

AMENDED IN ASSEMBLY MARCH 27, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 938

**Introduced by Committee on Judiciary (Feuer (Chair), Brownley,
Evans, Jones, Krekorian, Lieu, and Monning)**

February 26, 2009

An act to amend Sections 309, ~~315, 317, 319, and 366.21~~ 317.5, 319, 358, 358.1, and 361.3 of the Welfare and Institutions Code, relating to dependent children.

LEGISLATIVE COUNSEL'S DIGEST

AB 938, as amended, Committee on Judiciary. Dependent children: relative caregivers and foster parents.

(1) Existing law authorizes a social worker to take a child who is at risk of abuse or neglect into temporary custody under specified circumstances. Existing law requires the social worker to investigate the circumstances of the child and the facts surrounding the taking of the child into custody. Existing law requires that the social worker immediately release the child to the custody of the child's parent or guardian, or other responsible relative, except under certain conditions. If the child is not released to the custody of his or her parent or guardian, the child is deemed to be detained, and a detention hearing must be conducted before the expiration of the next judicial day after a petition to declare the minor a dependent child of the juvenile court has been filed.

Existing law provides for an initial petition hearing to determine, among other things, whether a child shall remain in detention, and, with respect to a child who is adjudged a dependent child of the juvenile court and placed in foster care, for periodic status review hearings to

review, among other things, the continuing necessity for and appropriateness of the placement. Prior to a status review hearing regarding a child who is in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services or by a licensed county adoption agency, as specified, the foster parent, relative caregiver, or certified foster parent may file with the court a report containing his or her recommendation for disposition.

This bill would require a social worker, when a child is ~~detained~~ *removed from the home*, to immediately ~~conduct~~ *begin conducting* an investigation, as specified, in order to identify and locate all grandparents, *adult siblings*, and other adult relatives of the child, in order to provide, ~~except in cases of when that relative's history of family or domestic violence makes notification inappropriate~~, those persons with specified information, including that the child has been removed from the ~~home~~ *custody of his or her parents or guardians* and an explanation of various options to participate in the care and placement of the child, as specified, and to report to the court at the initial petition hearing regarding that effort. *The bill would require each social study or evaluation to include a factual discussion of these efforts, as specified.* The bill would require the court to inquire, ~~at the detention hearing, and~~ at the initial petition hearing, regarding those efforts.

The bill would also require the Judicial Council to develop prior to January 1, 2011, a relative information form, as specified. The form would provide information regarding the needs of the child, and would include a provision whereby the relative may request the permission of the court to address the court. The bill would require a social worker to provide that form ~~at the initial petition hearing~~, on and after January 1, 2011, to the adult relatives identified pursuant to the provision described above.

The bill would require, ~~at the initial petition hearing and at the status review hearing~~, the court to consider *the information provided on a relative information form, to receive the form into evidence*, and to determine whether, in the court's discretion, ~~to grant the request of a relative, or of a foster parent on the report described above, to address the court~~ *explain to a parent the importance of obtaining that information to the child's well-being*. By imposing new duties on social workers, the bill would impose a state-mandated local program.

(2) Existing law authorizes the juvenile court to appoint counsel to represent a parent or guardian in dependency proceedings if that parent or guardian cannot afford counsel.

The bill would also express the intent of the Legislature that all parties to a juvenile court ~~hearing~~ *hearings* have a meaningful opportunity to participate in the hearings and, at a minimum, have the opportunity to review reports and ~~meet~~ *confer* with their attorneys before ~~the detention hearing~~ *all dependency hearings*.

The bill would specifically authorize attorneys representing children in dependency proceedings to utilize investigators or social workers to meet with or visit child clients in order to assess the child’s well-being. The bill would require the court to inquire at each dependency hearing as to whether the parties were able to review reports and confer with their attorneys before the hearing, and to continue the hearing under specified circumstances to allow a party to review a report and confer with his or her attorney.

(3) 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 309 of the Welfare and Institutions Code
2 is amended to read:
3 309. (a) Upon delivery to the social worker of a child who has
4 been taken into temporary custody under this article, the social
5 worker shall immediately investigate the circumstances of the child
6 and the facts surrounding the child’s being taken into custody and
7 attempt to maintain the child with the child’s family through the
8 provision of services. The social worker shall immediately release
9 the child to the custody of the child’s parent, guardian, or
10 responsible relative unless one or more of the following conditions
11 exist:

1 (1) The child has no parent, guardian, or responsible relative;
2 or the child’s parent, guardian, or responsible relative is not willing
3 to provide care for the child.

4 (2) Continued detention of the child is a matter of immediate
5 and urgent necessity for the protection of the child and there are
6 no reasonable means by which the child can be protected in his or
7 her home or the home of a responsible relative.

8 (3) There is substantial evidence that a parent, guardian, or
9 custodian of the child is likely to flee the jurisdiction of the court.

10 (4) The child has left a placement in which he or she was placed
11 by the juvenile court.

12 (5) The parent or other person having lawful custody of the
13 child voluntarily surrendered physical custody of the child pursuant
14 to Section 1255.7 of the Health and Safety Code and did not
15 reclaim the child within the 14-day period specified in subdivision
16 (e) of that section.

17 (b) In any case in which there is reasonable cause for believing
18 that a child who is under the care of a physician or surgeon or a
19 hospital, clinic, or other medical facility and cannot be immediately
20 moved and is a person described in Section 300, the child shall be
21 deemed to have been taken into temporary custody and delivered
22 to the social worker for the purposes of this chapter while the child
23 is at the office of the physician or surgeon or the medical facility.

24 (c) If the child is not released to his or her parent or guardian,
25 the child shall be deemed detained for purposes of this chapter.

