

**ASSEMBLY BILL**

**No. 2070**

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**Introduced by Assembly Member Bass**

February 19, 2008

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An act to amend Sections 361.5, 366.21, 366.26, and 16508.1 of the Welfare and Institutions Code, relating to foster care.

LEGISLATIVE COUNSEL'S DIGEST

AB 2070, as introduced, Bass. Foster care: incarcerated parents.

(1) Existing law requires the juvenile court to order the social worker to provide child welfare services for a child, as specified. Existing law prohibits those child welfare services from exceeding a period of 6 months from the date the child entered foster care for any child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under the age of 3 years. Existing law permits the court to extend those child welfare services, as specified. Existing law also requires that when the court orders counseling or other treatment services, it must also order the parent or guardian to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the child.

This bill would provide that for a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under the age of 3 years, court-ordered services shall not exceed a period of 6 months from the date the child entered foster care, or 12 months where one or both parents or guardians are incarcerated. This bill would also require the court, in determining whether court-ordered services may be extended, to consider the special circumstances of an incarcerated parent or parents, or parent or parents court-ordered to a

residential substance abuse treatment program, as specified. This bill would also exempt an incarcerated parent or guardian from participating in those counseling or other treatment services if he or she is incarcerated in a corrections facility that does not provide access to the services ordered by the court.

(2) Existing law requires the court to order the return of the child to the physical custody of his or her parent or legal guardian, at the review hearing held 6 months after the initial dispositional hearing, unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. Existing law requires the court to consider the criminal history of the parent or legal guardian subsequent to the child's removal, as specified.

This bill would require the court to consider the criminal history of the parent or legal guardian subsequent to the child's removal to the extent that the criminal record demonstrates a pattern of behavior substantially related to the welfare of the child or the parent's or guardian's ability to exercise custody and control regarding his or her child, as specified.

(3) Existing law declares the failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs is prima facie evidence that return of the child would be detrimental to the child. Under existing law, in making its determination regarding returning the child to the custody of the parent or legal guardian, the court shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself to services provided.

This bill would also declare that the failure of the parent or legal guardian to participate in court-ordered treatment programs, as specified, is not prima facie evidence that return of the child would be detrimental when that failure is due to circumstances outside of the parent or legal guardian's control, such as incarceration. This bill would require the court to take into account the particular barriers to an incarcerated parent's or guardian's access to any court-mandated services and the ability to maintain contact with his or her child.

(4) Existing law provides that a finding that the whereabouts of a parent have been unknown for 6 months or that the parent has failed to visit or contact the child for 6 months is sufficient basis for termination

of parental rights and the court must terminate parental rights, except as specified.

This bill would require the court to take into account the particular barriers to an incarcerated parent’s or guardian’s ability to maintain contact with his or her child. This bill would also provide that the court is not required to terminate rights under those circumstances if the court finds a compelling reason for determining that termination would be detrimental to the child due to one or both parents’ or guardians’ incarceration or court-ordered participation in a residential substance abuse treatment program constituting the sole reason for which reunification services were terminated.

(5) Existing law requires the social worker to submit to the court a recommendation that the court set a hearing pursuant to Section 366.26 for the purpose of terminating parental rights for every child who is in foster care, or who enters foster care, on or after January 1, 1999, and has been in foster care for 15 of the most recent 22 months, unless a specified exception applies.

This bill would not require the social worker to submit that recommendation if the incarceration of the parent or parents, or the court-ordered participation of the parent or parents in a residential substance abuse treatment program, is a significant factor in the child’s placement in foster care for a period of 15 of the most recent 22 months.

(6) Because increasing the duties on county social workers, the bill would impose a state-mandated local program.

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

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

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

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

- 1 SECTION 1. Section 361.5 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 361.5. (a) Except as provided in subdivision (b), or when the
- 4 parent has voluntarily relinquished the child and the relinquishment

1 has been filed with the State Department of Social Services, or  
2 upon the establishment of an order of guardianship pursuant to  
3 Section 360, whenever a child is removed from a parent's or  
4 guardian's custody, the juvenile court shall order the social worker  
5 to provide child welfare services to the child and the child's mother  
6 and statutorily presumed father or guardians. Upon a finding and  
7 declaration of paternity by the juvenile court or proof of a prior  
8 declaration of paternity by any court of competent jurisdiction, the  
9 juvenile court may order services for the child and the biological  
10 father, if the court determines that the services will benefit the  
11 child. Child welfare services, when provided, shall be provided as  
12 follows:

13 (1) For a child who, on the date of initial removal from the  
14 physical custody of his or her parent or guardian, was three years  
15 of age or older, court-ordered services shall not exceed a period  
16 of 12 months from the date the child entered foster care, except as  
17 otherwise provided in paragraph (3).

18 (2) For a child who, on the date of initial removal from the  
19 physical custody of his or her parent or guardian, was under the  
20 age of three years, court-ordered services shall not exceed a period  
21 of six months from the date the child entered foster care, *or 12*  
22 *months if one or both parents or guardians are incarcerated.*

23 (3) For the purpose of placing and maintaining a sibling group  
24 together in a permanent home should reunification efforts fail, for  
25 a child in a sibling group whose members were removed from  
26 parental custody at the same time, and in which one member of  
27 the sibling group was under the age of three years on the date of  
28 initial removal from the physical custody of his or her parent or  
29 guardian, court-ordered services to some or all of the sibling group  
30 may be limited to a period of six months from the date the child  
31 entered foster care. For the purposes of this paragraph, "a sibling  
32 group" shall mean two or more children who are related to each  
33 other as full or half-siblings.

34 Regardless of the age of the child, a child shall be deemed to  
35 have entered foster care on the earlier of the date of the  
36 jurisdictional hearing held pursuant to Section 356 or the date that  
37 is 60 days after the date on which the child was initially removed  
38 from the physical custody of his or her parent or guardian.

39 Notwithstanding paragraphs (1), (2), and (3), court-ordered  
40 services may be extended up to a maximum time period not to

1 exceed 18 months after the date the child was originally removed  
2 from physical custody of his or her parent or guardian if it can be  
3 shown, at the hearing held pursuant to subdivision (f) of Section  
4 366.21, that the permanent plan for the child is that he or she will  
5 be returned and safely maintained in the home within the extended  
6 time period. The court shall extend the time period only if it finds  
7 that there is a substantial probability that the child will be returned  
8 to the physical custody of his or her parent or guardian within the  
9 extended time period or that reasonable services have not been  
10 provided to the parent or guardian. *In determining whether*  
11 *court-ordered services may be extended, the court shall consider*  
12 *the special circumstances of an incarcerated parent or parents,*  
13 *or parent or parents court-ordered to a residential substance abuse*  
14 *treatment program, including, but not limited to, barriers to the*  
15 *parent's or guardian's access to services and ability to maintain*  
16 *contact with his or her child. The court shall also consider, among*  
17 *other factors, good faith efforts that the parent or guardian has*  
18 *made to maintain contact with the child. If the court extends the*  
19 *time period, the court shall specify the factual basis for its*  
20 *conclusion that there is a substantial probability that the child will*  
21 *be returned to the physical custody of his or her parent or guardian*  
22 *within the extended time period. The court also shall make findings*  
23 *pursuant to subdivision (a) of Section 366 and subdivision (e) of*  
24 *Section 358.1.*

25 When counseling or other treatment services are ordered, the  
26 parent or guardian shall be ordered to participate in those services,  
27 unless the parent's or guardian's participation is deemed by the  
28 court to be inappropriate or potentially detrimental to the child, *or*  
29 *unless a parent or guardian is incarcerated and the corrections*  
30 *facility in which he or she is incarcerated does not provide access*  
31 *to the treatment services ordered by the court. Physical custody*  
32 *of the child by the parents or guardians during the applicable time*  
33 *period under paragraph (1), (2), or (3) shall not serve to interrupt*  
34 *the running of the period. If at the end of the applicable time period,*  
35 *a child cannot be safely returned to the care and custody of a parent*  
36 *or guardian without court supervision, but the child clearly desires*  
37 *contact with the parent or guardian, the court shall take the child's*  
38 *desire into account in devising a permanency plan.*

39 In cases where the child was under the age of three years on the  
40 date of the initial removal from the physical custody of his or her

1 parent or guardian or is a member of a sibling group as described  
2 in paragraph (3), the court shall inform the parent or guardian that  
3 the failure of the parent or guardian to participate regularly in any  
4 court-ordered treatment programs or to cooperate or avail himself  
5 or herself of services provided as part of the child welfare services  
6 case plan may result in a termination of efforts to reunify the family  
7 after six months. The court shall inform the parent or guardian of  
8 the factors used in subdivision (e) of Section 366.21 to determine  
9 whether to limit services to six months for some or all members  
10 of a sibling group as described in paragraph (3).

11 Except in cases where, pursuant to subdivision (b), the court  
12 does not order reunification services, the court shall inform the  
13 parent or parents of Section 366.26 and shall specify that the  
14 parent's or parents' parental rights may be terminated.

15 (b) Reunification services need not be provided to a parent or  
16 guardian described in this subdivision when the court finds, by  
17 clear and convincing evidence, any of the following:

18 (1) That the whereabouts of the parent or guardian is unknown.  
19 A finding pursuant to this paragraph shall be supported by an  
20 affidavit or by proof that a reasonably diligent search has failed  
21 to locate the parent or guardian. The posting or publication of  
22 notices is not required in that search.

23 (2) That the parent or guardian is suffering from a mental  
24 disability that is described in Chapter 2 (commencing with Section  
25 7820) of Part 4 of Division 12 of the Family Code and that renders  
26 him or her incapable of utilizing those services.

