



JUDICIAL COUNCIL OF CALIFORNIA

TRIBAL COURT-STATE COURT FORUM

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TRIBAL COURT-STATE COURT FORUM

NOTICE AND AGENDA OF OPEN MEETING

Open to the Public (Cal. Rules of Court, rule 10.75(c)(1) and (e)(1))

THIS MEETING IS BEING CONDUCTED BY ELECTRONIC MEANS

THIS MEETING IS BEING RECORDED

Date: June 7, 2018
Time: 12:15-1:15 p.m.
Public Call-in Number: 877-820-7831; Passcode; passcode 4133250 (Listen Only)

Meeting materials will be posted on the advisory body web page on the California Courts website at least three business days before the meeting.

Members of the public seeking to make an audio recording of the meeting must submit a written request at least two business days before the meeting. Requests can be e-mailed to forum@jud.ca.gov.

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))

Call to Order and Roll Call

Approval of Minutes

Approve minutes of the April 12, 2018, Tribal Court-State Court Forum meeting.

II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(1))

This meeting will be conducted by electronic means with a listen only conference line available for the public. As such, the public may submit comments for this meeting only in writing. In accordance with California Rules of Court, rule 10.75(k)(1), written comments pertaining to any agenda item of a regularly noticed open meeting can be submitted up to one complete business day before the meeting. For this specific meeting, comments should be e-mailed to forum@jud.ca.gov or mailed or delivered to 455 Golden Gate Avenue, San Francisco, CA 94102, attention: Ann Gilmour. Only written comments received by 12:15 p.m. on June 6, 2018 will be provided to advisory body members prior to the start of the meeting.

III. INFORMATION ONLY ITEMS (NO ACTION REQUIRED)

Info 1

Cochairs Report

- Approval of Minutes for April 12, 2018 Meeting
- Update on [nomination](#)/appointment process

Info 2

[Restorative Justice and Government to Government Collaboration in Alaska: A Model for California](#)

Presenter: Hon. Eric Smith, Ret., Alaska Superior Court

Info 3

Update on RUPRO Items–Pro Hac Vice and Remote Access

Presenter: Ann Gilmour

Info 4

Legislative Update

*Presenter: Andi Liebenbaum, Attorney, Judicial Council’s Governmental Affairs
Heather Hostler, Director, California Department of Social Services,
Office of Tribal Affairs*

Info 5

U.C. Davis Law School–Tribal Justice Project

*Presenter: Hon. Christine Williams, Chief Judge, Shingle Springs Rancheria Tribal Court
and Director of the Tribal Justice Project*

Info 6

California Lawyers Association Family Law Section–Meeting at Shingle Springs Rancheria

*Presenters: Hon. Christine Williams
Hon. Mark Juhas, Judge, Superior Court of California, County of Los Angeles*

Info 7

Recent and Upcoming Conferences

Presenter: Vida Castaneda

IV. ADJOURNMENT

Adjourn



JUDICIAL COUNCIL OF CALIFORNIA

TRIBAL COURT-STATE COURT FORUM

www.courts.ca.gov/forum.htm
forum@jud.ca.gov

TRIBAL COURT-STATE COURT FORUM MINUTES OF OPEN MEETING

April 12, 2018
9:30 a.m-4:30 p.m.

Advisory Body Members Present: *Hon. Abby Abinanti, Co-chair, Hon. Dennis M. Perluss, Co-chair, Hon. April Attebury, Hon. Richard Blake, Hon. Hilary A. Chittick, Hon. Gail Dekreon, Hon. Leonard Edwards(Ret.), Ms. Heather Hostler, Hon. Mark Juhas, Hon. Lawrence C. King, Hon. Patricia Lenzi, Hon. Devon Lomayesva, Hon. Lester Marston, Hon. Mark Radoff, Hon. David Riemenschneider, Hon. John Sugiyama, Hon. Sunshine Sykes, Hon. Juan Ulloa, Hon. Claudette White, Hon. Christine Williams, and Hon. Christopher Wilson*

Advisory Body Members Absent: *Hon. Kimberly Gaab, Hon. Susanne Kingsbury, Hon. William Kockenmeister, Hon. Anthony Lee, and Hon. Joseph Wiseman*

Others Present: *Ms.Carolynn Bernabe, Ms. Vida Castaneda, Ms. Charlene Depner, Ms. Audrey Fancy, Ms. Ann Gilmour, Ms. Bonnie Hough, Ms. Andrea Jaramillo, Ms. Andi Liebenbaum, Ms. Joy Ricardo, Ms. Donna Strobel, Mr. Greg Tanaka, and Mr. Don Will*

OPEN MEETING

Call to Order and Roll Call

The co-chairs called the meeting to order at 12:18 p.m.

Approval of Minutes

The forum approved the February 15, 2018 meeting minutes.

DISCUSSION AND ACTION ITEMS (ITEMS 1-6)

Item 1

WELCOME AND INTRODUCTIONS

FORUM MEMBER PROJECT UPDATES

- *Hon. Abby Abinanti, Co-Chair, Chief Judge of the Yurok Tribal Court*
- *Hon. Dennis M. Perluss, Co-Chair, Justice of the Court of Appeal, Second Appellate District, Los Angeles*
- *Ann Gilmour, Attorney/Forum Counsel, Judicial Council's Center for Families, Children & the Courts (CFCC)*

Item 2

Cochairs Report

- *Update on [nomination](#)/appointment process*
The nomination period is now closed for state court judge members. The tribal court judge nomination period is open until May 4, 2018 with one nomination received to date. A few tribal judges intend to reapply and are seeking nominations from their tribal chairs.
- *Update on [annual agenda](#)*
The Executive and Planning committee approved the Forum annual agenda in March for 2018 activities. Forum should start identifying projects for 2019.

- *Invitation to Comment*

The Judicial Council is proposing an amendment to California Rules of Court, rule 9.40 to exempt out of state attorneys representing tribes “pro hac vice” in cases governed by the Indian Child Welfare Act from certain requirements governing such pro hac vice requirements. Submit any comments by June 8, 2018 [online](#) or email: invitations@jud.ca.gov

- *Introduction of new staff*

Justice Perluss welcomed new staff member, Ms. Joy Ricardo, Supervising Attorney, who introduced herself and briefly described her background. Ms. Ricardo joined the Center for Families, Children & the Courts on February 28th. Ms. Ricardo comes most recently from the East Bay Children’s Law Office of which she was a founding member. Prior to working at East Bay Children’s Law Offices, Ms. Ricardo worked in the Alameda County Public Defender’s Office representing parents and children in juvenile dependency matters.

- *Forum priorities as identified in the workbooks from the February 15 meeting. Areas for expansion of recognition and enforcement of tribal court orders.*

Ms. Ann Gilmour reported on the Forum priorities and areas of concern identified in the workbooks from the February 15, 2018 meeting. Priority areas include trafficking issues, supporting increased funding for tribal courts, work on expansion of recognition and enforcement of tribal court orders, and cross-court jurisdictional orders with a focus on DMV traffic vehicle violations, and tribal court conservatorship orders, improving education for judicial officers, in particular domestic violence as it affects trafficking, and implicit bias.

Item 3:

Judicial Council Proposed Remote Access Rules – Treatment of Tribes

Presenter: Andrea Jaramillo, Attorney, Judicial Council’s Legal Services

Ms. Andrea Jaramillo provided an overview of the rules proposal for remote access to electronic court records by parties, attorneys, and government entities. The presentation then focused on how tribal entities are defined and the level of access provided to tribal entities under the proposed rules.

Item 4:

Proposed ICWA Legislation

Presenter: Delia Sharpe, Executive Director, California Tribal Families Coalition

Andi Liebenbaum, Attorney, Judicial Council’s Governmental Affairs

Ms. Delia Sharpe, Executive Director for the California Tribal Families Coalition, presented three bills that the Coalition has introduced this legislative session. They are:

- 1) AB 3047 (Daly), which would eliminate \$500 pro hac vice fee in the Government Code for attorneys representing tribes in ICWA cases in California courts
- 2) AB 3076 (Reyes), which provides funding for qualified legal service providers who represent tribes in California dependency hearings
- 3) AB 3176 (Waldron), which seeks to conform federal regulations related to the Indian Child Welfare Act and California Welfare and Institutions Code

Ms. Andi Liebenbaum reported on the JCC’s process for reviewing legislation. Ms. Liebenbaum reported that AB 3047 (Daly) was not within purview, and would therefore not be submitted for a vote to the Family and Juvenile Law Advisory Committee (FamJuv). She reported that on April 9, FamJuv discussed and voted to recommend JCC support for AB 3076 (Reyes), and on Monday, April 16, FamJuv will hear and vote on AB 3176 (Waldron).