26 ~~(d) (1) If the child is detained, the social worker shall~~
27 ~~immediately conduct an investigation in order to identify and locate~~
28 ~~all grandparents and other adult relatives of the child. The social~~
29 ~~worker shall notify all adult relatives who have been located, except~~
30 ~~in cases of domestic violence, of the following information:~~

31 ~~(A) The child has been removed from the custody of his or her~~
32 ~~parent or parents, or his or her guardian.~~

33 ~~(B) An explanation of the various options to participate in the~~
34 ~~care and placement of the child, including, the Kin-GAP Program~~
35 ~~(Article 4.5 (commencing with Section 11360) of Chapter 2 of~~
36 ~~Part 3 of Division 9) the requirements to become a foster family~~
37 ~~home, and other options for contact with the child.~~

38 ~~(2) On and after January 1, 2011, the social worker shall also~~
39 ~~provide the adult relatives notified pursuant to paragraph (1) with~~
40 ~~a relative information form to provide information to the social~~

1 worker and the court regarding the needs of the child. The form
2 shall include a provision whereby the relative may request the
3 permission of the court to address the court. The Judicial Council
4 shall develop the form before January 1, 2011.

5 ~~(3) The social worker shall use due diligence in investigating~~
6 ~~the name and location of the relatives pursuant to paragraph (1),~~
7 ~~including, but not limited to, obtaining information regarding the~~
8 ~~location of the child's adult relatives from the California Parent~~
9 ~~Locator Service.~~

10 (e)

11 (d) (1) If an able and willing relative, as defined in Section 319,
12 or an able and willing nonrelative extended family member, as
13 defined in Section 362.7, is available and requests temporary
14 placement of the child pending the detention hearing, the county
15 welfare department shall initiate an assessment of the relative's or
16 nonrelative extended family member's suitability, which shall
17 include an in-home inspection to assess the safety of the home and
18 the ability of the relative or nonrelative extended family member
19 to care for the child's needs, and a consideration of the results of
20 a criminal records check conducted pursuant to subdivision (a) of
21 Section 16504.5 and a check of allegations of prior child abuse or
22 neglect concerning the relative or nonrelative extended family
23 member and other adults in the home. Upon completion of this
24 assessment, the child may be placed in the assessed home. For
25 purposes of this paragraph, and except for the criminal records
26 check conducted pursuant to subdivision (a) of Section 16504.5,
27 the standards used to determine suitability shall be the same
28 standards set forth in the regulations for the licensing of foster
29 family homes.

30 (2) Immediately following the placement of a child in the home
31 of a relative or a nonrelative extended family member, the county
32 welfare department shall evaluate and approve or deny the home
33 for purposes of AFDC-FC eligibility pursuant to Section 11402.
34 The standards used to evaluate and grant or deny approval of the
35 home of the relative and of the home of a nonrelative extended
36 family member, as described in Section 362.7, shall be the same
37 standards set forth in regulations for the licensing of foster family
38 homes which prescribe standards of safety and sanitation for the
39 physical plant and standards for basic personal care, supervision,
40 and services provided by the caregiver.

1 (3) To the extent allowed by federal law, as a condition of
2 receiving funding under Title IV-E of the federal Social Security
3 Act (42 U.S.C. Sec. 670 et seq.), if a relative or nonrelative
4 extended family member meets all other conditions for approval,
5 except for the receipt of the Federal Bureau of Investigation's
6 criminal history information for the relative or nonrelative extended
7 family member, and other adults in the home, as indicated, the
8 county welfare department may approve the home and document
9 that approval, if the relative or nonrelative extended family
10 member, and each adult in the home, has signed and submitted a
11 statement that he or she has never been convicted of a crime in the
12 United States, other than a traffic infraction as defined in paragraph
13 (1) of subdivision (a) of Section 42001 of the Vehicle Code. If,
14 after the approval has been granted, the department determines
15 that the relative or nonrelative extended family member or other
16 adult in the home has a criminal record, the approval may be
17 terminated.

18 (4) If the criminal records check indicates that the person has
19 been convicted of a crime for which the Director of Social Services
20 cannot grant an exemption under Section 1522 of the Health and
21 Safety Code, the child shall not be placed in the home. If the
22 criminal records check indicates that the person has been convicted
23 of a crime for which the Director of Social Services may grant an
24 exemption under Section 1522 of the Health and Safety Code, the
25 child shall not be placed in the home unless a criminal records
26 exemption has been granted by the county based on substantial
27 and convincing evidence to support a reasonable belief that the
28 person with the criminal conviction is of such good character as
29 to justify the placement and not present a risk of harm to the child.

30 *(e) (1) If the child is removed, the social worker shall*
31 *immediately begin conducting an investigation in order to identify*
32 *and locate all grandparents, adult siblings and other adult relatives*
33 *of the child, as defined in paragraph (2) of subdivision (f) of*
34 *Section 319. For all adult relatives who are located, except when*
35 *that relative's history of family or domestic violence makes that*
36 *notification inappropriate, the social worker shall immediately*
37 *provide written notification and shall also provide oral notification*
38 *in person or by phone, whenever appropriate, of the following*
39 *information:*

1 (A) *The child has been removed from the custody of his or her*
2 *parent or parents, or his or her guardians.*

3 (B) *An explanation of the various options to participate in the*
4 *care and placement of the child and support for the child's family,*
5 *including, any options that may be lost by failing to respond. The*
6 *notice shall provide information about providing care for the child*
7 *while the family receives reunification services with the goal of*
8 *returning the child to the parent or guardian, how to become a*
9 *foster family home or approved nonrelative extended family*
10 *member as defined in Section 362.7, and additional services and*
11 *support that are available in out-of-home placements, including*
12 *child care, and shall include information regarding the Kin-GAP*
13 *Program (Article 4.5 (commencing with Section 11360) of Chapter*
14 *2 of Part 3 of Division 9), the CalWORKs program for approved*
15 *relative caregivers (Chapter 2 (commencing with Section 11200)*
16 *of Part 3 of Division 9), adoption, and adoption assistance*
17 *(Chapter 2.1 (commencing with Section 16115) of Part 4 of*
18 *Division 9), as well as other options for contact with the child,*
19 *including, but not limited to, visitation. The State Department of*
20 *Social Services, in consultation with the County Welfare Directors*
21 *Association and other interested stakeholders, shall develop the*
22 *notice before January 1, 2011.*

