Agency  Group Home
  - Relative Home  Non-related Extended Family Member  Mother  Father  Legal Guardian(s)
- DHHS has discretion to release the child to  Mother  Father  Relative  NREFM \_\_\_\_\_.
- With Wraparound services per sections WI§18250, 18251 and 18252. The child and the family shall cooperate with the wraparound services and providers.
- DHHS to provide services as soon as possible to reunify the child and his/her family if appropriate. (WI§319(e))

- There is not a prima facie showing that the child comes within WI§300
- Reasonable services can be offered to the parent(s) alleviating the necessity for continued detention
- The child is returned to the home of the  Mother \_\_\_\_\_  Father \_\_\_\_\_  \_\_\_\_\_

**PARENTAGE/PATERNITY INQUIRY:**

- \_\_\_\_\_ found to be  Presumed  FC§7540  FC§7611(a)(b)(c)  FC§7611(d)
- \_\_\_\_\_ found to be  Bio/natural  FC§7570 et seq  Bio and Kelsy S.
- \_\_\_\_\_  FC§7550-7557  Adjudicated  Alleged
- Clerk to prepare a Paternity Judgment/Findings and Order to be sent to Department of Child Support Services (DCSS)
- Paternity test ordered as to father \_\_\_\_\_.

**VISITATION:**

- Visitation between the child and  **Mother** shall be a minimum of \_\_\_\_\_ times per  week  month:
  - Arranged by the DHHS  Supervised by DHHS  Supervised by \_\_\_\_\_.
  - Supervised by  Relative  NRFEM  Residential treatment facility
  - Monitoring by NREFM/Foster Parent/Extended Family  Group Monitoring
  - Unsupervised  in a public place  overnight
  - After consultation with minor's counsel  After consultation with the Tribe
- DHHS granted **discretion to transition** visitation w/  **Mother**  After consultation w/minor's counsel  After consultation w/Tribe.
  - Supervised by  relative  NRFEM  residential treatment facility  Supervised by \_\_\_\_\_.
  - Monitoring by NREFM/Foster Parent/Extended Family  Group Monitoring  Unsupervised  in a public place  overnights.
- Visitations shall not be forced  *DHHS is granted discretion to adjust frequency and duration above the minimum ordered.*
- Visitation between the child and  **Father** \_\_\_\_\_ shall be a minimum of \_\_\_\_\_ times per  week  month:
  - Arranged by the DHHS  Supervised by DHHS  Supervised by \_\_\_\_\_.
  - Supervised by  Relative  NRFEM  Residential treatment facility
  - Monitoring by NREFM/Foster Parent/Extended Family  Group Monitoring
  - Unsupervised  in a public place  overnight
  - After consultation with minor's counsel  After consultation with the Tribe
- DHHS granted **discretion to transition** visitation w/  **Father**  After consultation w/minor's counsel  After consultation w/Tribe.
  - Supervised by  relative  NRFEM  residential treatment facility  Supervised by \_\_\_\_\_.
  - Monitoring by NREFM/Foster Parent/Extended Family  Group Monitoring  Unsupervised  in a public place  overnights.
- Visitations shall not be forced  *DHHS is granted discretion to adjust frequency and duration above the minimum ordered.*

**Sibling** visits shall be  supervised by DHHS  professionally supervised  unsupervised \_\_\_\_\_ times per  week  month.

- Visitation between the child and  Mother  Father  Legal Guardian  is denied. Detriment to the child is found.
- \_\_\_\_\_
- \_\_\_\_\_

**OTHER ORDERS:**

- **Parties advised until written change of address is provided to the Court/DHHS:**

Mother's mailing address for legal notice is \_\_\_\_\_.

Father's mailing address for legal notice is \_\_\_\_\_.

- **The Court advises It is the parties responsibility to provide the DHHS and the Court with any change in mailing address. All notices will be sent to the last known mailing address provided by the parties.**

- Court inquired if relative(s) willing and able to care for child.  Court orders  Mother  Father to provide information to the DHHS to determine if there is a family, NREFM or relative for placement of the minor(s).
- Mother  Father shall provide information to the public health nurse after the hearing re: medical/dental/education of child.
- Mother  Father shall provide all available information via ICWA 010/020 re: tribal affiliations no later than the next hearing.
- DHHS shall provide Notice pursuant to the Indian Child Welfare Act via ICWA 030.
- \_\_\_\_\_
- \_\_\_\_\_

**Next Court Appearance:** Pretrial conference \_\_\_\_\_ at \_\_\_\_\_ am/pm in Department 1.

\_\_\_\_\_ at \_\_\_\_\_ am/pm in Department 1.

- Parties prefer and request to have one jurisdiction/disposition report and to hold the hearings at the same time and the parties agree to waive the statutory timelines for the initial setting of the combined hearing.
  - Pursuant to WI§352, the Court finds the continuance in this case is not contrary to the Minor's best interest. The Court has considered the Minor's need for prompt resolution, the need for the Minor to have a stable living environment and the damage to a minor of prolonged temporary placements.
- The Court finds **Good Cause to grant the request** for the jurisdiction/disposition hearing at the same time beyond the statutory time.

- **The court advises all parties regarding confidentiality of the proceedings and all generated documents.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge/Commissioner of the Superior Court

# PLACER COUNTY SUPERIOR COURT – JUVENILE DEPENDENCY DISPOSITION FINDINGS AND ORDER (WI§300)

<b>In the Matter of: Isabella Bigelow</b>	<b>Case No: 53-004504</b>
A person coming within the Juvenile Court Law	

The Court has read and considered the  Social Worker's report with case plan dated \_\_\_\_\_,  CASA report dated \_\_\_\_\_,  the expert declaration pursuant to I.C.W.A., the Court takes judicial notice of the Court file, which is received into evidence. After consideration of the those reports and all other evidence presented at the disposition hearing, good cause appearing therefore, **THE COURT FINDS AND ORDERS:**

- I. NOTICE:**  **Notice has been given as required by law.**
- The identity/whereabouts of the child's  Mother  Father  Legal Guardian is/are unknown and reasonable efforts have been made to ascertain his/her whereabouts and/or identity.
  - The  Mother  Father  Legal Guardian has received timely notice of the hearing and has willfully failed to appear.
  - The Court finds the I.C.W.A.  applies  does not apply in this matter.
  - The child is/may be an Indian child and notice has been provided as provided by law with proof of such notice filed with the court.
  - Legal residence is found to be in  Placer  \_\_\_\_\_ County, CA.

- II. DEPENDENCY STATUS:**
- The child is hereby  ordered and adjudged  continued a Dependent Child of the Court under WI§300  a  b  c  d  e  f  g  h  i  j

- III. PLACEMENT:**
- A**  **The Court finds that the child's placement is necessary and appropriate.**
- Physical custody of the child shall be removed from the  Mother  Father  Legal Guardian(s) because the Court finds clear and convincing evidence that:**
- There is substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child if the child is returned home and no reasonable alternative means to protect the child exists, and continuation in the home of the parent or legal guardian is contrary to the child's welfare.
  - The parent or legal guardian is unwilling to have physical custody of the child and has been notified that if the child remains out of the parent(s) or guardian(s) physical custody for the period specified in Section 366.26, the child may be declared permanently free of his or her custody and control.
  - The child is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal or untoward aggressive behavior toward self or others and no reasonable alternative means to protect the child's emotional health exists.
  - The child or a sibling has been sexually abused or is deemed to be at substantial risk of being sexually abused by a parent, guardian, or member of his or her household, or another person known to his or her parent, and there are no reasonable means by which the child can be protected from further sexual abuse, or a substantial risk of sexual abuse, without removing the child from his or her parent or guardian, or the child does not wish to return to his or her parent or guardian.
  - The child has been left without any provision for support, or a parent who has been incarcerated or institutionalized cannot arrange for the care of the child, or the whereabouts of the parent(s) is/are unknown and reasonable efforts to locate have been unsuccessful.
- B**  As to  Mother  Father the Court finds  by a preponderance of the evidence that existing conditions would justify initial assumption of jurisdiction under WI§300, or that such a condition is likely to exist if supervision is withdrawn.
- C**  As to  Mother  Father **the Court finds  by a preponderance of the evidence reasonable efforts  by clear and convincing evidence reasonable and active efforts (I.C.W.A.)**
- have been  have not been **made to prevent the need for removal of the child, to return the child to a safe home and/or to complete whatever steps are necessary to finalize the permanent placement of the child.**
  - Failure to make efforts to prevent or eliminate the need for removal of the child was reasonable.
- D**  The Court finds by clear and convincing evidence  Mother  Father \_\_\_\_\_ is a parent of child with whom child was not residing at the time the child was brought within § 300 of the W&I who desires to assume custody, however, the Court finds placement with  Mother  Father would be detrimental to the safety, protection or physical or emotional well being of the minor. (W&I 361.2)
- E**  The child is hereby placed in the care, custody and control of the Placer County Department of Health and Human Services (DHHS) for placement in a suitable and approved:
- Foster Home/Foster Family Agency  Group Home  Relative Home  NREFM  \_\_\_\_\_
  - DHHS is granted discretion to release the child to:  Mother  Father  Legal Guardian(s)  Relative  NREFM  \_\_\_\_\_
  - The child is hereby placed in the home of the  Mother  Father  Legal Guardian(s), who shall maintain custody of the child subject to the supervision of DHHS. Parent(s)/Guardian(s) shall be required to participate in Services.
    - With Wraparound services in accordance with sections 18250, 18251 and 18252 of the Welfare and Institutions.
    - The child and the family shall cooperate with the wraparound services and providers.
  - The Child has sibling(s) under the Court's jurisdiction.  Court has considered factors in WI§366 as outlined in the social workers report and finds the placement made above is appropriate.
  - The Court finds the placement preferences pursuant to I.C.W.A. have been adhered to.
  - The Court has considered and finds DHHS  has  has not used due diligence in to identify, locate and notify the child's relatives.

**IV. ADVISEMENTS AND SERVICE AND/OR REUNIFICATION PLAN:**

- The Court has **informed and advised** the  Mother  Father  Legal Guardian  Child and/or Child through their counsel of their rights and advisements; **OR**
  - The Court finds  Mother  Father  Legal Guardian  Child and/or Child through their counsel **have waived full reading** of the required rights and advisements.
  - The Court finds the  Mother  Father  Legal Guardian  Child and/or Child through their counsel has/have knowingly and intelligently waived the right to a court trial on the issues, the right to remain silent, the right to confront and cross-examine witnesses, and the right to subpoena witnesses and present evidence to the Court.

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  - The Court informs  Mother  Father  Legal Guardian that failure to participate regularly in court ordered programs or to avail himself/herself/themselves of provided services may result in termination of reunification services after  6 months  12 months.
  - The Court has further informed the parents that their parental rights may be terminated as a result of their failure to complete the reunification plan within the time limits.
  - The  Mother  Father  Legal Guardian have been/is advised that either the child will be returned to and safely maintained in the home, or the Court will choose a permanent plan of either adoption, guardianship, permanent placement with a relative, or other planned permanent living arrangement by: \_\_\_\_\_.**

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  - The compliance of Mother with the services offered by the Department of Health and Human Services and the extent of progress made by the family towards alleviating or mitigating the causes necessitating placement has been:**  outstanding  good  fair  poor  none  engaged  not engaged
  - The compliance of Father with the services offered by the Department of Health and Human Services and the extent of progress made by the family towards alleviating or mitigating the causes necessitating placement has been:**  outstanding  good  fair  poor  none  engaged  not engaged

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  - REUNIFICATION**  *Mother*  *Father*  **SERVICE**  *Mother*  *Father*  **ENHANCEMENT**  *Mother*  *Father*
- plan herein is approved, services are ordered and the parties are ordered to comply with such plans, except:
- 

- The Court finds that the services set forth in the case plan include those needed to assist the child in making the transition from foster care to independent living. (Child 16 and over.)**
  - The foster parents/placement agency/Department of Health and Human Services are hereby authorized to secure all medical and dental care as deemed necessary by a licensed physician or dentist.
  - The cost of the child's care and maintenance is a parental responsibility.
  - The County Treasurer is authorized to pay for care, maintenance, clothing and incidentals, at the approved rate, and nothing in this order shall be construed to relieve the parents of their legal obligation to support the child(s).
  - The parents are directed to cooperate in the completion and signing of necessary statement(s) to qualify the child for any financial and medical costs to which the child may be entitled.

**V. PERMANENT PLAN:**

- The  Likely Permanent Plan of:  Return Home  Adoption
  - Permanent Placement with, \_\_\_\_\_ a fit and willing relative; or
  - Planned Permanent Living Arrangement with \_\_\_\_\_; or
  - Legal Guardianship \_\_\_\_\_
- With a specific goal of:
  - Return Home  Adoption  Legal Guardianship  Placement with a Relative
  - Least Restrictive Foster Setting  Independent Living with identification of an adult to serve as a lifelong connection.
  - Dismissal of Dependency

is appropriate and is ordered as the permanent plan.
- The Department  has  has not complied with the case plan by making reasonable efforts to return the child to a safe home and complete all necessary steps to finalize the permanent placement of the child.
- The Permanent Plan set forth in the report of DHHS is herein is approved, and the parties are ordered to comply with such plans, except: \_\_\_\_\_

- The likely date by which the agency will finalize the Permanent Plan is: \_\_\_\_\_.
- The likely date by which the child's specific goal in the planned permanent living arrangement will be achieved is: \_\_\_\_\_.

**VI. REUNIFICATION SERVICES DENIED**

- Pursuant to WI§361.5, the Court finds by clear and convincing evidence, as outlined in the social worker's report and the case file, reunification services need not be provided to:
 

<input type="checkbox"/> <b>Mother</b>	<input type="checkbox"/> 361.5(a)_____	<input type="checkbox"/> 361.5(b)_____	<input type="checkbox"/> Whereabouts Unknown
<input type="checkbox"/> <b>Father</b>	<input type="checkbox"/> 361.5(a)_____	<input type="checkbox"/> 361.5(b)_____	<input type="checkbox"/> Whereabouts Unknown
<input type="checkbox"/> Legal Guardian	<input type="checkbox"/> 361.5(b)_____	<input type="checkbox"/> Whereabouts Unknown	<input type="checkbox"/> The Court is it's discretion denies services to the former custodial parent as a result of the findings in section VIII below.
<input type="checkbox"/> The <input type="checkbox"/> Mother	<input type="checkbox"/> Father	<input type="checkbox"/> Guardian	
- has signed a written waiver of his/her rights (JV-195) to receive reunification services pursuant to W&I 361.5(b)(14).
- Father \_\_\_\_\_ is denied services as he remains an alleged father and that status is unchanged.
- A hearing pursuant to WI§366.26 shall be set within 120 days.

**VII. EDUCATION RIGHTS:**  The education rights of the  Mother  Father  Legal Guardian are  terminated  suspended.  
 The Court makes this order in the best interests of the child.  
 \_\_\_\_\_ is appointed as a surrogate parent to make all educational decisions on behalf of the child. The DHHS is directed to prepare Judicial Council Form JV-535 and submit it to the Court.

**VIII. TERMINATION:**  Dependency status of the child is terminated.  
 Guardianship of the child is awarded to \_\_\_\_\_, and letters of guardianship shall issue.  
 The Court finds  Mother  Father \_\_\_\_\_ is a parent of the child with whom the child was not residing at the time the child was brought within section 300 of the W&I who desires to assume custody and there is no finding of detriment to the child. The Court in it's discretion orders: \_\_\_\_\_  
 Joint  Sole **physical** custody of the child is granted to  Mother  Father, and  
 Joint  Sole **legal** custody of the child is granted to the  Mother  Father pursuant to W&I 361.2.  
 No need for ongoing jurisdiction over the child for reasons outlined in the social worker's report & with this custody order.

**IX. VISITATION/CASA:**  **CASA** appointed  
 Visitation between the child and  **Mother** shall be a minimum of \_\_\_\_\_ times per  week  month:  
 Arranged by the DHHS  Supervised by DHHS  Supervised by \_\_\_\_\_  
 Supervised by  Relative  NRFEM  Residential facility  an agreed upon 3<sup>rd</sup> party  3<sup>rd</sup> party prof. at \_\_\_\_\_ expense.  
 Monitoring by NREFM/Foster Parent/Extended Family  Group Monitoring  
 Unsupervised  in a public place  overnight  
 After consultation with minor's counsel  After consultation with the Tribe  
 DHHS granted **discretion to transition** visits w/  **Mother**  After consult w/minor's counsel  After consult w/Tribe.  
 Supervised by  relative  NRFEM  residential treatment facility  Supervised by \_\_\_\_\_  
 Monitoring by NREFM/Foster Parent/Extended Family  Group Monitoring  Unsupervised  in a public place  overnights.  
 Visitations shall not be forced  *DHHS is granted discretion to adjust frequency and duration above the minimum ordered.*  
 Visitation between the child and  **Father** \_\_\_\_\_ shall be a minimum of \_\_\_\_\_ times per  week  month:  
 Arranged by the DHHS  Supervised by DHHS  Supervised by \_\_\_\_\_  
 Supervised by  Relative  NRFEM  Residential facility  an agreed upon 3<sup>rd</sup> party  3<sup>rd</sup> party prof. at \_\_\_\_\_ expense.  
 Monitoring by NREFM/Foster Parent/Extended Family  Group Monitoring  
 Unsupervised  in a public place  including overnight visits.  
 After consultation with minor's counsel  After consultation with the Tribe  
 DHHS granted **discretion to transition** visits w/  **Father**  After consult w/minor's counsel  After consult w/Tribe.  
 Supervised by  relative  NRFEM  residential treatment facility  Supervised by \_\_\_\_\_  
 Monitoring by NREFM/Foster Parent/Extended Family  Group Monitoring  Unsupervised  in a public place  overnights.  
 Visitations shall not be forced  *DHHS is granted discretion to adjust frequency and duration above the minimum ordered.*  
**Sibling** visits shall be  supervised by Department of Health and Human Services  professionally supervised  unsupervised \_\_\_\_\_ times per  week  month.  
 Visitation between the child and  Mother  Father  Legal Guardian  is denied. Detriment to the child is found.

**X. APPEAL RIGHTS:**  
 The Court has advised the parties and/or the party through his/her attorney of their appeal rights as required by law and provided written notification pursuant to C.R.C. 5.590  
 The Clerk has provided the written copy in Court on today's date; or  
 The Clerk is ordered to provide a written copy to the parties of their appeal rights and the right to review at the last known address provided by the parties.  
 The parties and/or the party through his/her attorney are/have been advised that if they wish to preserve any right to review on appeal of the order setting the hearing under section WIS366.26, the party must seek an extraordinary writ by filing a Notice of Intent to File a Petition and request for a record or other notice of intent to file a writ petition and request for record and a Petition for Extraordinary Writ within seven days of today's date.  
 **Except as specifically modified herein, all previous orders remain in full force and effect.**  

- **The court advises all parties regarding confidentiality of the proceedings and all generated documents.**

**XI. NEXT REVIEWS:**  
\_\_\_\_\_ at \_\_\_\_\_ am/pm in Department \_\_\_\_\_  
\_\_\_\_\_ at \_\_\_\_\_ am/pm in Department \_\_\_\_\_

Dated : \_\_\_\_\_

\_\_\_\_\_  
Judge/Commissioner of the Superior Court

# PLACER COUNTY SUPERIOR COURT – JUVENILE DEPENDENCY JURISDICTION FINDINGS AND ORDER (WI§300)

<b>In the Matter of: Hailey Wells</b>	<b>Case No: 53-004474</b>
A Person Coming Within the Juvenile Court Law	

I. The Court has read and considered the Social Worker's report (s), dated \_\_\_\_\_, which is received into evidence. After examination of the Social Worker's report and all other evidence presented at the jurisdiction hearing, good cause appearing therefore, **THE COURT FINDS AND ORDERS:**

**II. NOTICE:**

- Notice has been given as required by law.**
- The identity/whereabouts of the child's  Mother  Father  Legal Guardian is/are unknown and reasonable efforts have been made to ascertain his/her whereabouts and/or identity.
- Mother  Father  Legal Guardian has received timely notice of the hearing and has willfully failed to appear.
- The child is/may be an Indian child and notice has been provided as provided by law with proof of such notice filed with the court.

**III. ADMISSIONS/SUBMISSIONS:**

- A.  The  Mother  Father  Legal Guardian freely  admit  submit to count(s) \_\_\_\_\_ of the Petition filed \_\_\_\_\_, as orally amended on the record on \_\_\_\_\_, as to:  
 WI§ 300  a  b  c  d  e  f  g  h  i  j
- B.  Count(s) \_\_\_\_\_ are dismissed  with  without prejudice on County Counsel's motion.
- C.  **The birth date of the child is** \_\_\_\_\_.  
 **The child's legal residence is in**  Placer  \_\_\_\_\_ **County, California.**
- D.  The  Mother  Father understand(s) each of the trial rights enumerated in CRC§ 5.534 & 5.682 and WI§ 311 and 341, the nature of statements in the petition and direct consequences of a finding that the statements are true, and that by admitting/submitting the truth of the statements, the above rights are waived.  
 The parent(s) knowingly and intelligently waived the right to a court trial, the right to remain silent, the right to confront and cross-examine witnesses, and the right to subpoena witnesses and present evidence to the Court.  
 The parent(s) understand(s) the nature of the conduct alleged in the petition and the possible consequences of an admission/submission.  
 The admission/submission by the parent(s) is voluntarily made.  
 There is a factual basis for the admission/submission.  
 **The statements of the petition as admitted/submitted are true.**  
 The Court finds that the allegations in the Petition have been proven by a preponderance of the evidence, petition is sustained.  
 **The child is a person described by WI§300**  a  b  c  d  e  f  g  h  i  j  
 The previous disposition has not been effective in the protection of the child.

**IV. FINDINGS AFTER CONTESTED JURISDICTIONAL HEARING RE:**  Mother  Father  Legal Guardian

- PETITION FILED** \_\_\_\_\_ Petition was orally amended on the record on \_\_\_\_\_.
- The Court finds that the allegations in the Petition have been proven by a preponderance of the evidence.
- The birth date of the child is** \_\_\_\_\_.
- The child's legal residence is in**  Placer  \_\_\_\_\_ **County, California.**
- The statements of the petition in count(s) \_\_\_\_\_ are found true and the petition is sustained as to the counts.
- The child is a person described by WI§300**  a  b  c  d  e  f  g  h  i  j
- The statements in count(s) \_\_\_\_\_ are not found true and are hereby dismissed.
- The child is returned to the custody of the  Mother  Father  \_\_\_\_\_.

**V. PARENTAGE/PATERNITY INQUIRY:**

- \_\_\_\_\_ found to be  Presumed  FC§7540  FC§7611(a)(b)(c)  FC§7611(d)  FC§7570 et seq  Bio and Kelsy S.
- \_\_\_\_\_ found to be  Bio/natural  FC§7550-7557  Adjudicated  Alleged
- \_\_\_\_\_
- Clerk to prepare a Paternity Judgment/Findings and Order to be sent to Department of Child Support Services (DCSS)
- Paternity test ordered as to father \_\_\_\_\_.

**VI. NEXT COURT APPEARANCE:** Disposition \_\_\_\_\_ at \_\_\_\_\_ am/pm in Department 1  
 The Mater is transferred to \_\_\_\_\_ for hearing on \_\_\_\_\_ at \_\_\_\_\_ am/pm Department/Floor \_\_\_\_\_  
 Mother  Father are ordered to appear at the above hearing  
 The court finds good cause to continue the disposition hearing date.

Date: \_\_\_\_\_

\_\_\_\_\_  
 Judge/Commissioner of the Superior Court

# PLACER COUNTY SUPERIOR COURT – JUVENILE DEPENDENCY REVIEW FINDINGS AND ORDER (WI§300)

<b>In the Matter of:</b>  A Person Coming Within the Juvenile Court Law	<b>Case No:</b>  <b>FINDINGS AND ORDER: REVIEW (WI§300)</b>
---	---

**I. NATURE OF THE PROCEEDINGS:**

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Six Month FM/FR       | <input type="checkbox"/> Twelve Month FM/FR         | <input type="checkbox"/> Eighteen Month FM/FR |
| <input type="checkbox"/> Permanent Plan Review | <input type="checkbox"/> Post Permanent Plan Review | <input type="checkbox"/> Other _____          |

The Court has read and considered the Social Worker’s report and case plan dated \_\_\_\_\_,  CASA report dated \_\_\_\_\_, the court take judicial notice of the court file, which is received into evidence. After consideration of the Social Worker’s report and all other evidence presented at the hearing, good cause appearing therefore, **THE COURT**

**FINDS AND ORDERS:**

**II. NOTICE AND ADVISEMENTS:**

- Notice has been given as required by law.  The Court finds ICWA  does apply  does not apply
- The identity/whereabouts of the child’s  Mother  Father  Legal Guardian is/are unknown and reasonable efforts have been made to ascertain his/her whereabouts and/or identity.
- The child is/may be an Indian child and notice has been provided as provided by law with proof of such notice filed with the court.
- The  Mother  Father  Legal Guardian has received timely notice of the hearing and has willfully failed to appear.
- Legal residence is found to be in  Placer  \_\_\_\_\_ County, California.
- Parents address has been verified as \_\_\_\_\_
- Proceedings transferred to \_\_\_\_\_ County, CA

- The Court has **informed and advised** the  Mother  Father  Legal Guardian  Child and/or Child through their counsel of their rights and advisements; **OR**
- The Court finds  Mother  Father  Legal Guardian  Child and/or Child through their counsel **have waived full reading** of the required rights and advisements.
- The Court finds the  Mother  Father  Legal Guardian  Child and/or Child through their counsel has knowingly and intelligently waived the right to a court trial, the right to remain silent, the right to confront and cross-examine witnesses, and the right to subpoena witnesses and present evidence to the Court.

**III. DEPENDENCY STATUS:**

- The child is hereby continued a Dependent of the Court under WI§300
- a     b     c     d     e     f     g     h     i     j

**III. PLACEMENT:**

- **The Court finds the child’s placement remains necessary and appropriate.**
- The child is hereby placed in the care, custody, and control of the Placer County Department of Health and Human Services (DHHS) for placement:
- In a suitable and approved:  Foster Home/Foster Family Agency     Group Home     Relative Home
- Non-related Extended Family Member  \_\_\_\_\_
- DHHS is granted discretion to release the child to:  Mother  Father  Legal Guardian(s)  Relative  NREFM  \_\_\_\_\_
- The child is hereby placed in the home of the  Mother  Father  Legal Guardian(s), who shall maintain custody of the child subject to the supervision of Placer County DHHS. Parent(s)/Legal Guardian(s) shall be required to participate in Child Welfare Services or other services provided by an appropriate agency.
- With Wraparound services in accordance with sections 18250, 18251 and 18252 of the Welfare and Institutions Code.
- The child and the family shall cooperate with the wraparound services and providers.
- The child has a sibling(s) under the Court’s jurisdiction.  Court has considered the factors listed in WI§366 as outlined in the social workers report and finds the placement made above is appropriate.

**IV. FINDINGS:**

- **The Department  has  has not complied with the case plan by making  reasonable  active efforts (I.C.W.A.) to:**
  - enable the child’s safe return home.**
  - finalize the permanent placement of the child.**
- Failure to make the reasonable and/or active efforts and to comply with the case plan to prevent or eliminate the need for removal was reasonable.

As to  Mother  Father The Court finds by a  preponderance of the evidence that existing conditions would justify initial assumption of jurisdiction under WI§300, or that such a condition is likely to exist if supervision is withdrawn.



- The Court finds by a  preponderance of the evidence  clear and convincing evidence (I.C.W.A.) that a return of the child to the custody of their  Mother  Father  Guardian(s) would create a substantial risk of detriment to the physical or emotional well-being of the child; and
- The care, custody, control, and conduct of the child shall continue to be placed with DHHS for placement as ordered above; and
- Continuation in the home of the parent(s) or legal guardian(s) is contrary to the child's welfare.

- The  Mother  Father  Guardian(s) failed to comply with the Reunification Plan.
- The Court finds that  Mother  Father  Guardian(s) has not maintained regular visitation with the child.
- Reunification services to the  Mother  Father  Guardian are terminated as outlined in the social workers report.

There is clear and convincing evidence reasonable services were provided to or offered to the parents.

- The Court finds by clear and convincing evidence there  is  is not a substantial probability that the child will be returned to the physical custody of his/her  Mother  Father  Guardian(s) within six months; and
- (1) the parent has maintained contact with child, (2) made progress in resolving the problems that led to the child's removal, and (3) demonstrated the capacity to complete the treatment plan objectives and provide for the child.
- The Court finds by clear and convincing evidence that the child is not adoptable  and there is no suitable adult available to become legal guardian of the child or the child is not otherwise a suitable subject of guardianship proceedings.
- The Court finds that there is a compelling reason the child cannot be adopted and legal guardianship is not appropriate.
- Based on clear and convincing evidence already presented, a compelling reason exists for determining that a hearing under WI§366.26 is not in the best interest of the child.
- The Court finds by clear and convincing evidence that it is likely the child will be adopted.
- A permanency planning hearing pursuant to WI§366.26 shall be set within 120 days.

**V.**

**PLAN:**

- The extent of progress which the Mother has made toward alleviating or mitigating the causes necessitating placement has been:
    - outstanding  good  fair  poor
  - The extent of progress which the Father has made toward alleviating or mitigating the causes necessitating placement has been:
    - outstanding  good  fair  poor
  - The  Mother  Father  Guardian has been advised that either the child will be returned to and safely maintained in the home, or the Court will choose a Permanent Plan of either adoption, guardianship, permanent placement with a relative, or other planned permanent living arrangement by: \_\_\_\_\_.
  - For the Service Plan, the Court finds the  Mother  Father  Child  was  was not actively involved in the development of the case plan as age and developmentally appropriate.
  - REUNIFICATION  Mother  Father  SERVICE  Mother  Father  ENHANCEMENT  Mother  Father
  - Permanency Plan  W&I 366.3(f) SERVICES
- plan herein is approved, services are ordered and the parties are ordered to comply with such plans, except:
- \_\_\_\_\_.

- The Permanent Plan of:  Return Home  Adoption
  - Permanent Placement with \_\_\_\_\_, a fit and willing relative; or
  - Placement with \_\_\_\_\_; or
  - Legal Guardianship \_\_\_\_\_,
- With a specific goal of:
  - Return Home  Adoption  Legal Guardianship  Placement with a Relative
  - Less Restrictive Foster Setting  Independent Living with Identification of an adult to serve as a lifelong connection.
  - Dismissal of Dependency

\_\_\_\_\_ is appropriate and is ordered as the permanent plan.
- The likely date by which the agency will finalize the Permanent Plan is: \_\_\_\_\_.
- The likely date by which the child's specific goal in the permanent plan will be achieved is: \_\_\_\_\_.

- The Court finds that the services set forth in the case plan include those needed to assist the child in making the transition from foster care to independent living. [Age 16 and older.]

**VI.**

**EDUCATIONAL RIGHTS:**

- The educational rights of the  Mother  Father  Legal Guardian are  terminated.  suspended.
  - The Court makes this order in the best interests of the child.
  - \_\_\_\_\_ is appointed as a surrogate parent to make all educational decisions on behalf of the child.
- The DHHS is directed to prepare Judicial Council Form JV-535 and submit it to the Court for filing.

VII.

VISITATION:

- Visitation between the child and  **Mother** shall be a minimum of \_\_\_\_\_ times per  week  month:
    - Arranged by the DHHS  Supervised by DHHS  Supervised by \_\_\_\_\_.
    - Supervised by Relative  NRFEM  Residential tmt. facility  an agreed upon 3<sup>rd</sup> party  3<sup>rd</sup> party prof. at \_\_\_\_\_ expense.  Monitoring by NREFM/Foster Parent/Extended Family  Group Monitoring
    - Unsupervised  in a public place  including overnight visits.
    - After consultation with minor's counsel  After consultation with the Tribe
  - DHHS granted **discretion to transition** visits w/  **Mother**  After consult w/minor's counsel  After consult w/Tribe.
    - Supervised by relative  NRFEM  residential treatment facility  Supervised by \_\_\_\_\_.
    - Monitoring by NREFM/Foster Parent/Extended Family  Group Monitoring  Unsupervised  in a public place  overnights.
    - Visitations shall not be forced  *DHHS is granted discretion to adjust frequency and duration above the minimum ordered.*
  - Visitation between the child and  **Father** \_\_\_\_\_ shall be a minimum of \_\_\_\_\_ times per  week  month:
    - Arranged by the DHHS  Supervised by DHHS  Supervised by \_\_\_\_\_.
    - Supervised by Relative  NRFEM  Residential tmt. facility  an agreed upon 3<sup>rd</sup> party  3<sup>rd</sup> party prof. at \_\_\_\_\_ expense.  Monitoring by NREFM/Foster Parent/Extended Family  Group Monitoring
    - Unsupervised  in a public place  including overnight visits.
    - After consultation with minor's counsel  After consultation with the Tribe
  - DHHS granted **discretion to transition** visits w/  **Father**  After consult w/minor's counsel  After consult w/Tribe.
    - Supervised by relative  NRFEM  residential treatment facility  Supervised by \_\_\_\_\_.
    - Monitoring by NREFM/Foster Parent/Extended Family  Group Monitoring  Unsupervised  in a public place  overnights.
    - Visitations shall not be forced  *DHHS is granted discretion to adjust frequency and duration above the minimum ordered.*
- Sibling** visits shall be  supervised by Department of Health and Human Services  professionally supervised  unsupervised \_\_\_\_\_ times per  week  month.
- Visitation between the child and  Mother  Father  Legal Guardian  is denied. Detriment to the child is found.
  - \_\_\_\_\_

VIII.

OTHER ORDERS:

- The foster parents/placement agency/DHHS are hereby authorized to secure all medical, dental, and surgical care as deemed necessary by a licensed physician or dentist.
  - The County Treasurer is authorized to pay for care, maintenance, clothing, and incidentals at the approved rate and nothing in this order shall be construed to relieve the parent or guardian of their legal obligations to support said child.
  - The parents are directed to cooperate in the completion and signing of necessary statements to qualify the child for any financial and medical costs to which the child may be entitled.
- 
- \_\_\_\_\_
  - \_\_\_\_\_

IX.

TERMINATION:

- Legal Guardianship of the child is awarded to \_\_\_\_\_, and letters of guardianship shall issue.
- Joint  Sole **physical** custody of the child is granted to  Mother  Father and
- Joint  Sole **legal** custody of the child is granted to the  Mother  Father pursuant to W&I 361.2, and the Department of Health and Human Services shall prepare Judicial Form JV-200 for filing in the proper court.
- Dependency status of the child is terminated.

X.

APPEAL RIGHTS:

- The Court has advised the parties and/or the party through his/her attorney of their appeal rights as required by law and provided written notification pursuant to C.R.C. 5.590
  - The Clerk has provided the written copy in Court on today's date; or
  - The Clerk is ordered to provide a written copy to the parties of their appeal rights and the right to review at the last known address provided by the parties.
- The parties and/or the party through his/her attorney are/have been advised that if they wish to preserve any right to review on appeal of the order setting the hearing under section WIS366.26, the party must seek an extraordinary writ by filing a Notice of Intent to File a Petition and request for a record or other notice of intent to file a writ petition and request for record and a Petition for Extraordinary Writ within seven days of today's date.
- Except as specifically modified herein, all previous orders remain in full force and effect.

**The court advises all parties regarding confidentiality of the proceedings and all generated documents.**

XI.

NEXT REVIEWS:

\_\_\_\_\_ at \_\_\_\_\_ am/pm in Department \_\_\_\_\_.

\_\_\_\_\_ at \_\_\_\_\_ am/pm in Department \_\_\_\_\_.

Dated : \_\_\_\_\_

\_\_\_\_\_  
Judge/Commissioner of the Superior Court (Updated 6-2014)

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER:  NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>ORDERS UNDER WELFARE AND INSTITUTIONS CODE          SECTIONS 366.24, 366.26, 727.3, 727.31</b>	
CASE NUMBER:	

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

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

2.  The court has read and considered the assessment prepared under Welfare and Institutions Code section 361.5(g), 366.21(i), 366.22(c), or 366.25(b) and the report and recommendation of the  social worker  probation officer  and other evidence.
3.  The court has considered the wishes of the child, consistent with the child's age, and all findings and orders of the court are made in the best interest of the child.

**THE COURT FINDS AND ORDERS**

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

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

8. a.  There is clear and convincing evidence that it is likely the child will be adopted.
- b.  This case involves an Indian child, and the court finds by evidence beyond a reasonable doubt, including the testimony of one or more qualified expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. *(If item 8a or 8b is checked, go to item 9 unless item 10, 11, 12, or 13 is applicable. If item 8a or 8b is not checked, go to item 15 or 16.)* **The fact that the child is not placed in a preadoptive home or with a person or family prepared to adopt the child is not a basis for concluding that the child is unlikely to be adopted.**

9. The parental rights of

- a.  parent (name):  Mother  Father
- b.  parent (name):  Mother  Father
- c.  alleged fathers (names):
- d.  unknown mother  all unknown fathers

are terminated, adoption is the child's permanent plan, and the child is referred to the California Department of Social Services or a local licensed adoption agency for adoptive placement.

- e. **The adoption is likely to be finalized by (date):**  
*(If item 9 is checked, go to item 17.)*

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

- a.  parent (name):
- b.  parent (name):
- c.  Indian custodians (names):
- d.  alleged fathers (names):
- d.  unknown mother  all unknown fathers

are modified in accordance with the tribal customary adoption order of the (specify): \_\_\_\_\_ tribe, dated \_\_\_\_\_ and comprising \_\_\_\_\_ pages, which is accorded full faith and credit and fully incorporated herein. The child is referred to the California Department of Social Services or a local licensed adoption agency for tribal customary adoptive placement in accordance with the tribal customary adoption order.  
*(If item 10 is checked, go to item 17.)*

11.  The child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship. Removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child. *(If item 11 is checked, go to item 15 or 16.)*

12.  Termination of parental rights would be detrimental to the child for the following reasons *(If item 12 is checked, check reasons below and go to item 15 or 16):*

- a.  The parents or guardians have maintained regular visitation and contact with the child, and the child would benefit from continuing the relationship.
- b.  The child is 12 years or older and objects to termination of parental rights.
- c.  The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent a permanent family placement if the parents cannot resume custody when residential care is no longer needed.
- d.  The child is living with a foster parent or Indian custodian who is unable or unwilling to adopt the child because of exceptional circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment. Removal of the child from the physical custody of the foster parent or Indian custodian would be detrimental to the emotional well-being of the child. This clause does not apply to any child who is either

- (1) under the age of 6; or
- (2) a member of a sibling group with at least one child under the age of 6 and the siblings are or should be placed together.

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12. e.  There would be substantial interference with the child's sibling relationship.
- f.  The child is an Indian child, and there are compelling reasons for determining that termination of parental rights would not be in the best interest of the child, including, but not limited to:
- (1) Termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights.
  - (2) The child's tribe has identified guardianship or another permanent plan for the child.
13.  Termination of parental rights would not be detrimental to the child, but no adoptive parent has been identified or is available, and the child is difficult to place because the child *(if item 13 is checked, check reasons below and go to item 14)*:
- a.  is a member of a sibling group that should stay together.
  - b.  has a diagnosed medical, physical, or mental disability.
  - c.  is 7 years or older.
14. a.  Termination of parental rights is not ordered at this time. Adoption is the permanent placement goal, and efforts are to be made to locate an appropriate adoptive family. A report to the court is due by *(date, not to exceed 180 days from the date of this order)*:  
*(Do not check in the case of a tribal customary adoption. If item 14a is checked, provide for visitation in items 14b and 14c as appropriate, and go to item 17.)*
- b.  Visitation between the child and  
 parent *(name)*:  Mother     Father  
 parent *(name)*:  Mother     Father  
 legal guardian *(name)*:  
 other *(name)*:  
 is scheduled as follows *(specify)*:
- c.  Visitation between the child and *(names)*:  
 is detrimental to the child's physical or emotional well-being and is terminated.
15.  The child's permanent plan is legal guardianship.
- (Name)*:  
 is appointed legal guardian of the child, and *Letters of Guardianship* will issue. *(Do not check in case of a tribal customary adoption. If item 15 is checked, provide for visitation in items 15a and 15b as appropriate, and go to item 15c or 15d.)*
- a.  Visitation between the child and  
 parent *(name)*:  Mother     Father  
 parent *(name)*:  Mother     Father  
 legal guardian *(name)*:  
 other *(name)*:  
 is scheduled as follows *(specify)*:
- b.  Visitation between the child and *(names)*:  
 is detrimental to the child's physical or emotional well-being and is terminated.
- c.  Dependency     Wardship    is terminated.
- d.  Dependency     Wardship    is terminated. The likely date for termination of the dependency or wardship is  
*(date)*: *(If this item is checked, go to items 17.)*

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The juvenile court retains jurisdiction of the guardianship under Welfare and Institutions Code section 366.4.

16. a.  The child's remains placed with *(name of placement)*:  
with a permanent plan of *(specify)*:

- |  |   |
|--|---|
| (1) <input type="checkbox"/> Returning home            | (5) <input type="checkbox"/> Permanent placement with a fit and willing relative  |
| (2) <input type="checkbox"/> Adoption                  | (6) <input type="checkbox"/> Independent living with identification of a caring adult to serve as a lifelong connection |
| (3) <input type="checkbox"/> Tribal customary adoption |   |
| (4) <input type="checkbox"/> Legal guardianship        |   |

**The child's permanent plan is likely to be achieved by *(date)*:**

*If item 16a is checked, provide for visitation in items 16b and 16c as appropriate, and go to item 17.*

- b.  Visitation between the child and  
 parent *(name)*:  Mother  Father  
 parent *(name)*:  Mother  Father  
 legal guardian *(name)*:  
 other *(name)*:

is scheduled as follows *(specify)*:

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

17.  The child's placement is necessary.
18.  The child's placement is appropriate.
19.  The agency has complied with the case plan by making reasonable efforts, including whatever steps are necessary to finalize the permanent plan. If this case involves an Indian child, the court finds that the agency has made active efforts to provide remedial and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proven unsuccessful.
20.  The services set forth in the case plan include those needed to assist the child age 14 or older in making the transition from foster care to successful adulthood. *(This finding is required only for a child 14 years or older.)*
21.  The child remains a  dependent  ward of the court. *(If this box is checked, go to items 22 and 23 if applicable, and items 24 and 25.)*
22.  All prior orders not in conflict with this order will remain in full force and effect.
23.  Other *(specify)*:

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24.  Next hearing date: \_\_\_\_\_ Time: \_\_\_\_\_ Dept: \_\_\_\_\_ Room: \_\_\_\_\_

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

25. The  Parent (*name*): \_\_\_\_\_  Mother  Father  
 Parent (*name*): \_\_\_\_\_  Mother  Father  
 Indian custodian (*name*): \_\_\_\_\_  
 Child  
 Other (*name*): \_\_\_\_\_

have been advised of their appeal rights (under Cal. Rules of Court, rule 5.590).

Date: \_\_\_\_\_

\_\_\_\_\_

JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>FINDINGS AND ORDERS AFTER SIX-MONTH STATUS REVIEW HEARING</b> (Welf. & Inst. Code, § 366.21(e))	CASE NUMBER:

1. Six-month status review hearing

- a. Date:
- b. Department:
- c. Judicial officer (name):
- d. Court clerk (name):
- e. Court reporter (name):
- f. Bailiff (name):
- g. Interpreter (name and language):

	<u>Present</u>	<u>Attorney (name):</u>	<u>Present</u>	<u>Appointed today</u>
h. <u>Party (name):</u>				
(1) Child:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(2) Mother:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(3) Father—presumed:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(4) Father—biological:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(5) Father—alleged:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(6) Legal guardian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(7) Indian custodian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(8) De facto parent:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(9) County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(10) Tribal representative:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(11) Other (specify):	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

- i. Others present in courtroom:
  - (1) Court Appointed Special Advocate (CASA) volunteer (name):
  - (2) Other (name):
  - (3) Other (name):

2. The court has read and considered and admits into evidence:

- a.  Report of social worker dated:
- b.  Report of CASA volunteer dated:
- c.  Case plan dated:
- d.  Other (specify):
- e.  Other (specify):

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:

- 3. a.  Notice of the date, time, and location of the hearing was given as required by law.
- b.  **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.



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4. a.  The child  is  maybe an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
- b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.
5.  A Court Appointed Special Advocate is appointed for the child.

**6. Parentage**

- a.  The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
- b.  The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
- (1) alleged parent (*name*):
- (2) alleged parent (*name*):
- (3) alleged parent (*name*):

**Advisements and waivers**

**7. The court has informed and advised the**

- mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- other (*specify*):

of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

8. The  mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- other (*specify*):

**has knowingly and intelligently waived the right** to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

**Case plan development**

9. a.  The following were actively involved in the case plan development, including the child's plan for permanent placement.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):
- b.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is ordered to actively involve them and submit an updated case plan within 30 days of the date of this hearing.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):
- c.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is not required to involve them because these persons are unable, unavailable, or unwilling to participate.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):

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**Efforts**

**10. The county agency**

- a.  has
- b.  has not

complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child and by making reasonable efforts to complete whatever steps are necessary to finalize the permanent placement of the child.

- 11.  The child  is  may be an Indian child, and
  - a.  by clear and convincing evidence active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family, and these efforts were unsuccessful.
  - b.  active efforts were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family.