Justice Perluss called for a vote by the Forum to support all three pieces of legislation. The motion passed, and Ms. Liebenbaum stated that the Forum's vote/recommendations for support would be included in recommendations to the Policy and Coordinating Liaison Committee (PCLC).

Item 5:

Peer Courts – Resources

Presenter: Donna Strobel, Analyst, Judicial Council's Center for Families, Children & the Courts

Ms. Donna Strobel presented an overview on California peer/youth courts. In her presentation, Ms. Strobel discussed youth court operations, participants, youth court models, and the benefits of participating in youth court rather than going through the traditional juvenile justice system. Ms. Strobel also shared training opportunities that are available for anyone interested in starting a youth court in their jurisdiction. These trainings include the annual Youth Court Summit and Youth Court Regional Roundtables.

Item 6

Recent and Upcoming Conferences

Presenter: Vida Castaneda

- On April 13th Judicial Council's Center for Families, Children & the Courts will be hosting the 2018 Bay Area ICWA Symposium from 8:30am-5:00pm. Judge Abby Abinanti will be the keynote speaker; Judge Christine Williams will be participating in the morning panel to speak on California history in relation to tribal communities, along with local experts on local tribal history, historical trauma and multi-ethnic identity; Mr. Stephen Pevar, tribal attorney and legal expert, will provide the afternoon plenary about his case from South Dakota; and there will be an array of workshops on ICWA. The goals of this symposium are to build ICWA champions, highlight ICWA best practices, enhance skills to improve outcomes for Native American families, strengthen relationships and provide legal updates. There is currently a wait list to attend the symposium, but if there are any forum members interested in attending, please contact Vida Castaneda to see if there are any openings that will become available.
- The 25th annual statewide ICWA conference is from June 4–6 hosted by the Federated Indians of Graton Rancheria and Co-Sponsored by California Department of Social Services; California Tribal Families Coalition; California Indian Legal Services; and Office of Tribal Affairs. The theme is: "Weaving Traditions to Defend, Protect & Honor Indian Children, Families and Tribes." The conference is located at the Graton Resort & Casino in Rohnert Park. For further information, please visit: www.gratonrancheria.com.

Next Forum call is June 7, 2018.

ADJOURNMENT

There being no further business, the meeting was adjourned at 1:15 p.m.

Pending approval by the advisory body on June 7, 2018.

The Alaska Supreme Court has adopted two rules – Criminal Rule 11(j) and Delinquency Rule 23(f) – which authorize judges to refer cases to tribes and other entities for recommendations as to the appropriate sentence or disposition. This was done at the recommendation of the court system’s Fairness, Diversity and Equality Committee.

Retired Superior Court Judge Eric Smith was asked by the Court to implement these rules. He chose to do so in large part by working with tribes to sign an agreement, called a Plan, by which the tribe and the court system agree to a formal and binding procedure by which the referral process will occur. He chose this approach because he wanted to institutionalize the process, rather than relying on the willingness and availability of a particular judge to refer cases to tribes. In furtherance of this goal, he developed a template which has been approved by the court system (including then Chief Justice Fabe) to show to the tribes as a possible approach.

The basic model is as follows: i) the tribe will monitor the calendar on the Web and notify the relevant court that it is interested in a particular case; ii) the court will send the relevant documents to the tribe; iii) the tribe will look over the paperwork and if it decides to get involved in that case, it will notify the court that it wants to conduct a “proceeding” as to that defendant (generally a circle, but the term is purposefully broad since different tribes have different practices); iv) once the defendant is convicted, the court will refer the matter to the tribe if the parties agree and will set sentencing out long enough for the tribe to conduct the proceeding; v) the tribe will conduct the proceeding and let the court know the outcome, which will be a formal recommendation to the court as to the sentence or disposition; vi) the court will carefully and respectfully consider the recommendation and impose sentence.

Thus far, the court system has signed formal Plans with a number of tribes, including the Sun’aq Tribe of Kodiak, Qagan Tayagungin Tribe of Sand Point, Kenaitze Ts’ilq’u Circle, Togiak, Shishmaref, Solomon, Chickaloon, Nikolai, Nulatto, Mentasta, and Kluti Kaah tribes, as well as the Tlingit-Haida Central Council, the Hmong Center of Alaska, and the Polynesian Community in Anchorage. The court system has also developed a set of forms that the tribes can use for filing the notifications and sentencing recommendations discussed above. These can be found at <http://courts.alaska.gov/trialcourts/rjp.htm>.

A number of other tribes are also actively considering participating in this program.

For further information, Judge Smith can be contacted at esmith@akcourts.us

**PLAN ADOPTED BY THE [TRIBE]
AND
THE ALASKA COURT SYSTEM
FOR RESTORATIVE JUSTICE REFERRALS
UNDER CRIMINAL RULE II(i)**

This PLAN adopted by [TRIBE] and the Alaska Court System sets out the procedures for the referral of matters relating to criminal cases involving Tribal members and descendants of members.

PARTIES: This PLAN is made and entered into by the [Tribe] and the Alaska Court System on behalf of the [court location] Trial Courts (“[] Court” or “Court”).

PURPOSE: The purpose of this PLAN is to involve the Tribe and traditional restorative justice approaches in Alaska Court System cases involving tribal members, recognizing that outcomes in these cases improve when the delivery of justice involves collaborative and community-based programs.

The Court’s efforts to impose meaningful and relevant consequences for the [defendant or juvenile], the community, and the victim will be aided by tribal restorative justice program sentencing recommendations that reflect the community’s assessment of the impacts of the criminal behavior and that integrate local wisdom and cultural norms.

BOTH PARTIES AGREE TO THE FOLLOWING PROCEDURES:

1. The Tribe will monitor the daily Court calendar for Tribal members or member descendants. The Tribe will submit a request for a copy of the [specify documents, eg complaint, indictment] from the case file, which the Court will provide to the Tribe within [] days of receipt of the request. The Court will not charge the Tribe for these documents.
2. Within [] days after receiving the documents, the Tribe will notify the Court whether it wishes to conduct a [specify tribal sentencing proceeding, e.g., circle sentencing] as to that defendant.
3. If the Tribe notifies the Court that it wishes to conduct the [proceeding] as to that defendant, the Court will notify the parties of this request. If the defendant subsequently is convicted of the crime, the Court will, within [] days of the conviction, notify the Tribe of the date that the defendant will be sentenced and whether the prosecution, defense and victim (if any) have consented to a referral. Provided that the necessary consents have been obtained, the Court will also formally refer the case to the Tribe at that time to conduct a [proceeding]. The notice and referral, if any, will identify the charge of which the defendant was convicted, any mandatory sentencing requirements (such as the presumptive or minimum term that the defendant must serve in jail), and any agreement the defendant and the state made regarding the conviction. When a case has been referred to the Tribe under these procedures, the Court will set sentencing for a date at least [] days after the date of conviction.
4. After a case is referred to the Tribe, the Tribe will take the necessary steps to convene and conduct the [proceeding] [include any specific steps as necessary, such as meeting with the

defendant following the Court proceeding to answer questions and schedule an initial intake, conducting the initial intake and assessment, determining the participants in each sentencing circle, and making arrangements for the proceeding based on its assessment.] The Tribe will promptly notify the Court if it needs the Court to change the sentencing date.