23 (2) *On and after January 1, 2011, the social worker shall also*
24 *provide the adult relatives notified pursuant to paragraph (1) with*
25 *a relative information form to provide information to the social*
26 *worker and the court regarding the needs of the child. The form*
27 *shall include a provision whereby the relative may request the*
28 *permission of the court to address the court, if the relative so*
29 *chooses. The Judicial Council, in consultation with the State*
30 *Department of Social Services and the County Welfare Directors*
31 *Association, shall develop the form before January 1, 2011.*

32 (3) *The social worker shall use due diligence in investigating*
33 *the name and location of the relatives pursuant to paragraph (1),*
34 *including, but not limited to, asking the child in an age-appropriate*
35 *manner about relatives important to the child, consistent with the*
36 *child's best interest, and obtaining information regarding the*
37 *location of the child's adult relatives from the California Parent*
38 *Locator Service, in accordance with federal requirements. Each*
39 *county welfare department shall create and make public a*
40 *procedure by which relatives of a child who has been removed*

1 *from his or her parents or guardians may identify themselves to*
2 *the department and be provided with the notices required by*
3 *paragraphs (1) and (2).*

4 *SEC. 2. Section 317.5 of the Welfare and Institutions Code is*
5 *amended to read:*

6 *317.5. (a) All parties who are represented by counsel at*
7 *dependency proceedings shall be entitled to competent counsel.*
8 *In order to ensure competent representation, it is the intent of the*
9 *Legislature that all parties to juvenile court hearings have a*
10 *meaningful opportunity to participate in these hearings, including*
11 *the opportunity to review reports and confer with their attorneys*
12 *before all dependency hearings. It is expected that the attorney*
13 *will counsel the client concerning the subject matter of the*
14 *litigation, the client's rights, the court system, the proceedings,*
15 *the attorney's role, and what to expect in the legal process, and*
16 *that the attorney investigate the factual and legal issues in the case*
17 *and identify the services needed by the client. It is the intent of the*
18 *Legislature that the attorney review all reports to the court and*
19 *any other relevant information with the client including child*
20 *clients who are four years of age and older, and ensure that the*
21 *attorney has explained the substance of those reports to the client.*

22 *(b) It is the intent of the Legislature that the attorney for a party*
23 *in a dependency case must have sufficient contact with that party*
24 *to establish and maintain an adequate and professional*
25 *attorney-client relationship. Attorneys in dependency cases are*
26 *expected to meet regularly with clients, including clients who are*
27 *children, regardless of the age of the child or the child's ability*
28 *to communicate verbally, to contact social workers and other*
29 *professionals associated with the client's case, and to work*
30 *professionally with other counsel and the court to resolve disputed*
31 *aspects of a case.*

32 *(c) Notwithstanding subdivision (b), attorneys representing*
33 *children in dependency proceedings may utilize investigators or*
34 *social workers to meet with or visit child clients in order to assess*
35 *the child's well-being. The attorney's communication with the*
36 *child, including counseling the child concerning the subject matter*
37 *of the litigation, the client's rights, the court system, the attorney's*
38 *role, and what to expect in the legal process, shall be conducted*
39 *in a manner consistent with the child's age and developmental*
40 *level.*

1 ~~(b)~~

2 (d) Each minor who is the subject of a dependency proceeding
3 is a party to that proceeding.

4 (e) *At each dependency hearing, the court shall inquire as to*
5 *whether the parties were able to review reports and confer with*
6 *their attorneys before the hearing. If a party did not receive proper*
7 *notice, did not receive the report, or was not able to confer with*
8 *his or her attorney prior to the hearing, and the party requests a*
9 *continuance in order to review the report and confer with his or*
10 *her attorney, the court shall continue the hearing to allow the party*
11 *to review reports and confer with his or her attorney, unless the*
12 *court finds that it is not in the best interest of the minor, or would*
13 *prejudice the rights of a party, to continue the hearing. The court*
14 *shall continue the hearing only for that period of time necessary*
15 *to provide the opportunity to review reports and confer with the*
16 *attorney, which may even be later the same day. The court may*
17 *issue any and all orders reasonably necessary to ensure*
18 *compliance with this subdivision.*

19 SEC. 3. *Section 319 of the Welfare and Institutions Code is*
20 *amended to read:*

21 319. (a) At the initial petition hearing, the court shall examine
22 the child's parents, guardians, or other persons having relevant
23 knowledge and hear the relevant evidence as the child, the child's
24 parents or guardians, the petitioner, or their counsel desires to
25 present. The court may examine the child, as provided in Section
26 350.

27 (b) The social worker shall report to the court on the reasons
28 why the child has been removed from the parent's physical custody,
29 the need, if any, for continued detention, the available services
30 and the referral methods to those services that could facilitate the
31 return of the child to the custody of the child's parents or guardians,
32 and whether there are any relatives who are able and willing to
33 take temporary physical custody of the child. The court shall order
34 the release of the child from custody unless a prima facie showing
35 has been made that the child comes within Section 300, the court
36 finds that continuance in the parent's or guardian's home is
37 contrary to the child's welfare, and any of the following
38 circumstances exist:

39 (1) There is a substantial danger to the physical health of the
40 child or the child is suffering severe emotional damage, and there

1 are no reasonable means by which the child's physical or emotional
2 health may be protected without removing the child from the
3 parent's or guardian's physical custody.

4 (2) There is substantial evidence that a parent, guardian, or
5 custodian of the child is likely to flee the jurisdiction of the court.

6 (3) The child has left a placement in which he or she was placed
7 by the juvenile court.

8 (4) The child indicates an unwillingness to return home, if the
9 child has been physically or sexually abused by a person residing
10 in the home.

11 (c) If the matter is continued pursuant to Section 322 or for any
12 other reason, the court shall find that the continuance of the child
13 in the parent's or guardian's home is contrary to the child's welfare
14 at the initial petition hearing or order the release of the child from
15 custody.

