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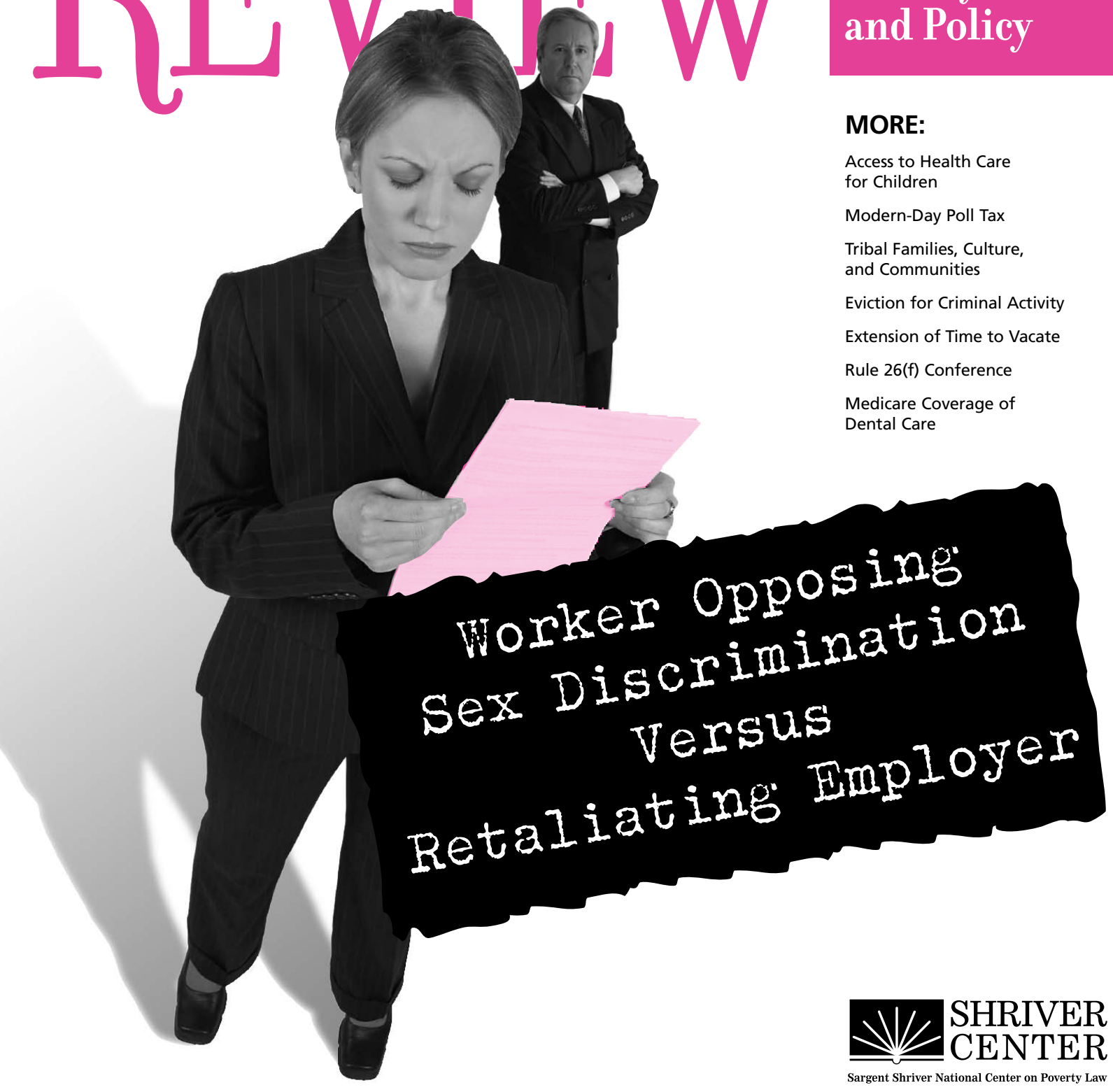

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Preserving Tribal Families, Culture, and Communities: California's Legislation to Enforce the Indian Child Welfare Act

