



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: February 10, 2022
Time: 12:15 - 1:15 p.m.
Public Call-in Number: 833 568 8864 Meeting ID: 160 562 4450 (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 December 9, 2021, 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. Only comments received by 12:15 p.m. on February 9, 2022 will be provided to advisory body members prior to the start of the meeting.

III. ACTION ITEMS

Item 1

Cochairs Report

Item 2

Rules and Forms - Implementation of AB 627

Presenter: Ann Gilmour, Attorney, Center for Families, Children & the Courts, Judicial Council of California

IV. INFORMATION ONLY ITEMS (NO ACTION REQUIRED)

Info 3

Public Safety and Enforcement of Tribal Exclusion Orders

Presenter: Hon. Lawrence King, Chief Judge of the Morongo Tribal Court

Info 4

Discretionary Tribal Participation in Non-ICWA Juvenile Cases

Presenters: Hon. Dean Stout, Chief Judge of the Bishop Paiute Tribal Court; Ann Gilmour, Attorney, Center for Families, Children & the Courts, Judicial Council of California

Info 5

Procedures for Recognition of Tribal Court Child Custody Orders

Presenters: Hon. Victorio Shaw, Chief Judge of the Shingle Springs Rancheria Tribal Court; Ann Gilmour, Attorney, CFCC

V. ADJOURN

Adjourn



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OF CALIFORNIA

TRIBAL COURT-STATE COURT FORUM

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TRIBAL COURT-STATE COURT FORUM

MINUTES OF OPEN MEETING

December 9, 2021
12:15-1:15 p.m.

Advisory Body Members Present: *Hon. Abby Abinanti, Co-chair*, Hon. Erin Alexander, Hon. April Attebury, Hon. Gail Dekreon, Hon. Leonard Edwards (Ret.), Hon. Ana España, Hon. Patricia Guerrero, Mr. Christopher Haug, Hon. Lawrence King, Hon. Patricia Lenzi, Hon. Devon Lomayesva, Hon. Nicholas Mazanec, Hon. Victorio Shaw, Ms. Christina Snider, Hon. Dean Stout, Hon. Allen Sumner, Hon. Sunshine Sykes, Hon. Juan Ulloa, Hon. Christine Williams.

Advisory Body Members Absent: *Hon. Suzanne Kingsbury, Cochair*, Hon. Richard Blake, Hon. Leona Colegrove, Hon. Gregory Elvine-Kreis, Hon. Joni Hiramoto, Ms. Merri Lopez-Keifer, Hon. Gilbert Ochoa, Hon. Michael Sachs, Hon. Delia Sharpe, Hon. Mark Vezzola, Hon. Joseph Wiseman.

Others Present: Ms. Vida Castaneda, Ms. Charli Depner, Ms. Audrey Fancy, Mr. Marshall Galvan, Ms. Ann Gilmour, Ms. Anne Hadreas, Ms. Sharon Hopkins-Bright, Ms. Andi Liebenbaum, Ms. Amanda Morris, Ms. Sherri Peterson, Mr. Dan Richardson, Ms. Stephanie Weldon.

OPEN MEETING

Call to Order and Roll Call

The co-chairs called the meeting to order at 12:17 p.m.

Approval of Minutes

The Forum approved the October 14, 2021 meeting minutes by consensus.

DISCUSSION AND ACTION ITEMS (ITEMS 1-4)

Info 1

Cochairs Report

The Forum approved the October 14, 2021 meeting minutes.

Info 2

Opportunities for Cross-Jurisdictional Collaboration in Criminal Matters – Yurok Tribe and Humboldt County

Presenter: Hon. Abby Abinanti, Chief Judge of the Yurok Tribal Court

Judge Abinanti gave Forum members a presentation on Cross-Jurisdictional Collaboration efforts underway between the Yurok Tribe and Humboldt County in criminal matters. The jurisdictions are building on the success of their collaborations in child welfare cases. Judge Abinanti presented examples of how working together can provide a better understanding of the community, better meet the needs of the tribal community, and allowed for increased success and completion rates for various types of court mandated programs.

Action Item 3

Rules and Forms – Implementation of Family First Prevention Services Act (FFPSA)

Presenter: Daniel Richardson, Attorney, Center for Families, Children & the Courts, Judicial Council of California

Daniel Richardson provided the Forum with an update on the Family and Juvenile Law Advisory committee's proposal implementing Assembly Bill 153. The proposal was approved by the Judicial Council during their meeting on October 1, 2021. Five forms were created and a rule of court 5.618 was adopted.

The proposal will be circulated for public comment in April 2022. Judicial Council staff will ensure it circulates to tribal representatives especially.

Action Item 4

Rules and Forms –

• Implementation of Assembly Bill 627 – Recognition of Tribal Court Orders Relating to the Division of Marital Assets

Presenter: Ann Gilmour, Center for Families, Children & the Courts, Judicial Council of California

Ann Gilmour presented to the committee the first draft of an Invitation to Comment and several forms to implement AB627 which will go out for public comment. Several Forum members had questions and revisions and will email them for research and implementation.

A D J O U R N M E N T

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

Pending approval by the advisory body on _____.

DRAFT

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688

www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

SPR-22-__

<p>Title Family Law: Recognition of Tribal Court Orders Relating to the Division of Marital Assets</p> <p>Proposed Rules, Forms, Standards, or Statutes Approve forms FL-540 and FL-541</p> <p>Proposed by Tribal Court – State Court Forum Hon. Abby Abinanti, Cochair Hon. Suzanne N. Kingsbury, Cochair</p> <p>Family and Juvenile Law Advisory Committee Hon. Stephanie E. Hulse, Cochair Hon. Amy M. Pellman, Cochair</p>	<p>Action Requested Review and submit comments by May 13, 2022.</p> <p>Proposed Effective Date January 1, 2023</p> <p>Contact Ann Gilmour, 415-865-4207, ann.gilmour@jud.ca.gov</p>
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Executive Summary and Origin

In 2020 the legislature passed AB 627, Judicial Council sponsored legislation that added section 2611 to the Family Code and revised various provisions of the Tribal Court Civil Money Judgement Act found in the Code of Civil Procedure to ensure that valid divorce or dissolution judgments issued by tribal courts that include division of pension assets are effective and in particular are recognized as meeting the requirements of the Employee Retirement Income Security Act of 1974 (ERISA).¹ AB 627 mandated that the Judicial Council adopt forms to implement the legislation.

Background

California is home to more people of Indian ancestry than any other state in the nation. Currently there are 109 federally recognized tribes in California, second only to the number of tribes in the state of Alaska. Each tribe is sovereign, with powers of internal self-governance, including the

¹ AB 627 is available at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB627

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

authority to develop and operate a court system. At least 20 tribal courts currently operate in California, and several other courts are under development.

Tribal courts in California hear a variety of case types including child abuse and neglect cases; domestic violence protective orders; domestic relations (e.g., divorce and dissolution); contract disputes and other civil cases for money judgments; unlawful detainers, property disputes, nuisance abatements, and possession of tribal lands; name changes; and civil harassment protective orders.

Some tribal courts in California issue domestic relations orders, including divorce and dissolution decrees. When these dissolution orders include the division of assets, including pension benefits and other deferred compensation benefits governed by the federal Employee Retirement Income Security Act of 1974 (ERISA) or a similar statute, interpretations of the law may require that the order be recognized by a state court in order to be fully effective. In 2011, the U.S. Department of Labor issued guidance on when a domestic relations order issued under tribal law would be a “judgment, decree or order . . . made pursuant to a State domestic relations law within the meaning of federal law.”² That guidance concluded that a tribal court order could only meet the standard for a “qualified domestic relations order” under ERISA if it was treated or recognized as such by the law of a State that could issue such an order.

The result of the guidance issued by the U.S. Department of Labor is that for a tribal court divorce or dissolution order to effectively distribute pension benefits governed by ERISA, state law must recognize the order as a judgement, decree, or order made pursuant to state domestic relations law. The Department of Labor specifically approved of the model that had been incorporated into Oregon statute at Oregon Revised Statutes section 24.115(4).³

In 2012, the Judicial Council proposed legislation that eventually became the Tribal Court Civil Money Judgment Act (Sen. Bill 406 (Evans); Stats. 2014, ch. 243). This legislation added sections 1730–1741 to the Code of Civil Procedure to clarify and simplify the process for recognition and enforcement of tribal court civil judgments consistent with the mandate set out in rule 10.60(b) of the California Rules of Court regarding recommendations concerning the recognition and enforcement of court orders that cross jurisdictional lines. Prior to the passage of AB 627, California law did not explicitly recognize judgments or orders from tribal courts (or foreign courts for that matter) that divide pension assets as judgments or orders made pursuant to state domestic relations law as mandated by ERISA. Further, current California law has no mechanism to simply “recognize” a tribal court order. Therefore, in order for a party in tribal court to have an ERISA Domestic Relations Order (DRO) accepted, that party would have to “register” the order. This creates a multitude of additional issues both for the litigant as well as the court.

Those issues include a requirement that the litigants: (1) pay for the two first-appearance fees (currently \$870); (2) pay for a certified copy (currently \$20); and (3) pay the fee for a bench officer’s signature (currently \$20).

² Available at <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/advisory-opinions/2011-03a>.

³ Available at <https://www.oregonlaws.org/ors/24.115>.

Litigants are also required to complete the necessary registration paperwork. Once registration is complete, the California court then becomes responsible for that order, requiring court and court staff time to review and process.

The Family Code contemplates recognition and enforcement of foreign custody orders under the Uniform Child Custody Jurisdiction Act (UCCJA) and foreign support orders and paternity judgments under the Uniform Interstate Family Support Act (UIFSA).⁴ The Foreign-Country Money Judgments Act⁵ excludes from its coverage any judgment arising from a divorce, support, or maintenance judgment rendered in connection with domestic relations. The Tribal Court Civil Money Judgment Act⁶ does not have a blanket exclusion for domestic relations judgments but does exclude judgments for which federal or state law already provides for recognition, including the Full Faith and Credit for Child Support Orders Act (28 U.S.C. § 1738B) and the Uniform Interstate Family Support Act.⁷ Registration of these orders can be inconsistent, cumbersome, and expensive, and is not required by federal law.

To remedy this problem, the Judicial Council sponsored, and the legislature enacted AB 627. AB 627 creates a simplified process for California courts to recognize domestic relations orders from tribal courts that would meet the definition of a “qualified domestic relations order” under ERISA and other similar statutes if they were issued by a state court. AB 627 mandates that the Judicial Council create forms to implement the statute.

The Proposal

The proposal would adopt two mandatory forms contemplated and required by AB 627. Section 1733.1 (a) of the Code of Civil Procedure as added by AB 627 creates a process where the parties to the underlying tribal court proceeding may file a joint application for recognition of a tribal court order when they both agree and directs the Judicial Council to adopt a form for this joint application. Proposed new form FL-540 contains this joint application. Section 1733.1(e) contemplates the situation where one of the parties to the tribal court order does not agree to join in the application, and states that the other party may proceed by having the tribal court execute a certificate in lieu of the signature of the other party, and mandates that the Judicial Council adopt a format for that certificate. It seemed clearest to create a separate form for the situation where one party is not joining in the application and to include the required certificate in that form. Proposed new form FL-541 would be used in this situation. The proposal is required by statute.

⁴ The Uniform Child Custody and Jurisdiction Act is incorporated into the Family Code at sections 3400 et seq. The Uniform Interstate Family Support Act is found at sections 5700.101 et seq.

⁵ Code Civ. Proc., §§ 1713–1725.

⁶ For a very helpful overview of these issues, see “Making Foreign Divorce Judgments, Orders, and Decrees Valid and Enforceable California Court Orders,” Divorcesource.com, Peter M. Walzer, Esq., available at <https://www.divorcesource.com/ds/california/making-foreign-divorce-judgments-orders-and-decrees-valid-and-enforceable-california-court-orders-4276.shtml>.

⁷ Part 6 (commencing with § 5700.101), Fam. Code, Div. 9.

By enhancing the effectiveness of tribal court orders, the proposal minimizes the duplication of efforts in state and tribal court systems, lessens the burdens on state courts, and reduces costs and complications for litigants.

Alternatives Considered

The committees considered whether they should adopt one form or two in order to implement the statute and determined that two would be less confusing.

Fiscal and Operational Impacts

Courts may have to develop processes for registering these orders, but that is a cost resulting from the underlying legislation. Ultimately the proposal should reduce state court costs by reducing the need for these dissolution and divorce matters to be heard in state court.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Should there be one form that could be used for either a joint or sole application rather than two forms?
Is the scope of the tribal certification required in proposed form FL-541 appropriate and adequate?

The advisory committees also seek comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?
- Would rules specifying the process for recognizing and filing these tribal court orders be useful and of assistance to the courts, or should each court be left to develop its own process and procedures?

Attachments and Links

1. Forms FL-540 and FL-541 at pages 5-6.

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (<i>name</i>):	STATE BAR NUMBER: STATE: ZIP CODE: FAX NO.:	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PETITIONER: RESPONDENT:		
JOINT APPLICATION FOR RECOGNITION OF A TRIBAL COURT ORDER DIVIDING A RETIREMENT PLAN OR OTHER DEFERRED COMPENSATION		CASE NUMBER:

Use this form to ask the court to recognize a tribal court order that assigns all or part of the following types of benefits to an alternate payee: child support payments, spousal support payments, martial property rights for a spouse, child or other dependent of a participant in a retirement plan or other plan of deferred compensation. You can make this application in the superior court of the county in which either party resides. You must attach a certified copy of the tribal court order.

Note: Recognition of this tribal court order based on this application does not give a court of this state jurisdiction to modify or enforce the tribal court order.

1. Petitioner (Applicant One) (*name*):
 Mailing Address:

 Telephone Number:
 Email Address:

2. Respondent (Applicant Two) (*name*):
 Mailing Address:

 Telephone Number:
 Email Address:

3. Other Applicant (if any) (*name*):
 Relationship to parties:
 Mailing Address:

 Telephone Number:
 Email Address:

4. Tribal Court that issued the order (*name*):
 Mailing Address:

 Telephone Number:
 Email Address:

PETITIONER: RESPONDANT:	CASE NUMBER:
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5. The applicants, who are parties to the underlying action in tribal court, seek recognition of the order from the _____ tribal court issued on _____ (insert date filed with tribal court) under section 1733.1 of the Code of Civil Procedure.