16 (d) (1) The court shall also make a determination on the record,
17 referencing the social worker's report or other evidence relied
18 upon, as to whether reasonable efforts were made to prevent or
19 eliminate the need for removal of the child from his or her home,
20 pursuant to subdivision (b) of Section 306, and whether there are
21 available services that would prevent the need for further detention.
22 Services to be considered for purposes of making this determination
23 are case management, counseling, emergency shelter care,
24 emergency in-home caretakers, out-of-home respite care, teaching
25 and demonstrating homemakers, parenting training, transportation,
26 and any other child welfare services authorized by the State
27 Department of Social Services pursuant to Chapter 5 (commencing
28 with Section 16500) of Part 4 of Division 9. The court shall also
29 review whether the social worker has considered whether a referral
30 to public assistance services pursuant to Chapter 2 (commencing
31 with Section 11200) and Chapter 7 (commencing with Section
32 14000) of Part 3, Chapter 1 (commencing with Section 17000) of
33 Part 5, and Chapter 10 (commencing with Section 18900) of Part
34 6 of Division 9 would have eliminated the need to take temporary
35 custody of the child or would prevent the need for further detention.

36 (2) If the child can be returned to the custody of his or her parent
37 or guardian through the provision of those services, the court shall
38 place the child with his or her parent or guardian and order that
39 the services shall be provided. If the child cannot be returned to
40 the physical custody of his or her parent or guardian, the court

1 shall determine if there is a relative who is able and willing to care
2 for the child, and has been assessed pursuant to paragraph (1) of
3 subdivision (d) of Section 309.

4 (e) If a court orders a child detained, the court shall state the
5 facts on which the decision is based, specify why the initial removal
6 was necessary, reference the social worker's report or other
7 evidence relied upon to make its determination whether
8 continuance in the home of the parent or legal guardian is contrary
9 to the child's welfare, order temporary placement and care of the
10 child to be vested with the county child welfare department pending
11 the hearing held pursuant to Section 355 or further order of the
12 court, and order services to be provided as soon as possible to
13 reunify the child and his or her family if appropriate.

14 (f) (1) If the child is not released from custody, the court may
15 order that the child shall be placed in the assessed home of a
16 relative, in an emergency shelter or other suitable licensed place,
17 in a place exempt from licensure designated by the juvenile court,
18 or in the assessed home of a nonrelative extended family member
19 as defined in Section 362.7 for a period not to exceed 15 judicial
20 days.

21 (2) As used in this section, "relative" means an adult who is
22 related to the child by blood, adoption, or affinity within the fifth
23 degree of kinship, including stepparents, stepsiblings, and all
24 relatives whose status is preceded by the words "great,"
25 "great-great," or "grand," or the spouse of any of these persons,
26 even if the marriage was terminated by death or dissolution.
27 However, only the following relatives shall be given preferential
28 consideration for placement of the child: an adult who is a
29 grandparent, aunt, uncle, or sibling of the child.

30 (3) The court shall consider the recommendations of the social
31 worker based on the assessment pursuant to paragraph (1) of
32 subdivision (d) of Section 309 of the relative's home, including
33 the results of a criminal records check and prior child abuse
34 allegations, if any, prior to ordering that the child be placed with
35 a relative. The court shall *explain to the parent the importance of*
36 *obtaining relative information to the child's well-being and shall*
37 *order the parent to disclose to the social worker the names,*
38 *residences, and any known identifying information of any maternal*
39 *or paternal relatives of the child. The social worker shall initiate*

1 the assessment pursuant to Section 361.3 of any relative to be
2 considered for continuing placement.

3 (g) (1) At the initial hearing upon the petition filed in
4 accordance with subdivision (c) of Rule 5.520 of the California
5 Rules of Court or anytime thereafter up until the time that the
6 minor is adjudged a dependent child of the court or a finding is
7 made dismissing the petition, the court may temporarily limit the
8 right of the parent or guardian to make educational decisions for
9 the child and temporarily appoint a responsible adult to make
10 educational decisions for the child if all of the following conditions
11 are found:

12 (A) The parent or guardian is unavailable, unable, or unwilling
13 to exercise educational rights for the child.

14 (B) The county placing agency has made diligent efforts to
15 locate and secure the participation of the parent or guardian in
16 educational decisionmaking.

17 (C) The child's educational needs cannot be met without the
18 temporary appointment of a responsible adult.

19 (2) If the court cannot identify a responsible adult to make
20 educational decisions for the child and the appointment of a
21 surrogate parent, as defined in subdivision (a) of Section 56050
22 of the Education Code, is not warranted, the court may, with the
23 input of any interested person, make educational decisions for the
24 child. If the court makes educational decisions for the child, the
25 court shall also issue appropriate orders to ensure that every effort
26 is made to identify a responsible adult to make future educational
27 decisions for the child.

28 (3) Any temporary appointment of a responsible adult and
29 temporary limitation on the right of the parent or guardian to make
30 educational decisions for the child shall be specifically addressed
31 in the court order. Any order made under this section shall expire
32 at the conclusion of the hearing held pursuant to Section 361 or
33 upon dismissal of the petition. Upon the entering of disposition
34 orders, any additional needed limitation on the parent's or
35 guardian's educational rights shall be addressed pursuant to Section
36 361.

37 (h) *At the hearing held pursuant to this section, the court shall*
38 *inquire regarding the efforts made by the social worker to comply*
39 *with the requirements of subdivision (e) of Section 309, and the*
40 *results of those efforts. The social worker shall also provide to the*

1 *court and to the parties any relative information form, as provided*
2 *for pursuant to Section 309, that has been completed and received.*
3 *The court shall consider that information and, if applicable, shall*
4 *decide whether to grant the request of a relative to address the*
5 *court.*

6 *SEC. 4. Section 358 of the Welfare and Institutions Code is*
7 *amended to read:*

8 358. (a) After finding that a child is a person described in
9 Section 300, the court shall hear evidence on the question of the
10 proper disposition to be made of the child. Prior to making a
11 finding required by this section, the court may continue the hearing
12 on its own motion, the motion of the parent or guardian, or the
13 motion of the child, as follows:

14 (1) If the child is detained during the continuance, and the social
15 worker is not alleging that subdivision (b) of Section 361.5 is
16 applicable, the continuance shall not exceed 10 judicial days. The
17 court may make an order for detention of the child or for the child's
18 release from detention, during the period of continuance, as is
19 appropriate.

