III. Overview of the Indian Child Welfare Act

A. ICWA Policy and Legislative History

Congress passed the ICWA to counteract widespread misuse of state child protection powers with regard to Indian children, which had resulted in wrongful removal of such children from their Indian families and subsequent placement with non-Indian families. The ICWA helps to fulfill an important aspect of the federal government’s trust responsibility to tribes by protecting the bond between Indian children and their tribes, which is by definition in the “best interest” of those children. In doing so, the ICWA ultimately serves both the best interests of Indian children and the stability and security of Indian tribes and families.

Because the Act protects the best interests of Indian children as well as the rights of parents, Indian custodians, and Indian tribes, the Act applies regardless of whether a child’s tribe exercises any of its rights under the Act, or is even involved in the case.

1. The Problem Leading to the Passage of the ICWA

Congressional hearings in the mid-1970s revealed a pattern of wholesale public and private removal of Indian children from their homes, undermining Indian families and threatening the survival of Indian tribes and tribal cultures. At the national level, studies in the years leading up to the passage of the ICWA found that:

- Indian children were approximately six to seven times as likely as non-Indian children to be placed in foster care or adoptive homes; and,
- Approximately 25-35% of all Indian children were removed from their homes and placed in foster care or adoptive homes, or institutions such as boarding schools.

In California specifically:

- Indian children were more than eight times as likely as non-Indian children to be placed in adoptive homes;
- Over 90% of California Indian children subject to adoption were placed in non-Indian homes; and,
- 1 of every 124 Indian children in California was in a foster care home, compared to a rate of 1 in 367 for non-Indian children.

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2 Ibid.
7 Sherwin Broadhead et al., Report on Federal, State, and Tribal Jurisdiction: Final Report to the American Indian
Congress determined that Indian children who are placed for adoption into non-Indian homes frequently encounter problems in adjusting to cultural environments much different than their own. Such problems include being stereotyped into social and cultural identities which they know little about, and a corresponding lack of acceptance into non-Indian society. Due in large part to states’ failures to recognize the different cultural standards of Indian tribes and the tribal relations of Indian people, Congress concluded that the Indian child welfare crisis was of massive proportions and that Indian families face vastly greater risks of involuntary separation than are typical for our society as a whole. These involuntary separations created social chaos within tribal communities. The emotional problems embedded in Indian children hampered their ability as adults to positively contribute to tribal communities, and left families in extended mourning mode, significantly impairing their ability to meet their tribal citizenship responsibilities.

2. California’s Implementation of the ICWA via Senate Bill 678 and Other Laws

a. Policy and Purpose in Applying the ICWA through State Statute

Prior to the adoption of Senate Bill 678 in 2006, many California tribes struggled to convince courts, county social workers, and attorneys that the ICWA was not just a rote procedural hurdle, but rather that they should embrace the spirit and purpose of the ICWA. Despite the enactment of the Act in 1978, there arose in the years leading up to SB 678 a widespread perception of institutional resistance and a belief that the Act’s application had often been inconsistent and perfunctory. For example, essential requirements such as proving the detriment of returning a child to his or her Indian family, a requirement that can be satisfied only with expert testimony, were frequently met with boilerplate declarations ratifying state agencies’ actions. Some attempts to transfer cases to tribal court were resisted by counties due to a perception that tribal forums were inferior.

When state courts considered permanent plans for tribal children, adoption was prioritized, rather than guardianship, in spite of the effect which the termination of parental rights often has on a child’s tribal membership and identity. Prior to the passage of SB 678, if the parents did not comply with or complete a reunification plan, the range of permanence options narrowed and was weighted toward termination of the parent-child relationship – a concept that is alien and offensive to many Indian tribes due to the emotional harm associated with the disassociation of the child from his or her cultural transmitters, as well as the loss of benefits and rights available to tribal members.

Procedurally, in order to avoid termination of parental rights, a recognized exception had to exist. Such exceptions included consideration of a sibling bond, for example, but did not include any consideration of the effects that terminating parental rights would have on the child’s

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relationship to his or her tribal community and culture. Once adoption was identified as the permanent plan, there was no provision for an enforceable post-adoption agreement allowing the child a way to maintain contact with extended family and the tribal community.