6. A certified copy of the tribal court order to be registered is attached to this form.

Date: _____

 (TYPE OR PRINT NAME)



 (SIGNATURE OF PETITIONER)

Date: _____

 (TYPE OR PRINT NAME)



 (SIGNATURE OF RESPONDENT)

Date: _____

 (TYPE OR PRINT NAME)



 (SIGNATURE OF OTHER APPLICANT IF ANY)

PETITIONER: RESPONDENT:	CASE NUMBER:
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and attached is a true and authentic copy of the order issued by the tribe.

Date: _____

(TYPE OR PRINT NAME)



(SIGNATURE OF PETITIONER)

CERTIFICATION OF TRIBAL COURT REPRESENTATIVE

I am a representative of the _____ tribal court (*insert name of tribal court*)
 _____ (*insert title of position*). In that capacity I am authorized to and hereby certify that the
 attached is a copy of the order issued by the _____ tribal court (*insert name of tribal court*)
 on _____ (*insert date*). The order was made in compliance with the tribal court's rules and procedures.
 The order is final. There has been no appeal or stay of enforcement and the time for appeal has expired.

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

Date: _____

(TYPE OR PRINT NAME)



(SIGNATURE OF AUTHORIZED TRIBAL COURT REPRESENTATIVE)

From: [Lawrence King](#)
To: [Abinanti Abby](#); [Kingsbury, Suzanne](#); [Derinda Lambie \(Judge Kingsbury's Assistant\)](#)
Cc: [Gilmour, Ann](#); [Castaneda, Vida](#); [Lawrence King](#)
Subject: Agenda Item for New Forum Meeting - Exclusion Orders and Public Safety
Date: Thursday, January 27, 2022 1:40:49 PM
Attachments: [Attorney General Opinion.pdf](#)
[NCAI Resolution.pdf](#)
[PEN 166..pdf](#)

Madam Co-Chairs

For the next meeting of the Tribal Court-State Court Forum, I would like to speak to an issue the Morongo Band of Mission Indians, and what I expect – all tribes in California Indian Country – have increasingly felt frustration over – an inability to remove unwanted individuals from within the exterior boundaries of the reservation. Generally, California Penal Code 602 (trespass) is not available to the tribes for trespass enforcement (See 80 Ops.Cal.Atty.Gen. 46).

This “frustration” I speak to is a public safety issue, and as such, it must be addressed by all responsible parties: the tribes and the State of California. California, for our purposes, is the Courts (the Judicial Branch of California), the Office of the Attorney General, and the Office of the Governor – all represented here in this Forum.

It is time, as so eloquently stated by the National Congress of American Indians’ Resolution #SD-15-053, that there are responsibilities held by each government actor to “protect tribal lands and communities from harm,” and those responsibilities need to be fulfilled. There are too many bad actors who have used the excuse of jurisdictional confusion to their benefit – narcotics sales leading to issues of addition and fatal overdoses, narcotic cultivation (methamphetamine labs and marijuana grows), timber theft, hunting and fishing theft – knowing that these crimes, these injustices that threatened the very lives and livelihood of our tribal citizens and residents will never be held to answer for their bad acts.

Something must be done and I believe that this Forum can do something that can finally address and resolve this critical safety issue. For instance, one possible solution is to examine California Penal Code Section 166(a)(4) and have there be guidance provided by the Judicial Council - or whichever body the Forum identifies- that for purposes of “out of state courts” that tribal courts are to be treated as out-of-state courts and, accordingly that a tribal court’s order of exclusion (for public safety reasons) shall be eligible for enforcement under such section. Tribal court judges and those who come to our tribal courts for help, must know that these public safety protection orders will be enforced by all law enforcement – regardless of who their sovereign may be. Currently, tribal court orders are to be recognized by California in California’s Family Code and Civil Code, as well as through federal legislation, such as the Violence Against Women Act – which broadly defines the term “protection” and “individual.” Therefore, I ask that this issue be placed on the agenda for our very next meeting so that work may begin swiftly to bring resolution to this long-standing problem.

Respectfully,

Larry King

Chief Judge Morongo Band of Mission Indians

This transmission is intended for the named addressee(s) only and may contain confidential and privileged information.



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #SD-15-053

TITLE: Enforcement of Exclusion Orders, Protective Orders, and Trespass Violations in Indian Country

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WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, crimes related to drugs, including the efforts of organized crime to sell drugs to tribal citizens, as well other violent crimes relating to drugs and alcohol, or domestic relations crimes, and other crimes against people and property, have increased dramatically on Indian reservations; and

WHEREAS, tribes are unable to address problems with non-native sexual assault and stalking offenders as well as domestic violence perpetrators who are subject to civil protection or exclusionary orders, but continue to return to the reservation and harass victims; and

WHEREAS, tribes are also experiencing problems with timber theft, illegal mining, illegal dumps and illegal marijuana grow operations, serious crimes that are infrequently enforced by the federal government; and

WHEREAS, tribes also have difficulties with former tenants who overstay agricultural and residential leases and refuse to leave or pay rent. Also some sportsmen are repeatedly warned to avoid unpermitted hunting and fishing in Indian country, but refuse to respect the law and tribal property rights; and

WHEREAS, often a person who is subject to a tribal government exclusion order, or a tribal court protection order, or who have been found to commit criminal activity on the reservation simply goes back to the reservation and commits more crimes; and

WHEREAS, Indian Country trespass crime clarification should be considered to increase federal notice and deterrence for violations of tribal exclusion orders, protection orders, and for those who cause serious threats to persons and damage to property; and

WHEREAS, in *Duro v. Reina* the Supreme Court addressed the authority of tribal law enforcement to detain non-Indians, holding that tribes possess “traditional and undisputed power to exclude persons whom they deem to be undesirable from tribal lands,” and therefore “where jurisdiction to try and punish an offender rests outside the tribe, tribal officers may exercise their power to detain the offender and transport him to the proper authorities”; and

WHEREAS, the United States has trust and treaty responsibilities to protect tribal lands and communities from harm.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) urges Congress to consult with Indian tribes and develop legislation to increase federal penalties and deterrence for Native and Non-Natives who violate tribal exclusion orders and protection orders, those who cause serious threats to persons and damage to property in Indian country, and repeat offenders of Indian country hunting, fishing and trespass laws; and

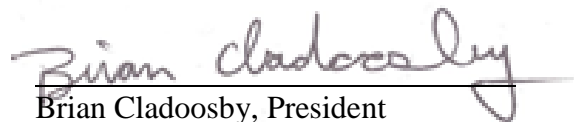
BE IT FURTHER RESOLVED, that NCAI calls upon tribal law enforcement, federal law enforcement and federal prosecutors to fully enforce tribal exclusion orders, protection orders and trespass laws against those who cause serious threats to persons and damage to property in Indian country; and

BE IT FURTHER RESOLVED, the NCAI calls upon the federal government to provide improved training to tribal and BIA law enforcement on their authority to arrest non-Natives who commit criminal offenses in Indian country, and where jurisdiction to try and punish an offender rests outside the tribe, to detain the offender and transport to the proper authorities; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2015 Annual Session of the National Congress of American Indians, held at the Town and Country Resort, San Diego, CA, October 18-23, 2015, with a quorum present.


Brian Cladoosby, President

ATTEST:


Aaron Payment, Recording Secretary

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

DANIEL E. LUNGREN
Attorney General

OPINION :
 :
 of : No. 96-609
 :
 : February 28, 1997
 DANIEL E. LUNGREN :
 Attorney General :
 :
 ANTHONY D. DA VIGO :
 Deputy Attorney General :
 :

THE HONORABLE FRED AGUIAR, MEMBER OF THE CALIFORNIA STATE ASSEMBLY, has requested an opinion on the following questions:

1. Would a violation of an exclusion order issued by the tribal council of an Indian tribe, prohibiting an individual from entering or occupying real property or structures on the reservation, constitute a misdemeanor under the terms of Penal Code section 602, subdivision (l)?
2. What action, if any, would a county sheriff be required to take to enforce an exclusion order issued by the tribal council of an Indian tribe, prohibiting an individual from entering or occupying real property or structures on the reservation?

CONCLUSIONS

1. A violation of an exclusion order issued by the tribal council of an Indian tribe, prohibiting an individual from entering or occupying real property or structures on the reservation, would not constitute a misdemeanor under the terms of Penal Code section 602, subdivision (l).
2. A county sheriff would not be required to take any action to enforce an exclusion order issued by the tribal council of an Indian tribe, prohibiting an individual from entering or occupying real property or structures on the reservation.

ANALYSIS

The tribal council of the Chemehuevi Indian Tribe has adopted an ordinance **Footnote No. 1** providing in part:

"a. It is unlawful and constitutes a violation of this Ordinance for any person to enter or remain upon any portion of the Chemehuevi Indian Reservation, if they have been excluded from the Reservation by order of the Tribal Council and they have been personally served with a notice to show cause under Section 9.52.30(a) or 9.52.40 and failed to attend the noticed hearing or, if they attended the hearing, they have been personally served with the order excluding them.

"b. It is unlawful and constitutes a violation of this Ordinance for any lessee or assignee of Tribal trust land or owner or tenant of housing located on the Reservation to allow a person excluded from the Reservation under this Chapter to enter, occupy or remain upon or within their lease, assignment, home or rental unit, after notice of exclusion has been given as provided in Section 9.52.50." (§ 9.52.10.)

Section 9.52.20 specifies the particular grounds for exclusion, e.g., threatening the peace and quiet or personal safety of persons who live or work on the reservation, cutting down trees, defacing signs, discharging pollutants or toxic waste, and damaging cultural artifacts or grave sites. Section 9.52.30 sets forth the procedures for the issuance of an exclusion order, including notice, service, and pre-exclusion and post-exclusion hearings. Each order of exclusion provides in part:

"You are prohibited from entering or remaining upon the reservation while this order remains in effect. If you violate this order, tribal enforcement officials may remove you and your possessions from the reservation. You may be guilty of criminal trespass under the California Penal Code and subject to arrest and imprisonment."

We are first asked to address whether a violation of a tribal council exclusion order as described above would constitute a misdemeanor under the terms of section 602, subdivision (I), of the Penal Code (hereinafter "subdivision (I)"). **Footnote No. 2** The statute provides:

". . . [E]very person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

".....

"(I) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

"....."

The second inquiry presented is whether a county sheriff would be required to enforce such an exclusion order. We conclude that a violation of the exclusion order in question would not *per se* satisfy the descriptive elements of a criminal trespass as defined in subdivision (I); thus, a sheriff would not be authorized to enforce the issuance of such an order. However, the provisions of subdivision (I) may be enforced on the reservation where the terms thereof are independently applicable.

Whether California law may be applied to Indian reservations located in the state depends primarily upon the approval of Congress. As stated in *California v. Cabazon Band of Mission Indians* (1987) 480 U.S. 202, 207:

"The Court has consistently recognized that Indian tribes retain 'attributes of sovereignty over both their members and their territory,' *United States v. Mazurie*, 419 U.S. 544, 557 (1975), and that 'tribal sovereignty is dependent on, and subordinate to, only the Federal Government, not the States,' *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 154 (1980). It is clear, however, that state laws may be applied to tribal Indians on their reservations if Congress has expressly so provided. . . .

"In Pub. L. 280 [18 U.S.C., § 1162, . . .] Congress expressly granted six States, including California, jurisdiction over specified areas of Indian country within the States. . . . California was granted broad criminal jurisdiction over offenses committed by or against Indians within all Indian country within the State."

The governing federal law, title 18, United States Code, section 1162, subdivision (a), provides as follows:

"Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

"*State or Territory of Indian country affected*

".....

"California All Indian country within the State.

"....." **Footnote No. 3**

Clearly, under federal law (18 U.S.C., § 1162) California's criminal statutes apply to Indian reservations in the state. Tribal code provisions and orders, on the other hand, do not constitute the criminal laws of the state and have no force and effect elsewhere within California. Such tribal code provisions and orders are not enforceable by a county sheriff either within or without the reservation.

We believe that if a tribal order of exclusion met all of the elements of a trespass as defined in subdivision (l), a county sheriff could enforce the provisions of the state law based upon issuance of such an order. The exclusion order in question, however, does not satisfy the requirements of subdivision (l) and thus a violation of such an order would not invoke the application of state law.

Specifically, this subject exclusion order is violated by a person who, having been excluded by the tribal council, enters *or* remains on the reservation. (§ 9.52.10, subd. (a).) Further, the order is violated by a person on the reservation (lessee or assignee) who allows an excluded person to "enter, occupy *or* remain" on the reservation. (§ 9.52.10, subd. (b).) However, a violation of subdivision (l) requires that the individual both enter *and* occupy real property or structures without the consent of the owner. As explained by the court in *People v. Wilkinson* (1967) 248 Cal.App.2d Supp. 906, 909-910:

"It is not a violation of Penal Code section 602, subdivision (l) to enter private property without consent unless such entry is followed by occupation thereof without consent. Nor is it a violation to occupy without consent if the entry be made with consent. This is so because the conjunction used is 'and' not 'or'. . . ."

In *People v. Brown* (1965) 236 Cal.App.2d Supp. 915, 919-920, the court analyzed the issue as follows:

"Defendants next contend that section 602, subdivision (l) by its very terms is not applicable where the entering of a building was with the express or implied consent of the owner. . . .

"It was stipulated that the bank's premises were open to the public, including the defendants and their associates.

"Respondent argues that section 602, subdivision (l) is applicable where the entry of a building was with the consent of the owner if the owner later withdraws his consent, and that following that withdrawal a person on the premises may become a trespasser. The cases cited for the proposition that an invitation may be withdrawn at any time (*Rogers v. Duhart*, 97 Cal. 500,

and *Riechhold v. Sommarstrom Inv. Co.*, 83 Cal.App. 173) are both civil cases, and do not involve the issue of criminal trespass.