20 (2) If the child is not detained during the continuance, the
21 continuance shall not exceed 30 days after the date of the finding
22 pursuant to Section 356. However, the court may, for cause,
23 continue the hearing for an additional 15 days.

24 (3) If the social worker is alleging that subdivision (b) of Section
25 361.5 is applicable, the court shall continue the proceedings for a
26 period not to exceed 30 days. The social worker shall notify each
27 parent of the content of subdivision (b) of Section 361.5 and shall
28 inform each parent that if the court does not order reunification a
29 permanency planning hearing will be held, and that his or her
30 parental rights may be terminated within the timeframes specified
31 by law.

32 (b) Before determining the appropriate disposition, the court
33 shall receive in evidence the social study of the child made by the
34 social worker, any study or evaluation made by a child advocate
35 appointed by the court, and other relevant and material evidence
36 as may be offered, including, but not limited to, the willingness
37 of the caregiver to provide legal permanency for the child if
38 reunification is unsuccessful, *and any relative information form,*
39 *as provided for pursuant to Section 309. The court shall consider*
40 *the information in any relative information form and, if applicable,*

1 shall decide whether to grant the request of a relative to address
 2 the court. In any judgment and order of disposition, the court shall
 3 specifically state that the social study made by the social worker
 4 and the study or evaluation made by the child advocate appointed
 5 by the court, if there be any, has been read and considered by the
 6 court in arriving at its judgment and order of disposition. Any
 7 social study or report submitted to the court by the social worker
 8 shall include the individual child’s case plan developed pursuant
 9 to Section 16501.1.

10 (c) If the court finds that a child is described by subdivision (h)
 11 of Section 300 or that subdivision (b) of Section 361.5 may be
 12 applicable, the court shall conduct the dispositional proceeding
 13 pursuant to subdivision (c) of Section 361.5.

14 *SEC. 5. Section 358.1 of the Welfare and Institutions Code is*
 15 *amended to read:*

16 358.1. Each social study or evaluation made by a social worker
 17 or child advocate appointed by the court, required to be received
 18 in evidence pursuant to Section 358, shall include, but not be
 19 limited to, a factual discussion of each of the following subjects:

20 (a) Whether the county welfare department or social worker has
 21 considered child protective services, as defined in Chapter 5
 22 (commencing with Section 16500) of Part 4 of Division 9, as a
 23 possible solution to the problems at hand, and has offered these
 24 services to qualified parents if appropriate under the circumstances.

25 (b) What plan, if any, for return of the child to his or her parents
 26 and for achieving legal permanence for the child if efforts to reunify
 27 fail, is recommended to the court by the county welfare department
 28 or probation officer.

29 (c) Whether the best interests of the child will be served by
 30 granting reasonable visitation rights with the child to his or her
 31 grandparents, in order to maintain and strengthen the child’s family
 32 relationships.

33 (d) (1) Whether the child has siblings under the court’s
 34 jurisdiction, and, if any siblings exist, all of the following:

35 (A) The nature of the relationship between the child and his or
 36 her siblings.

37 (B) The appropriateness of developing or maintaining the sibling
 38 relationships pursuant to Section 16002.

39 (C) If the siblings are not placed together in the same home,
 40 why the siblings are not placed together and what efforts are being

1 made to place the siblings together, or why those efforts are not
2 appropriate.

3 (D) If the siblings are not placed together, the frequency and
4 nature of the visits between siblings.

5 (E) The impact of the sibling relationships on the child's
6 placement and planning for legal permanence.

7 (2) The factual discussion shall include a discussion of indicators
8 of the nature of the child's sibling relationships, including, but not
9 limited to, whether the siblings were raised together in the same
10 home, whether the siblings have shared significant common
11 experiences or have existing close and strong bonds, whether either
12 sibling expresses a desire to visit or live with his or her sibling, as
13 applicable, and whether ongoing contact is in the child's best
14 emotional interest.

15 (e) *The activities undertaken by the social worker to comply*
16 *with the requirements of subdivision (e) of Section 309, and the*
17 *results of those activities. The social worker shall also provide to*
18 *the court and the parties any relative information form, as provided*
19 *for pursuant to Section 309, that has been completed and received.*

20 (e)

21 (f) If the parent or guardian is unwilling or unable to participate
22 in making an educational decision for his or her child, or if other
23 circumstances exist that compromise the ability of the parent or
24 guardian to make educational decisions for the child, the county
25 welfare department or social worker shall consider whether the
26 right of the parent or guardian to make educational decisions for
27 the child should be limited. If the study or evaluation makes that
28 recommendation, it shall identify whether there is a responsible
29 adult available to make educational decisions for the child pursuant
30 to Section 361.

31 (f)

32 (g) Whether the child appears to be a person who is eligible to
33 be considered for further court action to free the child from parental
34 custody and control.

35 (g)

36 (h) Whether the parent has been advised of his or her option to
37 participate in adoption planning, including the option to enter into
38 a postadoption contact agreement as described in Section 8714.7
39 of the Family Code, and to voluntarily relinquish the child for

1 adoption if an adoption agency is willing to accept the
 2 relinquishment.

3 ~~(h)~~

4 (i) The appropriateness of any relative placement pursuant to
 5 Section 361.3. However, this consideration may not be cause for
 6 continuance of the dispositional hearing.

7 ~~(i)~~

8 (j) Whether the caregiver desires, and is willing, to provide legal
 9 permanency for the child if reunification is unsuccessful.

10 *SEC. 6. Section 361.3 of the Welfare and Institutions Code is*
 11 *amended to read:*

12 361.3. (a) In any case in which a child is removed from the
 13 physical custody of his or her parents pursuant to Section 361,
 14 preferential consideration shall be given to a request by a relative
 15 of the child for placement of the child with the relative. In
 16 determining whether placement with a relative is appropriate, the
 17 county social worker and court shall consider, but shall not be
 18 limited to, consideration of all the following factors:

19 (1) The best interest of the child, including special physical,
 20 psychological, educational, medical, or emotional needs.