27 (3) That the child or a sibling of the child has been previously  
28 adjudicated a dependent pursuant to any subdivision of Section  
29 300 as a result of physical or sexual abuse, that following that  
30 adjudication the child had been removed from the custody of his  
31 or her parent or guardian pursuant to Section 361, that the child  
32 has been returned to the custody of the parent or guardian from  
33 whom the child had been taken originally, and that the child is  
34 being removed pursuant to Section 361, due to additional physical  
35 or sexual abuse.

36 (4) That the parent or guardian of the child has caused the death  
37 of another child through abuse or neglect.

38 (5) That the child was brought within the jurisdiction of the  
39 court under subdivision (e) of Section 300 because of the conduct  
40 of that parent or guardian.

1 (6) That the child has been adjudicated a dependent pursuant  
2 to any subdivision of Section 300 as a result of severe sexual abuse  
3 or the infliction of severe physical harm to the child, a sibling, or  
4 a half sibling by a parent or guardian, as defined in this subdivision,  
5 and the court makes a factual finding that it would not benefit the  
6 child to pursue reunification services with the offending parent or  
7 guardian.

8 A finding of severe sexual abuse, for the purposes of this  
9 subdivision, may be based on, but is not limited to, sexual  
10 intercourse, or stimulation involving genital-genital, oral-genital,  
11 anal-genital, or oral-anal contact, whether between the parent or  
12 guardian and the child or a sibling or half sibling of the child, or  
13 between the child or a sibling or half sibling of the child and  
14 another person or animal with the actual or implied consent of the  
15 parent or guardian; or the penetration or manipulation of the  
16 child's, sibling's, or half sibling's genital organs or rectum by any  
17 animate or inanimate object for the sexual gratification of the  
18 parent or guardian, or for the sexual gratification of another person  
19 with the actual or implied consent of the parent or guardian.

20 A finding of the infliction of severe physical harm, for the  
21 purposes of this subdivision, may be based on, but is not limited  
22 to, deliberate and serious injury inflicted to or on a child's body  
23 or the body of a sibling or half sibling of the child by an act or  
24 omission of the parent or guardian, or of another individual or  
25 animal with the consent of the parent or guardian; deliberate and  
26 torturous confinement of the child, sibling, or half sibling in a  
27 closed space; or any other torturous act or omission that would be  
28 reasonably understood to cause serious emotional damage.

29 (7) That the parent is not receiving reunification services for a  
30 sibling or a half sibling of the child pursuant to paragraph (3), (5),  
31 or (6).

32 (8) That the child was conceived by means of the commission  
33 of an offense listed in Section 288 or 288.5 of the Penal Code, or  
34 by an act committed outside of this state that, if committed in this  
35 state, would constitute one of those offenses. This paragraph only  
36 applies to the parent who committed the offense or act.

37 (9) That the child has been found to be a child described in  
38 subdivision (g) of Section 300, that the parent or guardian of the  
39 child willfully abandoned the child, and the court finds that the  
40 abandonment itself constituted a serious danger to the child; or

1 that the parent or other person having custody of the child  
2 voluntarily surrendered physical custody of the child pursuant to  
3 Section 1255.7 of the Health and Safety Code. For the purposes  
4 of this paragraph, “serious danger” means that without the  
5 intervention of another person or agency, the child would have  
6 sustained severe or permanent disability, injury, illness, or death.  
7 For purposes of this paragraph, “willful abandonment” shall not  
8 be construed as actions taken in good faith by the parent without  
9 the intent of placing the child in serious danger.

10 (10) That the court ordered termination of reunification services  
11 for any siblings or half siblings of the child because the parent or  
12 guardian failed to reunify with the sibling or half sibling after the  
13 sibling or half sibling had been removed from that parent or  
14 guardian pursuant to Section 361 and that parent or guardian is  
15 the same parent or guardian described in subdivision (a) and that,  
16 according to the findings of the court, this parent or guardian has  
17 not subsequently made a reasonable effort to treat the problems  
18 that led to removal of the sibling or half sibling of that child from  
19 that parent or guardian.

20 (11) That the parental rights of a parent over any sibling or half  
21 sibling of the child had been permanently severed, and this parent  
22 is the same parent described in subdivision (a), and that, according  
23 to the findings of the court, this parent has not subsequently made  
24 a reasonable effort to treat the problems that led to removal of the  
25 sibling or half sibling of that child from the parent.

26 (12) That the parent or guardian of the child has been convicted  
27 of a violent felony, as defined in subdivision (c) of Section 667.5  
28 of the Penal Code.

29 (13) That the parent or guardian of the child has a history of  
30 extensive, abusive, and chronic use of drugs or alcohol and has  
31 resisted prior court-ordered treatment for this problem during a  
32 three-year period immediately prior to the filing of the petition  
33 that brought that child to the court’s attention, or has failed or  
34 refused to comply with a program of drug or alcohol treatment  
35 described in the case plan required by Section 358.1 on at least  
36 two prior occasions, even though the programs identified were  
37 available and accessible.

38 (14) That the parent or guardian of the child has advised the  
39 court that he or she is not interested in receiving family  
40 maintenance or family reunification services or having the child

1 returned to or placed in his or her custody and does not wish to  
2 receive family maintenance or reunification services.

3 The parent or guardian shall be represented by counsel and shall  
4 execute a waiver of services form to be adopted by the Judicial  
5 Council. The court shall advise the parent or guardian of any right  
6 to services and of the possible consequences of a waiver of  
7 services, including the termination of parental rights and placement  
8 of the child for adoption. The court shall not accept the waiver of  
9 services unless it states on the record its finding that the parent or  
10 guardian has knowingly and intelligently waived the right to  
11 services.

12 (15) That the parent or guardian has on one or more occasions  
13 willfully abducted the child or child's sibling or half sibling from  
14 his or her placement and refused to disclose the child's or child's  
15 sibling's or half sibling's whereabouts, refused to return physical  
16 custody of the child or child's sibling or half sibling to his or her  
17 placement, or refused to return physical custody of the child or  
18 child's sibling or half sibling to the social worker.

19 (c) In deciding whether to order reunification in any case in  
20 which this section applies, the court shall hold a dispositional  
21 hearing. The social worker shall prepare a report that discusses  
22 whether reunification services shall be provided. When it is alleged,  
23 pursuant to paragraph (2) of subdivision (b), that the parent is  
24 incapable of utilizing services due to mental disability, the court  
25 shall order reunification services unless competent evidence from  
26 mental health professionals establishes that, even with the provision  
27 of services, the parent is unlikely to be capable of adequately caring  
28 for the child within the time limits specified in subdivision (a).

29 The court shall not order reunification for a parent or guardian  
30 described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12),  
31 (13), (14), or (15) of subdivision (b) unless the court finds, by clear  
32 and convincing evidence, that reunification is in the best interest  
33 of the child.

34 In addition, the court shall not order reunification in any situation  
35 described in paragraph (5) of subdivision (b) unless it finds that,  
36 based on competent testimony, those services are likely to prevent  
37 reabuse or continued neglect of the child or that failure to try  
38 reunification will be detrimental to the child because the child is  
39 closely and positively attached to that parent. The social worker  
40 shall investigate the circumstances leading to the removal of the

1 child and advise the court whether there are circumstances that  
2 indicate that reunification is likely to be successful or unsuccessful  
3 and whether failure to order reunification is likely to be detrimental  
4 to the child.

5 The failure of the parent to respond to previous services, the fact  
6 that the child was abused while the parent was under the influence  
7 of drugs or alcohol, a past history of violent behavior, or testimony  
8 by a competent professional that the parent's behavior is unlikely  
9 to be changed by services are among the factors indicating that  
10 reunification services are unlikely to be successful. The fact that  
11 a parent or guardian is no longer living with an individual who  
12 severely abused the child may be considered in deciding that  
13 reunification services are likely to be successful, provided that the  
14 court shall consider any pattern of behavior on the part of the parent  
15 that has exposed the child to repeated abuse.

16 (d) If reunification services are not ordered pursuant to  
17 paragraph (1) of subdivision (b) and the whereabouts of a parent  
18 become known within six months of the out-of-home placement  
19 of the child, the court shall order the social worker to provide  
20 family reunification services in accordance with this subdivision.

21 (e) (1) If the parent or guardian is incarcerated or  
22 institutionalized, the court shall order reasonable services unless  
23 the court determines, by clear and convincing evidence, those  
24 services would be detrimental to the child. In determining  
25 detriment, the court shall consider the age of the child, the degree  
26 of parent-child bonding, the length of the sentence, the nature of  
27 the treatment, the nature of the crime or illness, the degree of  
28 detriment to the child if services are not offered and, for children  
29 10 years of age or older, the child's attitude toward the  
30 implementation of family reunification services, and any other  
31 appropriate factors. Reunification services are subject to the  
32 applicable time limitations imposed in subdivision (a). Services  
33 may include, but shall not be limited to, all of the following:

34 (A) Maintaining contact between the parent and child through  
35 collect telephone calls.

36 (B) Transportation services, where appropriate.

37 (C) Visitation services, where appropriate.

38 (D) Reasonable services to extended family members or foster  
39 parents providing care for the child if the services are not  
40 detrimental to the child.

1 An incarcerated parent may be required to attend counseling,  
2 parenting classes, or vocational training programs as part of the  
3 service plan if these programs are available.