5. The Tribe will complete the proceeding no later than [] days prior to the Court sentencing date. The Tribe will inform the Court, district attorney, the defendant, and the defendant's lawyer, if any, of the proceeding date at least [] days prior to that date.
6. Through this community-based process, the [proceeding] will identify proposed terms of the defendant's sentence, which may require culturally relevant activities, a drug and alcohol assessment and treatment, restitution (such as money or services for the victim), or other steps.
7. At the end of the [proceeding], the Tribe will prepare a written report, which will state each component of the recommended sentence and timeframe for completion of each component. This report shall be provided to the Court, the defendant, the defendant's attorney and the district attorney at least [] days before the date of the sentencing.
8. The Court will carefully and respectfully consider the recommendation of the [proceeding]. The parties understand, however, that the Court is not bound by that recommendation.
9. The parties agree to meet from time to time to review the implementation of this PLAN and to make any revisions they find to be appropriate.
10. Nothing in this PLAN prevents the Tribe from conducting a [proceeding] after notification of defendant's conviction and providing a sentencing recommendation to the Court, even if a formal referral has not been made.

SIGNED THIS DAY OF [MONTH], 20__.

Christine Johnson
Administrative Director
Alaska Court System
303 K Street
Anchorage, Alaska 99501

[Tribal Official's Name]
[Title]
[Tribe]
[Address]
[Location], Alaska 99574

Acknowledged by:

[Judge/Magistrate Judge's Name]

[Judge/Magistrate Judge]

Alaska Court System

[Address]

[Address]

[Location], Alaska 99574

**PLAN ADOPTED BY THE [TRIBE]
AND
THE ALASKA COURT SYSTEM
FOR RESTORATIVE JUSTICE REFERRALS
UNDER CRIMINAL RULE II(i)**

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The Court’s efforts to impose meaningful and relevant consequences for the [defendant or juvenile], the community, and the victim will be aided by tribal restorative justice program sentencing recommendations that reflect the community’s assessment of the impacts of the criminal behavior and that integrate local wisdom and cultural norms.

BOTH PARTIES AGREE TO THE FOLLOWING PROCEDURES:

1. The Tribe will monitor the daily Court calendar for Tribal members or member descendants. The Tribe will submit a request for a copy of the relevant charging documents from the case file, which the Court will provide to the Tribe within 5 working business days of receipt of the request. The Court will not charge the Tribe for these documents.
2. Within 5 working business days after receiving the documents, the Tribe will notify the Court whether it wishes to conduct a [specify tribal sentencing proceeding, e.g., circle sentencing] as to that defendant.
3. If the Tribe notifies the Court that it wishes to conduct the [proceeding] as to that defendant, the Court will notify the parties of this request. If the defendant subsequently is convicted of the crime, the Court will, within 5 working business days of the conviction, notify the Tribe of the date that the defendant will be sentenced and whether the prosecution, defense and victim (if any) have consented to a referral. Provided that the necessary consents have been obtained, the Court will also formally refer the case to the Tribe at that time to conduct a [proceeding]. The notice and referral, if any, will identify the charge of which the defendant was convicted, any mandatory sentencing requirements (such as the presumptive or minimum term that the defendant must serve in jail), and any agreement the defendant and the state made regarding the conviction. When a case has been referred to the Tribe under these procedures, the Court will set sentencing for a date at least 45 days after the date of conviction.
4. After a case is referred to the Tribe, the Tribe will take the necessary steps to convene and

conduct the [proceeding] [include any specific steps as necessary, such as meeting with the defendant following the Court proceeding to answer questions and schedule an initial intake, conducting the initial intake and assessment, determining the participants in each sentencing circle, and making arrangements for the proceeding based on its assessment.] The Tribe will promptly notify the Court if it needs the Court to change the sentencing date.

5. The Tribe will complete the proceeding no later than 10 days prior to the Court sentencing date. The Tribe will inform the Court, district attorney, the defendant, and the defendant's lawyer, if any, of the proceeding date at least 5 days prior to that date.
6. Through this community-based process, the [proceeding] will identify proposed terms of the defendant's sentence, which may require culturally relevant activities, a drug and alcohol assessment and treatment, restitution (such as money or services for the victim), or other steps.
7. At the end of the [proceeding], the Tribe will prepare a written report, which will state each component of the recommended sentence and timeframe for completion of each component. This report shall be provided to the Court, the defendant, the defendant's attorney and the district attorney at least 5 days before the date of the sentencing.
8. The Court will carefully and respectfully consider the recommendation of the [proceeding]. The parties understand, however, that the Court is not bound by that recommendation.
9. The parties agree to meet from time to time to review the implementation of this PLAN and to make any revisions they find to be appropriate.
10. Nothing in this PLAN prevents the Tribe from conducting a [proceeding] after notification of defendant's conviction and providing a sentencing recommendation to the Court, even if a formal referral has not been made.

SIGNED THIS DAY OF [MONTH], 20__.

Christine Johnson
Administrative Director
Alaska Court System
303 K Street
Anchorage, Alaska 99501

[Tribal Official's Name]
[Title]
[Tribe]
[Address]
[Location], Alaska 99574

Acknowledged by:

[Judge/Magistrate Judge's Name]

[Judge/Magistrate Judge]

Alaska Court System

[Address]

[Address]

[Location], Alaska 99574


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AB-3176 Indian children. (2017-2018)

Current Version: 05/25/18 - Amended Assembly

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AMENDED IN ASSEMBLY MAY 25, 2018

AMENDED IN ASSEMBLY APRIL 11, 2018

AMENDED IN ASSEMBLY APRIL 02, 2018

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

ASSEMBLY BILL

No. 3176

Introduced by Assembly Member Waldron

(Coauthors: Assembly Members Arambula, Daly, Maienschein, Mathis, Reyes, and Rubio)

February 16, 2018

An act to amend Sections 224, [224.1](#), 224.2, 224.3, 224.6, ~~305.5~~, 361.31, 361.7, and 16507.4 ~~of, and to repeal and add Section 224.1 of, of~~ the Welfare and Institutions Code, relating to Indian children.

LEGISLATIVE COUNSEL'S DIGEST

AB 3176, as amended, Waldron. Indian children.

(1) Existing federal law, the Indian Child Welfare Act of 1978 (ICWA), governs the proceedings for determining the placement of an Indian child when that child is removed from the custody of his or her parent or guardian. Existing law specifies that the state is committed to protecting the essential tribal relations and best interest of an Indian child by promoting practices in accordance with ICWA. Existing law requires a court in all Indian child custody proceedings to, among other things, comply with ICWA. Under existing law, a determination by an Indian tribe that an unmarried person who is under 18 years of age, is either a member of an Indian tribe, or is eligible for membership in an Indian tribe and a biological child of a member of an Indian tribe, constitutes a significant political affiliation with the tribe and requires application of ICWA to the proceedings.

Under existing law, if an Indian child is a member of more than one tribe or is eligible for membership in more than one tribe, the court is required to make a determination, in writing together with the reasons for it, as to which tribe is the Indian child's tribe for purposes of an Indian child custody proceeding. Existing law requires the court to make that determination based on specified factors relating to his or her tribal membership, as specified.

In accordance with federal law, this bill would revise and recast those provisions. Among other things, the bill would instead require, in the case that the Indian child may be placed with more than one tribe, that deference be given to the tribe of which the Indian child is already a member or citizen, unless otherwise agreed to by the tribes. If the child is a member or citizen of more than one tribe, the bill would authorize the tribes to reach an agreement on placement, as specified. Upon the failure to make an agreement, the bill would require the state court to consider certain factors with regard to placement, as specified.

Under

(2) *Under* existing law, if a court, social worker, or probation officer knows or has reason to know that an Indian child is involved in a custody proceeding, a notice meeting specified requirements is required to be sent to the minor's parents or legal guardian, Indian custodian, and the minor's tribe. Existing law also requires the notice to be sent to all tribes of which the child may be a member or eligible for membership, as provided.

This bill would require the party seeking placement of the child to send notice of specified hearings to each tribe in which a child may be a member or citizen or is eligible for membership or ~~citizenship if a biological parent is a member or citizen,~~ *citizenship, as specified,* to the child's parents, and the child's Indian ~~custodian, if applicable:~~ *custodian.*

(2)

(3) Existing law also requires notice of an Indian child custody proceeding to be sent to the Sacramento Area Director of the Bureau of Indian Affairs, and if the identity or location of the parents, Indian custodians, or the tribe is known, a copy of the notice is required to be sent to the Secretary of the Interior, unless the secretary waives notice.