21 (2) The wishes of the parent, the relative, and child, if
 22 appropriate.

23 (3) The provisions of Part 6 (commencing with Section 7950)
 24 of Division 12 of the Family Code regarding relative placement.

25 (4) Placement of siblings and half siblings in the same home,
 26 if that placement is found to be in the best interest of each of the
 27 children as provided in Section 16002.

28 (5) The good moral character of the relative and any other adult
 29 living in the home, including whether any individual residing in
 30 the home has a prior history of violent criminal acts or has been
 31 responsible for acts of child abuse or neglect.

32 (6) The nature and duration of the relationship between the child
 33 and the relative, and the relative's desire to care for, and to provide
 34 legal permanency for, the child if reunification is unsuccessful.

35 (7) The ability of the relative to do the following:

36 (A) Provide a safe, secure, and stable environment for the child.

37 (B) Exercise proper and effective care and control of the child.

38 (C) Provide a home and the necessities of life for the child.

39 (D) Protect the child from his or her parents.

40 (E) Facilitate court-ordered reunification efforts with the parents.

1 (F) Facilitate visitation with the child’s other relatives.

2 (G) Facilitate implementation of all elements of the case plan.

3 (H) Provide legal permanence for the child if reunification fails.

4 However, any finding made with respect to the factor considered
5 pursuant to this subparagraph and pursuant to subparagraph (G)
6 shall not be the sole basis for precluding preferential placement
7 with a relative.

8 (I) Arrange for appropriate and safe child care, as necessary.

9 (8) The safety of the relative’s home. For a relative to be
10 considered appropriate to receive placement of a child under this
11 section, the relative’s home shall first be approved pursuant to the
12 process and standards described in subdivision (d) of Section 309.

13 In this regard, the Legislature declares that a physical disability,
14 such as blindness or deafness, is no bar to the raising of children,
15 and a county social worker’s determination as to the ability of a
16 disabled relative to exercise care and control should center upon
17 whether the relative’s disability prevents him or her from exercising
18 care and control. The court shall *explain to the parent the*
19 *importance of obtaining relative information to the child’s*
20 *well-being and shall* order the parent to disclose to the county
21 social worker the names, residences, and any other known
22 identifying information of any maternal or paternal relatives of
23 the child. This inquiry shall not be construed, however, to guarantee
24 that the child will be placed with any person so identified. The
25 county social worker shall initially contact the relatives given
26 preferential consideration for placement to determine if they desire
27 the child to be placed with them. Those desiring placement shall
28 be assessed according to the factors enumerated in this subdivision.
29 The county social worker shall document these efforts in the social
30 study prepared pursuant to Section 358.1. The court shall authorize
31 the county social worker, while assessing these relatives for the
32 possibility of placement, to disclose to the relative, as appropriate,
33 the fact that the child is in custody, the alleged reasons for the
34 custody, and the projected likely date for the child’s return home
35 or placement for adoption or legal guardianship. However, this
36 investigation shall not be construed as good cause for continuance
37 of the dispositional hearing conducted pursuant to Section 358.

38 (b) In any case in which more than one appropriate relative
39 requests preferential consideration pursuant to this section, each

1 relative shall be considered under the factors enumerated in
2 subdivision (a).

3 (c) For purposes of this section:

4 (1) “Preferential consideration” means that the relative seeking
5 placement shall be the first placement to be considered and
6 investigated.

7 (2) “Relative” means an adult who is related to the child by
8 blood, adoption, or affinity within the fifth degree of kinship,
9 including stepparents, stepsiblings, and all relatives whose status
10 is preceded by the words “great,” “great-great” or “grand” or the
11 spouse of any of these persons even if the marriage was terminated
12 by death or dissolution. However, only the following relatives
13 shall be given preferential consideration for the placement of the
14 child: an adult who is a grandparent, aunt, uncle, or sibling.

15 (d) Subsequent to the hearing conducted pursuant to Section
16 358, whenever a new placement of the child must be made,
17 consideration for placement shall again be given as described in
18 this section to relatives who have not been found to be unsuitable
19 and who will fulfill the child’s reunification or permanent plan
20 requirements. In addition to the factors described in subdivision
21 (a), the county social worker shall consider whether the relative
22 has established and maintained a relationship with the child.

23 (e) If the court does not place the child with a relative who has
24 been considered for placement pursuant to this section, the court
25 shall state for the record the reasons placement with that relative
26 was denied.

27 (f) (1) With respect to a child who satisfies the criteria set forth
28 in paragraph (2), the department and any licensed adoption agency
29 may search for a relative and furnish identifying information
30 relating to the child to that relative if it is believed the child’s
31 welfare will be promoted thereby.

32 (2) Paragraph (1) shall apply if both of the following conditions
33 are satisfied:

- 34 (A) The child was previously a dependent of the court.
- 35 (B) The child was previously adopted and the adoption has been
36 disrupted, set aside pursuant to Section 9100 or 9102 of the Family
37 Code, or the child has been released into the custody of the
38 department or a licensed adoption agency by the adoptive parent
39 or parents.

1 (3) As used in this subdivision, “relative” includes a member
2 of the child’s birth family and nonrelated extended family
3 members, regardless of whether the parental rights were terminated,
4 provided that both of the following are true:

5 (A) No appropriate potential caretaker is known to exist from
6 the child’s adoptive family, including nonrelated extended family
7 members of the adoptive family.

8 (B) The child was not the subject of a voluntary relinquishment
9 by the birth parents pursuant to Section 8700 of the Family Code
10 or Section 1255.7 of the Health and Safety Code.