"As noted above . . . the plain meaning of the words used in the statute should be followed. Section 602, subdivision (*l*) by its terms applies to `entering *and* occupying . . . without . . . consent. . . .'

"Recent enactments of the Legislature, such as Penal Code section 602.5 (1961): `Every person . . . who enters *or* remains . . . without consent of the owner' (italics ours) indicate that the distinction between the use of the word `and' and the word `or' was well understood by the framers of the legislation. Section 602.5 by its wording gives fair warning that either the act of entering or the act of remaining on certain premises without consent will constitute a trespass. Section 602, subdivision (*l*) gives no such warning. There is nothing in the wording of this statute to indicate that it makes criminal the act of occupying without the consent of the owner after an original entry by permission. . . ." **Footnote No. 4**

Hence, an unconsented entry followed by consent to remain, or a consented entry without consent to remain, would violate the terms of the exclusion order in question, but would not violate subdivision (*l*).

We conclude that a violation of an exclusion order issued by the tribal council of an Indian tribe, prohibiting an individual from entering or occupying real property or structures on the reservation would not constitute a misdemeanor under the terms of subdivision (*l*) and thus a county sheriff would not be required to enforce a violation of the order.

* * * * *

Footnote No. 1

All references hereafter to the tribal code of the Chemehuevi Indian Tribe are by section number only.

Footnote No. 2

No other California criminal statute appears applicable to the particular circumstances presented herein.

Footnote No. 3

The term "Indian country" includes all land within the limits of any Indian reservation under the jurisdiction of the United States Government. (18 U.S.C., § 1151.) The application of California's civil laws to activities on Indian reservations is governed by a different federal law. (28 U.S.C., § 1360(a).) While trespass has both civil and criminal aspects, we are concerned here only with the criminal connotation.

Footnote No. 4

Penal Code section 602.5 provides in full:

"Every person other than a public officer or employee acting within the course and scope of his employment in performance of a duty imposed by law, who enters or remains in any noncommercial dwelling house, apartment, or other such place without consent of the owner, his agent, or the person in lawful possession thereof, is guilty of a misdemeanor."

State of California

PENAL CODE

Section 166

166. (a) Except as provided in subdivisions (b), (c), and (d), a person guilty of any of the following contempts of court is guilty of a misdemeanor:

(1) Disorderly, contemptuous, or insolent behavior committed during the sitting of a court of justice, in the immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due to its authority.

(2) Behavior specified in paragraph (1) that is committed in the presence of a referee, while actually engaged in a trial or hearing, pursuant to the order of a court, or in the presence of a jury while actually sitting for the trial of a cause, or upon an inquest or other proceeding authorized by law.

(3) A breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of the court.

(4) Willful disobedience of the terms, as written, of a process or court order or out-of-state court order, lawfully issued by a court, including orders pending trial.

(5) Resistance willfully offered by a person to the lawful order or process of a court.

(6) The contumacious and unlawful refusal of a person to be sworn as a witness or, when so sworn, the like refusal to answer a material question.

(7) The publication of a false or grossly inaccurate report of the proceedings of a court.

(8) Presenting to a court having power to pass sentence upon a prisoner under conviction, or to a member of the court, an affidavit, testimony, or representation of any kind, verbal or written, in aggravation or mitigation of the punishment to be imposed upon the prisoner, except as provided in this code.

(9) Willful disobedience of the terms of an injunction that restrains the activities of a criminal street gang or any of its members, lawfully issued by a court, including an order pending trial.

(b) (1) A person who is guilty of contempt of court under paragraph (4) of subdivision (a) by willfully contacting a victim by telephone or mail, social media, electronic communication, or electronic communication device, or directly, and who has been previously convicted of a violation of Section 646.9 shall be punished by imprisonment in a county jail for not more than one year, by a fine of no more than five thousand dollars (\$5,000), or by both that fine and imprisonment.

(2) For the purposes of sentencing under this subdivision, each contact shall constitute a separate violation of this subdivision.

(3) The present incarceration of a person who makes contact with a victim in violation of paragraph (1) is not a defense to a violation of this subdivision.

(4) For purposes of this subdivision, the following definitions shall apply:

(A) "Social media" has the same definition as in Section 632.01.

(B) "Electronic communication" has the same definition as in Section 646.9.

(C) "Electronic communication device" has the same definition as in Section 646.9.

(c) (1) Notwithstanding paragraph (4) of subdivision (a), a willful and knowing violation of a protective order or stay-away court order described as follows shall constitute contempt of court, a misdemeanor, punishable by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars (\$1,000), or by both that imprisonment and fine:

(A) An order issued pursuant to Section 136.2.

(B) An order issued pursuant to paragraph (2) of subdivision (a) of Section 1203.097.

(C) An order issued after a conviction in a criminal proceeding involving elder or dependent adult abuse, as defined in Section 368.

(D) An order issued pursuant to Section 1201.3.

(E) An order described in paragraph (3).

(F) An order issued pursuant to subdivision (j) of Section 273.5.

(2) If a violation of paragraph (1) results in a physical injury, the person shall be imprisoned in a county jail for at least 48 hours, whether a fine or imprisonment is imposed, or the sentence is suspended.

(3) Paragraphs (1) and (2) apply to the following court orders:

(A) An order issued pursuant to Section 6320 or 6389 of the Family Code.

(B) An order excluding one party from the family dwelling or from the dwelling of the other.

(C) An order enjoining a party from specified behavior that the court determined was necessary to effectuate the orders described in paragraph (1).

(4) A second or subsequent conviction for a violation of an order described in paragraph (1) occurring within seven years of a prior conviction for a violation of any of those orders and involving an act of violence or "a credible threat" of violence, as provided in subdivision (c) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or in the state prison for 16 months or two or three years.

(5) The prosecuting agency of each county shall have the primary responsibility for the enforcement of the orders described in paragraph (1).

(d) (1) A person who owns, possesses, purchases, or receives a firearm knowing that person is prohibited from doing so by the provisions of a protective order as defined in Section 136.2 of this code, Section 6218 of the Family Code, or Section 527.6 or 527.8 of the Code of Civil Procedure, shall be punished under Section 29825.

(2) A person subject to a protective order described in paragraph (1) shall not be prosecuted under this section for owning, possessing, purchasing, or receiving a firearm to the extent that firearm is granted an exemption pursuant to subdivision (h) of Section 6389 of the Family Code.

(e) (1) If probation is granted upon conviction of a violation of subdivision (c), the court shall impose probation consistent with Section 1203.097.

(2) If probation is granted upon conviction of a violation of subdivision (c), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(A) That the defendant make payments to a domestic violence shelter-based program up to a maximum of one thousand dollars (\$1,000).

(B) That the defendant provide restitution to reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(3) For an order to pay a fine, make payments to a domestic violence shelter-based program, or pay restitution as a condition of probation under this subdivision or subdivision (c), the court shall make a determination of the defendant's ability to pay. An order to make payments to a domestic violence shelter-based program, shall not be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support.

(4) If the injury to a married person is caused, in whole or in part, by the criminal acts of the person's spouse in violation of subdivision (c), the community property shall not be used to discharge the liability of the offending spouse for restitution to the injured spouse required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents required by this subdivision, until all separate property of the offending spouse is exhausted.

(5) A person violating an order described in subdivision (c) may be punished for any substantive offenses described under Section 136.1 or 646.9. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1 or 646.9. However, a person held in contempt for a violation of subdivision (c) shall be entitled to credit for any punishment imposed as a result of that violation against a sentence imposed upon conviction of an offense described in Section 136.1 or 646.9. A conviction or acquittal for a substantive offense under Section 136.1 or 646.9 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(Amended by Stats. 2021, Ch. 704, Sec. 1. (AB 764) Effective January 1, 2022.)



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date	Action Requested
January 31, 2022	Please Review and Consider
To	Deadline
Tribal Court - State Court Forum	N/A
From	Contact
Ann Gilmour, Attorney, CFCC	Ann Gilmour, Attorney 415-865-4207 phone ann.gilmour@jud.ca.gov
Subject	
Discretionary Tribal Participation in Juvenile Cases not governed by ICWA	

At the Tribal Court-State Court Forum (forum) planning meeting several months ago, one of the issues raised was potential action to provide guidance and improve consistency in the manner in which requests of tribes to participate in non-ICWA cases are considered by the courts. This memo outlines the issue, provides background information, and presents a question for the forum.

Issue

Not all Native American children and families meet the definition of an “Indian child” in section 1903(4) of the Indian Child Welfare Act.¹ California’s historic treatment of Native Americans means that there are many “unrecognized” tribes and individuals in California². Notwithstanding that many historical tribal groups in California do not currently have the sovereign government to government relationship is acknowledged by federal recognition, federal law does contain a special definition of “Indians of California” that acknowledges the unique rights of “...all

¹ [25 U.S.C. 1903\(4\)](#) defines an Indian child as “any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.”

² For a more detailed discussion of this history and its impact on ICWA implementation see: <https://www.courts.ca.gov/documents/ICWANoticingIssues.pdf> and <https://www.courts.ca.gov/documents/Tribal-FollowSpiritICWA.pdf>

Indians how were residing in the State of California on June 1, 1852, and their descendants now living in said State to benefits and services from the federal government.³

The Indian Child Welfare Act does not apply to all juvenile cases.⁴ However, California law protects certain basic cultural and political rights of all Native American and Indian children in foster care regardless of whether they enter foster care through delinquency or dependency proceedings.⁵ California law authorizes the court to permit any person deemed to have a “direct and legitimate interest in the particular case or the work of the court” to participate in juvenile court proceedings.⁶ California law also specifically recognizes the interests of a child and tribe that would fall within the Indian Child Welfare Act if the child’s tribe had received federal recognition.⁷

Tribal representatives from both federally recognized and unrecognized tribes report that whether they are permitted to participate in juvenile cases when ICWA does not apply differs from county to county and judge to judge. In 2009, the Superior Court of California for the County of Inyo adopted several standing orders under Welfare & Institutions Code §676 creating a presumption that a youth’s tribe as well as tribal service providers had a direct and legitimate interest in juvenile delinquency proceedings involving Native American youth.⁸ Tribal representatives report that these helped improve tribal access and consistency of application.

Tribal representatives have asked us to consider ways to improve their access to non-ICWA cases involving their tribal youth and provide consistency and guidance to courts on the exercise of their discretion to allow tribal participation in juvenile cases under sections 306.6, 346 and 676 of the Welfare & Institutions Code.

Question

Should the forum recommend action on this issue to the Judicial Council? If so, is legislation required, or can this be accomplished by rules of court establishing principles for the exercise of

³ See [25 U.S.C. §651](#)

⁴ 25 U.S.C. 1903(1) which defines the kinds of cases to which ICWA applies excludes any “...placement based upon an act which, if committed by an adult, would be deemed a crime...” and therefore does not apply to most juvenile delinquency cases.

⁵ See section [16001.9](#) of the Welfare & Institutions Code. For a more detailed discussion of the specific rights of Native American and Indian children under the section see: <https://www.courts.ca.gov/documents/ICWA-Delinquency-factsheet.pdf>

⁶ See sections [346](#) and [676](#) of the Welfare & Institutions Code regarding dependency and delinquency cases respectively.

⁷ See section [306.6](#) of the Welfare & Institutions Code.

⁸ Standing Orders No SISOAD-09-031, SISOAD-09-032 and SISOAD-09-33.

Tribal Court-State Court Forum

January 31, 2022

Page 3

judicial discretion under sections 306.6, 346 and 676 regarding tribal participation in non-ICWA cases?

§ 224. Legislative findings and declarations; Indian child custody proceedings

(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 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 of 1978 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 of 1978 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 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 of 1978, 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 Section 1911, 1912, or 1913 of the federal Indian Child Welfare Act of 1978.

State of California

WELFARE AND INSTITUTIONS CODE

Section 16001.9

16001.9. (a) All children placed in foster care, either voluntarily or after being adjudged a ward or dependent of the juvenile court pursuant to Section 300, 601, or 602, shall have the rights specified in this section. These rights also apply to nonminor dependents in foster care, except when they conflict with nonminor dependents' retention of all their legal decisionmaking authority as an adult. The rights are as follows:

(1) To live in a safe, healthy, and comfortable home where they are treated with respect. If the child is an Indian child, to live in a home that upholds the prevailing social and cultural standards of the child's Indian community, including, but not limited to, family, social, and political ties.

(2) To be free from physical, sexual, emotional, or other abuse, corporal punishment, and exploitation.

(3) To receive adequate and healthy food, adequate clothing, grooming and hygiene products, and an age-appropriate allowance. Clothing and grooming and hygiene products shall respect the child's culture, ethnicity, and gender identity and expression.

(4) To be placed in the least restrictive setting possible, regardless of age, physical health, mental health, sexual orientation, and gender identity and expression, juvenile court record, or status as a pregnant or parenting youth, unless a court orders otherwise.

(5) To be placed with a relative or nonrelative extended family member if an appropriate and willing individual is available.

(6) To not be locked in any portion of their foster care placement, unless placed in a community treatment facility.

(7) To have a placement that utilizes trauma-informed and evidence-based deescalation and intervention techniques, to have law enforcement intervention requested only when there is an imminent threat to the life or safety of a child or another person or as a last resort after other diversion and deescalation techniques have been utilized, and to not have law enforcement intervention used as a threat or in retaliation against the child.

(8) To not be detained in a juvenile detention facility based on their status as a dependent of the juvenile court or the child welfare services department's inability to provide a foster care placement. If they are detained, to have all the rights afforded under the United States Constitution, the California Constitution, and all applicable state and federal laws.

(9) To have storage space for private use.

(10) To be free from unreasonable searches of personal belongings.

(11) To be provided the names and contact information for social workers, probation officers, attorneys, service providers, foster youth advocates and supporters, Court Appointed Special Advocates (CASAs), and education rights holder if other than the parent or parents, and when applicable, representatives designated by the child's Indian tribe to participate in the juvenile court proceeding, and to communicate with these individuals privately.