**12. The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:**

	<u>None</u>	<u>Minimal</u>	<u>Adequate</u>	<u>Substantial</u>	<u>Excellent</u>
a. <input type="checkbox"/> Mother	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. <input type="checkbox"/> Presumed father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. <input type="checkbox"/> Biological father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. <input type="checkbox"/> Legal guardian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. <input type="checkbox"/> Indian custodian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. <input type="checkbox"/> Other ( <i>specify</i> ):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Siblings**

- 13.  The child does not have siblings under the court's jurisdiction.
- 14.  The child has siblings under the court's jurisdiction. *Sibling Attachment: Contact and Placement* (form JV-403) is attached and incorporated by reference.

**Education**

- 15. a.  A limitation on the right of the parents to make educational decisions for the child is **not** necessary. The parents hold educational rights and responsibilities in regard to the child's education, including those described in rule 5.650(e)–(f) of the California Rules of Court. A copy of rule 5.650(e)–(f) may be obtained from the court clerk.
- b.  A limitation on the right of the parents to make educational decisions for the child is necessary, and those rights are limited as stated in *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (form JV-535) filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e)–(f) of the California Rules of Court. A copy of rule 5.650(e)–(f) may be obtained from the court clerk.

- 16. a. The child's educational needs  are  are not being met.
- b. The child's physical needs  are  are not being met.
- c. The child's mental health needs  are  are not being met.
- d. The child's developmental needs  are  are not being met.

- 17.  The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 16 or other concerns are:
  - a.  stated in the social worker's report.
  - b.  specified here:

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18.  The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 17:
- Social worker.
  - Parent (*name*):
  - Surrogate parent (*name*):
  - Educational representative (*name*):
  - Other (*name*):
19.  The child's education placement has changed since the last review hearing.
- The child's educational records, including any evaluation regarding a disability, were requested by the child's new school within two business days of the request to enroll and, those records were provided by the child's former school to the child's new school within two business days of the receipt of the educational records request.
  - The child is enrolled in school.
  - The child is attending school.
20.  **Child 14 years of age or older:**
- The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.
  - The services stated in the case plan do not include those needed to assist the child in making the transition from foster care to successful adulthood.
  - To assist the child in making the transition to successful adulthood, the county agency must add to the case plan and provide the services
    - stated on the record.
    - as follows:
21. **Placement and services are ordered as stated in** (*check appropriate boxes and attach indicated forms*):
- Six-Month Permanency Attachment: Child Reunified (Welf. & Inst. Code, § 366.21(e))* (form JV-431), which is attached and incorporated by reference.
  - Six-Month Prepermanency Attachment: Reunification Services Continued (Welf. & Inst. Code, § 366.21(e))* (form JV-432), which is attached and incorporated by reference.
  - Six-Month Permanency Attachment: Reunification Services Terminated (Welf. & Inst. Code, § 366.21(e))* (form JV-433), which is attached and incorporated by reference.
22.  **Contact with the child is ordered as stated in** (*check appropriate box and attach indicated form*):
- Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
  - Visitation Attachment: Sibling* (form JV-401).
  - Visitation Attachment: Grandparent* (form JV-402).
23. **All prior orders not in conflict with this order remain in full force and effect.**
24.  **Other findings and orders:**
- See attached.
  - (*Specify*):

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25.  **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:
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- a.  In-home status review hearing (Welf. & Inst. Code, § 364)
- b.  12-month permanency hearing (Welf. & Inst. Code, § 366.21(f))
- c.  Selection and implementation hearing (Welf. & Inst. Code, § 366.26)
- d.  Other (*specify*):

26.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

27. Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_

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JUDGE   
 JUDGE PRO TEMPORE   
 COMMISSIONER   
 REFEREE

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**SIX-MONTH PERMANENCY ATTACHMENT:  
REUNIFICATION SERVICES TERMINATED  
(Welf. & Inst. Code, § 366.21(e))**

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.

**Placement**

- 2. **The child's out-of-home placement is necessary.**
- 3.  **The child's current placement is appropriate.**
- 4.  **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.
  - a.  The matter is continued to the date and time indicated in form JV-430, item 25 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.
  - b.  Other (specify):
- 5.  **The child is placed outside the state of California and that out-of-state placement**
  - a.  continues to be the most appropriate placement for the child and is in the best interest of the child.
  - b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in form JV-430, item 25 for a  written  oral report by the county agency on the progress made toward
    - (1)  returning the child to California and locating an appropriate placement within California.
    - (2)  locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
    - (3)  Other (specify):

**Reunification services**

- 6.  **Reunification services terminated: Child under age of three years at time of removal or member of sibling group**
  - a.  The child was under the age of three years on the date of the initial removal from the home.
  - b.  The child and the child's siblings listed below form a sibling group in which one child in the sibling group was under the age of three years at the time of the initial removal, and all children in the sibling group were removed from parental custody at the same time.
    - (1)
    - (2)
    - (3)
    - (4)
    - (5)
    - (6)
  - c. By clear and convincing evidence the
    - mother  biological father  Indian custodian
    - presumed father  legal guardian
    - other (specify):

failed to participate regularly and make substantive progress in a court-ordered treatment plan. Reunification services are terminated.
  - d. Scheduling a hearing under Welf. & Inst. Code, § 366.26 for this child and some or all members of the sibling group is in the child's best interest. The factual basis for this finding is stated on the record.

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7.  **Reunification services terminated: Child of any age**

- a.  Reunification services are terminated for the  
 mother                       biological father                       Indian custodian  
 presumed father                       legal guardian  
 other (*specify*):  
because, by clear and convincing evidence,  
(1)  the child was initially removed from the person indicated under Welf. & Inst. Code, § 300(g) and the person's whereabouts remain unknown.  
(2)  the person has not had contact with the child for six months.
- b.  Reunification services are terminated for the  
 mother                       biological father                       Indian custodian  
 presumed father                       legal guardian  
 other (*specify*):  
because, by clear and convincing evidence, that person has been convicted of a felony indicating parental unfitness.
- c.  Reunification services are terminated for the  
 mother                       biological father                       Indian custodian  
 presumed father                       legal guardian  
 other (*specify*):  
because it is determined that the person is deceased.

8.  Reunification services are terminated for the

- mother                       legal guardian  
 presumed father                       Indian custodian  
 other (*specify*):

because the child was removed initially under Welf. & Inst. Code, § 300(g) and, by clear and convincing evidence, the person's whereabouts are still unknown.

9. The county agency  has  has not made diligent efforts to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department  has  has not been evaluated.

**Important individuals**

10.  **Child 10 years of age or older, placed in a group home for six months or longer from the date the child entered foster care**

- a.  The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationship with those individuals, consistent with the child's best interest.
- b.  The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationship with those individuals, consistent with the child's best interest.
- c.  To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services  
(1)  as stated on the record.  
(2)  as follows:

**Health**

11.  The  mother                       biological father                       other (*specify*):  
 presumed father                       legal guardian  
is  unable                       unwilling                       unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

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**Setting for selection of permanent plan**

12.  a. **The matter is ordered set for hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child.**
- b. By clear and convincing evidence reasonable services have been provided or offered to the child's parents, legal guardian, or Indian custodian.
  - c. The county agency and the licensed county adoption agency or the California Department of Social Services, acting as an adoption agency, will prepare and serve an assessment report as described in Welf. & Inst. Code, § 361.5(g).
  - d. The court advised all parties present in court that to preserve any right to review on appeal of this order, a party must seek an extraordinary writ by filing notice of intent to file a writ petition and a request for the record, which may be submitted on *Notice of Intent to File Writ Petition and Request for Record* (form JV-820), and a petition for extraordinary writ, which may be submitted on *Petition for Extraordinary Writ (Juvenile Dependency)* (form JV-825). A copy of each form is available in the courtroom. The court further advised all parties present in court that, as to them, a notice of intent to file a writ petition and request for record must be filed with the juvenile court clerk within seven days of the date of this hearing. The clerk of the court must provide written notice as stated in rule 5.708(n)(5) of the California Rules of Court to any party not present.
  - e. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, or an identified placement with a specific goal for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.
  - f.  The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person named below, who is a mother, a presumed father, or an alleged father and who has relinquished the child for adoption where the relinquishment has been accepted and filed with notice under Fam. Code, § 8700, or an alleged father who has denied paternity and has executed section 2 of *Statement Regarding Parentage (Juvenile)* (form JV-505).
    - (1) (name):
    - (2) (name):
    - (3) (name):
    - (4) (name):
  - g. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative is (*specify date*):

13.  **By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child** because the child is not a proper subject for adoption at this time and has no one currently willing or appropriate to accept legal guardianship. It is ordered that:

- a.  The child's permanent plan is placement with (*name*): \_\_\_\_\_ a fit and willing relative.  
The likely date by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_
- b.  The child remain in foster care with a permanent plan of (*specify*): \_\_\_\_\_
  - (1)  Return home.
  - (2)  Adoption.
  - (3)  Tribal customary adoption.
  - (4)  Legal guardianship
  - (5)  The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with a goal of:
    - return home                       legal guardianship
    - emancipation                       placement with a relative
    - other (*specify*): \_\_\_\_\_

The likely date by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_

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13. c.  The court finds that the barriers to achieving the child's permanent plans are *(describe)*:  
[Redacted]

14.  **For Children 16 and older placed in another planned permanent living arrangement:**

a. The court asked the child where he/she wants to live and the child provided the following information *(describe)*:  
[Redacted]

b. The court has considered the evidence before it and finds that another planned permanent living arrangement is still the best permanent plan because *(describe)*:  
[Redacted]

c. The compelling reasons why the other permanent plan options are not in the [name of the child] best interests are *(describe)*:  
[Redacted]



ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>FINDINGS AND ORDERS AFTER                  12-MONTH PERMANENCY HEARING                  (Welf. &amp; Inst. Code, § 366.21(f))</b>	CASE NUMBER:

**1. Twelve-month permanency hearing**

- a. Date:
- b. Department:
- c. Judicial officer (name):
- d. Court clerk (name):
- e. Court reporter (name):
- f. Bailiff (name):
- g. Interpreter (name and language):

	Present	Attorney (name):	Present	Appointed today
h. <u>Party (name):</u>				
(1) Child:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(2) Mother:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(3) Father—presumed:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(4) Father—biological:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(5) Father—alleged:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(6) Legal guardian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(7) Indian custodian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(8) De facto parent:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(9) County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(10) Tribal representative:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(11) Other (specify):	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
i. Others present in courtroom:				
(1) Court Appointed Special Advocate (CASA) volunteer (name):				
(2) Other (name):				
(3) Other (name):				

**2. The court has read and considered and admits into evidence:**

- a.  Report of social worker dated:
- b.  Report of CASA volunteer dated:
- c.  Case plan dated:
- d.  Other (specify):
- e.  Other (specify):

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:**

- 3. a.  Notice of the date, time, and location of the hearing was given as required by law.
- b.  **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

<b>CHILD'S NAME:</b>	CASE NUMBER:
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4. a.  The child  is  maybe an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
- b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.
5.  A Court Appointed Special Advocate is appointed for the child.

**6. Parentage**

- a.  The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
- b.  The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
- (1) alleged parent (*name*):
  - (2) alleged parent (*name*):
  - (3) alleged parent (*name*):

**Advisements and waivers**

**7. The court has informed and advised the**

- mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- Other (*specify*):

of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

8. The  mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- Other (*specify*):

**has knowingly and intelligently waived the right** to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

**Case plan development**

9. a.  The following were actively involved in the case plan development, including the child's plan for permanent placement.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):
- b.  **The following were not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is ordered to actively involve them and submit an updated case plan within 30 days of the date of this hearing.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):
- c.  **The following were not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is not required to involve them because these persons are unable, unavailable, or unwilling to participate.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):

<b>CHILD'S NAME:</b>	CASE NUMBER:
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**Efforts**

**10. The county agency**

- a.  has
- b.  has not

complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child and by making reasonable efforts to complete whatever steps are necessary to finalize the permanent placement of the child.

**11.  The child  is  may be an Indian child, and**

- a.  by clear and convincing evidence active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family, and these efforts were unsuccessful.
- b.  active efforts were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family.

**12. The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:**

	<u>None</u>	<u>Minimal</u>	<u>Adequate</u>	<u>Substantial</u>	<u>Excellent</u>
a. <input type="checkbox"/> Mother	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. <input type="checkbox"/> Presumed father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. <input type="checkbox"/> Biological father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. <input type="checkbox"/> Legal guardian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. <input type="checkbox"/> Indian custodian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. <input type="checkbox"/> Other ( <i>specify</i> ):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Siblings**

- 13.  **The child does not have siblings under the court's jurisdiction.**
- 14.  **The child has siblings under the court's jurisdiction.** *Sibling Attachment: Contact and Placement (form JV-403) is attached and incorporated by reference.*

**Education**

- 15. a.  **A limitation on the right of the parents to make educational decisions for the child is not necessary.** The parents hold educational rights and responsibilities in regard to the child's education, including those described in rule 5.650(e)-(f) of the California Rules of Court. A copy of rule 5.650(e)-(f) may be obtained from the court clerk.
- b.  A limitation on the right of the parents to make educational decisions for the child is necessary, and those rights are limited as stated in *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs (form JV-535)* filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e)-(f) of the California Rules of Court. A copy of rule 5.650(e)-(f) may be obtained from the court clerk.

- 16. a. The child's educational needs  are  are not being met.
- b. The child's physical needs  are  are not being met.
- c. The child's mental health needs  are  are not being met.
- d. The child's developmental needs  are  are not being met.

- 17.  The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 16 or other concerns are:
  - a.  stated in the social worker's report.
  - b.  specified here:

<b>CHILD'S NAME:</b>	CASE NUMBER:
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18.  The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 17:
- a.  Social worker.
  - b.  Parent (*name*):
  - c.  Surrogate parent (*name*):
  - d.  Educational representative (*name*):
  - e.  Other (*name*):
19.  The child's education placement has changed since the last review hearing.
- a.  The child's educational records, including any evaluation regarding a disability, were requested by the child's new school within two business days of the request to enroll and, those records were provided by the child's former school to the child's new school within two business days of the receipt of the educational records request.
  - b.  The child is enrolled in school.
  - c.  The child is attending school.
20.  **Child 14 years of age or older:**
- a.  The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.
  - b.  The services stated in the case plan do not include those needed to assist the child in making the transition from foster care to successful adulthood.
  - c.  To assist the child in making the transition to successful adulthood, the county agency must add to the case plan and provide the services
    - (1)  stated on the record.
    - (2)  as follows:
21. **Placement and services are ordered as stated in** (*check appropriate boxes and attach indicated forms*):
- a.  *Twelve-Month Permanency Attachment: Child Reunified (Welf. & Inst. Code, § 366.21(f))* (form JV-436), which is attached and incorporated by reference.
  - b.  *Twelve-Month Permanency Attachment: Reunification Services Continued (Welf. & Inst. Code, § 366.21(f))* (form JV-437), which is attached and incorporated by reference.
  - c.  *Twelve-Month Permanency Attachment: Reunification Services Terminated (Welf. & Inst. Code, § 366.21(f))* (form JV-438), which is attached and incorporated by reference.
22.  **Contact with the child is ordered as stated in** (*check appropriate box and attach indicated form*):
- a.  *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
  - b.  *Visitation Attachment: Sibling* (form JV-401).
  - c.  *Visitation Attachment: Grandparent* (form JV-402).
23. **All prior orders not in conflict with this order remain in full force and effect.**
24.  **Other findings and orders:**
- a.  See attached.
  - b.  (*Specify*):

<b>CHILD'S NAME:</b>	CASE NUMBER:
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25.  **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:
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- a.  In-home status review hearing (Welf. & Inst. Code, § 364)
- b.  18-month permanency hearing (Welf. & Inst. Code, § 366.22)
- c.  Selection and implementation hearing (Welf. & Inst. Code, § 366.26)
- d.  Postpermanency hearing (Welf. & Inst. Code, § 366.3)
- e.  Other (*specify*):

26.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

27. Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_

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JUDGE   
 JUDGE PRO TEMPORE   
 COMMISSIONER   
 REFEREE

CHILD'S NAME:	CASE NUMBER:
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**TWELVE-MONTH PERMANENCY ATTACHMENT:  
REUNIFICATION SERVICES TERMINATED  
(Welf. & Inst. Code, § 366.21(f))**

- By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.
- Reunification services are terminated.**

**Placement**

- The child's out-of-home placement is necessary.**
- The child's current placement is appropriate.**
- The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.
  - The matter is continued to the date and time indicated in form JV-435, item 25 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.
  - Other (*specify*):
- The child is placed outside the state of California and that out-of-state placement**
  - continues to be the most appropriate placement for the child and is in the best interest of the child.
  - does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in form JV-435, item 25 for a  written  oral report by the county agency on the progress made toward
    - returning the child to California and locating an appropriate placement within California.
    - locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
    - other (*specify*):
- The county agency  has  has not made diligent efforts to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department  has  has not been evaluated.

**Important individuals**

- Child 10 years of age or older, placed in a group home for six months or longer from the date the child entered foster care**
  - The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
  - The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
  - To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
    - as stated on the record.
    - as follows:

**Health**

- The  mother  biological father  other (*specify*):  
 presumed father  legal guardian  
is  unable  unwilling  unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

CHILD'S NAME:	CASE NUMBER:
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**Selection of permanent plan**

10.  **By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child** because the child is not a proper subject for adoption at this time and has no one currently willing or appropriate to accept legal guardianship. It is ordered that:

a.  The child's permanent plan is placement with (*name*): \_\_\_\_\_ a fit and willing relative.

The likely date by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_

b.  The child remain in foster care with a permanent plan of (*specify*): \_\_\_\_\_

(1)  Return home.

(2)  Adoption.

(3)  Tribal customary adoption.

(4)  Legal guardianship.

(5)  The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with a goal of return home, legal guardianship, placement with a relative, emancipation, or

The likely date by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_

c.  The court finds that the barriers to achieving the child's permanent plans are (*describe*): \_\_\_\_\_

11.  **For Children 16 and older placed in another planned permanent living arrangement:** \_\_\_\_\_

a. The court asked the child where he/she wants to live and the child provided the following information (*describe*): \_\_\_\_\_

b. The court has considered the evidence before it and finds that another planned permanent living arrangement is still the best permanent plan because (*describe*): \_\_\_\_\_

c. The compelling reasons why the other permanent plan options are not in the [name of the child] best interests are (*describe*): \_\_\_\_\_

12.  a. **The matter is ordered set for hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child.**

b. By clear and convincing evidence, reasonable services have been provided or offered to the child's parents, legal guardian, or Indian custodian.

c. The county agency and the licensed county adoption agency or the California Department of Social Services, acting as an adoption agency, will prepare and serve an assessment report as described in Welf. & Inst. Code § 361.5(g).

d. The court advised all parties present in court that to preserve any right to review on appeal of this order, a party must seek an extraordinary writ by filing notice of intent to file a writ petition and a request for the record, which may be submitted on *Notice of Intent to File Writ Petition and Request for Record* (form JV-820), and a petition for extraordinary writ, which may be submitted on *Petition for Extraordinary Writ* (form JV-825). A copy of each form is available in the courtroom. The court advised all parties present in court that, as to them, a notice of intent to file a writ petition and request for record must be filed with the juvenile court clerk within seven days of the date of this hearing. The clerk of the court must provide written notice as stated in rule 5.708(n)(5) of the California Rules of Court to any party not present.

CHILD'S NAME:

CASE NUMBER:

- e. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, or an identified placement with a specific goal for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.
- f.  The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person named below, who is a mother, a presumed father, or an alleged father and who has relinquished the child for adoption where the relinquishment has been accepted and filed with notice under Fam. Code, § 8700, or an alleged father who has denied paternity and has executed section 2 of *Statement Regarding Parentage (Juvenile)* (form JV-505).
- (1) (name):
- (2) (name):
- g. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative (*specify date*):



ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER:  NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>FINDINGS AND ORDERS AFTER 18-MONTH PERMANENCY HEARING</b> (Welf. & Inst. Code, § 366.22)	CASE NUMBER:

1. Eighteen-month permanency hearing

- a. Date:
- b. Department:
- c. Judicial officer (name):
- d. Court clerk (name):
- e. Court reporter (name):
- f. Bailiff (name):
- g. Interpreter (name and language):

<u>Party (name):</u>	<u>Present</u>	<u>Attorney (name):</u>	<u>Present</u>	<u>Appointed today</u>
(1) Child:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(2) Mother:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(3) Father—presumed:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(4) Father—biological:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(5) Father—alleged:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(6) Legal guardian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(7) Indian custodian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(8) De facto parent:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(9) County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(10) Tribal representative:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(11) Other (specify):	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

- i. Others present in courtroom:
  - (1) Court Appointed Special Advocate (CASA) volunteer (name):
  - (2) Other (name):
  - (3) Other (name):

2. The court has read and considered and admits into evidence:

- a.  Report of social worker dated:
- b.  Report of CASA volunteer dated:
- c.  Case plan dated:
- d.  Other (specify):
- e.  Other (specify):

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:

- 3. a.  Notice of the date, time, and location of the hearing was given as required by law.
- b.  **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

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

4. a.  The child  is  maybe an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
- b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.
5.  A Court Appointed Special Advocate is appointed for the child.

**6. Parentage**

- a.  The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
- b.  The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
- (1) alleged parent (*name*):
  - (2) alleged parent (*name*):
  - (3) alleged parent (*name*):

**Advisements and waivers**

**7. The court has informed and advised the**

- mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- other (*specify*):

of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

8. The  mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- other (*specify*):

**has knowingly and intelligently waived the right** to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

**Case plan development**

9. a.  The following were actively involved in the case plan development, including the child's plan for permanent placement.
- child                       mother                       father                       representative of child's identified Indian tribe
  - other (*specify*):
- b.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is ordered to actively involve them and submit an updated case plan within 30 days of the date of this hearing.
- child                       mother                       father                       representative of child's identified Indian tribe
  - other (*specify*):
- c.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is not required to involve them because these persons are unable, unavailable, or unwilling to participate.
- child                       mother                       father                       representative of child's identified Indian tribe
  - other (*specify*):

CHILD'S NAME:	CASE NUMBER:
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**Efforts**

**10. The county agency**

- a.  has
- b.  has not

complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child and by making reasonable efforts to complete whatever steps are necessary to finalize the permanent placement of the child.

11. The child is 16 years or older and the agency  has  has not made the following ongoing and intensive efforts to return the child to a safe home or finalize the permanent plan *(describe)*:

12.  The child  is  may be an Indian child, and
- a.  by clear and convincing evidence active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family, and these efforts were unsuccessful.
  - b.  active efforts were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family.

**13. The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:**

	None	Minimal	Adequate	Substantial	Excellent
a. <input type="checkbox"/> Mother	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. <input type="checkbox"/> Presumed father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. <input type="checkbox"/> Biological father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. <input type="checkbox"/> Legal guardian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. <input type="checkbox"/> Indian custodian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. <input type="checkbox"/> Other <i>(specify)</i> :	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Siblings**

14.  **The child does not have siblings under the court's jurisdiction.**
15.  **The child has siblings under the court's jurisdiction.** *Sibling Attachment: Contact and Placement (form JV-403) is attached and incorporated by reference.*

**Education**

16. a.  A limitation on the right of the parents to make educational decisions for the child is **not** necessary. The parents hold educational rights and responsibilities in regard to the child's education, including those described in rule 5.650(e)–(f) of the California Rules of Court. A copy of rule 5.650(e)–(f) may be obtained from the court clerk.
- b.  A limitation on the right of the parents to make educational decisions for the child is necessary, and those rights are limited as stated in *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (form JV-535) filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e)–(f) of the California Rules of Court. A copy of rule 5.650(e)–(f) may be obtained from the court clerk.
17. a. The child's educational needs  are  are not being met.
- b. The child's physical needs  are  are not being met.
- c. The child's mental health needs  are  are not being met.
- d. The child's developmental needs  are  are not being met.

CHILD'S NAME:	CASE NUMBER:
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18.  The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 16 or other concerns are:
- stated in the social worker's report.
  - specified here:
19.  The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 17:
- Social worker.
  - Parent (*name*):
  - Surrogate parent (*name*):
  - Educational representative (*name*):
  - Other (*name*):
20.  The child's education placement has changed since the last review hearing.
- The child's educational records, including any evaluation regarding a disability, were requested by the child's new school within two business days of the request to enroll and, those records were provided by the child's former school to the child's new school within two business days of the receipt of the educational records request.
  - The child is enrolled in school.
  - The child is attending school.
21.  **Child 14 years of age or older:**
- The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.
  - The services stated in the case plan do not include those needed to assist the child in making the transition from foster care to successful adulthood.
  - To assist the child in making the transition to successful adulthood, the county agency must add to the case plan and provide the services
    - stated on the record.
    - as follows:
22. **Placement and services are ordered as stated in** (*check appropriate boxes and attach indicated forms*):
- Eighteen-Month Permanency Attachment: Child Reunified (Welf. & Inst. Code, § 366.22)* (form JV-441), which is attached and incorporated by reference.
  - Eighteen-Month Permanency Attachment: Reunification Services Terminated (Welf. & Inst. Code, § 366.22)* (form JV-442), which is attached and incorporated by reference.
  - Eighteen-Month Permanency Attachment: Reunification Services Continued (Welf. & Inst. Code, § 366.25)* (form JV-443), which is attached and incorporated by reference.
23.  **Contact with the child is ordered as stated in** (*check appropriate box and attach indicated form*):
- Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
  - Visitation Attachment: Sibling* (form JV-401).
  - Visitation Attachment: Grandparent* (form JV-402).
24. **All prior orders not in conflict with this order remain in full force and effect.**

CHILD'S NAME:	CASE NUMBER:
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25.  **Other findings and orders:**

- a.  See attached.
- b.  (Specify):

26.  **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:
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- a.  In-home status review hearing (Welf. & Inst. Code, § 364)
- b.  Twenty-four-month permanency hearing (Welf. & Inst. Code, § 366.25)
- c.  Selection and implementation hearing (Welf. & Inst. Code, § 366.26)
- d.  Postpermanency hearing (Welf. & Inst. Code, § 366.3)
- e.  Other (specify):

27.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

28. Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_

JUDGE   
 JUDGE PRO TEMPORE   
 COMMISSIONER   
 REFEREE

CHILD'S NAME:	CASE NUMBER:
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**EIGHTEEN-MONTH PERMANENCY ATTACHMENT:  
REUNIFICATION SERVICES TERMINATED  
(Welf. & Inst. Code, § 366.22)**

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.

2. **Reunification services are terminated.**

**Placement**

3. **The child's out-of-home placement is necessary.**

4.  **The child's current placement is appropriate.**

5.  **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.

- a.  The matter is continued to the date and time indicated in form JV-440, item 25 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.
- b.  Other (*specify*):

6.  **The child is placed outside the state of California and that out-of-state placement**

- a.  continues to be the most appropriate placement for the child and is in the best interest of the child.
- b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in form JV-440, item 25 for a  written  oral report by the county agency on the progress made toward
  - (1)  returning the child to California and locating an appropriate placement within California.
  - (2)  locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
  - (3)  other (*specify*):

7. The county agency  has  has not made diligent efforts to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department  has  has not been evaluated.

**Important individuals**

8.  **Child 10 years of age or older, placed in a group home for six months or longer from the date the child entered foster care**

- a.  The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
- b.  The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
- c.  To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
  - (1)  as stated on the record.
  - (2)  as follows:

CHILD'S NAME:	CASE NUMBER:
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**Health**

9.  The  mother  biological father  other (*specify*):  
 presumed father  legal guardian  
 is  unable  unwilling  unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

**Selection of permanent plan**

10.  **By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child** because the child is not a proper subject for adoption at this time and has no one currently willing or appropriate to accept legal guardianship. It is ordered that:

a.  The child's permanent plan is placement with (*name*): \_\_\_\_\_ a fit and willing relative.  
 The likely date by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_

b.  The child remain in foster care with a permanent plan of (*specify*): \_\_\_\_\_

(1)  Return home.

(2)  Adoption.

(3)  Tribal customary adoption.

(4)  Legal guardianship.

(5)  The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with a goal of return home, legal guardianship, placement with a relative, emancipation, or

The likely date by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_

c.  The court finds that the barriers to achieving the child's permanent plans are (*describe*): \_\_\_\_\_

11.  **For Children 16 and older placed in another planned permanent living arrangement:**

a. The court asked the child where he/she wants to live and the child provided the following information (*describe*): \_\_\_\_\_

b. The court has considered the evidence before it and finds that another planned permanent living arrangement is still the best permanent plan because (*describe*): \_\_\_\_\_

c. The compelling reasons why the other permanent plan options are not in the [name of the child] best interests are (*describe*): \_\_\_\_\_

12.  a. **The matter is ordered set for hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child.**

b. By clear and convincing evidence, reasonable services have been provided or offered to the child's parents, legal guardian, or Indian custodian.

c. The county agency and the licensed county adoption agency or the California Department of Social Services, acting as an adoption agency, will prepare and serve an assessment report as described in Welf. & Inst. Code § 361.5(g).

CHILD'S NAME:

CASE NUMBER:

- d. The court advised all parties present in court that to preserve any right to review on appeal of this order, a party must seek an extraordinary writ by filing notice of intent to file a writ petition and a request for the record, which may be submitted on *Notice of Intent to File Writ Petition and Request for Record* (form JV-820), and a petition for extraordinary writ, which may be submitted on *Petition for Extraordinary Writ* (form JV-825). A copy of each form is available in the courtroom. The court advised all parties present in court that, as to them, a notice of intent to file a writ petition and request for record must be filed with the juvenile court clerk within seven days of the date of this hearing. The clerk of the court must provide written notice as stated in rule 5.708(n)(5) of the California Rules of Court to any party not present.
- e. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, or an identified placement with a specific goal for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.
- f.  The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person named below, who is a mother, a presumed father, or an alleged father and who has relinquished the child for adoption where the relinquishment has been accepted and filed with notice under Fam. Code, § 8700, or an alleged father who has denied paternity and has executed section 2 of *Statement Regarding Parentage (Juvenile)* (form JV-505).
- (1) (name):
- (2) (name):
- g. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative (*specify date*):



CHILD'S NAME:	CASE NUMBER:
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**EIGHTEEN-MONTH PERMANENCY ATTACHMENT: REUNIFICATION SERVICES CONTINUED**  
(Welf. & Inst. Code, § 366.22)

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.

**Placement**

2. **The child's out-of-home placement is necessary.**
3.  **The child's current placement is appropriate.**
4.  **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.
- a.  The matter is continued to the date and time indicated in form JV-440, item 25 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.
- b.  Other (*specify*):
5.  **The child is placed outside the state of California and that out-of-state placement**
- a.  continues to be the most appropriate placement for the child and is in the best interest of the child.
- b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in form JV-440, item 25 for a  written  oral report by the county agency on the progress made toward
- (1)  returning the child to California and locating an appropriate placement within California.
- (2)  locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
- (3)  Other (*specify*):

**Reunification services**

6. **By clear and convincing evidence, it is in the best interest of the child to provide additional reunification services to this**
- a.  mother  biological father  Indian custodian  
 presumed father  legal guardian  other (*specify*):
- (1)  who is making significant and consistent progress in a substance abuse treatment program.
- (2)  who is recently discharged from incarceration, institutionalization, or the custody of homeland security and making significant and consistent progress in establishing a safe home for the child's return.
- (3)  who was a minor parent or a nonminor dependent at the time of the initial hearing and is making significant and consistent progress in establishing a safe home for the child's return.

and

- b. **There is a substantial probability that the child may be returned to the**
- mother  biological father  Indian custodian  
 presumed father  legal guardian  other (*specify*):
- by the date set for the 24-month permanency hearing under Welf. & Inst. Code, § 366.22 because the person has
- (1) consistently and regularly contacted and visited the child;
- (2) made significant and consistent progress in the prior 18 months in resolving the problems that led to the child's removal from the home; and
- (3) demonstrated the capacity and ability to provide for the safety, protection, physical and emotional health, and special needs of the child and

CHILD'S NAME:	CASE NUMBER:
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- (a)  to complete the objectives of his or her substance abuse treatment plan as evidenced by reports from a substance abuse provider.
- (b)  to complete a treatment plan postdischarge from incarceration or institutionalization.

**7. Reunification services are continued for the**

- mother
- biological father
- Indian custodian
- presumed father
- legal guardian
- other (*specify*):

- a.  as previously ordered.
- b.  as modified
  - (1)  on the record.
  - (2)  in the case plan.

8.  **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative (*specify date*):

**Important Individuals**

9.  **Child 10 years of age or older, placed in a group home for six months or longer from the date the child entered foster care**
- a.  The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
  - b.  The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
  - c.  To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
    - (1)  as stated on the record.
    - (2)  as follows:

**Health**

10.  The  mother  biological father  Indian custodian  
 presumed father  legal guardian  other (*specify*):  
 is  unable  unwilling  unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

**Advisement**

11. The court informed all parties present at the time of the hearing and further advises all parties that if the child is not returned to the home at the 24-month permanency hearing set on a date within 24 months from the date the child was initially removed from his or her home, the case may be referred to a selection and implementation hearing under Welf. & Inst. Code, § 366.26 **that may result in the termination of parental rights and adoption of the child and other members of the sibling group or, in the case of an Indian child for whom tribal customary adoption under section 366.24 is selected as the permanent plan goal, modification of parental rights and the adoption of the child and other members of the sibling group.**

Twenty-four-month permanency hearing date:

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER:  NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>FINDINGS AND ORDERS AFTER POSTPERMANENCY HEARING—                  PARENTAL RIGHTS TERMINATED; PERMANENT PLAN OF ADOPTION                  (Welf. &amp; Inst. Code, § 366.3)</b>	CASE NUMBER:

**1. Postpermanency hearing**

- |                             |                                     |
|-----------------------------|-------------------------------------|
| a. Date:                    | e. Court reporter (name):           |
| b. Department:              | f. Bailiff (name):                  |
| c. Judicial officer (name): | g. Interpreter (name and language): |
| d. Court clerk (name):      |                                     |

	Present	Attorney (name):	Present	Appointed today
h. <u>Party (name):</u>				
(1) Child:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(2) Legal guardian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(3) Indian custodian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(4) De facto parent:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(5) County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(6) Tribal representative:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(7) Other (specify):	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
i. Others present in courtroom:				
(1) Court Appointed Special Advocate (CASA) volunteer (name):				
(2) Other (name):				
(3) Other (name):				

**2. The court has read and considered and admits into evidence:**

- a.  Report of social worker (dated):
- b.  Report of CASA volunteer (dated):
- c.  Case plan (dated):
- d.  Other (specify):
- e.  Other (specify):

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:**

- 3. a.  Notice of the date, time, and location of the hearing was given as required by law.
- b.  **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.
- 4. a.  The child  is  maybe an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
- b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.

CHILD'S NAME:	CASE NUMBER:
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5.  A Court Appointed Special Advocate is appointed for the child.

#### Placement

6. **The child's out-of home placement is necessary.**
7.  **The child's current placement is appropriate.**
8.  **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.
- a.  The matter is continued to the date and time indicated in item 28 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.
- b.  Other (*specify*):
9.  **The child is placed outside the state of California and that out-of-state placement**
- a.  continues to be the most appropriate placement for the child and is in the best interest of the child.
- b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in item 28 for a  written  oral report by the county agency on the progress made toward
- (1)  returning the child to California and locating an appropriate placement within California.
- (2)  locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
- (3)  Other (*specify*):

#### Case plan development

10. a.  The child was actively involved in the case plan development, including the child's plan for permanent placement.
- b.  The child was not actively involved in the case plan development, including the child's plan for permanent placement, and
- (1)  the county agency is ordered to actively involve the child in the case plan development, including the plan for permanent placement, and to submit to the court an updated case plan within 30 days of the date of this hearing.
- (2)  the county agency is not required to actively involve the child because the child is unable, unavailable, or unwilling to participate.
11.  **Child 12 years of age and over:**
- a.  The child was given the opportunity to review the case plan, sign it, and receive a copy.
- b.  The child was not given the opportunity to review the case plan, sign it, and receive a copy, and
- (1)  the county agency is ordered to provide the child with the opportunity to review the case plan, sign it, and receive a copy. The county agency is further ordered to submit to the court within 30 days of the date of this hearing written confirmation that the child was provided with this opportunity.
- (2)  the county agency is not required to actively involve the child because the child is unable, unavailable, or unwilling to participate.

#### Efforts

##### 12. The county agency

- a.  has
- b.  has not

complied with the case plan by making reasonable efforts, including whatever steps are necessary to make and to finalize the permanent placement of the child.

13. The child is 16 years or older and the agency  has  has not made the following ongoing and intensive efforts to return the child to a safe home or finalize the permanent plan (*describe*):

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14.  **Child not yet placed with prospective adoptive parent or a guardian**
- a. The county agency  has  has not made diligent efforts to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department  has  has not been evaluated.
- b. The child has identified the following as an individual important to him or her:  
 (1) (name):  
 (2) (name):
- c. The county agency  has  has not made efforts to identify individuals who are important to the child, consistent with the child's best interest.
- d. The county agency  has  has not made efforts to maintain the child's relationships with the individuals who are important to the child, consistent with the child's best interest.
- e. The county agency  has  has not made efforts to identify a prospective adoptive parent or a legal guardian for the child.
- f.  To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services  
 (1)  as stated on the record.  
 (2)  as follows:
- g.  To identify a prospective adoptive parent or a legal guardian for the child, the county agency must provide the service  
 (1)  as stated on the record.  
 (2)  as follows:

15. The services provided to the child have been
- a.  adequate.
- b.  not adequate.

**Education**

16. a. The child's educational needs  are  are not being met.  
 b. The child's physical needs  are  are not being met.  
 c. The child's mental health needs  are  are not being met.  
 d. The child's developmental needs  are  are not being met.
17.  The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 16 or other concerns are:  
 a.  stated in the social worker's report.  
 b.  specified here:
18.  The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 17:  
 a.  Social worker.  
 b.  Surrogate parent (name):  
 c.  Educational representative (name):  
 d.  Other (name):

CHILD'S NAME:	CASE NUMBER:
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19.  The child's education placement has changed since the last review hearing.
- a.  The child's educational records, including any evaluation regarding a disability, were requested by the child's new school within two business days of the request to enroll and, those records were provided by the child's former school to the child's new school within two business days of the receipt of the educational records request.
- b.  The child is enrolled in school.
- c.  The child is attending school.
20.  **Child 14 years of age or older:**
- a.  The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.
- b.  The services stated in the case plan do not include those needed to assist the child in making the transition from foster care to successful adulthood.
- c.  To assist the child in making the transition to successful adulthood, the county agency must add to the case plan and provide the services
- (1)  stated on the record.
- (2)  as follows:

### Siblings

21.  **The child does not have siblings under the court's jurisdiction.**
22.  **The child has siblings under the court's jurisdiction.** *Sibling Attachment: Contact and Placement (form JV-403) is attached and incorporated by reference.*

### Permanent plan

23.  a. The permanent plan of adoption is appropriate and is ordered to continue as the permanent plan.  
b. **The likely date** by which the child's adoption will be finalized is *(specify date)*:
24.  a. The permanent plan of tribal customary adoption is appropriate and is ordered to continue as the permanent plan.  
b. **The likely date** by which the child's tribal customary adoption will be finalized is *(specify date)*:
25.  a. The child's permanent plan of adoption may or may not be appropriate, and the matter is ordered set for a hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child. The county agency and the licensed county adoption agency or the California Department of Social Services, acting as an adoption agency, will prepare and serve an assessment report as described in Welf. & Inst. Code, § 366.22(b).  
b. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative *(specify date)*:
26.  **Contact with the child is ordered as follows** *(check appropriate box and attach indicated form)*:
- a.  *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person (form JV-400).*
- b.  *Visitation Attachment: Sibling (form JV-401).*
- c.  *Visitation Attachment: Grandparent (form JV-402).*
27. **All prior orders not in conflict with this order remain in full force and effect.**
28.  **Other findings and orders:**
- a.  See attached.
- b.  *(Specify):*

CHILD'S NAME:	CASE NUMBER:
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29.  The next hearing is scheduled as follows:

Hearing date:	Time:	Dept:	Room:
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- a.  Postpermanency hearing (Welf. & Inst. Code, § 366.3)
- b.  Selection and implementation hearing (Welf. & Inst. Code, § 366.26)
- c.  Other (*specify*):

30. Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_

JUDGE   
 JUDGE PRO TEMPORE   
 COMMISSIONER   
 REFEREE

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>FINDINGS AND ORDERS AFTER POSTPERMANENCY HEARING—                  PERMANENT PLAN OTHER THAN ADOPTION                  (Welf. &amp; Inst. Code, § 366.3)</b>	CASE NUMBER:

**1. Postpermanency hearing**

- a. Date:
- b. Department:
- c. Judicial officer (name):
- d. Court clerk (name):
- e. Court reporter (name):
- f. Bailiff (name):
- g. Interpreter (name and language):

	Present	Attorney (name):	Present	Appointed today
h. <u>Party (name):</u>				
(1) Child:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(2) Mother:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(3) Father—presumed:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(4) Father—biological:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(5) Father—alleged:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(6) Legal guardian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(7) Indian custodian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(8) De facto parent:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(9) County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(10) Tribal representative:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(11) Other (specify):	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
i. Others present in courtroom:				
(1) Court Appointed Special Advocate (CASA) volunteer (name):				
(2) Other (name):				
(3) Other (name):				

**2. The court has read and considered and admits into evidence:**

- a.  Report of social worker (dated):
- b.  Report of CASA volunteer (dated):
- c.  Case plan (dated):
- d.  Other (specify):
- e.  Other (specify):

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:**

- 3. a.  Notice of the date, time, and location of the hearing was given as required by law.
- b.  **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.



<b>CHILD'S NAME:</b>	CASE NUMBER:
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4. a.  The child  is  maybe an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
- b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.
5.  A Court Appointed Special Advocate is appointed for the child.

**6. Parentage**

- a.  The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
- b.  The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
- (1) alleged parent (*name*):
  - (2) alleged parent (*name*):
  - (3) alleged parent (*name*):

**Advisements and waivers**

**7. The court has informed and advised the**

- mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- Other (*specify*):

of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

8. The  mother                       biological father                       legal guardian                       Indian custodian                       child
- presumed father                       alleged father                       other (*specify*):

**has knowingly and intelligently waived the right** to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

**Placement**

9. **Continued out-of-home placement is necessary.**
10. **The child's out-of-home placement is necessary.**
11.  **The child's current placement is appropriate.**
12.  **The child's current placement is not appropriate.** The county agency must locate an appropriate place for the child.
- a.  The matter is continued to the date and time indicated in item 36 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.
- b.  Other (*specify*):

<b>CHILD'S NAME:</b>	CASE NUMBER:
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13.  **The child is placed outside the state of California and that out-of-state placement**
- a.  continues to be the most appropriate placement for the child and is in the best interest of the child.
  - b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in item 36 for a  written  oral report by the county agency on the progress made toward
    - (1)  returning the child to California and locating an appropriate placement within California.
    - (2)  locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
    - (3)  Other(*specify*):

14. The county agency  has  has not made diligent efforts to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department  has  has not been evaluated.

**Case plan development**

15. a.  The child was actively involved in the case plan development, including the child's plan for permanent placement.
- b.  The child was not actively involved in the case plan development, including the child's plan for permanent placement, and
- (1)  the county agency is ordered to actively involve the child in the case plan development, including the plan for permanent placement, and to submit to the court an updated case plan within 30 days of the date of this hearing.
  - (2)  the county agency is not required to actively involve the child in the case plan development because the child was unable, unavailable, or unwilling to participate.

16.  **Child 12 years of age and over:**

- a.  The child was given the opportunity to review the case plan, sign it, and receive a copy.
- b.  The child was not given the opportunity to review the case plan, sign it, and receive a copy, and
  - (1)  the county agency is ordered to provide the child with the opportunity to review the case plan, sign it, and receive a copy. The agency is further ordered to submit to the court within 30 days of the date of this hearing written confirmation that the child was provided with this opportunity.
  - (2)  the county agency is not required to give the child this opportunity because the child was unable, unavailable, or unwilling to participate.

**Efforts**

17. **The county agency**

- a.  has
  - b.  has not
- compiled with the case plan by making reasonable efforts, including whatever steps are necessary to make and to finalize the permanent placement of the child.

17. The child is 16 years or older and the agency  has  has not made the following ongoing and intensive efforts to return the child to a safe home or finalize the permanent plan (*describe*):

18. The services provided to the child have been

- a.  adequate.
- b.  not adequate.

<b>CHILD'S NAME:</b>	CASE NUMBER:
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19.  **Child 10 years of age or older, placed in a group home for six months or longer from the date the child entered foster care**
- a. The child has identified the following as an individual important to him or her:
    - (1) (name):
    - (2) (name):
  - b. The county agency  has  has not made efforts to identify individuals who are important to the child, consistent with the child's best interest.
  - c. The county agency  has  has not made efforts to maintain the child's relationships with the individuals who are important to the child, consistent with the child's best interest.
  - d. The county agency  has  has not made efforts to identify a prospective adoptive parent or a legal guardian for the child.
  - e.  To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
    - (1)  as stated on the record.
    - (2)  as follows:
  - f.  To identify a prospective adoptive parent or a legal guardian for the child, the county agency must provide the service
    - (1)  as stated on the record.
    - (2)  as follows:

**Siblings**

20.  **The child does not have siblings under the court's jurisdiction.**
21.  **The child has siblings under the court's jurisdiction.** *Sibling Attachment: Contact and Placement* (form JV-403) is attached and incorporated by reference.