The bill would require the notice to *be sent to the Pacific Regional Office of the Bureau of Indian Affairs, and would require the notice to all of the parties described above* to include additional information, including the *time, date, and location of any scheduled hearings, and the* name of the petitioner and the name and address of the petitioner's ~~attorney, and a notice that all parties are required to keep confidential the information contained in the notice. The bill would prohibit an Indian child custody proceeding from being held until at least 10 days after receipt of the notice by the parent, Indian custodian, tribe, or secretary.~~ *attorney.*

(3)

(4) Under existing law, a court, a county welfare department, and the probation department have an affirmative and continuing duty to inquire whether a child is or may be an Indian child in all dependency proceedings and in any juvenile wardship proceeding if the child is at risk of entering foster care or is in foster care.

This bill would ~~declare that the duty to inquire begins upon the entity's first contact with the family provide that when a child is taken into temporary custody the child welfare agency has a duty to determine whether that child is an Indian child, as specified,~~ and would set forth specific steps a social worker, probation officer, or court is *further* required to take ~~to make that inquiry. in making an inquiry of a child who is the subject of an Indian child custody proceeding.~~

~~(4) Existing law requires a state or local authority who removes an Indian child, who is a ward of a tribal court, or who resides or is domiciled within a reservation of an Indian tribe that has exclusive jurisdiction over child custody proceedings, from the custody of his or her parents or Indian custodian to provide a notice of the removal to the tribe no later than the next working day following the removal of the child, as provided. Under existing law, if the tribe determines that the child is an Indian child, the state or local authority is required to transfer the child custody proceeding to the tribe within 24 hours after receipt of written notice from the tribe, unless the court finds good cause to deny the petition to transfer, as specified.~~

~~This bill instead would require a court, if either the child's residence or domicile is on a reservation of which the tribe exercises exclusive jurisdiction over Indian child custody proceedings, or if a child is a ward of a tribal court to, upon confirmation from the tribal court, dismiss the state court Indian child custody proceeding and ensure that the tribal court is sent all information regarding the proceeding, unless the court determines that certain criteria are met, including that either parent objects to the transfer, the tribal court declines the transfer, or good cause exists to deny the transfer.~~

~~(5) Existing law authorizes an emergency removal of an Indian child who is a ward of a tribal court or who resides or is domiciled within a reservation of an Indian tribe, but is temporarily located off the reservation, from a parent or Indian custodian, in order to prevent imminent physical damage or harm to the child.~~

~~This bill would require a petition for a court order authorizing an emergency removal or continued emergency placement to contain a statement of the risk of imminent physical damage or harm to the Indian child, as specified. The bill would require the emergency removal or placement of an Indian child to terminate immediately if the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child, as provided.~~

(5) Existing law provides that a person who meets certain characteristics is most likely to meet the requirements of a qualified expert witness for purposes of Indian child custody proceedings.

This bill would add to the list of qualified expert witnesses a person designated by the Indian child's tribe as being qualified to testify to the prevailing social and cultural standards of the Indian child's tribe.

(6) Existing law sets forth placement preferences for an Indian child who is removed from the physical custody of his or her parents or Indian custodian parents. Existing law authorizes a court to determine that good cause exists not to follow those placement preferences.

This

Among other things, this bill would require that, if a party asserts that good cause exists to not follow the placement preferences, the reason for that belief or assertion shall be stated orally on the record or provided in writing to the court and to the parties to the Indian child custody proceeding. The bill would require the person seeking departure from the placement preferences to bear the burden of proof, as provided.

(7) By increasing the duties on county welfare departments, the bill would impose a state-mandated local program.

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

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

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

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

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

(b) 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~~, *Act of 1978 (25 U.S.C. Sec. 1901 et seq.) and other applicable federal law*, 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 *federal* Indian Child Welfare ~~Act~~, *Act of 1978 (25 U.S.C. Sec. 1901 et seq.) and other applicable state and federal law*.

(c) A determination by an Indian tribe that an unmarried person, who is under the age of 18 years, is either (1) a member *or citizen* of an Indian tribe or (2) eligible for membership *or citizenship* in an Indian tribe and a biological child of a member *or citizen* of an Indian tribe shall constitute a significant political affiliation with the tribe and shall require the application of the federal Indian Child Welfare Act *of 1978 (25 U.S.C. Sec. 1901 et seq.) and other applicable state and federal law* to the proceedings.

(d) In any case in which this code or other applicable state or federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child, or the Indian child's tribe, than the rights provided under the *federal Indian Child Welfare Act, Act of 1978 (25 U.S.C. Sec. 1901 et seq.)*, the court shall apply the higher standard.

(e) Any Indian child, the Indian child's tribe, or the parent or Indian custodian from whose custody the child has been removed, may petition 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 *federal Indian Child Welfare Act, Act of 1978 (25 U.S.C. Sec. 1901 et seq.)*.

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

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

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

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

(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.

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

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

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

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

~~(1) If an Indian child meets the definition of "Indian child" through more than one tribe because the child is a member or citizen of more than one tribe or the child is not a member or citizen but is eligible for membership or citizenship in more than one tribe, the state court shall provide the tribes the opportunity to determine the tribe that shall be designated as the Indian child's tribe.~~

~~(2) If the tribes are able to reach an agreement, the agreed-upon tribe shall be designated as the Indian child's tribe.~~

(3) If the tribes are unable to reach an agreement, the state court shall designate as the Indian child's tribe, for purposes of the federal Indian Child Welfare Act of 1978 (ICWA) (25 U.S.C. Sec. 1901 et seq.), the Indian tribe with which the Indian child has the most significant contacts. The state court shall consider:

(A) The length of *domicile or* 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)~~

(G) The child's self-identification.

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

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

(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.

(4) A determination of the Indian child's tribe for purposes of the Indian Child Welfare Act does not constitute a determination for any other purpose.

(f) "Active efforts" means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. If an agency is involved in an Indian child custody proceeding, active efforts shall involve assisting the parent, parents, or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts shall be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and shall be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and tribe. Active efforts shall be tailored to the facts and circumstances of the case and may include, but are not limited to, any of the following:

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

(2) Identifying appropriate services and helping the parents overcome barriers, including actively assisting the parents in obtaining those services.

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

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

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

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

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

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

(9) Monitoring progress and participation in services.

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

(11) Providing postreunification services and monitoring.

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

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

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

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

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

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

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

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

(m) "Indian organization" means, solely for purposes of eligibility for grants, any legally established group, association, partnership, corporation, or other legal entity that is owned or controlled by Indians, or of which a majority of members are Indians.

(n) "Involuntary proceeding" means an Indian 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. "Involuntary proceeding" also means an Indian child custody proceeding in which the parent consents to the foster care, preadoptive, or adoptive placement, under threat of removal of the child by a state court or agency.

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

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

(q) "Voluntary proceeding" means an Indian child custody proceeding that is not an involuntary proceeding, including, but not limited to, a proceeding for foster care, preadoptive or adoptive placement that either parent, both parents, 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.

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

224.2. (a) If the court, a social worker, or probation officer knows or has reason to ~~know~~ know, as described in subdivision (c) of Section 224.3, 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 child's~~ tribe and comply with all of the following requirements:

(1) Notice shall be sent by registered or certified mail with return receipt requested. 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.~~

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

(A) All tribes of which the child may be a member or citizen or eligible for membership or citizenship, until the court makes a determination as to which tribe is the child's tribe in accordance with subdivision (e) of Section 224.1, after which notice need only be sent to the tribe determined to be the Indian child's tribe.

(B) The child's parents.

(C) The child's Indian custodian.

(4) Notice, to the extent required by federal law, shall be sent to the Secretary of the Interior's designated agent, 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.~~ *Pacific Regional Office of the Bureau of Indian Affairs.*

(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 great-grandparents, or Indian custodians, including maiden, married and former names or aliases, as well as their current and former addresses, birthdates, places of birth and death, tribal enrollment ~~numbers,~~ *information of other direct lineal ancestors of the child,* and any other identifying information, if known.

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

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

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

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

~~(G)~~

(H) A statement of the following:

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

~~(i)~~

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

~~(ii)~~

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

~~(iii)~~

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

~~(iv)~~

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

~~(v)~~

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

~~(vi)That~~

(vii) *In accordance with Section 827*, 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)~~ (H) of paragraph (5) of subdivision (a) need not be included with the notice.