11 *SEC. 7. If the Commission on State Mandates determines that*
12 *this act contains costs mandated by the state, reimbursement to*
13 *local agencies and school districts for those costs shall be made*
14 *pursuant to Part 7 (commencing with Section 17500) of Division*
15 *4 of Title 2 of the Government Code.*

16 ~~SEC. 2. Section 315 of the Welfare and Institutions Code is~~
17 ~~amended to read:~~

18 ~~315. (a) If a minor has been taken into custody under this~~
19 ~~article and not released to a parent or guardian, the juvenile court~~
20 ~~shall hold a hearing (which shall be referred to as a “detention~~
21 ~~hearing”) to determine whether the minor shall be further detained.~~
22 ~~This hearing shall be held as soon as possible, but in any event~~
23 ~~before the expiration of the next judicial day after a petition to~~
24 ~~declare the minor a dependent child has been filed. If the hearing~~
25 ~~is not held within the period prescribed by this section, the minor~~
26 ~~shall be released from custody.~~

27 ~~(b) At the hearing, the court shall inquire regarding the efforts~~
28 ~~made by the social worker to comply with the requirements of~~
29 ~~subdivision (d) of Section 309, and the results of those efforts.~~

30 ~~SEC. 3. Section 317 of the Welfare and Institutions Code is~~
31 ~~amended to read:~~

32 ~~317. (a) It is the intent of the Legislature that all parties to~~
33 ~~juvenile court hearings, including children, parents, and social~~
34 ~~workers, have a meaningful opportunity to participate in these~~
35 ~~hearings. At a minimum, it is the intent of the Legislature that all~~
36 ~~parties have the opportunity to review reports and meet with their~~
37 ~~attorneys before the detention hearing, held pursuant to Section~~
38 ~~315, and in advance of all subsequent hearings.~~

39 ~~(b) (1) When it appears to the court that a parent or guardian~~
40 ~~of the child desires counsel but is presently financially unable to~~

1 ~~afford and cannot for that reason employ counsel, the court may~~
2 ~~appoint counsel as provided in this section.~~

3 ~~(2) When it appears to the court that a parent or Indian custodian~~
4 ~~in an Indian child custody proceeding desires counsel but is~~
5 ~~presently unable to afford and cannot for that reason employ~~
6 ~~counsel, the provisions of subsection (b) of Section 1912 of the~~
7 ~~Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and Section~~
8 ~~23.13 of Title 25 of the Code of Federal Regulations are applicable.~~

9 ~~(e) When it appears to the court that a parent or guardian of the~~
10 ~~child is presently financially unable to afford and cannot for that~~
11 ~~reason employ counsel, and the child has been placed in~~
12 ~~out-of-home care, or the petitioning agency is recommending that~~
13 ~~the child be placed in out-of-home care, the court shall appoint~~
14 ~~counsel for the parent or guardian, unless the court finds that the~~
15 ~~parent or guardian has made a knowing and intelligent waiver of~~
16 ~~counsel as provided in this section.~~

17 ~~(d) If a child is not represented by counsel, the court shall~~
18 ~~appoint counsel for the child unless the court finds that the child~~
19 ~~would not benefit from the appointment of counsel. The court shall~~
20 ~~state on the record its reasons for that finding. A primary~~
21 ~~responsibility of any counsel appointed to represent a child~~
22 ~~pursuant to this section shall be to advocate for the protection,~~
23 ~~safety, and physical and emotional well-being of the child. Counsel~~
24 ~~for the child may be a district attorney, public defender, or other~~
25 ~~member of the bar, provided that the counsel does not represent~~
26 ~~another party or county agency whose interests conflict with the~~
27 ~~child's interests. The fact that the district attorney represents the~~
28 ~~child in a proceeding pursuant to Section 300 as well as conducts~~
29 ~~a criminal investigation or files a criminal complaint or information~~
30 ~~arising from the same or reasonably related set of facts as the~~
31 ~~proceeding pursuant to Section 300 is not in and of itself a conflict~~
32 ~~of interest. The court may fix the compensation for the services~~
33 ~~of appointed counsel. The appointed counsel shall have a caseload~~
34 ~~and training that ensures adequate representation of the child. The~~
35 ~~Judicial Council shall promulgate rules of court that establish~~
36 ~~caseload standards, training requirements, and guidelines for~~
37 ~~appointed counsel for children and shall adopt rules as required~~
38 ~~by Section 326.5 no later than July 1, 2001.~~

39 ~~(e) The counsel appointed by the court shall represent the parent,~~
40 ~~guardian, or child at the detention hearing and at all subsequent~~

1 proceedings before the juvenile court. Counsel shall continue to
2 represent the parent, guardian, or child unless relieved by the court
3 upon the substitution of other counsel or for cause. The
4 representation shall include representing the parent, guardian, or
5 the child in termination proceedings and in those proceedings
6 relating to the institution or setting aside of a legal guardianship.

7 (f) ~~The counsel for the child shall be charged in general with~~
8 ~~the representation of the child's interests. To that end, the counsel~~
9 ~~shall make or cause to have made any further investigations that~~
10 ~~he or she deems in good faith to be reasonably necessary to~~
11 ~~ascertain the facts, including the interviewing of witnesses, and~~
12 ~~he or she shall examine and cross-examine witnesses in both the~~
13 ~~adjudicatory and dispositional hearings. He or she may also~~
14 ~~introduce and examine his or her own witnesses, make~~
15 ~~recommendations to the court concerning the child's welfare, and~~
16 ~~participate further in the proceedings to the degree necessary to~~
17 ~~adequately represent the child. In any case in which the child is~~
18 ~~four years of age or older, counsel shall interview the child to~~
19 ~~determine the child's wishes and to assess the child's well-being,~~
20 ~~and shall advise the court of the child's wishes. Counsel for the~~
21 ~~child shall not advocate for the return of the child if, to the best of~~
22 ~~his or her knowledge, that return conflicts with the protection and~~
23 ~~safety of the child. In addition counsel shall investigate the interests~~
24 ~~of the child beyond the scope of the juvenile proceeding and report~~
25 ~~to the court other interests of the child that may need to be~~
26 ~~protected by the institution of other administrative or judicial~~
27 ~~proceedings. The attorney representing a child in a dependency~~
28 ~~proceeding is not required to assume the responsibilities of a social~~
29 ~~worker and is not expected to provide nonlegal services to the~~
30 ~~child. The court shall take whatever appropriate action is necessary~~
31 ~~to fully protect the interests of the child.~~