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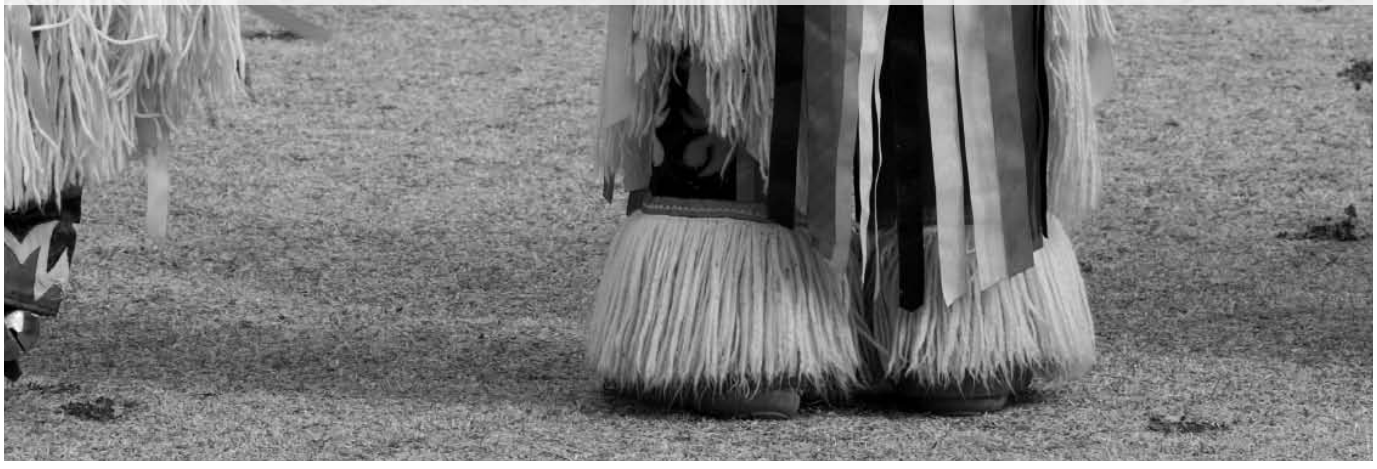
Congress passed the Indian Child Welfare Act (ICWA) in 1978 to "protect the best interests of Indian children and promote the stability and security of Indian tribes and families" by establishing minimum federal standards for removal of Indian children from their families.[1] However, almost thirty years later, belief is widespread among Indian tribes and Indian people that ICWA application has been inconsistent and perfunctory. In California, during this period, many tribes struggled to convince courts, county social workers, and attorneys to apply the ICWA's spirit and purpose and to promote the interests of Indian children and their tribes by encouraging the children's connections to their tribal communities. Instead courts and counties too often treated the ICWA as merely a procedural hurdle in child custody cases involving Indian children.

[1]Indian Child Welfare Act (ICWA), 25 U.S.C. § 1902 (2007). More information about the ICWA is available at www.calindian.org; see, e.g., Mary J. Risling, The Indian Child Welfare Act (2000), available at www.calindian.org/benchguide/benchguide.complete.PDF.



Members of the Pala Band of Mission Indians discovered, in a case involving a Pala family whose children were the subjects of a dependency proceeding, that, despite the ICWA's procedural protections and its clearly articulated preference for placement of Indian children with Indian families, institutional resistance to the mandate was entrenched. ICWA requirements such as proof that returning a child to his Indian family would be detrimental—which could be satisfied only with expert testimony—were met with boilerplate declarations affirming the child welfare agency's actions. Counties perceived tribal courts as inferior and resisted attempts to transfer cases there. When a court considered a permanent plan for the tribal child, the court insisted upon adoption—a concept that some Indian tribes do not recognize—rather than a guardianship.

Under California law, maintenance of sibling bonds was an explicit exception to a court's authority to terminate parental rights, but the effect of termination on the child's relationship to his tribal community and culture was not a factor that courts were willing to consider. Once adoption was identified as the permanent plan, there was no provision for an enforceable postadoption agreement to enable the child to maintain contact with extended family and the tribal community.