**Education**

22. a. The child's educational needs  are  are not being met.  
 b. The child's physical needs  are  are not being met.  
 c. The child's mental health needs  are  are not being met.  
 d. The child's developmental needs  are  are not being met.
23.  The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 22 or other concerns are:
- a.  stated in the social worker's report.
  - b.  specified here:
24.  The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 23:
- a.  Social worker.
  - b.  Parent (name):
  - c.  Surrogate parent (name):
  - d.  Educational representative (name):
  - e.  Other (name):

<b>CHILD'S NAME:</b>	CASE NUMBER:
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25.  The child's education placement has changed since the last review hearing.
- a.  The child's educational records, including any evaluation regarding a disability, were requested by the child's new school within two business days of the request to enroll, and those records were provided by the child's former school to the child's new school within two business days of the receipt of the educational records request.
- b.  The child is enrolled in school.
- c.  The child is attending school.

26.  **Child 14 years of age or older:**

- a.  The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.
- b.  The services stated in the case plan do not include those needed to assist the child in making the transition from foster care to successful adulthood.
- c.  To assist the child in making the transition to successful adulthood, the county agency must add to the case plan and provide the services
- (1)  stated on the record.
- (2)  as follows:

**Health**

27.  The  mother  biological father  Indian custodian  
 presumed father  legal guardian  Other (*specify*):  
 is  unable  unwilling  unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

**Permanent Plan**

28. It is ordered that:

- a. The child's permanent plan is legal guardianship.  
 The likely date by which the child's permanent plan will be achieved is (*specify date*):
- b. The child's permanent plan is placement with a fit and willing relative.  
 The likely date by which the child's permanent plan will be achieved is (*specify date*):
- c. The child remain in foster care with a permanent plan of (*specify*):
- (1)  Return home.
- (2)  Adoption.
- (3)  Tribal customary adoption.
- (4)  Legal guardianship.
- (5)  The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with a goal of:  
 return home  legal guardianship  
 emancipation  placement with a relative  
 other (*specify*):  
 The likely date by which the child's permanent plan will be achieved is (*specify date*):
- d. The court finds that the barriers to achieving the child's permanent plan are (*describe*):

<b>CHILD'S NAME:</b>	CASE NUMBER:
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29.  **For Children 16 and older placed in another planned permanent living arrangement:**
- a. The court asked the child where he/she wants to live and the child provided the following information (*describe*):
  - b. The court has considered the evidence before it and finds that another planned permanent living arrangement is still the best permanent plan because (*describe*):
  - c. The compelling reasons why the other permanent plan options are not in the [name of the child] best interests are (*describe*):
30.  By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child because the child is not a proper subject for adoption at this time and has no one currently willing or appropriate to accept legal guardianship.
31.  The child's permanent plan identified in item 28 is appropriate and continues as the permanent plan.
32.  a. The child's permanent plan identified in item 28 may not be appropriate, and the matter is ordered set for a hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child.
- b. The county agency and the licensed county adoption agency or the California Department of Social Services, acting as an adoption agency, will prepare and serve an assessment report as described in Welf. & Inst. Code, § 366.22(b).
  - c. The court advised all parties present in court that to preserve any right to review on appeal of this order, a party must seek an extraordinary writ by filing notice of intent to file a writ petition and a request for the record, which may be submitted on *Notice of Intent to File Writ Petition and Request for Record* (form JV-820), and a petition for extraordinary writ, which may be submitted on *Petition for Extraordinary Writ* (form JV-825). A copy of each form is available in the courtroom. The court further advised all parties present in court that, as to them, a notice of intent to file a writ petition and request for record must be filed with the juvenile court clerk within seven days of the date of this hearing. The clerk of the court is directed to provide written notice as stated in rule 5.708(n)(5) of the California Rules of Court to any party not present.
  - d. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, or identified placement with a specific goal for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.
  - e.  The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person named below, who is a mother, a presumed father, or an alleged father and who has relinquished the child for adoption where the relinquishment has been accepted and filed with notice under Fam. Code, § 8700, or an alleged father who has denied paternity and has executed section 2 of *Statement Regarding Parentage (Juvenile)* (form JV-505).
    - (1) (*name*):
    - (2) (*name*):
    - (3) (*name*):
    - (4) (*name*):
33.  **Contact with the child is ordered as stated in** (*check appropriate box and attach indicated form*):
- a.  *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
  - b.  *Visitation Attachment: Sibling* (form JV-401).
  - c.  *Visitation Attachment: Grandparent* (form JV-402).
34. **All prior orders not in conflict with this order remain in full force and effect.**

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35.  **Other findings and orders:**

- a.  See attached.
- b.  (Specify):

36.  **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:
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- a.  Selection and implementation hearing (Welf. & Inst. Code, § 366.26)
- b.  Postpermanency hearing (Welf. & Inst. Code, § 366.3)
- c.  Other (specify):

37. Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_

JUDGE   
  JUDGE PRO TEMPORE   
  COMMISSIONER   
  REFEREE

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>FINDINGS AND ORDERS AFTER 24-MONTH PERMANENCY HEARING</b> (Welf. & Inst. Code, § 366.25)	CASE NUMBER:

**1. Twenty-four-month permanency hearing**

- a. Date:
- b. Department:
- c. Judicial officer (name):
- d. Court clerk (name):
- e. Court reporter (name):
- f. Bailiff (name):
- g. Interpreter (name and language):

	<u>Present</u>	<u>Attorney (name):</u>	<u>Present</u>	<u>Appointed today</u>
h. <u>Party (name):</u>				
(1) Child:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(2) Mother:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(3) Father—presumed:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(4) Father—biological:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(5) Father—alleged:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(6) Legal guardian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(7) Indian custodian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(8) De facto parent:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(9) County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(10) Tribal representative:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(11) Other (specify):	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
i. Others present in courtroom:				
(1) Court Appointed Special Advocate (CASA) volunteer (name):				
(2) Other (name):				
(3) Other (name):				

**2. The court has read and considered and admits into evidence:**

- a.  Report of social worker dated:
- b.  Report of CASA volunteer dated:
- c.  Case plan dated:
- d.  Other (specify):
- e.  Other (specify):

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:**

- 3. a.  Notice of the date, time, and location of the hearing was given as required by law.
- b.  **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

CHILD'S NAME:	CASE NUMBER:
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4. a.  The child  is  maybe an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
- b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.
5.  A Court Appointed Special Advocate is appointed for the child.

**6. Parentage**

- a.  The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
- b.  The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
- (1) alleged parent (*name*):
- (2) alleged parent (*name*):
- (3) alleged parent (*name*):

**Advisements and waivers**

**7. The court has informed and advised the**

- mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- other (*specify*):

of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

8. The  mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- other (*specify*):

**has knowingly and intelligently waived the right** to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

**Case plan development**

9. a.  The following were actively involved in the case plan development, including the child's plan for permanent placement.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):
- b.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is ordered to actively involve them and submit an updated case plan within 30 days of the date of this hearing.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):
- c.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is not required to involve them because these persons are unable, unavailable, or unwilling to participate.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):



CHILD'S NAME:	CASE NUMBER:
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**Efforts**

**10. The county agency**

- a.  has
- b.  has not

complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child and by making reasonable efforts to complete whatever steps are necessary to finalize the permanent placement of the child.

11. The child is 16 years or older and the agency  has  has not made the following ongoing and intensive efforts to return the child to a safe home or finalize the permanent plan (*describe*):

12.  The child  is  may be an Indian child, and
- a.  by clear and convincing evidence active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family, and these efforts were unsuccessful.
  - b.  active efforts were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family.

**13. The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:**

	None	Minimal	Adequate	Substantial	Excellent
a. <input type="checkbox"/> Mother	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. <input type="checkbox"/> Presumed father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. <input type="checkbox"/> Biological father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. <input type="checkbox"/> Legal guardian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. <input type="checkbox"/> Indian custodian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. <input type="checkbox"/> Other ( <i>specify</i> ):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Siblings**

- 14.  The child does not have siblings under the court's jurisdiction.
- 15.  The child has siblings under the court's jurisdiction. *Sibling Attachment: Contact and Placement* (form JV-403) is attached and incorporated by reference.

**Education**

- 16. a.  A limitation on the right of the parents to make educational decisions for the child is **not** necessary. The parents hold educational rights and responsibilities in regard to the child's education, including those described in rule 5.650(e)–(f) of the California Rules of Court. A copy of rule 5.650(e)–(f) may be obtained from the court clerk.
  - b.  A limitation on the right of the parents to make educational decisions for the child is necessary, and those rights are limited as stated in *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (form JV-535) filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e)–(f) of the California Rules of Court. A copy of rule 5.650(e)–(f) may be obtained from the court clerk.
- 17. a. The child's educational needs  are  are not being met.
  - b. The child's physical needs  are  are not being met.
  - c. The child's mental health needs  are  are not being met.
  - d. The child's developmental needs  are  are not being met.

CHILD'S NAME:	CASE NUMBER:
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18.  The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 16 or other concerns are:
- stated in the social worker's report.
  - specified here:
19.  The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 17:
- Social worker.
  - Parent (*name*):
  - Surrogate parent (*name*):
  - Educational representative (*name*):
  - Other (*name*):
20.  The child's education placement has changed since the last review hearing.
- The child's educational records, including any evaluation regarding a disability, were requested by the child's new school within two business days of the request to enroll and, those records were provided by the child's former school to the child's new school within two business days of the receipt of the educational records request.
  - The child is enrolled in school.
  - The child is attending school.
21.  **Child 14 years of age or older:**
- The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.
  - The services stated in the case plan do not include those needed to assist the child in making the transition from foster care to successful adulthood.
  - To assist the child in making the transition to successful adulthood, the county agency must add to the case plan and provide the services
    - stated on the record.
    - as follows:
22. **Placement and services are ordered as stated in** (*check appropriate boxes and attach indicated forms*):
- Twenty-four-Month Permanency Attachment: Child Reunified (Welf. & Inst. Code, § 366.25)* (form JV-456), which is attached and incorporated by reference.
  - Twenty-four-Month Permanency Attachment: Reunification Services Terminated (Welf. & Inst. Code, § 366.25)* (form JV-457), which is attached and incorporated by reference.
23.  **Contact with the child is ordered as stated in** (*check appropriate box and attach indicated form*):
- Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
  - Visitation Attachment: Sibling* (form JV-401).
  - Visitation Attachment: Grandparent* (form JV-402).
24. **All prior orders not in conflict with this order remain in full force and effect.**
25.  **Other findings and orders:**
- See attached.
  - (*Specify*):

CHILD'S NAME:	CASE NUMBER:
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26.  **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:
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- a.  In-home status review hearing (Welf. & Inst. Code, § 364)
- b.  Selection and implementation hearing (Welf. & Inst. Code, § 366.26)
- c.  Postpermanency hearing (Welf. & Inst. Code, § 366.3)
- d.  Other (*specify*):

27.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

28. Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_

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JUDGE   
 JUDGE PRO TEMPORE   
 COMMISSIONER   
 REFEREE

CHILD'S NAME:	CASE NUMBER:
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**TWENTY-FOUR-MONTH PERMANENCY ATTACHMENT:  
REUNIFICATION SERVICES TERMINATED  
(Welf. & Inst. Code, § 366.25)**

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.
2. **The child's out-of-home placement is necessary.**
3. **Reunification services are terminated.**
4.  **The child's current placement is appropriate.**
5.  **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.
  - a.  The matter is continued to the date and time indicated in form JV-440, item 25 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.
  - b.  Other (*specify*):
6.  **The child is placed outside the state of California and that out-of-state placement**
  - a.  continues to be the most appropriate placement for the child and is in the best interest of the child.
  - b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in form JV-440, item 25 for a  written  oral report by the county agency on the progress made toward
    - (1)  returning the child to California and locating an appropriate placement within California.
    - (2)  locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
    - (3)  other (*specify*):

**Selection of permanent plan**

7. The county agency  has  has not made diligent efforts to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department  has  has not been evaluated.
8.  **By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child** because the child is not a proper subject for adoption at this time and has no one currently willing or appropriate to accept legal guardianship. It is ordered that:
  - a.  The child's permanent plan is placement with (*name*): \_\_\_\_\_ a fit and willing relative.  
The likely date by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_
  - b.  The child remain in foster care with a permanent plan of (*specify*): \_\_\_\_\_
    - (1)  Return home.
    - (2)  Adoption.
    - (3)  Tribal customary adoption.
    - (4)  Legal guardianship.
    - (5)  The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with a goal of return home, legal guardianship, placement with a relative, emancipation, or \_\_\_\_\_  
\_\_\_\_\_

The likely date by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_
  - c.  The court finds that the barriers to achieving the child's permanent plans are (*describe*): \_\_\_\_\_  
\_\_\_\_\_

CHILD'S NAME:	CASE NUMBER:
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9.  **For Children 16 and older placed in another planned permanent living arrangement:**
- a. The court asked the child where he/she wants to live and the child provided the following information (*describe*):
  - b. The court has considered the evidence before it and finds that another planned permanent living arrangement is still the best permanent plan because (*describe*):
  - c. The compelling reasons why the other permanent plan options are not in the [name of the child] best interests are (*describe*):
10.  a. **The matter is ordered set for hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child.**
- b. By clear and convincing evidence, reasonable services have been provided or offered to the child's parents, legal guardian, or Indian custodian.
  - c. The county agency and the licensed county adoption agency or the California Department of Social Services, acting as an adoption agency, will prepare and serve an assessment report as described in Welf. & Inst. Code § 361.5(g).
  - d. The court advised all parties present in court that to preserve any right to review on appeal of this order, a party must seek an extraordinary writ by filing notice of intent to file a writ petition and a request for the record, which may be submitted on *Notice of Intent to File Writ Petition and Request for Record* (form JV-820), and a petition for extraordinary writ, which may be submitted on *Petition for Extraordinary Writ* (form JV-825). A copy of each form is available in the courtroom. The court advised all parties present in court that, as to them, a notice of intent to file a writ petition and request for record must be filed with the juvenile court clerk within seven days of the date of this hearing. The clerk of the court must provide written notice as stated in rule 5.708(n)(5) of the California Rules of Court to any party not present.
  - e. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, or an identified placement with a specific goal for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.
  - f.  The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person named below, who is a mother, a presumed father, or an alleged father and who has relinquished the child for adoption where the relinquishment has been accepted and filed with notice under Fam. Code, § 8700, or an alleged father who has denied paternity and has executed section 2 of *Statement Regarding Parentage (Juvenile)* (form JV-505).
    - (1) (*name*):
    - (2) (*name*):
    - (3) (*name*):
    - (4) (*name*):
- g. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative (*specify date*):

CHILD'S NAME:

CASE NUMBER:

**Important individuals**

11.  **Child 10 years of age or older, placed in a group home for six months or longer from the date the child entered foster care**
- a.  The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
- b.  The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
- c.  To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
- (1)  as stated on the record.
- (2)  as follows:

**Health**

12.  The  mother  biological father  Indian custodian  
 presumed father  legal guardian  other (*specify*):
- is  unable  unwilling  unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

CHILD'S NAME:	CASE NUMBER:
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### FINDINGS AND ORDERS AFTER SIX-MONTH PREPERMANENCY HEARING—DELINQUENCY

1. **The court has read and considered and admits into evidence:**

- a.  Report of probation dated:  
b.  Other (*specify*):

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE OCURT FINDS AND ORDERS**

2. a.  Notice of the date, time, and location of the hearing was given as required by law.  
b.  **For child who is not present:** The child received proper notice of his or her right to attend the hearing and voluntarily gave up that right to attend this hearing.
3. a.  The child  is  maybe an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.  
b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.

**Child returned home**

4.  The return of the child to his or her parent or legal guardian would not create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. Out-of-home placement is no longer necessary or appropriate. Probation has complied with the case plan by making reasonable efforts to return the child safely home and to complete whatever steps are necessary to finalize the permanent placement of the child.

**Child remaining in out-of-home placement**

5.  By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.
6.  The child's out-of home placement is necessary.
7. a.  The child's out-of -home placement is appropriate.  
b.  The child's current placement is not appropriate. This hearing is continued for a report by probation on the progress made to locate an appropriate placement.
8.  The child has run away from placement. Out-of-home placement continues to be necessary. The placement was appropriate. Probation has made reasonable efforts to locate the child. Probation has complied with the case plan by making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent plan.
9.  The child is placed outside the state of California and that out-of state placement:  
a.  continues to be the most appropriate placement and is in the child's best interest. There are no available and adequate in-state facilities to meet the child's needs. All licensure requirements have been met or a waiver granted. The placement complies with the requirements of Family Code section 7911.1.  
b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued for a report by probation on the progress made toward finding an appropriate placement for the child.
10.  Probation  has  has not complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child, and by making reasonable efforts to complete whatever steps are necessary to finalize the permanent plan.
11.  **The child is an Indian child**, and by clear and convincing evidence active efforts  were  were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family.
12.  **The child has no know Indian heritage.**

CHILD'S NAME:	CASE NUMBER:
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13.  The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:

	None	Minimal	Adequate	Substantial	Excellent
a. <input type="checkbox"/> Child	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. <input type="checkbox"/> Mother	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. <input type="checkbox"/> Father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. <input type="checkbox"/> Legal guardian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. <input type="checkbox"/> Other (specify):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. <input type="checkbox"/> Other (specify):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

14.  The likely date by which the child may be returned to and safely maintained in the home or placed for adoption, appointed a legal guardian or placed permanently with a fit and willing relative is (date):

**Case Planning and visitation**

15.  **The child is 14 years or older.** The services set forth in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.

16. a.  The following were actively involved in the case plan development, including the plan for permanent placement:  
 child    mother    father    legal guardian    tribal representative  
 other :
- b.  The following were NOT actively involved in the case plan development, including the plan for permanent placement. The probation officer is ordered to actively involve them and submit an updated case plan within 30 days from today.  
 child    mother    father    legal guardian    tribal representative  
 other :
- c.  The following were NOT actively involved in the case plan development, including the plan for permanent placement. The probation officer is not required to involve them because they are unable, unavailable, or unwilling to participate.  
 child    mother    father    legal guardian    tribal representative  
 other :

17.  The court finds that the child's:

a. developmental needs	<input type="checkbox"/> are	<input type="checkbox"/> are not	being met	c. physical needs	<input type="checkbox"/> are	<input type="checkbox"/> are not	being met
b. mental health needs	<input type="checkbox"/> are	<input type="checkbox"/> are not	being met	d. education needs	<input type="checkbox"/> are	<input type="checkbox"/> are not	being met

18.  The additional services, assessments, and/or evaluations the child requires and the person(s) or agency ordered to take the steps necessary for the child to receive these services, assessments, and/or evaluations are:

- a.  set forth on the record.  
b.  as follows:

19. a.  The following are ordered by the court to participate with the child in a counselling or education program as directed by probation:  Mother    Father    Legal guardian    Other (specify):
- b.  The participation by the following is deemed by the court to be inappropriate or potentially detrimental to the child and their participation with the child in a counseling or education program is NOT ordered:  
 Mother    Father    Legal guardian    Other (specify):

20.  The child has siblings under the court's jurisdiction and all of the siblings are NOT placed together in the same home.
- a.  Visitation between the child and child's siblings who are not placed together is appropriate and ordered.
- b.  The court finds by clear and convincing evidence that visitation between the siblings who are not placed together would be detrimental to at least one of the children. No visitation is ordered.

21.  Visitation with the child is ordered:
- a.  As set forth in *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
- b.  As follows (specify):



CHILD'S NAME:	CASE NUMBER:
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**Health and education**

22.  The  parent(s)  legal guardian(s) are  unable  unwilling  unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welfare & Institution Code section 739 and vested with the probation department.
23.  A limitation on the  parent(s)  legal guardian(s) to make educational decisions for the child
- a.  is NOT necessary. The parents or legal guardians hold educational rights and responsibilities, including those listed in California Rules of Court, rule 5.650(e) and (f).
- b.  is necessary. Those rights are limited as ordered and as set forth in *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (form JV-535).
24.  The child's school placement has changed since the dispositional hearing.
- a.  The child's educational records, including any evaluation regarding a disability, were transferred to the new school placement within two business days.
- b.  The child is  enrolled in  attending school.

**Parentage**

25. a.  The court inquired of  the mother  others (*names and relationships*):
- as to the identity and address of all presumed or alleged fathers. All alleged fathers present during the hearing who had not previously submitted a *Statement Regarding Paternity (Juvenile)* (form JV-505) were provided with and ordered to complete the form and submit it to the court.
- b.  The  court clerk  probation department shall provide the notice required by Welfare and Institutions Code sections 726.4 to:
- (1) alleged father (*name*):
- (2) alleged father (*name*):

**Advisement**

26. The court informed all parties present at the time of the hearing and further advises all parties that if the child is not returned to the home at the permanency hearing set on a date within 12 months from the date the child entered foster care, the case may be referred under Welfare and Institutions Code section 727.31 to a selection and implementation hearing **that could result in the termination of parental rights and the adoption of the child.**

27. **All prior orders not in conflict with this order remain in full force and effect.**

28.  Other findings and orders:
- a.  See attached.
- b.  (*Specify*):

29.  The date the child entered foster care is (*specify*):

30.  **The next hearing will be:**

Date:	Time:	Dept:	Type of hearing:
Date:	Time:	Dept:	Type of hearing:

31.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved.
32.  The sealing process has been explained to the youth, and the youth has received any materials relevant to the sealing process, and the name of his or her attorney who can assist with sealing records.
33. Number of pages attached:

Date:



JUDICIAL OFFICER

CHILD'S NAME:	CASE NUMBER:
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### FINDINGS AND ORDERS AFTER PERMANENCY HEARING—DELINQUENCY

12 MONTH       18 MONTH (only if reunification services extended at 12 months)

1. **The court has read and considered and admits into evidence:**

- a.  Report of probation dated:  
b.  Other (specify):

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE OCURT FINDS AND ORDERS**

2. a.  Notice of the date, time, and location of the hearing was given as required by law.  
b.  **For child who is not present:** The child received proper notice of his or her right to attend the hearing and voluntarily gave up that right to attend this hearing.
3. a.  The child  is  maybe an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.  
b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.

**Child returned home**

4.  The return of the child to his or her parent or legal guardian would not create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. Out-of-home placement is no longer necessary or appropriate. Probation has complied with the case plan by making reasonable efforts to return the child safely home and to complete whatever steps are necessary to finalize the permanent placement of the child.

**Child remaining in out-of-home placement**

5.  By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.
6.  The child's out-of home placement is necessary.
7. a.  The child's out-of -home placement is appropriate.  
b.  The child's current placement is not appropriate. This hearing is continued for a report by probation on the progress made to locate an appropriate placement.
8.  The child has run away from placement. Out-of-home placement continues to be necessary. The placement was appropriate. Probation has made reasonable efforts to locate the child. Probation has complied with the case plan by making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent plan.
9.  The child is placed outside the state of California and that out-of state placement:  
a.  continues to be the most appropriate placement and is in the child's best interest. There are no available and adequate in-state facilities to meet the child's needs. All licensure requirements have been met or a waiver granted. The placement complies with the requirements of Family Code section 7911.1.  
b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued for a report by probation on the progress made toward finding an appropriate placement for the child.
10.  Probation  has  has not complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child, and by making reasonable efforts to complete whatever steps are necessary to finalize the permanent plan.  
a.  for children 16 and older placed in another planned permanent living arrangement, the court finds that probation  has  has not made the following ongoing and intensive efforts to return the child to a safe home or finalize the permanent plan (describe):
11.  **The child is an Indian child**, and by clear and convincing evidence active efforts  were  were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family.

CHILD'S NAME:	CASE NUMBER:
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12.  **The child has no know Indian heritage.**

13.  The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:

	None	Minimal	Adequate	Substantial	Excellent
a. <input type="checkbox"/> Child	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. <input type="checkbox"/> Mother	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. <input type="checkbox"/> Father	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. <input type="checkbox"/> Legal guardian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. <input type="checkbox"/> Other ( <i>specify</i> ):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. <input type="checkbox"/> Other ( <i>specify</i> ):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

14. a.  Reunification Services are continued (WIC 727.3 (b)(2))

(1)  There is a substantial probability that the child may be returned to the  mother  father  guardian by the date set for the 18 month permanency hearing because the  mother  father  guardian and the child have demonstrated the capacity and ability to complete the objectives of the case plan. Reunification services are continued to the  mother  father  guardian .

(2)  The probation department has not provided reasonable services to the  mother  father  guardian . The services provided have been inadequate in that (*describe*):

The probation department is ordered to provide reasonable reunification services to the  mother  father  guardian .

b.  Reunification Services are terminated

(1)  The probation department has provided services and opportunities but the  mother  father  guardian has not participated regularly and has not demonstrated the capacity and ability to complete the objectives of the case plan. Reunification services are terminated.

(2)  The probation department has provided services and opportunities but there is not a substantial probability that the child may be returned to the  mother  father  guardian by the date set for the 18 month review. Reunification services are terminated.

(3)  **At 18 month review:** Reunification services are terminated because it has been 18 months since the date the minor was originally removed from the physical custody of his or her (parent or legal guardian).

(4)  The probation department  has  has not made diligent efforts to locate an appropriate relative with whom (*name*)  could be placed. Each relative whose name has been submitted to the department  has  has not been evaluated. (FC 7950)

15. a.  The following is appropriate and ordered as the permanent plan:

(1)  The child is returned home immediately;

(2)  Continuation of reunification services and setting of a further permanency hearing. If the child is not returned home at the next permanency hearing, that could result in termination of parental rights and the adoption of the child;

(3)  Adoption. A hearing under Welf. and Inst. Section 727.31 is scheduled for  and an adoption assessment report is ordered;

(4)  Legal guardianship

b.  The court finds by clear and convincing evidence that (*name of child*)  is not a proper subject for adoption and there is no one willing to accept legal guardianship. The permanent plan is:

(1)  Permanent placement with (*name*)  a fit and willing relative;

(2)  Placement in foster care with a permanent plan of (*specify*) return home, adoption, or placement with a fit and willing relative;

(3)  The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with a goal of:

return home  legal guardianship

emancipation  placement with a relative

other (*specify*):

CHILD'S NAME:	CASE NUMBER:
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- 16. a.  The likely date by which the permanent plan will be achieved is: \_\_\_\_\_
- b.  The likely date by which the child may be returned to and safely maintained in the home or another permanent plan selected is \_\_\_\_\_ . (Use this finding only when the court continues reunification services under 14a.).
- c.  The court finds that the barriers to achieving the child's permanent plan are *(describe)*:  
\_\_\_\_\_

**For Children 16 and older placed in another planned permanent living arrangement:**

- 17. a.  The court asked the child where he/she wants to live and the child provided the following information *(describe)*:  
\_\_\_\_\_
- b.  The court has considered the evidence before it and finds that another planned permanent living arrangement is still the best permanent plan because *(describe)*:  
\_\_\_\_\_
- c.  The compelling reasons why the other permanent plan options are not in the (name of the child) best interests are *(describe)*:  
\_\_\_\_\_

**Case planning and visitation**

- 18.  **The child is 14 years or older.** The services set forth in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.
- 19. a.  The following were actively involved in the case plan development, including the plan for permanent placement:  
 child     mother     father     legal guardian     tribal representative  
 other :
- b.  The following were NOT actively involved in the case plan development, including the plan for permanent placement. The probation officer is ordered to actively involve them and submit an updated case plan within 30 days from today.  
 child     mother     father     legal guardian     tribal representative  
 other :
- c.  The following were NOT actively involved in the case plan development, including the plan for permanent placement. The probation officer is not required to involve them because they are unable, unavailable, or unwilling to participate.  
 child     mother     father     legal guardian     tribal representative  
 other :
- 20.  The court finds that the child's:
  - a. developmental needs     are     are not    being met
  - b. mental health needs     are     are not    being met
  - c. physical needs     are     are not    being met
  - d. education needs     are     are not    being met
- 21.  The additional services, assessments, and/or evaluations the child requires and the person or agency ordered to take the steps necessary for the child to receive these services, assessments, and/or evaluations are:
  - a.  set forth on the record.
  - b.  as follows:
- 22. a.  The following are ordered by the court to participate with the child in a counselling or education program as directed by probation:  Mother     Father     Legal guardian     Other *(specify)*:
- b.  The participation by the following is deemed by the court to be inappropriate or potentially detrimental to the child and their participation with the child in a counseling or education program is NOT ordered:  
 Mother     Father     Legal guardian     Other *(specify)*:

CHILD'S NAME:	CASE NUMBER:
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23.  The child has siblings under the court's jurisdiction and all of the siblings are NOT placed together in the same home.
- a.  Visitation between the child and child's siblings who are not placed together is appropriate and ordered.
- b.  The court finds by clear and convincing evidence that visitation between the siblings who are not placed together would be detrimental to at least one of the children for the following reasons (*state reasons*):

No visitation is ordered.

24.  Visitation with the child is ordered:
- a.  As set forth in *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
- b.  As follows (*specify*):

**Health and education**

25.  The  parent(s)  legal guardian(s) are  unable  unwilling  unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welfare & Institution Code section 739 and vested with the probation department.
26.  A limitation on the  parent(s)  legal guardian(s) to make educational decisions for the child
- a.  is NOT necessary. The parents or legal guardian hold educational rights and responsibilities, including those listed in California Rules of Court, rule 5.650(e) and (f).
- b.  is necessary. Those rights are limited as ordered and as set forth in *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (form JV-535).
27.  The child's school placement has changed since the last hearing.
- a.  The child's educational records, including any evaluation regarding a disability, were transferred to the new school placement within two business days since the placement change.
- b.  The child is  enrolled in  attending (*specify school*):

**Parentage**

28. a.  The court inquired of  the mother  others (*names and relationships*):
- as to the identity and address of all presumed or alleged fathers. All alleged fathers present during the hearing who had not previously submitted a *Statement Regarding Paternity (Juvenile)* (form JV-505) were provided with and ordered to complete and submit the form to the court.
- b.  The  court clerk  probation department shall provide the notice required by Welfare and Institutions Code sections 726.4 to:
- (1) alleged father (*name*):
- (2) alleged father (*name*):

**Advisement**

29. The court informed all parties present at the time of the hearing and further advises all parties that if the child is not returned to the home at the permanency hearing set on a date within 12 months from the date the child entered foster care, the case may be referred under Welfare and Institutions Code section 727.31 to a selection and implementation hearing **that could result in the termination of parental rights and the adoption of the child.**

30. **All prior orders not in conflict with this order remain in full force and effect.**

31.  Other findings and orders:
- a.  See attached.
- b.  (*Specify*):

32.  The date the child entered foster care is (*specify*):

33.  **The next hearing will be:**

Date:	Time:	Dept:	Type of hearing:
Date:	Time:	Dept:	Type of hearing:

CHILD'S NAME:	CASE NUMBER:
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- 34.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved.
- 35.  The sealing process has been explained to the youth, and the youth has received any materials relevant to the sealing process, and the name of his or her attorney who can assist with sealing records.

36. Number of pages attached:

Date:



\_\_\_\_\_  
JUDICIAL OFFICER

CHILD'S NAME:	CASE NUMBER:
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**FINDINGS AND ORDERS AFTER POSTPERMANENCY HEARING—DELINQUENCY**

**1. The court has read and considered and admits into evidence:**

- a.  Report of probation dated:
- b.  Other (specify):

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE OCURT FINDS AND ORDERS**

- 2. a.  Notice of the date, time, and location of the hearing was given as required by law.
- b.  **For child who is not present:** The child received proper notice of his or her right to attend the hearing and voluntarily gave up that right to attend this hearing.
- 3. a.  The child  is  maybe an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
- b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.

**Child returned home**

- 4.  The return of the child to his or her parent or legal guardian would not create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. Out-of-home placement is no longer necessary or appropriate. Probation has complied with the case plan by making reasonable efforts to return the child safely home and to complete whatever steps are necessary to finalize the permanent placement of the child.

**Child remaining in out-of-home placement**

- 5.  Continued out of home care is in the best interest of the child. Reunification services are terminated.
- 6.  The child's out-of home placement is necessary.
- 7. a.  The child's out-of -home placement is appropriate.
- b.  The child's current placement is not appropriate. This hearing is continued for a report by probation on the progress made to locate an appropriate placement.
- 8.  The child has run away from placement. Out-of-home placement continues to be necessary. The placement was appropriate. Probation has made reasonable efforts to locate the child. Probation has complied with the case plan by making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent plan.
- 9.  The child is placed outside the state of California and that out-of state placement:
  - a.  continues to be the most appropriate placement and is in the child's best interest. There are no available and adequate in-state facilities to meet the child's needs. All licensure requirements have been met or a waiver granted. The placement complies with the requirements of Family Code section 7911.1.
  - b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued for a report by the county agency on the progress made toward finding an appropriate placement for the child.
- 10.  The probation department  has  has not made diligent efforts to locate an appropriate relative with whom (name) could be placed. Each relative whose name has been submitted to the department  has  has not been evaluated. (FC 7950)
- 11.  Probation  has  has not complied with the case plan by making reasonable efforts, including whatever steps are necessary to finalize the permanent placement of the child.
  - a.  for children 16 and older placed in another planned permanent living arrangement, the court finds that probation  has  has not made the following ongoing and intensive efforts to return the child to a safe home or finalize the permanent plan (describe):

CHILD'S NAME:	CASE NUMBER:
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12.  **The child is an Indian child**, and by clear and convincing evidence active efforts  were  were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family.

13.  **The child has no know Indian heritage.**

14. a.  The following is appropriate and ordered as the permanent plan:

- (1)  The child is returned home immediately;
- (2)  Adoption. A hearing under Welf. and Inst. Section 727.31 is scheduled for \_\_\_\_\_ and a adoption assessment report is ordered;
- (3)  Legal guardianship \_\_\_\_\_

b.  The court finds by clear and convincing evidence that *(name of child)* \_\_\_\_\_ is not a proper subject for adoption and there is no one willing to accept legal guardianship. The permanent plan is:

- (1)  Permanent placement with *(name)* \_\_\_\_\_ a fit and willing relative;
- (2)  Placement in foster care with a permanent plan of return home, adoption, or placement with a fit and willing relative;
- (3)  The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with a goal of return home, legal guardianship, placement with a relative, emancipation, or \_\_\_\_\_

15.  The likely date by which the permanent plan will be achieved is: \_\_\_\_\_

16.  The court finds that the barriers to achieving the child's permanent plan are *(describe)*:  
 \_\_\_\_\_

17.  **For Children 16 and older placed in another planned permanent living arrangement:**

a.  The court asked the child where he/she wants to live and the child provided the following information *(describe)*:  
 \_\_\_\_\_

b.  The court has considered the evidence before it and finds that another planned permanent living arrangement is still the best permanent plan because *(describe)*:  
 \_\_\_\_\_

c.  The compelling reasons why the other permanent plan options are not in the *(name of child)* best interests are *(describe)*:  
 \_\_\_\_\_

**Case planning and visitation**

18.  **The child is 14 years or older.** The services set forth in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.

19. a.  The child was actively involved in the development of his or her case plan, including the plan for permanent placement.

- b.  The child was NOT actively involved in teh development of his or her case plan, including the plan for permanent placement.
  - (1)  Probation is ordered to involve the child and submit an updated case plan within 30 days.
  - (2)  Probation is NOT required to involve the child because the child is unable, unavailable, or unwilling to participate.

20  The court finds that the child's:

a. developmental needs	<input type="checkbox"/> are	<input type="checkbox"/> are not	c. physical needs	<input type="checkbox"/> are	<input type="checkbox"/> are not
b. mental health needs	<input type="checkbox"/> are	<input type="checkbox"/> are not	d. education needs	<input type="checkbox"/> are	<input type="checkbox"/> are not



CHILD'S NAME:	CASE NUMBER:
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21.  The additional services, assessments, and/or evaluations the child requires and the person(s) or agency ordered to take the steps necessary for the child to receive these services, assessments, and/or evaluations are:
- a.  set forth on the record.
  - b.  as follows:
22.  The child has siblings under the court's jurisdiction and all of the siblings are NOT placed together in the same home.
- a.  Visitation between the child and child's siblings who are not placed together is appropriate and ordered.
  - b.  The court finds by clear and convincing evidence that visitation between the siblings who are not placed together would be detrimental to at least one of the children. No visitation is ordered.
23.  Visitation with the child is ordered:
- a.  As set forth in *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
  - b.  As follows (*specify*):

**Health and education**

24.  The  parent(s)  legal guardian(s) are  unable  unwilling  unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welfare & Institution Code section 739 and vested with the probation department.
25.  A limitation on the  parent(s)  legal guardian(s) to make educational decisions for the child
- a.  is NOT necessary. The parents or legal guardian hold educational rights and responsibilities, including those listed in California Rules of Court, rule 5.650(e) and (f).
  - b.  is necessary. Those rights are limited as ordered and as set forth in *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (form JV-535).
26.  The child's school placement has changed since the last review hearing.
- a.  The child's educational records, including any evaluation regarding a disability, were transferred to the new school placement within two business days since the placement change.
  - b.  The child is  enrolled in  attending school.

**Parentage**

27. a.  The court inquired of  the mother  others (*names and relationships*):
- as to the identity and address of all presumed or alleged fathers. All alleged fathers present during the hearing who had not previously submitted a *Statement Regarding Paternity (Juvenile)* (form JV-505) were provided with and ordered to complete and submit the form to the court.
- b.  The  court clerk  probation department shall provide the notice required by Welfare and Institutions Code sections 726.4 to:
- (1) alleged father (*name*):
  - (2) alleged father (*name*):

**Advisement**

28. The court informed all parties present at the time of the hearing and further advises all parties that if the child is not returned to the home at the permanency hearing set on a date within 12 months from the date the child entered foster care, the case may be referred under Welfare and Institutions Code section 727.31 to a selection and implementation hearing **that could result in the termination of parental rights and the adoption of the child.**
29. **All prior orders not in conflict with this order remain in full force and effect.**
30.  Other findings and orders:
- a.  See attached.
  - b.  (*Specify*):

CHILD'S NAME:	CASE NUMBER:
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31.  The date the child entered foster care is (*specify*):

32.  **The next hearing will be:**


Date:	Time:	Dept:	Type of hearing:
Date:	Time:	Dept:	Type of hearing:

33.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved.

34.  The sealing process has been explained to the youth, and the youth has received any materials relevant to the sealing process, and the name of his or her attorney who can assist with sealing records.

35. Number of pages attached:

Date: \_\_\_\_\_




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JUDICIAL OFFICER

## **Juvenile Law: Competency Issues**

### **Annual Agenda Item:**

To enrich recommendations to the council and avoid duplication of effort, members of the committee collaborated with members of the Collaborative Justice Courts Advisory Committee and former members of the Mental Health Task Force serving on other advisory bodies form the Joint Competency Work Group to consider developing recommendations to the Judicial Council to do the following:

- 1) Revise rule 5.645 to define appropriate evaluation tools for use with juveniles;
- 2) Amend legislative language to clarify the presumption of competency;
- 3) Suggest other legislative changes necessary to improve the handling of cases where competency issues are raised; and
- 4) Identify effective practices developed by local courts to address juvenile cases in which competency is a factor.

### **Background:**

Effective January 1, 2012, the Judicial Council, at the recommendation of the committee, amended rule 5.645(d) of the California Rules of Court to specify the qualifications of experts evaluating children's competency to participate in juvenile proceedings as required by changes to WIC 709 enacted in 2010. At that time the committee also considered drafting proposed legislation to more comprehensibly address this issue but decided that the complexity of the issues coupled with the need to address core issues during the economic downturn warranted posting discussion.

In 2014, a Joint Juvenile Competency Issues Working Group was formed with members from the Family and Juvenile Law Advisory Committee, the Collaborative Justice Courts Advisory Committee, and the Mental Health Issues Implementation Task Force. This working group drafted legislation to amend Welfare and Institutions Code section 709. The working group received and incorporated comments from court stakeholders in the juvenile justice community. On December 11, 2015, the Judicial Council voted to sponsor the legislation.

### **Update:**

The competency legislation was authored by Assemblyman Obernolte. On May 27, 2016, the legislation was held by the Assembly Appropriations Committee in the suspense file. Despite our best efforts, the legislation was deemed to have a financial impact in the range of a few hundred thousand dollars. The reasons for holding a bill at this stage can be due to high costs, opposition from influential groups, or general political reasons that may have little or nothing to do with the bill itself. We hope to bring the bill back again in 2017.

AMENDED IN ASSEMBLY APRIL 19, 2016  
california legislature—2015–16 regular session

**ASSEMBLY BILL**

**No. 2695**

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**Introduced by Assembly Member Obernolte**

February 19, 2016

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An act to amend Section 709 of the Welfare and Institutions Code, relating to juveniles.

**LEGISLATIVE COUNSEL'S DIGEST**

AB 2695, as amended, Obernolte. Juvenile proceedings: competency.

Existing law authorizes, during the pendency of any juvenile proceeding, the minor's counsel or the court to express a doubt as to the minor's competency. Existing law requires proceedings to be suspended if the court finds substantial evidence raises a doubt as to the minor's competency. Existing law requires the court to appoint an expert, as specified, to evaluate whether the minor suffers from a mental disorder, developmental disability, developmental immaturity, or other condition and, if so, whether the condition or conditions impair the minor's competency.

This bill would revise and recast these provisions to, among other things, expand upon the duties imposed upon the expert during his or her evaluation of a minor whose competency is in doubt, as specified. The bill would authorize the district attorney or minor's counsel to retain or seek the appointment of additional qualified experts with regard to determining competency, as specified. *The bill would require the Judicial Council to adopt a rule of court relating to the qualifications of those experts, as specified.* The bill would require ~~the question of the~~ minor's competency to be determined at an evidentiary hearing, except as specified, and ~~places the burden on the minor to establish a~~

*presumption of competency, unless it is proven by a preponderance of the evidence that he or she is incompetent. The bill would require the court, upon a finding of incompetency, to refer the minor to services designed to help the minor attain competency. If the court finds that the minor will not achieve competency, competency within a reasonable period of time, the bill would require the court to dismiss the petition. The bill would authorize the court to invite specified persons and agencies to discuss any services that may be available to the minor after the court’s jurisdiction is terminated, and would require the court to make certain referrals for the minor. The bill would require, among others, the presiding judge of a juvenile court, the probation department, and the county mental health department to develop a written protocol describing the competency process and a program to ensure that minors who are found incompetent receive appropriate remediation services. ~~By~~ *Notwithstanding these provisions, the bill would prohibit remediation services from exceeding certain time periods, as specified.**

By imposing additional duties on local officials, ~~the~~ *this bill would impose a state-mandated local program.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

**NOTE: YELLOW HIGHLIGHTED SECTIONS WERE ADDED AFTER ASSEMBLY PUBLIC HEALTH COMMITTEE BUT BEFORE SUSPENSE AND WERE NOT ORIGINALLY REFLECTED ON THIS VERSION. PINK HIGHLIGHTED SECTIONS WERE THE RESULT OF OUR JOINT COMMITTEE’S COMPROMISE BUT HAD YET TO BE ADDED DUE TO PREVIOUS LEGISLATIVE COMMITTEE DECISIONS. THE BILL WAS PUT INTO SUSPENSE BEFORE THESE ADDITIONS COULD BE DISCUSSED.**

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

- 1 SECTION 1. Section 709 of the Welfare and Institutions Code
- 2 is amended to read:
- 3 709. (a) (1) Whenever the court has a doubt that a minor who
- 4 is subject to any juvenile proceedings is mentally competent, the
- 5 court shall suspend all proceedings and proceed pursuant to this
- 6 section.
- 7 (2) A minor is mentally incompetent for purposes of this section
- 8 if he or she is unable to understand the nature of the proceedings,
- 9 including his or her role in the proceedings, or unable to assist
- 10 counsel in conducting a defense in a rational manner, including a

1 lack of a rational and factual understanding of the nature of the  
2 charges or proceedings. Incompetency may result from the presence  
3 of any condition or conditions, including, but not limited to, mental  
4 illness, mental disorder, developmental disability, or developmental  
5 immaturity. Except as specifically provided otherwise, this section  
6 applies to a minor who is alleged to come within the jurisdiction  
7 of the court pursuant to Section 601 or 602.

8 (3) During the pendency of any juvenile proceeding, the court  
9 may receive information from any source regarding the minor's  
10 ability to understand the proceedings. The minor's counsel or the  
11 court may express a doubt as to the minor's competency. The  
12 receipt of information or the expression of doubt of the minor's  
13 counsel does not automatically require the suspension of  
14 proceedings. If the court has a doubt as to the minor's competency,  
15 the court shall suspend the proceedings.

16 (b) (1) Unless the parties stipulate to a finding that the minor  
17 lacks competency, or the parties are willing to submit on the issue  
18 of the minor's lack of competency, the court shall appoint an expert  
19 to evaluate the minor and determine whether the minor suffers  
20 from a mental illness, mental disorder, developmental disability,  
21 developmental immaturity, or other condition affecting competency  
22 and, if so, whether the minor is competent.

23 (2) The expert shall have expertise in child and adolescent  
24 development and forensic evaluation of juveniles for purposes of  
25 adjudicating competency, shall be familiar with competency  
26 standards and accepted criteria used in evaluating juvenile  
27 competency, and shall have received training in conducting juvenile  
28 competency evaluations.