(12) To visit and contact siblings, family members, and relatives privately, unless prohibited by court order, and to ask the court for visitation with the child's siblings.

(13) To make, send, and receive confidential telephone calls and other electronic communications, and to send and receive unopened mail, unless prohibited by court order.

(14) To have social contacts with people outside of the foster care system, including, but not limited to, teachers, coaches, religious or spiritual community members, mentors, and friends. If the child is an Indian child, to have the right to have contact with tribal members and members of their Indian community consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe.

(15) To attend religious services, activities, and ceremonies of the child's choice, including, but not limited to, engaging in traditional Native American religious practices.

(16) To participate in extracurricular, cultural, racial, ethnic, personal enrichment, and social activities, including, but not limited to, access to computer technology and the internet, consistent with the child's age, maturity, developmental level, sexual orientation, and gender identity and expression.

(17) To have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity and expression, mental or physical disability, or HIV status.

(18) To have caregivers, child welfare and probation personnel, and legal counsel who have received instruction on cultural competency and sensitivity relating to sexual orientation, gender identity and expression, and best practices for providing adequate care to lesbian, gay, bisexual, and transgender children in out-of-home care.

(19) To be placed in out-of-home care according to their gender identity, regardless of the gender or sex listed in their court, child welfare, medical, or vital records, to be referred to by the child's preferred name and gender pronoun, and to maintain privacy regarding sexual orientation and gender identity and expression, unless the child permits the information to be disclosed, or disclosure is required to protect their health and safety, or disclosure is compelled by law or a court order.

(20) To have child welfare and probation personnel and legal counsel who have received instruction on the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.) and on cultural competency and sensitivity relating to, and best practices for, providing adequate care to Indian children in out-of-home care.

(21) To have recognition of the child's political affiliation with an Indian tribe or Alaskan village, including a determination of the child's membership or citizenship

in an Indian tribe or Alaskan village; to receive assistance in becoming a member of an Indian tribe or Alaskan village in which the child is eligible for membership or citizenship; to receive all benefits and privileges that flow from membership or citizenship in an Indian tribe or Alaskan village; and to be free from discrimination based on the child's political affiliation with an Indian tribe or Alaskan village.

(22) (A) To access and receive medical, dental, vision, mental health, and substance use disorder services, and reproductive and sexual health care, with reasonable promptness that meets the needs of the child, to have diagnoses and services explained in an understandable manner, and to participate in decisions regarding health care treatment and services. This right includes covered gender affirming health care and gender affirming mental health care, and is subject to existing laws governing consent to health care for minors and nonminors and does not limit, add, or otherwise affect applicable laws governing consent to health care.

(B) To view and receive a copy of their medical records to the extent they have the right to consent to the treatment provided in the medical record and at no cost to the child until they are 26 years of age.

(23) Except in an emergency, to be free of the administration of medication or chemical substances, and to be free of all psychotropic medications unless prescribed by a physician, and in the case of children, authorized by a judge, without consequences or retaliation. The child has the right to consult with and be represented by counsel in opposing a request for the administration of psychotropic medication and to provide input to the court about the request to authorize medication. The child also has the right to report to the court the positive and adverse effects of the medication and to request that the court reconsider, revoke, or modify the authorization at any time.

(24) (A) To have access to age-appropriate, medically accurate information about reproductive health care, the prevention of unplanned pregnancy, and the prevention and treatment of sexually transmitted infections.

(B) At any age, to consent to or decline services regarding contraception, pregnancy care, and perinatal care, including, but not limited to, abortion services and health care services for sexual assault without the knowledge or consent of any adult.

(C) At 12 years of age or older, to consent to or decline health care services to prevent, test for, or treat sexually transmitted diseases, including HIV, and mental health services, without the consent or knowledge of any adult.

(25) At 12 years of age or older, to choose, whenever feasible and in accordance with applicable law, their own health care provider for medical, dental, vision, mental health, substance use disorder services, and sexual and reproductive health care, if payment for the service is authorized under applicable federal Medicaid law or other approved insurance, and to communicate with that health care provider regarding any treatment concerns or needs and to request a second opinion before being required to undergo invasive medical, dental, or psychiatric treatment.

(26) To confidentiality of medical and mental health records, including, but not limited to, HIV status, substance use disorder history and treatment, and sexual and reproductive health care, consistent with existing law.

(27) To attend school, to remain in the child's school of origin, to immediate enrollment upon a change of school, to partial credits for any coursework completed, and to priority enrollment in preschool, afterschool programs, a California State University, and each community college district, and to receive all other necessary educational supports and benefits, as described in the Education Code.

(28) To have access to existing information regarding the educational options available, including, but not limited to, the coursework necessary for career, technical, and postsecondary educational programs, and information regarding financial aid for postsecondary education, and specialized programs for current and former foster children available at the University of California, the California State University, and the California Community Colleges.

(29) To attend Independent Living Program classes and activities, if the child meets the age requirements, and to not be prevented by caregivers from attending as a consequence or punishment.

(30) To maintain a bank account and manage personal income, consistent with the child's age and developmental level, unless prohibited by the case plan.

(31) To work and develop job skills at an age-appropriate level, consistent with state law.

(32) For children 14 to 17 years of age, inclusive, to receive a consumer credit report provided to the child by the social worker or probation officer on an annual basis from each of the three major credit reporting agencies, and to receive assistance with interpreting and resolving any inaccuracies.

(33) To be represented by an attorney in juvenile court; to have an attorney appointed to advise the court of the child's wishes, to advocate for the child's protection, safety, and well-being, and to investigate and report to the court on legal interests beyond the scope of the juvenile proceeding; to speak to the attorney confidentially; and to request a hearing if the child feels their appointed counsel is not acting in their best interest or adequately representing their legal interests.

(34) To receive a notice of court hearings, to attend court hearings, to speak to the judge, to view and receive a copy of the court file, subject to existing federal and state confidentiality laws, and to object to or request the presence of interested persons during court hearings. If the child is an Indian child, to have a representative designated by the child's Indian tribe be in attendance during hearings.

(35) To the confidentiality of all juvenile court records consistent with existing law.

(36) To view and receive a copy of their child welfare records, juvenile court records, and educational records at no cost to the child until the child is 26 years of age, subject to existing federal and state confidentiality laws.

(37) To be involved in the development of their own case plan, including placement decisions, and plan for permanency. This involvement includes, but is not limited to, the development of case plan elements related to placement and gender affirming health care, with consideration of the child's gender identity. If the child is an Indian child, the case plan shall include protecting the essential tribal relations and best interests of the Indian child by assisting the child in establishing, developing, and

maintaining political, cultural, and social relationships with the child's Indian tribe and Indian community.

(38) To review the child's own case plan and plan for permanent placement if the child is 10 years of age or older, and to receive information about their out-of-home placement and case plan, including being told of changes to the plan.

(39) To request and participate in a child and family team meeting, as follows:

(A) Within 60 days of entering foster care, and every 6 months thereafter.

(B) If placed in a short-term residential therapeutic program, or receiving intensive home-based services or intensive case coordination, or receiving therapeutic foster care services, to have a child and family team meeting at least every 90 days.

(C) To request additional child and family team meetings to address concerns, including, but not limited to, placement disruption, change in service needs, addressing barriers to sibling or family visits, and addressing difficulties in coordinating services.

(D) To have both informal and formal support people participate, consistent with state law.

(40) To be informed of these rights in an age and developmentally appropriate manner by the social worker or probation officer and to be provided a copy of the rights in this section at the time of placement, any placement change, and at least once every six months or at the time of a regularly scheduled contact with the social worker or probation officer.

(41) To be provided with contact information for the Community Care Licensing Division of the State Department of Social Services, the tribal authority approving a tribally approved home, and the State Foster Care Ombudsperson, at the time of each placement, and to contact any or all of these offices immediately upon request regarding violations of rights, to speak to representatives of these offices confidentially, and to be free from threats or punishment for making complaints.

(b) The rights described in this section are broad expressions of the rights of children in foster care and are not exhaustive of all rights set forth in the United States Constitution and the California Constitution, federal and California statutes, and case law.

(c) This section does not require, and shall not be interpreted to require, a foster care provider to take any action that would impair the health and safety of children in out-of-home placement.

(d) The State Department of Social Services and each county welfare department are encouraged to work with the Student Aid Commission, the University of California, the California State University, and the California Community Colleges to receive information pursuant to paragraph (28) of subdivision (a).

(Repealed and added by Stats. 2019, Ch. 416, Sec. 3. (AB 175) Effective January 1, 2020.)

25 U.S.C.

United States Code, 2009 Edition

Title 25 - INDIANS

CHAPTER 14 - MISCELLANEOUS

SUBCHAPTER XXV - INDIANS OF CALIFORNIA

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SUBCHAPTER XXV—INDIANS OF CALIFORNIA

§651. “Indians of California” defined

For the purposes of this subchapter the Indians of California shall be defined to be all Indians who were residing in the State of California on June 1, 1852, and their descendants now living in said State.

(May 18, 1928, ch. 624, §1, 45 Stat. 602.)

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–294, §1, Oct. 27, 1998, 112 Stat. 2818, provided that: “This Act [amending provisions set out as a note below] may be cited as the ‘Advisory Council on California Indian Policy Extension Act of 1998’.”

ADVISORY COUNCIL ON CALIFORNIA INDIAN POLICY ACT OF 1992

Pub. L. 102–416, Oct. 14, 1992, 106 Stat. 2131, as amended by Pub. L. 104–109, §14, Feb. 12, 1996, 110 Stat. 766; Pub. L. 105–294, §3, Oct. 27, 1998, 112 Stat. 2818, provided for the establishment of Advisory Council on California Indian Policy, consisting of 18 members, to develop list of tribes, to conduct a study of policies and programs affecting California Indians, to submit a report on the study no later than 36 months after first meeting of the Council, and to work with Congress, the Secretary, the Secretary of Health and Human Services, and the California Indian tribes, to implement the Council's proposals and recommendations, authorized the Council to appoint staff, hold hearings, establish task forces, accept funding from sources other than Federal government, and secure information from other Federal agencies, provided for termination of the Council on Mar. 31, 2000, and authorized \$700,000 in appropriations to carry out the provisions of this Act.

REPORT TO CONGRESS

Act June 8, 1954, ch. 271, §2, 68 Stat. 240, directed Secretary of the Interior to transmit to Congress on or before Aug. 31, 1955, a full and complete report of funds used and purposes accomplished to carry out provisions of this Act [amending section 657 of this title] and act approved May 18, 1928 (45 Stat. 602), as amended by acts of April 29, 1930 (46 Stat. 259); and June 30, 1948 (62 Stat. 1166); and May 24, 1950 (64 Stat. 189) [this subchapter].

§652. Claims against United States for appropriated lands; submission to United States Court of Federal Claims; appeal; grounds for relief

All claims of whatsoever nature the Indians of California as defined in section 651 of this title may have against the United States by reason of lands taken from them in the State of California by the United States without compensation, or for the failure or refusal of the United States to compensate them for their interest in lands in said State which the United States appropriated to its own purposes without the consent of said Indians, may be submitted to the United States Court of Federal Claims by the attorney general of the State of California acting for and on behalf of said Indians for determination of the equitable amount due said Indians from the United States; and jurisdiction is conferred upon the United States Court of Federal Claims,¹ to hear and determine all such equitable claims of said Indians against the United States and to render final decree thereon.

It is declared that the loss to the said Indians on account of their failure to secure the lands and compensation provided for in the eighteen unratified treaties is sufficient ground for equitable relief. (May 18, 1928, ch. 624, §2, 45 Stat. 602; Pub. L. 97–164, title I, §150, Apr. 2, 1982, 96 Stat. 46; Pub. L. 100–352, §6(b), June 27, 1988, 102 Stat. 663; Pub. L. 102–572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

AMENDMENTS

1992—Pub. L. 102–572 substituted “United States Court of Federal Claims” for “United States Claims Court” in two places.

1988—Pub. L. 100–352 struck out “, with the right of either party to appeal to the United States Court of Appeals for the Federal Circuit” before “, to hear and determine”.

1982—Pub. L. 97–164 substituted “United States Claims Court” for “Court of Claims” and for “Court of Claims of the United States” and substituted “United States Court of Appeals for the Federal Circuit” for “Supreme Court of the United States”.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–352 effective ninety days after June 27, 1988, except that such amendment not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered before such effective date, see section 7 of Pub. L. 100–352, set out as a note under section 1254 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

¹ So in original. The comma probably should not appear.

§653. Statutes of limitations unavailable against claims; amount of decree; set-off

If any claim or claims be submitted to said courts, they shall settle the equitable rights therein, notwithstanding lapse of time or statutes of limitation or the fact that the said claim or claims have not been presented to any other tribunal, including the commission created by the Act of March 3, 1851 (Ninth Statutes at Large, page 631): *Provided*, That any decree for said Indians shall be for an amount equal to the just value of the compensation provided or proposed for the Indians in those certain eighteen unratified treaties executed by the chiefs and head men of the several tribes and bands of Indians of California and submitted to the Senate of the United States by the President of the United States for ratification on the 1st day of June, 1852, including the lands described therein at \$1.25 per acre. Any payment which may have been made by the United States or moneys heretofore or hereafter expended to date of award for the benefit of the Indians of California, made under specific appropriations for the support, education, health, and civilization of Indians in California, including purchases of land, shall not be pleaded as an estoppel but may be pleaded by way of set-off.

(May 18, 1928, ch. 624, §3, 45 Stat. 602.)

REFERENCES IN TEXT

Act of March 3, 1851, referred to in text, is act Mar. 3, 1851, ch. 41, 9 Stat. 631, which was not classified to the Code.

§654. Claims presented by petition; filing date; amendment; signature and verification; official letters, documents, etc., furnished

The claims of the Indians of California under the provisions of this subchapter shall be presented by petition, which shall be filed within three years after May 18, 1928. Said petition shall be subject to amendment. The petition shall be signed and verified by the attorney general of the State of California. Verification may be upon information and belief as to the facts alleged. Official letters, papers, documents, and public records, or certified copies thereof, may be used in evidence and the departments of the Government shall give the said attorney access to such papers, correspondence, or furnish such certified copies of record as may be necessary in the premises free of cost.