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

(d) 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.

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

224.3. (a) *When a child is taken into temporary custody, the child welfare agency has a duty to determine whether that child is an Indian child as defined by the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.). Inquiry starts by asking the child, the parents, legal guardian, and Indian custodian whether the child is, or may be, an Indian.*

(b) 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 who is the subject of the Indian child custody proceeding~~ 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.~~ *child.*

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

(c) The court has reason to know that a child involved in the proceedings is an Indian child under any of the following circumstances:

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

(2) The residence or domicile of the child, the child's parents, or Indian custodian is ~~in a predominantly Indian community.~~ *on a reservation or in an Alaska Native village.*

~~(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 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 under paragraph (3) of subdivision (a) of Section 224.2 and the Bureau of Indian Affairs.~~

(3) 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.

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

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

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

(d) If the court, social worker, or probation officer knows or has reason to believe 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. Further inquiry includes, but is not limited to, 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. If there is reason to know, as defined in subdivision (c), the child is an Indian child, the party seeking foster care placement shall provide notice in accordance with paragraph (5) of subdivision (a) of Section 224.2.

(e) 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.

(f) Notwithstanding a determination that the Indian Child Welfare Act does not apply to the proceedings, if the court, social worker, or probation officer subsequently receives any information pursuant to Section 224.2 that was not previously available or included in the notice issued under Section 224.2, the party seeking placement shall provide the additional information to any tribes entitled to notice under Section 224.2 and the Pacific Regional Office of the Bureau of Indian Affairs.

SEC. 5. *Section 224.6 of the Welfare and Institutions Code is amended to read:*

224.6. (a) When testimony of a "qualified expert witness" is required in an Indian child custody proceeding, a "qualified expert witness" 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 person designated by the Indian child's tribe as being qualified to testify to the prevailing social and cultural standards of the Indian child's tribe.

~~(1)~~

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

~~(2)Any~~

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

~~(3)~~

(4) A professional person having substantial education and experience in the area of his or her specialty.

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

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

voluntarily.

SEC. 6. *Section 361.31 of the Welfare and Institutions Code is amended to read:*

361.31. (a) ~~In any case in which~~ *If* 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. *The placement shall be analyzed each time there is a change in placement.*

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

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

(2) A foster home licensed, approved, or specified by the child's 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 that~~ has a program suitable to meet the Indian child's needs.

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

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

(2) Other members *or citizens* of the child's 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 if~~ of sufficient age, or parent shall be considered. In applying the preferences, a consenting parent's request for anonymity shall also be given weight by the court or agency effecting the placement.

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

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

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

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

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

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

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

(4) The extraordinary physical, mental, or emotional needs of the Indian child, including, but not limited to, specialized treatment services that may be unavailable in the community in which the child will be placed.

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

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

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

~~(k)~~

(m) A record of each foster care placement or adoptive placement of an Indian child shall be maintained in perpetuity by the State Department of Social Services. The record shall document the active efforts to comply with the applicable order of preference specified in this ~~section~~ section, and shall be made available within 14 days of a request by the child's tribe.

SEC. 7. Section 361.7 of the Welfare and Institutions Code is amended to read:

361.7. (a) Notwithstanding Section 361.5, a party seeking an involuntary foster care placement of, or termination of parental rights over, an Indian child shall provide evidence to the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. *The active efforts shall be documented in detail in the record.*

(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.

(c) ~~No~~ *A* foster care placement or guardianship ~~may~~ *shall not* be ordered in the proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of a qualified expert witness, as defined in Section 224.6, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

SEC. 8. Section 16507.4 of the Welfare and Institutions Code is amended to read:

16507.4. (a) Notwithstanding any other provisions of this chapter, voluntary family reunification services shall be provided without fee to families who qualify, or would qualify if application had been made therefor, as recipients of public assistance under the Aid to Families with Dependent Children program as described in the State Plan in effect on July 1, 1996. If the family is not qualified for aid, voluntary family reunification services may be

utilized, provided that the county seeks reimbursement from the parent or guardian on a statewide sliding scale according to income as determined by the State Department of Social Services and approved by the Department of Finance. The fee may be waived if the social worker determines that the payment of the fee may be a barrier to reunification. Section 17552 of the Family Code shall also apply.

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

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

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

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

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

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

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

(D) The placement preferences are in compliance with Section 361.31.

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

(d) The State Department of Social Services shall amend its plan pursuant to Part E (commencing with Section 670) of Subchapter IV of Chapter 7 of Title 42 of the United States Code in order to conform to mandates of Public Law 96-272 and Public Law 110-351 for federal financial participation in voluntary placements.

SEC. 9. *No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act implements a federal law or regulation and results only in costs mandated by the federal government, within the meaning of Section 17556 of the Government Code.*

With regard to other costs, to the extent that this act has an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation within the meaning of Section 36 of Article XIII of the California Constitution, it shall apply to local agencies only to the extent that the state provides annual funding for the cost increase. Any new program or higher level of service provided by a local agency pursuant to this act above the level for which funding has been provided shall not require a subvention of funds by the state or otherwise be subject to Section 6 of Article XIII B of the California Constitution.

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

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

~~(1) There is no resource that is more vital to the continued existence and integrity of Indian tribes than their children, and the State of California has an interest in protecting Indian children who are members or citizens of, or are eligible for membership or citizenship in, an Indian tribe. The state is committed to protecting the essential tribal relations and best interest of an Indian child by promoting practices, in accordance with applicable state and federal law, designed to prevent the child's involuntary out of home placement and, whenever that placement is necessary or ordered, by placing the child, whenever possible, in a placement that reflects the unique values of the child's tribal culture and is best able to assist the child in establishing,~~

~~developing, and maintaining a political, cultural, and social relationship with the child's tribe and tribal community.~~

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

~~(b)In all Indian child custody proceedings, the court shall consider all of the findings contained in subdivision (a), strive to promote the stability and security of Indian tribes and families, comply with applicable federal law, 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 applicable state and federal law.~~

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

~~(d)In any case in which this code or other applicable state or federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child, or the Indian child's tribe, than the rights provided under the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.), the court shall apply the higher standard.~~

~~(e)Any Indian child, the Indian child's tribe, or the parent or Indian custodian from whose custody the child has been removed, may petition 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 federal Indian Child Welfare Act of 1978:~~

~~SEC. 2. Section 224.1 of the Welfare and Institutions Code is repealed:~~

~~SEC. 3. Section 224.1 is added to the Welfare and Institutions Code, to read:~~

~~224.1. For purposes of this chapter, the following definitions apply:~~

~~(a)"Active efforts" means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. If an agency is involved in an Indian child custody proceeding, active efforts shall involve assisting the parent, parents, or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts shall be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and shall be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and tribe. Active efforts shall be tailored to the facts and circumstances of the case and may include, but are not limited to, any of the following:~~

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

~~(2)Identifying appropriate services and helping the parents overcome barriers, including actively assisting the parents in obtaining those services:~~

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

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

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

~~(6)Taking steps to keep siblings together whenever possible:~~

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

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

~~(9) Monitoring progress and participation in services.~~

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

~~(11) Providing postreunification services and monitoring.~~

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

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

~~(d) "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 an Indian child is deemed to have had custody of the Indian child.~~

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

~~(f) "Domicile" means either of the following:~~

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

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

~~(g) "Emergency proceeding" means and includes any court action that involves an emergency removal or emergency placement of an Indian child.~~

~~(h) "Extended family member" is defined by the law or custom of the Indian child's tribe or, in the absence of a law or custom, is a person who is 18 years of age or older 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.~~

~~(i) "Indian" means a person who is a member or citizen of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in Section 7 of the Alaska Native Claims Settlement Act (43 U.S.C. Sec. 1606 et seq.).~~

~~(j)(1) "Indian child" means any unmarried person who is under 18 years of age and is either of the following:~~

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

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

~~(2) The term "Indian child" also means a person who is 18 years of age or older, but under 21 years of age, who is a member or citizen of an Indian tribe or eligible for membership or citizenship in an Indian tribe and who is the biological child of a member or citizen of an Indian tribe, and who is under the jurisdiction of a dependency court. An Indian child custody proceeding involving a person 18 years of age or older shall be conducted in a manner that respects the person's status as a legal adult.~~