Before SB 678 took effect, the Act had generally been applied through the California Rules of Court, case law, and the BIA Guidelines, but had not been codified on a state level. This lack of codification led to inconsistent applications of the Act.\(^{11}\) SB 678 was intended to harmonize federal legislation and intent with California law.\(^{12}\) In a way, it was one of the most far-reaching state laws in the country; because California has such a large population of Indians from non-California tribes,\(^{13}\) and because any Indian child who falls under the jurisdiction of the dependency, delinquency, family and probate courts is within its scope, the provisions of SB 678 could potentially affect hundreds of tribes across the country. The final legislation was the culmination of efforts by State Senator Denise Moreno Ducheny (its sponsor), California Indian Legal Services, and a host of others.

With the enactment of Assembly Bill 1325 (AB 1325) in 2009, California instituted “tribal customary adoption” as a new permanency option in dependency cases that does not include termination of parental rights (and the resulting severance of the cultural and social ties that the ICWA endeavors to protect).\(^{14}\) Credit for this legislation is due in large part to the Soboba Band of Luiseño Indians.

b. Key Provisions

A number of the ICWA’s and SB 678’s key provisions are briefly summarized below. More detailed coverage of each of these provisions appears in later sections of this Benchguide.

i. Applicability

The ICWA and complementary California law apply where Indian children are involved in foster care placements, guardianships, and conservatorships, if in any of these types of proceedings (whether voluntary or involuntary, temporary or long-term) the parent or Indian custodian does not retain the right to have the child returned upon demand;\(^{15}\) custody awards to a non-parent where a parent objects;\(^{16}\) terminations of parental rights (including a petition to declare an Indian child free from the custody or control of a parent);\(^{17}\) preadoptive and adoptive placements (including voluntary relinquishments);\(^{18}\) and, certain delinquency proceedings.\(^{19}\)

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\(^{11}\) See, e.g., § III(C) of this Benchguide (“Constitutionality and the ‘Existing Indian Family Exception’”).
\(^{13}\) See § II(B) of this Benchguide (“Native Americans in California”).
\(^{14}\) See § XI(E) of this Benchguide (“Tribal Customary Adoption”) and Appendix D.
\(^{15}\) 25 U.S.C. § 1903(1)(i); Fam. Code § 170(c).
\(^{16}\) Fam. Code §§ 170(c), 3041(e).
\(^{17}\) 25 U.S.C. § 1903(1)(iii); Fam. Code §§ 170(c), 7822(e), 7892.5.
\(^{18}\) 25 U.S.C. § 1903(1)(iii) and (iv); Fam. Code § 8620.
\(^{19}\) See § XII of this Benchguide (“Delinquency Proceedings”).
ii. Notice

One of the most crucial requirements of the ICWA, and yet one of the most frequent areas of noncompliance, is the provision of notice whenever “it is known or there is reason to know that an Indian child is involved” in a proceeding. Lack of proper notice may result in a parent, Indian custodian, or tribe being unaware of the very existence of a proceeding, and thus prejudicially denied the chance to exercise legal rights under the Act in a timely manner.

Notice must be sent to the child’s parents or legal guardian, Indian custodian (if any), and to all federally-recognized tribes of which the child is or may be a member (or in some circumstances, the BIA). Notice must provide certain details in order to allow the tribe(s) to confirm membership or eligibility for membership and to advise the parties of their rights. For the purposes of providing proper notice, any party who knowingly and willfully misrepresents or conceals a fact regarding whether a child is an Indian child is subject to sanctions by the court.

iii. Duty to Inquire

SB 678 imposed an affirmative and continuing duty to inquire whether a child is or may be an Indian child. The continuing nature of this duty means, for example, that a duty to provide notice will be triggered even in the midst of a case if information comes to light that was not previously available suggesting that the child is or may be Indian. This duty applies to all of the following: the courts, court-connected investigators, county welfare departments, probation departments, licensed adoption agencies, adoption service providers, investigators, petitioners, appointed guardians or conservators, and appointed fiduciaries.

iv. Active Efforts

The ICWA requires that any party seeking a foster care placement or a termination of parental rights must first show that “active efforts” have been made by that party “to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.” SB 678 incorporated this requirement into the Family Code, Probate Code, and Welfare & Institutions Code.