Indian children who are removed from their homes are victimized further by loss of their relationships—and the chance to create relationships—with tribal members. Courts and child welfare agencies often chastise tribes that do not step forward in child custody proceedings, whether a tribe's later intervention is due to inadequate notice or deference to the parents' right to reunify with their children. Even where family and tribal relationships are in place, when the time comes to establish a permanent plan, too often courts and child welfare agencies fail to consider a termination-of-parental-rights alternative that takes into account the minor's tribal membership and connections. To remedy these problems, the Pala Band of Mission Indians and California Indian Legal Services, with Sen. Denise Moreno Ducheny (D-San Diego), drafted legislation to strengthen the ICWA in California.

In drafting and sponsoring Senate Bill 678 the Pala Tribe, under the leadership of Chairman Robert Smith, recognized that the opportunity to fine-tune the ICWA on a statewide level might not appear again. Chairman Smith and the Pala Tribe enlisted California Indian Legal Services to produce a broad, comprehensive bill. Until S.B. 678 passed in 2006, California applied the ICWA through court rules, case law, and Bureau of Indian Affairs guidelines, but the ICWA had not been codified on a state level. Prior legislation governing the custody of Indian children was narrowly tailored and issue-specific.

Before S.B. 678 the most recent major legislative change in Indian child welfare in California overturned case law that recognized the existing Indian family doctrine, which limits application of the ICWA to cases involving Indian children who have "significant" political, social, or cultural ties to their tribe, even though the federal statute contains no such requirement.[2] Nonetheless, some courts continued to infer the requirement or cloaked it in the guise of good cause to deviate from the ICWA's placement preferences.[3]

California Indian tribes and families found in Senator Ducheny a legislator who was willing to address the statutory infirmities as a whole rather than piecemeal. The result was S.B. 678 and its two-year journey to become state law, culminating in unanimous passage by both houses of the legislature. When Gov. Arnold Schwarzenegger signed S.B. 678 into law on September 30, 2006, it became one of the most far-reaching state laws, one that could affect every tribe in the nation. Its impact is broad because California has the largest Indian population in the United States, and the law ap-

[2]Former Cal. Welf. & Inst. Code § 360.6, now repealed.

[3]See, e.g., *In re Santos Y.*, 112 Cal. Rptr. 2d 692 (Cal. Ct. App. 2001).

plies to any Indian child who falls under the jurisdiction of the dependency, delinquency, family, and probate courts.[4]

Background

In California dependency cases are filed in juvenile court, where the county agency (often called child protective services or the department of social services) alleges that a child has been abused, neglected, or abandoned by the parents or caretakers. The child is often removed from the parents' custody, and various services are offered to maintain or reunify the family. Typically services are offered and supervised for periods ranging from six to eighteen months. The juvenile court holds a series of review hearings to evaluate the services offered and the parents' responsiveness to those services and makes certain required findings about the case and the parents' progress. These requirements are designed to guarantee compliance with the state's preference for children's return to their families when safe return is feasible.

But, for Indian children, the ICWA imposes additional requirements. Before an Indian child may be removed from an Indian parent or Indian custodian, *active efforts* must be made to prevent the breakup of the Indian family.[5]

The ICWA applies not just in dependency proceedings but whenever an Indian child is the subject of a child custody proceeding, which can also include adoptions and probate guardianship petitions. While this may seem apparent, it was not clear in California's family or probate codes, which govern these other proceedings; the result was inconsistent and incomplete authority and rulings. S.B. 678 makes explicit the application of the ICWA in those contexts.

The Passage of S.B. 678

On February 22, 2005, Senator Ducheny introduced S.B. 678, a bill designed to improve California's compliance with the ICWA. Senator Ducheny had proposed and supported earlier initiatives to promote Indian child welfare. Unlike past efforts, however, S.B. 678 was a comprehensive bill to amend state law and raise awareness of the protections guaranteed under federal law to Indian children, families, and tribes.