(May 18, 1928, ch. 624, §4, 45 Stat. 602.)

§655. Reimbursement of State of California for necessary costs and expenses

In the event that the court renders judgment against the United States under the provisions of this subchapter, it shall decree such amount as it finds reasonable to be paid to the State of California to reimburse the State for all necessary costs and expenses incurred by said State, other than attorney fees: *Provided*, That no reimbursement shall be made to the State of California for the services rendered by its attorney general.

(May 18, 1928, ch. 624, §5, 45 Stat. 602.)

§656. Judgment amount deposited in Treasury to credit of Indians; interest rate; use of fund

The amount of any judgment shall be placed in the Treasury of the United States to the credit of the Indians of California and shall draw interest at the rate of 4 per centum per annum and shall be thereafter subject to appropriation by Congress for educational, health, industrial, and other purposes for the benefit of said Indians, including the purchase of lands and building of homes, and no part of said judgment shall be paid out in per capita payments to said Indians: *Provided*, That the Secretary of the Treasury is authorized and directed to pay to the State of California, out of the proceeds of the judgment when appropriated, the amount decreed by the court to be due said State, as provided in section 655 of this title.

(May 18, 1928, ch. 624, §6, 45 Stat. 603.)

§657. Revision of roll of Indians

The Secretary of the Interior, under such regulations as he may prescribe, is authorized and directed to revise the roll of the Indians of California, as defined in section 651 of this title, which was approved by him on May 16, 1933, in the following particulars: (a) By adding to said roll the names of persons who filed applications for enrollment as Indians of California on or before May 18, 1932, and who, although determined to be descendants of the Indians residing in the State of California on June 1, 1852, were denied enrollment solely on the ground that they were not living in the State of California on May 18, 1928, and who were alive on May 24, 1950; (b) by adding to said roll the names of persons who are descendants of the Indians residing in the State of California on June 1, 1852, and who are the fathers, mothers, brothers, sisters, uncles, or aunts of persons whose names appear on said roll, and who were alive on May 24, 1950, irrespective of whether such fathers, mothers, brothers, sisters, uncles, or aunts were living in the State of California on May 18, 1928; (c) by adding to said roll the names of persons born since May 18, 1928, and living on May 24, 1950, who are the children or other descendants of persons whose names appear on said roll, or of persons whose names are eligible for addition to said roll under clauses (a) or (b) of this section, or of persons dying prior to May 24, 1950, whose names would have been eligible for addition to said roll under clauses (a) or (b) of this section if such persons had been alive on May 24, 1950; and (d) by removing from said roll the names of persons who have died since May 18, 1928, and prior to May 24, 1950. Persons entitled to enrollment under clause (a) of this section shall be enrolled by the Secretary of the Interior without further application. Persons claiming to be entitled to enrollment under clauses (b) or (c) of this section shall, within one year after May 24, 1950, make an application in writing to the Secretary of the Interior for enrollment, unless they have previously filed such an application under this section. For the purposes of clause (d) of this section, when the Secretary of the Interior is satisfied that reasonable and diligent efforts have been made to locate a person whose name is on said roll and that such person cannot be located, he may presume that such person died prior to May 24, 1950, and his presumption shall be conclusive. The Secretary of the Interior shall prepare not less than five hundred copies of an alphabetical list of the Indians of California whose names appear on the roll approved on May 16, 1933, giving the name, address, and age at time of enrollment of each such enrollee, together with such other factual information, if any, as the Secretary may deem advisable as tending to identify each enrollee, and shall distribute copies of this list to the various communities of California Indians. The Indians of California in each community may elect a committee of three enrollees who may aid the enrolling agent in any matters relating to

the revision of said roll. After the expiration of the period allowed by this section for filing applications, the Secretary of the Interior shall have until June 30, 1955, to approve and promulgate the revised roll of the Indians of California provided for in this section. Upon such approval and promulgation, the roll shall be closed and thereafter no additional names shall be added thereto.

(May 18, 1928, ch. 624, §7, 45 Stat. 603; Apr. 29, 1930, ch. 222, 46 Stat. 259; June 30, 1948, ch. 765, §1, 62 Stat. 1166; May 24, 1950, ch. 196, §1, 64 Stat. 189; June 8, 1954, ch. 271, §1, 68 Stat. 240.)

AMENDMENTS

1954—Act June 8, 1954, inserted sentence providing for presumption of death, for purposes of cl. (d), after failure to locate, and extended to June 30, 1955, time for approving and promulgating revised roll.

1950—Act May 24, 1950, permitted revision of roll to include certain classes of Indians not previously eligible for inclusion.

1948—Act June 30, 1948, amended section generally to permit Secretary of the Interior to revise roll of Indians.

1930—Act Apr. 29, 1930, increased time within which an Indian could make application to be enrolled, and increased time within which Secretary of the Interior could alter and revise roll.

APPROPRIATIONS

Section 2 of act June 30, 1948, authorized \$25,000 for the Secretary of the Interior to be used to defray the expense incurred in revising the roll as provided for in this section.

§658. Distribution of \$150 from fund to each enrolled Indian

Notwithstanding the provisions of section 656 of this title, the Secretary of the Interior, under such regulations as he may prescribe, is authorized and directed to distribute per capita the sum of \$150 to each Indian of California living on May 24, 1950, who is now or may hereafter be enrolled under sections 651 and 657 of this title. The Secretary of the Interior may, in his discretion, make such distribution from time to time to persons on the roll of the Indians of California approved on May 16, 1933, as he identifies such enrollees, before the completion of the revised roll provided for in section 657 of this title. The Secretary of the Interior is authorized to withdraw from the fund on deposit in the Treasury of the United States arising from the judgment in favor of the Indians of California entered by the Court of Claims on December 4, 1944, and appropriated for them by section 203 of the Act of April 25, 1945 (59 Stat. 77), such sums as may be necessary to make the per capita payments required by this section, including not to exceed \$15,000 for the purpose of defraying the expenses incident to carrying out the provisions of sections 657 and 658 of this title. Such payments shall be made out of the accumulated interest on such judgment fund and so much of the principal thereof as is necessary to complete the payments. The money paid to enrollees pursuant to this section shall not be subject to any lien or claim of any nature against any such persons, except for debts owing to the United States.

(May 24, 1950, ch. 196, §2, 64 Stat. 190.)

REFERENCES IN TEXT

The Court of Claims, referred to in text, and the Court of Customs and Patent Appeals were merged effective Oct. 1, 1982, into a new United States Court of Appeals for the Federal Circuit by Pub. L. 97-164, Apr. 2, 1982, 96 Stat. 25, which also created a United States Claims Court [now United States Court of Federal Claims] that inherited the trial jurisdiction of the Court of Claims. See sections 48, 171 et seq., 791 et seq., and 1491 et seq. of Title 28, Judiciary and Judicial Procedure.

Section 203 of the Act of April 25, 1945, referred to in text, is section 203 of act Apr. 25, 1945, ch. 95, title II, 59 Stat. 94, which was not classified to the Code.

CODIFICATION

Section was not enacted as part of act May 18, 1928, ch. 624, 45 Stat. 602, which comprises this subchapter.

§659. Distribution of judgment fund

(a) Preparation of Indian roll

The Secretary of the Interior shall prepare a roll of persons of Indian blood who apply for inclusion thereon and (i) whose names or the name of a lineal or collateral relative appears on any of

the approved rolls heretofore prepared pursuant to this subchapter and the amendments thereto or (ii) who can establish, to the satisfaction of the Secretary, lineal or collateral relationship to an Indian who resided in California on June 1, 1852, and (iii) who were born on or before and were living on September 21, 1968.

(b) Contents

The roll so prepared shall indicate, as nearly as possible, the group or groups of Indians of California with which the ancestors of each enrollee were affiliated on June 1, 1852. If the affiliation of an enrollee's ancestors on that date is unknown, it shall be presumed to be the same as that of the ancestors' relatives whose affiliation is known unless there is sound reason to believe otherwise. Applicants whose ancestry is derived partly from one of the groups named in section 660(b) of this title and partly from another group of Indians in California shall elect the affiliation to be shown for them on the roll.

(c) Application for enrollment

Application for enrollment shall be filed with the Area Director of the Bureau of Indian Affairs, Sacramento, California, on forms prescribed for that purpose.

(Pub. L. 90-507, §1, Sept. 21, 1968, 82 Stat. 860.)

CODIFICATION

Section was not enacted as part of act May 18, 1928, ch. 624, 45 Stat. 602, which comprises this subchapter.

§660. Equal share distribution of 1964 appropriation

(a) Persons covered; amounts

The Secretary shall distribute to each person whose name appears on the roll prepared pursuant to section 659 of this title, except those whose ancestry is derived from one or more of the groups named in subsection (b) of this section, an equal share of the moneys which were appropriated by the Act of October 7, 1964 (78 Stat. 1033), in satisfaction of the judgment of the Indian Claims Commission in consolidated dockets numbered 31, 37, 80, 80-D, and 347, plus the interest earned thereon, minus attorneys fees, litigation expenses (including the reimbursement of funds expended under authority of the Acts of July 1, 1946 (60 Stat. 348), August 4, 1955 (69 Stat. 460), and July 14, 1960 (74 Stat. 512)), a proper share of the costs of roll preparation, and such amounts as may be required to effect the distribution.

(b) Persons excepted

Persons whose ancestry is derived solely from one or more of the following groups and persons of mixed ancestry who elected to share, other than as heirs or legatees of enrollees, in any award granted to any of the following groups shall not share in the funds distributed pursuant to subsection (a) of this section: Northern Paiute, Southern Paiute, Mohave, Quechan (Yuma), Chemehuevi, Shoshone, Washoe, Klamath, Modoc, and Yahooskin Band of Snakes.

(Pub. L. 90-507, §2, Sept. 21, 1968, 82 Stat. 860.)

REFERENCES IN TEXT

Act of October 7, 1964, referred to in subsec. (a), is act Oct. 7, 1964, Pub. L. 88-635, 78 Stat. 1033, known as the Supplemental Appropriation Act, 1965. That portion of the act which appropriated the funds referred to was not classified to the Code.

The Indian Claims Commission, referred to in subsec. (a), terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

Acts of July 1, 1946, August 4, 1955, and July 14, 1960, referred to in subsec. (a), are, respectively, act July 1, 1946, ch. 529, 60 Stat. 348, known as the Interior Department Appropriation Act, 1947, act Aug. 4, 1955, ch. 541, 69 Stat. 450, known as the Supplemental Appropriation Act, 1956, and act July 14, 1960, Pub. L. 86-651, 74 Stat. 509, known as the Supplemental Appropriation Act, 1961. Those portions of the acts which appropriated the funds referred to were not classified to the Code.

CODIFICATION

Section was not enacted as part of act May 18, 1928, ch. 624, 45 Stat. 602, which comprises this subchapter.

§661. Equal share distribution of undistributed balance of 1945 appropriation

(a) Persons covered; amounts

The Secretary shall distribute to each person whose name appears on the roll prepared pursuant to section 659 of this title regardless of group affiliation an equal share of the undistributed balance of the moneys appropriated in satisfaction of the judgment of the Court of Claims in the case of *The Indians of California against United States* (102 Court of Claims 837; 59 Stat. 94), plus the interest earned thereon, including the reimbursed moneys and unexpended balances of the funds established by the Acts of July 1, 1946 (60 Stat. 348), August 4, 1955 (69 Stat. 460), and July 14, 1960 (74 Stat. 512), minus a proper share of the costs of roll preparation and such amounts as may be necessary to effect the distribution.

(b) Credit to judgment account

The Secretary of the Treasury is authorized and directed to credit to the judgment account referred to in subsection (a) of this section, for distribution as a part of such account, the sum of \$83,275, plus interest at 4 per centum per annum from December 4, 1944, which sum represents the value of sixty-six thousand six hundred and twenty acres of land erroneously used as an offset against said judgment.

(Pub. L. 90–507, §3, Sept. 21, 1968, 82 Stat. 860; Pub. L. 91–64, Aug. 25, 1969, 83 Stat. 105.)

REFERENCES IN TEXT

The moneys appropriated in satisfaction of the judgment of the Court of Claims in the case of *The Indians of California against United States* (102 Court of Claims 837; 59 Stat. 94), referred to in subsec. (a), are the moneys appropriated by act Apr. 25, 1945, ch. 95, 59 Stat. 77, known as the First Deficiency Appropriations Act, 1945. That portion of the act which appropriated the moneys referred to was not classified to the Code.

The Court of Claims, referred to in text, and the Court of Customs and Patent Appeals were merged effective Oct. 1, 1982, into a new United States Court of Appeals for the Federal Circuit by Pub. L. 97–164, Apr. 2, 1982, 96 Stat. 25, which also created a United States Claims Court [now United States Court of Federal Claims] that inherited the trial jurisdiction of the Court of Claims. See sections 48, 171 et seq., 791 et seq., and 1491 et seq. of Title 28, Judiciary and Judicial Procedure.

Acts of July 1, 1946, August 4, 1955, and July 14, 1960, referred to in subsec. (a), are, respectively, act July 1, 1946, ch. 529, 60 Stat. 348, known as the Interior Department Appropriation Act, 1947, act Aug. 4, 1955, ch. 541, 69 Stat. 450, known as the Supplemental Appropriation Act, 1956, and act July 14, 1960, Pub. L. 86–651, 74 Stat. 509, known as the Supplemental Appropriation Act, 1961. Those portions of the acts which appropriated the funds referred to were not classified to the Code.

CODIFICATION

Section was not enacted as part of act May 18, 1928, ch. 624, 45 Stat. 602, which comprises this subchapter.

AMENDMENTS

1969—Pub. L. 91–64 designated existing provisions as subsec. (a) and added subsec. (b).