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21 25 U.S.C. § 1912(a); see Fam. Code § 180(c), Prob. Code § 1460.2(a); Welf. & Inst. Code § 224.2(b); Cal. Rules of Court, rule 5.481(b); see § VI of this Benchguide (“Notice”).
23 25 U.S.C. § 1912(a); Fam. Code, § 180; Prob. Code § 1460.2; Welf. & Inst. Code § 224.2; Cal. Rules of Court, rule 5.481(b).
24 Welf. & Inst. Code § 224.2(e).
25 Welf. & Inst. Code § 224.3(a); Cal. Rules of Court, rule 5.481(a); In re Desiree F. (2000) 83 Cal.App.4th 460, 470; see § VI(A) of this Benchguide (“When Notice and Inquiry are Required”).
26 Welf. & Inst. Code § 224.3(f); In re Kahlen W. (1991) 233 Cal.App.3d 1414, 1424; In re Junious M. (1983) 144 Cal.App.3d 786 (notice required even though Indian heritage raised for first time in midst of hearing to have minor declared free from parental custody and control, five (5) years after dependency was first established).
27 Cal. Rules of Court, rule 5.481(a).
29 Fam. Code §§ 177(a), 3041(e), and 7892.5; Prob. Code § 1459.5(b); Welf. & Inst. Code §§ 224.6(b), 361(d),
The ICWA does not define active efforts. While SB 678 did not define the term either, it set forth several provisions to assist courts and responsible parties in ensuring that active efforts are truly made. Specific active efforts will necessarily vary on a case-by-case basis, as they must be designed “to accomplish the goal which Congress has set: to avoid the breakup of Indian families whenever possible” by addressing the underlying problems which threaten a particular family. In a proceeding involving an Indian child, active efforts must take into account the prevailing social and cultural values of the Indian child's tribe. Furthermore, any resources available through the child’s “extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers” must be utilized when making active efforts. The party responsible for making active efforts must prove to the court that they were made, and were unsuccessful, by clear and convincing evidence.

SB 678 also created additional “active efforts” requirements not related to the provision of remedial and rehabilitative services. These include making (and documenting in the record) active efforts to comply with the ICWA’s placement preferences, and, if there is no preferred placement available, making active efforts to place the child “with a family committed to enabling the child to have extended family visitation and participation in the cultural and ceremonial events of the child's tribe.”

Updates to the California Rules of Court in 2008 further provide that “active efforts” shall include the responsible party taking any necessary steps towards enrolling a child in a tribe if the child is eligible for membership in that tribe.

BEST PRACTICE: Strong judicial oversight of the enrollment status of an Indian child is important. The court should determine a child’s enrollment status as early in the case as possible, and if the child is eligible for membership but not enrolled, should ensure that the party responsible for making active efforts does everything necessary, in consultation with tribal officials, to enroll the child as soon as possible. No matter where an Indian child is ultimately placed, failure to enroll can jeopardize a myriad of benefits that are assuredly in the child’s best interest, including (but not necessarily limited to) inheritance rights, tribal land assignments, per capita payments, health care benefits, school enrollment, educational support services, housing, hunting and fishing rights, the right to gather other natural resources, employment training services, and priority hiring rights.

361.7, and 366.26(c)(2)(B); see also, § VIII of this Benchguide (“Evidentiary Requirements”).
30 Welf. & Inst. Code § 361.7(b).
32 Welf. & Inst. Code § 361.7(b).
33 Ibid.
35 Welf. & Inst. Code § 361.31(k).
36 Welf. & Inst. Code § 361.31(i).
37 Cal. Rules of Court, rules 5.482(c) and 5.484(c).
38 Whether a child qualifies for membership, and what documentation or other evidence is required for enrollment, are decisions left exclusively to the child’s tribe. Santa Clara Pueblo v. Martinez (1978) 436 U.S. 49.
v. Qualified Expert Witness

Prior to a foster care placement (as defined by the Act) or a termination of parental rights, the ICWA requires that a “qualified expert witness” testify that a parent’s or Indian custodian’s continued custody of a child would be likely to result in serious physical or emotional harm.\textsuperscript{39} SB 678 addressed this subject in two significant ways—one, by providing examples of certain persons likely to qualify as expert witnesses and the probable characteristics thereof, and two, by prohibiting the use of an employee of the person or party seeking a foster care placement or termination of parental rights.\textsuperscript{40} The most common effect of the latter provision is to prevent a county social worker from acting as an expert witness in a case where the county is seeking foster care placement or termination of parental rights.