At nearly 100 pages, S.B. 678 was initially perceived by many as too long, burdensome, and unwieldy. Opponents criticized the bill for its size rather than its content, and, ironically, size probably improved its chances of passage. The prospect of reading repetitive and detailed code sections deterred some commentators. Some criticized the bill's size without articulating substantive disapproval. The complexity of the bill, which was based on existing federal law, led to confusion about its provisions; the confusion became rote opposition. A few opponents read the legislation and sought amendments. The California Welfare Directors Association, Academy of California Adoption Lawyers, and adoption agencies were among the opponents. More than fifty California Indian tribes, Indian organizations, and individuals were among the supporters.[6]

The adoption agency opponents focused primarily on the proposed Family Code changes, while the welfare directors focused on the Welfare and Institutions Code amendments and a few Family Code amendments that affected social service departments. The Probate Code amendments were largely uncontroversial. In August 2005 opponents and supporters met in Sacramento with Senator Ducheny's office staff and the Senate Judiciary Committee staff to negotiate their differences. Throughout that marathon session, most agreed on one fundamental principle: legislation to ensure compliance with the ICWA was essential. While no one openly objected to S.B. 678's goals, opposition was couched in terms of how

[4]Cal. Fam. Code § 170 (West 2007); Cal. Prob. Code § 1449 (West 2007); Cal. Welf. & Inst. Code § 224.1 (West 2007).

[5]25 U.S.C. § 1912(e) (2007). See *infra* for a discussion of differences between "active efforts" and the "reasonable efforts" required in cases involving non-Indian children.

[6]For a list of supporters, see www.calindian.org/tribalalert10.02.06.htm.

to achieve minimal compliance without a high price tag.

As it wound its way through the legislature, S.B. 678 was amended seven times. Various committee analyses were produced, but the bill has no formal legislative history. Once the bill was in the Assembly, several committees held hearings on the bill, and Senator Ducheny, California Indian Legal Services attorneys, supporters, and opponents appeared at each. The bill passed unanimously out of each committee with, remarkably, no committee member posing any questions. This silence speaks to the fact that those who took the time to understand the bill's essential provisions found little that was objectionable.

The key factor in the passage of S.B. 678 was negotiation between the bill's supporters and opponents. Senator Ducheny and her staff, California Indian Legal Services attorneys, the Pala Tribe, and supporters discussed proposed amendments and formulated strategies before negotiating with the bill's opponents. The overriding goal was to house all the ICWA enforcement provisions in one piece of legislation, thus maintaining the federal legislation's integrity and purpose.

We proponents were well prepared. We developed a matrix to track the bill by section and amendment and to identify opponents who objected to various sections. The matrix highlighted potential areas of compromise and was a chronology of the two years of negotiations. More fundamental, though, was our approach to the negotiations. We knew the opponents and their motivations. The county welfare directors focused on the amendments to the Welfare and Institutions Code but also showed interest in the adoption language in the Family Code. They advocated limiting the "active efforts" requirement, use of expert witness testimony, and criteria for expert witnesses. These opponents had many constituents and ultimately focused on fiscal concerns regarding implementation. In response proponents noted that federal law already required the standards the bill would implement and that characterizing fiscal issues as new was a red herring.

The adoption lawyers' organization focused primarily on adoptive parents and children and whether passage of S.B. 678 would make adoptions more difficult. Even in a family law proceeding, we countered, the federal ICWA standards are mandatory. Rather than making adoptions more difficult, S.B. 678 requires recognition and application of the ICWA standards and intent. All parties in an Indian child custody proceeding must recognize and respect the rights of the child, parents, and the child's tribe. Eventually opponents became allies. In the end neither the County Welfare Directors Association nor the Academy of California Adoption Lawyers opposed S.B. 678; both are now working with Senator Ducheny, California Indian Legal Services staff, and the California Department of Social Services toward implementation.

After two years, the Assembly passed the legislation on August 24, 2006, by a vote of 70 to 0; the Senate, 36 to 0, approved it a few days later. The Pala Tribe's perseverance, California Indian Legal Services' tenacity, Senator Ducheny's guidance, and careful negotiations resulted in the codification of the ICWA in California.