§662. Heirs of deceased enrollees; tax exemption

Each share distributable to an enrollee under sections 660 and 661 of this title shall be paid directly to the enrollee or, if he is deceased at the time of distribution, to his heirs or legatees unless the distributee is under twenty-one years of age or is otherwise under legal disability, in which case such disposition shall be made of the share as the Secretary determines will adequately protect the best interests of the distributee. Funds distributed under sections 659 to 663 of this title shall not be subject to Federal or State income taxes.

(Pub. L. 90–507, §4, Sept. 21, 1968, 82 Stat. 861.)

CODIFICATION

Section was not enacted as part of act May 18, 1928, ch. 624, 45 Stat. 602, which comprises this subchapter.

§663. Rules and regulations; filing deadline

The Secretary is authorized to prescribe rules and regulations to carry out the provisions of sections 659 to 663 of this title, which rules and regulations shall include an appropriate deadline for the filing of applications for enrollment under section 659 of this title. The determinations of the Secretary regarding eligibility for enrollment, the affiliation of an applicant's ancestors, and the shares of the cost of roll preparation to be charged to each of the two funds referred to in sections 660 and 661 of this title shall be final. Not more than \$325,000 in all shall be available under sections 659 to 663 of this title for the costs of roll preparation and of the distribution of shares. (Pub. L. 90-507, §5, Sept. 21, 1968, 82 Stat. 861.)

CODIFICATION

Section was not enacted as part of act May 18, 1928, ch. 624, 45 Stat. 602, which comprises this subchapter.

State of California

WELFARE AND INSTITUTIONS CODE

Section 346

346. Unless requested by a parent or guardian and consented to or requested by the minor concerning whom the petition has been filed, the public shall not be admitted to a juvenile court hearing. The judge or referee may nevertheless admit such persons as he deems to have a direct and legitimate interest in the particular case or the work of the court.

(Amended by Stats. 1982, Ch. 978, Sec. 15. Effective September 13, 1982.)

State of California

WELFARE AND INSTITUTIONS CODE

Section 676

676. (a) Unless requested by the minor concerning whom the petition has been filed and any parent or guardian present, the public shall not be admitted to a juvenile court hearing. Nothing in this section shall preclude the attendance of up to two family members of a prosecuting witness for the support of that witness, as authorized by Section 868.5 of the Penal Code. The judge or referee may nevertheless admit those persons he or she deems to have a direct and legitimate interest in the particular case or the work of the court. However, except as provided in subdivision (b), members of the public shall be admitted, on the same basis as they may be admitted to trials in a court of criminal jurisdiction, to hearings concerning petitions filed pursuant to Section 602 alleging that a minor is a person described in Section 602 by reason of the violation of any one of the following offenses:

- (1) Murder.
- (2) Arson of an inhabited building.
- (3) Robbery while armed with a dangerous or deadly weapon.
- (4) Rape with force or violence, threat of great bodily harm, or when the person is prevented from resisting due to being rendered unconscious by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable, because of a disability, of giving consent, and this is known or reasonably should be known to the person committing the offense.
- (5) Sodomy by force, violence, duress, menace, threat of great bodily harm, or when the person is prevented from resisting due to being rendered unconscious by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable, because of a disability, of giving consent, and this is known or reasonably should be known to the person committing the offense.
- (6) Oral copulation by force, violence, duress, menace, threat of great bodily harm, or when the person is prevented from resisting due to being rendered unconscious by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable, because of a disability, of giving consent, and this is known or reasonably should be known to the person committing the offense.
- (7) Any offense specified in subdivision (a) or (e) of Section 289 of the Penal Code.
- (8) Kidnapping for ransom.
- (9) Kidnapping for purpose of robbery.
- (10) Kidnapping with bodily harm.
- (11) Assault with intent to murder or attempted murder.
- (12) Assault with a firearm or destructive device.

- (13) Assault by any means of force likely to produce great bodily injury.
 - (14) Discharge of a firearm into an inhabited dwelling or occupied building.
 - (15) Any offense described in Section 1203.09 of the Penal Code.
 - (16) Any offense described in Section 12022.5 or 12022.53 of the Penal Code.
 - (17) Any felony offense in which a minor personally used a weapon described in any provision listed in Section 16590 of the Penal Code.
 - (18) Burglary of an inhabited dwelling house or trailer coach, as defined in Section 635 of the Vehicle Code, or the inhabited portion of any other building, if the minor previously has been adjudged a ward of the court by reason of the commission of any offense listed in this section, including an offense listed in this paragraph.
 - (19) Any felony offense described in Section 136.1 or 137 of the Penal Code.
 - (20) Any offense as specified in Sections 11351, 11351.5, 11352, 11378, 11378.5, 11379, and 11379.5 of the Health and Safety Code.
 - (21) Criminal street gang activity which constitutes a felony pursuant to Section 186.22 of the Penal Code.
 - (22) Manslaughter as specified in Section 192 of the Penal Code.
 - (23) Driveby shooting or discharge of a weapon from or at a motor vehicle as specified in Sections 246, 247, and 26100 of the Penal Code.
 - (24) Any crime committed with an assault weapon, as defined in Section 30510 of the Penal Code, including possession of an assault weapon as specified in Section 30605 of the Penal Code.
 - (25) Carjacking, while armed with a dangerous or deadly weapon.
 - (26) Kidnapping, in violation of Section 209.5 of the Penal Code.
 - (27) Torture, as described in Sections 206 and 206.1 of the Penal Code.
 - (28) Aggravated mayhem, in violation of Section 205 of the Penal Code.
- (b) Where the petition filed alleges that the minor is a person described in Section 602 by reason of the commission of rape with force or violence or great bodily harm; sodomy by force, violence, duress, menace, threat of great bodily harm, or when the person is prevented from resisting by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable, because of mental disorder or developmental or physical disability, of giving consent, and this is known or reasonably should be known to the person committing the offense; oral copulation by force, violence, duress, menace, threat of great bodily harm, or when the person is prevented from resisting by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable, because of mental disorder or developmental or physical disability, of giving consent, and this is known or reasonably should be known to the person committing the offense; any offense specified in Section 289 of the Penal Code, members of the public shall not be admitted to the hearing in either of the following instances:
- (1) Upon a motion for a closed hearing by the district attorney, who shall make the motion if so requested by the victim.
 - (2) During the victim's testimony, if, at the time of the offense the victim was under 16 years of age.

(c) The name of a minor found to have committed one of the offenses listed in subdivision (a) shall not be confidential, unless the court, for good cause, so orders. As used in this subdivision, “good cause” shall be limited to protecting the personal safety of the minor, a victim, or a member of the public. The court shall make a written finding, on the record, explaining why good cause exists to make the name of the minor confidential.

(d) Notwithstanding Sections 827 and 828 and subject to subdivisions (e) and (f), when a petition is sustained for any offense listed in subdivision (a), the charging petition, the minutes of the proceeding, and the orders of adjudication and disposition of the court that are contained in the court file shall be available for public inspection. Nothing in this subdivision shall be construed to authorize public access to any other documents in the court file.

(e) The probation officer or any party may petition the juvenile court to prohibit disclosure to the public of any file or record. The juvenile court shall prohibit the disclosure if it appears that the harm to the minor, victims, witnesses, or public from the public disclosure outweighs the benefit of public knowledge. However, the court shall not prohibit disclosure for the benefit of the minor unless the court makes a written finding that the reason for the prohibition is to protect the safety of the minor.

(f) Nothing in this section shall be applied to limit the disclosure of information as otherwise provided for by law.

(g) The juvenile court shall for each day that the court is in session, post in a conspicuous place which is accessible to the general public, a written list of hearings that are open to the general public pursuant to this section, the location of those hearings, and the time when the hearings will be held.

(Amended by Stats. 2014, Ch. 919, Sec. 2. (SB 838) Effective January 1, 2015. Note: This section was amended on March 7, 2000, by initiative Prop. 21.)

State of California

WELFARE AND INSTITUTIONS CODE

Section 306.6

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

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

- (1) Be present at the hearing.
- (2) Address the court.
- (3) Request and receive notice of hearings.
- (4) Request to examine court documents relating to the proceeding.
- (5) Present information to the court that is relevant to the proceeding.
- (6) Submit written reports and recommendations to the court.
- (7) Perform other duties and responsibilities as requested or approved by the court.

(c) If more than one tribe requests to participate in a proceeding under subdivision (a), the court may limit participation to the tribe with which the child has the most significant contacts, as determined in accordance with paragraph (2) of subdivision (d) of Section 170 of the Family Code.

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

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

(Added by Stats. 2006, Ch. 838, Sec. 45. Effective January 1, 2007.)

To the ends of serving the best interests of Native American and Alaskan Native children by establishing, developing, and maintaining the child's political, cultural, and social relationship with their tribe and tribal community; obtaining relevant information that will enhance the Court's decision making; and where appropriate, promoting the child's rehabilitation and ensuring community safety, this Order shall apply to all juvenile justice (formerly juvenile delinquency), status offense, and dependency cases¹; including, but not limited to, detention hearings, dispositional hearings, and post-dispositional review hearings, which involve an Indian, Native American or Alaskan Native² child. Upon initial contact with a child, the Probation Officer and Child Protective Services (Child Welfare Director) shall promptly carry out their affirmative and continuing duty to inquire whether the child is an Indian child or has Native American/Alaskan Native heritage. (See WIC section 224.2(a); In re W.B. (2012) 55 Cal.4th 30,40)

This Order is intended to ensure prompt identification of Indian, Native American and Alaskan Native children, notification to the child's tribe, and active participation by a representative from the child's tribe in said proceedings.

The Court finds that public policy favors early tribal access and participation in all dependency, status offense, and juvenile justice cases involving an Indian child and all children with Native American or Alaskan Native heritage. The Court is committed to protecting the essential tribal relations and best interest of Indian children and all Native children by promoting practices that protect the child's right to establish, develop, and maintain a political, cultural and social relationship with the child's tribe and tribal community. (See WIC section 224(a))

The *Foster Care Bill of Rights* (WIC section 160001.9) protects the rights of all children in foster care to cultural connections and rights - specifically protecting the rights of Indian children to access their Tribes and Tribal Representatives regardless whether in foster care through dependency or delinquency. The Court finds that it is in the best interest of all Native children to have those rights protected, even though they may not be in foster care or at risk of entering foster care, and whether or not they meet the definition of an Indian child or whether the Indian Child Welfare Act applies to the proceeding

¹ California Welfare & Institutions Code sections 300, 601, and 602.

² In this order the term Indian child means a child meeting the definition of Indian child under 25 U.S.C. § 1903 (iv) (4) and corresponding state law. Native American, Native, and Alaska Native children refers to children who identify as Alaska Native or Native American but who do not meet the definition of Indian child under the Indian Child Welfare Act and corresponding state law.

Early identification of Native youth and their Tribe(s), along with providing for early access and participation in the child's case, will insure that if and when the child becomes at risk of entering foster care, Probation and Child Welfare agencies can fulfill their mandate to integrate into the case plan input from the "...child's identified Tribe" in a timely manner. (See WIC sections 727.1 and 16501.1(c))

California Welfare & Institutions Code section 306.6 specifically contemplates the participation of tribes that have not been recognized by the federal government as having a government to government relationship in dependency proceedings. California Welfare & Institutions Code section 346 and 676 authorize the juvenile court to permit the participation of persons with a direct and legitimate interest to participate in dependency and juvenile justice cases respectively.

In order to consistently protect the legal rights of all Native children to maintain their tribal and cultural connections, this Order is intended to promote early discretionary access and participation by the child's tribe, so to assist the court in making decisions that are in the best interest of the child, and where appropriate, promoting rehabilitation and public safety, through the Tribal Representative informing the court and parties to the proceeding about placement options for the child within the child's extended family or tribal community, services and programs available to the child and the child's parents as Indians, and other unique interests the child or the child's parents may have as Indians.

GOOD CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED as follows:

1. The _____ County Probation Officer and the _____ County Child Protective Services (Child Welfare Director) shall upon initial contact with a child for whom a petition has been or may be filed under WIC sections 300, 601, or 602, promptly carry out their affirmative and continuing duty to inquire whether the child is an Indian child, or for purposes of this rule, has Native American or Alaskan Native heritage. (See WIC section 224.2(a); *In re W.B.* (2012) 55 Cal.4th 30,40)
2. Upon receiving any information creating a reason to believe that the child is or may be an Indian Child or has Native American heritage, the Probation Officer or Social Worker shall forthwith give notice to the child's tribe(s). Said notice to the child's Tribe may be informal notice to the Tribe's designated ICWA Representative or Tribal Chairperson, by any reasonable means to insure timely

notice of proceedings, which may include telephone, fax, email, hand delivery, and/or mailing of informal notice.³

3. This Order applies to all such cases and children even though any or all of the following exist:
 - The notice and other substantive provisions of the Indian Child Welfare Act (ICWA)⁴ do not apply;
 - The child's tribe is not a "federally recognized" tribe;
 - The child is not technically an "Indian child" within the meaning of the ICWA;
 - The child is of lineal descent and involved in a tribal community, but is not enrolled or eligible for tribal enrollment; and,
 - The child is not in foster care or "at risk" of removal or entering foster care.
4. The Court finds that for any child described herein, their identified Tribe has a presumptively "direct and legitimate interest" in the particular child's case, and is entitled to access (See WIC sections 346 and 676(a)) The Tribal Representative (e.g, ICWA Representative) shall be allowed to attend otherwise confidential juvenile justice, status offense, and dependency proceedings pertaining to such Native child, subject to the judicial officer presiding over the case or particular hearing determining that said Tribe and/or Tribal Representative does not have a direct and legitimate interest in the particular case, or that good cause otherwise exists to exclude the Tribal Representative from a particular hearing(s), or portions thereof.
5. For the reasons set forth above, in addition to being present at such hearings, the Tribal Representative may do all of the following upon consent of the court:
 - Address the court.
 - Request and receive notice of hearings.
 - Request to examine court documents relating to the proceeding.
 - Present information to the court that is relevant to the proceeding.
 - Submit written reports and recommendations to the court.
 - Perform other duties and responsibilities as requested or approved by the court.