29 (3) The expert shall personally interview the minor and review  
30 all of the available records provided, including, but not limited to,  
31 medical, education, special education, probation, child welfare,  
32 mental health, regional center, and court records, and any other  
33 relevant information that is available. The expert shall consult with  
34 the minor's counsel and any other person who has provided  
35 information to the court regarding the minor's lack of competency.  
36 The expert shall gather a developmental history of the minor. If  
37 any information is unavailable to the expert, he or she shall note  
38 in the report the efforts to obtain that information. The expert shall  
39 administer age-appropriate testing specific to the issue of  
40 competency unless the facts of the particular case render testing

1 unnecessary or inappropriate. In a written report, the expert shall  
2 opine whether the minor has the sufficient present ability to consult  
3 with his or her counsel with a reasonable degree of rational  
4 understanding and whether he or she has a rational and factual  
5 understanding of the proceedings against him or her. The expert  
6 shall also state the basis for these conclusions. If the expert  
7 concludes that the minor lacks competency, the expert shall make  
8 recommendations regarding the type of remediation services that  
9 would be effective in assisting the minor in attaining competency,  
10 and, if possible, the expert shall address the likelihood of the minor  
11 attaining competency within a reasonable period of time.

12 (4) ~~The Judicial Council~~ *Council, in conjunction with groups*  
13 *or individuals representing judges, defense counsel, district*  
14 *attorneys, counties, advocates for people with developmental and*  
15 *mental disabilities, state psychologists and psychiatrists,*  
16 *professional associations and accredited bodies for psychologists*  
17 *and psychiatrists, and other interested stakeholders, shall adopt a*  
18 *rule of court identifying the training and experience needed for an*  
19 *expert to be competent in forensic evaluations of juveniles, and*  
20 *juveniles. The Judicial Council shall develop and adopt rules for*  
21 *the implementation of the other requirements in this subdivision.*

22 (5) Statements made to the appointed expert during the minor's  
23 competency evaluation, statements made by the minor to mental  
24 health professionals during the remediation proceedings, and any  
25 fruits of those statements shall not be used in any other hearing  
26 against the minor in either juvenile or adult court.

27 (6) The district attorney or minor's counsel may retain or seek  
28 the appointment of additional qualified experts who may testify  
29 during the competency hearing. The expert's report and  
30 qualifications shall be disclosed to the opposing party within a  
31 reasonable time before, but no later than five court days before,  
32 the hearing. If disclosure is not made in accordance with this  
33 paragraph, the expert shall not be allowed to testify, and the  
34 expert's report shall not be considered by the court unless the court  
35 finds good cause to consider the expert's report and testimony. If,  
36 after disclosure of the report, the opposing party requests a  
37 continuance in order to further prepare for the hearing and shows  
38 good cause for the continuance, the court shall grant a continuance  
39 for a reasonable period of time.

1 (7) If the expert believes the minor is developmentally disabled,  
2 the court shall appoint the director of a regional center for  
3 developmentally disabled individuals described in Article 1  
4 (commencing with Section 4620) of Chapter 5 of Division 4.5, or  
5 his or her designee, to evaluate the minor. The director of the  
6 regional center, or his or her designee, shall determine whether  
7 the minor is eligible for services under the Lanterman  
8 Developmental Disabilities Services Act (Division 4.5  
9 (commencing with Section 4500)), and shall provide the court with  
10 a written report informing the court of his or her determination.  
11 The court's appointment of the director of the regional center for  
12 determination of eligibility for services shall not delay the court's  
13 proceedings for determination of competency.

14 (8) An expert's opinion that a minor is developmentally disabled  
15 does not supersede an independent determination by the regional  
16 center regarding the minor's eligibility for services under the  
17 Lanterman Developmental Disabilities Services Act (Division 4.5  
18 (commencing with Section 4500)).

19 (9) Nothing in this section shall be interpreted to authorize or  
20 require either of the following:

21 (A) Placement of a minor who is incompetent in a developmental  
22 center or community facility operated by the State Department of  
23 Developmental Services without a determination by a regional  
24 center director, or his or her designee, that the minor has a  
25 developmental disability and is eligible for services under the  
26 Lanterman Developmental Disabilities Services Act (Division 4.5  
27 (commencing with Section 4500)).

28 (B) Determinations regarding the competency of a minor by the  
29 director of the regional center or his or her designee.

30 (c) The question of the minor's competency shall be determined  
31 at an evidentiary hearing unless there is a stipulation or submission  
32 by the parties on the findings of the expert. ~~The minor has the~~  
33 ~~burden of establishing by a preponderance of the evidence that he~~  
34 ~~or she is incompetent. It shall be presumed that the minor is~~  
35 ~~mentally competent, unless it is proven by a preponderance of the~~  
36 ~~evidence that the minor is mentally incompetent. *With respect to minors under 14 years of age*~~  
*at the time of the commission of the alleged offense, the court shall make a determination as*  
*to the minor's capacity, pursuant to Penal Code section 26 prior to deciding the issue of*  
*competency.*

37 (d) If the court finds the minor to be competent, the court shall  
38 reinstate proceedings and proceed commensurate with the court's  
39 jurisdiction.



1 (e) If the court finds, by a preponderance of evidence, that the  
 2 minor is incompetent, all proceedings shall remain suspended for  
 3 a period of time that is no longer than reasonably necessary to  
 4 determine whether there is a substantial probability that the minor  
 5 will attain competency in the foreseeable future, or the court no  
 6 longer retains jurisdiction. During this time, the court may make  
 7 orders that it deems appropriate for services. Further, the court  
 8 may rule on motions that do not require the participation of the  
 9 minor in the preparation of the motions. These motions include,  
 10 but are not limited to, all of the following:

- 11 (1) Motions to dismiss.
- 12 (2) Motions regarding a change in the placement of the minor.
- 13 (3) Detention hearings.
- 14 (4) Demurrers.

15 (f) Upon a finding of incompetency, the court shall refer the  
 16 minor to services designed to help the minor attain competency *immediately*.

17 Service providers and evaluators shall adhere to the standards  
 18 stated in this section and the California Rules of Court. Services  
 19 shall be provided in the least restrictive environment consistent  
 20 with public safety. Priority shall be given to minors in custody.

21 Service providers shall determine the likelihood of the minor  
 22 attaining competency within a reasonable period of time, and if  
 23 the opinion is that the minor will not attain competency within a  
 24 reasonable period of time, the minor shall be returned to court at  
 25 the earliest possible date. ~~The court shall review remediation~~

26 ~~services at least every 30 calendar days for minors in custody and~~  
 27 ~~every 45 calendar days for minors out of custody.~~ *The court shall review cases every 15 days*  
*until remediation services begin. After remediation services have commenced, the court shall*  
*review cases every 30 days.*

28 (g) (1) Upon receipt of the recommendation by the remediation  
 29 program, the court shall hold an evidentiary hearing on whether  
 30 the minor is remediated or is able to be remediated unless the  
 31 parties stipulate to, or agree to the recommendation of, the  
 32 remediation program. If the recommendation is that the minor has  
 33 attained competency, and if the minor disputes that  
 34 recommendation, the burden is on the minor to prove by a  
 35 preponderance of evidence that he or she remains incompetent. If  
 36 the recommendation is that the minor is unable to be remediated  
 37 and if the prosecutor disputes that recommendation, the burden is  
 38 on the prosecutor to prove by a preponderance of evidence that  
 39 the minor is remediable. If the prosecution contests the evaluation  
 40 of continued incompetence, the minor shall be presumed

1 incompetent and the prosecution shall have the burden to prove  
2 by a preponderance of evidence that the minor is competent. The  
3 provisions of subdivision (c) shall apply at this stage of the  
4 proceedings.

5 (2) If the court finds that the minor has been remediated, the  
6 court shall reinstate the proceedings.

7 (3) If the court finds that the minor has not yet been remediated,  
8 but is likely to be ~~remediated,~~ *remediated within a reasonable*  
9 *period of time*, the court shall order the minor to return to the  
10 remediation program.

11 (4) If the court finds that the minor will not achieve ~~competency,~~  
12 *competency within a reasonable period of time*, the court shall  
13 dismiss the petition. The court may invite persons and agencies  
14 with information about the minor, including, but not limited to,  
15 the minor and his or her attorney, the probation department,  
16 parents, guardians, or relative caregivers, mental health treatment  
17 professionals, the public guardian, educational rights holders,  
18 education providers, and social services agencies, to the dismissal  
19 hearing to discuss any services that may be available to the minor  
20 after jurisdiction is terminated. If appropriate, the court shall refer  
21 the minor for evaluation pursuant to Article 6 (commencing with  
22 Section 5300) of Chapter 2 of Part 1 of Division 5 or Article 3  
23 (commencing with Section 6550) of Chapter 2 of Part 2 of Division  
24 6.

~~25 (5) In no case shall remediation extend beyond two years, or a~~  
~~26 *period of time equal to the maximum term of detention for the most*~~  
~~27 *serious charge on the petition, whichever is shorter, on a petition*~~  
~~28 *that contains a felony offense. In no case shall remediation extend*~~  
~~29 *beyond one year, or a period of time equal to the maximum term*~~  
~~30 *of detention provided by law for the most serious offense,*~~  
~~31 *whichever is shorter, on a petition that contains only misdemeanor*~~  
~~32 *offenses.*~~

33 (h) The presiding judge of the juvenile court, the probation  
34 department, the county mental health department, the public  
35 defender and other entity that provides representation for minors,  
36 the district attorney, the regional center, if appropriate, and any  
37 other participants that the presiding judge shall designate, shall  
38 develop a written protocol describing the competency process and  
39 a program to ensure that minors who are found incompetent receive  
40 appropriate remediation services.

Note: This (5) section was added later and the committee preferred that it be removed. If unable to remove, it should be replaced with "Remediation shall not extend beyond a reasonable period of time."

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

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## **Juvenile Law: Proposition 47**

### **Annual Agenda Item:**

Monitor implementation of proposition enacted November 5, 2014, which reduced the classification of many nonserious and nonviolent property and drug crimes from a felony to a misdemeanor. Assist juvenile courts with any required implementation.

### **Current Status:**

Following the February 18, 2016 meeting, the committee sent a memorandum to Presiding Judges of the Juvenile Court to provide background on Proposition 47, including information on the impact of the initiative on adult criminal and juvenile justice court workload, and the data collection and funding allocation implications of the statute.

Since implementation, courts have been reporting the number of Proposition 47 related petitions to the Judicial Council as part of the criminal justice quarterly reporting requirements pursuant to Penal Code § 13155. This is an on-going criminal justice data collection requirement that is typically coordinated by criminal court administrators each court. Judicial Council staff amended the tool in September 2015 to collect information on petitions for Proposition 47 relief for both adult and juveniles. Attached is a chart showing reported petitions through June 2016.

In addition, during this legislative session [Assembly Bill 2765](#) was enacted authorizing a person to petition or apply for a reduction of sentence before November 4, 2022, rather than November 4, 2017. Proposition 47 and AB 2765 also includes a provision authorizing a person to petition at a later date upon a showing of good cause.

## Proposition 47 Data Summary Report

The data contained in these tables enumerates the self-reported petitions from each court filed for resentencing and/or reclassification under Proposition 47. Note that these data reflect filings/cases, not individual persons, and that data may vary due to revision/corrections in subsequent reports. The final disposition of these filings is not reported to the Judicial Council.

Quarter/Month	Counties reporting	Resentencing petitions	Reclassification Applications	Juvenile Petitions for Relief <sup>A</sup>	Total
Nov-Dec 2014	56	53,597	6,140		59,737
January 2015	57	18,149	4,116		22,265
February 2015	57	11,833	4,500		16,333
March 2015	57	9,060	5,700		14,760
April 2015	58	16,297	5,928		22,225
May 2015	58	11,211	5,000		16,211
June 2015	55	8,107	5,513		13,620
July-Sept 2015	53	17,537	12,162	389	30,088
Oct-Dec 2015	54	8,913	8,721	392	18,026
Jan-March 2016	53	7,634	15,363	49	23,046
April-June 2016	46	6,661	16,790	226	23,677
<b>Total</b>		<b>168,999</b>	<b>89,933</b>	<b>1,056</b>	<b>259,988</b>

### Nov 2014 - June 2016 Totals

County	Resentencing petitions	Reclassification Applications	Total Adult	Total Juvenile
Alameda <sup>B</sup>	4,013	0	4,013	5
Alpine	0	0	0	0
Amador	147	149	296	0
Butte	1,482	480	1,962	1
Calaveras	178	98	276	0
Colusa	39	13	52	0
Contra Costa	1,685	361	2,046	115
Del Norte	86	33	119	0
El Dorado	607	357	964	0
Fresno	6,413	3,028	9,441	47
Glenn	100	96	196	2
Humboldt	520	423	943	0
Inyo	388	164	552	0
Imperial	35	5	40	0
Kern	2,852	8,820	11,672	0
Kings	1,081	811	1,892	0
Lake	332	133	465	0
Lassen	119	57	176	0
Los Angeles	26,735	19,460	46,195	4
Madera	388	631	1,019	0
Marin	156	242	398	0
Mariposa	13	20	33	0
Mendocino	143	160	303	Data Unavailable
Merced	553	222	775	0
Modoc	16	7	23	Data Unavailable
Mono	66	72	138	0
Monterey	597	525	1,122	36
Napa	62	195	257	0
Nevada	81	97	178	0
Orange	18,647	9,648	28,295	50
Placer	865	431	1,296	10
Plumas	37	22	59	0
Riverside	8,364	3,770	12,134	40
Sacramento	7,558	3,543	11,101	1
San Benito	250	86	336	0
San Bernardino	4,977	4,311	9,288	66
San Diego <sup>B</sup>	48,477	1,280	49,757	450
San Francisco	651	609	1,260	31
San Joaquin	3,264	4,832	8,096	0
San Luis Obispo	924	518	1,442	0
San Mateo	5,388	3,107	8,495	1
Santa Barbara	1,507	384	1,891	0
Santa Clara	1,030	3,114	4,144	Data Unavailable
Santa Cruz	1,787	509	2,296	0
Shasta	1,775	893	2,668	23
Sierra	1	2	3	Data Unavailable
Siskiyou	137	18	155	10
Solano	265	1,358	1,623	15
Sonoma	1,187	810	1,997	17
Stanislaus <sup>B</sup>	3,995	451	4,446	Data Unavailable
Sutter	461	148	609	Data Unavailable
Tehama	404	288	692	1
Trinity	49	29	78	0
Tulare	1,891	2,276	4,167	3
Tuolumne	419	194	613	0
Ventura	2,440	9,901	12,341	128
Yolo <sup>B</sup>	3,150	573	3,723	0
Yuba	214	177	391	0

<sup>A</sup>Juvenile data reported by the courts in the July-September 2015 survey are the total filings from November 4, 2014 through September 30, 2015. Some courts have been unable to report juvenile petitions and applications.

<sup>B</sup>These courts do not distinguish between petitions for resentencing and applications for reclassification. Both are reported under petitions for resentencing.

## **Juvenile Law: Indian Child Welfare Act Rules and Forms**

### **Annual Agenda Item:**

In conjunction with the Tribal Court-State Court Forum and Probate and Mental Health Advisory Committee monitor pending California Supreme Court cases *In re Abbigail A.* (2014) 173 Cal.Rptr.3d 191(3rd District) and *In re. Isaiah W.* (2014) 228 Cal.App.4th 981 (2nd District) for possible amendments to rules 5.482(c) and 5.484(c)(2) and status of proposed Federal Regulations for State Courts and Agencies in Indian Child Custody Proceedings governed by the Indian Child Welfare Act published for public comment in the federal register on March 20, 2015 (Vol. 80 FR No. 54 14880) for possible further amendments to ICWA rules and revisions to ICWA forms; concurrently amend *Notice of Child Custody Proceeding for Indian Child* (ICWA-030) in light of the *Abbigail A.* decision and *In re S.E.* (2013) 217 Cal. App. 4th 610 (2nd District).

### **Background:**

In the past year there have been a number of developments which impact application of Indian Child Welfare Act (ICWA) in California. In addition, there are several further developments which are anticipated in the near future which may also impact ICWA practice and procedure in California.

Although there are no specific legislative or RUPRO proposals recommended at this time related to these developments, the purpose of this memo and the attached materials is to summarize these developments, highlight the issues they raise for ICWA practice here in California, and alert the Committee to the likely need for action to address these issues in the near future.

### **Attachments:**

Memo to Family and Juvenile Law Advisory Committee from Ann Gilmour;  
Final BIA ICWA Regulations;  
Topic Issue Sheet for California – Emergency Removals;  
Topic Issue Sheet for California – Meaning of “proceedings”;  
Topic Issue Sheet for California – Voluntary vs. Involuntary  
Topic Issue Sheet for California – Placement Preferences  
Topic Issue Sheet for California – Qualified Expert Witness  
Topic Issue Sheet for California – Transfer to Tribal Court  
Topic Issue Sheet for California – Active Efforts  
Policy Matrix Chart  
ICWA Task Force Report excerpts



## JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688  
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

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### MEMORANDUM

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Date	Action Requested
October 19, 2016	Please Review
To	Deadline
Family and Juvenile Law Advisory Committee	N/A
From	Contact
Ann Gilmour, Attorney, CFCC	Ann Gilmour, Attorney, CFCC 415-865-4207 phone 415- 865-7217 fax ann.gilmour@jud.ca.gov
Subject	
Indian Child Welfare Act - Recent Developments	

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In the past year there have been a number of developments which impact application of Indian Child Welfare Act (ICWA) in California. In addition, there are several further developments which are anticipated in the near future which may also impact ICWA practice and procedure in California.

Although there are no specific legislative or RUPRO proposals recommended at this time related to these developments, the purpose of this memo and the attached materials is to summarize these developments, highlight the issues they raise for ICWA practice here in California, and alert the Committee to the likely need for action to address these issues in the near future.

#### **Background Federal**

The federal statute (25 U.S.C. §§ 1901 – 1963) was enacted in 1978 in response to evidence presented to Congress by tribes and their allies that Indian children were being unnecessarily removed from their families and communities at alarmingly high rates through abusive practices of the child welfare and adoption systems. These unwarranted removals were having a devastating negative effect on both Indian children and on tribes. ICWA established certain minimum federal standards for any state court proceeding removing an Indian child from their

parent's custody, terminating parental rights for an Indian child, or placing Indian children for adoption. In 1979 the Department of Interior, Bureau of Indian Affairs issued *Guidelines for State Courts; Indian Child Custody Proceedings*<sup>1</sup> which set out the Bureau's interpretation of most of the substantive requirements of ICWA and provided guidance on best practices for complying with the act. Although the *Guidelines* were held not to be binding upon state courts, California courts consistently held that the *Guidelines* were entitled to great weight as they represented the interpretation of the federal agency charged with implementing and administering the act.<sup>2</sup> In addition, BIA issued Federal Regulations at 25 C.F.R. Part 23 which are binding upon state courts.<sup>3</sup> These regulations initially published in 1979 and revised from time to time, dealt primarily with technical issues such as notice, payment for appointed counsel, grants to tribal service programs, etc.

The Indian Child Welfare Act itself has never been amended since it was enacted in 1978. The Guidelines had never been amended until 2015 (more discussion of these amendments below).

### **Background California**

In 2006, the Legislature enacted Senate Bill 678 (Ducheny; Stats. 2006, ch. 838), which incorporated various provisions of the federal Indian Child Welfare Act (ICWA) (25 U.S.C. §§ 1901–1963) into the California Family Code, Probate Code, and Welfare and Institutions Code. To implement SB 678, the Judicial Council adopted comprehensive ICWA rules and forms effective January 1, 2008.<sup>4</sup>

SB 678 drew to a large extent upon both ICWA and the federal Guidelines which had been issued in 1979. The goal of SB 678 was to improve ICWA compliance in California.

Since 2006, ICWA compliance has continued to be an issue in California with over 1500 appellate cases dealing with ICWA issues since 2008.

### **Recent Developments: Federal**

In the last several years, there have been several important developments related to ICWA.

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<sup>1</sup> 67584 Federal Register / Vol. 44, No. 228 / Monday, November 26, 2009 / Notices available at: [http://www.nicwa.org/policy/regulations/icwa/ICWA\\_guidelines.pdf](http://www.nicwa.org/policy/regulations/icwa/ICWA_guidelines.pdf)

<sup>2</sup> See eg. *In re Desiree F.*, (2000) 83 Cal. App. 4<sup>th</sup> 460 at 474; *In re R.R.* (2009) 180 Cal. App. 4<sup>th</sup> 185 at 207.

<sup>3</sup> Current version available at <http://www.ecfr.gov/cgi-bin/text-idx?SID=95a3f26d8675afccce17e5712fa079aa&mc=true&node=pt25.1.23&rgn=div5>

<sup>4</sup> The rules and forms were adopted at the October 26, 2007, Judicial Council meeting as item A27 on that agenda available at [www.courts.ca.gov/documents/102607ItemA27.pdf](http://www.courts.ca.gov/documents/102607ItemA27.pdf)



In March of 2015, the BIA issued new Guidelines entitled *Guidelines for State Courts and Agencies in Indian Child Custody Proceedings*.<sup>5</sup> These new Guidelines substantially altered and expanded upon the Guidelines which had been issued in 1979.

Then in April of 2015, the BIA published proposed expanded regulations governing ICWA. The proposed regulations to a large extent mirrored the new Guidelines which had been issued in March of 2015. The BIA received a large number of comments on the proposed regulations. As a result of those comments, in June of 2016 the BIA issued its “final rule”, or final regulations.<sup>6</sup> These regulations are very different both from the Guidelines and the proposed regulations which were issued in 2015. In some areas they are also substantially different than the 1979 Guidelines and parts of SB 678. These new final regulations become effective December 12, 2016.

In addition, BIA has indicated that they intend to issue revised Guidelines prior to the December 12, 2016 effective date of the new regulations.

### **Recent Developments: California**

In July of 2016 the California Supreme Court issued its decision in two important ICWA cases: *In re Abigail A.*, (2016) 1 Cal.5<sup>th</sup> 83 and *In re Isaiah W.*, (2016) 1 Cal.5<sup>th</sup> 1 which addressed the extent of ICWA obligations due to children who do not currently meet ICWA’s definition of “Indian child”, but are potential Indian children, and whether and when a right to raise ICWA notice issues is forfeited for purposes of appeal, respectively.

In response to the California Supreme Court’s decision in *Abigail*, an immediate revision was made to California Rule of Court 5.482(c), which the court had ruled to be invalid.

In addition to these decisions, in 2015 the California Department of Justice, by and through the Bureau of Children’s Justice created an ICWA Compliance Task Force (Task Force) in California made up of tribal leaders and advocates. The Task Force issued a “Preliminary Final – California ICWA Compliance Task Force Report to the Bureau of Children’s Justice” in June of 2016.<sup>7</sup> The report raised a number of concerns about non-compliance with ICWA in California

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<sup>5</sup> 10146 Federal Register / Vol. 80, No. 37 / Wednesday, February 25, 2015 / Notices available at [http://www.courts.ca.gov/documents/Tribal\\_2015\\_federal\\_register.pdf](http://www.courts.ca.gov/documents/Tribal_2015_federal_register.pdf)

<sup>6</sup> The final regulations can be found here <https://www.gpo.gov/fdsys/pkg/FR-2016-06-14/pdf/2016-13686.pdf> . You can find BIA resources concerning the regulations here: <http://www.indianaffairs.gov/WhoWeAre/BIA/OIS/HumanServices/IndianChildWelfareAct/index.htm>

<sup>7</sup> The entire report can be found here: <https://turtletalk.files.wordpress.com/2016/06/prelim-final-ca-icwa-tf-report-6-10-2016.pdf>

and made 26 specific recommendations to remedy these perceived issues. Those recommendations are attached. We expect that a final report will be issued in November. It is unknown how different the final report will be from the “Preliminary Final” report.

Tribal leaders and advocates, in California, have expressed a desire to take the lead in developing any legislative strategies required to implement the new federal Regulations and Guidelines as well as the Task Force recommendations.

### **Issues**

Staff have reviewed the new final ICWA regulations which become effective December 2016 and prepared the attached chart which compares the new regulations to existing California law and practice and highlights areas where California law may be inconsistent with the requirements of the new federal regulations. In addition staff have prepared several discrete “issue sheets” which examine the inconsistencies in discrete areas.

It is clear that some changes will have to be made to both California statutory law and rules of court to align with the requirements of the new federal regulations. At this point, however, we are still awaiting the publications of the new federal ICWA guidelines and final recommendations from the Task Force, so at this point it is not clear the extent of revisions which may be required.



# FEDERAL REGISTER

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Part II

Department of the Interior

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Bureau of Indian Affairs

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25 CFR Part 23

Indian Child Welfare Act Proceedings; Final Rule

Section	Respondent	Information collection	Annual number of respondents	Frequency of responses	Annual number of responses	Completion time per response	Total annual burden hours
23.141 .....	State court or State agency.	Notify where records maintained .....	50	167	8,350	0.5	4,175
			.....	.....	98,069	.....	301,811

The annual cost burden to respondents associated with providing notice by certified mail is \$6.74 and the cost of a return receipt green card is \$2.80. For each Indian child-custody proceeding, at least two notices must be sent—one to the parent and one to the Tribe, totaling \$19.08. At an annual estimated 13,000 child welfare proceedings that may involve an “Indian child,” where approximately 650 of these include an interstate transfer (13,650), this totals: \$260,442. In addition, there are approximately 2,578 voluntary proceedings for which parties may choose to provide notice, at a cost of \$49,118. Together, the total cost burden is \$309,630.

Comment was taken on this information collection in the proposed rule, as part of the public notice and comment period proposed rule, in compliance with OMB regulations. One commenter, the California Health and Human Services Agency, Department of Social Services (CHHS) submitted comments specifically in response to the request for comments on the information collection burden.

- *Comment on Proposed § 23.111:* The proposed rule states that notice must be by registered mail, whereas the current 23.11(a) allows for notice by certified mail. To require registered mail will increase costs that undermine noticing under ICWA. *Response:* The statute specifies “registered mail with return receipt requested.” 25 U.S.C. 1912(a). In response to these comments, the Department examined whether certified mail with return receipt requested is allowable under the statute, and determined that it is because certified mail with return receipt requested better meets the goals of prompt, documented notice. The final rule allows for certified mail.

- *Comment on Proposed § 23.104, providing information on how to contact a Tribe:* The rule should clarify BIA’s obligation in gathering the information for the list of Tribe’s designated agents and contact information because the current list is outdated, inefficient, and inconsistently maintained. The list is hampered by publication in the **Federal Register** and BIA should be required to publish updates on the Web. The list

also no longer maintains the historical affiliations, which was helpful. *Response:* BIA is now publishing the list using historical affiliations, as requested, and making the list available on its Web site, where it can be updated more frequently. The rule does not address this because these are procedures internal to the BIA.

- *Comment on Proposed § 23.111(i), requiring notice by both States where child is transferred interstate:* Requiring both the originating State court and receiving State court to provide notice is duplicative and burdensome because notice should only be required in the State where the actual court proceeding is pending. Another commenter stated that the provision appears to apply to transfers between Tribes and States, where notice is unnecessary. *Response:* The final rule deletes this provision.

- *Comment on Proposed § 23.134, requiring BIA to disclose information to adult adoptees:* This section appears to be creating duplicative work of the BIA and States, because both sections require each to provide adult adoptees information for Tribal enrollment. *Response:* The Act imposes this responsibility on both BIA and the State. Section 1951(b) of the Act imposes the responsibility on BIA, which is in § 23.71(b) of the final rule. Section 1917 of the Act imposes the responsibility on States, which is addressed at § 23.134 of the final rule.

- *Comment on Proposed § 23.137, requiring the State to establish a single location for placement records:* This requirement would be an unfunded mandate with undue burden and would require relocating 1,145 files to a different location and require changes to existing recordkeeping systems. Another State agency commented that there is a significant fiscal and annual burden due to the staffing, costs for copying, packaging and transferring physical files to a different location. *Response:* The final rule deletes the provision requiring States to establish a single, central repository. The associated information collection request has also been deleted.

- *Comment on Proposed § 23.137, requiring providing records to the Department or Tribe upon request:* The 15-minute burden estimate allocated to

this task is too low. The time to copy, package and mail the documents will be no less than one hour, but more realistically two hours. *Response:* The final rule updates the burden estimates to reflect 1.5 hours.

If you have comments on this information collection, please submit them to Elizabeth K. Appel, Office of Regulatory Affairs & Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1849 C Street NW., MS–3071, Washington, DC 20240, or by email to [elizabeth.appel@bia.gov](mailto:elizabeth.appel@bia.gov).

#### J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment because it is of an administrative, technical, and procedural nature. *See*, 43 CFR 46.210(i). No extraordinary circumstances exist that would require greater review under the National Environmental Policy Act.

#### K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

#### List of Subjects in 25 CFR Part 23

Administrative practice and procedure, Child welfare, Indians, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, amends part 23 in Title 25 of the Code of Federal Regulations as follows:

#### PART 23—INDIAN CHILD WELFARE ACT

- 1. The authority citation for part 23 continues to read as follows: 5 U.S.C. 301; 25 U.S.C. 2, 9, 1901–1952.
- 2. In § 23.2:
  - a. Add a definition for “active efforts” in alphabetical order;
  - b. Revise the definition of “child-custody proceeding”;
  - c. Add definitions for “continued custody”, “custody”, and “domicile” in alphabetical order;

- d. Add a definition for “emergency proceeding” in alphabetical order;
- e. Revise the definition of “extended family member”;
- f. Add a definition for “hearing” in alphabetical order;
- g. Revise the definitions of “Indian child”, “Indian child’s Tribe”, and “Indian custodian”;
- h. Add a definition for “Indian foster home” in alphabetical order;
- i. Add a definition of “involuntary proceeding” in alphabetical order;
- j. Revise the definition of “parent”;
- k. Revise the definitions of “reservation” and “Secretary”;
- l. Add a definition for “status offenses” in alphabetical order;
- m. Revise the definition of “Tribal court”; and
- n. Add definitions for “upon demand”, and “voluntary proceeding” in alphabetical order.

The additions and revisions read as follows:

**§ 23.2 Definitions.**

\* \* \* \* \*

*Active efforts* means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. Where an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent or 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 should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child’s Tribe and should be conducted in partnership with the Indian child and the Indian child’s parents, extended family members, Indian custodians, and Tribe. Active efforts are to be tailored to the facts and circumstances of the case and may include, for example:

- (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 and helping the parents to overcome barriers, including actively assisting the parents in obtaining such 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 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, transportation, mental health, substance abuse, 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 post-reunification services and monitoring.

\* \* \* \* \*

*Child-custody proceeding.* (1) “Child-custody proceeding” means and includes any action, other than an emergency proceeding, that may culminate in one of the following outcomes:

(i) *Foster-care placement*, which is any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) *Termination of parental rights*, which is any action resulting in the termination of the parent-child relationship;

(iii) *Preadoptive placement*, which is 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; or

(iv) *Adoptive placement*, which is the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

(2) An action that may culminate in one of these four outcomes is considered a separate child-custody proceeding from an action that may culminate in a different one of these four outcomes. There may be several child-custody proceedings involving any given Indian child. Within each child-custody proceeding, there may be several hearings. 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 a child-custody proceeding.

\* \* \* \* \*

*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 point in the past. The biological mother of a child has had custody of a child.

*Custody* means physical custody or legal custody or both, under any applicable Tribal law or Tribal custom or State law. A party may demonstrate the existence of custody by looking to Tribal law or Tribal custom or State law.

*Domicile* means:

(1) For a parent or Indian custodian, the place at which a person has been physically present and that the person regards as home; 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 or Indian custodian or guardian. In the case of an Indian child whose parents are not married to each other, the domicile of the Indian child’s custodial parent.

*Emergency proceeding* means and includes any court action that involves an emergency removal or emergency placement of an Indian child.

*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, is a person who has reached age 18 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.

\* \* \* \* \*

*Hearing* means a judicial session held for the purpose of deciding issues of fact, of law, or both.

\* \* \* \* \*

*Indian child* means any unmarried person who is under age 18 and either:

- (1) Is a member or citizen of an Indian Tribe; or
- (2) Is eligible for membership or citizenship in an Indian Tribe and is the



biological child of a member/citizen of an Indian Tribe.

*Indian child's Tribe* means:

(1) The Indian Tribe in which an Indian child is a member or eligible for membership; or

(2) In the case of an Indian child who is a member of or eligible for membership in more than one Tribe, the Indian Tribe described in § 23.109.

*Indian custodian* means any Indian who has legal custody of an Indian child under applicable Tribal law or custom or under applicable State law, or to whom temporary physical care, custody, and control has been transferred by the parent of such child. An Indian may demonstrate that he or she is an Indian custodian by looking to Tribal law or Tribal custom or State law.

*Indian foster home* means a foster home where one or more of the licensed or approved foster parents is an "Indian" as defined in 25 U.S.C. 1903(3).

*Involuntary proceeding* means a child-custody proceeding in which the parent does not consent of his or her free will to the foster-care, preadoptive, or adoptive placement or termination of parental rights or 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.

\* \* \* \* \*

*Parent or parents* means any biological parent or parents of an Indian child, or any Indian who has lawfully adopted an Indian child, including adoptions under Tribal law or custom. It does not include an unwed biological father where paternity has not been acknowledged or established.

*Reservation* means Indian country as defined in 18 U.S.C 1151 and any lands, not covered under that section, title to which is 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.

*Secretary* means the Secretary of the Interior or the Secretary's authorized representative acting under delegated authority.

\* \* \* \* \*

*Status offenses* mean offenses that would not be considered criminal if committed by an adult; they are acts prohibited only because of a person's status as a minor (e.g., truancy, incorrigibility).

\* \* \* \* \*

*Tribal court* means a court with jurisdiction over child-custody proceedings and which 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 vested with authority over child-custody proceedings.

\* \* \* \* \*

*Upon demand* means that the parent or Indian custodian can regain custody simply upon verbal request, without any formalities or contingencies.

\* \* \* \* \*

*Voluntary proceeding* means a child-custody proceeding that is not an involuntary proceeding, such as a proceeding for foster-care, preadoptive, or adoptive placement that either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a State agency, consented to for the Indian child, or a proceeding for voluntary termination of parental rights.

■ 3. Revise § 23.11 to read as follows:

**§ 23.11 Notice.**

(a) In any involuntary proceeding in a State court where the court knows or has reason to know that an Indian child is involved, and where the identity and location of the child's parent or Indian custodian or Tribe is known, the party seeking the foster-care placement of, or termination of parental rights to, an Indian child must directly notify the parents, the Indian custodians, and the child's Tribe by registered or certified mail with return receipt requested, of the pending child-custody proceedings and their right of intervention. Notice must include the requisite information identified in § 23.111, consistent with the confidentiality requirement in § 23.111(d)(6)(ix). Copies of these notices must be sent to the appropriate Regional Director listed in paragraphs (b)(1) through (12) of this section by registered or certified mail with return receipt requested or by personal delivery and must include the information required by § 23.111.

(b)(1) For child-custody proceedings in Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, or any territory or possession of the United States, notices must be sent to the following address: Eastern Regional Director, Bureau of Indian Affairs, 545 Marriott Drive, Suite 700, Nashville, Tennessee 37214.

(2) For child-custody proceedings in Illinois, Indiana, Iowa, Michigan,

Minnesota, Ohio, or Wisconsin, notices must be sent to the following address: Minneapolis Regional Director, Bureau of Indian Affairs, 331 Second Avenue South, Minneapolis, Minnesota 55401-2241.

(3) For child-custody proceedings in Nebraska, North Dakota, or South Dakota, notices must be sent to the following address: Aberdeen Regional Director, Bureau of Indian Affairs, 115 Fourth Avenue SE., Aberdeen, South Dakota 57401.

(4) For child-custody proceedings in Kansas, Texas (except for notices to the Ysleta del Sur Pueblo of El Paso County, Texas), or the western Oklahoma counties of Alfalfa, Beaver, Beckman, Blaine, Caddo, Comanche, Cimarron, Cleveland, Comancho, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Pawnee, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods or Woodward, notices must be sent to the following address: Anadarko Regional Director, Bureau of Indian Affairs, P.O. Box 368, Anadarko, Oklahoma 73005. Notices to the Ysleta del Sur Pueblo must be sent to the Albuquerque Regional Director at the address listed in paragraph (b)(6) of this section.

(5) For child-custody proceedings in Wyoming or Montana (except for notices to the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana), notices must be sent to the following address: Billings Regional Director, Bureau of Indian Affairs, 316 N. 26th Street, Billings, Montana 59101. Notices to the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, must be sent to the Portland Regional Director at the address listed in paragraph (b)(11) of this section.

(6) For child-custody proceedings in the Texas counties of El Paso and Hudspeth or in Colorado or New Mexico (exclusive of notices to the Navajo Nation from the New Mexico counties listed in paragraph (b)(9) of this section), notices must be sent to the following address: Albuquerque Regional Director, Bureau of Indian Affairs, 615 First Street, P.O. Box 26567, Albuquerque, New Mexico 87125. Notices to the Navajo Nation must be sent to the Navajo Regional Director at the address listed in paragraph (b)(9) of this section.

(7) For child-custody proceedings in Alaska (except for notices to the Metlakatla Indian Community, Annette Island Reserve, Alaska), notices must be sent to the following address: Juneau Regional Director, Bureau of Indian

Affairs, 709 West 9th Street, Juneau, Alaska 99802–1219. Notices to the Metlakatla Indian Community, Annette Island Reserve, Alaska, must be sent to the Portland Regional Director at the address listed in paragraph (b)(11) of this section.

(8) For child-custody proceedings in Arkansas, Missouri, or the eastern Oklahoma counties of Adair, Atoka, Bryan, Carter, Cherokee, Craig, Creek, Choctaw, Coal, Delaware, Garvin, Grady, Haskell, Hughes, Jefferson, Johnson, Latimer, LeFlore, Love, Mayes, McCurtain, McClain, McIntosh, Murray, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pittsburg, Pontotoc, Pushmataha, Marshall, Rogers, Seminole, Sequoyah, Stephens, Tulsa, Wagoner, or Washington, notices must be sent to the following address: Muskogee Regional Director, Bureau of Indian Affairs, 101 North Fifth Street, Muskogee, Oklahoma 74401.

(9) For child-custody proceedings in the Arizona counties of Apache, Coconino (except for notices to the Hopi Tribe of Arizona and the San Juan Southern Paiute Tribe of Arizona) or Navajo (except for notices to the Hopi Tribe of Arizona); the New Mexico counties of McKinley (except for notices to the Zuni Tribe of the Zuni Reservation), San Juan, or Socorro; or the Utah county of San Juan, notices must be sent to the following address: Navajo Regional Director, Bureau of Indian Affairs, P.O. Box 1060, Gallup, New Mexico 87301. Notices to the Hopi and San Juan Southern Paiute Tribes of Arizona must be sent to the Phoenix Regional Director at the address listed in paragraph (b)(10) of this section. Notices to the Zuni Tribe of the Zuni Reservation must be sent to the Albuquerque Regional Director at the address listed in paragraph (b)(6) of this section.

(10) For child-custody proceedings in Arizona (exclusive of notices to the Navajo Nation from those counties listed in paragraph (b)(9) of this section), Nevada, or Utah (exclusive of San Juan County), notices must be sent to the following address: Phoenix Regional Director, Bureau of Indian Affairs, 1 North First Street, P.O. Box 10, Phoenix, Arizona 85001.

(11) For child-custody proceedings in Idaho, Oregon, or Washington, notices must be sent to the following address: Portland Regional Director, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, Oregon 97232. All notices to the Confederated Salish and Kootenai Tribes of the Flathead Reservation, located in the Montana counties of Flathead, Lake, Missoula, and Sanders,

must also be sent to the Portland Regional Director.

(12) For child-custody proceedings in California or Hawaii, notices must be sent to the following address: Sacramento Regional Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

(c) Upon receipt of the notice, the Secretary will make reasonable documented efforts to locate and notify the child's Tribe and the child's parent or Indian custodian. The Secretary will have 15 days, after receipt of the notice, to notify the child's Tribe and parents or Indian custodians and to send a copy of the notice to the court. If within the 15-day period the Secretary is unable to verify that the child meets the criteria of an Indian child as defined in § 23.2, or is unable to locate the parents or Indian custodians, the Secretary will so inform the court and state how much more time, if any, will be needed to complete the verification or the search. The Secretary will complete all research efforts, even if those efforts cannot be completed before the child-custody proceeding begins.

(d) Upon request from a party to an Indian child-custody proceeding, the Secretary will make a reasonable attempt to identify and locate the child's Tribe, parents, or Indian custodians to assist the party seeking the information.

■ 4. Revise § 23.71 to read as follows:

**§ 23.71 Recordkeeping and information availability.**

(a) The Division of Human Services, Bureau of Indian Affairs (BIA), is authorized to receive all information and to maintain a central file on all State Indian adoptions. This file is confidential and only designated persons may have access to it.

(b) Upon the request of an adopted Indian who has reached age 18, the adoptive or foster parents of an Indian child, or an Indian Tribe, BIA will disclose such information as may be necessary for purposes of Tribal enrollment or determining any rights or benefits associated with Tribal membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, BIA must certify to the Indian child's Tribe, where the information warrants, that the child's parentage and other circumstances entitle the child to enrollment under the criteria established by such Tribe.

(c) BIA will ensure that the confidentiality of this information is maintained and that the information is not subject to the Freedom of

Information Act, 5 U.S.C. 552, as amended.

■ 5. Add subpart I to read as follows:

**Subpart I—Indian Child Welfare Act Proceedings**

**General Provisions**

Sec.

- 23.101 What is the purpose of this subpart?
- 23.102 What terms do I need to know?
- 23.103 When does ICWA apply?
- 23.104 What provisions of this subpart apply to each type of child-custody proceeding?
- 23.105 How do I contact a Tribe under the regulations in this subpart?
- 23.106 How does this subpart interact with State and Federal laws?

**Pretrial Requirements**

- 23.107 How should a State court determine if there is reason to know the child is an Indian child?
- 23.108 Who makes the determination as to whether a child is a member, whether a child is eligible for membership, or whether a biological parent is a member of a Tribe?
- 23.109 How should a State court determine an Indian child's Tribe when the child may be a member or eligible for membership in more than one Tribe?
- 23.110 When must a State court dismiss an action?
- 23.111 What are the notice requirements for a child-custody proceeding involving an Indian child?
- 23.112 What time limits and extensions apply?
- 23.113 What are the standards for emergency proceedings involving an Indian child?
- 23.114 What are the requirements for determining improper removal?

**Petitions To Transfer to Tribal Court**

- 23.115 How are petitions for transfer of a proceeding made?
- 23.116 What happens after a petition for transfer is made?
- 23.117 What are the criteria for ruling on transfer petitions?
- 23.118 How is a determination of "good cause" to deny transfer made?
- 23.119 What happens after a petition for transfer is granted?

**Adjudication of Involuntary Proceedings**

- 23.120 How does the State court ensure that active efforts have been made?
- 23.121 What are the applicable standards of evidence?
- 23.122 Who may serve as a qualified expert witness?
- 23.123 [Reserved]

**Voluntary Proceedings**

- 23.124 What actions must a State court undertake in voluntary proceedings?
- 23.125 How is consent obtained?
- 23.126 What information must a consent document contain?
- 23.127 How is withdrawal of consent to a foster-care placement achieved?

23.128 How is withdrawal of consent to a termination of parental rights or adoption achieved?

**Dispositions**

- 23.129 When do the placement preferences apply?
- 23.130 What placement preferences apply in adoptive placements?
- 23.131 What placement preferences apply in foster-care or preadoptive placements?
- 23.132 How is a determination of “good cause” to depart from the placement preferences made?

**Access**

- 23.133 Should courts allow participation by alternative methods?
- 23.134 Who has access to reports and records during a proceeding?
- 23.135 [Reserved]

**Post-Trial Rights & Responsibilities**

- 23.136 What are the requirements for vacating an adoption based on consent having been obtained through fraud or duress?
- 23.137 Who can petition to invalidate an action for certain ICWA violations?
- 23.138 What are the rights to information about adoptees’ Tribal affiliations?
- 23.139 Must notice be given of a change in an adopted Indian child’s status?

**Recordkeeping**

- 23.140 What information must States furnish to the Bureau of Indian Affairs?
- 23.141 What records must the State maintain?
- 23.142 How does the Paperwork Reduction Act affect this subpart?

**Effective Date**

- 23.143 How does this subpart apply to pending proceedings?

**Severability**

- 23.144 What happens if some portion of this part is held to be invalid by a court of competent jurisdiction?

**Subpart I—Indian Child Welfare Act Proceedings**

**General Provisions**

**§ 23.101 What is the purpose of this subpart?**

The regulations in this subpart clarify the minimum Federal standards governing implementation of the Indian Child Welfare Act (ICWA) to ensure that ICWA is applied in all States consistent with the Act’s express language, Congress’s intent in enacting the statute, and to promote the stability and security of Indian tribes and families.

**§ 23.102 What terms do I need to know?**

The following terms and their definitions apply to this subpart. All other terms have the meanings assigned in § 23.2.

*Agency* means a nonprofit, for-profit, or governmental organization and its employees, agents, or officials that performs, or provides services to biological parents, foster parents, or adoptive parents to assist in the administrative and social work necessary for foster, preadoptive, or adoptive placements.

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

**§ 23.103 When does ICWA apply?**

(a) ICWA includes requirements that apply whenever an Indian child is the subject of:

- (1) A child-custody proceeding, including:
  - (i) An involuntary proceeding;
  - (ii) A voluntary proceeding that could prohibit the parent or Indian custodian from regaining custody of the child upon demand; and
  - (iii) A proceeding involving status offenses if any part of the proceeding results in the need for out-of-home

placement of the child, including a foster-care, preadoptive, or adoptive placement, or termination of parental rights.

- (2) An emergency proceeding.
- (b) ICWA does not apply to:
  - (1) A Tribal court proceeding;
  - (2) A proceeding regarding a criminal act that is not a status offense;
  - (3) An award of custody of the Indian child to one of the parents including, but not limited to, an award in a divorce proceeding; or
  - (4) A voluntary placement that either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a State agency, chosen for the Indian child and that does not operate to prohibit the child’s parent or Indian custodian from regaining custody of the child upon demand.