Key Provisions of the New Law

While a complete summary is beyond the scope of this article, a synopsis of S.B. 678's ten key provisions follows.

1. Applicability of the ICWA in Indian Child Custody Proceedings; Notice Requirements

Under both the ICWA and S.B. 678, a foster care placement is *any* temporary placement—such as a shelter care home, foster home, or the home of a guardian or conservator—from which the parent or Indian custodian may not remove a child on demand.[7] S.B. 678 makes clear its application in nondependency adoptions,

[7]25 U.S.C. § 1903 (2007); Cal. Rules of Court, Family and Juvenile Rules, Rule 5.664(a)(9) (2007).

probate guardianships, and delinquency cases by explicitly referring to the definitional section of the ICWA.[8]

S.B. 678's notice requirements for Indian child custody proceedings do not differ substantially from the former court rule, but the new law adds a provision for court sanctions against a party who knowingly and willfully falsifies or conceals a material fact concerning whether a child is Indian.[9] The sanctions also apply to those—lawyers, county counsel, and social workers, among others—who counsel a party to conceal such a fact.

The notice must have the child's name, date and place of birth, and tribal affiliation; a copy of the petition filed; and a statement advising the Indian parents, custodians, or tribe of their rights to intervene, transfer the case to tribal court, obtain court-appointed counsel, and obtain discovery of documents and statements.[10] Petitioners and practitioners should consult the appropriate California code sections and federal law to ensure complete compliance.

2. Duty to Inquire Whether Child Is Indian

County social workers have a continuing duty under S.B. 678 to inquire whether a minor who is the subject of a custody proceeding is an Indian child.[11] This affirmative duty also applies to the court, to county welfare departments in *all* dependency cases, and to probation departments in wardship cases (delinquency) where the minor is at risk of entering or is in foster care. The ICWA requirements in delinquency cases are sprinkled throughout the legislation governing delinquency proceedings. The state uses Title IV-E funds to pay for juvenile placements and so must comply with the statute's funding requirements and show that the placements are made for the best interests of the child, not to punish the child's conduct. California adopted legislation in 2000 to comply with the federal funding restrictions, and the California Judicial Council amended court rules in 2005 to clarify that the rules apply to all dependency and delinquency proceedings in which a child is at risk of entering foster care or is in foster care.[12]

One appellate court held that the notice requirements did not apply to delinquency proceedings in part because the requirements were based on court rules.[13] By enacting S.B. 678, which explicitly applies to delinquency cases, the legislature arguably overturns this ruling and the court's reasoning.

3. Active Efforts to Prevent Family Breakup

S.B. 678 incorporates the ICWA requirement that active efforts be made to prevent the breakup of the Indian family. The party requesting a foster care placement or termination of parental rights must demonstrate that remedial services and rehabilitative programs designed to keep the family together were offered and proved unsuccessful before removing an Indian child or terminating parental rights. The active-efforts requirement applies not only in dependency and delinquency cases but also in cases to declare an Indian child free from the custody and control of a parent (termination of parental rights), guardianship cases, and adoptions.[14] The *active*-efforts requirement is not necessarily coextensive with the *reasonable*-reunification-ef-

[8]25 U.S.C. § 1903; Cal. Fam. Code § 170(c) (West 2007); Cal. Prob. Code § 1449(c) (West 2007); Cal. Welf. & Inst. Code § 224.1 (West 2007).

[9]Cal. Welf. & Inst. Code § 224.2(e) (West 2007); see 25 U.S.C. § 1912 (2007) (ICWA notice requirements).

[10]Cal. Fam. Code § 180 (West 2007); Cal. Prob. Code § 1460.2 (West 2007); Cal. Welf. & Inst. Code § 224.2 (West 2007).

[11]See Cal. Welf. & Inst. Code § 224.3.

[12]California Rules of Court, Family and Juvenile Rules, Rule 5.664(b) (adopted January 1, 2007). The rule expressly refers to the ICWA (25 U.S.C. §§ 1911, 1912).