4 (2) The presiding judge of the juvenile court of each county  
5 may convene representatives of the county welfare department,  
6 the sheriff's department, and other appropriate entities for the  
7 purpose of developing and entering into protocols for ensuring the  
8 notification, transportation, and presence of an incarcerated or  
9 institutionalized parent at all court hearings involving proceedings  
10 affecting the child pursuant to Section 2625 of the Penal Code.

11 (3) Notwithstanding any other provision of law, if the  
12 incarcerated parent is a woman seeking to participate in the  
13 community treatment program operated by the Department of  
14 Corrections and Rehabilitation pursuant to Chapter 4.8  
15 (commencing with Section 1174) of Title 7 of Part 2 of, Chapter  
16 4 (commencing with Section 3410) of Title 2 of Part 3 of, the Penal  
17 Code, the court shall determine whether the parent's participation  
18 in a program is in the child's best interest and whether it is suitable  
19 to meet the needs of the parent and child.

20 (f) If the court, pursuant to paragraph (2), (3), (4), (5), (6), (7),  
21 (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) or  
22 paragraph (1) of subdivision (e), does not order reunification  
23 services, it shall, at the dispositional hearing, that shall include a  
24 permanency hearing, determine if a hearing under Section 366.26  
25 shall be set in order to determine whether adoption, guardianship,  
26 or long-term foster care is the most appropriate plan for the child,  
27 and shall consider in-state and out-of-state placement options. If  
28 the court so determines, it shall conduct the hearing pursuant to  
29 Section 366.26 within 120 days after the dispositional hearing.  
30 However, the court shall not schedule a hearing so long as the  
31 other parent is being provided reunification services pursuant to  
32 subdivision (a). The court may continue to permit the parent to  
33 visit the child unless it finds that visitation would be detrimental  
34 to the child.

35 (g) (1) Whenever a court orders that a hearing shall be held  
36 pursuant to Section 366.26, it shall direct the agency supervising  
37 the child and the licensed county adoption agency, or the State  
38 Department of Social Services when it is acting as an adoption  
39 agency in counties that are not served by a county adoption agency,  
40 to prepare an assessment that shall include:

1 (A) Current search efforts for an absent parent or parents.

2 (B) A review of the amount of and nature of any contact between  
3 the child and his or her parents and other members of his or her  
4 extended family since the time of placement. Although the  
5 extended family of each child shall be reviewed on a case-by-case  
6 basis, “extended family” for the purpose of this subparagraph shall  
7 include, but not be limited to, the child’s siblings, grandparents,  
8 aunts, and uncles.

9 (C) An evaluation of the child’s medical, developmental,  
10 scholastic, mental, and emotional status.

11 (D) A preliminary assessment of the eligibility and commitment  
12 of any identified prospective adoptive parent or guardian,  
13 particularly the caretaker, to include a social history including  
14 screening for criminal records and prior referrals for child abuse  
15 or neglect, the capability to meet the child’s needs, and the  
16 understanding of the legal and financial rights and responsibilities  
17 of adoption and guardianship. If a proposed guardian is a relative  
18 of the minor, and the relative was assessed for foster care placement  
19 of the minor prior to January 1, 1998, the assessment shall also  
20 consider, but need not be limited to, all of the factors specified in  
21 subdivision (a) of Section 361.3. As used in this subparagraph,  
22 “relative” means an adult who is related to the minor by blood,  
23 adoption, or affinity within the fifth degree of kinship, including  
24 stepparents, stepsiblings, and all relatives whose status is preceded  
25 by the words “great,” “great-great,” or “grand,” or the spouse of  
26 any of those persons even if the marriage was terminated by death  
27 or dissolution.

28 (E) The relationship of the child to any identified prospective  
29 adoptive parent or guardian, the duration and character of the  
30 relationship, the motivation for seeking adoption or guardianship,  
31 and a statement from the child concerning placement and the  
32 adoption or guardianship, unless the child’s age or physical,  
33 emotional, or other condition precludes his or her meaningful  
34 response, and if so, a description of the condition.

35 (F) An analysis of the likelihood that the child will be adopted  
36 if parental rights are terminated.

37 (2) (A) A relative caregiver’s preference for legal guardianship  
38 over adoption, if it is due to circumstances that do not include an  
39 unwillingness to accept legal or financial responsibility for the  
40 child, shall not constitute the sole basis for recommending removal

1 of the child from the relative caregiver for purposes of adoptive  
2 placement.

3 (B) A relative caregiver shall be given information regarding  
4 the permanency options of guardianship and adoption, including  
5 the long-term benefits and consequences of each option, prior to  
6 establishing legal guardianship or pursuing adoption.

7 (h) In determining whether reunification services will benefit  
8 the child pursuant to paragraph (6) or (7) of subdivision (b), the  
9 court shall consider any information it deems relevant, including  
10 the following factors:

11 (1) The specific act or omission comprising the severe sexual  
12 abuse or the severe physical harm inflicted on the child or the  
13 child's sibling or half sibling.

14 (2) The circumstances under which the abuse or harm was  
15 inflicted on the child or the child's sibling or half sibling.

16 (3) The severity of the emotional trauma suffered by the child  
17 or the child's sibling or half sibling.

18 (4) Any history of abuse of other children by the offending  
19 parent or guardian.

20 (5) The likelihood that the child may be safely returned to the  
21 care of the offending parent or guardian within 12 months with no  
22 continuing supervision.

23 (6) Whether or not the child desires to be reunified with the  
24 offending parent or guardian.

25 (i) The court shall read into the record the basis for a finding of  
26 severe sexual abuse or the infliction of severe physical harm under  
27 paragraph (6) of subdivision (b), and shall also specify the factual  
28 findings used to determine that the provision of reunification  
29 services to the offending parent or guardian would not benefit the  
30 child.

31 SEC. 2. Section 366.21 of the Welfare and Institutions Code  
32 is amended to read:

33 366.21. (a) Every hearing conducted by the juvenile court  
34 reviewing the status of a dependent child shall be placed on the  
35 appearance calendar. The court shall advise all persons present at  
36 the hearing of the date of the future hearing and of their right to  
37 be present and represented by counsel.

38 (b) Except as provided in Sections 294 and 295, notice of the  
39 hearing shall be provided pursuant to Section 293.

1 (c) At least 10 calendar days prior to the hearing, the social  
2 worker shall file a supplemental report with the court regarding  
3 the services provided or offered to the parent or legal guardian to  
4 enable him or her to assume custody and the efforts made to  
5 achieve legal permanence for the child if efforts to reunify fail,  
6 including, but not limited to, efforts to maintain relationships  
7 between a child who is 10 years of age or older and has been in  
8 out-of-home placement for six months or longer and individuals  
9 who are important to the child, consistent with the child’s best  
10 interests; the progress made; and, where relevant, the prognosis  
11 for return of the child to the physical custody of his or her parent  
12 or legal guardian; and shall make his or her recommendation for  
13 disposition. If the child is a member of a sibling group described  
14 in paragraph (3) of subdivision (a) of Section 361.5, the report and  
15 recommendation may also take into account those factors described  
16 in subdivision (e) relating to the child’s sibling group. If the  
17 recommendation is not to return the child to a parent or legal  
18 guardian, the report shall specify why the return of the child would  
19 be detrimental to the child. The social worker shall provide the  
20 parent or legal guardian, counsel for the child, and any  
21 court-appointed child advocate with a copy of the report, including  
22 his or her recommendation for disposition, at least 10 calendar  
23 days prior to the hearing. In the case of a child removed from the  
24 physical custody of his or her parent or legal guardian, the social  
25 worker shall, at least 10 calendar days prior to the hearing, provide  
26 a summary of his or her recommendation for disposition to any  
27 foster parents, relative caregivers, and certified foster parents who  
28 have been approved for adoption by the State Department of Social  
29 Services when it is acting as an adoption agency in counties that  
30 are not served by a county adoption agency or by a licensed county  
31 adoption agency, community care facility, or foster family agency  
32 having the physical custody of the child. The social worker shall  
33 include a copy of the Judicial Council Caregiver Information Form  
34 (JV-290) with the summary of recommendations to the child’s  
35 foster parents, relative caregivers, or foster parents approved for  
36 adoption, in the caregiver’s primary language when available,  
37 along with information on how to file the form with the court.

38 (d) Prior to any hearing involving a child in the physical custody  
39 of a community care facility or a foster family agency that may  
40 result in the return of the child to the physical custody of his or

1 her parent or legal guardian, or in adoption or the creation of a  
2 legal guardianship, the facility or agency shall file with the court  
3 a report, or a Judicial Council Caregiver Information Form  
4 (JV-290), containing its recommendation for disposition. Prior to  
5 the hearing involving a child in the physical custody of a foster  
6 parent, a relative caregiver, or a certified foster parent who has  
7 been approved for adoption by the State Department of Social  
8 Services when it is acting as an adoption agency or by a licensed  
9 adoption agency, the foster parent, relative caregiver, or the  
10 certified foster parent who has been approved for adoption by the  
11 State Department of Social Services when it is acting as an  
12 adoption agency in counties that are not served by a county  
13 adoption agency or by a licensed county adoption agency, may  
14 file with the court a report containing his or her recommendation  
15 for disposition. The court shall consider the report and  
16 recommendation filed pursuant to this subdivision prior to  
17 determining any disposition.