(c) If a proceeding listed in paragraph (a) of this section concerns a child who meets the statutory definition of “Indian child,” then ICWA will apply to that proceeding. In determining whether ICWA applies to a proceeding, the State court may not consider factors such as the participation of the parents or the Indian child in Tribal cultural, social, religious, or political activities, the relationship between the Indian child and his or her parents, whether the parent ever had custody of the child, or the Indian child’s blood quantum.

(d) If ICWA applies at the commencement of a proceeding, it will not cease to apply simply because the child reaches age 18 during the pendency of the proceeding.

**§ 23.104 What provisions of this subpart apply to each type of child-custody proceeding?**

The following table lists what sections of this subpart apply to each type of child-custody proceeding identified in § 23.103(a):

Section	Type of proceeding
23.101–23.106 (General Provisions) .....	Emergency, Involuntary, Voluntary.
<i>Pretrial Requirements:</i>	
23.107 (How should a State court determine if there is reason to know the child is an Indian child?) .....	Emergency, Involuntary, Voluntary.
23.108 (Who makes the determination as to whether a child is a member whether a child is eligible for membership, or whether a biological parent is a member of a Tribe?) .....	Emergency, Involuntary, Voluntary.
23.109 (How should a State court determine an Indian child’s Tribe when the child may be a member or eligible for membership in more than one Tribe?) .....	Emergency, Involuntary, Voluntary.
23.110 (When must a State court dismiss an action?) .....	Involuntary, Voluntary.
23.111 (What are the notice requirements for a child-custody proceeding involving an Indian child?) .....	Involuntary (foster-care placement and termination of parental rights).
23.112 (What time limits and extensions apply?) .....	Involuntary (foster-care placement and termination of parental rights).
23.113 (What are the standards for emergency proceedings involving an Indian child?) .....	Emergency.
23.114 (What are the requirements for determining improper removal?) .....	Involuntary.
<i>Petitions to Transfer to Tribal Court:</i>	
23.115 (How are petitions for transfer of a proceeding made?) .....	Involuntary, Voluntary (foster-care placement and termination of parental rights).



Section	Type of proceeding
23.116 (What happens after a petition for transfer is made?) .....	Involuntary, Voluntary (foster-care placement and termination of parental rights).
23.117 (What are the criteria for ruling on transfer petitions?) .....	Involuntary, Voluntary (foster-care placement and termination of parental rights).
23.118 (How is a determination of "good cause" to deny transfer made?) .....	Involuntary, Voluntary (foster-care placement and termination of parental rights).
23.119 (What happens after a petition for transfer is granted?) .....	Involuntary, Voluntary (foster-care placement and termination of parental rights).
<i>Adjudication of Involuntary Proceedings:</i>	
23.120 (How does the State court ensure that active efforts have been made?) .....	Involuntary (foster-care placement and termination of parental rights).
23.121 (What are the applicable standards of evidence?) .....	Involuntary (foster-care placement and termination of parental rights).
23.122 (Who may serve as a qualified expert witness?) .....	Involuntary (foster-care placement and termination of parental rights).
23.123 Reserved .....	N/A.
<i>Voluntary Proceedings:</i>	
23.124 (What actions must a State court undertake in voluntary proceedings?) .....	Voluntary.
23.125 (How is consent obtained?) .....	Voluntary.
23.126 (What information must a consent document contain?) .....	Voluntary.
23.127 (How is withdrawal of consent to a foster-care placement achieved?) .....	Voluntary.
23.128 (How is withdrawal of consent to a termination of parental rights or adoption achieved?) .....	Voluntary.
<i>Dispositions:</i>	
23.129 (When do the placement preferences apply?) .....	Involuntary, Voluntary.
23.130 (What placement preferences apply in adoptive placements?) .....	Involuntary, Voluntary.
23.131 (What placement preferences apply in foster-care or preadoptive placements?) .....	Involuntary, Voluntary.
23.132 (How is a determination of "good cause" to depart from the placement preferences made?) .....	Involuntary, Voluntary.
<i>Access:</i>	
23.133 (Should courts allow participation by alternative methods?) .....	Emergency, Involuntary.
23.134 (Who has access to reports and records during a proceeding?) .....	Emergency, Involuntary.
23.135 Reserved. ....	N/A.
<i>Post-Trial Rights &amp; Responsibilities:</i>	
23.136 (What are the requirements for vacating an adoption based on consent having been obtained through fraud or duress?) .....	Involuntary (if consent given under threat of removal), voluntary.
23.137 (Who can petition to invalidate an action for certain ICWA violations?) .....	Emergency (to extent it involved a specified violation), involuntary, voluntary.
23.138 (What are the rights to information about adoptees' Tribal affiliations?) .....	Emergency, Involuntary, Voluntary.
23.139 (Must notice be given of a change in an adopted Indian child's status?) .....	Involuntary, Voluntary.
<i>Recordkeeping:</i>	
23.140 (What information must States furnish to the Bureau of Indian Affairs?) .....	Involuntary, Voluntary.
23.141 (What records must the State maintain?) .....	Involuntary, Voluntary.
23.142 (How does the Paperwork Reduction Act affect this subpart?) .....	Emergency, Involuntary, Voluntary.
<i>Effective Date:</i>	
23.143 (How does this subpart apply to pending proceedings?) .....	Emergency, Involuntary, Voluntary.
<i>Severability:</i>	
23.144 (What happens if some portion of part is held to be invalid by a court of competent jurisdiction?) .....	Emergency, Involuntary, Voluntary.

**Note:** For purposes of this table, status-offense child-custody proceedings are included as a type of involuntary proceeding.

### § 23.105 How do I contact a Tribe under the regulations in this subpart?

To contact a Tribe to provide notice or obtain information or verification under the regulations in this subpart, you should direct the notice or inquiry as follows:

(a) Many Tribes designate an agent for receipt of ICWA notices. The BIA publishes a list of Tribes' designated Tribal agents for service of ICWA notice in the **Federal Register** each year and makes the list available on its Web site at [www.bia.gov](http://www.bia.gov).

(b) For a Tribe without a designated Tribal agent for service of ICWA notice, contact the Tribe to be directed to the appropriate office or individual.

(c) If you do not have accurate contact information for a Tribe, or the Tribe

contacted fails to respond to written inquiries, you should seek assistance in contacting the Indian Tribe from the BIA local or regional office or the BIA's Central Office in Washington, DC (see [www.bia.gov](http://www.bia.gov)).

### § 23.106 How does this subpart interact with State and Federal laws?

(a) The regulations in this subpart provide minimum Federal standards to ensure compliance with ICWA.

(b) Under section 1921 of ICWA, where applicable State or other Federal law provides a higher standard of protection to the rights of the parent or Indian custodian than the protection accorded under the Act, ICWA requires the State or Federal court to apply the higher State or Federal standard.

### Pretrial Requirements

#### § 23.107 How should a State court determine if there is reason to know the child is an Indian child?

(a) State courts must ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry is made at the commencement of the proceeding and all responses should be on the record. State courts must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.

(b) 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 must:

(1) 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 (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership); and

(2) Treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an "Indian child" in this part.

(c) A court, upon conducting the inquiry required in paragraph (a) of this section, has reason to know that a child involved in an emergency or child-custody proceeding is an Indian child if:

(1) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child;

(2) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;

(3) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;

(4) The court is informed that the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village;

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

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

(d) In seeking verification of the child's status in a voluntary proceeding where a consenting parent evidences, by written request or statement in the record, a desire for anonymity, the court must keep relevant documents pertaining to the inquiry required under this section confidential and under seal. A request for anonymity does not relieve the court, agency, or other party from any duty of compliance with ICWA, including the obligation to verify whether the child is an "Indian child." A Tribe receiving information related to this inquiry must keep documents and information confidential.

**§ 23.108 Who makes the determination as to whether a child is a member, whether a child is eligible for membership, or whether a biological parent is a member of a Tribe?**

(a) The Indian Tribe of which it is believed the child is a member (or eligible for membership and of which the biological parent is a member) determines whether the child is a member of the Tribe, or whether the child is eligible for membership in the Tribe and a biological parent of the child is a member of the Tribe, except as otherwise provided by Federal or Tribal law.

(b) The determination by a Tribe of whether a child is a member, whether a child is eligible for membership, or whether a biological parent is a member, is solely within the jurisdiction and authority of the Tribe, except as otherwise provided by Federal or Tribal law. The State court may not substitute its own determination regarding a child's membership in a Tribe, a child's eligibility for membership in a Tribe, or a parent's membership in a Tribe.

(c) The State court may rely on facts or documentation indicating a Tribal determination of membership or eligibility for membership in making a judicial determination as to whether the child is an "Indian child." An example of documentation indicating membership is a document issued by the Tribe, such as Tribal enrollment documentation.

**§ 23.109 How should a State court determine an Indian child's Tribe when the child may be a member or eligible for membership in more than one Tribe?**

(a) If the Indian child is a member or eligible for membership in only one Tribe, that Tribe must be designated as the Indian child's Tribe.

(b) If the Indian child meets the definition of "Indian child" through more than one Tribe, deference should be given to the Tribe in which the Indian child is already a member, unless otherwise agreed to by the Tribes.

(c) If an Indian child meets the definition of "Indian child" through more than one Tribe because the child is a member in more than one Tribe or the child is not a member of but is eligible for membership in more than one Tribe, the court must provide the opportunity in any involuntary child-custody proceeding for the Tribes to determine which should be designated as the Indian child's Tribe.

(1) If the Tribes are able to reach an agreement, the agreed-upon Tribe should be designated as the Indian child's Tribe.

(2) If the Tribes are unable to reach an agreement, the State court designates,

for the purposes of ICWA, the Indian Tribe with which the Indian child has the more significant contacts as the Indian child's Tribe, taking into consideration:

(i) Preference of the parents for membership of the child;

(ii) Length of past domicile or residence on or near the reservation of each Tribe;

(iii) Tribal membership of the child's custodial parent or Indian custodian; and

(iv) Interest asserted by each Tribe in the child-custody proceeding;

(v) Whether there has been a previous adjudication with respect to the child by a court of one of the Tribes; and

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

(3) A determination of the Indian child's Tribe for purposes of ICWA and the regulations in this subpart do not constitute a determination for any other purpose.

**§ 23.110 When must a State court dismiss an action?**

Subject to 25 U.S.C. 1919 (Agreements between States and Indian Tribes) and § 23.113 (emergency proceedings), the following limitations on a State court's jurisdiction apply:

(a) The court in any voluntary or involuntary child-custody proceeding involving an Indian child must determine the residence and domicile of the Indian child. If either the residence or domicile is on a reservation where the Tribe exercises exclusive jurisdiction over child-custody proceedings, the State court must expeditiously notify the Tribal court of the pending dismissal based on the Tribe's exclusive jurisdiction, dismiss the State-court child-custody proceeding, and ensure that the Tribal court is sent all information regarding the Indian child-custody proceeding, including, but not limited to, the pleadings and any court record.

(b) If the child is a ward of a Tribal court, the State court must expeditiously notify the Tribal court of the pending dismissal, dismiss the State-court child-custody proceeding, and ensure that the Tribal court is sent all information regarding the Indian child-custody proceeding, including, but not limited to, the pleadings and any court record.

**§ 23.111 What are the notice requirements for a child-custody proceeding involving an Indian child?**

(a) When a court knows or has reason to know that the subject of an involuntary foster-care-placement or

termination-of-parental-rights proceeding is an Indian child, the court must ensure that:

(1) The party seeking placement promptly sends notice of each such child-custody proceeding (including, but not limited to, any foster-care placement or any termination of parental or custodial rights) in accordance with this section; and

(2) An original or a copy of each notice sent under this section is filed with the court together with any return receipts or other proof of service.

(b) Notice must be sent to:

(1) Each Tribe where the child may be a member (or eligible for membership if a biological parent is a member) (*see* § 23.105 for information on how to contact a Tribe);

(2) The child's parents; and

(3) If applicable, the child's Indian custodian.

(c) Notice must be sent by registered or certified mail with return receipt requested. Notice may also be sent via personal service or electronically, but such alternative methods do not replace the requirement for notice to be sent by registered or certified mail with return receipt requested.

(d) Notice must be in clear and understandable language and include the following:

(1) The child's name, birthdate, and birthplace;

(2) All names known (including maiden, married, and former names or aliases) of the parents, the parents' birthdates and birthplaces, and Tribal enrollment numbers if known;

(3) If known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors of the child, such as grandparents;

(4) The name of each Indian Tribe in which the child is a member (or may be eligible for membership if a biological parent is a member);

(5) A copy of the petition, complaint, or other document by which the child-custody proceeding was initiated and, if a hearing has been scheduled, information on the date, time, and location of the hearing;

(6) Statements setting out:

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

(ii) The right of any parent or Indian custodian of the child, if not already a party to the child-custody proceeding, to intervene in the proceedings.

(iii) The Indian Tribe's right to intervene at any time in a State-court proceeding for the foster-care placement of or termination of parental rights to an Indian child.

(iv) That, if the child's parent or Indian custodian is unable to afford counsel based on a determination of indigency by the court, the parent or Indian custodian has the right to court-appointed counsel.

(v) The right to be granted, upon request, up to 20 additional days to prepare for the child-custody proceedings.

(vi) The right of the parent or Indian custodian and the Indian child's Tribe to petition the court for transfer of the foster-care-placement or termination-of-parental-rights proceeding to Tribal court as provided by 25 U.S.C. 1911 and § 23.115.

(vii) The mailing addresses and telephone numbers of the court and information related to all parties to the child-custody proceeding and individuals notified under this section.

(viii) The potential legal consequences of the child-custody proceedings on the future parental and custodial rights of the parent or Indian custodian.

(ix) That all parties notified must keep confidential the information contained in the notice and the notice should not be handled by anyone not needing the information to exercise rights under ICWA.

(e) If the identity or location of the child's parents, the child's Indian custodian, or the Tribes in which the Indian child is a member or eligible for membership cannot be ascertained, but there is reason to know the child is an Indian child, notice of the child-custody proceeding must be sent to the appropriate Bureau of Indian Affairs Regional Director (*see* [www.bia.gov](http://www.bia.gov)). To establish Tribal identity, as much information as is known regarding the child's direct lineal ancestors should be provided. The Bureau of Indian Affairs will not make a determination of Tribal membership but may, in some instances, be able to identify Tribes to contact.

(f) If there is a reason to know that a parent or Indian custodian possesses limited English proficiency and is therefore not likely to understand the contents of the notice, the court must provide language access services as required by Title VI of the Civil Rights Act and other Federal laws. To secure such translation or interpretation support, a court may contact or direct a party to contact the Indian child's Tribe or the local BIA office for assistance in locating and obtaining the name of a qualified translator or interpreter.

(g) If a parent or Indian custodian of an Indian child appears in court without an attorney, the court must inform him or her of his or her rights, including any

applicable right to appointed counsel, right to request that the child-custody proceeding be transferred to Tribal court, right to object to such transfer, right to request additional time to prepare for the child-custody proceeding as provided in § 23.112, and right (if the parent or Indian custodian is not already a party) to intervene in the child-custody proceedings.

#### **§ 23.112 What time limits and extensions apply?**

(a) No foster-care-placement or termination-of-parental-rights proceeding may be held until at least 10 days after receipt of the notice by the parent (or Indian custodian) and by the Tribe (or the Secretary). The parent, Indian custodian, and Tribe each have a right, upon request, to be granted up to 20 additional days from the date upon which notice was received to prepare for participation in the proceeding.

(b) Except as provided in 25 U.S.C. 1922 and § 23.113, no child-custody proceeding for foster-care placement or termination of parental rights may be held until the waiting periods to which the parents or Indian custodians and to which the Indian child's Tribe are entitled have expired, as follows:

(1) 10 days after each parent or Indian custodian (or Secretary where the parent or Indian custodian is unknown to the petitioner) has received notice of that particular child-custody proceeding in accordance with 25 U.S.C. 1912(a) and § 23.111;

(2) 10 days after the Indian child's Tribe (or the Secretary if the Indian child's Tribe is unknown to the party seeking placement) has received notice of that particular child-custody proceeding in accordance with 25 U.S.C. 1912(a) and § 23.111;

(3) Up to 30 days after the parent or Indian custodian has received notice of that particular child-custody proceeding in accordance with 25 U.S.C. 1912(a) and § 23.111, if the parent or Indian custodian has requested up to 20 additional days to prepare for the child-custody proceeding as provided in 25 U.S.C. 1912(a) and § 23.111; and

(4) Up to 30 days after the Indian child's Tribe has received notice of that particular child-custody proceeding in accordance with 25 U.S.C. 1912(a) and § 23.111, if the Indian child's Tribe has requested up to 20 additional days to prepare for the child-custody proceeding.

(c) Additional time beyond the minimum required by 25 U.S.C. 1912 and § 23.111 may also be available under State law or pursuant to extensions granted by the court.



**§ 23.113 What are the standards for emergency proceedings involving an Indian child?**

(a) Any emergency removal or placement of an Indian child under State law must terminate immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(b) The State court must:

(1) Make a finding on the record that the emergency removal or placement is necessary to prevent imminent physical damage or harm to the child;

(2) Promptly hold a hearing on whether the emergency removal or placement continues to be necessary whenever new information indicates that the emergency situation has ended; and

(3) At any court hearing during the emergency proceeding, determine whether the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(4) Immediately terminate (or ensure that the agency immediately terminates) the emergency proceeding once the court or agency possesses sufficient evidence to determine that the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(c) An emergency proceeding can be terminated by one or more of the following actions:

(1) Initiation of a child-custody proceeding subject to the provisions of ICWA;

(2) Transfer of the child to the jurisdiction of the appropriate Indian Tribe; or

(3) Restoring the child to the parent or Indian custodian.

(d) A petition for a court order authorizing the emergency removal or continued emergency placement, or its accompanying documents, should contain 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 such imminent physical damage or harm to the child. The petition or its accompanying documents should also contain the following information:

(1) The name, age, and last known address of the Indian child;

(2) The name and address of the child's parents and Indian custodians, if any;

(3) The steps taken to provide notice to the child's parents, custodians, and Tribe about the emergency proceeding;

(4) 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 BIA Regional Director (see [www.bia.gov](http://www.bia.gov));

(5) The residence and the domicile of the Indian child;

(6) 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;

(7) The Tribal affiliation of the child and of the parents or Indian custodians;

(8) A specific and detailed account of the circumstances that led the agency responsible for the emergency removal of the child to take that action;

(9) If the child is believed to reside or be domiciled on a reservation where the Tribe exercises exclusive jurisdiction over child-custody matters, a statement of efforts that have been made and are being made to contact the Tribe and transfer the child to the Tribe's jurisdiction; and

(10) 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.

(e) An emergency proceeding regarding an Indian child should not be continued for more than 30 days unless the court makes the following determinations:

(1) Restoring the child to the parent or Indian custodian would subject the child to imminent physical damage or harm;

(2) The court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian Tribe; and

(3) It has not been possible to initiate a "child-custody proceeding" as defined in § 23.2.

**§ 23.114 What are the requirements for determining improper removal?**

(a) If, in the course of any child-custody proceeding, any party asserts or the court has reason to believe that the Indian child may have been improperly removed from the custody of his or her parent or Indian custodian, or that the Indian child has been improperly retained (such as after a visit or other temporary relinquishment of custody), the court must expeditiously determine whether there was improper removal or retention.

(b) If the court finds that the Indian child was improperly removed or retained, the court must terminate the proceeding and the child must be returned immediately to his or her parent or Indian custodian, unless returning the child to his parent or Indian custodian would subject the

child to substantial and immediate danger or threat of such danger.

**Petitions To Transfer to Tribal Court**

**§ 23.115 How are petitions for transfer of a proceeding made?**

(a) Either parent, the Indian custodian, or the Indian child's Tribe may request, at any time, orally on the record or in writing, that the State court transfer a foster-care or termination-of-parental-rights proceeding to the jurisdiction of the child's Tribe.

(b) The right to request a transfer is available at any stage in each foster-care or termination-of-parental-rights proceeding.

**§ 23.116 What happens after a petition for transfer is made?**

Upon receipt of a transfer petition, the State court must ensure that the Tribal court is promptly notified in writing of the transfer petition. This notification may request a timely response regarding whether the Tribal court wishes to decline the transfer.

**§ 23.117 What are the criteria for ruling on transfer petitions?**

Upon receipt of a transfer petition from an Indian child's parent, Indian custodian, or Tribe, the State court must transfer the child-custody proceeding unless the court determines that transfer is not appropriate because one or more of the following criteria are met:

(a) Either parent objects to such transfer;

(b) The Tribal court declines the transfer; or

(c) Good cause exists for denying the transfer.

**§ 23.118 How is a determination of "good cause" to deny transfer made?**

(a) If the State court believes, or any party asserts, that good cause to deny transfer exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing on the record and to the parties to the child-custody proceeding.

(b) Any party to the child-custody proceeding must have the opportunity to provide the court with views regarding whether good cause to deny transfer exists.

(c) In determining whether good cause exists, the court must not consider:

(1) Whether the foster-care or termination-of-parental-rights proceeding is at an advanced stage if the Indian child's parent, Indian custodian, or Tribe did not receive notice of the child-custody proceeding until an advanced stage;

(2) Whether there have been prior proceedings involving the child for which no petition to transfer was filed;

(3) Whether transfer could affect the placement of the child;

(4) The Indian child's cultural connections with the Tribe or its reservation; or

(5) Socioeconomic conditions or any negative perception of Tribal or BIA social services or judicial systems.

(d) The basis for any State-court decision to deny transfer should be stated orally on the record or in a written order.

**§ 23.119 What happens after a petition for transfer is granted?**

(a) If the Tribal court accepts the transfer, the State court should expeditiously provide the Tribal court with all records related to the proceeding, including, but not limited to, the pleadings and any court record.

(b) The State court should work with the Tribal court to ensure that the transfer of the custody of the Indian child and of the proceeding is accomplished smoothly and in a way that minimizes the disruption of services to the family.

**Adjudication of Involuntary Proceedings**

**§ 23.120 How does the State court ensure that active efforts have been made?**

(a) Prior to ordering an involuntary foster-care placement or termination of parental rights, the court must conclude that active efforts have been made to prevent the breakup of the Indian family and that those efforts have been unsuccessful.

(b) Active efforts must be documented in detail in the record.

**§ 23.121 What are the applicable standards of evidence?**

(a) The court must not order a foster-care placement of an Indian child unless clear and convincing evidence is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(b) The court must not order a termination of parental rights for an Indian child unless evidence beyond a reasonable doubt is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(c) For a foster-care placement or termination of parental rights, the evidence must show a causal relationship between the particular

conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child who is the subject of the child-custody proceeding.

(d) Without a causal relationship identified in paragraph (c) of this section, evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence or evidence beyond a reasonable doubt that continued custody is likely to result in serious emotional or physical damage to the child.

**§ 23.122 Who may serve as a qualified expert witness?**

(a) A qualified expert witness must be qualified to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's Tribe. A person may be 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.

(b) The court or any party may request the assistance of the Indian child's Tribe or the BIA office serving the Indian child's Tribe in locating persons qualified to serve as expert witnesses.

(c) The social worker regularly assigned to the Indian child may not serve as a qualified expert witness in child-custody proceedings concerning the child.

**§ 23.123 [Reserved]**

**Voluntary Proceedings**

**§ 23.124 What actions must a State court undertake in voluntary proceedings?**

(a) The State court must require the participants in a voluntary proceeding to state on the record whether the child is an Indian child, or whether there is reason to believe the child is an Indian child, as provided in § 23.107.

(b) If there is reason to believe the child is an Indian child, the State court must ensure that the party seeking placement has taken all reasonable steps to verify the child's status. This may include contacting the Tribe of which it is believed the child is a member (or eligible for membership and of which the biological parent is a member) to verify the child's status. As described in § 23.107, where a consenting parent

requests anonymity, a Tribe receiving such information must keep relevant documents and information confidential.

(c) State courts must ensure that the placement for the Indian child complies with §§ 23.129–23.132.

**§ 23.125 How is consent obtained?**

(a) A parent's or Indian custodian's consent to a voluntary termination of parental rights or to a foster-care, preadoptive, or adoptive placement must be executed in writing and recorded before a court of competent jurisdiction.

(b) Prior to accepting the consent, the court must explain to the parent or Indian custodian:

(1) The terms and consequences of the consent in detail; and

(2) The following limitations, applicable to the type of child-custody proceeding for which consent is given, on withdrawal of consent:

(i) For consent to foster-care placement, the parent or Indian custodian may withdraw consent for any reason, at any time, and have the child returned; or

(ii) For consent to termination of parental rights, the parent or Indian custodian may withdraw consent for any reason, at any time prior to the entry of the final decree of termination and have the child returned; or

(iii) For consent to an adoptive placement, the parent or Indian custodian may withdraw consent for any reason, at any time prior to the entry of the final decree of adoption, and have the child returned.

(c) The court must certify that the terms and consequences of the consent were explained on the record in detail in English (or the language of the parent or Indian custodian, if English is not the primary language) and were fully understood by the parent or Indian custodian.

(d) Where confidentiality is requested or indicated, execution of consent need not be made in a session of court open to the public but still must be made before a court of competent jurisdiction in compliance with this section.

(e) A consent given prior to, or within 10 days after, the birth of an Indian child is not valid.

**§ 23.126 What information must a consent document contain?**

(a) If there are any conditions to the consent, the written consent must clearly set out the conditions.

(b) A written consent to foster-care placement should contain, in addition to the information specified in paragraph (a) of this section, the name

and birthdate of the Indian child; the name of the Indian child's Tribe; the Tribal enrollment number for the parent and for the Indian child, where known, or some other indication of the child's membership in the Tribe; the name, address, and other identifying information of the consenting parent or Indian custodian; the name and address of the person or entity, if any, who arranged the placement; and the name and address of the prospective foster parents, if known at the time.

**§ 23.127 How is withdrawal of consent to a foster-care placement achieved?**

(a) The parent or Indian custodian may withdraw consent to voluntary foster-care placement at any time.

(b) To withdraw consent, the parent or Indian custodian must file a written document with the court or otherwise testify before the court. Additional methods of withdrawing consent may be available under State law.

(c) When a parent or Indian custodian withdraws consent to a voluntary foster-care placement, the court must ensure that the Indian child is returned to that parent or Indian custodian as soon as practicable.

**§ 23.128 How is withdrawal of consent to a termination of parental rights or adoption achieved?**

(a) A parent may withdraw consent to voluntary termination of parental rights at any time prior to the entry of a final decree of termination.

(b) A parent or Indian custodian may withdraw consent to voluntary adoption at any time prior to the entry of a final decree of adoption.

(c) To withdraw consent prior to the entry of a final decree of adoption, the parent or Indian custodian must file a written document with the court or otherwise testify before the court. Additional methods of withdrawing consent may be available under State law.

(d) The court in which the withdrawal of consent is filed must promptly notify the person or entity who arranged any voluntary preadoptive or adoptive placement of such filing, and the Indian child must be returned to the parent or Indian custodian as soon as practicable.

**Dispositions**

**§ 23.129 When do the placement preferences apply?**

(a) In any preadoptive, adoptive, or foster-care placement of an Indian child, the placement preferences specified in § 23.130 and § 23.131 apply.

(b) Where a consenting parent requests anonymity in a voluntary proceeding, the court must give weight

to the request in applying the preferences.

(c) The placement preferences must be applied in any foster-care, preadoptive, or adoptive placement unless there is a determination on the record that good cause under § 23.132 exists to not apply those placement preferences.

**§ 23.130 What placement preferences apply in adoptive placements?**

(a) In any adoptive placement of an Indian child under State law, where the Indian child's Tribe has not established a different order of preference under paragraph (b) of this section, preference must be given in descending order, as listed below, to placement of the child with:

(1) A member of the Indian child's extended family;

(2) Other members of the Indian child's Tribe; or

(3) Other Indian families.

(b) If the Indian child's Tribe has established by resolution a different order of preference than that specified in ICWA, the Tribe's placement preferences apply.

(c) The court must, where appropriate, also consider the placement preference of the Indian child or Indian child's parent.

**§ 23.131 What placement preferences apply in foster-care or preadoptive placements?**

(a) In any foster-care or preadoptive placement of an Indian child under State law, including changes in foster-care or preadoptive placements, the child must be placed in the least-restrictive setting that:

(1) Most approximates a family, taking into consideration sibling attachment;

(2) Allows the Indian child's special needs (if any) to be met; and

(3) Is in reasonable proximity to the Indian child's home, extended family, or siblings.

(b) In any foster-care or preadoptive placement of an Indian child under State law, where the Indian child's Tribe has not established a different order of preference under paragraph (c) of this section, preference must be given, in descending order as listed below, to placement of the child with:

(1) A member of the Indian child's extended family;

(2) A foster home that is licensed, approved, or specified by the Indian child's Tribe;

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

(4) An institution for children approved by an Indian Tribe or operated

by an Indian organization which has a program suitable to meet the child's needs.

(c) If the Indian child's Tribe has established by resolution a different order of preference than that specified in ICWA, the Tribe's placement preferences apply, so long as the placement is the least-restrictive setting appropriate to the particular needs of the Indian child, as provided in paragraph (a) of this section.

(d) The court must, where appropriate, also consider the preference of the Indian child or the Indian child's parent.

**§ 23.132 How is a determination of "good cause" to depart from the placement preferences made?**

(a) If any party asserts that good cause not to follow the placement preferences exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the child-custody proceeding and the court.

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

(c) A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and should 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, such as 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 to find suitable placements meeting the preference criteria, but none has been located. For purposes of this analysis, the standards for determining whether a placement is unavailable must 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.

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

(e) A placement may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA.

#### Access

##### **§ 23.133 Should courts allow participation by alternative methods?**

If it possesses the capability, the court should allow alternative methods of participation in State-court child-custody proceedings involving an Indian child, such as participation by telephone, videoconferencing, or other methods.

##### **§ 23.134 Who has access to reports and records during a proceeding?**

Each party to an emergency proceeding or a foster-care-placement or termination-of-parental-rights proceeding under State law involving an Indian child has a right to timely examine all reports and other documents filed or lodged with the court upon which any decision with respect to such action may be based.

##### **§ 23.135 [Reserved]**

#### Post-Trial Rights & Responsibilities

##### **§ 23.136 What are the requirements for vacating an adoption based on consent having been obtained through fraud or duress?**

(a) Within two years after a final decree of adoption of any Indian child by a State court, or within any longer period of time permitted by the law of the State, the State court may invalidate the voluntary adoption upon finding that the parent's consent was obtained by fraud or duress.

(b) Upon the parent's filing of a petition to vacate the final decree of adoption of the parent's Indian child, the court must give notice to all parties to the adoption proceedings and the Indian child's Tribe and must hold a hearing on the petition.

(c) Where the court finds that the parent's consent was obtained through fraud or duress, the court must vacate the final decree of adoption, order the consent revoked, and order that the child be returned to the parent.

##### **§ 23.137 Who can petition to invalidate an action for certain ICWA violations?**

(a) Any of the following may petition any court of competent jurisdiction to

invalidate an action for foster-care placement or termination of parental rights under state law where it is alleged that 25 U.S.C. 1911, 1912, or 1913 has been violated:

(1) An Indian child who is or was the subject of any action for foster-care placement or termination of parental rights;

(2) A parent or Indian custodian from whose custody such child was removed; and

(3) The Indian child's Tribe.

(b) Upon a showing that an action for foster-care placement or termination of parental rights violated any provision of 25 U.S.C. 1911, 1912, or 1913, the court must determine whether it is appropriate to invalidate the action.

(c) To petition for invalidation, there is no requirement that the petitioner's rights under ICWA were violated; rather, a petitioner may challenge the action based on any violations of 25 U.S.C. 1911, 1912, or 1913 during the course of the child-custody proceeding.

##### **§ 23.138 What are the rights to information about adoptees' Tribal affiliations?**

Upon application by an Indian who has reached age 18 who was the subject of an adoptive placement, the court that entered the final decree of adoption must inform such individual of the Tribal affiliations, if any, of the individual's biological parents and provide such other information necessary to protect any rights, which may include Tribal membership, resulting from the individual's Tribal relationship.

##### **§ 23.139 Must notice be given of a change in an adopted Indian child's status?**

(a) If an Indian child has been adopted, the court must notify, by registered or certified mail with return receipt requested, the child's biological parent or prior Indian custodian and the Indian child's Tribe whenever:

(1) A final decree of adoption of the Indian child has been vacated or set aside; or

(2) The adoptive parent has voluntarily consented to the termination of his or her parental rights to the child.

(b) The notice must state the current name, and any former name, of the Indian child, inform the recipient of the right to petition for return of custody of the child, and provide sufficient information to allow the recipient to participate in any scheduled hearings.

(c) A parent or Indian custodian may waive his or her right to such notice by executing a written waiver of notice and filing the waiver with the court.

(1) Prior to accepting the waiver, the court must explain the consequences of

the waiver and explain how the waiver may be revoked.

(2) The court must certify that the terms and consequences of the waiver and how the waiver may be revoked were explained in detail in English (or the language of the parent or Indian custodian, if English is not the primary language), and were fully understood by the parent or Indian custodian.

(3) Where confidentiality is requested or indicated, execution of the waiver need not be made in a session of court open to the public but still must be made before a court of competent jurisdiction in compliance with this section.

(4) The biological parent or Indian custodian may revoke the waiver at any time by filing with the court a written notice of revocation.

(5) A revocation of the right to receive notice does not affect any child-custody proceeding that was completed before the filing of the notice of revocation.

#### Recordkeeping

##### **§ 23.140 What information must States furnish to the Bureau of Indian Affairs?**

(a) Any State court entering a final adoption decree or order in any voluntary or involuntary Indian-child adoptive placement must furnish a copy of the decree or order within 30 days to the Bureau of Indian Affairs, Chief, Division of Human Services, 1849 C Street NW., Mail Stop 4513 MIB, Washington, DC 20240, along with the following information, in an envelope marked "Confidential":

(1) Birth name and birthdate of the Indian child, and Tribal affiliation and name of the Indian child after adoption;

(2) Names and addresses of the biological parents;

(3) Names and addresses of the adoptive parents;

(4) Name and contact information for any agency having files or information relating to the adoption;

(5) Any affidavit signed by the biological parent or parents asking that their identity remain confidential; and

(6) Any information relating to Tribal membership or eligibility for Tribal membership of the adopted child.

(b) If a State agency has been designated as the repository for all State-court adoption information and is fulfilling the duties described in paragraph (a) of this section, the State courts in that State need not fulfill those same duties.

##### **§ 23.141 What records must the State maintain?**

(a) The State must maintain a record of every voluntary or involuntary foster-care, preadoptive, and adoptive

placement of an Indian child and make the record available within 14 days of a request by an Indian child's Tribe or the Secretary.

(b) The record must contain, at a minimum, the petition or complaint, all substantive orders entered in the child-custody proceeding, the complete record of the placement determination (including, but not limited to, the findings in the court record and the social worker's statement), and, if the placement departs from the placement preferences, detailed documentation of the efforts to comply with the placement preferences.

(c) A State agency or agencies may be designated to be the repository for this information. The State court or agency should notify the BIA whether these records are maintained within the court system or by a State agency.

**§ 23.142 How does the Paperwork Reduction Act affect this subpart?**

The collections of information contained in this part have been approved by the Office of Management

and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076-0186. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless the form or regulation requesting the information displays a currently valid OMB Control Number. Send comments regarding this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer—Indian Affairs, 1849 C Street NW., Washington, DC 20240.

**Effective Date**

**§ 23.143 How does this subpart apply to pending proceedings?**

None of the provisions of this subpart affects a proceeding under State law for foster-care placement, termination of parental rights, preadoptive placement, or adoptive placement that was initiated prior to December 12, 2016, but the provisions of this subpart apply to any subsequent proceeding in the same

matter or subsequent proceedings affecting the custody or placement of the same child.

**Severability**

**§ 23.144 What happens if some portion of this part is held to be invalid by a court of competent jurisdiction?**

If any portion of this part is determined to be invalid by a court of competent jurisdiction, the other portions of the part remain in effect. For example, the Department has considered separately whether the provisions of this part apply to involuntary and voluntary proceedings; thus, if a particular provision is held to be invalid as to one type of proceeding, it is the Department's intent that it remains valid as to the other type of proceeding.

Dated: June 6, 2016.

**Lawrence S. Roberts,**

*Acting Assistant Secretary—Indian Affairs.*

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## **New Federal ICWA Regulations – topics for California**

### **EMERGENCY REMOVALS**

ICWA has always had special considerations with respect to emergency removals. 25 USC 1922 states:

Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

This was reflected in California law in WIC 305.5 (f):

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

Very little further guidance was given on when this emergency authority could be used, whether there were any limits on it and how it relates to the other protections and requirements of ICWA and the normal progression of a case through the California dependency system.

In practice, it was assumed that if there was sufficient basis to detain a child from the parent, this qualified as an “emergency” under ICWA. The normal assumption and practice was that because a child’s Indian status is normally unclear at detention, ICWA requirements other than inquiry and notice did not apply. Generally in California the practice is not to apply most substantive ICWA requirements (qualified expert witness testimony; active efforts finding; placement preferences, etc) until disposition which can often be 60 days or more after a child is detained.

The new BIA regulations address emergency proceedings in a number of ways that both limit the use of this power and clarify requirements when the emergency removal authority is used.

A definition of “emergency proceeding” has been added to section 23.2 as follows:

*Emergency proceeding* means and includes any court action that involves an emergency removal or emergency placement of an Indian child.

New regulation 23.113 sets the following standards and requirements for emergency removals:

**§ 23.113 What are the standards for emergency proceedings involving an Indian child?**

(a) Any emergency removal or placement of an Indian child under State law must terminate immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(b) The State court must:

(1) Make a finding on the record that the emergency removal or placement is necessary to prevent imminent physical damage or harm to the child;

(2) Promptly hold a hearing on whether the emergency removal or placement continues to be necessary whenever new information indicates that the emergency situation has ended; and

(3) At any court hearing during the emergency proceeding, determine whether the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(4) Immediately terminate (or ensure that the agency immediately terminates) the emergency proceeding once the court or agency possesses sufficient evidence to determine that the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(c) An emergency proceeding can be terminated by one or more of the following actions:

(1) Initiation of a child-custody proceeding subject to the provisions of ICWA;

(2) Transfer of the child to the jurisdiction of the appropriate Indian Tribe; or

(3) Restoring the child to the parent or Indian custodian.

(d) A petition for a court order authorizing the emergency removal or continued emergency placement, or its accompanying documents, should contain 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 such imminent physical damage or harm to the child. The petition or its accompanying documents should also contain the following information:

(1) The name, age, and last known address of the Indian child;

(2) The name and address of the child’s parents and Indian custodians, if any;

- (3) The steps taken to provide notice to the child's parents, custodians, and Tribe about the emergency proceeding;
  - (4) 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 BIA Regional Director (see *www.bia.gov*);
  - (5) The residence and the domicile of the Indian child;
  - (6) 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;
  - (7) The Tribal affiliation of the child and of the parents or Indian custodians;
  - (8) A specific and detailed account of the circumstances that led the agency responsible for the emergency removal of the child to take that action;
  - (9) If the child is believed to reside or be domiciled on a reservation where the Tribe exercises exclusive jurisdiction over child-custody matters, a statement of efforts that have been made and are being made to contact the Tribe and transfer the child to the Tribe's jurisdiction; and
  - (10) 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.
- (e) An emergency proceeding regarding an Indian child should not be continued for more than 30 days unless the court makes the following determinations:
- (1) Restoring the child to the parent or Indian custodian would subject the child to imminent physical damage or harm;
  - (2) The court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian Tribe; and
  - (3) It has not been possible to initiate a "child-custody proceeding" as defined in § 23.2

ICWA inquiry must be done in all cases at an early stage, and in all cases at least prior to the filing of the petition. If that inquiry reveals reason to know that the child may be an Indian child, any removal must either:

- 1) Meet the new evidentiary and procedural requirements of regulation 23.113; or
- 2) Comply with ICWA requirements including those that require a finding of active efforts and the testimony of a Qualified Expert Witness BEFORE removal and placement in temporary foster care.

## New Federal ICWA Regulations – topics for California

### PROCEEDING

ICWA applies to “child custody proceeding[s]” which are defined as (25 USC 1903(1)):

- (i) “foster care placement” which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
- (ii) “termination of parental rights” which shall mean any action resulting in the termination of the parent-child relationship;
- (iii) “preadoptive placement” which shall mean 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; and (iv) “adoptive placement” which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

In California, mapping the term “proceeding” onto a child welfare case has posed questions of interpretation. Typically, a petition initiates a proceeding and procedurally, the case advances from initial hearing through permanency, culminating in reunification, or if the parents fail to reunify, then an alternative permanent plan. Is this whole case one “proceeding” from an ICWA standpoint? If not, where is the line between each “proceeding” for ICWA purposes? Is each hearing within the case a “proceeding”?

SB 678 did not entirely resolve the issue. Instead it provided that some ICWA requirements (such as WIC 224.2 governing noticing) applied at each “hearing” within a case, and implicitly suggested that some rights (such as WIC 305.5 governing transfer to tribal court) were continuous throughout the entire case. Section 305.5 (c)(2)(B) provides with respect to what will constitute good cause not to transfer to tribal court that:

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

The new regulations contain definitions which clarify the distinction between “proceeding” and “hearing”.

Regulation 23.2 defines “hearing” as “...a judicial session held for the purpose of deciding issues of fact, of law, or both.” The definition of “child custody proceeding” recites the four types of proceedings contained in the act itself, but then goes on to state:

- (2) An action that may culminate in one of these four outcomes is considered a separate child-custody proceeding from an action that may culminate in a different one of these four

outcomes. There may be several child-custody proceedings involving any given Indian child. Within each child-custody proceeding, there may be several hearings...

Under the new regulations, there can be multiple “proceedings” within one child welfare case. The challenge in California is determining the dividing line between these “proceedings”. At what point do we move between a “foster care placement” proceeding and to a “termination of parental rights” proceeding or a “preadoptive placement” or “adoptive placement” proceeding?

In practice, California treats the dividing line between a “foster care placement and “termination of parental rights” proceeding as the hearing at which reunification services are terminated and a 366.26 hearing is set. This is the hearing at which courts typically require qualified expert witness testimony to be presented (in addition to requiring it at the dispositional hearing).

The interplay between the interpretation of proceeding and ICWA requirements are discussed by topic in separate sheets, such as Transfer to Tribal Court and Placement Preferences).

DRAFT

## New Federal ICWA Regulations – topics for California

### VOLUNTARY vs. INVOLUNTARY

ICWA has always made a distinction between “voluntary” and “involuntary” proceedings, but the line between what is voluntary and what is involuntary has not always been clear.

In defining what is considered a “foster care placement” for ICWA purposes 25 USC 1903 (1)(i) states that it applies to any foster care placement “...where the parent or Indian custodian cannot have the child returned upon demand...” 25 USC 1912 requires notice in “...any involuntary proceeding in a State court...”

25 USC 1913 sets out requirements for obtaining valid consent to either the foster care placement or termination of parental rights regarding an Indian child, in particular stipulating that for a foster care placement to be considered voluntary the parent or Indian custodian must be entitled to withdraw that consent at any time and have the child returned.

WIC 224.1 makes a similar distinction in terms of applying ICWA requirements and provides that “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.

What this means in practice in California cases is not entirely clear and there is anecdotal evidence that at least in some courts and counties the practice was not to apply ICWA requirements and protections in child welfare or probate guardianship cases where parents had been persuaded in some way to consent, but in practice the parents could not have the child returned simply by making a request to have the child returned. In child welfare or probate guardianship cases, it is reported that if parents asked to have the children returned, their request was often denied and the proceeding was converted from a voluntary to an involuntary proceeding.<sup>1</sup>

The new regulations contain a number of provisions designed to clarify what is voluntary and what is involuntary and ensure that ICWA protections and requirements apply to all proceedings which are not truly voluntary.

The definitions found in 25 CFR 23.2 contain the following:

*Involuntary proceeding* means a child-custody proceeding in which the parent does not consent of his or her free will to the foster-care, preadoptive, or adoptive placement or termination of parental rights or 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.

*Upon demand* means that the parent or Indian custodian can regain custody simply upon verbal request, without any formalities or contingencies.

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<sup>1</sup> See Preliminary Final-California ICWA Compliance Task Force Report to the Bureau of Children’s Justice, 2016 at page 20-23. Available at <https://turtletalk.files.wordpress.com/2016/06/prelim-final-ca-icwa-tf-report-6-10-2016.pdf>

*Voluntary proceeding* means a child custody proceeding that is not an involuntary proceeding, such as a proceeding for foster-care, preadoptive, or adoptive placement that either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a State agency, consented to for the Indian child, or a proceeding for voluntary termination of parental rights.

These provisions then limit the ability of a child welfare agency to tell a family that someone needs to go get a guardianship or the child will be removed or otherwise pressure parents to surrender custody of a child without full ICWA compliance.

DRAFT

## **New Federal ICWA Regulations – topics for California**

### **PLACEMENT PREFERENCES**

ICWA (25 U.S.C. 1915) sets out preferences for the placement of Indian children both for adoptive placement and for foster care or pre-adoptive placement as follows:

#### **§ 1915. Placement of Indian children**

##### **(a) Adoptive placements; preferences**

In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

##### **(b) Foster care or preadoptive placements; criteria; preferences**

Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with—

- (i) a member of the Indian child's extended family;
- (ii) a foster home licensed, approved, or specified by the Indian child's tribe;
- (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority;  
or
- (iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

##### **(c) Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences**

In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: Provided, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

##### **(d) Social and cultural standards applicable**

The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or



extended family resides or with which the parent or extended family members maintain social and cultural ties.