[13]*In re Enrique O.*, 40 Cal. Rptr. 3d 570 (Cal. Ct. App. 2006).

[14]Cal. Welf. & Inst. Code § 361.7; California Probate Code Section 1459.5(b) and California Family Code Section 7892.5 both refer to the Welfare and Institutions Code active-efforts requirement.

forts standard that applies to non-Indian children and families.[15] The legislature adopted a higher standard of proof to support removal of an Indian child, foster care placement, or termination of parental rights. Thus cases holding that "active efforts under ICWA and reasonable reunification efforts are essentially undifferentiable" seem overturned by S.B. 678.[16] Although S.B. 678 does not list specific acts that qualify as active efforts, the legislation requires that active efforts be assessed case by case and take into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe.[17]

4. Qualified Expert Witnesses

A court may not order foster care placement or guardianship of an Indian child unless it finds *clear and convincing* evidence that continued custody by the parent or Indian custodian will likely result in serious emotional or physical harm to the child.[18] A court may not terminate parental rights unless it finds evidence *beyond a reasonable doubt* that continued custody by the parent or Indian custodian will likely result in such harm.[19] In both situations, the finding must be based on the testimony of a qualified expert witness, who may be a social worker, sociologist, physician, psychologist, traditional tribal therapist and healer, tribal spiritual leader, tribal historian, tribal elder, or other expert.[20] Significantly a county social worker or any employee of the agency or person recommending foster care or termination of parental rights may *not* act as this expert.[21]

A further limitation is that the expert witness testimony may not be based on a written declaration unless certain criteria are met. Through the years departments of social services and attorneys, when confronted with the expert witness requirement, developed the practice of submitting a written declaration to support the necessary findings. Despite the ICWA requirement of expert "testimony," the practice became widespread. S.B. 678 addresses this problem by requiring in-person expert testimony unless the parties stipulate in writing to use of a written declaration and the court is satisfied that the stipulation was entered into knowingly, intelligently, and voluntarily.[22] Even where a tribe has not received notice or intervened in a case, the court may not waive the requirement without the tribe's consent.

5. Application of the ICWA to Guardianship and Family Law Proceedings

Before S.B. 678, the Probate Code stated that the ICWA applied generically to all guardianships and conservatorships. However, that code contained no other references or guidance on cases involving Indian children, and so courts struggled with the practical aspects of applying ICWA. Juvenile court rules adopted ICWA language wholesale, while the silence on ICWA in probate and family court rules led some judges in those courts to question whether they had authority to follow ICWA directives.

S.B. 678's codification of the ICWA in the Probate Code leaves no question that the ICWA applies to both guardianships and conservatorships.[23] Similarly, in family law cases where a third party petitions the court to declare an Indian child free

[15]Regarding the federal "reasonable efforts" requirement, see 42 U.S.C. § 671(a)(15); the parallel provision in California law is California Welfare and Institutions Code Section 361(d).

[16]*In re Michael G.*, 74 Cal. Rptr. 2d 642 (Cal. Ct. App. 1998).

[17]Cal. Welf. & Inst. Code § 361.7.

[18]*Id.* § 361.7(c).

[19]*Id.* § 366.26(c)(2)(B)(ii); Cal. Fam. Code § 7892.5.

[20]Cal. Welf. & Inst. Code § 224.6(a); see also Cal. Fam. Code § 177(a); Cal. Prob. Code §1459.5(b).

[21]Cal. Welf. & Inst. Code § 224.6(a).

[22]*Id.* § 224.6(e).

[23]Cal. Prob. Code §§ 1449–1601.

from the custody and control of a parent and grant custody to a nonparent, and the parent objects, or where a parent voluntarily relinquishes custody, ICWA applies.[24] All the requirements that apply to dependency and delinquency cases involving Indian children also apply to guardianships, conservatorships, and relevant family law proceedings.