A further limitation on the testimony of the qualified expert witness applies to the use of a declaration or affidavit in lieu of actual testimony. Over the course of time, social services agencies and attorneys, when confronted with the expert witness requirement, would instead submit a written declaration to support the necessary findings. Despite the fact that the ICWA specified the need for expert testimony, the practice became widespread. The changes made by SB 678 now require a stipulation in writing by the parties in order to prove a case by declaration, as well as the court’s satisfaction that the stipulation was “knowingly, intelligently and voluntarily” entered into.\textsuperscript{41}

vi. Transfer of Case

An Indian child’s tribe can petition the court to transfer a child custody proceeding involving a child who is not domiciled or residing on a reservation to tribal court at any time.\textsuperscript{42} The only specific limitations are where a parent objects to the transfer or the court finds good cause to deny the transfer.\textsuperscript{43} The good cause standard for a court to disallow a transfer was not defined in the ICWA. SB 678 defined a good cause standard and specifically provided that “[s]ocioeconomic conditions and the perceived adequacy of tribal social services or judicial systems may not be considered in a determination that good cause exists.”\textsuperscript{44} Many tribal courts operate informally on tribal custom and tradition, which the ICWA itself permits.\textsuperscript{45}

In California, a reunification plan might last as long as 18 months. SB 678 established that it is \textit{not} an unreasonable delay in filing a petition for a transfer to tribal court to wait until reunification efforts have failed and services have been terminated.\textsuperscript{46} Simply put, good cause to deny a transfer does not exist solely by virtue of the fact that a tribe chooses to afford a parent

\textsuperscript{39} 25 U.S.C. § 1912(e) and (f); \textit{see} § VIII(B)(1) of this Benchguide (“Selection of an Expert Witness”).
\textsuperscript{40} Welf. & Inst. Code § 224.6; Fam. Code § 177(a); Prob. Code § 1459.5(b); Cal. Rules of Court, rule 5.484(a).
\textsuperscript{41} Welf. & Inst. Code § 224.6(e); Cal. Rules of Court, rule 5.484(a)(2); \textit{see} Fam. Code § 177(a), Prob. Code § 1459.5(b).
\textsuperscript{42} 25 U.S.C. § 1911(b); Welf. & Inst. Code § 305.5(b); Cal. Rules of Court, rule 5.483(b); \textit{see} Fam. Code § 177(a), Prob. Code § 1459.5(b); \textit{see also} § V of this Benchguide (“Jurisdiction under the Act”).
\textsuperscript{43} \textit{Ibid.}
\textsuperscript{44} Welf. & Inst. Code § 305.5(c).
\textsuperscript{45} 25 U.S.C. § 1903(12).
\textsuperscript{46} Welf. & Inst. Code § 305.5(c)(2)(B); Cal. Rules of Court, rule 5.483(d)(2)(B); \textit{see} Fam. Code § 177(a), Prob. Code § 1459.5(b).
time to comply with court-ordered services before seeking a transfer. SB 678 also provided that the burden of establishing good cause to deny a transfer to tribal court rests on the party objecting to the transfer.45

Normally, when a child is to be placed out of state, the Interstate Compact on Placement of Children (ICPC) applies.48 SB 678 added Family Code section 7907.3 to clarify that the ICPC does not apply to “any placement, sending, or bringing of an Indian child into another state pursuant to a transfer of jurisdiction to a tribal court under Section 1911 of the [ICWA].”49

vii. Concurrent Jurisdiction

The ICWA provides for both state court and tribal court jurisdiction over an Indian child.50 In California, jurisdiction is a somewhat complicated matter due to the interaction between the ICWA and Public Law 83-280,51 but it is safe to say that Indian tribes and the state generally share concurrent jurisdiction over Indian child custody proceedings.

The potential benefits of state and tribal cooperation within this jurisdictional framework are many. Tribes often have access to resources that a state court may not (or at least may be unaware of), such as: inpatient rehabilitation services; drug testing; transportation to court, visitations, and court-ordered services; visitation supervision; job training and placement programs; re-entry services; educational placement and scholarships; housing; cultural support services, such as language classes; summer camps/programs for minors; and, placement options with supportive services. Out-of-state tribes offer similar services, or contract to provide them in California (e.g., the Friendship House Association of American Indians, Inc., in San Francisco). Many of these services are specifically oriented towards Native American values and beliefs, and thus may be more likely to reach a successful outcome than those of non-Indian orientation.