18 (e) At the review hearing held six months after the initial  
19 dispositional hearing, the court shall order the return of the child  
20 to the physical custody of his or her parent or legal guardian unless  
21 the court finds, by a preponderance of the evidence, that the return  
22 of the child to his or her parent or legal guardian would create a  
23 substantial risk of detriment to the safety, protection, or physical  
24 or emotional well-being of the child. The social worker shall have  
25 the burden of establishing that detriment. At the hearing, the court  
26 shall consider the criminal history, obtained pursuant to paragraph  
27 (1) of subdivision (f) of Section 16504.5, of the parent or legal  
28 guardian subsequent to the child's removal *to the extent that the*  
29 *criminal record demonstrates a pattern of behavior substantially*  
30 *related to the welfare of the child or the parent's or guardian's*  
31 *ability to exercise custody and control regarding his or her child,*  
32 *provided that he or she the parent or legal guardian agreed to*  
33 *submit fingerprint images to obtain criminal history information*  
34 *as part of the case plan. The failure of the parent or legal guardian*  
35 *to participate regularly and make substantive progress in*  
36 *court-ordered treatment programs shall be prima facie evidence*  
37 *that return would be detrimental, except when that failure is due*  
38 *to circumstances outside of the parent or legal guardian's control,*  
39 *such as incarceration.* In making its determination, the court shall  
40 review and consider the social worker's report and

1 recommendations and the report and recommendations of any child  
2 advocate appointed pursuant to Section 356.5; and shall consider  
3 the efforts or progress, or both, demonstrated by the parent or legal  
4 guardian and the extent to which he or she availed himself or  
5 herself to services provided, *taking into account the particular*  
6 *barriers to an incarcerated parent or legal guardian's access to*  
7 *those court-mandated services and ability to maintain contact with*  
8 *his or her child.*

9 Regardless of whether the child is returned to a parent or legal  
10 guardian, the court shall specify the factual basis for its conclusion  
11 that the return would be detrimental or would not be detrimental.  
12 The court also shall make appropriate findings pursuant to  
13 subdivision (a) of Section 366; and, where relevant, shall order  
14 any additional services reasonably believed to facilitate the return  
15 of the child to the custody of his or her parent or legal guardian.  
16 The court shall also inform the parent or legal guardian that if the  
17 child cannot be returned home by the 12-month permanency  
18 hearing, a proceeding pursuant to Section 366.26 may be instituted.  
19 This section does not apply in a case where, pursuant to Section  
20 361.5, the court has ordered that reunification services shall not  
21 be provided.

22 If the child was under the age of three years on the date of the  
23 initial removal, or is a member of a sibling group described in  
24 paragraph (3) of subdivision (a) of Section 361.5, and the court  
25 finds by clear and convincing evidence that the parent failed to  
26 participate regularly and make substantive progress in a  
27 court-ordered treatment plan, the court may schedule a hearing  
28 pursuant to Section 366.26 within 120 days. If, however, the court  
29 finds there is a substantial probability that the child, who was under  
30 the age of three years on the date of initial removal or is a member  
31 of a sibling group described in paragraph (3) of subdivision (a) of  
32 Section 361.5, may be returned to his or her parent or legal  
33 guardian within six months or that reasonable services have not  
34 been provided, the court shall continue the case to the 12-month  
35 permanency hearing.

36 For the purpose of placing and maintaining a sibling group  
37 together in a permanent home, the court, in making its  
38 determination to schedule a hearing pursuant to Section 366.26  
39 for some or all members of a sibling group, as described in  
40 paragraph (3) of subdivision (a) of Section 361.5, shall review and

1 consider the social worker’s report and recommendations. Factors  
2 the report shall address, and the court shall consider, may include,  
3 but need not be limited to, whether the sibling group was removed  
4 from parental care as a group, the closeness and strength of the  
5 sibling bond, the ages of the siblings, the appropriateness of  
6 maintaining the sibling group together, the detriment to the child  
7 if sibling ties are not maintained, the likelihood of finding a  
8 permanent home for the sibling group, whether the sibling group  
9 is currently placed together in a preadoptive home or has a  
10 concurrent plan goal of legal permanency in the same home, the  
11 wishes of each child whose age and physical and emotional  
12 condition permits a meaningful response, and the best interest of  
13 each child in the sibling group. The court shall specify the factual  
14 basis for its finding that it is in the best interest of each child to  
15 schedule a hearing pursuant to Section 366.26 in 120 days for some  
16 or all of the members of the sibling group.

17 If the child was removed initially under subdivision (g) of  
18 Section 300 and the court finds by clear and convincing evidence  
19 that the whereabouts of the parent are still unknown, or the parent  
20 has failed to contact and visit the child, the court may schedule a  
21 hearing pursuant to Section 366.26 within 120 days. If the court  
22 finds by clear and convincing evidence that the parent has been  
23 convicted of a felony indicating parental unfitness, the court may  
24 schedule a hearing pursuant to Section 366.26 within 120 days.

25 If the child had been placed under court supervision with a  
26 previously noncustodial parent pursuant to Section 361.2, the court  
27 shall determine whether supervision is still necessary. The court  
28 may terminate supervision and transfer permanent custody to that  
29 parent, as provided for by paragraph (1) of subdivision (b) of  
30 Section 361.2.

31 In all other cases, the court shall direct that any reunification  
32 services previously ordered shall continue to be offered to the  
33 parent or legal guardian pursuant to the time periods set forth in  
34 subdivision (a) of Section 361.5, provided that the court may  
35 modify the terms and conditions of those services.

36 If the child is not returned to his or her parent or legal guardian,  
37 the court shall determine whether reasonable services that were  
38 designed to aid the parent or legal guardian in overcoming the  
39 problems that led to the initial removal and the continued custody  
40 of the child have been provided or offered to the parent or legal

1 guardian. The court shall order that those services be initiated,  
2 continued, or terminated.

3 (f) The permanency hearing shall be held no later than 12  
4 months after the date the child entered foster care, as that date is  
5 determined pursuant to subdivision (a) of Section 361.5. At the  
6 permanency hearing, the court shall determine the permanent plan  
7 for the child, which shall include a determination of whether the  
8 child will be returned to the child's home and, if so, when, within  
9 the time limits of subdivision (a) of Section 361.5. The court shall  
10 order the return of the child to the physical custody of his or her  
11 parent or legal guardian unless the court finds, by a preponderance  
12 of the evidence, that the return of the child to his or her parent or  
13 legal guardian would create a substantial risk of detriment to the  
14 safety, protection, or physical or emotional well-being of the child.  
15 The social worker shall have the burden of establishing that  
16 detriment. At the permanency hearing, the court shall consider the  
17 criminal history, obtained pursuant to paragraph (1) of subdivision  
18 (f) of Section 16504.5, of the parent or legal guardian subsequent  
19 to the child's removal, provided that he or she agreed to submit  
20 fingerprint images to obtain criminal history information as part  
21 of the case plan. The court shall also determine whether reasonable  
22 services that were designed to aid the parent or legal guardian to  
23 overcome the problems that led to the initial removal and continued  
24 custody of the child have been provided or offered to the parent  
25 or legal guardian. For each youth 16 years of age and older, the  
26 court shall also determine whether services have been made  
27 available to assist him or her in making the transition from foster  
28 care to independent living. The failure of the parent or legal  
29 guardian to participate regularly and make substantive progress in  
30 court-ordered treatment programs shall be prima facie evidence  
31 that return would be detrimental. In making its determination, the  
32 court shall review and consider the social worker's report and  
33 recommendations and the report and recommendations of any child  
34 advocate appointed pursuant to Section 356.5, shall consider the  
35 efforts or progress, or both, demonstrated by the parent or legal  
36 guardian and the extent to which he or she availed himself or  
37 herself of services provided, and shall make appropriate findings  
38 pursuant to subdivision (a) of Section 366.

39 Regardless of whether the child is returned to his or her parent  
40 or legal guardian, the court shall specify the factual basis for its

1 decision. If the child is not returned to a parent or legal guardian,  
2 the court shall specify the factual basis for its conclusion that the  
3 return would be detrimental. The court also shall make a finding  
4 pursuant to subdivision (a) of Section 366. If the child is not  
5 returned to his or her parent or legal guardian, the court shall  
6 consider, and state for the record, in-state and out-of-state  
7 placement options. If the child is placed out of the state, the court  
8 shall make a determination whether the out-of-state placement  
9 continues to be appropriate and in the best interests of the child.

10 (g) If the time period in which the court-ordered services were  
11 provided has met or exceeded the time period set forth in paragraph  
12 (1), (2), or (3) of subdivision (a) of Section 361.5, as appropriate,  
13 and a child is not returned to the custody of a parent or legal  
14 guardian at the permanency hearing held pursuant to subdivision  
15 (f), the court shall do one of the following:

16 (1) Continue the case for up to six months for a permanency  
17 review hearing, provided that the hearing shall occur within 18  
18 months of the date the child was originally taken from the physical  
19 custody of his or her parent or legal guardian. The court shall  
20 continue the case only if it finds that there is a substantial  
21 probability that the child will be returned to the physical custody  
22 of his or her parent or legal guardian and safely maintained in the  
23 home within the extended period of time or that reasonable services  
24 have not been provided to the parent or legal guardian. For the  
25 purposes of this section, in order to find a substantial probability  
26 that the child will be returned to the physical custody of his or her  
27 parent or legal guardian and safely maintained in the home within  
28 the extended period of time, the court shall be required to find all  
29 of the following:

30 (A) That the parent or legal guardian has consistently and  
31 regularly contacted and visited with the child.

32 (B) That the parent or legal guardian has made significant  
33 progress in resolving problems that led to the child's removal from  
34 the home.

35 (C) The parent or legal guardian has demonstrated the capacity  
36 and ability both to complete the objectives of his or her treatment  
37 plan and to provide for the child's safety, protection, physical and  
38 emotional well-being, and special needs.