6. Interstate Compact on Placement of Children

Previously, when a court or child welfare agency wanted to place an Indian child out of state, the court would comply with the Interstate Compact on Placement of Children, which applies whenever a juvenile court sends a child out of state for more than thirty days.[25] Under the compact the receiving state must evaluate the placement and undertake some level of supervision once the placement is approved. However, Indian tribes, unlike the fifty states, were not signatories to the compact; therefore, strictly speaking, the compact does not apply when a juvenile court sends an Indian child to an out-of-state, tribally approved placement. Nevertheless, many courts require child welfare agencies and tribes to comply with the compact.

S.B. 678 adds to the Family Code a provision that the Interstate Compact on the Placement of Children does *not* apply when a child is placed in another state pursuant to a transfer of jurisdiction to a tribal court.[26]

7. Transfer of Case to Tribal Court

When a child custody proceeding involves an Indian child who is not domiciled or residing on a reservation, the child's tribe may petition the court to transfer the proceeding to tribal court.[27] The only specific limitations on transfer are where a parent objects or the court finds good cause to deny the petition. Tribal intervention is not required to request a transfer—a parent or Indian custodian may also make the request—but the tribe or the designated tribal forum may decline to accept a transfer. Where a tribe is the petitioner, transfer is mandatory absent a showing of good cause to deny the petition.

The ICWA does not define good cause for denying a transfer, nor did the California Rules of Court, but Bureau of Indian Affairs Guidelines defined the term.[28] S.B. 678 incorporates a portion of that definition and provides that good cause includes objections by one or both parents or where the tribe does not have a tribal court as defined in the ICWA.[29]

Tribes and family members may wait to intervene or offer placement until they assess the likelihood of parent-child reunification. In California a typical reunification plan lasts twelve months; plans can be as short as six months for children under 3 years old and as long as eighteen months where additional time is needed for successful completion. S.B. 678 states specifically that waiting to file a transfer petition until reunification efforts fail and services are terminated does not constitute an unreasonable delay.[30] Simply put, the tribe will not be prejudiced in its transfer request if it gives the parent time to comply with court-ordered services and the parent fails. The burden of establishing good cause rests on the party objecting to the transfer.[31]

S.B. 678 also states explicitly that socioeconomic conditions or a perceived in-

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[24]Cal. Fam. Code §§ 170, 8620.

[25]*Id.* § 7901. California adopted the compact in 1975; see *id.* §§ 7900–7912.

[26]Cal. Fam. Code § 7907.3.

[27]25 U.S.C. § 1911(b).

[28]Bureau of Indian Affairs, Guidelines for State Courts: Indian Child Custody Proceedings, 44 Fed. Reg. 67584 (1979) C.3 and C.3 commentary, available at www.nicwa.org/policy/regulations/icwa/ICWA_guidelines.pdf.

[29]Cal. Welf. & Inst. Code § 305.5(c); see also 25 U.S.C. § 1903(12).

[30]Cal. Welf. & Inst. Code § 305.5(c)(2)(B).

[31]*Id.* § 305.5(c)(4).

adequacy of tribal social services or the tribal judicial system may *not* be considered in determining good cause. Too frequently tribal courts or tribal advocates had to demonstrate their courts' adequacy. Although state courts should not have permitted such inquiries, which were inappropriate under Bureau of Indian Affairs Guidelines, the inquiries were nonetheless common.[32]

8. Appointment of Counsel

S.B. 678 authorizes, and under some circumstances requires, the court to appoint counsel where a parent, guardian, Indian custodian, or child desires an attorney but is unable to afford one.[33] This provision does not affect dependency or delinquency matters, where appointed counsel is already available, but it is relevant in guardianships, conservatorships, and family law petitions to declare an Indian child free from the custody and control of a parent. It is therefore a significant change.[34]

Before S.B. 678, a parent could find herself defending a guardianship petition without the assistance of counsel, thereby jeopardizing her right to due process. The probate guardianship procedure was never intended to bypass juvenile courts or to leave parents without court-appointed representation. Although the funding mechanism for court-appointed counsel refers to Section 1912 of the ICWA and 25 C.F.R. Part 23.13, which involve petitioning the Bureau of Indian Affairs for reimbursement, a court is unlikely to require a party to proceed without counsel pending resolution of the funding issue. Subject to the right to request reimbursement pursuant to federal regulations, the best practice is for the court to appoint counsel at the earliest stage.