These requirements were more or less incorporated directly into California law by SB 678 which added section 361.31 to the WIC as follows:

**§ 361.31. Placement of children with Indian ancestry; considerations; priority of placement in adoptions; record of foster care**

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

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

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

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

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

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

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

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

(2) Other members of the child's 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 tribe, the court or agency effecting the placement shall follow the order of preference established by the tribe, so long as the placement is the least restrictive setting appropriate to the particular needs of the child as provided in subdivision (b).

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

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

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

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

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

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

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

Although the WIC provision appears to be consistent with the requirements of ICWA, a number of challenges have arisen in putting the placement preferences into practice in California. Often when children are first detained, their Indian status and tribal affiliation, if any, is not known, and as a result it is not possible to ensure that the child's initial placement complies with the ICWA placement preferences. Many of these issues could be avoided if child welfare agencies did early ICWA inquiry and outreach to tribes at first contact with a family. In addition in most areas of California there are few native foster homes available and even fewer that will meet the preferences for a specific tribe.

In addition, many Indian children and families in California are affiliated with out of state tribes. In most cases, these tribes will not want to interfere or hinder a parent's opportunity to reunify with a child and may, therefore, agree to a temporary foster care placement outside of the placement preferences while parents are seeking to reunify, but may still want to ensure that if parents do not reunify, any permanent placement is consistent with the ICWA placement preferences. This may mean the tribe wants a change in the child's placement at the stage the case moves to permanency planning. (The tribe may also seek a transfer to tribal court at this stage for the same reasons. The issues around that are discussed in the topic sheet concerning transfers to tribal court..)

This desire to see the child placed permanently in an Indian home can sometimes conflict with child welfare's desire that the child remain in a stable placement if the child has been doing well and is perceived to be bonded and attached to the "temporary" caregivers. If the "temporary" caregivers want to adopt, there can be a conflict between the goals of stability for the child and the goals of ICWA that Indian child maintain their tribal connections and be permanently placed in Indian homes.

The new BIA Regulations do offer some guidance in this area:

**§ 23.129 When do the placement preferences apply?**

- (a) In any preadoptive, adoptive, or foster-care placement of an Indian child, the placement preferences specified in § 23.130 and § 23.131 apply.
- (b) Where a consenting parent requests anonymity in a voluntary proceeding, the court must give weight to the request in applying the preferences.
- (c) The placement preferences must be applied in any foster-care, preadoptive, or adoptive placement unless there is a determination on the record that good cause under § 23.132 exists to not apply those placement preferences.

**§ 23.130 What placement preferences apply in adoptive placements?**

- (a) In any adoptive placement of an Indian child under State law, where the Indian child's Tribe has not established a different order of preference under paragraph (b) of this section, preference must be given in descending order, as listed below, to placement of the child with:
  - (1) A member of the Indian child's extended family;
  - (2) Other members of the Indian child's Tribe; or
  - (3) Other Indian families.
- (b) If the Indian child's Tribe has established by resolution a different order of preference than that specified in ICWA, the Tribe's placement preferences apply.
- (c) The court must, where appropriate, also consider the placement preference of the Indian child or Indian child's parent.

**§ 23.131 What placement preferences apply in foster-care or preadoptive placements?**

- (a) In any foster-care or preadoptive placement of an Indian child under State law, including changes in foster-care or preadoptive placements, the child must be placed in the least restrictive setting that:
  - (1) Most approximates a family, taking into consideration sibling attachment;
  - (2) Allows the Indian child's special needs (if any) to be met; and
  - (3) Is in reasonable proximity to the Indian child's home, extended family, or siblings.
- (b) In any foster-care or preadoptive placement of an Indian child under State law, where the Indian child's Tribe has not established a different order of preference under paragraph (c) of

this section, preference must be given, in descending order as listed below, to placement of the child with:

- (1) A member of the Indian child's extended family;
  - (2) A foster home that is licensed, approved, or specified by the Indian child's Tribe;
  - (3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority;  
or
  - (4) An institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the child's needs.
- (c) If the Indian child's Tribe has established by resolution a different order of preference than that specified in ICWA, the Tribe's placement preferences apply, so long as the placement is the least-restrictive setting appropriate to the particular needs of the Indian child, as provided in paragraph (a) of this section.
- (d) The court must, where appropriate, also consider the preference of the Indian child or the Indian child's parent.

**§ 23.132 How is a determination of "good cause" to depart from the placement preferences made?**

- (a) If any party asserts that good cause not to follow the placement preferences exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the child-custody proceeding and the court.
- (b) The party seeking departure from the placement preferences should bear the burden of proving by clear and convincing evidence that there is "good cause" to depart from the placement preferences.
- (c) A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and should 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, such as 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 to find suitable placements meeting the preference criteria, but none has

been located. For purposes of this analysis, the standards for determining whether a placement is unavailable must 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.

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

(e) A placement may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA

The main change that the new Regulations represent for California, is the restrictions on what can be considered "good cause" for the purposes of deviating from the placement preferences set out in 23.123 subsections (d) and (e).

In addition, however, the issue of application of placement preferences must be looked at in relation to the definition of "proceeding" and "hearing" found in section 23.2. Regulation 23.2 defines "hearing" as "...a judicial session held for the purpose of deciding issues of fact, of law, or both." The definition of "child custody proceeding" recites the four types of proceeding contained in the act itself, but then goes on to state:

(2) An action that may culminate in one of these four outcomes is considered a separate child-custody proceeding from an action that may culminate in a different one of these four outcomes. There may be several child-custody proceedings involving any given Indian child. Within each child-custody proceeding, there may be several hearings...

So clearly for ICWA purposes there can be multiple "proceedings" within one child welfare case. The challenge in California is determining the dividing line between these "proceedings". At what point do we move between a "foster care placement" proceeding and move to a "termination of parental rights" proceeding or a "preadoptive placement" or "adoptive placement" proceeding?

What this seems to mean is that the "placement preference" analysis must begin afresh when the posture of a case changes and we are looking at an "adoptive placement" instead of a "foster care placement". In fact, this view of the placement preference analysis having to be made separately at the different stages of the case is consistent with the Second District Court of Appeal's holding in the first *In re Alexandria P.* (228 Cal.App. 4<sup>th</sup> 1322 (2014)) case. There, the tribe had agreed to a foster care placement with a non-Indian family while the Indian father attempted to reunify with his daughter. However, the tribe advised the court and parties that should reunification fail, they wanted the child placed permanently with a family the tribe had identified.

When reunification efforts failed, the tribe with the support of the child welfare agency and the child's attorney, sought to transfer placement to the family that the tribe had identified. The defacto parents fought the transfer and argued *inter alia* that the tribe had forfeited the right to argue for application of the placement preferences at the adoptive placement phase of the case by having consented to the non-ICWA compliant foster care placement:

...we are not persuaded that Congress or the California Legislature intended to require tribes to make an election at the time of foster care placement that would prevent a change in placement for adoption, especially when the foster family is informed that they are not being considered as an adoptive placement because of the ICWA's requirements. [Section 1903\(1\)](#) provides separate definitions for “foster care placement” and “adoptive placement.” The ICWA's placement preferences are distinct for each type of placement, and different considerations apply for foster care and adoptive placements. (See §§ 1915(a) [adoptive placement preferences], 1915(b) [foster care placement preferences].) The P.s and amici curiae argue that once an Indian child is placed in foster care under section 1915(b), the only way for a court to consider adoptive placement preferences under section 1915(a) is if the child is “removed” from the foster placement under section 1916(b).

This argument is unsupported by case law and, in fact, runs counter to the many published cases where a tribe or Indian parent initially consents to foster care placement that does not comply with the ICWA's placement preferences, and later asserts adoptive placement preferences, usually after reunification efforts have failed. (See, e.g., [Santos Y., supra, 92 Cal.App.4th 1274, 112 Cal.Rptr.2d 692](#) [tribe supported placement with foster parents for two years, until it found a suitable individual qualified as a preferred adoptive placement]; [Native Village of Tununak v. State, Dept. of Health & Social Services, Office of Children's Services\(Alaska 2013\) 303 P.3d 431, 434 \(Tununak\)](#) [parties stipulated to a foster placement that departed from the ICWA's placement preferences while a search for preferred placements continued].) (pp 1346-1347)

So, it seems clear now as a result of the new Regulations and the *Alexandria P.* case, that the placement preference analysis must be done independently at the adoptive placement phase of the case.

## **New Federal ICWA Regulations – topics for California**

### **QUALIFIED EXPERT WITNESS**

The final regulations discuss Qualified Expert Witness (QEW) in several places.

Consistent with ICWA itself, regulation 23.121 discusses QEW as part of the court's evidentiary requirements as follows:

#### **§ 23.121 What are the applicable standards of evidence?**

(a) The court must not order a fostercare placement of an Indian child unless clear and convincing evidence is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(b) The court must not order a termination of parental rights for an Indian child unless evidence beyond a reasonable doubt is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

The regulations then go on to give some guidance on who can serve as a QEW as follows:

#### **§ 23.122 Who may serve as a qualified expert witness?**

(a) A qualified expert witness must be qualified to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's Tribe. A person may be 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.

(b) The court or any party may request the assistance of the Indian child's Tribe or the BIA office serving the Indian child's Tribe in locating persons qualified to serve as expert witnesses.

(c) The social worker regularly assigned to the Indian child may not serve as a qualified expert witness in child-custody proceedings concerning the child.

The regulations are not inconsistent with the requirements of California law, but they are different in some respects. Further, the new regulations fail to address some of the matters which have caused continuing disagreement within California concerning the requirements of QEW testimony.

WIC 224.6 was based upon the 1979 ICWA Guidelines and states:

#### **§ 224.6. Testimony of qualified expert witnesses; qualifications; participation at hearings; written reports and recommendations**

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

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

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

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

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

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

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

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

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

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

CRC 5.484 (a)(1) and 5.485 (a)(2) incorporate the requirements of WIC 224.6

### **Issues**

Notable differences in the requirements include that the new regulations do not contain the list of the kinds of individuals and qualifications that the court would be looking for in a qualified expert witness. The regulations only prohibit the social worker normally assigned the case from serving as the QEW, not any employee of the agency, and the regulations do not contain the limitation on acceptance of affidavit evidence in lieu of live testimony.

Arguably all of these differences between the California law and regulations set a “higher standard” of protection in state law and are consistent.



Disappointingly the new regulations do not give additional guidance on a number of issues that have arisen in California including:

- Whose witness is the QEW? Is the QEW a “partisan” witness for the party seeking the foster care or termination of parental rights or is the QEW intended to be more of an impartial advisor to the court?
- What sort of investigation should we expect from the QEW? Is it sufficient for a QEW to simply read the social worker’s court reports or should the QEW do independent investigation on the case, meet with parents and other parties, talk to the tribe and draw their own conclusions?
- At what point in the case is the QEW testimony required? ICWA says that it is required before a foster care placement and before termination of parental rights. In California this has been interpreted to mean at disposition and at the 366.21(f) hearing at which reunification services are terminated. Is this correct? The new regulations suggest that QEW testimony may be required at detention unless there are emergency circumstances which justify dispensing with such testimony.
- Do or should the requirements of the Code of Civil Procedure governing expert witnesses (CCP 2034.210-2034.310) which require providing reports in advance apply to these cases?

## New Federal ICWA Regulations – topics for California

### TRANSFER TO TRIBAL COURT

The new Regulations address transfers to tribal court as follows:

#### § 23.115 How are petitions for transfer of a proceeding made?

(a) Either parent, the Indian custodian, or the Indian child's Tribe may request, at any time, orally on the record or in writing, that the State court transfer a foster-care or termination-of-parental-rights proceeding to the jurisdiction of the child's Tribe.

(b) The right to request a transfer is available at any stage in each foster-care or termination-of-parental-rights proceeding.

#### § 23.116 What happens after a petition for transfer is made?

Upon receipt of a transfer petition, the State court must ensure that the Tribal court is promptly notified in writing of the transfer petition. This notification may request a timely response regarding whether the Tribal court wishes to decline the transfer.

#### § 23.117 What are the criteria for ruling on transfer petitions?

Upon receipt of a transfer petition from an Indian child's parent, Indian custodian, or Tribe, the State court must transfer the child-custody proceeding unless the court determines that transfer is not appropriate because one or more of the following criteria are met:

- (a) Either parent objects to such transfer;
- (b) The Tribal court declines the transfer; or
- (c) Good cause exists for denying the transfer.

#### § 23.118 How is a determination of "good cause" to deny transfer made?

(a) If the State court believes, or any party asserts, that good cause to deny transfer exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing on the record and to the parties to the child custody proceeding.

(b) Any party to the child-custody proceeding must have the opportunity to provide the court with views regarding whether good cause to deny transfer exists.

(c) In determining whether good cause exists, the court must not consider:

(1) Whether the foster-care or termination-of-parental-rights proceeding is at an advanced stage if the Indian child's parent, Indian custodian, or Tribe did not receive notice of the child-custody proceeding until an advanced stage;

(2) Whether there have been prior proceedings involving the child for which no petition to transfer was filed;

(3) Whether transfer could affect the placement of the child;

(4) The Indian child's cultural connections with the Tribe or its reservation; or

(5) Socioeconomic conditions or any negative perception of Tribal or BIA social services or judicial systems.

(d) The basis for any State-court decision to deny transfer should be stated orally on the record or in a written order.

**§ 23.119 What happens after a petition for transfer is granted?**

(a) If the Tribal court accepts the transfer, the State court should expeditiously provide the Tribal court with all records related to the proceeding, including, but not limited to, the pleadings and any court record.

(b) The State court should work with the Tribal court to ensure that the transfer of the custody of the Indian child and of the proceeding is accomplished smoothly and in a way that minimizes the disruption of services to the family.

WIC 305.5 (c) is the primary provision of California law governing transfers to tribal court. It states:

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

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

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

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

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

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

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

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

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

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

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

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

One of the clearest inconsistencies between the new federal regulations and existing California law here is the consideration of the stage of the “proceeding”. California law (WIC 305.5(c)(2)(B) specifically authorizes the court to look at whether the proceeding is at an advanced state in making the determination of whether or not there is good cause to transfer.

The new federal regulations, in contrast, specifically reiterates that the “foster care placement” and “termination of parental rights” stages of the case are separate “proceedings” for ICWA purposes and the right to seek a transfer to tribal court attaches afresh with each “proceeding”. The court may not consider whether there was a prior proceeding involving the child in which no transfer the tribal court was filed. In essence this means that the court may not consider, as part of its “good cause” analysis the fact that no parties sought transfer to tribal court during the “foster care placement” (ie. reunification) stage of a case once the case moves to the “termination of parental rights” (ie. permanency) stage of a case. Nor may the court consider whether the transfer might result in a change in the child’s placement.

## New Federal ICWA Regulations – topics for California

### ACTIVE EFFORTS

California has gone back and forth on whether “active efforts” require something more or different than “reasonable efforts”.

In SB 678 the legislature addressed this in WIC 361.7 (b):

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

This seems to make a clear distinction between “active efforts” and what is required in other cases and at a minimum require that services be culturally relevant and utilize tribal resources.

Notwithstanding SB 678 some California case law has continued to hold that there is no significant difference between “active efforts” and “reasonable services”. (*C.F. v. Superior Court* (2014), 230 Cal. App. 4<sup>th</sup> 227 at 238).

New Regulations again address “active efforts” and appear to affirm that they require something different (if not explicitly more than) the reasonable efforts required in non-ICWA cases.

Definitions in 25 CFR § 23.2 include the following definition of “Active Efforts”:

*Active Efforts* means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. Where an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent or 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 should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child’s Tribe and should be conducted in partnership with the Indian child and the Indian child’s parents, extended family members, Indian custodians, and Tribe.

Active efforts are to be tailored to the facts and circumstances of the case and may include, for example:

- (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 and helping the parents to overcome barriers, including actively assisting the parents in obtaining such 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 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, transportation, mental health, substance abuse, 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 post-reunification services and monitoring.

Chart Summarizing California Implementation requirements for new BIA ICWA Regulations

Prepared by Ann Gilmour

Regulation	Subject area(s)	Equivalent California law	Nature of difference	Implementation Recommendation
<p>23.2 – Definitions. <i>Active Efforts</i> means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. Where an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent or 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 should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child’s Tribe and should be conducted in partnership with the Indian child and the Indian child’s parents, extended family members, Indian custodians, and Tribe.</p> <p>Active efforts are to be tailored to the facts and circumstances of the case and may include, for example:</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(2) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;</li> <li>(3) Identifying, notifying, and inviting representatives of the Indian child’s Tribe to</li> </ul>	<p>Active Efforts</p>	<p>WIC 361.7 (b)                      (b) What constitutes active efforts shall be assessed on a case-by-case basis. The active efforts shall be made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child’s tribe. Active efforts shall utilize the available resources of the Indian child’s extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.</p>	<p>New definition in 23.2 clarifies the level of effort that an agency must make to meet active efforts requirement and sets out a list of 11 examples of active efforts that are not included in the California definition, although they are not inconsistent with the California definition.</p> <p><b>Other issues re active efforts:</b>                      The definition of “active efforts” was included in WIC 361.7(b) in 2006 as part of Senate Bill 678 (Ducheny; Stats. 2006, ch. 838). Notwithstanding this, some California case law has continued to hold that there is no significant difference between “active efforts” and “reasonable services”. (<i>C.F. v. Superior Court</i> (2014), 230 Cal. App. 4<sup>th</sup> 227 at 238). This takes no account of the requirement in WIC 361.7(b) that active efforts take into account the prevailing social and cultural values or make use of available resources of the Indian child’s extended family, tribe and other service providers.</p>	<p>Consider a statutory revision to more closely match definition in regulations.</p> <p>Consider statutory revision to clarify that active efforts are distinct from reasonable services.</p>

<p>participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues;</p> <p>(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 to provide family structure and support for the Indian child and the Indian child's parents;</p> <p>(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;</p> <p>(6) Taking steps to keep siblings together whenever possible;</p> <p>(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;</p> <p>(8) Identifying community resources including housing, financial, transportation, mental health, substance abuse, 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;</p> <p>(9) Monitoring progress and participation in services;</p> <p>(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;</p>				
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<p>(11) Providing post-reunification services and monitoring.</p>				
<p>23.2 – Definitions  <i>Child Custody Proceeding</i>  (1) “Child custody proceeding” means and includes any action, other than an emergency proceeding, that may culminate in one of the following outcomes:  (i) Foster-care placement, which is any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;  (ii) Termination of parental rights, which is any action resulting in the termination of the parent-child relationship;  (iii) Preadoptive placement, which is 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; or  (iv) Adoptive placement, which is the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.  (2) An action that may culminate in one of these four outcomes is considered a separate child-custody proceeding from an action that may culminate in a different one of these four outcomes. There may be several child-custody proceedings involving any given Indian child. Within each child-custody proceeding, there may be several hearings. If a child is placed in</p>	<p>Application / Notice</p>	<p>WIC 224.1(d) - (d) “Indian child custody proceeding” means a “child custody proceeding” within the meaning of Section 1903 of the Indian Child Welfare Act, including a proceeding for temporary or long-term foster care or guardianship placement, termination of parental rights, preadoptive placement after termination of parental rights, or adoptive placement. “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.</p>	<p>The new regulation clarifies that there may be multiple “proceedings” for ICWA purposes within a single action. So the stage which may culminate in a “foster-care placement” is considered a separate “proceeding” from the stage which may culminate in “termination of parental rights”. There may be several hearings within each of these separate “proceedings”.</p> <p>This new provision is significant for ICWA notice purposes because under new regulations formal ICWA notice would only be required for each separate “proceeding”. California law currently requires formal ICWA notice for each “hearing”.</p>	<p>Consider whether to revise California statutes to require formal ICWA notice only once per “proceeding” rather than for every hearing.</p>

foster care or another out-of-home placement as a result of a status offense, that status offense proceeding is a child custody proceeding.				
<p>23.2 Definitions</p> <p><i>Continued Custody</i> means physical custody of 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 point in the past. The biological mother of a child has had custody of a child.</p>	Application	There is no equivalent California provision.	This is a new definition, likely to clarify parents' rights to claim ICWA protections following the Supreme Court's decision in <i>Adoptive Couple v. Baby Girl</i> (2013) 133 S. Ct. 2552 which held that the heightened evidentiary standards in 25 U.S.C. 1912(f); the active efforts requirement in 25 U.S.C. 1912(d) and the adoption placement preferences found in 25 U.S.C. 1915(a) did not apply when a parent has never had prior legal or physical custody of a child and where no party within the placement preferences had sought to adopt the child.	Consider a statutory revision to include definition of "continued custody".
<p>23.2 Definitions</p> <p><i>Custody</i> means physical custody or legal custody or both, under any applicable Tribal law or Tribal custom or State law. A party may demonstrate the existence of custody by looking to Tribal law or Tribal custom or State law.</p>	Application	There is no equivalent California provision.	Again it is likely that this new definition is in response to the U.S. Supreme Court decision in <i>Adoptive Couple v. Baby Girl</i> and seeks to clarify that a parent's right to custody may be defined in relation to tribal law and not only in relation to state law.	
<p>23.2 Definitions</p> <p><i>Domicile</i> means:</p> <p>(1) For a parent or Indian custodian, the place at which a person has been physically present and that the person regards as home; a person's true, fixed, principal, and permanent home, to which</p>	Jurisdiction	<p>WIC 305.5</p> <p>(d) An Indian child's domicile or place of residence is determined by that of the parent, guardian, or Indian custodian with whom the child maintained his or her primary place of</p>	The definition is slightly different.	Consider amending definition to conform to new regulation

<p>that person intends to return and remain indefinitely even though the person may be currently residing elsewhere.</p> <p>(2) For an Indian child, the domicile of the Indian child’s parents or Indian custodian or guardian. In the case of an Indian child whose parents are not married to each other, the domicile of the Indian child’s custodial parent.</p>		<p>abode at the time the Indian child custody proceedings were initiated.</p>		
<p>23.2 Definitions</p> <p><i>Emergency proceeding</i> means and includes any court action that involves an emergency removal or emergency placement of an Indian child.</p>	<p>Emergency Removal</p>	<p>California law does not contain a definition of “emergency proceeding”</p>	<p>The new regulations contain more details regarding use of emergency removal authority provided by ICWA. The regulations limit the scope of the use of the emergency removal authority and also limit the time that such a removal can last without an ICWA compliant hearing.</p>	<p>Consider revisions to California statutes to clarify use of emergency removal authority in ICWA cases to conform to the requirements of the new regulations.</p>
<p>23.2 Definitions</p> <p><i>Extended family member</i> is defined by the law or custom of the Indian child’s Tribe or, in the absence of such law or custom, is a person who has reached age 18 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.</p>	<p>Placement Preferences</p>	<p>WIC 224.1(c) states that the term “extended family member” shall be defined as provided in section 1903 of the Indian Child Welfare Act.</p>	<p>There is no conflict.</p>	<p>No revisions necessary</p>
<p>23.2 Definitions</p> <p><i>Hearing</i> means a judicial session held for the purpose of deciding issues of fact, of law, or both.</p>	<p>Notice</p>	<p>California law has no equivalent definition for ICWA purposes.</p>	<p>California law currently treats each hearing within an Indian Child Custody action as a “proceeding”, requiring formal ICWA Notice for each hearing.</p>	<p>Consider whether California law should be revised to require formal ICWA notice only for each proceeding rather than for each hearing.</p>
<p>23.2 Definitions</p> <p><i>Indian child</i> means any unmarried person who is under age 18 and either:</p> <p>(1) Is a member or citizen of an Indian tribe; or</p>	<p>Application</p>	<p>WIC 224.1 defines “Indian child” as defined in 25 U.S.C. 1903(4):</p>	<p>There is no conflict between existing California law and the new regulations. However the regulation clarifies that</p>	

(2) Is eligible for membership or citizenship in an Indian Tribe and is the biological child of a member/citizen of an Indian tribe.		“Indian child” means 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.	membership is equivalent to citizenship.	
23.2 Definitions <i>Indian child’s Tribe</i> means: 1) The Indian Tribe in which an Indian child is a member or eligible for membership; or 2) In the case of an Indian child who is a member of or eligible for membership in more than one Tribe, the Indian Tribe described in § 23.109.	Jurisdiction	California law does not contain a definition of the term “Indian child’s Tribe”.  However WIC 224.1 (e) sets out the procedure and factors that should be considered in determining which tribe to recognize if a child is a member or eligible for membership in more than one tribe. This corresponds to		
23.2 Definitions <i>Indian Custodian</i> means any Indian who has legal custody of an Indian child under applicable Tribal law or custom or under applicable State law, or to whom temporary physical care, custody, and control has been transferred by the parent of such child. An Indian may demonstrate that he or she is an Indian custodian by looking to Tribal law or Tribal custom or State law.	Indian Custodian	WIC 224.1 defines Indian Custodian” as it is defined in ICWA.  25 U.S.C.A. 1903(6) defines Indian custodian as “...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 has been transferred by the parent of such child.”	The new regulation specifies that the Indian custodianship may be demonstrated by looking to Tribal law or Tribal custom or to State law.	
23.2 Definitions <i>Indian foster home</i> means a foster home where one or more of the licensed or approved foster parents is an “Indian” as defined in 25 U.S.C. 1903(3).	Placement Preferences	There is no definition for Indian foster home in California law, although drawing upon ICWA at 25 USC 1915 (b)(iii), the term is used in WIC 361.31 (b)(3) regarding placement preferences.	Under current California law it would be possible for a home to be considered an “Indian foster home” if the home was licensed or approved by a tribe, without having one foster parent who is an Indian. This restricts the definition.	Consider adopting a definition of Indian foster home into California law.
23.2 Definitions <i>Involuntary proceeding</i> means a child-custody proceeding in which the parent does not consent of his or her free will to the foster-care, preadoptive, or adoptive placement	Application	There is no equivalent definition in California law.	It appears that the purpose of this definition is to clarify that the requirements of ICWA cannot be circumvented by an agency demanding that a parent agree to	Consider adding a definition to California law

or termination of parental rights or 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.			a “voluntary” placement under threat of the child being removed.	
23.2 Definitions <i>Parent</i> or <i>parents</i> means any biological parent or parents of an Indian child, or any Indian who has lawfully adopted an Indian child, including adoptions under Tribal law or custom. It does not include an unwed biological father where paternity has not been acknowledged or established.	Application	WIC 224.1 (c) incorporates the definition of “parent” found in section 1903 of ICWA.	The regulation adds “or parents” and the term “biological father” to the definition but is otherwise identical with the definition of “parent” found in 25 USC 1903 (g)	
23.2 Definitions <i>Reservation</i> means Indian country as defined in 18 U.S.C 1151 and any lands, not covered under that section, title to which is 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.	Jurisdiction	WIC 224.1 (a) adopts the definition of reservation found in 25 USC 1903, which is very similar, but not identical in wording to the definition in the regulations.	There is no real conflict, although there are some minor technical differences between the language in the statute itself and the new regulations.	
23.2 Definitions <i>Secretary</i> means the Secretary of the Interior or the Secretary’s authorized representative acting under delegated authority.	Misc.	California law has no definition of Secretary, but does reference the Secretary of the Interior.	There is no real conflict. The regulation adds to the definition in ICWA itself, by referencing an authorized representative acting under delegated authority.	
23.2 Definitions <i>Status offenses</i> mean offenses that would not be considered criminal if committed by an adult; they are acts prohibited only because of a person’s status as a minor ( <i>e.g.</i> , truancy, incorrigibility).	Application / delinquency	California law has no definition of “status offense”. However the California Supreme Court in <i>In re. W.B.</i> (2012) 55 Cal. 4 <sup>th</sup> 30 the court addressed application of ICWA to delinquency cases under federal and state law.	No inconsistency	
23.2 Definitions <i>Tribal court</i> means a court with jurisdiction over child-custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or	Jurisdiction	WIC 224.1 adopts the definition in 25 USC 1903 (12).	No inconsistency	

custom of an Indian Tribe, or any other administrative body of a Tribe vested with authority over child-custody proceedings.		This new definition in the regulations is (almost) verbatim the wording in 25 U.S.C. 1903 (12)		
23.2 Definitions <i>Upon demand</i> means that the parent or Indian custodian can regain custody simply upon verbal request, without any formalities or contingencies.	Voluntary proceedings	California law contains no definition of “upon demand” but does reference it in WIC 224.1 (d), and Probate Code 1459.5(a)(1).	There is no inconsistency with the law, but in practice I believe there is an inconsistency as applied in some cases. In that a guardianship or other placement which might have been understood by the parents to be voluntary, but the child is not in fact returned to them upon their request.	
23.2 Definitions <i>Voluntary proceeding</i> means a child custody proceeding that is not an involuntary proceeding, such as a proceeding for foster-care, preadoptive, or adoptive placement that either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a State agency, consented to for the Indian child, or a proceeding for voluntary termination of parental rights.	Application / Voluntary proceeding	California law contains no definition of “voluntary proceeding”.	There is no conflict in law, but there may be a conflict with accepted practice, that if parents can be persuaded by an agency to agree to family maintenance or guardianship or other placement then ICWA does not apply, even if the agreement might have been obtained after threats of removal.	Consider amendments to limit what is considered “voluntary”.
23.11 Notice (a) In any involuntary proceeding in a State court where the court knows or has reason to know that an Indian child is involved, and where the identity and location of the child’s parent or Indian custodian or Tribe is known, the party seeking the foster-care placement of, or termination of parental rights to, an Indian child must directly notify the parents, the Indian custodians, and the child’s Tribe by registered or certified mail with return receipt requested, of the pending child-custody proceedings and their right of intervention. Notice must include	Notice	<b>WIC § 224.2. Matters involving a child of Indian ancestry; notice to interested parties; time to notify; proof</b> (a) If the court, a social worker, or probation officer knows or has reason to know that an Indian child is involved, any notice sent in an Indian child custody proceeding under this code shall be sent to the minor's parents or legal guardian, Indian custodian, if any, and the minor's tribe and 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-	Regulation only requires notice in “involuntary proceeding”.  Wording and requirements are slightly different specifically new regulation states: “Where the identity and location of the child’s parent or Indian custodian or Tribe is known...” then notice must be sent.  California law may be seen as setting a higher standard. Notice	

<p>the requisite information identified in § 23.111, consistent with the confidentiality requirement in § 23.111(d)(6)(ix). Copies of these notices must be sent to the appropriate Regional Director listed in paragraphs (b)(1) through (12) of this section by registered or certified mail with return receipt requested or by personal delivery and must include the information required by § 23.111. (Designation of BIA regional offices for service by state omitted)</p>	<p>class mail is recommended, but not required. (2) Notice to the tribe shall be to the tribal chairperson, unless the tribe has designated another agent for service. (3) Notice shall be sent to all tribes of which the child may be a member or eligible for membership, until the court makes a determination as to which tribe is the child's tribe in accordance with subdivision (d) of Section 224.1, after which notice need only be sent to the tribe determined to be the Indian child's tribe. (4) Notice, to the extent required by federal law, shall be sent to the Secretary of the Interior's designated agent, the Sacramento Area Director, Bureau of Indian Affairs. If the identity or location of the parents, Indian custodians, or the minor's tribe is known, a copy of the notice shall also be sent directly to the Secretary of the Interior, unless the Secretary of the Interior has waived the notice in writing and the person responsible for giving notice under this section has filed proof of the waiver with the court. (5) In addition to the information specified in other sections of this article, notice shall include all of the following information: (A) The name, birthdate, and birthplace of the Indian child, if known. (B) The name of the Indian tribe in which the child is a member or may be eligible for membership, if known. (C) All names known of the Indian child's biological parents, grandparents, and greatgrandparents, or Indian custodians, including maiden, married and former names or aliases, as well as their current and former addresses, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information, if</p>	<p>is required in both voluntary and involuntary proceedings involving and Indian child and must be sent to potentially affiliated tribes even if the identity of a child's tribe is not known but there is information connecting the child with a particular tribe or tribe(s).</p>	
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	<p>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) A statement of the following: (i) The absolute right of the child's parents, Indian custodians, and tribe to intervene in the proceeding. (ii) 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. (iii) 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. (iv) The potential legal consequences of the proceedings on the future custodial and parental rights of the child's parents or Indian custodians. (v) 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 Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.). (vi) That the information contained in the notice, petition, pleading, and other court documents is confidential, so any person or entity notified shall maintain the confidentiality of the information contained in the notice concerning the particular proceeding and not reveal it to anyone who does not need the information in order to exercise the tribe's rights under the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.). (b) Notice shall be sent whenever it is</p>		
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	<p>known or there is reason to know that an Indian child is involved, and for every hearing thereafter, including, but not limited to, the hearing at which a final adoption order is to be granted, unless it is determined that the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) does not apply to the case in accordance with Section 224.3. After a tribe acknowledges that the child is a member 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 (G) 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) No proceeding shall be held until at least 10 days after receipt of notice by the parent, Indian custodian, the tribe, or the Bureau of Indian Affairs, except for the detention hearing, provided that notice of the detention hearing shall be given as soon as possible after the filing of the petition initiating the proceeding and proof of the notice is filed with the court within 10 days after the filing of the petition. With the exception of the detention hearing, the parent, Indian custodian, or the tribe shall, upon request, be granted up to 20 additional days to prepare for that proceeding. Nothing herein shall be construed as limiting the rights of the parent, Indian custodian, or tribe to more than 10 days notice when a lengthier notice period is required by statute. (e) With respect to giving notice to Indian</p>		
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		tribes, a party shall be subject to court sanctions if that person knowingly and willfully falsifies or conceals a material fact concerning whether the child is an Indian child, or counsels a party to do so. (f) The inclusion of contact information of any adult or child that would otherwise be required to be included in the notification pursuant to this section, shall not be required if that person is at risk of harm as a result of domestic violence, child abuse, sexual abuse, or stalking.		
23.71 – re recordkeeping responsibilities of BIA omitted				
<p><b>§ 23.101 What is the purpose of this subpart?</b> The regulations in this subpart clarify the minimum Federal standards governing implementation of the Indian Child Welfare Act (ICWA) to ensure that ICWA is applied in all States consistent with the Act’s express language, Congress’s intent in enacting the statute, and to promote the stability and security of Indian tribes and families.</p>	Purpose	No equivalent in CA law	No conflict.	
<p><b>§ 23.102 What terms do I need to know?</b> The following terms and their definitions apply to this subpart. All other terms have the meanings assigned in § 23.2.</p> <p><i>Agency</i> means a nonprofit, for-profit, or governmental organization and its employees, agents, or officials that performs, or provides services to biological parents, foster parents, or adoptive parents to assist in the administrative and social work necessary for foster, preadoptive, or adoptive placements. <i>Indian organization</i> means any group, association, partnership, corporation, or other</p>	Definitions	There are no equivalent CA definitions		Consider adding.

<p>legal entity owned or controlled by Indians or a Tribe, or a majority of whose members are Indians.</p>				
<p><b>§ 23.103 When does ICWA apply?</b>  (a) ICWA includes requirements that apply whenever an Indian child is the subject of:  (1) A child-custody proceeding, including:  (i) An involuntary proceeding;  (ii) A voluntary proceeding that could prohibit the parent or Indian custodian from regaining custody of the child upon demand; and  (iii) A proceeding involving status offenses if any part of the proceeding results in the need for out-of-home placement of the child, including a foster-care, preadoptive, or adoptive placement, or termination of parental rights.  (2) An emergency proceeding.  (b) ICWA does not apply to:  (1) A Tribal court proceeding;  (2) A proceeding regarding a criminal act that is not a status offense;  (3) An award of custody of the Indian child to one of the parents including, but not limited to, an award in a divorce proceeding; or  (4) A voluntary placement that either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a State agency, chosen for the Indian child and that does not operate to prohibit the child’s parent or Indian custodian from regaining custody of the child upon demand.  (c) If a proceeding listed in paragraph (a) of this section concerns a child who meets the statutory definition of “Indian child,” then</p>	<p>Application</p>	<p>California statutes do not have a specific provision regarding application. Instead WIC 224 includes various relevant legislative findings and declarations, including WIC 224 (b) which states:</p> <p>(b) In all Indian child custody proceedings, as defined in the federal Indian Child Welfare Act the court shall consider all of the findings contained in subdivision (a), strive to promote the stability and security of Indian tribes and families, comply with the federal Indian Child Welfare Act, and seek to protect the best interest of the child. Whenever an Indian child is removed from a foster care home or institution, guardianship, or adoptive placement for the purpose of further foster care, guardianship, or adoptive placement, placement of the child shall be in accordance with the Indian Child Welfare Act.</p> <p>Then the definitions in WIC 224.1 includes at subsection (d) a definition of “Indian child custody Proceedings”:</p> <p>(d) “Indian child custody proceeding” means a “child custody proceeding” within the meaning of Section 1903 of the Indian Child Welfare Act, including a proceeding for temporary or long-term foster care or guardianship placement, termination of parental rights, preadoptive placement after termination of parental rights, or adoptive placement. “Indian</p>	<p>California law does not directly address how ICWA applies in “emergency proceedings”. In practice few of the requirements of ICWA (active efforts; placement preferences, etc) are applied at detention. For the most part ICWA requirements (other than inquiry and notice) are not considered to apply until disposition. This seems inconsistent with the general requirements of the new regulations which set out detailed limitations on the use of “emergency proceedings”.</p> <p>Another area that may need to be looked at is the relationship between ICWA and delinquency proceedings.</p>	<p>Consider amendments</p>

<p>ICWA will apply to that proceeding. In determining whether ICWA applies to a proceeding, the State court may not consider factors such as the participation of the parents or the Indian child in Tribal cultural, social, religious, or political activities, the relationship between the Indian child and his or her parents, whether the parent ever had custody of the child, or the Indian child's blood quantum. (d) If ICWA applies at the commencement of a proceeding, it will not cease to apply simply because the child reaches age 18 during the pendency of the proceeding.</p>	<p>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.</p> <p>CRC Rule 5.480, however does speak specifically about application:</p> <p><b>Rule 5.480. Application</b>  This chapter addressing the Indian Child Welfare Act (25 United States Code section 1901 et seq.) as codified in various sections of the California Family, Probate, and Welfare and Institutions Codes, applies to most proceedings involving Indian children that may result in an involuntary foster care placement; guardianship or conservatorship placement; custody placement under Family Code section 3041; declaration freeing a child from the custody and control of one or both parents; termination of parental rights; or adoptive placement. This chapter applies to:</p> <p>(1) Proceedings under Welfare and Institutions Code section 300 et seq.;</p> <p>(2) Proceedings under Welfare and Institutions Code sections 601 and 602 et seq., whenever the child is either in foster care or at risk of entering foster care. In these proceedings, inquiry is required in accordance with rule 5.481(a). The other requirements of this chapter contained in rules 5.481 through 5.487 apply only if:</p> <p>(A) The court's jurisdiction is based on conduct that would not be criminal if the child were 18 years of age or over;</p>		
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		<p>(B) The court has found that placement outside the home of the parent or legal guardian is based entirely on harmful conditions within the child's home. Without a specific finding, it is presumed that placement outside the home is based at least in part on the child's criminal conduct, and this chapter shall not apply; or</p> <p>(C) The court is setting a hearing to terminate parental rights of the child's parents.</p> <p>(3) Proceedings under Family Code section 3041;</p> <p>(4) Proceedings under the Family Code resulting in adoption or termination of parental rights; and</p> <p>(5) Proceedings listed in Probate Code section 1459.5 and rule 7.1015.</p> <p>This chapter does not apply to voluntary foster care and guardianship placements where the child can be returned to the parent or Indian custodian on demand.</p>		
<p><b>§ 23.104 What provisions of this subpart apply to each type of child-custody proceeding?</b></p> <p>The following table lists what sections of this subpart apply to each type of child-custody proceeding identified in § 23.103(a): (Table not included)</p>	Application			
<p><b>§ 23.105 How do I contact a Tribe under the regulations in this subpart?</b></p> <p>To contact a Tribe to provide notice or obtain information or verification under the regulations in this subpart, you should direct the notice or inquiry as follows:</p> <p>(a) Many Tribes designate an agent for receipt of ICWA notices. The BIA publishes a list of</p>	Inquiry/Notice	<p>WIC 224.3 details ICWA inquiry obligations and WIC 224.2 details ICWA Notice Requirements. These are then further elaborated in California Rule of Court 5.481 (a) and (b), for Inquiry and Notice respectively.</p> <p>Each of the issues of Inquiry and Notice are discussed separately below.</p>	<p>There is no real conflict, however, California law does not really envision or provide for or govern less formal interactions between the agency or court and a Tribe, other than formal ICWA notice sent by registered mail return receipt requested. There</p>	

<p>Tribes' designated Tribal agents for service of ICWA notice in the Federal Register each year and makes the list available on its Web site at <i>www.bia.gov</i>.</p> <p>(b) For a Tribe without a designated Tribal agent for service of ICWA notice, contact the Tribe to be directed to the appropriate office or individual.</p> <p>(c) If you do not have accurate contact information for a Tribe, or the Tribe contacted fails to respond to written inquiries, you should seek assistance in contacting the Indian Tribe from the BIA local or regional office or the BIA's Central Office in Washington, DC (see <i>www.bia.gov</i>).</p>		<p>CRC Rule 5.481 governs Inquiry and Notice as follows:</p> <p><b>Rule 5.481. Inquiry and notice</b></p> <p><b>(a) Inquiry</b></p> <p>The court, court-connected investigator, and party seeking a foster-care placement, guardianship, conservatorship, custody placement under Family Code section 3041, declaration freeing a child from the custody or control of one or both parents, termination of parental rights, or adoption have an affirmative and continuing duty to inquire whether a child is or may be an Indian child in all proceedings identified in rule 5.480. The court, court-connected investigator, and party include the county welfare department, probation department, licensed adoption agency, adoption service provider, investigator, petitioner, appointed guardian or conservator of the person, and appointed fiduciary.</p> <p>(1) The party seeking a foster-care placement, guardianship, conservatorship, custody placement under Family Code section 3041, declaration freeing a child from the custody or control of one or both parents, termination of parental rights, or adoption must ask the child, if the child is old enough, and the parents, Indian custodian, or legal guardians whether the child is or may be an Indian child and must complete the <i>Indian Child Inquiry Attachment</i> (form ICWA-010(A)) and attach it to the petition unless the party is filing a</p>	<p>are some places where the statutes discuss the need for "consultation" between the agency and the tribe on placement, permanency planning, etc. but what is required and how it is to be accomplished is not discussed in any detail.</p> <p>The regulations clearly envision some sorts of contact and interaction between the state agency and court and tribes beyond just formal ICWA Notice.</p>	
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	<p>subsequent petition, and there is no new information.</p> <p>(2) At the first appearance by a parent, Indian custodian, or guardian in any dependency case; or in juvenile wardship proceedings in which the child is at risk of entering foster care or is in foster care; or at the initiation of any guardianship, conservatorship, proceeding for custody under Family Code section 3041, proceeding to terminate parental rights proceeding to declare a child free of the custody and control of one or both parents, or adoption proceeding; the court must order the parent, Indian custodian, or guardian if available, to complete <i>Parental Notification of Indian Status</i> (form ICWA-020).</p> <p>(3) If the parent, Indian custodian, or guardian does not appear at the first hearing, or is unavailable at the initiation of a proceeding, the court must order the person or entity that has the inquiry duty under this rule to use reasonable diligence to find and inform the parent, Indian custodian, or guardian that the court has ordered the parent, Indian custodian, or guardian to complete <i>Parental Notification of Indian Status</i> (form ICWA-020).</p> <p>(4) If the social worker, probation officer, licensed adoption agency, adoption service provider, investigator, or petitioner knows or has reason to know that an Indian child is or may be involved, that person or entity must make further inquiry as soon as practicable by:</p> <p>(A) Interviewing the parents, Indian custodian, and "extended family members" as defined in 25 United States Code sections 1901 and 1903(2), to gather the information listed in</p>		
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	<p>Welfare and Institutions Code section 224.2(a)(5), Family Code section 180(b)(5), or Probate Code section 1460.2(b)(5), which is required to complete the <i>Notice of Child Custody Proceeding for Indian Child</i> (form ICWA-030);</p> <p>(B) Contacting the Bureau of Indian Affairs and the California Department of Social Services for assistance in identifying the names and contact information of the tribes in which the child may be a member or eligible for membership; and</p> <p>(C) Contacting the tribes and any other person that reasonably can be expected to have information regarding the child's membership status or eligibility.</p> <p>(5) The circumstances that may provide reason to know the child is an Indian child include the following:</p> <p>(A) The child or a person having an interest in the child, including an Indian tribe, an Indian organization, an officer of the court, a public or private agency, or a member of the child's extended family, informs or otherwise provides information suggesting that the child is an Indian child to the court, the county welfare agency, the probation department, the licensed adoption agency or adoption service provider, the investigator, the petitioner, or any appointed guardian or conservator;</p> <p>(B) The residence or domicile of the child, the child's parents, or an Indian custodian is or was in a predominantly Indian community; or</p> <p>(C) The child or the child's family has received services or benefits from a tribe or services that are available to Indians from</p>		
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	<p>tribes or the federal government, such as the U.S. Department of Health and Human Services, Indian Health Service, or Tribal Temporary Assistance to Needy Families benefits.</p> <p><i>(Subd (a) amended effective January 1, 2013.)</i></p> <p><b>(b) Notice</b></p> <p>(1) If it is known or there is reason to know that an Indian child is involved in a proceeding listed in rule 5.480, except for a wardship proceeding under Welfare and Institutions Code sections 601 and 602 et seq., the social worker, petitioner, or in probate guardianship and conservatorship proceedings, if the petitioner is unrepresented, the court must send <i>Notice of Child Custody Proceeding for Indian Child</i> (form ICWA-030) to the parent or legal guardian and Indian custodian of an Indian child, and the Indian child's tribe, in the manner specified in Welfare and Institutions Code section 224.2, Family Law Code section 180, and Probate Code section 1460.2.</p> <p>(2) If it is known or there is reason to know that an Indian child is involved in a wardship proceeding under Welfare and Institutions Code sections 601 and 602 et seq., the probation officer must send <i>Notice of Child Custody Proceeding for Indian Child</i> (form ICWA-030) to the parent or legal guardian, Indian custodian, if any, and the child's tribe, in accordance with Welfare and Institutions Code section 727.4(a)(2) in any case described by rule 5.480(2)(A)-(C).</p> <p>(3) The circumstances that may provide reason to know the child is an Indian child include the circumstances specified in (a)(5).</p>		
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		(4) Notice to an Indian child's tribe must be sent to the tribal chairperson unless the tribe has designated another agent for service.		
<p><b>§ 23.106 How does this subpart interact with State and Federal laws?</b></p> <p>(a) The regulations in this subpart provide minimum Federal standards to ensure compliance with ICWA.</p> <p>(b) Under section 1921 of ICWA, where applicable State or other Federal law provides a higher standard of protection to the rights of the parent or Indian custodian than the protection accorded under the Act, ICWA requires the State or Federal court to apply the higher State or Federal standard.</p>	Standards	<p>WIC 224 (d):</p> <p>(d) In any case in which this code or other applicable state or federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child, or the Indian child's tribe, than the rights provided under the Indian Child Welfare Act, the court shall apply the higher standard.</p>	No inconsistency.	No changes required
<p><b>§ 23.107 How should a State court determine if there is reason to know the child is an Indian child?</b></p> <p>(a) State courts must ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry is made at the commencement of the proceeding and all responses should be on the record. State courts must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.</p> <p>(b) 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 must:</p> <p>(1) Confirm, by way of a report, declaration, or testimony included in the record that the agency</p>	Inquiry	<p>WIC § 224.3. Determination whether child is an Indian child; considerations; scope of inquiry (a) The court, county welfare department, and the probation department have an affirmative and continuing duty to inquire whether a child for whom a petition under Section 300, 601, or 602 is to be, or has been, filed is or may be an Indian child in all dependency proceedings and in any juvenile wardship proceedings if the child is at risk of entering foster care or is in foster care. (b) The circumstances that may provide reason to know the child is an Indian child include, but are not limited to, the following: (1) A person having an interest in the child, including the child, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child's extended family provides information suggesting the child is a member of a tribe or eligible for membership in a tribe</p>	<p>There is no real conflict, however, there are some significant differences between the new regulations and California statutes which are worthy of note.</p> <p>The new regulations focus on the court's obligations rather than what an agency or petitioner must do. California statutes place an inquiry duty jointly on the court, and agency or petitioner.</p> <p>It is likely that the new Guidelines which are expected to be issued before December will address agency/petitioner pre-filing inquiry duties. In any</p>	