39 For purposes of this subdivision, the court's decision to continue  
40 the case based on a finding or substantial probability that the child

1 will be returned to the physical custody of his or her parent or legal  
2 guardian is a compelling reason for determining that a hearing  
3 held pursuant to Section 366.26 is not in the best interests of the  
4 child.

5 The court shall inform the parent or legal guardian that if the  
6 child cannot be returned home by the next permanency review  
7 hearing, a proceeding pursuant to Section 366.26 may be instituted.  
8 The court may not order that a hearing pursuant to Section 366.26  
9 be held unless there is clear and convincing evidence that  
10 reasonable services have been provided or offered to the parent or  
11 legal guardian.

12 (2) Order that a hearing be held within 120 days, pursuant to  
13 Section 366.26, but only if the court does not continue the case to  
14 the permanency planning review hearing and there is clear and  
15 convincing evidence that reasonable services have been provided  
16 or offered to the parents or legal guardians.

17 (3) Order that the child remain in long-term foster care, but only  
18 if the court finds by clear and convincing evidence, based upon  
19 the evidence already presented to it, including a recommendation  
20 by the State Department of Social Services when it is acting as an  
21 adoption agency in counties that are not served by a county  
22 adoption agency or by a licensed county adoption agency, that  
23 there is a compelling reason for determining that a hearing held  
24 pursuant to Section 366.26 is not in the best interest of the child  
25 because the child is not a proper subject for adoption and has no  
26 one willing to accept legal guardianship. For purposes of this  
27 section, a recommendation by the State Department of Social  
28 Services when it is acting as an adoption agency in counties that  
29 are not served by a county adoption agency or by a licensed county  
30 adoption agency that adoption is not in the best interest of the child  
31 shall constitute a compelling reason for the court's determination.  
32 That recommendation shall be based on the present circumstances  
33 of the child and may not preclude a different recommendation at  
34 a later date if the child's circumstances change.

35 If the court orders that a child who is 10 years of age or older  
36 remain in long-term foster care, the court shall determine whether  
37 the agency has made reasonable efforts to maintain the child's  
38 relationships with individuals other than the child's siblings who  
39 are important to the child, consistent with the child's best interests,

1 and may make any appropriate order to ensure that those  
2 relationships are maintained.

3 If the child is not returned to his or her parent or legal guardian,  
4 the court shall consider, and state for the record, in-state and  
5 out-of-state options for permanent placement. If the child is placed  
6 out of the state, the court shall make a determination whether the  
7 out-of-state placement continues to be appropriate and in the best  
8 interests of the child.

9 (h) In any case in which the court orders that a hearing pursuant  
10 to Section 366.26 shall be held, it shall also order the termination  
11 of reunification services to the parent or legal guardian. The court  
12 shall continue to permit the parent or legal guardian to visit the  
13 child pending the hearing unless it finds that visitation would be  
14 detrimental to the child. The court shall make any other appropriate  
15 orders to enable the child to maintain relationships with individuals,  
16 other than the child's siblings, who are important to the child,  
17 consistent with the child's best interests.

18 (i) (1) Whenever a court orders that a hearing pursuant to  
19 Section 366.26 shall be held, it shall direct the agency supervising  
20 the child and the licensed county adoption agency, or the State  
21 Department of Social Services when it is acting as an adoption  
22 agency in counties that are not served by a county adoption agency,  
23 to prepare an assessment that shall include:

24 (A) Current search efforts for an absent parent or parents or  
25 legal guardians.

26 (B) A review of the amount of and nature of any contact between  
27 the child and his or her parents or legal guardians and other  
28 members of his or her extended family since the time of placement.  
29 Although the extended family of each child shall be reviewed on  
30 a case-by-case basis, "extended family" for the purpose of this  
31 subparagraph shall include, but not be limited to, the child's  
32 siblings, grandparents, aunts, and uncles.

33 (C) An evaluation of the child's medical, developmental,  
34 scholastic, mental, and emotional status.

35 (D) A preliminary assessment of the eligibility and commitment  
36 of any identified prospective adoptive parent or legal guardian,  
37 particularly the caretaker, to include a social history including  
38 screening for criminal records and prior referrals for child abuse  
39 or neglect, the capability to meet the child's needs, and the  
40 understanding of the legal and financial rights and responsibilities

1 of adoption and guardianship. If a proposed guardian is a relative  
2 of the minor, and the relative was assessed for foster care placement  
3 of the minor prior to January 1, 1998, the assessment shall also  
4 consider, but need not be limited to, all of the factors specified in  
5 subdivision (a) of Section 361.3.

6 (E) The relationship of the child to any identified prospective  
7 adoptive parent or legal guardian, the duration and character of  
8 the relationship, the motivation for seeking adoption or  
9 guardianship, and a statement from the child concerning placement  
10 and the adoption or guardianship, unless the child's age or physical,  
11 emotional, or other condition precludes his or her meaningful  
12 response, and if so, a description of the condition.

13 (F) A description of efforts to be made to identify a prospective  
14 adoptive parent or legal guardian, including, but not limited to,  
15 child-specific recruitment and listing on an adoption exchange  
16 within the state or out of the state.

17 (G) An analysis of the likelihood that the child will be adopted  
18 if parental rights are terminated.

19 (2) (A) A relative caregiver's preference for legal guardianship  
20 over adoption, if it is due to circumstances that do not include an  
21 unwillingness to accept legal or financial responsibility for the  
22 child, shall not constitute the sole basis for recommending removal  
23 of the child from the relative caregiver for purposes of adoptive  
24 placement.

25 (B) A relative caregiver shall be given information regarding  
26 the permanency options of guardianship and adoption, including  
27 the long-term benefits and consequences of each option, prior to  
28 establishing legal guardianship or pursuing adoption.

29 (j) If, at any hearing held pursuant to Section 366.26, a  
30 guardianship is established for the minor with a relative, and  
31 juvenile court dependency is subsequently dismissed, the relative  
32 shall be eligible for aid under the Kin-GAP Program, as provided  
33 for in Article 4.5 (commencing with Section 11360) of Chapter 2  
34 of Part 3 of Division 9.

35 (k) As used in this section, "relative" means an adult who is  
36 related to the minor by blood, adoption, or affinity within the fifth  
37 degree of kinship, including stepparents, stepsiblings, and all  
38 relatives whose status is preceded by the words "great,"  
39 "great-great," or "grand," or the spouse of any of those persons  
40 even if the marriage was terminated by death or dissolution.

1 (l) For purposes of this section, evidence of any of the following  
2 circumstances may not, in and of itself, be deemed a failure to  
3 provide or offer reasonable services:

4 (1) The child has been placed with a foster family that is eligible  
5 to adopt a child, or has been placed in a preadoptive home.

6 (2) The case plan includes services to make and finalize a  
7 permanent placement for the child if efforts to reunify fail.

8 (3) Services to make and finalize a permanent placement for  
9 the child, if efforts to reunify fail, are provided concurrently with  
10 services to reunify the family.

11 (m) The implementation and operation of the amendments to  
12 subdivisions (c) and (g) enacted at the 2005–06 Regular Session  
13 shall be subject to appropriation through the budget process and  
14 by phase, as provided in Section 366.35.

15 SEC. 3. Section 366.26 of the Welfare and Institutions Code  
16 is amended to read:

17 366.26. (a) This section applies to children who are adjudged  
18 dependent children of the juvenile court pursuant to subdivision  
19 (d) of Section 360. The procedures specified herein are the  
20 exclusive procedures for conducting these hearings; Part 2  
21 (commencing with Section 3020) of Division 8 of the Family Code  
22 is not applicable to these proceedings. Section 8616.5 of the Family  
23 Code is applicable and available to all dependent children meeting  
24 the requirements of that section, if the postadoption contact  
25 agreement has been entered into voluntarily. For children who are  
26 adjudged dependent children of the juvenile court pursuant to  
27 subdivision (d) of Section 360, this section and Sections 8604,  
28 8605, 8606, and 8700 of the Family Code and Chapter 5  
29 (commencing with Section 7660) of Part 3 of Division 12 of the  
30 Family Code specify the exclusive procedures for permanently  
31 terminating parental rights with regard to, or establishing legal  
32 guardianship of, the child while the child is a dependent child of  
33 the juvenile court.

34 (b) At the hearing, which shall be held in juvenile court for all  
35 children who are dependents of the juvenile court, the court, in  
36 order to provide stable, permanent homes for these children, shall  
37 review the report as specified in Section 361.5, 366.21, or 366.22,  
38 shall indicate that the court has read and considered it, shall receive  
39 other evidence that the parties may present, and then shall make  
40 findings and orders in the following order of preference:

1 (1) Terminate the rights of the parent or parents and order that  
2 the child be placed for adoption and, upon the filing of a petition  
3 for adoption in the juvenile court, order that a hearing be set. The  
4 court shall proceed with the adoption after the appellate rights of  
5 the natural parents have been exhausted.

6 (2) Appoint a relative or relatives with whom the child is  
7 currently residing as legal guardian or guardians for the child, and  
8 order that letters of guardianship issue.

9 (3) On making a finding under paragraph (3) of subdivision (c),  
10 identify adoption as the permanent placement goal and order that  
11 efforts be made to locate an appropriate adoptive family for the  
12 child within a period not to exceed 180 days.

13 (4) Appoint a nonrelative legal guardian for the child and order  
14 that letters of guardianship issue.

15 (5) Order that the child be placed in long-term foster care,  
16 subject to the periodic review of the juvenile court under Section  
17 366.3.