³ Should the notice and other substantive provisions of the ICWA apply or become applicable to the child's case, it should be noted that any notice provided under this Order may not necessarily constitute proper legal notice to the Tribe as required by the ICWA.

⁴ 25 U.S.C. section 1901 *et seq.*; California Welfare & Institutions Code section 224 *et seq.*; California Rules of Court, rule 5.480 *et seq.*

6. If more than one tribe is identified or requests to participate, the Court may limit participation to the tribe with which the child has the most significant contacts, as determined in accordance Family Code section 170(d)(2))

SAMPLE

FILED

MAY 12 2009

INYO CO. SUPERIOR COURT
NANCY A. MOXLEY, CLERK
BY Virginia Boyd DEPUTY

1 Inyo County Superior Court
168 North Edwards Street
2 Post Office Drawer U
Independence, California 93526
3 Tel: (760) 878-0217
4
5
6
7

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF INYO
10 JUVENILE COURT

11	In Re the Matter of)	STANDING ORDER NO.
)	SISOAD-09-031
12	The Tribe's Presumed Direct and)	
13	Legitimate Interest in Juvenile)	Order Presuming Tribe's
14	Delinquency Proceedings Involving)	Direct and Legitimate
15	Designated Native American Youth)	Interest in Juvenile
16)	Delinquency Proceedings
17)	Involving Designated Native
)	American Youth (WIC §
)	676(a))

18 This Standing Order is intended to enhance the Court's
19 decision making in juvenile delinquency proceedings, including,
20 but not limited to, detention hearings, dispositional hearings,
21 and post-dispositional review hearings, which involve a Native
22 American unmarried minor child who is a member of one of the
23 following federally recognized local tribes, or who is the
24 biological child of a member of one of the following federally
25 recognized local tribes, and the child is eligible for
26 membership:

- 27 • Big Pine Paiute Tribe Of The Owens Valley
- 28 • Bishop Paiute Reservation

- 1 • Fort Independence Indian Reservation
- 2 • Lone Pine Paiute-Shoshone Reservation
- 3 • Timbisha Shoshone Tribe

4 The Court recognizes that even though the provisions of the
5 Indian Child Welfare Act (ICWA) may not be applicable in any
6 particular case or hearing, the Court, Juvenile Probation, and
7 the Minor can nevertheless benefit from the participation of the
8 Tribe in the Minor's delinquency proceedings. Such benefits may
9 include, but are not necessarily limited to, assessing the
10 Minor's need for and providing substance abuse, mental health,
11 and/or other treatment services to the Minor and/or his/her
12 family; informing the court about placement options for the
13 Minor within the Minor's extended family or the tribal
14 community; assist the Probation Department and Court in
15 identifying strengths and needs of the Minor and his/her family;
16 assist in identifying and accessing tribal and cultural
17 activities and programs for the benefit of the Minor and his/her
18 family; as well as assisting in the development and
19 implementation of a case plan and/or Independent Living
20 Program/Plan for the Minor.

21 GOOD CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED AS
22 FOLLOWS:

23 In the case of any unmarried Native American minor
24 appearing before the above-entitled Court in connection with any
25 juvenile delinquency (WIC § 602) proceeding, and said minor is a
26 member of one of the following federally recognized local
27 tribes, or who is the biological child of a member of one of the
28 following federally recognized local tribes, and the child is

1 eligible for membership: Big Pine Paiute Tribe Of The Owens
2 Valley; Bishop Paiute Reservation; Fort Independence Indian
3 Reservation; Lone Pine Paiute-Shoshone Reservation; or, the
4 Timbisha Shoshone Tribe, the duly authorized Indian Child
5 Welfare Act (ICWA) Representative for said Tribe shall, within
6 the meaning of Welfare & Institutions Code Section 676(a), be
7 presumed to have a direct and legitimate interest in the case of
8 said Minor.

9 Said ICWA Representative shall be allowed to attend
10 Juvenile Court proceedings pertaining to such a Minor, subject
11 to the judicial officer presiding over the case or particular
12 hearing determining that said Tribe and ICWA Representative does
13 not have a direct and legitimate interest in the particular
14 case, or that good cause otherwise exists to exclude said ICWA
15 Representative from a particular hearing(s), or portion thereof.


16 In addition to being present at the hearing, said
17 Representative may do all of the following upon consent of the
18 court:

- 19 1. Address the court.
- 20 2. Request and receive notice of hearings.
- 21 3. Request to examine court documents relating to the
22 proceeding.
- 23 4. Present information to the court that is relevant to the
24 proceeding.
- 25 5. Submit written reports and recommendations to the court.
- 26 6. Perform other duties and responsibilities as requested or
27 approved by the court.

1 This Standing Order shall also apply to proceedings
2 involving Native American minors, as described above, who have
3 been designated by the Court as a "dual status" minor. (WIC §
4 241.1)

5 This Standing Order applies even though the above-described
6 minor has not been determined to be "at risk of removal," and/or
7 the provisions of the Indian Child Welfare Act (ICWA)¹, including
8 the provisions of California Welfare & Institutions Code § 224
9 *et seq.*, and *California Rules of Court*, Rule 5.480 *et seq.*)
10 do not otherwise apply to the Minor's delinquency hearing or
11 case. Any notice given to the Tribe under this Order shall not
12 constitute any express or implied finding that the minor is "at
13 risk of removal" under the aforementioned ICWA provisions, or
14 otherwise implicating said provisions. Further, should the
15 aforementioned provisions of ICWA apply to a particular minor,
16 any notice provided to the Tribe hereunder, may not necessarily
17 constitute legal notice to the Tribe as required by the
18 aforementioned provisions of the ICWA.

19 Informal notice provided to the Tribe hereunder may be
20 given by the Inyo County Probation Department to the Tribe's
21 designated ICWA Representative by any reasonable means to insure
22 timely notice of proceedings, which may include telephone, fax,
23 and/or mailing of informal notice by use of Judicial Council
24 form JV-625.

25 Dated: *May 12, 2009*

26 _____
27 Dean T. Stout, Presiding Judge/
Presiding Judge of the Juvenile Court

28 ¹ 25 U.S.C. § 1901 *et seq.*

PROOF OF SERVICE
BY MAIL OR INTERDEPARTMENTAL TRAFFIC DELIVERY

CASE NO. SISOAD-09-031

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Inyo, over the age of eighteen years and not a party to the within action or proceedings; that my business address is 168 North Edwards Street, Independence, California; that on the date hereafter set forth I served the document described hereafter on the parties named by depositing a true copy thereof in the US Postal Service mail receptacle or through the interdepartmental traffic system of the Superior Court of California, County of Inyo and County of Inyo.

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President of Inyo Bar Association
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Independence, CA 93526

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Cindy Felkel, Deputy Probation Officer, Inyo County
Samantha Rottner-Bell, Deputy Probation Officer, Inyo County
Virginia Torres, Deputy Probation Officer, Inyo County
Mark Olsen, Acting Director, Juvenile Hall
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Nancy Moxley, Court Executive Officer
Superior Court of California, County of Inyo
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Bishop, CA 93514

Hon. Brian J. Lamb
301 West Line St.
Bishop, CA 93514

Bishop Police Department
207 West Line
Bishop, CA 93514

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Bishop, CA 93514

Adora Saulque, ICWA Rep.
567 Yellow Jacket Road
Benton, CA 93512

NATURE OF DOCUMENT MAILED AND DELIVERED: **STANDING ORDER NO. SISOAD-09-031 ORDER PRESUMING TRIBE'S DIRECT AND LEGITIMATE INTEREST IN JUVENILE DELINQUENCY PROCEEDINGS INVOLVING DESIGNATED NATIVE AMERICAN YOUTH (WIC § 676(a))**

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

Executed on May 19, 2009, at Independence, CA 93526


Virginia Bird



JUDICIAL COUNCIL OF CALIFORNIA

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

MEMORANDUM

Date January 31, 2022	Action Requested Please Review and Consider
To Tribal Court - State Court Forum	Deadline N/A
From Ann Gilmour, Attorney, CFCC	Contact Ann Gilmour, Attorney 415-865-4207 phone ann.gilmour@jud.ca.gov
Subject Recognition of Tribal Court Child Custody Orders	

At the Tribal Court-State Court Forum (forum) planning meeting several months ago, one of the issues raised was potential action regarding the recognition of tribal court child custody orders.

Issue

Tribal courts may issue child custody orders in cases under their jurisdiction. These custody orders may be issued in cases that are akin to California juvenile, family or probate guardianship proceedings. State and federal law mandate recognition of these orders. The Indian Child Welfare Act¹ provides at §1911:

(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes

The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that

¹ [25 U.S.C. §1911\(d\)](#)

such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

Neither the Welfare & Institutions Code nor the Probate Code have any specific provisions regarding the recognition of either tribal or out of state child custody orders. Nevertheless, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), applies to these case types:

The UCCJEA applies to a variety of proceedings. Specifically, courts in UCCJEA States must comply with the statute when custody and visitation issues arise in proceedings for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence.²

The UCCJEA, implemented in California statutes at [Family Code §§ 3400-3465](#), provides for the recognition and enforcement of out of state child custody orders. Although the UCCJEA is implemented in the Family Code, it is not limited to out of state child custody cases arising in what would be family law cases in California. With respect to child custody orders issued by tribes, section 3404 excludes cases governed by ICWA (which does not apply to tribal court cases) from its application and provides that “[a] child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this part must be recognized and enforced ...”³

The UCCJEA is currently implemented through Judicial Council form [FL-580](#) *Registration of Out-of-State Custody Order*.

Tribal court judges and personnel report that they are experiencing problems having their custody orders (in all case types) recognized and enforced because of confusion around the use of the FL-580 for tribal court orders and in case types that would not be defined as “family law” cases under California law.

² See [U.S. Department of Justice Office of Justice Programs Bulletin](#) and section [3402](#)(d) of the Family Code which defines the proceedings to which it applies: “Child custody proceeding” means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for dissolution of marriage, legal separation of the parties, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Chapter 3 (commencing with Section 3441).

³ See Family Code [§3404](#)

Question

Should the forum recommend action on this issue to the Judicial Council? If so, is legislation or a rule of court required? Would it be sufficient to revise the FL-580?

Code: Section: [Up^](#) [Add To My Favorites](#)**FAMILY CODE - FAM****DIVISION 8. CUSTODY OF CHILDREN [3000 - 3465]** (*Division 8 enacted by Stats. 1992, Ch. 162, Sec. 10.*)**PART 3. UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT [3400 - 3465]** (*Part 3 repealed and added by Stats. 1999, Ch. 867, Sec. 3.*)**CHAPTER 1. General Provisions [3400 - 3412]** (*Chapter 1 added by Stats. 1999, Ch. 867, Sec. 3.*)

3400. This part may be cited as the Uniform Child Custody Jurisdiction and Enforcement Act.
(*Repealed and added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.*)

3402. As used in this part:

- (a) "Abandoned" means left without provision for reasonable and necessary care or supervision.
- (b) "Child" means an individual who has not attained 18 years of age.
- (c) "Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.
- (d) "Child custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for dissolution of marriage, legal separation of the parties, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Chapter 3 (commencing with Section 3441).
- (e) "Commencement" means the filing of the first pleading in a proceeding.
- (f) "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination.
- (g) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.
- (h) "Initial determination" means the first child custody determination concerning a particular child.
- (i) "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this part.
- (j) "Issuing state" means the state in which a child custody determination is made.
- (k) "Modification" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.
- (l) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.
- (m) "Person acting as a parent" means a person, other than a parent, who: (1) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year

immediately before the commencement of a child custody proceeding; and (2) has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

(n) "Physical custody" means the physical care and supervision of a child.

(o) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(p) "Tribe" means an Indian tribe or band, or Alaskan Native village, that is recognized by federal law or formally acknowledged by a state.

(q) "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

(Repealed and added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3403. This part does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

(Repealed and added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3404. (a) A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) is not subject to this part to the extent that it is governed by the Indian Child Welfare Act.

(b) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying this chapter and Chapter 2 (commencing with Section 3421).

(c) A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this part must be recognized and enforced under Chapter 3 (commencing with Section 3441).

(Repealed and added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3405. (a) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying this chapter and Chapter 2 (commencing with Section 3421).

(b) Except as otherwise provided in subdivision (c), a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this part must be recognized and enforced under Chapter 3 (commencing with Section 3441).

(c) A court of this state need not apply this part if the child custody law of a foreign country violates fundamental principles of human rights.

(Repealed and added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3406. A child custody determination made by a court of this state that had jurisdiction under this part binds all persons who have been served in accordance with the laws of this state or notified in accordance with Section 3408 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

(Repealed and added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3407. If a question of existence or exercise of jurisdiction under this part is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

(Repealed and added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3408. (a) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

(Repealed and added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3409. (a) A party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination, is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

(b) A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(c) The immunity granted by subdivision (a) does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this part committed by an individual while present in this state.

(Repealed and added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3410. (a) A court of this state may communicate with a court in another state concerning a proceeding arising under this part.

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Except as otherwise provided in subdivision (c), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(Repealed and added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3411. (a) In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court, on its own motion, may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

(Repealed and added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3412. (a) A court of this state may request the appropriate court of another state to do all of the following:

(1) Hold an evidentiary hearing.

(2) Order a person to produce or give evidence pursuant to procedures of that state.

(3) Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding.

(4) Forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request.

(5) Order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subdivision (a).

(c) Travel and other necessary and reasonable expenses incurred under subdivisions (a) and (b) may be assessed against the parties according to the law of this state.

(d) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

(Repealed and added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

Code: Section: [Up^](#) [Add To My Favorites](#)**FAMILY CODE - FAM****DIVISION 8. CUSTODY OF CHILDREN [3000 - 3465]** (*Division 8 enacted by Stats. 1992, Ch. 162, Sec. 10.*)**PART 3. UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT [3400 - 3465]** (*Part 3 repealed and added by Stats. 1999, Ch. 867, Sec. 3.*)**CHAPTER 2. Jurisdiction [3421 - 3430]** (*Chapter 2 added by Stats. 1999, Ch. 867, Sec. 3.*)

3421. (a) Except as otherwise provided in Section 3424, a court of this state has jurisdiction to make an initial child custody determination only if any of the following are true:

(1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.