<p>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 (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership); and</p> <p>(2) Treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an “Indian child” in this part.</p> <p>(c) A court, upon conducting the inquiry required in paragraph (a) of this section, has reason to know that a child involved in an emergency or child custody proceeding is an Indian child if:</p> <p>(1) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child;</p> <p>(2) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;</p> <p>(3) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;</p> <p>(4) The court is informed that the domicile or residence of the child, the child’s parent, or the child’s Indian custodian is on a reservation or in an Alaska Native village;</p> <p>(5) The court is informed that the child is or has been a ward of a Tribal court; or</p>		<p>or one or more of the child’s biological parents, grandparents, or great-grandparents are or were a member of a tribe. (2) The residence or domicile of the child, the child’s parents, or Indian custodian is in a predominantly Indian community. (3) The child or the child’s family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the Indian Health Service. (c) If the court, social worker, or probation officer knows or has reason to know that an Indian child is involved, the social worker or probation officer is required to make further inquiry regarding the possible Indian status of the child, and to do so as soon as practicable, by interviewing the parents, Indian custodian, and extended family members to gather the information required in paragraph (5) of subdivision (a) of Section 224.2, contacting the Bureau of Indian Affairs and the State Department of Social Services for assistance in identifying the names and contact information of the tribes in which the child may be a member or eligible for membership in and contacting the tribes and any other person that reasonably can be expected to have information regarding the child’s membership status or eligibility. (d) If the court, social worker, or probation officer knows or has reason to know that an Indian child is involved, the social worker or probation officer shall provide notice in accordance with paragraph (5) of subdivision (a) of Section 224.2. (e)(1) 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</p>	<p>case to the extent that California law imposes such duties they set a “higher” standard which is compatible with ICWA.</p>	
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<p>(6) The court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe.</p> <p>(d) In seeking verification of the child’s status in a voluntary proceeding where a consenting parent evidences, by written request or statement in the record, a desire for anonymity, the court must keep relevant documents pertaining to the inquiry required under this section confidential and under seal.</p> <p>A request for anonymity does not relieve the court, agency, or other party from any duty of compliance with ICWA, including the obligation to verify whether the child is an “Indian child.”</p> <p>A Tribe receiving information related to this inquiry must keep documents and information confidential.</p>	<p>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 eligible for enrollment in the tribe is not determinative of the child's membership status unless the tribe also confirms in writing that enrollment is a prerequisite for membership under tribal law or custom. (2) In the absence of a contrary determination by the tribe, a determination by the Bureau of Indian Affairs that a child is or is not a member of or eligible for membership in that tribe is conclusive. (3) If proper and adequate notice has been provided pursuant to Section 224.2, and neither a tribe nor the Bureau of Indian Affairs has provided a determinative response within 60 days after receiving that notice, the court may determine that the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) does not apply to the proceedings, provided that the court shall reverse its determination of the inapplicability of the Indian Child Welfare Act and apply the act prospectively if a tribe or the Bureau of Indian Affairs subsequently confirms that the child is an Indian child. (f) Notwithstanding a determination that the Indian Child Welfare Act does not apply to the proceedings made in accordance with subdivision (e), if the court, social worker, or probation officer subsequently receives any information required under paragraph (5) of subdivision (a) of Section 224.2 that was not previously available or included in the notice issued under Section 224.2, the social worker or probation officer shall provide the additional information to any tribes entitled to notice</p>		
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		under paragraph (3) of subdivision (a) of Section 224.2 and the Bureau of Indian Affairs		
<p><b>23.108 Who makes the determination as to whether a child is a member, whether a child is eligible for membership, or whether a biological parent is a member of a Tribe?</b></p> <p>(a) The Indian Tribe of which it is believed the child is a member (or eligible for membership and of which the biological parent is a member) determines whether the child is a member of the Tribe, or whether the child is eligible for membership in the Tribe and a biological parent of the child is a member of the Tribe, except as otherwise provided by Federal or Tribal law.</p> <p>(b) The determination by a Tribe of whether a child is a member, whether a child is eligible for membership, or whether a biological parent is a member, is solely within the jurisdiction and authority of the Tribe, except as otherwise provided by Federal or Tribal law. The State court may not substitute its own determination regarding a child’s membership in a Tribe, a child’s eligibility for membership in a Tribe, or a parent’s membership in a Tribe.</p> <p>(c) The State court may rely on facts or documentation indicating a Tribal determination of membership or eligibility for membership in making a judicial determination as to whether the child is an “Indian child.” An example of documentation indicating membership is a document issued by the Tribe, such as Tribal enrollment documentation.</p>	Determination of ICWA status	<p>WIC 224 (c)</p> <p>(c) A determination by an Indian tribe that an unmarried person, who is under the age of 18 years, is either (1) a member of an Indian tribe or (2) eligible for membership in an Indian tribe and a biological child of a member of an Indian tribe shall constitute a significant political affiliation with the tribe and shall require the application of the federal Indian Child Welfare Act to the proceedings.</p> <p>WIC 224.3 (e):</p> <p>(e)(1) 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. Information that the child is not enrolled or eligible for enrollment in the tribe is not determinative of the child's membership status unless the tribe also confirms in writing that enrollment is a prerequisite for membership under tribal law or custom.</p>		
<p><b>§ 23.109 How should a State court determine an Indian child’s Tribe when the child may</b></p>	Eligible in more than one tribe	WIC 224.3 (e):		

<p><b>be a member or eligible for membership in more than one Tribe?</b></p> <p>(a) If the Indian child is a member or eligible for membership in only one Tribe, that Tribe must be designated as the Indian child's Tribe.</p> <p>(b) If the Indian child meets the definition of "Indian child" through more than one Tribe, deference should be given to the Tribe in which the Indian child is already a member, unless otherwise agreed to by the Tribes.</p> <p>(c) If an Indian child meets the definition of "Indian child" through more than one Tribe because the child is a member in more than one Tribe or the child is not a member of but is eligible for membership in more than one Tribe, the court must provide the opportunity in any involuntary child custody proceeding for the Tribes to determine which should be designated as the Indian child's Tribe.</p> <p>(1) If the Tribes are able to reach an agreement, the agreed-upon Tribe should be designated as the Indian child's Tribe.</p> <p>(2) If the Tribes are unable to reach an agreement, the State court designates, for the purposes of ICWA, the Indian Tribe with which the Indian child has the more significant contacts as the Indian child's Tribe, taking into consideration:</p> <p>(i) Preference of the parents for membership of the child;</p> <p>(ii) Length of past domicile or residence on or near the reservation of each Tribe;</p> <p>(iii) Tribal membership of the child's custodial parent or Indian custodian; and</p> <p>(iv) Interest asserted by each Tribe in the child-custody proceeding;</p>		<p>(1) If the Indian child is or becomes a member of only one tribe, that tribe shall be designated as the Indian child's tribe, even though the child is eligible for membership in another tribe. (2) If an Indian child is or becomes a member of more than one tribe, or is not a member of any tribe but is eligible for membership in more than one tribe, the tribe with which the child has the more significant contacts shall be designated as the Indian child's tribe. In determining which tribe the child has the more significant contacts with, the court shall consider, among other things, the following factors: (A) The length of residence on or near the reservation of each tribe and frequency of contact with each tribe. (B) The child's participation in activities of each tribe. (C) The child's fluency in the language of each tribe. (D) Whether there has been a previous adjudication with respect to the child by a court of one of the tribes. (E) Residence on or near one of the tribes' reservations by the child parents, Indian custodian or extended family members. (F) Tribal membership of custodial parent or Indian custodian. (G) Interest asserted by each tribe in response to the notice specified in Section 224.2. (H) The child's self-identification. (3) If an Indian child becomes a member of a tribe other than the one designated by the court as the Indian child's tribe under paragraph (2), actions taken based on the court's determination prior to the child's becoming a tribal member continue to be valid.</p>		
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<p>(v) Whether there has been a previous adjudication with respect to the child by a court of one of the Tribes; and</p> <p>(vi) Self-identification by the child, if the child is of sufficient age and capacity to meaningfully self-identify.</p> <p>(3) A determination of the Indian child's Tribe for purposes of ICWA and the regulations in this subpart do not constitute a determination for any other purpose.</p>				
<p><b>§ 23.110 When must a State court dismiss an action?</b></p> <p>Subject to 25 U.S.C. 1919 (Agreements between States and Indian Tribes) and § 23.113 (emergency proceedings), the following limitations on a State court's jurisdiction apply:</p> <p>(a) The court in any voluntary or involuntary child-custody proceeding involving an Indian child must determine the residence and domicile of the Indian child. If either the residence or domicile is on a reservation where the Tribe exercises exclusive jurisdiction over child-custody proceedings, the State court must expeditiously notify the Tribal court of the pending dismissal based on the Tribe's exclusive jurisdiction, dismiss the State-court child-custody proceeding, and ensure that the Tribal court is sent all information regarding the Indian child-custody proceeding, including, but not limited to, the pleadings and any court record.</p> <p>(b) If the child is a ward of a Tribal court, the State court must expeditiously notify the Tribal court of the pending dismissal, dismiss the State-court child-custody proceeding, and</p>	<p>Jurisdiction</p>	<p>WIC § 305.5. Removal of Indian child from custody of parents by state or local authority; transfer of proceedings to tribal court</p> <p>(a) If an Indian child, who is a ward of a tribal court or resides or is domiciled within a reservation of an Indian tribe that has exclusive jurisdiction over child custody proceedings as recognized in Section 1911 of Title 25 of the United States Code or reassumed exclusive jurisdiction over Indian child custody proceedings pursuant to Section 1918 of Title 25 of the United States Code, has been removed by a state or local authority from the custody of his or her parents or Indian custodian, the state or local authority shall provide notice of the removal to the tribe no later than the next working day following the removal and shall provide all relevant documentation to the tribe regarding the removal and the child's identity. If the tribe determines that the child is an Indian child, the state or local authority shall transfer the child custody proceeding to the tribe within 24 hours after receipt of written notice from the tribe of that determination.</p>	<p>California law talks about transferring jurisdiction of proceedings to a tribal court, however, the new regulations make it clear that the state court has no jurisdiction (absent emergency jurisdiction) and talks of dismissal rather than transfer.</p>	

<p>ensure that the Tribal court is sent all information regarding the Indian child-custody proceeding, including, but not limited to, the pleadings and any court record.</p>				
<p><b>§ 23.111 What are the notice requirements for a child-custody proceeding involving an Indian child?</b>  (a) When a court knows or has reason to know that the subject of an involuntary foster-care-placement or termination-of-parental-rights proceeding is an Indian child, the court must ensure that:  (1) The party seeking placement promptly sends notice of each such child-custody proceeding (including, but not limited to, any foster-care placement or any termination of parental or custodial rights) in accordance with this section; and  (2) An original or a copy of each notice sent under this section is filed with the court together with any return receipts or other proof of service.  (b) Notice must be sent to:  (1) Each Tribe where the child may be a member (or eligible for membership if a biological parent is a member) (<i>see</i> § 23.105 for information on how to contact a Tribe);  (2) The child’s parents; and  (3) If applicable, the child’s Indian custodian.  (c) Notice must be sent by registered or certified mail with return receipt requested. Notice may also be sent via personal service or electronically, but such alternative methods do not replace the requirement for notice to be sent by registered or certified mail with return receipt requested.</p>	<p>Notice</p>	<p>WIC 224.2 details ICWA Notice requirements.  § 224.2. Matters involving a child of Indian ancestry; notice to interested parties; time to notify; proof (a) If the court, a social worker, or probation officer knows or has reason to know that an Indian child is involved, any notice sent in an Indian child custody proceeding under this code shall be sent to the minor's parents or legal guardian, Indian custodian, if any, and the minor's tribe and comply with all of the following requirements:  (1) Notice shall be sent by registered or certified mail with return receipt requested. Additional notice by first-class mail is recommended, but not required. (2) Notice to the tribe shall be to the tribal chairperson, unless the tribe has designated another agent for service. (3) Notice shall be sent to all tribes of which the child may be a member or eligible for membership, until the court makes a determination as to which tribe is the child's tribe in accordance with subdivision (d) of Section 224.1, after which notice need only be sent to the tribe determined to be the Indian child's tribe. (4) Notice, to the extent required by federal law, shall be sent to the Secretary of the Interior's designated agent, the Sacramento Area Director, Bureau of Indian Affairs. If the identity or location of the parents, Indian custodians, or the minor's tribe is known, a copy of the notice shall also be sent directly to</p>	<p>23.111(d)(3) requires inclusion of information concerning “...direct lineal ancestors of the child, such as grandparents.” It does not limit it to great-grandparents as under California law. So California law provides greater protections.    Still send notice when you “know or have reason to know”. So does not need to be certain.    Notice need only be sent to BIA regional office when identity of parents or tribe is not known. No obligation to send to secretary of Interior.</p>	



<p>(d) Notice must be in clear and understandable language and include the following:</p> <p>(1) The child's name, birthdate, and birthplace;</p> <p>(2) All names known (including maiden, married, and former names or aliases) of the parents, the parents' birthdates and birthplaces, and Tribal enrollment numbers if known;</p> <p>(3) If known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors of the child, such as grandparents;</p> <p>(4) The name of each Indian Tribe in which the child is a member (or may be eligible for membership if a biological parent is a member);</p> <p>(5) A copy of the petition, complaint, or other document by which the child custody proceeding was initiated and, if a hearing has been scheduled, information on the date, time, and location of the hearing;</p> <p>(6) Statements setting out:</p> <p>(i) The name of the petitioner and the name and address of petitioner's attorney;</p> <p>(ii) The right of any parent or Indian custodian of the child, if not already a party to the child-custody proceeding, to intervene in the proceedings.</p> <p>(iii) The Indian Tribe's right to intervene at any time in a State-court proceeding for the foster-care placement of or termination of parental rights to an Indian child.</p> <p>(iv) That, if the child's parent or Indian custodian is unable to afford counsel based on a determination of indigency by the court, the parent or Indian custodian has the right to court appointed counsel.</p>		<p>the Secretary of the Interior, unless the Secretary of the Interior has waived the notice in writing and the person responsible for giving notice under this section has filed proof of the waiver with the court. (5) In addition to the information specified in other sections of this article, notice shall include all of the following information: (A) The name, birthdate, and birthplace of the Indian child, if known. (B) The name of the Indian tribe in which the child is a member or may be eligible for membership, if known. (C) All names known of the Indian child's biological parents, grandparents, and greatgrandparents, or Indian custodians, including maiden, married and former names or aliases, as well as their current and former addresses, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information, 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) A statement of the following: (i) The absolute right of the child's parents, Indian custodians, and tribe to intervene in the proceeding. (ii) 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. (iii) 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</p>		
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<p>(v) The right to be granted, upon request, up to 20 additional days to prepare for the child-custody proceedings.</p> <p>(vi) The right of the parent or Indian custodian and the Indian child's Tribe to petition the court for transfer of the foster-care-placement or termination-of parental- rights proceeding to Tribal court as provided by 25 U.S.C. 1911 and § 23.115.</p> <p>(vii) The mailing addresses and telephone numbers of the court and information related to all parties to the child-custody proceeding and individuals notified under this section.</p> <p>(viii) The potential legal consequences of the child-custody proceedings on the future parental and custodial rights of the parent or Indian custodian.</p> <p>(ix) That all parties notified must keep confidential the information contained in the notice and the notice should not be handled by anyone not needing the information to exercise rights under ICWA.</p> <p>(e) If the identity or location of the child's parents, the child's Indian custodian, or the Tribes in which the Indian child is a member or eligible for membership cannot be ascertained, but there is reason to know the child is an Indian child, notice of the child-custody proceeding must be sent to the appropriate Bureau of Indian Affairs Regional Director (see <a href="http://www.bia.gov">www.bia.gov</a>).</p> <p>To establish Tribal identity, as much information as is known regarding the child's direct lineal ancestors should be provided. The Bureau of Indian Affairs will not make a determination of Tribal membership but may, in</p>		<p>prepare for the proceeding. (iv) The potential legal consequences of the proceedings on the future custodial and parental rights of the child's parents or Indian custodians. (v) 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 Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.). (vi) That the information contained in the notice, petition, pleading, and other court documents is confidential, so any person or entity notified shall maintain the confidentiality of the information contained in the notice concerning the particular proceeding and not reveal it to anyone who does not need the information in order to exercise the tribe's rights under the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.). (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 thereafter, including, but not limited to, the hearing at which a final adoption order is to be granted, unless it is determined that the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) does not apply to the case in accordance with Section 224.3. After a tribe acknowledges that the child is a member 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 (G) 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</p>		
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<p>some instances, be able to identify Tribes to contact.</p> <p>(f) If there is a reason to know that a parent or Indian custodian possesses limited English proficiency and is therefore not likely to understand the contents of the notice, the court must provide language access services as required by Title VI of the Civil Rights Act and other Federal laws. To secure such translation or interpretation support, a court may contact or direct a party to contact the Indian child's Tribe or the local BIA office for assistance in locating and obtaining the name of a qualified translator or interpreter.</p> <p>(g) If a parent or Indian custodian of an Indian child appears in court without an attorney, the court must inform him or her of his or her rights, including any applicable right to appointed counsel, right to request that the child-custody proceeding be transferred to Tribal court, right to object to such transfer, right to request additional time to prepare for the child-custody proceeding as provided in § 23.112, and right (if the parent or Indian custodian is not already a party) to intervene in the child-custody proceedings.</p>		<p>except as permitted under subdivision (d). (d) No proceeding shall be held until at least 10 days after receipt of notice by the parent, Indian custodian, the tribe, or the Bureau of Indian Affairs, except for the detention hearing, provided that notice of the detention hearing shall be given as soon as possible after the filing of the petition initiating the proceeding and proof of the notice is filed with the court within 10 days after the filing of the petition. With the exception of the detention hearing, the parent, Indian custodian, or the tribe shall, upon request, be granted up to 20 additional days to prepare for that proceeding. Nothing herein shall be construed as limiting the rights of the parent, Indian custodian, or tribe to more than 10 days notice when a lengthier notice period is required by statute. (e) With respect to giving notice to Indian tribes, a party shall be subject to court sanctions if that person knowingly and willfully falsifies or conceals a material fact concerning whether the child is an Indian child, or counsels a party to do so. (f) The inclusion of contact information of any adult or child that would otherwise be required to be included in the notification pursuant to this section, shall not be required if that person is at risk of harm as a result of domestic violence, child abuse, sexual abuse, or stalking.</p>		
<p><b>§ 23.112 What time limits and extensions apply?</b></p> <p>(a) No foster-care-placement or termination-of-parental-rights proceeding may be held until at least 10 days after receipt of the notice by the parent (or Indian custodian) and by the Tribe (or</p>	<p>Timing</p>	<p>WIC 224.2 (d)</p> <p>(d) No proceeding shall be held until at least 10 <b>days</b> after receipt of notice by the parent, Indian custodian, the tribe, or the Bureau of Indian Affairs, except for the detention</p>	<p>California law envisions right to notice for every hearing rather than each "proceeding" as defined in the regulations. The regulations speak of separate "proceedings" for foster care</p>	

<p>the Secretary). The parent, Indian custodian, and Tribe each have a right, upon request, to be granted up to 20 additional days from the date upon which notice was received to prepare for participation in the proceeding.</p> <p>(b) Except as provided in 25 U.S.C. 1922 and § 23.113, no child-custody proceeding for foster-care placement or termination of parental rights may be held until the waiting periods to which the parents or Indian custodians and to which the Indian child’s Tribe are entitled have expired, as follows:</p> <p>(1) 10 days after each parent or Indian custodian (or Secretary where the parent or Indian custodian is unknown to the petitioner) has received notice of that particular child-custody proceeding in accordance with 25 U.S.C. 1912(a) and § 23.111;</p> <p>(2) 10 days after the Indian child’s Tribe (or the Secretary if the Indian child’s Tribe is unknown to the party seeking placement) has received notice of that particular child-custody proceeding in accordance with 25 U.S.C. 1912(a) and § 23.111;</p> <p>(3) Up to 30 days after the parent or Indian custodian has received notice of that particular child-custody proceeding in accordance with 25 U.S.C. 1912(a) and § 23.111, if the parent or Indian custodian has requested up to 20 additional days to prepare for the child custody proceeding as provided in 25 U.S.C. 1912(a) and § 23.111; and (4) Up to 30 days after the Indian child’s Tribe has received notice of that particular child-custody proceeding in accordance with 25 U.S.C. 1912(a) and § 23.111, if the Indian child’s Tribe has requested</p>		<p>hearing, provided that notice of the detention hearing shall be given as soon as possible after the filing of the petition initiating the proceeding and proof of the notice is filed with the court within <b>10 days</b> after the filing of the petition. With the exception of the detention hearing, the parent, Indian custodian, or the tribe shall, upon request, be granted up to <b>20 additional days</b> to prepare for that proceeding. Nothing herein shall be construed as limiting the rights of the parent, Indian custodian, or tribe to more than <b>10 days</b> notice when a lengthier notice period is required by statute.</p>	<p>placement and termination of parental rights, but there may be several hearings within each proceeding. Consider whether we need to revise WIC 224.2 (d) so that there is greater clarity that this is only for each “proceeding”. Also consider whether the detention is a foster care placement “proceeding”. California practice has always been to treat disposition as the time when ICWA requirements kick in.</p>	
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<p>up to 20 additional days to prepare for the child-custody proceeding.  (c) Additional time beyond the minimum required by 25 U.S.C. 1912 and § 23.111 may also be available under State law or pursuant to extensions granted by the court.</p>				
<p><b>§ 23.113 What are the standards for emergency proceedings involving an Indian child?</b>  (a) Any emergency removal or placement of an Indian child under State law must terminate immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.  (b) The State court must:  (1) Make a finding on the record that the emergency removal or placement is necessary to prevent imminent physical damage or harm to the child;  (2) Promptly hold a hearing on whether the emergency removal or placement continues to be necessary whenever new information indicates that the emergency situation has ended; and  (3) At any court hearing during the emergency proceeding, determine whether the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.  (4) Immediately terminate (or ensure that the agency immediately terminates) the emergency proceeding once the court or agency possesses sufficient evidence to determine that the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.</p>	<p>Emergency proceeding</p>	<p>WIC 305.5 (f)  (f) Nothing in this section shall be construed to prevent the emergency removal of an Indian child who is a ward of a tribal court or resides or is domiciled within a reservation of an Indian tribe, but is temporarily located off the reservation, from a parent or Indian custodian or the emergency placement of the child in a foster home or institution in order to prevent imminent physical damage or harm to the child. The state or local authority shall ensure that the emergency removal or placement terminates immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate an Indian child custody proceeding, transfer the child to the jurisdiction of the Indian child's tribe, or restore the child to the parent or Indian custodian, as may be appropriate.</p> <p><b>WIC 361.31.</b>  (a) In any case in which an Indian child is removed from the physical custody of his or her parents or Indian custodian pursuant to Section 361, the child's placement shall comply with this section.  (b) Any foster care or guardianship placement of an Indian child, or any <b>emergency removal</b> of a child who is</p>	<p>The new regulations have much more detailed provisions aimed at limiting use of emergency removals as a basis to detain Indian children without full ICWA compliance.</p> <p>California law does not currently require the kind of detailed reporting and evidentiary requirements.  Further the new regulations require that an emergency removal cannot normally last more than 30 days without initiating fully ICWA compliant proceedings.</p>	

<p>(c) An emergency proceeding can be terminated by one or more of the following actions:</p> <p>(1) Initiation of a child-custody proceeding subject to the provisions of ICWA;</p> <p>(2) Transfer of the child to the jurisdiction of the appropriate Indian Tribe; or</p> <p>(3) Restoring the child to the parent or Indian custodian.</p> <p>(d) A petition for a court order authorizing the emergency removal or continued emergency placement, or its accompanying documents, should contain 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 such imminent physical damage or harm to the child. The petition or its accompanying documents should also contain the following information:</p> <p>(1) The name, age, and last known address of the Indian child;</p> <p>(2) The name and address of the child's parents and Indian custodians, if any;</p> <p>(3) The steps taken to provide notice to the child's parents, custodians, and Tribe about the emergency proceeding;</p> <p>(4) 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 BIA Regional Director (see <a href="http://www.bia.gov">www.bia.gov</a>);</p> <p>(5) The residence and the domicile of the Indian child;</p>		<p>known to be, or there is reason to know that the child is, an Indian child shall be in the least restrictive setting which most approximates a family situation and in which the child's special needs, if any, may be met. The child shall also be placed within reasonable proximity to the child's home, taking into account any special needs of the child. Preference shall be given to the child's placement with one of the following, in descending priority order: [list of placement preferences, etc. omitted]</p>		
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<p>(6) 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;</p> <p>(7) The Tribal affiliation of the child and of the parents or Indian custodians;</p> <p>(8) A specific and detailed account of the circumstances that led the agency responsible for the emergency removal of the child to take that action;</p> <p>(9) If the child is believed to reside or be domiciled on a reservation where the Tribe exercises exclusive jurisdiction over child-custody matters, a statement of efforts that have been made and are being made to contact the Tribe and transfer the child to the Tribe’s jurisdiction; and</p> <p>(10) 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.</p> <p>(e) An emergency proceeding regarding an Indian child should not be continued for more than 30 days unless the court makes the following determinations:</p> <p>(1) Restoring the child to the parent or Indian custodian would subject the child to imminent physical damage or harm;</p> <p>(2) The court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian Tribe; and</p> <p>(3) It has not been possible to initiate a “child-custody proceeding” as defined in § 23.2</p>				
<p><b>§ 23.114 What are the requirements for determining improper removal?</b></p>	<p>Improper removal/</p>	<p>WIC 305.5 (e):</p>	<p>This issue arises most often in the case of a voluntary</p>	

<p>(a) If, in the course of any child custody proceeding, any party asserts or the court has reason to believe that the Indian child may have been improperly removed from the custody of his or her parent or Indian custodian, or that the Indian child has been improperly retained (such as after a visit or other temporary relinquishment of custody), the court must expeditiously determine whether there was improper removal or retention.</p> <p>(b) If the court finds that the Indian child was improperly removed or retained, the court must terminate the proceeding and the child must be returned immediately to his or her parent or Indian custodian, unless returning the child to his parent or Indian custodian would subject the child to substantial and immediate danger or threat of such danger.</p>	<p>termination of proceeding</p>	<p>(e) If any petitioner in an Indian child custody proceeding has <b>improperly removed</b> the child from the custody of the parent or Indian custodian or has <b>improperly</b> retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and shall immediately return the child to his or her parent or Indian custodian, unless returning the child to the parent or Indian custodian would subject the child to a substantial and immediate danger or threat of danger.</p>	<p>placement or voluntary guardianship when the parent seeks return of the child. If the agency or temporary guardian refuses, this becomes an issue.</p> <p>Current practice would be to allow an ordinary petition for dependency or guardianship to be filed. The new regulations suggest that more is required.</p>	
<p><b>§ 23.115 How are petitions for transfer of a proceeding made?</b></p> <p>(a) Either parent, the Indian custodian, or the Indian child's Tribe may request, at any time, orally on the record or in writing, that the State court transfer a foster-care or termination-of-parental-rights proceeding to the jurisdiction of the child's Tribe.</p> <p>(b) The right to request a transfer is available at any stage in each foster-care or termination-of-parental-rights proceeding.</p>	<p>Transfer</p>	<p>WIC 305.5</p> <p>(b) In the case of an Indian child who is not domiciled or residing within a reservation of an Indian tribe or who resides or is domiciled within a reservation of an Indian tribe that does not have exclusive jurisdiction over child custody proceedings pursuant to Section 1911 or 1918 of Title 25 of the United States Code, the court shall transfer the proceeding to the jurisdiction of the child's tribe upon petition of either parent, the Indian custodian, if any, or the child's tribe, unless the court finds good cause not to transfer. The court shall dismiss the proceeding or terminate jurisdiction only after receiving proof that the tribal court has accepted the transfer of jurisdiction. At the time that the court dismisses the proceeding or</p>		



		terminates jurisdiction, the court shall also make an order transferring the physical custody of the child to the tribal court.		
<p><b>§ 23.116 What happens after a petition for transfer is made?</b></p> <p>Upon receipt of a transfer petition, the State court must ensure that the Tribal court is promptly notified in writing of the transfer petition. This notification may request a timely response regarding whether the Tribal court wishes to decline the transfer.</p>	Transfer			
<p><b>§ 23.117 What are the criteria for ruling on transfer petitions?</b></p> <p>Upon receipt of a transfer petition from an Indian child's parent, Indian custodian, or Tribe, the State court must transfer the child-custody proceeding unless the court determines that transfer is not appropriate because one or more of the following criteria are met:</p> <p>(a) Either parent objects to such transfer;</p> <p>(b) The Tribal court declines the transfer; or</p> <p>(c) Good cause exists for denying the transfer.</p>	Transfer	<p>WIC 305.5</p> <p>(c) (1) If a petition to transfer proceedings as described in subdivision (b) is filed, the court shall find good cause to deny the petition if one or more of the following circumstances are shown to exist:</p> <p>(A) One or both of the child's parents object to the transfer.</p> <p>(B) The child's tribe does not have a "tribal court" as defined in Section 1910 of Title 25 of the United States Code.</p> <p>(C) The tribal court of the child's tribe declines the transfer.</p> <p>CRC 5.483</p> <p><b>Rule 5.483. Transfer of case</b></p> <p><b>(a) Mandatory transfer of case to tribal court with exclusive jurisdiction</b></p> <p>The court must order transfer of a case to the tribal court of the child's tribe if:</p> <p>(1) The Indian child is a ward of the tribal court; or</p> <p>(2) The Indian child is domiciled or resides within a reservation of an Indian tribe that has exclusive jurisdiction over Indian child custody</p>		

	<p>proceedings under section 1911 or 1918 of title 25 of the United States Code.</p> <p><b>(b) Presumptive transfer of case to tribal court with concurrent state and tribal jurisdiction</b></p> <p>Unless the court finds good cause under subdivision (d), the court must order transfer of a case to the tribal court of the child's tribe if the parent, the Indian custodian, or the child's tribe requests.</p> <p><b>(c) Documentation of request to transfer a case to tribal court</b></p> <p>The parent, the Indian custodian, or the child's tribe may request transfer of the case, either orally or in writing or by filing <i>Notice of Petition and Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction</i> (form ICWA-050).</p> <p>If the request is made orally, the court must document the request and make it part of the record.</p> <p><b>(d) Cause to deny a request to transfer to tribal court with concurrent state and tribal jurisdiction</b></p> <p>(1) One or more of the following circumstances constitutes mandatory good cause to deny a request to transfer:</p> <p>(A) One or both of the child's parents objects to the transfer in open court or in an admissible writing for the record;</p> <p>(B) The child's tribe does not have a "tribal court" or any other administrative body as defined in section 1903 of the Indian Child Welfare Act: "a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established</p>		
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	<p>and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings;" or</p> <p>(C) The tribal court of the child's tribe declines the transfer.</p> <p>(2) One or more of the following circumstances may constitute discretionary good cause to deny a request to transfer:</p> <p>(A) The evidence necessary to decide the case cannot be presented in the tribal court without undue hardship to the parties or the witnesses, and the tribal court is unable to mitigate the hardship by making arrangements to receive and consider the evidence or testimony by use of remote communication, by hearing the evidence or testimony at a location convenient to the parties or witnesses, or by use of other means permitted in the tribal court's rules of evidence or discovery;</p> <p>(B) The proceeding was at an advanced stage when the request to transfer was received and the petitioner did not make the request within a reasonable time after receiving notice of the proceeding, provided the notice complied with statutory requirements. Waiting until reunification efforts have failed and reunification services have been terminated before filing a request to transfer may not, by itself, be considered an unreasonable delay;</p> <p>(C) The Indian child is over 12 years of age and objects to the transfer; or</p> <p>(D) The parents of a child over five years of age are not available and the child has had little or no contact with his or her tribe or members of the child's tribe.</p>		
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		(3) If it appears that there is good cause to deny a transfer, the court must hold an evidentiary hearing on the transfer and make its findings on the record.		
<p><b>§ 23.118 How is a determination of “good cause” to deny transfer made?</b></p> <p>(a) If the State court believes, or any party asserts, that good cause to deny transfer exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing on the record and to the parties to the child custody proceeding.</p> <p>(b) Any party to the child-custody proceeding must have the opportunity to provide the court with views regarding whether good cause to deny transfer exists.</p> <p>(c) In determining whether good cause exists, the court must not consider:</p> <p>(1) Whether the foster-care or termination-of-parental-rights proceeding is at an advanced stage if the Indian child’s parent, Indian custodian, or Tribe did not receive notice of the child-custody proceeding until an advanced stage;</p> <p>(2) Whether there have been prior proceedings involving the child for which no petition to transfer was filed;</p> <p>(3) Whether transfer could affect the placement of the child;</p> <p>(4) The Indian child’s cultural connections with the Tribe or its reservation; or</p> <p>(5) Socioeconomic conditions or any negative perception of Tribal or BIA social services or judicial systems.</p>	Transfer	<p>WIC 305.5 (c)</p> <p>(2) Good cause not to transfer the proceeding may exist if:</p> <p>(A) The evidence necessary to decide the case cannot be presented in the tribal court without undue hardship to the parties or the witnesses, and the tribal court is unable to mitigate the hardship by making arrangements to receive and consider the evidence or testimony by use of remote communication, by hearing the evidence or testimony at a location convenient to the parties or witnesses, or by use of other means permitted in the tribal court’s rules of evidence or discovery.</p> <p>(B) The proceeding was at an advanced stage when the petition to transfer was received and the petitioner did not file the petition within a reasonable time after receiving notice of the proceeding, provided the notice complied with Section 224.2. It shall not, in and of itself, be considered an unreasonable delay for a party to wait until reunification efforts have failed and reunification services have been terminated before filing a petition to transfer.</p> <p>(C) The Indian child is over 12 years of age and objects to the transfer.</p> <p>(D) The parents of the child over five years of age are not available and the child has had little or no contact with the child’s tribe or members of the child’s tribe. (3) Socioeconomic conditions and the perceived adequacy of tribal</p>		

<p>(d) The basis for any State-court decision to deny transfer should be stated orally on the record or in a written order.</p>		<p>social services or judicial systems may not be considered in a determination that good cause exists.</p> <p>(4) The burden of establishing good cause to the contrary shall be on the party opposing the transfer. If the court believes, or any party asserts, that good cause to the contrary exists, the reasons for that belief or assertion shall be stated in writing and made available to all parties who are petitioning for the transfer, and the petitioner shall have the opportunity to provide information or evidence in rebuttal of the belief or assertion.</p> <p>CRC 5.483</p> <p><b>(e) Evidentiary considerations</b> The court may not consider socioeconomic conditions and the perceived adequacy of tribal social services, tribal probation, or the tribal judicial systems in its determination that good cause exists to deny a request to transfer to tribal court with concurrent state and tribal jurisdiction.</p> <p><b>(f) Evidentiary burdens</b> (1) The burden of establishing good cause to deny a request to transfer is on the party opposing the transfer. (2) If the court believes, or any party asserts, that good cause to deny the request exists, the reasons for that belief or assertion must be stated in writing, in advance of the hearing, and made available to all parties who are requesting the transfer, and the petitioner must have the opportunity to provide information or evidence in rebuttal of the belief or assertion.</p>		
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<p><b>§ 23.119 What happens after a petition for transfer is granted?</b></p> <p>(a) If the Tribal court accepts the transfer, the State court should expeditiously provide the Tribal court with all records related to the proceeding, including, but not limited to, the pleadings and any court record.</p> <p>(b) The State court should work with the Tribal court to ensure that the transfer of the custody of the Indian child and of the proceeding is accomplished smoothly and in a way that minimizes the disruption of services to the family.</p>	Transfer	<p>CRC 5.483</p> <p><b>(g) Order on request to transfer</b></p> <p>(1) The court must issue its final order on the <i>Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction</i> (form ICWA-060).</p> <p>(2) When a matter is being transferred from the jurisdiction of a juvenile court, the order must include:</p> <p>(A) All of the findings, orders, or modifications of orders that have been made in the case;</p> <p>(B) The name and address of the tribe to which jurisdiction is being transferred;</p> <p>(C) Directions for the agency to release the child case file to the tribe having jurisdiction under section 827.15 of the Welfare and Institutions Code;</p> <p>(D) Directions that all papers contained in the child case file must be transferred to the tribal court; and</p> <p>(E) Directions that a copy of the transfer order and the findings of fact must be maintained by the transferring court.</p>		
<p><b>§ 23.120 How does the State court ensure that active efforts have been made?</b></p> <p>(a) Prior to ordering an involuntary foster-care placement or termination of parental rights, the court must conclude that active efforts have been made to prevent the breakup of the Indian family and that those efforts have been unsuccessful.</p>	Active Efforts	<p>WIC 361</p> <p>(d) The court shall make a determination as to whether reasonable <b>efforts</b> were made to prevent or to eliminate the need for removal of the minor from his or her home or, if the minor is removed for one of the reasons stated in paragraph (5) of subdivision (c), whether it was reasonable under the circumstances not to make any of those <b>efforts</b>, or, in the case of an</p>		

<p>(b) Active efforts must be documented in detail in the record.</p>	<p>Indian child custody proceeding, whether <b>active efforts</b> as required in Section 361.7 were made and that these <b>efforts</b> have proved unsuccessful. The court shall state the facts on which the decision to remove the minor is based.</p> <p><b>WIC 361.7.</b></p> <p>(a) Notwithstanding Section 361.5, a party seeking an involuntary foster care placement of, or termination of parental rights over, an Indian child shall provide evidence to the court that <b>active efforts</b> have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these <b>efforts</b> have proved unsuccessful.</p> <p>(b) What constitutes <b>active efforts</b> shall be assessed on a case-by-case basis. The <b>active efforts</b> shall be made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe. <b>Active efforts</b> shall utilize the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.</p> <p>(c) No foster care placement or guardianship may be ordered in the proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of a qualified expert witness, as defined in Section 224.6, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.</p>		
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<p><b>§ 23.121 What are the applicable standards of evidence?</b></p> <p>(a) The court must not order a foster care placement of an Indian child unless clear and convincing evidence is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.</p> <p>(b) The court must not order a termination of parental rights for an Indian child unless evidence beyond a reasonable doubt is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.</p> <p>(c) For a foster-care placement or termination of parental rights, the evidence must show a causal relationship between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child who is the subject of the child-custody proceeding.</p> <p>(d) Without a causal relationship identified in paragraph (c) of this section, evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence or evidence beyond a reasonable doubt that continued custody is</p>	<p>Evidence</p>	<p>WIC 361.7 (c)</p> <p>(c) No foster care placement or guardianship may be ordered in the proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of a qualified expert witness, as defined in Section 224.6, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.</p>		
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likely to result in serious emotional or physical damage to the child.				
<p><b>§ 23.122 Who may serve as a qualified expert witness?</b></p> <p>(a) A qualified expert witness must be qualified to testify regarding whether the child’s continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and should be qualified to testify as to the prevailing social and cultural standards of the Indian child’s Tribe. A person may be 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.</p> <p>(b) The court or any party may request the assistance of the Indian child’s Tribe or the BIA office serving the Indian child’s Tribe in locating persons qualified to serve as expert witnesses.</p> <p>(c) The social worker regularly assigned to the Indian child may not serve as a qualified expert witness in child-custody proceedings concerning the child.</p>	<p>Qualified Expert Witness</p>	<p>WIC 361.7 (c)</p> <p>(c) No foster care placement or guardianship may be ordered in the proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of a qualified expert witness, as defined in Section 224.6, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.</p> <p>WIC 224.6</p> <p><b>224.6.</b></p> <p>(a) When testimony of a “qualified expert witness” is required in an Indian child custody proceeding, a “qualified expert witness” may include, but is not limited to, a social worker, sociologist, physician, psychologist, traditional tribal therapist and healer, tribal spiritual leader, tribal historian, or tribal elder, provided the individual is not an employee of the person or agency recommending foster care placement or termination of parental rights.</p> <p>(b) In considering whether to involuntarily place an Indian child in foster care or to terminate the parental rights of the parent of an Indian child, the court shall:</p> <p>(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.</p>		

		<p>(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.</p> <p>(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:</p> <p>(1) A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and childrearing practices.</p> <p>(2) Any expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's tribe.</p> <p>(3) A professional person having substantial education and experience in the area of his or her specialty.</p> <p>(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.</p> <p>(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.</p>		
<p><b>§ 23.124 What actions must a State court undertake in voluntary proceedings?</b>  (a) The State court must require the</p>	<p>Voluntary proceedings</p>		<p>California law does not have anything similar to regulation 23.124. So long as the parent or</p>	

<p>participants in a voluntary proceeding to state on the record whether the child is an Indian child, or whether there is reason to believe the child is an Indian child, as provided in § 23.107.</p> <p>(b) If there is reason to believe the child is an Indian child, the State court must ensure that the party seeking placement has taken all reasonable steps to verify the child’s status. This may include contacting the Tribe of which it is believed the child is a member (or eligible for membership and of which the biological parent is a member) to verify the child’s status. As described in §23.107, where a consenting parent requests anonymity, a Tribe receiving such information must keep relevant documents and information confidential.</p> <p>(c) State courts must ensure that the placement for the Indian child complies with §§ 23.129–23.132.</p>			<p>Indian custodian retains the right to have the child returned upon demand, according to WIC 224.1 (d) that proceeding would not fall under definition of “Indian child custody proceeding.” If the parent does not retain the right to have the child returned upon demand, then normal ICWA requirements apply.</p>	
<p><b>§ 23.125 How is consent obtained?</b></p> <p>(a) A parent’s or Indian custodian’s consent to a voluntary termination of parental rights or to a foster-care, preadoptive, or adoptive placement must be executed in writing and recorded before a court of competent jurisdiction.</p> <p>(b) Prior to accepting the consent, the court must explain to the parent or Indian custodian:</p> <p>(1) The terms and consequences of the consent in detail; and</p> <p>(2) The following limitations, applicable to the type of child-custody proceeding for which consent is given, on withdrawal of consent:</p> <p>(i) For consent to foster-care placement, the parent or Indian custodian may withdraw consent for any reason, at any time, and have the child returned; or</p>	<p>Consent</p>	<p>WIC 16507.4 (b)</p> <p>In the case of an Indian child, in accordance with Section 1913 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), the following criteria are met: (A) The parent or Indian custodian's consent to the voluntary out-of-home placement is executed in writing at least 10 days after the child's birth and recorded before a judge. (B) The judge certifies that the terms and consequences of the consent were fully explained in detail in English and were fully understood by the parent or that they were interpreted into a language that the parent understood. (C) A parent of an Indian child may withdraw his or her consent for any reason</p>		