18 In choosing among the above alternatives the court shall proceed  
19 pursuant to subdivision (c).

20 (c) (1) If the court determines, based on the assessment provided  
21 as ordered under subdivision (i) of Section 366.21 or subdivision  
22 (b) of Section 366.22, and any other relevant evidence, by a clear  
23 and convincing standard, that it is likely the child will be adopted,  
24 the court shall terminate parental rights and order the child placed  
25 for adoption. The fact that the child is not yet placed in a  
26 preadoptive home nor with a relative or foster family who is  
27 prepared to adopt the child, shall not constitute a basis for the court  
28 to conclude that it is not likely the child will be adopted. A finding  
29 under subdivision (b) or paragraph (1) of subdivision (e) of Section  
30 361.5 that reunification services shall not be offered, under  
31 subdivision (e) of Section 366.21 that the whereabouts of a parent  
32 have been unknown for six months or that the parent has failed to  
33 visit or contact the child for six months, *taking into account the*  
34 *particular barriers to an incarcerated parent's or guardian's*  
35 *ability to maintain contact with his or her child*, or that the parent  
36 has been convicted of a felony indicating parental unfitness, or,  
37 under Section 366.21 or 366.22, that the court has continued to  
38 remove the child from the custody of the parent or guardian and  
39 has terminated reunification services, shall constitute a sufficient  
40 basis for termination of parental rights. Under these circumstances,

1 the court shall terminate parental rights unless either of the  
2 following applies:

3 (A) The child is living with a relative who is unable or unwilling  
4 to adopt the child because of circumstances that do not include an  
5 unwillingness to accept legal or financial responsibility for the  
6 child, but who is willing and capable of providing the child with  
7 a stable and permanent environment through legal guardianship,  
8 and the removal of the child from the custody of his or her relative  
9 would be detrimental to the emotional well-being of the child. For  
10 purposes of an Indian child, “relative” shall include an “extended  
11 family member,” as defined in the federal Indian Child Welfare  
12 Act (25 U.S.C. Sec. 1903(2)).

13 (B) The court finds a compelling reason for determining that  
14 termination would be detrimental to the child due to one or more  
15 of the following circumstances:

16 (i) The parents have maintained regular visitation and contact  
17 with the child and the child would benefit from continuing the  
18 relationship.

19 (ii) A child 12 years of age or older objects to termination of  
20 parental rights.

21 (iii) The child is placed in a residential treatment facility,  
22 adoption is unlikely or undesirable, and continuation of parental  
23 rights will not prevent finding the child a permanent family  
24 placement if the parents cannot resume custody when residential  
25 care is no longer needed.

26 (iv) The child is living with a foster parent or Indian custodian  
27 who is unable or unwilling to adopt the child because of  
28 exceptional circumstances, that do not include an unwillingness  
29 to accept legal or financial responsibility for the child, but who is  
30 willing and capable of providing the child with a stable and  
31 permanent environment and the removal of the child from the  
32 physical custody of his or her foster parent or Indian custodian  
33 would be detrimental to the emotional well-being of the child. This  
34 clause does not apply to any child who is either (I) under six years  
35 of age or (II) a member of a sibling group where at least one child  
36 is under six years of age and the siblings are, or should be,  
37 permanently placed together.

38 (v) There would be substantial interference with a child’s sibling  
39 relationship, taking into consideration the nature and extent of the  
40 relationship, including, but not limited to, whether the child was

1 raised with a sibling in the same home, whether the child shared  
2 significant common experiences or has existing close and strong  
3 bonds with a sibling, and whether ongoing contact is in the child's  
4 best interest, including the child's long-term emotional interest,  
5 as compared to the benefit of legal permanence through adoption.

6 (vi) The child is an Indian child and there is a compelling reason  
7 for determining that termination of parental rights would not be  
8 in the best interest of the child, including, but not limited to:

9 (I) Termination of parental rights would substantially interfere  
10 with the child's connection to his or her tribal community or the  
11 child's tribal membership rights.

12 (II) The child's tribe has identified guardianship, long-term  
13 foster care with a fit and willing relative, or another planned  
14 permanent living arrangement for the child.

15 *(vii) One or both parents' or guardians' incarceration or*  
16 *court-ordered participation in a residential substance abuse*  
17 *treatment program constituted the sole reason for which*  
18 *reunification services were terminated.*

19 If the court finds that termination of parental rights would be  
20 detrimental to the child pursuant to clause (i), (ii), (iii), (iv), (v),  
21 ~~or~~ (vi), *or* (vii), it shall state its reasons in writing or on the record.

22 (2) The court shall not terminate parental rights if:

23 (A) At each hearing at which the court was required to consider  
24 reasonable efforts or services, the court has found that reasonable  
25 efforts were not made or that reasonable services were not offered  
26 or provided.

27 (B) In the case of an Indian child:

28 (i) At the hearing terminating parental rights, the court has found  
29 that active efforts were not made as required in Section 361.7.

30 (ii) The court does not make a determination at the hearing  
31 terminating parental rights, supported by evidence beyond a  
32 reasonable doubt, including testimony of one or more "qualified  
33 expert witnesses" as defined in Section 224.6, that the continued  
34 custody of the child by the parent is likely to result in serious  
35 emotional or physical damage to the child.

36 (3) If the court finds that termination of parental rights would  
37 not be detrimental to the child pursuant to paragraph (1) and that  
38 the child has a probability for adoption but is difficult to place for  
39 adoption and there is no identified or available prospective adoptive  
40 parent, the court may identify adoption as the permanent placement

1 goal and without terminating parental rights, order that efforts be  
2 made to locate an appropriate adoptive family for the child, within  
3 the state or out of the state, within a period not to exceed 180 days.  
4 During this 180-day period, the public agency responsible for  
5 seeking adoptive parents for each child shall, to the extent possible,  
6 ask each child who is 10 years of age or older, to identify any  
7 individuals, other than the child's siblings, who are important to  
8 the child, in order to identify potential adoptive parents. The public  
9 agency may ask any other child to provide that information, as  
10 appropriate. During the 180-day period, the public agency shall,  
11 to the extent possible, contact other private and public adoption  
12 agencies regarding the availability of the child for adoption. During  
13 the 180-day period, the public agency shall conduct the search for  
14 adoptive parents in the same manner as prescribed for children in  
15 Sections 8708 and 8709 of the Family Code. At the expiration of  
16 this period, another hearing shall be held and the court shall  
17 proceed pursuant to paragraph (1) or (4) of subdivision (b). For  
18 purposes of this section, a child may only be found to be difficult  
19 to place for adoption if there is no identified or available  
20 prospective adoptive parent for the child because of the child's  
21 membership in a sibling group, or the presence of a diagnosed  
22 medical, physical, or mental handicap, or the child is the age of  
23 seven years or more.

24 (4) (A) If the court finds that adoption of the child or  
25 termination of parental rights is not in the best interest of the child,  
26 because one of the conditions in clause (i), (ii), (iii), (iv), (v), or  
27 (vi) of subparagraph (B) of paragraph (1) or in paragraph (2)  
28 applies, the court shall either order that the present caretakers or  
29 other appropriate persons shall become legal guardians of the child  
30 or order that the child remain in long-term foster care. Legal  
31 guardianship shall be considered before long-term foster care, if  
32 it is in the best interests of the child and if a suitable guardian can  
33 be found. A child who is 10 years of age or older, shall be asked  
34 to identify any individuals, other than the child's siblings, who are  
35 important to the child, in order to identify potential guardians. The  
36 agency may ask any other child to provide that information, as  
37 appropriate.

38 (B) If the child is living with a relative or a foster parent who  
39 is willing and capable of providing a stable and permanent  
40 environment, but not willing to become a legal guardian, the child

1 shall not be removed from the home if the court finds the removal  
2 would be seriously detrimental to the emotional well-being of the  
3 child because the child has substantial psychological ties to the  
4 relative caretaker or foster parents.

5 (C) The court shall also make an order for visitation with the  
6 parents or guardians unless the court finds by a preponderance of  
7 the evidence that the visitation would be detrimental to the physical  
8 or emotional well-being of the child.

9 (5) If the court finds that the child should not be placed for  
10 adoption, that legal guardianship shall not be established, and that  
11 there are no suitable foster parents except exclusive-use homes  
12 available to provide the child with a stable and permanent  
13 environment, the court may order the care, custody, and control  
14 of the child transferred from the county welfare department to a  
15 licensed foster family agency. The court shall consider the written  
16 recommendation of the county welfare director regarding the  
17 suitability of the transfer. The transfer shall be subject to further  
18 court orders.

19 The licensed foster family agency shall place the child in a  
20 suitable licensed or exclusive-use home that has been certified by  
21 the agency as meeting licensing standards. The licensed foster  
22 family agency shall be responsible for supporting the child and  
23 providing appropriate services to the child, including those services  
24 ordered by the court. Responsibility for the support of the child  
25 shall not, in and of itself, create liability on the part of the foster  
26 family agency to third persons injured by the child. Those children  
27 whose care, custody, and control are transferred to a foster family  
28 agency shall not be eligible for foster care maintenance payments  
29 or child welfare services, except for emergency response services  
30 pursuant to Section 16504.

31 (d) The proceeding for the appointment of a guardian for a child  
32 who is a dependent of the juvenile court shall be in the juvenile  
33 court. If the court finds pursuant to this section that legal  
34 guardianship is the appropriate permanent plan, it shall appoint  
35 the legal guardian and issue letters of guardianship. The assessment  
36 prepared pursuant to subdivision (g) of Section 361.5, subdivision  
37 (i) of Section 366.21, and subdivision (b) of Section 366.22 shall  
38 be read and considered by the court prior to the appointment, and  
39 this shall be reflected in the minutes of the court. The person

1 preparing the assessment may be called and examined by any party  
2 to the proceeding.