To the extent a guardianship, conservatorship, or petition to declare a child free from parental control is an action to remove a child from the biological parent, due process requires the court to ensure procedural and substantive safeguards, including court-appointed counsel, for the parent. The interest of parents in making decisions about the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests protected under the Constitution.[35] To deny a parent or Indian custodian the opportunity to protect that liberty interest without legal counsel invites a petition for invalidation.[36]

9. Placement Preferences

The new law codifies the following order of placement preference for Indian children: a member of the child's extended family; a foster home licensed or approved by the child's tribe; an Indian home licensed or approved by an authorized non-Indian licensing agency; and an institution for children approved by the tribe or operated by an Indian organization.[37]

A search for homes for placement or adoption should always start with ICWA-compliant tribal homes. Disputes concerning placement, compliance with the preferences, and the child's right to a stable non-Indian placement have become commonplace. The ICWA and S.B. 678 make the placement preferences mandatory, absent good cause to deviate from them. A tribe may establish an alternate order of preference so long as the placement is in the least restrictive setting appropriate to the child's needs.[38]

10. Exceptions to Terminating Parental Rights

Perhaps the most significant changes that S.B. 678 brings to California are new exceptions to the court's authority to terminate parental rights and permanently

[32] *Id.* § 305.5(c)(3).

[33] *Id.* § 317.

[34] Cal. Fam. Code § 180(b)(5)(G); Cal. Prob. Code §§ 1460.2(b)(5)(G), 1474.

[35] See *Kyle O. v. Donald R.* , 102 Cal. Rptr. 2d 476 (Cal. Ct. App. 2000) (citing *Troxel v. Granville*, 530 U.S. 57, 64–65 (2000)).

[36] 25 U.S.C. § 1914.

[37] Cal. Welf. & Inst. Code § 361.31; Cal. Fam. Code § 8710; Cal. Prob. Code § 1495.5.

[38] Cal. Welf. & Inst. Code § 361.31(c); Cal. Fam. Code § 8710; Cal. Prob. Code §1495.5.

sever an Indian child's legal relationship with her parents. A court may not terminate parental rights where "the child is an Indian child and there is a compelling reason for determining that termination of parental rights would not be in the best interest of the child."[39] The new exceptions are (1) where termination would substantially interfere with the child's connection to the tribal community or the child's tribal membership rights and (2) where the tribe identified guardianship, long-term foster care with a fit and willing relative, or another arrangement.[40]

Many tribes do not recognize culturally or politically the concept of terminating parental rights. These new exceptions to termination are significant because they alter permanent plans for Indian children and require social service agencies to modify practices that have forced the adoption of Indian children. The exceptions enable Indian children to maintain ties to their tribal communities and extended families and to retain tribal membership rights, rather than forcing children to lose their tribal identity due to their parents' inability to reunify with them. Tribes also now have a far larger role in the process. Thus attention will necessarily focus on the ICWA's original finding "that there is no resource more vital to the continued existence and integrity of the Indian tribes than their children, and that the United States has a direct interest, as trustee, in protecting Indian children who are members, or are eligible for membership in an Indian tribe."[41]

■ ■ ■

S.B. 678 supports and upholds the tenets found in the ICWA, and, more important, it recognizes tribes' continued struggle for compliance. The bill's passage was a process of reaffirming tribal sovereignty in California, for California tribes, but also for tribes throughout the nation. Recognition of the familial, political, social, traditional, and cultural well-being of Indian children and families strengthens and connects tribal governments and communities. This recognition is what resonates with the passage of S.B. 678.

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[39] CAL. WELF. & INST. CODE § 366.26(c)(1)(F).

[40] *Id.* § 366.26(c)(F)(i)(ii).

[41] 25 U.S.C. § 1901.

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