~~(k)(1) "Indian child's tribe" means the Indian tribe of which an Indian child is a member or citizen, or in which an Indian child is eligible for membership or citizenship.~~

~~(2) In the case of an Indian child who meets the definition of Indian child through more than one tribe, deference to be considered the Indian child's tribe shall be given to the tribe that the Indian child is already a member or citizen, unless otherwise agreed to by the tribes.~~

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

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

~~(C) If the tribes are unable to reach an agreement, the court shall designate as the Indian child's tribe, for purposes of the federal Indian Child Welfare Act of 1978 (ICWA) (25 U.S.C. Sec. 1901 et seq.), the Indian tribe with which the Indian child has the most significant contacts, taking into consideration all of the following:~~

~~(i) Preference of the parents for membership or citizenship of the child.~~

~~(ii) Length of past domicile or residence of the Indian child, on or near the reservation of each tribe.~~

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

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

~~(v) Whether there has been a previous adjudication with respect to the Indian child by a court of one or more of the tribes.~~

~~(vi) Self-identification by the Indian 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 does not constitute a determination for any other purpose.~~

~~(1)(1) "Indian child custody proceeding" means and includes any action involving an Indian child, other than an emergency proceeding, that may culminate in one of the following outcomes:~~

~~(A) Foster care placement, which includes 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 may not have the child returned upon demand, but where parental rights have not been terminated.~~

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

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

~~(D) Adoptive placement, which includes the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.~~

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

~~(2) An action that may culminate in one of the five outcomes specified pursuant to paragraph (1) is considered a separate Indian child custody proceeding from an action that may culminate in a different one of those five outcomes. There may be several Indian child custody proceedings involving any given Indian child. Within each Indian child custody proceeding, there may be several hearings.~~

~~(3) ICWA includes requirements that apply whenever an Indian child is the subject of either of the following proceedings:~~

~~(A) A child custody proceeding, including:~~

~~(i) An involuntary proceeding.~~

~~(ii) A voluntary proceeding that may prohibit the parent or Indian custodian from regaining custody of the child upon demand.~~

~~(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.~~

~~(B)An emergency proceeding:~~

~~(4)If a proceeding listed in paragraph (3) concerns a child who meets the definition of "Indian child," ICWA applies to that proceeding. In determining whether ICWA applies to a proceeding, the court shall not consider factors that include 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:~~

~~(5)If ICWA applies at the commencement of a proceeding, it does not cease to apply simply because the child reaches 18 years of age during the pendency of the proceeding.~~

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

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

~~(o)"Indian organization" means, solely for purposes of eligibility for grants, any legally established group, association, partnership, corporation, or other legal entity that is owned or controlled by Indians, or of which a majority of the members are Indians.~~

~~(p)"Indian preference" means preference and opportunities for employment and training provided to Indians in the administration of grants in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. Sec. 5301 et seq.).~~

~~(q)"Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians federally recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village as defined in Section 1602(c) of the Alaska Native Claims Settlement Act (43 U.S.C. Sec. 1602(c)).~~

~~(r)"Involuntary proceeding" means an Indian 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. "Involuntary proceeding" also means an Indian child custody proceeding in which the parent consents to the foster care, preadoptive, or adoptive placement, under threat of removal of the child by a state court or agency.~~

~~(s)"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. "Parent" does not include an unwed biological father if paternity has not been acknowledged or established.~~

~~(t)"Reservation" means Indian country as defined in Section 1151 of Title 18 of the United States Code, and any land 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.~~

~~(u)"Secretary" means the Secretary of the Interior or the secretary's authorized representative.~~

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

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

~~(x)"Upon demand" means that the parent or Indian custodian may regain custody simply upon verbal request, without any formalities or contingencies.~~

~~(y)"Voluntary proceeding" means an Indian child custody proceeding that is not an involuntary proceeding, including, but not limited to, a proceeding for foster care, preadoptive or adoptive placement that either parent, both parents, 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.~~

~~SEC. 4. Section 224.2 of the Welfare and Institutions Code is amended to read:~~

~~224.2.(a)If the court, a social worker, or probation officer knows or has reason to know that an Indian child is involved, any notice sent in an Indian child custody proceeding under this code shall be sent to the minor's parents or legal guardian, Indian 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 given of all Indian child custody hearings, including, but not limited to, detention hearings, disposition hearings, review hearings to terminate reunification services, and adoption hearings. A copy of each notice sent pursuant to this paragraph shall be filed with the court, along with a return receipt or proof of service. The notice required pursuant to this paragraph shall be sent by the party seeking placement of the child to all of the following:~~

~~(A)Each tribe in which the child may be a member or citizen or tribe in which the child is eligible for membership or citizenship if a biological parent is a member or citizen.~~

~~(B)The child's parents.~~

~~(C)The child's Indian custodian, if applicable.~~

~~(4)If the identity or location of the parents, Indian custodian, or the minor's tribe cannot be ascertained, a copy of the notice shall be sent directly to the Sacramento Area Director of the Bureau of Indian Affairs. To establish tribal identity, any known information about the child's direct lineal ancestors should be provided to the Bureau of Indian Affairs, who may be able to identify tribes to contact.~~

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

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

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

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

~~(D)A copy of the petition, complaint, or other document by which the Indian child custody proceeding was initiated, and if a hearing has been scheduled, information on the date, time, and location of the hearing.~~

~~(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 name of the petitioner and the name and address of the petitioner's attorney. In an Indian child custody proceeding involving a public or private entity, the statement shall include the name and contact information of the social worker or case manager.~~

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

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

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

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

~~(vi) That if the parents or Indian custodians are unable to afford counsel, counsel will be appointed to represent the parents or Indian custodians pursuant to Section 1912 of the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.).~~

~~(vii) That, in accordance with Section 827, all parties notified shall keep confidential the information contained in the notice, and the notice shall not be disclosed to anyone who does not need the information to exercise rights under federal law.~~

~~(viii) The mailing address, telephone number, and email address of the court and information relating to all the parties involved in the Indian child custody proceeding and individuals required to be notified under this section.~~

~~(b) If a tribe acknowledges that a child is a member or citizen or eligible for membership or citizenship in that tribe, the tribe shall be provided with all notices, reports, pleadings, and other documents that any other party is entitled to under this section, unless the tribe declines in writing to receive any further information.~~

~~(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) Except in an emergency Indian child custody proceeding, an Indian child custody proceeding shall not be held until at least 10 days after receipt of the notice by the parent, Indian custodian, tribe, and the Secretary of the Interior. The parent, Indian custodian, or tribe may, upon request, be granted up to 20 additional days from the date that the notice was received to prepare for participation in the proceedings. This subdivision does not limit the rights of the parent, Indian custodian, or tribe to more than 10 days' notice if a longer notice period is required by other law.~~

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

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

~~SEC. 5. Section 224.3 of the Welfare and Institutions Code is amended to read:~~

~~224.3.(a) The court, county welfare department, and the probation department have an affirmative and continuing duty to inquire whether a child may be an Indian child.~~

~~(b) The duty to inquire begins upon the entity's first contact with the family. If there is insufficient evidence to determine if the child is an Indian child, the social worker or probation officer shall make further inquiry and use due diligence to work with all of the tribes of which there is reason to know the child may be a member or citizen, or eligible for membership or citizenship, or if a biological parent is a member or citizen.~~

~~(c) Further inquiry includes, but is not limited to, interviewing the parents, Indian custodian, and extended family members to gather the information required in paragraph (5) of subdivision (a) of Section 224.2. The social worker or probation officer shall contact 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 citizen or eligible for membership or citizenship and contacting the tribes and any other person that reasonably may be expected to have information regarding the child's membership or citizenship status or eligibility.~~

~~(d) The court shall ask each participant in an emergency, voluntary, or involuntary Indian child custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry shall be made at the commencement of the proceeding and all responses shall be on the record. The court shall instruct the parties to inform the court if they subsequently receive information that provides evidence that the child is an Indian child.~~