(2) A court of another state does not have jurisdiction under paragraph (1), or a court of the home state of the child has declined to exercise jurisdiction on the grounds that this state is the more appropriate forum under Section 3427 or 3428, and both of the following are true:

(A) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence.

(B) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.

(3) All courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 3427 or 3428.

(4) No court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2), or (3).

(b) Subdivision (a) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

(Repealed and added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3422. (a) Except as otherwise provided in Section 3424, a court of this state that has made a child custody determination consistent with Section 3421 or 3423 has exclusive, continuing jurisdiction over the determination until either of the following occurs:

(1) A court of this state determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships.

(2) A court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

(b) A court of this state that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under Section 3421.

(Repealed and added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3423. Except as otherwise provided in Section 3424, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under paragraph (1) or (2) of subdivision (a) of Section 3421 and either of the following determinations is made:

(a) The court of the other state determines it no longer has exclusive, continuing jurisdiction under Section 3422 or that a court of this state would be a more convenient forum under Section 3427.

(b) A court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

(Repealed and added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3424. (a) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to, or threatened with, mistreatment or abuse.

(b) If there is no previous child custody determination that is entitled to be enforced under this part and a child custody proceeding has not been commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under Sections 3421 to 3423, inclusive. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

(c) If there is a previous child custody determination that is entitled to be enforced under this part, or a child custody proceeding has been commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under Sections 3421 to 3423, inclusive. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this state that has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to Sections 3421 to 3423, inclusive, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

(e) It is the intent of the Legislature in enacting subdivision (a) that the grounds on which a court may exercise temporary emergency jurisdiction be expanded. It is further the intent of the Legislature that these grounds include those that existed under Section 3403 of the Family Code as that section read on December 31, 1999, particularly including cases involving domestic violence.

(Repealed and added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3425. (a) Before a child custody determination is made under this part, notice and an opportunity to be heard in accordance with the standards of Section 3408 must be given to all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) This part does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child custody proceeding under this part are governed by the law of this state as in child custody proceedings between residents of this state.

(Amended by Stats. 2008, Ch. 699, Sec. 3. Effective January 1, 2009.)

3426. (a) Except as otherwise provided in Section 3424, a court of this state may not exercise its jurisdiction under this chapter if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this part, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under Section 3427.

(b) Except as otherwise provided in Section 3424, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to Section 3429. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this part, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this part does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

(c) In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may do any of the following:

(1) Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement.

(2) Enjoin the parties from continuing with the proceeding for enforcement.

(3) Proceed with the modification under conditions it considers appropriate.

(Added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3427. (a) A court of this state that has jurisdiction under this part to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child.

(2) The length of time the child has resided outside this state.

(3) The distance between the court in this state and the court in the state that would assume jurisdiction.

(4) The degree of financial hardship to the parties in litigating in one forum over the other.

(5) Any agreement of the parties as to which state should assume jurisdiction.

(6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child.

(7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence.

(8) The familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this state may decline to exercise its jurisdiction under this part if a child custody determination is incidental to an action for dissolution of marriage or another proceeding while still retaining jurisdiction over the dissolution of marriage or other proceeding.

(e) If it appears to the court that it is clearly an inappropriate forum, the court may require the party who commenced the proceeding to pay, in addition to the costs of the proceeding in this state, necessary travel and other expenses, including attorney's fees, incurred by the other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(Added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3428. (a) Except as otherwise provided in Section 3424 or by any other law of this state, if a court of this state has jurisdiction under this part because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless one of the following are true:

(1) The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction.

(2) A court of the state otherwise having jurisdiction under Sections 3421 to 3423, inclusive, determines that this state is a more appropriate forum under Section 3427.

(3) No court of any other state would have jurisdiction under the criteria specified in Sections 3421 to 3423, inclusive.

(b) If a court of this state declines to exercise its jurisdiction pursuant to subdivision (a), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under Sections 3421 to 3423, inclusive.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subdivision (a), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this state unless authorized by law other than this part.

(d) In making a determination under this section, a court shall not consider as a factor weighing against the petitioner any taking of the child, or retention of the child after a visit or other temporary relinquishment of physical custody, from the person who has legal custody, if there is evidence that the taking or retention of the child was a result of domestic violence against the petitioner, as defined in Section 6211.

(Added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3429. (a) In a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. However, where there are allegations of domestic violence or child abuse, any addresses of the party alleging violence or abuse and of the child which are unknown to the other party are confidential and may not be disclosed in the pleading or affidavit. The pleading or affidavit must state whether the party:

(1) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of, or visitation with, the child and, if so, identify the court, the case number, and the date of the child custody determination, if any.

(2) Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding.

(3) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subdivision (a) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in paragraphs (1) to (3), inclusive, of subdivision (a) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(Added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3430. (a) In a child custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to Section 3408 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child custody proceeding who is outside this state is directed to appear under subdivision (b) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

(Added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

Code: Section: [Up^](#) [Add To My Favorites](#)**FAMILY CODE - FAM****DIVISION 8. CUSTODY OF CHILDREN [3000 - 3465]** (*Division 8 enacted by Stats. 1992, Ch. 162, Sec. 10.*)**PART 3. UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT [3400 - 3465]** (*Part 3 repealed and added by Stats. 1999, Ch. 867, Sec. 3.*)**CHAPTER 3. Enforcement [3441 - 3457]** (*Chapter 3 added by Stats. 1999, Ch. 867, Sec. 3.*)**3441.** In this chapter:

(a) "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

(b) "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

(*Added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.*)

3442. Under this chapter, a court of this state may enforce an order for the return of a child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination.

(*Added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.*)

3443. (a) A court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this part or the determination was made under factual circumstances meeting the jurisdictional standards of this part and the determination has not been modified in accordance with this part.

(b) A court of this state may utilize any remedy available under other laws of this state to enforce a child custody determination made by a court of another state. The remedies provided in this chapter are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

(*Added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.*)

3444. (a) A court of this state which does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing either:

(1) A visitation schedule made by a court of another state.

(2) The visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.

(b) If a court of this state makes an order under paragraph (2) of subdivision (a), it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Chapter 2 (commencing with Section 3421). The order remains in effect until an order is obtained from the other court or the period expires.

(*Added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.*)

3445. (a) A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending all of the following to the appropriate court in this state:

(1) A letter or other document requesting registration.

(2) Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified.

(3) Except as otherwise provided in Section 3429, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

(b) On receipt of the documents required by subdivision (a), the registering court shall do both of the following:

(1) Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form.

(2) Serve notice upon the persons named pursuant to paragraph (3) of subdivision (a) and provide them with an opportunity to contest the registration in accordance with this section.

(c) The notice required by paragraph (2) of subdivision (b) shall state all of the following:

(1) That a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state.

(2) That a hearing to contest the validity of the registered determination must be requested within 20 days after service of the notice.

(3) That failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes any of the following:

(1) That the issuing court did not have jurisdiction under Chapter 2 (commencing with Section 3421).

(2) That the child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under Chapter 2 (commencing with Section 3421).

(3) That the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section 3408, in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served shall be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

(Added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3446. (a) A court of this state may grant any relief normally available under the law of this state to enforce a registered child custody determination made by a court of another state.

(b) A court of this state shall recognize and enforce, but may not modify, except in accordance with Chapter 2 (commencing with Section 3421), a registered child custody determination of a court of another state.

(Added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3447. If a proceeding for enforcement under this chapter is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under Chapter 2 (commencing with Section 3421), the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

(Added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3448. (a) A petition under this chapter must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child custody determination must state all of the following:

(1) Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was.

(2) Whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this part and, if so, identify the court, the case number, and the nature of the proceeding.

(3) Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding.

(4) The present physical address of the child and the respondent, if known.

(5) Whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought.

(6) If the child custody determination has been registered and confirmed under Section 3445, the date and place of registration.

(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) An order issued under subdivision (c) must state the time and place of the hearing and advise the respondent that, at the hearing, the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under Section 3452, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes either of the following:

(1) That the child custody determination has not been registered and confirmed under Section 3445 and all of the following are true:

(A) The issuing court did not have jurisdiction under Chapter 2 (commencing with Section 3421).

(B) The child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under Chapter 2 (commencing with Section 3421).

(C) The respondent was entitled to notice, but notice was not given in accordance with the standards of Section 3408, in the proceedings before the court that issued the order for which enforcement is sought.

(2) That the child custody determination for which enforcement is sought was registered and confirmed under Section 3445, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Chapter 2 (commencing with Section 3421).

(Amended by Stats. 2008, Ch. 699, Sec. 4. Effective January 1, 2009.)

3449. Except as otherwise provided in Section 3451, the petition and order shall be served, by any method authorized by the law of this state, upon the respondent and any person who has physical custody of the child.

(Added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3450. (a) Unless the court issues a temporary emergency order pursuant to Section 3424, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes either of the following:

(1) That the child custody determination has not been registered and confirmed under Section 3445 and one of the following is true:

(A) The issuing court did not have jurisdiction under Chapter 2 (commencing with Section 3421).

(B) The child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Chapter 2 (commencing with Section 3421).

(C) The respondent was entitled to notice, but notice was not given in accordance with the standards of Section 3408, in the proceedings before the court that issued the order for which enforcement is sought.

(2) That the child custody determination for which enforcement is sought was registered and confirmed under Section 3445 but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under

Chapter 2 (commencing with Section 3421).

(b) The court shall award the fees, costs, and expenses authorized under Section 3452 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of spouses or parent and child may not be invoked in a proceeding under this chapter.

(Amended by Stats. 2014, Ch. 82, Sec. 31. (SB 1306) Effective January 1, 2015.)

3451. (a) Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is imminently likely to suffer serious physical harm or be removed from this state.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by subdivision (b) of Section 3448.

(c) A warrant to take physical custody of a child must do all of the following:

(1) Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based.

(2) Direct law enforcement officers to take physical custody of the child immediately.

(3) Provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

(Added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3452. (a) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs, or expenses against a state unless authorized by law other than this part.

(Added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3453. A court of this state shall accord full faith and credit to an order issued by another state, and consistent with this part, enforce a child custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under Chapter 2 (commencing with Section 3421).

(Added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3454. An appeal may be taken from a final order in a proceeding under this chapter in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under Section 3424, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

(Added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3455. (a) In a case arising under this part or involving the Hague Convention on the Civil Aspects of International Child Abduction, a district attorney is authorized to proceed pursuant to Chapter 8 (commencing with Section 3130)

of Part 2.

(b) A district attorney acting under this section acts on behalf of the court and may not represent any party.

(Added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3456. At the request of a district attorney acting under Section 3455, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist the district attorney with responsibilities under Section 3455.

(Added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

3457. The court may assess all direct expenses and costs incurred by a district attorney under Section 3455 or 3456 pursuant to the provisions of Section 3134.

(Added by Stats. 1999, Ch. 867, Sec. 3. Effective January 1, 2000.)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT:	
REGISTRATION OF OUT-OF-STATE CUSTODY ORDER	CASE NUMBER: _____

1. The minor children covered by the out-of-state custody order are (name each):
- | <u>Child's name</u> | <u>Date of birth</u> | <u>Age</u> | <u>Sex</u> |
|---------------------|----------------------|------------|------------|
| | | | |
2. a. Petitioner has been awarded custody visitation of those minor children.
 b. Petitioner is the mother father other (specify): _____ of those minor children.
 c. Petitioner's address is:*
3. a. Respondent has been awarded custody visitation of those minor children.
 b. Respondent is the mother father other (specify): _____ of those minor children.
 c. Respondent's address is:*
4. a. Another person (specify name): _____ has been awarded
 custody visitation of those minor children. _____ of those minor children.
 b. That person is the mother father other (specify): _____
 c. That person's address is:*

* If there are issues of domestic violence or child abuse, you may give a mailing address instead.

5. A completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) is attached to this registration.
6. I request that the attached out-of-state custody order be registered in this court.
 a. The court, county, and state where order was made are (specify):
 b. The date when the most recent order for child custody/visitation was made in that case (specify):
 c. Two copies, including one certified copy of that out-of-state order, are attached to this registration and made a part of it.
 d. To the best of my knowledge and belief, this order has not been modified.

Date: _____

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

 (TYPE OR PRINT NAME)

▶ _____
 (SIGNATURE)

PETITIONER:	CASE NUMBER:
RESPONDENT:	

NOTICE OF REGISTRATION OF OUT-OF-STATE CUSTODY ORDER

1. To:
 - a. Petitioner at address on 2(c) on page 1
 - b. Respondent at address on 3(c) on page 1
 - c. Other person who has been awarded custody or visitation in this custody order at address on 4(c) on page 1

2. The attached out-of-state custody order can be enforced as of the date of registration in the same manner as an order issued by a California court.

- 3. If you want to contest the validity of this registered out-of-state custody order, you must request a hearing date that is within 20 days of the date that this notice was mailed to you (see clerk's date of mailing below). A request for a hearing must be in writing and filed in this case.
- 4. If you do not request this hearing, the out-of-state order will be confirmed in California and you will not be able to challenge its validity in the future.

5. At the hearing, the court will confirm the out-of-state order unless you can prove one of the following:
 - a. The issuing court did not have jurisdiction under chapter 2 of the California Family Code (commencing with section 3421).
 - b. The child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under chapter 2 of the California Family Code (commencing with section 3421).
 - c. You were entitled to notice of the original order, but did not receive that notice in accordance with the standards of California Family Code section 3408 in the proceedings before the court that issued the order for which registration is sought.

CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this case and that a copy of this *Registration of Out-of-State Custody Order* and all attachments was sent to each person named in item 1 above by first-class mail. The copies were enclosed in envelopes with postage fully prepaid. The envelopes were addressed to the persons named in item 1 at the addresses listed above, sealed, and deposited with the United States Postal Service.

At (*place*): _____

On (*date*): _____

Date: _____

Clerk by: _____, Deputy