3 (e) The proceeding for the adoption of a child who is a  
4 dependent of the juvenile court shall be in the juvenile court if the  
5 court finds pursuant to this section that adoption is the appropriate  
6 permanent plan and the petition for adoption is filed in the juvenile  
7 court. Upon the filing of a petition for adoption, the juvenile court  
8 shall order that an adoption hearing be set. The court shall proceed  
9 with the adoption after the appellate rights of the natural parents  
10 have been exhausted. The full report required by Section 8715 of  
11 the Family Code shall be read and considered by the court prior  
12 to the adoption and this shall be reflected in the minutes of the  
13 court. The person preparing the report may be called and examined  
14 by any party to the proceeding. It is the intent of the Legislature,  
15 pursuant to this subdivision, to give potential adoptive parents the  
16 option of filing in the juvenile court the petition for the adoption  
17 of a child who is a dependent of the juvenile court. Nothing in this  
18 section is intended to prevent the filing of a petition for adoption  
19 in any other court as permitted by law, instead of in the juvenile  
20 court.

21 (f) At the beginning of any proceeding pursuant to this section,  
22 if the child or the parents are not being represented by previously  
23 retained or appointed counsel, the court shall proceed as follows:

24 (1) In accordance with subdivision (c) of Section 317, if a child  
25 before the court is without counsel, the court shall appoint counsel  
26 unless the court finds that the child would not benefit from the  
27 appointment of counsel. The court shall state on the record its  
28 reasons for that finding.

29 (2) If a parent appears without counsel and is unable to afford  
30 counsel, the court shall appoint counsel for the parent, unless this  
31 representation is knowingly and intelligently waived. The same  
32 counsel shall not be appointed to represent both the child and his  
33 or her parent. The public defender or private counsel may be  
34 appointed as counsel for the parent.

35 (3) Private counsel appointed under this section shall receive a  
36 reasonable sum for compensation and expenses, the amount of  
37 which shall be determined by the court. The amount shall be paid  
38 by the real parties in interest, other than the child, in any  
39 proportions the court deems just. However, if the court finds that

1 any of the real parties in interest are unable to afford counsel, the  
2 amount shall be paid out of the general fund of the county.

3 (g) The court may continue the proceeding for a period of time  
4 not to exceed 30 days as necessary to appoint counsel, and to  
5 enable counsel to become acquainted with the case.

6 (h) (1) At all proceedings under this section, the court shall  
7 consider the wishes of the child and shall act in the best interests  
8 of the child.

9 (2) In accordance with Section 349, the child shall be present  
10 in court if the child or the child's counsel so requests or the court  
11 so orders. If the child is 10 years of age or older and is not present  
12 at a hearing held pursuant to this section, the court shall determine  
13 whether the minor was properly notified of his or her right to attend  
14 the hearing and inquire as to the reason why the child is not present.

15 (3) (A) The testimony of the child may be taken in chambers  
16 and outside the presence of the child's parent or parents, if the  
17 child's parent or parents are represented by counsel, the counsel  
18 is present, and any of the following circumstances exists:

19 (i) The court determines that testimony in chambers is necessary  
20 to ensure truthful testimony.

21 (ii) The child is likely to be intimidated by a formal courtroom  
22 setting.

23 (iii) The child is afraid to testify in front of his or her parent or  
24 parents.

25 (B) After testimony in chambers, the parent or parents of the  
26 child may elect to have the court reporter read back the testimony  
27 or have the testimony summarized by counsel for the parent or  
28 parents.

29 (C) The testimony of a child also may be taken in chambers and  
30 outside the presence of the guardian or guardians of a child under  
31 the circumstances specified in this subdivision.

32 (i) (1) Any order of the court permanently terminating parental  
33 rights under this section shall be conclusive and binding upon the  
34 child, upon the parent or parents and upon all other persons who  
35 have been served with citation by publication or otherwise as  
36 provided in this chapter. After making the order, the juvenile court  
37 shall have no power to set aside, change, or modify it, except as  
38 provided in paragraph (2), but nothing in this section shall be  
39 construed to limit the right to appeal the order.

1 (2) A child who has not been adopted after the passage of at  
2 least three years from the date the court terminated parental rights  
3 and for whom the court has determined that adoption is no longer  
4 the permanent plan may petition the juvenile court to reinstate  
5 parental rights pursuant to the procedure prescribed by Section  
6 388. The child may file the petition prior to the expiration of this  
7 three-year period if the State Department of Social Services or  
8 licensed adoption agency that is responsible for custody and  
9 supervision of the child as described in subdivision (j) and the  
10 child stipulate that the child is no longer likely to be adopted. A  
11 child over 12 years of age shall sign the petition in the absence of  
12 a showing of good cause as to why the child could not do so. If it  
13 appears that the best interests of the child may be promoted by  
14 reinstatement of parental rights, the court shall order that a hearing  
15 be held and shall give prior notice, or cause prior notice to be  
16 given, to the social worker or probation officer and to the child's  
17 attorney of record, or, if there is no attorney of record for the child,  
18 to the child, and the child's tribe, if applicable, by means prescribed  
19 by subdivision (c) of Section 297. The court shall order the child  
20 or the social worker or probation officer to give prior notice of the  
21 hearing to the child's former parent or parents whose parental  
22 rights were terminated in the manner prescribed by subdivision  
23 (f) of Section 294 where the recommendation is adoption. The  
24 juvenile court shall grant the petition if it finds by clear and  
25 convincing evidence that the child is no longer likely to be adopted  
26 and that reinstatement of parental rights is in the child's best  
27 interest. If the court reinstates parental rights over a child who is  
28 under 12 years of age and for whom the new permanent plan will  
29 not be reunification with a parent or legal guardian, the court shall  
30 specify the factual basis for its findings that it is in the best interest  
31 of the child to reinstate parental rights. This subdivision is intended  
32 to be retroactive and applies to any child who is under the  
33 jurisdiction of the juvenile court at the time of the hearing  
34 regardless of the date parental rights were terminated.

35 (j) If the court, by order or judgment, declares the child free  
36 from the custody and control of both parents, or one parent if the  
37 other does not have custody and control, the court shall at the same  
38 time order the child referred to the State Department of Social  
39 Services or a licensed adoption agency for adoptive placement by  
40 the agency. However, a petition for adoption may not be granted

1 until the appellate rights of the natural parents have been exhausted.  
2 The State Department of Social Services or licensed adoption  
3 agency shall be responsible for the custody and supervision of the  
4 child and shall be entitled to the exclusive care and control of the  
5 child at all times until a petition for adoption is granted, except as  
6 specified in subdivision (n). With the consent of the agency, the  
7 court may appoint a guardian of the child, who shall serve until  
8 the child is adopted.

9 (k) Notwithstanding any other provision of law, the application  
10 of any person who, as a relative caretaker or foster parent, has  
11 cared for a dependent child for whom the court has approved a  
12 permanent plan for adoption, or who has been freed for adoption,  
13 shall be given preference with respect to that child over all other  
14 applications for adoptive placement if the agency making the  
15 placement determines that the child has substantial emotional ties  
16 to the relative caretaker or foster parent and removal from the  
17 relative caretaker or foster parent would be seriously detrimental  
18 to the child's emotional well-being.

19 As used in this subdivision, "preference" means that the  
20 application shall be processed and, if satisfactory, the family study  
21 shall be completed before the processing of the application of any  
22 other person for the adoptive placement of the child.

23 (l) (1) An order by the court that a hearing pursuant to this  
24 section be held is not appealable at any time unless all of the  
25 following apply:

26 (A) A petition for extraordinary writ review was filed in a timely  
27 manner.

28 (B) The petition substantively addressed the specific issues to  
29 be challenged and supported that challenge by an adequate record.

30 (C) The petition for extraordinary writ review was summarily  
31 denied or otherwise not decided on the merits.

32 (2) Failure to file a petition for extraordinary writ review within  
33 the period specified by rule, to substantively address the specific  
34 issues challenged, or to support that challenge by an adequate  
35 record shall preclude subsequent review by appeal of the findings  
36 and orders made pursuant to this section.

37 (3) The Judicial Council shall adopt rules of court, effective  
38 January 1, 1995, to ensure all of the following:

39 (A) A trial court, after issuance of an order directing a hearing  
40 pursuant to this section be held, shall advise all parties of the

1 requirement of filing a petition for extraordinary writ review as  
2 set forth in this subdivision in order to preserve any right to appeal  
3 in these issues. This notice shall be made orally to a party if the  
4 party is present at the time of the making of the order or by  
5 first-class mail by the clerk of the court to the last known address  
6 of a party not present at the time of the making of the order.

7 (B) The prompt transmittal of the records from the trial court  
8 to the appellate court.

9 (C) That adequate time requirements for counsel and court  
10 personnel exist to implement the objective of this subdivision.

11 (D) That the parent or guardian, or their trial counsel or other  
12 counsel, is charged with the responsibility of filing a petition for  
13 extraordinary writ relief pursuant to this subdivision.

14 (4) The intent of this subdivision is to do both of the following:

15 (A) Make every reasonable attempt to achieve a substantive and  
16 meritorious review by the appellate court within the time specified  
17 in Sections 366.21 and 366.22 for holding a hearing pursuant to  
18 this section.

19 (B) Encourage the appellate court to determine all writ petitions  
20 filed pursuant to this subdivision on their merits.

21 (5) This subdivision shall only apply to cases in which an order  
22 to set a hearing pursuant to this section is issued on or after January  
23 1, 1995.