~~(e) If there is reason to know that the child may be an Indian child, but the court does not have sufficient evidence to determine that the child is or is not an Indian child, the court shall do both of the following:~~

~~(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 citizen, or eligible for membership or citizenship, or to determine if a biological parent is a member or citizen.~~

~~(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.~~

~~(f) 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 or citizen of a tribe or eligible for membership or citizenship in 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, including the Indian Health Service.~~

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

~~(h) A determination by an Indian tribe that a child is or is not a member or citizen of or eligible for membership or citizenship in that tribe, or testimony attesting to that status by a person authorized by the tribe to provide that determination, shall be conclusive. Information that the child is not enrolled or 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.~~

~~SEC. 6. Section 224.6 of the Welfare and Institutions Code is amended to read:~~

~~224.6.(a) When testimony of a "qualified expert witness" is required in an Indian child custody proceeding, a "qualified expert witness" 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, in descending order, are most likely to meet the requirements for a qualified expert witness for purposes of Indian child custody proceedings:~~

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

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

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

~~(4) A professional person having substantial education and experience in the area of his or her specialty.~~

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

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

~~SEC. 7. Section 305.5 of the Welfare and Institutions Code is amended to read:~~

~~305.5.(a)(1)The court in any voluntary or involuntary child custody proceeding involving an Indian child shall determine the residence and domicile of the Indian child. If either the residence or domicile is on a reservation in which the tribe exercises exclusive jurisdiction over Indian child custody proceedings, the state court shall expeditiously notify the tribal court of the pending dismissal based on the tribe's exclusive jurisdiction, and upon confirmation from the tribal court, the state court shall dismiss the state court Indian child custody proceeding, and ensure that the tribal court is sent all information regarding the Indian child custody proceeding. This information includes, but is not limited to, the pleadings and any court record.~~

~~(2)If the court determines that a child is a ward of a tribal court, the state court shall expeditiously notify the tribal court of the pending dismissal. Upon confirmation from the tribal court, the state court shall dismiss the state court Indian 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)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 Indian 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 at any time, either orally on the record or in writing, of either parent, the Indian custodian, if any, or the child's tribe, unless the court finds good cause not to transfer. Upon receipt of a transfer petition, the state court shall ensure the tribal court is promptly notified in writing of the transfer petition. The notification may request a timely response regarding whether the tribal court wishes to decline transfer. The state 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 state court dismisses the proceeding or terminates jurisdiction, the state court shall expeditiously provide the tribal court with all records related to the proceeding, including, but not limited to, the pleadings and any court record. The state court shall also make an order transferring the physical custody of the child to the tribal court to ensure the transfer of the custody of the Indian child and the proceeding is accomplished smoothly and in a way that minimizes disruption of services to the family.~~

~~(c)(1)Upon receipt of a transfer petition from an Indian child's parent, Indian custodian, or tribe, the court shall transfer the Indian child custody proceeding unless the court determines that the transfer is not appropriate because one or more of the following criteria are met:~~

~~(A)Either parent objects to the transfer.~~

~~(B)The tribal court declines the transfer.~~

~~(C)Good cause exists for denying the transfer.~~

~~(2)If the court believes, or any party asserts, that good cause to deny a transfer exists, the reasons for that belief or assertion shall be stated orally on the record or provided in writing on the record and to the parties to the Indian child custody proceeding.~~

~~(3)Each party to the Indian child custody proceeding shall have the opportunity to provide the court with views regarding whether good cause exists to deny the transfer.~~

~~(4)In determining whether good cause exists, the court shall not consider any of the following:~~

~~(A)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 Indian child custody proceeding until an advanced stage.~~

~~(B)Whether there have been prior proceedings involving the child for which no petition to transfer was filed.~~

~~(C)Whether the transfer could affect the placement of the child.~~

~~(D)The Indian child's cultural connections with the tribe or its reservation.~~

~~(E)The socioeconomic conditions or any negative perception of tribal or Bureau of Indian Affairs social services or judicial systems.~~

~~(5)The basis for any court decision to deny a transfer shall be stated orally on the record or in a written order.~~

~~(d)This section does not 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. Pursuant to this section, 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.~~

~~(e)An emergency removal or placement of an Indian child shall terminate immediately if the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.~~

~~(f)In accordance with state law, in a proceeding for an emergency removal or placement of an Indian child, the court shall do all of the following:~~

~~(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.~~

~~(3)At each court hearing related to the emergency removal or placement, 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 county social welfare department immediately terminates, the emergency proceeding once the court or county social welfare department 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.~~

~~(g)A proceeding for an emergency removal or placement may be terminated by one or more of the following actions:~~

~~(1)Initiation of an Indian child custody proceeding subject to the provisions of the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.);~~

~~(2)Transfer of the child to the jurisdiction of the appropriate Indian tribe.~~

~~(3)Restoration of the child to the parent or Indian custodian.~~

~~(h)A petition for a court order authorizing the emergency removal or continued emergency placement, and its accompanying documents, shall 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 that imminent physical damage or harm to the child. The petition and its accompanying documents shall also contain the following information:~~

~~(1)The name, age, and last known address of the child.~~

~~(2)The name and address of the child's parent or Indian custodian, if any.~~

~~(3)The steps taken to provide notice to the child's parent, Indian custodian, and tribe of the emergency proceeding.~~

~~(4)If the child's parents or Indian custodians are unknown, a detailed explanation of the efforts that have been made to locate and contact them, including contact with the Secretary of the Interior.~~

~~(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 custodian.~~

~~(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 Indian child custody matters, a statement of efforts that have been made and that are being made to contact the tribe and transfer the child to the tribe's jurisdiction.~~

~~(10)A statement of the efforts that have been taken to assist the parent or Indian custodian so that the Indian child may safely be returned to his or her custody.~~

~~(i)If, in the course of an Indian child custody proceeding, a 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, the court shall expeditiously determine whether there was improper removal or retention. If the court finds that the Indian child was improperly removed or retained, the court shall terminate the proceeding and the child shall be returned immediately to his or her parent or Indian custodian, unless returning the child to the parent or Indian custodian would subject the child to substantial and immediate danger or threat of danger.~~

~~(j)When an Indian child is transferred from a county juvenile court to an Indian tribe pursuant to subdivision (a), (b), or (d), the county shall, pursuant to Section 827.15, release the child case file to the tribe having jurisdiction.~~

~~SEC. 8. Section 361.31 of the Welfare and Institutions Code is amended to read:~~

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

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

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

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

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

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

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

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

~~(2)Other members or citizens of the child's 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, if of sufficient age, or parent shall be considered. In applying the preferences, a consenting parent's request for anonymity shall also be given weight by the court or agency effecting the placement.~~

~~(f)The prevailing social and cultural standards of the Indian community in which the parent or extended family members of an Indian child reside, or with which the parent or extended family members maintain social and cultural ties, or the prevailing social and cultural standards of the Indian child's tribe shall be applied in meeting the placement preferences under this section. A determination of the applicable prevailing social and cultural standards may be confirmed by the Indian child's tribe or by the testimony or other documented support of a qualified expert witness, as defined in subdivision (c) of Section 224.6, who is knowledgeable regarding the social and cultural standards of the Indian 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)If a party asserts that good cause not to follow the placement preferences exists, the reason for that assertion shall be stated orally on the record or provided in writing to the parties to the Indian child custody proceeding and the court.~~

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

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

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

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

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

~~(4)The extraordinary physical, mental, or emotional needs of the Indian child, including, but not limited to, specialized treatment services that may be unavailable in the community in which the child will be placed.~~

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

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

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

~~(m)A record of each foster care placement or adoptive placement of an Indian child shall be maintained in perpetuity by the State Department of Social Services. The record shall document the active efforts to comply with the applicable order of preference specified in this section, and shall be made available within 14 days of a request by a tribe.~~

~~SEC. 9. Section 361.7 of the Welfare and Institutions Code is amended to read:~~

~~361.7.(a)Notwithstanding Section 361.5, a party seeking an involuntary foster care placement of, or termination of parental rights over, an Indian child shall provide evidence to the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. The active efforts shall be documented in detail in the record.~~

~~(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.~~

~~(c)A foster care placement or guardianship shall not be ordered in the proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of a qualified expert witness, as defined in Section 224.6, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.~~