<p>(ii) For consent to termination of parental rights, the parent or Indian custodian may withdraw consent for any reason, at any time prior to the entry of the final decree of termination and have the child returned; or</p> <p>(iii) For consent to an adoptive placement, the parent or Indian custodian may withdraw consent for any reason, at any time prior to the entry of the final decree of adoption, and have the child returned.</p> <p>(c) The court must certify that the terms and consequences of the consent were explained on the record in detail in English (or the language of the parent or Indian custodian, if English is not the primary language) and were fully understood by the parent or Indian custodian.</p> <p>(d) Where confidentiality is requested or indicated, execution of consent need not be made in a session of court open to the public but still must be made before a court of competent jurisdiction in compliance with this section.</p> <p>(e) A consent given prior to, or within 10 days after, the birth of an Indian child is not valid.</p>		<p>at any time and the child shall be returned to the parent.</p> <p>Family Code  § 8606.5. Consent to adoption of Indian children (a) Notwithstanding any other section in this part, and in accordance with Section 1913 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), consent to adoption given by an Indian child's parent is not valid unless both of the following occur: (1) The consent is executed in writing at least 10 days after the child's birth and recorded before a judge. (2) The judge certifies that the terms and consequences of the consent were fully explained in detail in English and were fully understood by the parent or that they were interpreted into a language that the parent understood. (b) The parent of an Indian child may withdraw his or her consent to adoption for any reason at any time prior to the entry of a final decree of adoption and the child shall be returned to the parent.</p> <p>Probate Code  § 1500.1. Consent by Indian child's parent; requirements (a) Notwithstanding any other section in this part, and in accordance with Section 1913 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), consent to nomination of a guardian of the person or of a guardian of the person and the estate given by an Indian child's parent is not valid unless both of the following occur: (1) The consent is executed in writing at least 10 days after the child's birth and recorded before a judge. (2)</p>		
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		The judge certifies that the terms and consequences of the consent were fully explained in detail in English and were fully understood by the parent or that they were interpreted into a language that the parent understood. (b) The parent of an Indian child may withdraw his or her consent to guardianship for any reason at any time prior to the issuance of letters of guardianship and the child shall be returned to the parent.		
<p><b>§ 23.126 What information must a consent document contain?</b></p> <p>(a) If there are any conditions to the consent, the written consent must clearly set out the conditions.</p> <p>(b) A written consent to foster-care placement should contain, in addition to the information specified in paragraph (a) of this section, the name and birthdate of the Indian child; the name of the Indian child's Tribe; the Tribal enrollment number for the parent and for the Indian child, where known, or some other indication of the child's membership in the Tribe; the name, address, and other identifying information of the consenting parent or Indian custodian; the name and address of the person or entity, if any, who arranged the placement; and the name and address of the prospective foster parents, if known at the time.</p>	Consent	There is no California equivalent		
<p><b>§ 23.127 How is withdrawal of consent to a foster-care placement achieved?</b></p> <p>(a) The parent or Indian custodian may withdraw consent to voluntary foster-care placement at any time.</p> <p>(b) To withdraw consent, the parent or Indian custodian must file a written document with the</p>	Consent	There is no equivalent California provision		

<p>court or otherwise testify before the court. Additional methods of withdrawing consent may be available under State law.</p> <p>(c) When a parent or Indian custodian withdraws consent to a voluntary foster care placement, the court must ensure that the Indian child is returned to that parent or Indian custodian as soon as practicable.</p>				
<p><b>§ 23.128 How is withdrawal of consent to a termination of parental rights or adoption achieved?</b></p> <p>(a) A parent may withdraw consent to voluntary termination of parental rights at any time prior to the entry of a final decree of termination.</p> <p>(b) A parent or Indian custodian may withdraw consent to voluntary adoption at any time prior to the entry of a final decree of adoption.</p> <p>(c) To withdraw consent prior to the entry of a final decree of adoption, the parent or Indian custodian must file a written document with the court or otherwise testify before the court. Additional methods of withdrawing consent may be available under State law.</p> <p>(d) The court in which the withdrawal of consent is filed must promptly notify the person or entity who arranged any voluntary preadoptive or adoptive placement of such filing, and the Indian child must be returned to the parent or Indian custodian as soon as practicable.</p>	Consent	There is no equivalent California provision		
<p><b>§ 23.129 When do the placement preferences apply?</b></p> <p>(a) In any preadoptive, adoptive, or foster-care placement of an Indian child, the placement preferences specified in § 23.130 and § 23.131 apply.</p>	Placement preferences	<p>WIC 361.31</p> <p><b>361.31.</b></p> <p>(a) In any case in which an Indian child is removed from the physical custody of his or her parents or Indian custodian pursuant to</p>		

<p>(b) Where a consenting parent requests anonymity in a voluntary proceeding, the court must give weight to the request in applying the preferences.</p> <p>(c) The placement preferences must be applied in any foster-care, preadoptive, or adoptive placement unless there is a determination on the record that good cause under § 23.132 exists to not apply those placement preferences.</p>		<p>Section 361, the child's <b>placement</b> shall comply with this section.</p> <p>(d) Notwithstanding the <b>placement preferences</b> listed in subdivisions (b) and (c), if a different order of <b>placement</b> preference is established by the child's tribe, the court or agency effecting the <b>placement</b> shall follow the order of preference established by the tribe, so long as the <b>placement</b> is the least restrictive setting appropriate to the particular needs of the child as provided in subdivision (b).</p> <p>(e) Where appropriate, the <b>placement</b> preference of the Indian child, when of sufficient age, or parent shall be considered. In applying the <b>preferences</b>, a consenting parent's request for anonymity shall also be given weight by the court or agency effecting the <b>placement</b>.</p>		
<p><b>§ 23.130 What placement preferences apply in adoptive placements?</b></p> <p>(a) In any adoptive placement of an Indian child under State law, where the Indian child's Tribe has not established a different order of preference under paragraph (b) of this section, preference must be given in descending order, as listed below, to placement of the child with:</p> <p>(1) A member of the Indian child's extended family;</p> <p>(2) Other members of the Indian child's Tribe; or</p> <p>(3) Other Indian families.</p> <p>(b) If the Indian child's Tribe has established by resolution a different order of preference than</p>	<p>Placement preferences</p>	<p>WIC 361.31</p> <p>(c) In any adoptive <b>placement</b> of an Indian child, preference shall be given to a <b>placement</b> with one of the following, in descending priority order:</p> <p>(1) A member of the child's extended family, as defined in Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).</p> <p>(2) Other members of the child's tribe.</p> <p>(3) Another Indian family</p>		

<p>that specified in ICWA, the Tribe's placement preferences apply.</p> <p>(c) The court must, where appropriate, also consider the placement preference of the Indian child or Indian child's parent.</p>				
<p><b>§ 23.131 What placement preferences apply in foster-care or preadoptive placements?</b></p> <p>(a) In any foster-care or preadoptive placement of an Indian child under State law, including changes in foster-care or preadoptive placements, the child must be placed in the least restrictive setting that:</p> <p>(1) Most approximates a family, taking into consideration sibling attachment;</p> <p>(2) Allows the Indian child's special needs (if any) to be met; and</p> <p>(3) Is in reasonable proximity to the Indian child's home, extended family, or siblings.</p> <p>(b) In any foster-care or preadoptive placement of an Indian child under State law, where the Indian child's Tribe has not established a different order of preference under paragraph (c) of this section, preference must be given, in descending order as listed below, to placement of the child with:</p> <p>(1) A member of the Indian child's extended family;</p> <p>(2) A foster home that is licensed, approved, or specified by the Indian child's Tribe;</p> <p>(3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or</p> <p>(4) An institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the child's needs.</p>		<p>WIC 361.31</p> <p>(b) Any foster care or guardianship <b>placement</b> of an Indian child, or any emergency removal of a child who is known to be, or there is reason to know that the child is, an Indian child shall be in the least restrictive setting which most approximates a family situation and in which the child's special needs, if any, may be met. The child shall also be placed within reasonable proximity to the child's home, taking into account any special needs of the child.</p> <p>Preference shall be given to the child's <b>placement</b> with one of the following, in descending priority order:</p> <p>(1) A member of the child's extended family, as defined in Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).</p> <p>(2) A foster home licensed, approved, or specified by the child's tribe.</p> <p>(3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority.</p> <p>(4) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.</p>		



<p>(c) If the Indian child’s Tribe has established by resolution a different order of preference than that specified in ICWA, the Tribe’s placement preferences apply, so long as the placement is the least-restrictive setting appropriate to the particular needs of the Indian child, as provided in paragraph (a) of this section.</p> <p>(d) The court must, where appropriate, also consider the preference of the Indian child or the Indian child’s parent.</p>				
<p><b>§ 23.132 How is a determination of “good cause” to depart from the placement preferences made?</b></p> <p>(a) If any party asserts that good cause not to follow the placement preferences exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the child-custody proceeding and the court.</p> <p>(b) The party seeking departure from the placement preferences should bear the burden of proving by clear and convincing evidence that there is “good cause” to depart from the placement preferences.</p> <p>(c) A court’s determination of good cause to depart from the placement preferences must be made on the record or in writing and should be based on one or more of the following considerations:</p> <p>(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;</p> <p>(2) The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;</p>	<p>Placement preferences</p>	<p>WIC 361.31</p> <p>(h) The court may determine that <b>good cause</b> exists not to follow placement preferences applicable under subdivision (b), (c), or (d) in accordance with subdivision (e).</p> <p>(i) When no preferred placement under subdivision (b), (c), or (d) is available, active efforts shall be made to place the child with a family committed to enabling the child to have extended family visitation and participation in the cultural and ceremonial events of the child’s tribe.</p> <p>(j) The burden of establishing the existence of <b>good cause</b> not to follow placement preferences applicable under subdivision (b), (c), or (d) shall be on the party requesting that the preferences not be followed.</p> <p>CRC 5.484</p> <p><b>(b) Standards and preferences in placement of an Indian child</b></p> <p>(1) Unless the court finds good cause to the contrary, all placements of Indian children in any proceeding listed in rule 5.480 must follow</p>	<p>The new regulations more closely regulation and limit the basis for a finding of good cause to deviate from the placement preferences.</p> <p>The limitation on considering socioeconomic circumstances is new and not contained in California law.</p> <p>The limitation on considering bonding which occurs while child is in a non-compliance placement is also new and is not reflected in California law.</p>	

<p>(3) The presence of a sibling attachment that can be maintained only through a particular placement;</p> <p>(4) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live;</p> <p>(5) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located. For purposes of this analysis, the standards for determining whether a placement is unavailable must 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.</p> <p>(d) A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.</p> <p>(e) A placement may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA.</p>		<p>the specified placement preferences in Family Code section 177(a), Probate Code section 1459(b), and Welfare and Institutions Code section 361.31.</p> <p>(2) The court may deviate from the preference order only for good cause, which may include the following considerations:</p> <p>(A) The requests of the parent or Indian custodian;</p> <p>(B) The requests of the Indian child, when of sufficient age;</p> <p>(C) The extraordinary physical or emotional needs of the Indian child as established by a qualified expert witness; or</p> <p>(D) The unavailability of suitable families based on a documented diligent effort to identify families meeting the preference criteria.</p> <p>(3) The burden of establishing good cause for the court to deviate from the preference order is on the party requesting that the preference order not be followed.</p> <p>(4) The tribe, by resolution, may establish a different preference order, which must be followed if it provides for the least restrictive setting.</p> <p>(5) The preferences and wishes of the Indian child, when of sufficient age, and the parent must be considered, and weight given to a consenting parent's request for anonymity.</p> <p>(6) When no preferred placement is available, active efforts must be made and documented to place the child with a family committed to enabling the child to have visitation with "extended family members," as defined in rule</p>		
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		5.481(a)(4)(A), and participation in the cultural and ceremonial events of the child's tribe.		
<p><b>§ 23.133 Should courts allow participation by alternative methods?</b></p> <p>If it possesses the capability, the court should allow alternative methods of participation in State-court child custody proceedings involving an Indian child, such as participation by telephone, videoconferencing, or other methods.</p>	Misc.	No equivalent California provisions		
<p><b>§ 23.134 Who has access to reports and records during a proceeding?</b></p> <p>Each party to an emergency proceeding or a foster-care-placement or termination-of-parental-rights proceeding under State law involving an Indian child has a right to timely examine all reports and other documents filed or lodged with the court upon which any decision with respect to such action may be based.</p>	Access to records			
<p><b>§ 23.136 What are the requirements for vacating an adoption based on consent having been obtained through fraud or duress?</b></p> <p>(a) Within two years after a final decree of adoption of any Indian child by a State court, or within any longer period of time permitted by the law of the State, the State court may invalidate the voluntary adoption upon finding that the parent's consent was obtained by fraud or duress.</p> <p>(b) Upon the parent's filing of a petition to vacate the final decree of adoption of the parent's Indian child, the court must give notice to all parties to the adoption proceedings and the Indian child's Tribe and must hold a hearing on the petition.</p>	Vacating adoption	<p>Family Code 8606.5</p> <p>(c) After the entry of a final decree of adoption of an Indian child, the Indian child's parent may withdraw consent to the adoption upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent, provided that no adoption that has been effective for at least 2 years may be invalidated unless otherwise permitted under state law.</p>		

<p>(c) Where the court finds that the parent's consent was obtained through fraud or duress, the court must vacate the final decree of adoption, order the consent revoked, and order that the child be returned to the parent.</p>				
<p><b>§ 23.137 Who can petition to invalidate an action for certain ICWA violations?</b>  (a) Any of the following may petition any court of competent jurisdiction to invalidate an action for foster-care placement or termination of parental rights under state law where it is alleged that 25 U.S.C. 1911, 1912, or 1913 has been violated:  (1) An Indian child who is or was the subject of any action for foster-care placement or termination of parental rights;  (2) A parent or Indian custodian from whose custody such child was removed;  and  (3) The Indian child's Tribe.  (b) Upon a showing that an action for foster-care placement or termination of parental rights violated any provision of 25 U.S.C. 1911, 1912, or 1913, the court must determine whether it is appropriate to invalidate the action.  (c) To petition for invalidation, there is no requirement that the petitioner's rights under ICWA were violated; rather, a petitioner may challenge the action based on any violations of 25 U.S.C. 1911, 1912, or 1913 during the course of the child-custody proceeding.</p>	<p>Invalidation</p>	<p>Family Code 175   (e) Any Indian child, the Indian child's tribe, or the parent or Indian custodian from whose custody the child has been removed, may petition the court to invalidate an action in an Indian child custody proceeding for foster care, guardianship placement, or termination of parental rights if the action violated Sections 1911, 1912, and 1913 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.). Nothing in this section is intended to prohibit, restrict, or otherwise limit any rights under Section 1914 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).   Probate Code 1459:   (e) Any Indian child, the Indian child's tribe, or the parent or Indian custodian from whose custody the child has been removed, may petition the court to invalidate an action in an Indian child custody proceeding for foster care or guardianship placement or termination of parental rights if the action violated Sections 1911, 1912, and 1913 of the Indian Child Welfare Act.   WIC 224</p>		

		(e) Any Indian child, the Indian child's tribe, or the parent or Indian custodian from whose custody the child has been removed, may petition the court to invalidate an action in an Indian child custody proceeding for foster care or guardianship placement or termination of parental rights if the action violated Sections 1911, 1912, and 1913 of the Indian Child Welfare Act.		
<p><b>§ 23.138 What are the rights to information about adoptees' Tribal affiliations?</b> Upon application by an Indian who has reached age 18 who was the subject of an adoptive placement, the court that entered the final decree of adoption must inform such individual of the Tribal affiliations, if any, of the individual's biological parents and provide such other information necessary to protect any rights, which may include Tribal membership, resulting from the individual's Tribal relationship.</p>	Misc.	No equivalent California legislation		
<p><b>§ 23.139 Must notice be given of a change in an adopted Indian child's status?</b> (a) If an Indian child has been adopted, the court must notify, by registered or certified mail with return receipt requested, the child's biological parent or prior Indian custodian and the Indian child's Tribe whenever: (1) A final decree of adoption of the Indian child has been vacated or set aside; or (2) The adoptive parent has voluntarily consented to the termination of his or her parental rights to the child. (b) The notice must state the current name, and any former name, of the Indian child, inform the recipient of the right to petition for return of</p>				

<p>custody of the child, and provide sufficient information to allow the recipient to participate in any scheduled hearings.</p> <p>(c) A parent or Indian custodian may waive his or her right to such notice by executing a written waiver of notice and filing the waiver with the court.</p> <p>(1) Prior to accepting the waiver, the court must explain the consequences of the waiver and explain how the waiver may be revoked.</p> <p>(2) The court must certify that the terms and consequences of the waiver and how the waiver may be revoked were explained in detail in English (or the language of the parent or Indian custodian, if English is not the primary language), and were fully understood by the parent or Indian custodian.</p> <p>(3) Where confidentiality is requested or indicated, execution of the waiver need not be made in a session of court open to the public but still must be made before a court of competent jurisdiction in compliance with this section.</p> <p>(4) The biological parent or Indian custodian may revoke the waiver at any time by filing with the court a written notice of revocation.</p> <p>(5) A revocation of the right to receive notice does not affect any child-custody proceeding that was completed before the filing of the notice of revocation.</p>				
<p><b>23.140 What information must States furnish to the Bureau of Indian Affairs?</b></p> <p>(a) Any State court entering a final adoption decree or order in any voluntary or involuntary Indian-child adoptive placement must furnish a copy of the decree or order within 30 days to the Bureau of Indian Affairs, Chief, Division of</p>				

<p>Human Services, 1849 C Street NW., Mail Stop 4513 MIB, Washington, DC 20240, along with the following information, in an envelope marked “Confidential”:</p> <p>(1) Birth name and birthdate of the Indian child, and Tribal affiliation and name of the Indian child after adoption;</p> <p>(2) Names and addresses of the biological parents;</p> <p>(3) Names and addresses of the adoptive parents;</p> <p>(4) Name and contact information for any agency having files or information relating to the adoption;</p> <p>(5) Any affidavit signed by the biological parent or parents asking that their identity remain confidential; and</p> <p>(6) Any information relating to Tribal membership or eligibility for Tribal membership of the adopted child.</p> <p>(b) If a State agency has been designated as the repository for all State-court adoption information and is fulfilling the duties described in paragraph (a) of this section, the State courts in that State need not fulfill those same duties.</p>				
<p><b>23.141 What records must the State maintain?</b></p> <p>(a) The State must maintain a record of every voluntary or involuntary fostercare, preadoptive, and adoptive placement of an Indian child and make the record available within 14 days of a request by an Indian child’s Tribe or the Secretary.</p> <p>(b) The record must contain, at a minimum, the petition or complaint, all substantive orders entered in the child custody proceeding, the</p>				

<p>complete record of the placement determination (including, but not limited to, the findings in the court record and the social worker's statement), and, if the placement departs from the placement preferences, detailed documentation of the efforts to comply with the placement preferences.</p> <p>(c) A State agency or agencies may be designated to be the repository for this information. The State court or agency should notify the BIA whether these records are maintained within the court system or by a State agency.</p>				
<p>Sections 23.142, 23.143 and 23.144 regarding paperwork reduction; effective date and severability omitted.</p>				

DRAFT



Preliminary Final-  
California ICWA Compliance  
Task Force Report to the  
Bureau of Children's Justice,  
2016

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## Executive Summary

At the time of its passage, in 1978, the Indian Child Welfare Act, 25 U.S.C. §1901 et seq. (“ICWA”) was considered landmark civil rights legislation. When California passed what has become known as Cal-ICWA, legislation to adopt many of the protections of the federal ICWA into state law, it was again a landmark moment for the American Indian community. Unfortunately, the promise and potential of the federal ICWA and the Cal-ICWA have not been realized, as neither the letter nor the spirit of the law have been implemented.

In 2015 the California ICWA Compliance Task Force came together, after meetings with the Bureau of Children’s Justice (“BCJ”), a newly created Bureau of the California Department of Justice, Office of the Attorney General, to gather narratives and data regarding the failure of ICWA implementation. The goal was that the narratives and data be used in a concerted effort to target reform at non-compliant entities within the dependency system. The intended audience for the Task Force work began as the BCJ, but has grown to many branches of state government and other stakeholders.

This Report is the culmination of the Task Force effort thus far, but it is not the end of the effort. This Report is an essential first step, an attempt to examine the issues and frame solutions. As an epicenter of ICWA cases (with more ICWA appeals than any other state), as the home of some of the most divisive and controversial cases involving the ICWA and as a state at the cutting edge of innovation and reform, California has a monumental task ahead in order to fulfill the promises made to Indian tribes, Indian communities and Indian families in 1978. We, as the Co-Chairs of the Taskforce, believe the important work has started with the presentation of this Report but we as tribal leaders must demand that the work continue with our partners in the Governor’s office, the Office of the Attorney General, the Judicial Council, the California Bar Association and the California Department of Social Services to get beyond this first step.

It is essential to make clear that this Report and the Task Force itself does not state or hold as true that there has been no effort or progress in ICWA implementation

over the last decades; there has been incremental progress with sincere and innovative means to address concerns that tribal leaders and stakeholders have brought forward. The work of the Tribal-State Workgroup, the passage of a number of new statutes, and the growing use of Tribal Customary Adoption as a culturally appropriate plan are all exceptional examples of innovation. But as we near the 40<sup>th</sup> anniversary of the ICWA, we cannot celebrate limited progress - we must hold ourselves to a higher standard so we do not look back on only incremental progress, but look forward to achieving the articulated national and state policies to protect Indian children and preserve Indian tribes through compliance with this landmark legislation.

From the work of the Task Force there are specific areas of ICWA violations that emerged as the most frequent, pointing to where the system is most critically flawed; lack of funding creating essentially an unfunded mandate of ICWA compliance for under resourced tribes, lack of pre-removal remedial services and robust active reunification efforts, failure to complete diligent inquiry and notice, resistance to tribal court jurisdiction, barriers to tribal participation in court processes, lack of competency within court systems, deviation from or violation of placement preferences. Tribal leaders, tribal social workers and tribal attorneys disclosed instances all over the state and at all stages of cases where non-compliance with the ICWA had devastating effects on tribes and tribal families.

**Tribal representatives shared many profound and deeply troubling stories on a private basis with the Task Force; however, those stories are not included here because the Native American community is effectively silenced by cultural custom. Tribes have shared that it is not appropriate to include a family's tragedy in a public document. In addition, tribes and Task Force participants feared retaliation for divulging ICWA violations and therefore requested privacy. The Task Force also vigilantly protected confidentiality of children.**

Beyond the individual instances of non-compliance what emerged is a narrative that is no less than a denial of the civil rights that the ICWA and Cal-ICWA were meant to safe-guard. Unfortunately, the civil rights violations visited upon California Indians in

the dependency system are a small microcosm of a fundamental breakdown of the systems that are failing tribal families and children across the country; one need only look at the underfunding of legal counsel for indigent tribal families, mental health crises with native youth,<sup>1</sup> the epidemic of sex trafficking of native girls,<sup>2</sup> and the federal court litigation in Pennington County, South Dakota,<sup>3</sup> which could be replicated in California.

As a result of the work of the Task Force, the Co-Chairs are requesting immediate action on the following issues, to be augmented by additional findings and recommendations as this process moves forward.

- A) BCJ must develop a concrete action plan for investigating every California county utilizing the agency's subpoena power to look at source documents.
- B) BCJ must create and maintain an internal investigative unit to vigilantly track ICWA compliance and non-compliance and consistently bring to bear the power of the Attorney General for non-compliance.
- C) There must be a reframing and reconsideration of the lack of resources provided to tribes for ICWA compliance, specifically the lack of appointed counsel or resources to retain counsel for tribes, as a violation of the civil rights of tribes and tribal families.
- D) There must be an investigation into state agencies' relationships with lobbying entities to ensure objectivity and independence so that CDSS remains unfettered and untethered to the whim of political forces especially forces that historically undermine full implementation of ICWA.
- E) The state must dedicate resources to fund authentic and robust ICWA compliance, including tribal consultation consistent with Executive Order B-10-11, support for tribes that are under resourced with regard to child welfare,

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<sup>1</sup> Anna Almendrala, *Native American Youth Suicide Rates Are at Crisis Levels*, Huffington Post (October 2, 2015) available at: [http://www.huffingtonpost.com/entry/native-american-youth-suicide-rates-are-at-crisis-levels\\_us\\_560c3084e4b0768127005591](http://www.huffingtonpost.com/entry/native-american-youth-suicide-rates-are-at-crisis-levels_us_560c3084e4b0768127005591) (last visited May 31, 2016).

<sup>2</sup> Victoria Sweet, *Trafficking in Native Communities*, Indian Country Today (May 25, 2015) available at: <http://indiancountrytodaymedianetwork.com/2015/05/24/trafficking-native-communities-160475> (last visited May 31, 2016).

<sup>3</sup> *Oglala Sioux Tribe v. Luann Van Hunnik*, United States District Court, District of South Dakota, Western Division, Case 13-cv-05020-JLV

and building tracking and data systems that accurately account for tribal families.

It is the goal of the Task Force that this Report be a call to action for the BCJ and that it starts a conversation examining why the civil rights protected by the ICWA, the right to due process, to cultural connections and religious freedoms, to remain in one's community of origin, are routinely under attack. To achieve the promise of the ICWA there must be more than episodic rallying cries and well-meaning grant cycle initiatives; there must be a vigilant force that demands more than mere lip-service to compliance. We thank you for joining us as we address ICWA compliance and protection of the civil rights of our most vulnerable population.



## RECOMMENDATIONS FOR ICWA COMPLIANCE IN CALIFORNIA

### **Recommendation 1: Competence of Counsel and Agency Personnel**

The minimum qualifications to practice law in dependency court pursuant to California Rules of Court, rules 5.40 and 5.660 must include substantive, procedural, and cultural competence of Cal-ICWA as part of the standards of representation. Competence requirements should apply to all attorneys representing parties in ICWA cases, including county counsel, and competence standards must also apply to social workers. It bears repeating, that agency leadership, managers and supervisors, must be highly trained and knowledgeable on Cal-ICWA and ICWA in order to fully and adequately supervise and provide guidance to staff. CDSS should require proof of competency much like court administrations do (via declaration) and failure to comply would result in a disciplinary action against the employee.

### **Recommendation 2: Consolidated Courts**

The model where all ICWA cases are heard in a single department, and by a single bench officer, creates an economy of scale and expertise that benefits everyone. It may not be feasible in all counties, particularly small counties, but it could be limited to counties which annually reach a threshold number of ICWA cases (tracked using the data collection remedy discussed further below). With respect to social workers, a consolidated ICWA unit within the agency, similar to the consolidated court approach discussed here, would be a realistic solution, with specially-qualified social workers handling all ICWA cases.

### **Recommendation 3: Appointed Counsel for Tribes**

Welfare & Institutions Code §317 provides for appointment of legal counsel for parents or Indian custodians, and guardians who cannot afford an attorney. It also compels appointment of counsel for children in every case, subject to limited exceptions, which was an expansion over the pre-2001 rule that allowed counsel when it would benefit the child. Even de facto parents are allowed appointed counsel under California Rules of Court, rule 5.534(e)(2) at the discretion of the trial judge. The agency is always represented by one or more attorneys.

The absence of a corresponding provision for appointment of attorneys for tribes, even though many appellate reversals could have been avoided if tribes had legal representation at the early stages of those cases, is a significant breach of the mandates of due process. The multitude of errors in ICWA cases is a cost on the entire system, and could be minimized if tribes were afforded the same right to counsel as other parties.

For tribes with resources to retain their own legal counsel, tribal attorneys could substitute into a case, as is done with other proceedings, but there would not be a gap in representation that invites error.

We specifically recommend the development of a 4-year pilot project that would:

1. Provide free legal counsel to tribes in dependency cases where the ICWA applies in at least two pilot counties. Counsel shall be a non-profit organization with at least 10 years of institutional experience specializing in representing tribes in cases where the ICWA applies.
2. Require the Judicial Council to convene a working group comprised of all relevant persons, including tribal representatives and tribal advocates, state court judges, and Judicial Council staff that would provide a report to the Legislative Counsel within 12 months regarding the efficacy of the project.
3. Review opportunities to seek federal funding under the ICWA for court appointed counsel in ICWA cases.

#### **Recommendation 4: Attorney Fees**

If tribes are not provided counsel as suggested above, an alternative is to create clear statutory authority for recovery of attorney's fees where a party is able to demonstrate a violation of the Cal-ICWA (similar to prevailing party provisions set forth in the Code of Civil Procedure). The Legislature has made it plain that compliance with the Cal-ICWA is a matter of public policy,<sup>232</sup> yet at present the tribe is the party most often seeking to prevent or correct Cal-ICWA violations and is the only party paying for legal representation themselves.

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<sup>232</sup> Welf. & Inst. §224(a)(1).

### **Recommendation 5: Sanctions**

Juvenile judges are empowered with the same authority to impose monetary and other sanctions on parties and counsel who do not follow substantive and procedural rules. A continuing problem is the failure of agencies to give notice to tribes, serve documents and provide discovery, and to file timely reports. Because there are no filing fees in dependency actions, and county counsel is not required to sign and verify pleadings (including proof of service), the normal checks and balances of court procedure do not apply equally.

Two ways that this could be remedied are: (i) to impose monetary sanctions on social service agencies that file late reports, or neglect to serve tribes; and (ii) to require the agency's legal counsel to sign and verify pleadings or reports in the same manner as other court proceedings. By shifting responsibility to counsel, the court could ensure that an officer of the court has reviewed documents before they are filed, and in cases where the agency does not follow rules, monetary sanctions would be a tangible disincentive. Any monetary sanctions would be paid directly to the tribe and not into a court or other common fund.

### **Recommendation 6: Binding Pre-Dispositional Agreements**

Welfare and Institutions Code §241.1 requires agencies to implement a jointly developed written protocol to ensure coordination between Probation and Social Services in designating whether a minor will be supervised by the delinquency court or dependency court. Some of the written protocols allow joint supervision, but the old model would not permit a child to have dispositions under both systems simultaneously.

For example, Los Angeles County's protocol provides that dual status assessments and case plan creation are overseen by a Multidisciplinary Team (MDT) which consists of representatives of probation, child welfare, mental health, and the education unit of child welfare. Case plans are developed at a post-dispositional planning meeting attended by the youth, the caregiver, the attorneys, and the probation officer and social worker on the case. At the meeting the MDT gets input from all present with the goal of achieving consensus on the specifics of the plan. After completion of the meeting a post

disposition hearing is held in each court to ensure that the youth, the caregiver, the probation officer, and the social worker understand their obligations.

This model could easily be adopted for ICWA cases and include tribes, tribal social services, and tribal providers as members of the MDT. If a pre-dispositional meeting and agreement were required for ICWA cases, the agreement is binding, and a prerequisite to placement and removal from an Indian home, this would facilitate tribal involvement at the earliest stages.

### **Recommendation 7: Foster Care Bill of Rights Amendment**

Welfare and Institutions Code §16001.9 codifies the rights of foster care minors as the policy of the State of California. Included are the rights to: (i) attend religious services and activities of his or her choice (§16001.9(10)); (ii) to attend school and participate in extracurricular, *cultural*, and personal enrichment activities (§16001.9(13)); (iii) to have fair and equal access to *all available services*, placement, care, treatment, and benefits, and not to be subjected to discrimination or harassment bases on *race*, *ethnic group* identification, or *ancestry* (§16001.9(23)); and (iv) to have caregivers and child welfare personnel who have received instruction on *cultural competence* and sensitivity...(§16001.9(24)). When applied together these rights include, but do not expressly state, an Indian foster child has the right to participate in culturally-appropriate tribal services, placements, and benefits, and be able to enforce the ICWA as a foster child right.

The Bureau of Children's Justice should advocate, and obtain, an amendment to the foster care bill of rights that unequivocally codifies ICWA enforcement and application as a foster care child right.

### **Recommendation 8: State Monitoring/Oversight**

In conjunction with recognizing Cal-ICWA enforcement as a foster child's right, the Office of the Foster Care Ombudsman should be specifically empowered to investigate and negotiate mandates for compliance in specific cases and specific counties where compliance with state mandates are systematically ignored. The director and staff of the

Office of the Ombudsman must complete and certify they have received competent and ongoing training on Cal-ICWA and ICWA.

### **Recommendation 9: Require County Social Worker Reports to Include ICWA Compliance Sections**

Social Worker reports currently include compulsory sections on Tribal Customary Adoption, and should be required to include additional sections to document ICWA compliance.

Counties must be required to keep detailed records of efforts to comply with the Cal-ICWA's placement preferences, thus providing a court or an outside investigating agency information and data to determine whether active efforts to comply with the Cal-ICWA placement requirements occurred and what the barriers to Cal-ICWA compliant placements may be.

Counties must also be required to include sections on both placement and active efforts which states whether the tribe was consulted on active efforts and placements and whether the tribe is in agreement that active efforts took place and whether placement is in compliance with ICWA's preferences.

### **Recommendation 10: Data Collection**

The current data system utilized by the California Department of Social Services and every California County (CWS/CMS) to track child welfare cases and systems contains inadequate data and system functionality regarding ICWA eligible children. While the majority of the problem is likely a result of inadequate inquiry regarding children's tribal affiliations, overall, the system fails to include data sets essential to tracking ICWA compliance. This lack of data makes it much more difficult for tribes to guide policy and budget allocation processes to ensure Cal-ICWA is complied with.<sup>233</sup> One step that must be taken is the addition of a drop down mandatory field to enter tribal affiliation when known. Implementation of such a data field would increase compliance because the data would be more routinely sought and failures to enter tribal affiliation could be

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<sup>233</sup> See the California CFSP, page 72-73 [http://www.childsworld.ca.gov/res/TitleIV-B/CFSP\\_2015-2019.pdf](http://www.childsworld.ca.gov/res/TitleIV-B/CFSP_2015-2019.pdf)

tracked. Next, UC Berkeley Social Welfare's Center for Social Services Research, which maintains the California Child Welfare Indicators Project (CCWIP) should create a whole data set specifically for American Indian Dependents which would provide for data collection outside of that which is collected via Agency reporting, in order to create a data system that can accurately reflect the population of American Indian, Cal-ICWA eligible dependents.

Further, every county and the State are required to complete reporting to support and justify their annual funding allocations (e.g. CFSPs, APSRs). Fortunately, the various tools required to evaluate counties and states to justify their federal funding increasingly require information and narrative descriptions regarding how counties, the State and Tribes are working cooperatively. Unfortunately, these reports often misrepresent the level of collaboration and consultation occurring with the tribes. A forensic review of represented ICWA compliance as stated in these reports should be completed and discrepancies should be addressed. Each county would be publically rated for ICWA compliance and each county's successes and failures noted. Counties with high compliance ratings would be eligible for additional state funding.

#### **Recommendation 10: Tribal Access to Records**

Legislative recognition of tribe's right to access records to other areas to overcome HIPAA and other confidentiality prohibitions. Despite the amendments to §827 designating tribes, tribal representatives and tribal attorneys as "parties" the practice of denying routine paperwork, pleadings, and minutes to tribes remains. The costs of preventing access to court filings and discovery should be enforced by the Court, but if, after notice, an Agency or county counsel continue to deny production then monetary sanctions should be mandatory. In addition, the Rule of Court should be amended to clarify what "intervention" means, and what rights and privileges are afforded tribes that intervene as a party, as well as the corresponding sanctions for parties failing to treat tribes as equal parties to the litigation.

### **Recommendation 11: Counties Should Contract with Culturally-Appropriate Services**

Counties, not Tribes, receive funding for social services; and those services should be representative of the client community – where a percentage of the children in care are Native American, a corresponding percentage of the services should be targeted at that populations. Such services might include Positive Indian Parenting, cultural mentors, trauma based services addressing intergenerational trauma, etc.

### **Recommendation 12: ICWA Units in Agencies**

Designated social services personnel within each county agency that specializes in cases involving Native American children and families will allow for the development of expertise and relationships between tribal social workers and county social workers. This must include the option to return to a process where one social workers works with the family throughout a case, instead of having social workers change throughout the various stages of a case (“family social workers” versus “assignment social workers”).

### **Recommendation 13: Lower Case Counts for Cal-ICWA Cases**

Cases involving active efforts are intended to take additional resources, for example transporting a parent to services, rather than providing a bus pass or a simple referral. For case count purposes, ICWA cases should count as 1.25 or 1.5 cases to allow social workers the ability to provide active efforts, particularly where distance is an aggravating circumstance.

### **Recommendation 14: CDSS Office of Native American Affairs**

Having an office of Native American Affairs within CDSS would assist tribes in communicating concerns to CDSS. Additionally, there is no longer one unit within CDSS that is targeted at tribal issues and concerns, therefore, it is also recommended that one person is designated within each unit to act in this capacity.

CDSS has oversight authority and as such must be involved and assist with protocols and agreements being negotiated between tribes and counties. When conflicts arise in a particular county, CDSS must become involved to assist as a neutral entity to assist with problem solving and resolution of issues.



### **Recommendation 15: CDSS Share Federal Block Grants with Tribes, as Occurs in Other States**

CDSS receives federal block grant funds as part of the social services funding budget process. A portion of these funds must be allocated to Tribes or Cal-ICWA related programs to fill in gaps where compliance efforts under resourced resulting in non-compliance with the mandates of Cal-ICWA.

### **Recommendation 16: State Funding for Placement Recruitment Should be Shared with Tribes**

Tribes are not only the primary source for identifying potential placements but are also better at developing and executing on culturally appropriate recruitment of tribal foster homes and adoptive homes.

### **Recommendation 17: Counties Must Make Active Efforts to Conduct Criminal Background Exemptions (*In re Julian B.*)**

The system for granting exemptions for placement where a proposed placement has a criminal history must become more robust, timely and accessible. Counties often dismiss requests for exemptions without true consideration of the individual's history.

### **Recommendation 18: Expert Witnesses**

Civil Procedure Code §2034.210 - §2034.310 sets forth the procedure for designating expert witnesses for trial, including identifying their qualifications, area of expertise, and documents relied upon in forming their opinion. One remedy to enhance Cal-ICWA compliance would be to treat "qualified expert witnesses" analogously to experts in civil cases; experts would be identified by the County twenty (20) days in advance, including identifying each and every document relied upon by the expert in forming their opinion, and making discoverable any communications made to the designated expert by the Agency or County Counsel, including emails or phone notes. As part of the process, Tribes and the courts could inquire about other cases that the expert has testified in, and for whom. If requested, the qualified expert could be deposed in advance of the hearing so that a protracted voir dire is not necessary. This is particularly critical where



a County intends to submit expert testimony by written declaration. If the county intends to use a *paper expert* then they should be required to submit the proffered testimony and *all* supporting documentation at least ten (10) days before a dispositional hearing (or termination of parental rights hearing), or else the testimony is excluded. Any delays or requests for continuances should be enforced by sanctions.

### **Recommendation 19: Periodic Reports and Agency Filings—Inclusion of Tribal Contacts**

Most Agency reports include a detailed narrative of every event that occurred leading up to a filing, including any referrals, assessments, or voluntary plans. After jurisdiction is taken, the Agency includes a diary of events, commonly including detailed statements of the parents' actions, comments, and compliance. However, nothing in the rules requires the Agency to identify and document the efforts it has made to contact and involve Indian tribes. Specifically, we recommend that the agency be required to narrate in detail, the nature and type of communications the worker has had with the tribe or tribal agency, and what documents or reports have been submitted by the tribe for court consideration, or which were rejected by the agency and not included in their report. If the agency is required to document its ongoing Active Efforts, Placement Preferences, and Culturally Appropriate Services, including input from the tribe (or tribes) then future reports will develop a baseline for measuring agency interaction with tribes and compliance with the Act.

### **Recommendation 20: Pleadings Signed by County Counsel**

In most cases a pleading must be reviewed and signed by an attorney, which is an implied acknowledgment that a legal review by an officer of the court has occurred. Though this may seem obvious and basic, pleadings filed in Dependency court are not always reviewed by an attorney, and not always signed off by legal counsel. The practice varies from county to county. But, if legal counsel (in Dependency cases it is County Counsel) were required to sign off on all pleadings and accept responsibility for the allegations and content, including consequences for improperly filed documents, this would go a long way toward enforcing compliance of the Cal-ICWA.

Attorneys by nature are detail oriented, and will not allow a substandard document or pleading to be filed with their name attached. Instead of delegating the legal filing to social workers, the court should require legal counsel to vouch for the accuracy and content, as is done in all other court cases.

### **Recommendation 21: Complete CDSS Tribal Consultation Policy**

Executive Order B-10-11 was signed by the Governor in 2010 and mandated that each department of the state government develop a Tribal Consultation Policy. In 2013 a Tribal Consultation Policy development process was commenced as a joint effort between Tribes, Tribal community stakeholders and the CDSS, Children and Family Services Division, the division which has the majority of responsibility for Cal-ICWA compliance on a state level. To date that process has not been completed and CDSS, and the CFSD continue to operate without a Tribal Consultation Policy as mandated by the Governor's Executive Order. CDSS must dedicate resources to completing a Tribal Consultation Policy which includes remedies Tribes can access in the event consultation is not adequate or available consistent with the Executive Order.

### **Recommendation 22: Judicial Competency**

Bench officers must be competently trained to preside over Cal-ICWA cases and understand ICWA cases are different from other dependency cases. Judicial training must be uniform throughout California, which will result in the uniform application of the law. This training must be legislatively mandated and include both introductory training for new bench officers and periodic training for existing bench officers.

### **Recommendation 23: Tribal Title IV-E Unit within CDSS**

It is recommended that a unit be developed within CDSS to development and implementation of Title IV-E for tribes. This unit must include a coordinator that has decision-making sufficient to assign and enforce tasks/deliverables and deadlines. This unit must report out at the statewide ICWA workgroup meeting on their progress with regard to each tribe that has initiated a state-tribal IV-E agreement.

#### **Recommendation 24: Exempt ICWA Cases from De Facto Parent Provisions**

The overuse of de facto parent status flies in the face of the legislative purposes of Cal-ICWA and the federal statute. Our recommendation is to exempt ICWA cases from de facto parent status, as tribes serve in the protective capacity for the dependent Indian child. Adding an additional parental figure elevates conflict, confuses issues and rules, and is not in the child's best interest.

#### **Recommendation 25: Criminal Penalties for Willful Violations**

Where willful failure to comply with state law, including the Cal-ICWA, result in harm to Indian children, criminal penalties should be considered.

## **CONCLUSION**

The promise of the ICWA and Cal-ICWA is attainable. California has seen progress over the last decade, moving from wholesale ignorance of the statutes, to a tentative embrace in some courts and in some cases truly innovative work to ensure that the interests of Indian families and tribes are protected. This report has highlighted issues that are most troubling and framed solutions with proposed actions that can be taken to improve ICWA compliance both in the short and long term. For example, the issue of competency in ICWA was a repeating theme throughout the data gathered and narratives shared, thus several of the proposed remedies, such as adopting Rules of Court regarding minimum standards for appointed counsel and advanced training resources for Bench Officers, address competency. The remedies presented are a start, but by no means an end, to the issues presented; the systemic denial of civil rights that ICWA provides is a symptom of the fundamental breakdown of the systems that are failing tribal families and children across the country.

We look forward to working with the BCJ to develop a concrete action plan for investigating, analyzing, pursuing and rectifying the ICWA failures of the last 40 years.



## **Juvenile Law: Court-Appointed Dependency Counsel**

### **Annual Agenda Item:**

**Completed April 2016:**

### **Juvenile Dependency: Court-Appointed-Counsel Funding Allocation Methodology Joint Subcommittee:**

To enrich recommendations to the council and avoid duplication of effort, members of the committee will continue to collaborate with members of the Trial Court Budget Advisory Committee to review the workload model for court-appointed dependency counsel and report back no later than the April 2016 Judicial Council meeting.

### **Background:**

In April, 2016 the Judicial Council approved 9 of the 10 recommended changes to the court-appointed counsel workload and allocation methodology developed by the joint subcommittee of the Family and Juvenile Law Advisory Committee and the Trial Court Budget Advisory Committee. Recommendation 10 of the joint report, approved by the council, states:

*That the Family and Juvenile Law Advisory Committee consider a comprehensive update of the attorney workload data and time standards in the current workload model. Because any updates to the workload data and time standards will uniformly affect all trial courts, this pending work should not slow or delay the remaining three-year phase-in period previously approved by the Judicial Council for implementing the new dependency counsel funding methodology. Rather this recommendation recognizes that a comprehensive update could not be completed within the time frame set by the Judicial Council for final report from the joint committees.*

### **Update:**

## **Juvenile Law: Court-Appointed Special Advocates Grants Program**

### **Annual Agenda Item:**

**Serve as statutorily mandated Advisory Committee to the Judicial Council for the Court Appointed Special Advocates (CASA) grants program (Welf. & Inst. Code, § 100 et seq.)**

Recommend annual funding to local programs pursuant to the methodology approved by the Judicial Council in August 2013.

### **Background:**

The committee recommended annual funding allocations which were approved by the Judicial Council on October 28, 2016. After discussing the recommendations and the methodology, the committee asked staff to survey the local CASA programs and collect feedback on the methodology. This feedback should be collected during the current fiscal year, for potential discussions of a revision to the methodology in fiscal year 2017-18.

### **Update:**

Staff has begun drafting a survey to collect feedback on the funding methodology.