Unfortunately, the potential benefits of concurrent jurisdiction are largely unrealized. Often tribes and state courts/agencies are considered adversaries. At best, there may be limited cooperation long after a case has been initiated – long after cooperation and tribal services could have been most effective. While the California Tribal Court/State Court Forum has recently made some advancement toward better collaborative efforts, there appears to be a long way to go before wise use of concurrent jurisdiction becomes the norm rather than the exception.52

viii. Appointment of Counsel

The ICWA requires appointment of counsel for indigent parents “in any removal, placement, or termination proceeding.”53 SB 678 codified this requirement into various sections

47 Welf. & Inst. Code § 305.5(c)(4); see Fam. Code § 177(a), Prob. Code § 1459.5(b).
48 Fam. Code § 7901.
49 Fam. Code § 7907.3.
51 See § V of this Benchguide (“Jurisdiction under the Act”).
52 More information on the Tribal Court/State Court Forum, including legislative and rule proposals, is available at the Judicial Council of California/Administrative Office of the Courts website at www.courts.ca.gov/3065.htm (last visited May 15, 2012).
III. Overview of the Act

of the Welfare & Institutions Code, Family Code, and Probate Code. These sections clarify that, in addition to dependency and delinquency matters, a parent or Indian custodian who cannot afford an attorney is entitled to have one appointed in a guardianship, conservatorship, or petition to declare an Indian child free from the custody and control of a parent.

ix. Placement Preferences

Indian children in child custody proceedings must be placed within a mandatory order of preference for placements, absent good cause to the contrary, in order to protect the best interests of the Indian child and the child’s tribe by ensuring a culturally-appropriate placement. According to the U.S. Supreme Court, these placement preferences are “[t]he most important substantive requirement imposed on state courts” by the ICWA.

SB 678 codified these placement preferences into state law. The legislation declared that California has an interest in “protecting the essential tribal relations and best interest of an Indian child 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.” Thankfully, SB 678 made it plain that adhering to the ICWA’s placement mandate, and encouraging and protecting an Indian child’s tribal membership and connection to his or her tribe, is in the best interest of that child.

x. Exceptions to Terminating Parental Rights

Perhaps the most significant change made by SB 678 was the new exception to termination of parental rights. The new exception applies where termination of parental rights would be detrimental to an Indian child, including but not limited to cases where: (1) termination would substantially interfere with the child’s connection to his or her tribal community or the child’s tribal membership rights; or, (2) the child’s tribe identifies guardianship, long term foster care with a fit and willing relative, tribal customary adoption or another permanent plan.

Severing the legal relationship of a parent and child is not a concept that is culturally recognized by most Indian tribes. A child’s membership or eligibility for membership is typically predicated on proving the membership or eligibility of lineal ancestors. When the parent-child relationship is severed, an Indian child often loses his or her right to membership. This may result in a tremendous impact on the child – cultural (loss of access to the tribal community, cultural knowledge/teachings, and cultural events), political (loss of voting

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55 25 U.S.C. § 1915; see § IX of this Benchguide (“Placement”).
58 Fam. Code § 175(a); Prob. Code §1459(a); Welf. & Inst. Code §§ 224(a).
59 Ibid.
60 Welf. & Inst. Code § 366.26(c)(1)(B)(vi). Note that SB 678 did not include tribal customary adoption in the second scenario listed – tribal customary adoption was added to that scenario by AB 1325 (2009) which went into effect July 1, 2010 (see § XI(E) of this Benchguide for more on tribal customary adoption).
III. Overview of the Act

The exceptions added by SB 678 are important because they allow alternative plans for Indian children and should reorient social service agencies away from the narrow view that conventional adoption is always the best placement for a child.\(^{61}\) Tribal customary adoption was intended to further limit terminations of parental rights and is yet another reason why courts and social services do not have to fall back on conventional adoption as a permanent plan.