~~SEC. 10. Section 16507.4 of the Welfare and Institutions Code is amended to read:~~

~~16507.4.(a)Notwithstanding any other provisions of this chapter, voluntary family reunification services shall be provided without fee to families who qualify, or would qualify if application had been made therefor, as recipients of public assistance under the Aid to Families with Dependent Children program as described in the State Plan in effect on July 1, 1996. If the family is not qualified for aid, voluntary family reunification services may be~~

~~utilized, provided that the county seeks reimbursement from the parent or guardian on a statewide sliding scale according to income as determined by the State Department of Social Services and approved by the Department of Finance. The fee may be waived if the social worker determines that the payment of the fee may be a barrier to reunification. Section 17552 of the Family Code shall also apply.~~

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

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

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

~~(3)If there is reason to know that a child is an Indian child pursuant to Section 224.3, the following criteria are met:~~

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

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

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

~~(D)The placement preferences are in compliance with Section 366.31.~~

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

~~(d)The State Department of Social Services shall amend its plan pursuant to Part E (commencing with Section 670) of Subchapter IV of Chapter 7 of Title 42 of the United States Code in order to conform to mandates of Public Law 96-272 and Public Law 110-351 for federal financial participation in voluntary placements.~~

~~SEC. 11.No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act implements a federal law or regulation and results only in costs mandated by the federal government, within the meaning of Section 17556 of the Government Code.~~



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Date: April 12, 2018

Submitted by: Honorable Christine Williams, Director

Press Release – Tribal Justice Project – Aoki Center for Critical Race and Nation Studies, University of California, Davis, School of Law

The Aoki Center for Critical Race and Nation Studies at King Hall, UC Davis Law School, is celebrating the launch of the Aoki Center Tribal Justice Project on Thursday, April 12, at noon in the courtyard of the law school. A collaborative effort with California tribal judges, lawyers, and leaders, the Tribal Justice Project seeks to enhance the capacity and sovereignty of tribes in California by providing culturally appropriate training for tribal judges and court personnel and establishing an intertribal appellate court at the law school.

By targeting the needs of tribes in California and other Public Law 280 states, the Project will be the first of its kind to fill a critical educational gap. In contrast to most other states, California and five other states are governed by Public Law 280, a federal law that allows the state to assume concurrent jurisdiction in certain criminal and civil matters over Indians on certain tribal lands. Historically this law has created significant challenges for tribes in California and other Public Law 280 states that wish to establish their own tribal courts. Training will be provided in areas accessible to tribes throughout the state and at King Hall. The first training is scheduled at the Yurok Tribe, California's largest tribe, in late June.

The Aoki Center hopes that the variety of curricular offerings in Federal Indian Law and Tribal Justice as well as extra-curricular programs and opportunities for service to tribes will encourage more Native students to become lawyers and to attract students to King Hall who are interested in providing legal services to California tribes.

Hon. Christine Williams, a member of the Yurok Tribe and the Chair of the California Tribal Judges Association, is the Director of the Aoki Center Tribal Justice Project. Certified in Indian law, Judge Williams has spent her legal career focused on representing Tribes in a broad spectrum of legal matters such as tribal court development, Indian child welfare and cultural resource protection. She currently serves as the Chief Judge for the Shingle Springs Band of Miwok Indians in El Dorado County. Previously, she assisted in the formation of and development of the Northern California Intertribal Court System, a consortium court serving four tribes in Mendocino County, California, where she also served as its Chief Judge. Judge Williams has a

long history of providing training and education on various areas of Indian law and Indian Child Welfare law and history. She serves as an appointee to the Tribal Court State Court Forum.

Jennifer R. Leal, a descendant of the Washoe and Mono Lake Paiute communities from northern California, is the Project's Program Administrator. She brings to the project extensive experience in the areas of tribal relations, tribal court administration and judicial education. Previously, Ms. Leal worked for the National Judicial College – National Tribal Judicial Center in Reno, Nevada as the Program Manager. Therein she utilized her prior role as the Tribal Court Administrator for the Washoe Tribe of Nevada & California – Washoe Tribal Court in Gardnerville, Nevada to inform her work. While working at a national level, she developed distance-learning curricula and facilitated discussions on problem solving tribal court administration challenges. Ms. Leal also contributed to the early idea and design of the Judicial Council of California's Court Toolkit for Tribal/State/Federal Administrators and Clerks. She became faculty in 2013 and provided education on court administration to Alaska tribal court administrators and clerks using David Kolb's Learning Style Inventory for adult learners. Since leaving the National Tribal Judicial Center and returning to California, Ms. Leal served as the Executive Assistant to the Morongo Band of Mission Indians' Tribal Chairman, Robert Martin, who was also Chairman in 1987 and represented the Tribe during the landmark U.S. Supreme Court case *California v. Cabazon Band of Mission Indians and Morongo Band of Mission Indians*. Ms. Leal earned both her Bachelor of Arts and Master of Arts degrees in American Indian Studies from UCLA. Her graduate research concentrated on history and law and primarily focused on tribal courts.

Professor Mary Louise Frampton, Director of the Aoki Center for Critical Race and Nation Studies at King Hall, will provide oversight and faculty support for the Tribal Justice Project. Professor Frampton introduced a new course in Tribal Justice in Fall 2017 in consultation with Judge Williams. That course added to the curricular offerings at King Hall by the preeminent Federal Indian Law scholar, Professor Katherine Florey. She is particularly interested in the extraterritorial application of law, theories of jurisdiction, and the powers of tribal courts.

This Project was created with support from the Yurok Tribe of Northern California and the Bureau of Indian Affairs.

<https://law.ucdavis.edu/centers/critical-race/tribal-justice/>







FOR IMMEDIATE RELEASE

April 24, 2018

Contact: Kim Stoll, Director of Public Relations

Shingle Springs Band of Miwok Indians

530-387-4183 or 775-232-4976

California Lawyers Association Meets on Tribal Land for the First Time

The Family Law Section of the California Lawyers Association (formerly housed at the State Bar of California) hosted “Family Law Essentials 2018,” a continuing education event for members of the California Bar at the Shingle Springs Band of Miwok Indians’ reservation on April 16. This was the first time, in the Family Law Section’s 40-year existence, that an education program has been hosted by a tribe on tribal lands.

In another groundbreaking effort to reach across jurisdictions, Shingle Springs Band of Miwok Indians Tribal Court Chief Judge Christine Williams and local El Dorado County Superior Court Judge Vicki Lynn Ashworth were guest speakers.

For its 2018 Family Law Essentials Program, the Family Law Section wanted to focus on bringing quality educational programming to rural areas and highlight local judges. The other esteemed presenters were: Honorable Mark Juhas from the Superior Court of Los Angeles County, Honorable Sue Alexander from the Superior Court of Alameda County, Honorable Dale Wells from the Superior Court of Riverside County, Barbara Hammers, Certified Family Law Specialist from Los Angeles County, and David Lederman, Certified Family Law Specialist from Contra Costa County.

The program content was “FAMILY LAW ESSENTIALS 2018; Making a Real Difference—Candid Discussions between Bench and Bar Regarding Custody in Today’s Courts.” It included lively discussion and real world analysis between prominent family law bench officers and certified family law specialists as they addressed paramount custody issues. Topics included factors influencing a court’s decision when fashioning parenting plans, the effective use of custody evaluations, how the family law court system is integrating the changing views, attitudes, and law toward substance use with families, approaches and strategies related to move away requests, practical approaches to child support related issues, and the nuances and hard facts of dealing with domestic violence issues when children are involved.

“Judge Williams was great, she explained how gaming revenue worked in child support, what some of the challenges tribal courts and tribes face and generally she provided much needed information about the whole tribal court system. Most importantly, she demonstrated that she is an excellent, thoughtful judicial officer and that the tribal court system is out there and should be respected and embraced,” said Honorable Mark Juhas, Superior Court of Los Angeles County.

-Shingle Springs Band of Miwok Indians-

PHOTO CUTLINE: Left to right: Honorable Mark Juhas, Honorable Vicki Lynn Ashworth, Honorable Dale Wells, Honorable Christine Williams, Honorable Sue Alexander, retired, Barbara Hammers, CFLS, and David Lederman, CFLS