24 (m) Except for subdivision (j), this section shall also apply to  
25 minors adjudged wards pursuant to Section 727.31.

26 (n) (1) Notwithstanding Section 8704 of the Family Code or  
27 any other provision of law, the court, at a hearing held pursuant  
28 to this section or anytime thereafter, may designate a current  
29 caretaker as a prospective adoptive parent if the child has lived  
30 with the caretaker for at least six months, the caretaker currently  
31 expresses a commitment to adopt the child, and the caretaker has  
32 taken at least one step to facilitate the adoption process. In  
33 determining whether to make that designation, the court may take  
34 into consideration whether the caretaker is listed in the preliminary  
35 assessment prepared by the county department in accordance with  
36 subdivision (i) of Section 366.21 as an appropriate person to be  
37 considered as an adoptive parent for the child and the  
38 recommendation of the State Department of Social Services or  
39 licensed adoption agency.

1 (2) For purposes of this subdivision, steps to facilitate the  
2 adoption process include, but are not limited to, the following:  
3 (A) Applying for an adoption home study.  
4 (B) Cooperating with an adoption home study.  
5 (C) Being designated by the court or the licensed adoption  
6 agency as the adoptive family.  
7 (D) Requesting de facto parent status.  
8 (E) Signing an adoptive placement agreement.  
9 (F) Engaging in discussions regarding a postadoption contact  
10 agreement.  
11 (G) Working to overcome any impediments that have been  
12 identified by the State Department of Social Services and the  
13 licensed adoption agency.  
14 (H) Attending classes required of prospective adoptive parents.  
15 (3) Prior to a change in placement and as soon as possible after  
16 a decision is made to remove a child from the home of a designated  
17 prospective adoptive parent, the agency shall notify the court, the  
18 designated prospective adoptive parent or the current caretaker, if  
19 that caretaker would have met the threshold criteria to be  
20 designated as a prospective adoptive parent pursuant to paragraph  
21 (1) on the date of service of this notice, the child’s attorney, and  
22 the child, if the child is 10 years of age or older, of the proposal  
23 in the manner described in Section 16010.6.  
24 (A) Within five court days or seven calendar days, whichever  
25 is longer, of the date of notification, the child, the child’s attorney,  
26 or the designated prospective adoptive parent may file a petition  
27 with the court objecting to the proposal to remove the child, or the  
28 court, upon its own motion, may set a hearing regarding the  
29 proposal. The court may, for good cause, extend the filing period.  
30 A caretaker who would have met the threshold criteria to be  
31 designated as a prospective adoptive parent pursuant to paragraph  
32 (1) on the date of service of the notice of proposed removal of the  
33 child may file, together with the petition under this subparagraph,  
34 a petition for an order designating the caretaker as a prospective  
35 adoptive parent for purposes of this subdivision.  
36 (B) A hearing ordered pursuant to this paragraph shall be held  
37 as soon as possible and not later than five court days after the  
38 petition is filed with the court or the court sets a hearing upon its  
39 own motion, unless the court for good cause is unable to set the  
40 matter for hearing five court days after the petition is filed, in

1 which case the court shall set the matter for hearing as soon as  
2 possible. At the hearing, the court shall determine whether the  
3 caretaker has met the threshold criteria to be designated as a  
4 prospective adoptive parent pursuant to paragraph (1), and whether  
5 the proposed removal of the child from the home of the designated  
6 prospective adoptive parent is in the child's best interest, and the  
7 child may not be removed from the home of the designated  
8 prospective adoptive parent unless the court finds that removal is  
9 in the child's best interest. If the court determines that the caretaker  
10 did not meet the threshold criteria to be designated as a prospective  
11 adoptive parent on the date of service of the notice of proposed  
12 removal of the child, the petition objecting to the proposed removal  
13 filed by the caretaker shall be dismissed. If the caretaker was  
14 designated as a prospective adoptive parent prior to this hearing,  
15 the court shall inquire into any progress made by the caretaker  
16 towards the adoption of the child since the caretaker was designated  
17 as a prospective adoptive parent.

18 (C) A determination by the court that the caretaker is a  
19 designated prospective adoptive parent pursuant to paragraph (1)  
20 or subparagraph (B) does not make the caretaker a party to the  
21 dependency proceeding nor does it confer on the caretaker any  
22 standing to object to any other action of the department or licensed  
23 adoption agency, unless the caretaker has been declared a de facto  
24 parent by the court prior to the notice of removal served pursuant  
25 to paragraph (3).

26 (D) If a petition objecting to the proposal to remove the child  
27 is not filed, and the court, upon its own motion, does not set a  
28 hearing, the child may be removed from the home of the designated  
29 prospective adoptive parent without a hearing.

30 (4) Notwithstanding paragraph (3), if the State Department of  
31 Social Services or a licensed adoption agency determines that the  
32 child must be removed from the home of the caretaker who is or  
33 may be a designated prospective adoptive parent immediately, due  
34 to a risk of physical or emotional harm, the agency may remove  
35 the child from that home and is not required to provide notice prior  
36 to the removal. However, as soon as possible and not longer than  
37 two court days after the removal, the agency shall notify the court,  
38 the caretaker who is or may be a designated prospective adoptive  
39 parent, the child's attorney, and the child, if the child is 10 years  
40 of age or older, of the removal. Within five court days or seven

1 calendar days, whichever is longer, of the date of notification of  
 2 the removal, the child, the child’s attorney, or the caretaker who  
 3 is or may be a designated prospective adoptive parent may petition  
 4 for, or the court on its own motion may set, a noticed hearing  
 5 pursuant to paragraph (3). The court may, for good cause, extend  
 6 the filing period.

7 (5) Except as provided in subdivision (b) of Section 366.28, an  
 8 order by the court issued after a hearing pursuant to this subdivision  
 9 shall not be appealable.

10 (6) Nothing in this section shall preclude a county child  
 11 protective services agency from fully investigating and responding  
 12 to alleged abuse or neglect of a child pursuant to Section 11165.5  
 13 of the Penal Code.

14 (7) The Judicial Council shall prepare forms to facilitate the  
 15 filing of the petitions described in this subdivision, which shall  
 16 become effective on January 1, 2006.

17 (o) The implementation and operation of the amendments to  
 18 paragraph (3) of subdivision (c) and subparagraph (A) of paragraph  
 19 (4) of subdivision (c) enacted at the 2005–06 Regular Session shall  
 20 be subject to appropriation through the budget process and by  
 21 phase, as provided in Section 366.35.

22 SEC. 4. Section 16508.1 of the Welfare and Institutions Code  
 23 is amended to read:

24 16508.1. (a) For every child who is in foster care, or who  
 25 enters foster care, on or after January 1, 1999, and has been in  
 26 foster care for 15 of the most recent 22 months, the social worker  
 27 shall submit to the court a recommendation that the court set a  
 28 hearing pursuant to Section 366.26 for the purpose of terminating  
 29 parental rights. The social worker shall concurrently initiate and  
 30 describe a plan to identify, recruit, process and approve a qualified  
 31 family for adoption of the child.

32 (b) The social worker is not required to submit the  
 33 recommendation as described in subdivision (a) if any of the  
 34 following applies:

35 (1) The case plan for the child has documented a compelling  
 36 reason or reasons why it is unlikely that the child will be adopted,  
 37 as determined by the department when it is acting as an adoption  
 38 agency or by the licensed adoption agency, and therefore  
 39 termination of parental rights would not be in the best interest of

1 the child or that one of the conditions set forth in paragraph (1) of  
2 subdivision (c) of Section 366.26 applies.

3 (2) A hearing under Section 366.26 is already set.

4 (3) The court has found at the previous hearing under Section  
5 366.21 that there is a substantial probability that the child will be  
6 returned to the child's home within the extended period of time  
7 permitted.

8 (4) The court has found at the previous hearing under Section  
9 366.21 that reasonable reunification services have not been offered  
10 or provided.

11 (5) The court has found at each and every hearing at which the  
12 court was required to consider reasonable efforts or services that  
13 reasonable efforts were not made or that reasonable services were  
14 not offered or provided.

15 (6) *The incarceration of the parent or parents, or the*  
16 *court-ordered participation of the parent or parents in a residential*  
17 *substance abuse treatment program, constitutes a significant factor*  
18 *in the child's placement in foster care for a period of 15 of the*  
19 *most recent 22 months.*

20 (c) A recommendation to the court pursuant to subdivision (a)  
21 shall not be made if the social worker documents in the case record  
22 a compelling reason why a hearing pursuant to Section 366.26 is  
23 not in the best interest of the child, or that reasonable efforts to  
24 safely return the child home are continuing consistent with the  
25 time period provided for in paragraph (1) of subdivision (g) of  
26 Section 366.21.

27 (d) Beginning January 1, 1999, the county welfare department  
28 shall implement a procedure for reviewing the application of this  
29 section to the case plans of all children who have been in foster  
30 care for 15 out of the most recent 22 months. The review shall  
31 proceed within the following timeframes:

32 (1) By July 1, 1999, one-third of the children shall have been  
33 reviewed, giving priority to children who have been in foster care  
34 the greatest length of time.

35 (2) By January 1, 2000, at least two-thirds of the children shall  
36 have been reviewed.

37 (3) By July 1, 2000, all children shall have been reviewed.

38 (e) For purposes of this section, a child shall be considered to  
39 have entered foster care on the earlier of the date of the  
40 jurisdictional hearing held pursuant to Section 356 or the date that

1 is 60 days after the date on which the child was initially removed  
2 from the home of his or her parent or guardian.

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

O