B. Protecting Indian Children: the “Best Interest” Standard

The ICWA revolutionized the “best interest of the child” standard as applied to Indian children by providing a specific definition for the best interest of an Indian child.\(^{62}\) Most states use a “best interest” standard in child custody proceedings. Generally, the best interest of a child is deemed to be a stable placement with an adult who becomes the psychological parent.\(^{63}\) In passing the ICWA, Congress was concerned that states were applying a subjective best interest standard to the detriment of Indian children by overlooking essential aspects of tribal social and cultural standards.\(^{64}\)

To solve this problem, Congress declared that the best interest of an Indian child (not just the child’s tribe) would be served by protecting “the rights of the Indian child as an Indian and the rights of the Indian community and tribe in retaining its children in its society.”\(^{65}\) This policy is carried out by following the four objectives:

- Jurisdictional provisions and intervention rights designed to enhance tribal control and involvement in Indian child custody cases;
- Adoption of minimum standards for removal of Indian children from their families;
- Culturally-appropriate placement of Indian children in Indian homes; and,
- Support of tribal child and family service programs.\(^{66}\)

Cultural considerations (e.g., Indian child-rearing norms and practices) and concern for tribal heritage are relevant to proper application of the Act. Assessment, treatment and placement standards require adherence to cultural dictates.\(^{67}\) However, the Act is not simply an effort to strengthen Indian culture. The Act acknowledges a special relationship between tribes and the federal government as well as between tribes and their members, which are founded on more than cultural considerations. Indians as members of tribes are not simply separate racial or cultural groups, but also separate political groups.\(^{68}\) Indian tribes stand in a government-to-

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\(^{61}\) Welf. & Inst. Code § 366.26(b).
\(^{63}\) See, e.g., J. Goldstein, et al., Beyond the Best Interests of the Child (1979) p. 53.
\(^{67}\) See 25 U.S.C. §§ 1912, 1915; see also, Welf. & Inst. Code § 361.7(b).
\(^{68}\) Morton v. Mancari (1974) 417 U.S. 535, 553 n.24 (membership in federally-recognized tribe is political, rather
III. Overview of the Act

An Indian child is a “citizen” of a tribe and entitled to the incidents of that status as determined both by the laws of the federal government and the tribe.

As discussed elsewhere in this section, California has enacted its own laws reinforcing the definition of an Indian child’s best interest. A state court may not justify the breakup of Indian families and tribes simply by casting its ruling in subjective terms of “best interest.” As a matter of federal and state law, the ICWA’s provisions must be met in order to truly guard the best interests of Indian children.

C. Constitutionality and the “Existing Indian Family Doctrine”

The ICWA has survived numerous constitutional challenges by parties claiming that the Act constitutes disparate treatment based on race. Prior to SB 678, there was a split in the California Courts of Appeal regarding a judicially-created exception to application of the ICWA known as the “existing Indian family doctrine,” which viewed an existing and significant social or cultural connection to an Indian tribe or community as a prerequisite necessary to render an application of the ICWA constitutional.

The doctrine received mixed treatment in California; surprisingly, some favorable treatment occurred even after Assembly Bill 65 in 1999, which was enacted with the specific intent of halting use of the doctrine and abrogating previous supportive holdings. The California Legislature returned to the issue with SB 678 in an effort to more clearly require application of the ICWA according to the plain language of the federal law. Two particular provisions of SB 678 illustrate the Legislature’s intent:

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

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70 See §§ III(A)(2)(b)(ix) and § III(C) of this Benchguide (“Placement Preferences” and “Constitutionality and the ‘Existing Indian Family Doctrine’”).
74 Welf. & Inst. Code § 224(a)(2) (emphasis added); accord Fam. Code § 175(a)(2) (emphasis added); Prob. Code § 1459(a)(2) (emphasis added); see Cal. Rules of Court, rule 5.485(b).
And,

- “A determination by an Indian tribe that an unmarried person, who is under the age of 18 years, is either (1) a member of an Indian tribe or (2) eligible for membership in an Indian tribe and a biological child of a member of an Indian tribe shall constitute a significant political affiliation with the tribe and shall require the application of the federal Indian Child Welfare Act to the proceedings.”

The only two cases addressing the existing Indian family doctrine since the passage of SB 678 have both rejected it. At this time, there should be no doubt that the application of the existing Indian family doctrine is no longer permissible in California.

**BEST PRACTICE:** Because of the history of a split in California courts regarding the application of the existing Indian family doctrine, there may still be some confusion by persons appearing before the court. Any argument referring to the doctrine can be extinguished simply by referring to SB 678 and subsequent case law.

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75 Welf. & Inst. Code § 224(c) (emphasis added).