32 (g) ~~Either the child or the counsel for the child, with the~~
33 ~~informed consent of the child if the child is found by the court to~~
34 ~~be of sufficient age and maturity to so consent, which shall be~~
35 ~~presumed, subject to rebuttal by clear and convincing evidence, if~~
36 ~~the child is over 12 years of age, may invoke the~~
37 ~~psychotherapist-client privilege, physician-patient privilege, and~~
38 ~~clergyman-penitent privilege; and if the child invokes the privilege,~~
39 ~~counsel may not waive it, but if counsel invokes the privilege, the~~
40 ~~child may waive it. Counsel shall be holder of these privileges if~~

1 the child is found by the court not to be of sufficient age and
2 maturity to so consent. For the sole purpose of fulfilling his or her
3 obligation to provide legal representation of the child, counsel for
4 a child shall have access to all records with regard to the child
5 maintained by a health care facility, as defined in Section 1545 of
6 the Penal Code, health care providers, as defined in Section 6146
7 of the Business and Professions Code, a physician and surgeon or
8 other health practitioner, as defined in former Section 11165.8 of
9 the Penal Code, as that section read on January 1, 2000, or a child
10 care custodian, as defined in former Section 11165.7 of the Penal
11 Code, as that section read on January 1, 2000. Notwithstanding
12 any other law, counsel shall be given access to all records relevant
13 to the case which are maintained by state or local public agencies.
14 All information requested from a child protective agency regarding
15 a child who is in protective custody, or from a child's guardian ad
16 litem, shall be provided to the child's counsel within 30 days of
17 the request.

18 (h) In a county of the third class, if counsel is to be provided to
19 a child at county expense other than by counsel for the agency,
20 the court shall first utilize the services of the public defender prior
21 to appointing private counsel, to provide legal counsel. Nothing
22 in this subdivision shall be construed to require the appointment
23 of the public defender in any case in which the public defender
24 has a conflict of interest. In the interest of justice, a court may
25 depart from that portion of the procedure requiring appointment
26 of the public defender after making a finding of good cause and
27 stating the reasons therefor on the record.

28 (i) In a county of the third class, if counsel is to be appointed
29 for a parent or guardian at county expense, the court shall first
30 utilize the services of the alternate public defender, prior to
31 appointing private counsel, to provide legal counsel. Nothing in
32 this subdivision shall be construed to require the appointment of
33 the alternate public defender in any case in which the public
34 defender has a conflict of interest. In the interest of justice, a court
35 may depart from that portion of the procedure requiring
36 appointment of the alternate public defender after making a finding
37 of good cause and stating the reasons therefor on the record.

38 SEC. 4. Section 319 of the Welfare and Institutions Code is
39 amended to read:

1 319. ~~(a) At the initial petition hearing, the court shall examine~~
2 ~~the child's parents, guardians, or other persons having relevant~~
3 ~~knowledge and hear the relevant evidence as the child, the child's~~
4 ~~parents or guardians, the petitioner, or their counsel desires to~~
5 ~~present. The court may examine the child, as provided in Section~~
6 ~~350.~~

7 ~~(b) The social worker shall report to the court on the reasons~~
8 ~~why the child has been removed from the parent's physical custody,~~
9 ~~the need, if any, for continued detention, the available services~~
10 ~~and the referral methods to those services that could facilitate the~~
11 ~~return of the child to the custody of the child's parents or guardians,~~
12 ~~and whether there are any relatives who are able and willing to~~
13 ~~take temporary physical custody of the child. The court shall order~~
14 ~~the release of the child from custody unless a prima facie showing~~
15 ~~has been made that the child comes within Section 300, the court~~
16 ~~finds that continuance in the parent's or guardian's home is~~
17 ~~contrary to the child's welfare, and any of the following~~
18 ~~circumstances exist:~~

19 ~~(1) There is a substantial danger to the physical health of the~~
20 ~~child or the child is suffering severe emotional damage, and there~~
21 ~~are no reasonable means by which the child's physical or emotional~~
22 ~~health may be protected without removing the child from the~~
23 ~~parent's or guardian's physical custody.~~

24 ~~(2) There is substantial evidence that a parent, guardian, or~~
25 ~~custodian of the child is likely to flee the jurisdiction of the court.~~

26 ~~(3) The child has left a placement in which he or she was placed~~
27 ~~by the juvenile court.~~

28 ~~(4) The child indicates an unwillingness to return home, if the~~
29 ~~child has been physically or sexually abused by a person residing~~
30 ~~in the home.~~

31 ~~(c) The social worker shall report to the court regarding the~~
32 ~~efforts made by the social worker to comply with the requirements~~
33 ~~of subdivision (d) of Section 309, and the results of those efforts.~~
34 ~~The social worker shall also provide to the court any relative~~
35 ~~caregiver information form, as provided for pursuant to Section~~
36 ~~309, that has been completed and received. The court shall consider~~
37 ~~that information and shall determine whether, in the court's~~
38 ~~discretion, to grant the request of a relative to address the court.~~

39 ~~(d) If the matter is continued pursuant to Section 322 or for any~~
40 ~~other reason, the court shall find that the continuance of the child~~

1 in the parent's or guardian's home is contrary to the child's welfare
2 at the initial petition hearing or order the release of the child from
3 custody.

4 (e) (1) The court shall also make a determination on the record,
5 referencing the social worker's report or other evidence relied
6 upon, as to whether reasonable efforts were made to prevent or
7 eliminate the need for removal of the child from his or her home,
8 pursuant to subdivision (b) of Section 306, and whether there are
9 available services that would prevent the need for further detention.
10 Services to be considered for purposes of making this determination
11 are case management, counseling, emergency shelter care,
12 emergency in-home caretakers, out-of-home respite care, teaching
13 and demonstrating homemakers, parenting training, transportation,
14 and any other child welfare services authorized by the State
15 Department of Social Services pursuant to Chapter 5 (commencing
16 with Section 16500) of Part 4 of Division 9. The court shall also
17 review whether the social worker has considered whether a referral
18 to public assistance services pursuant to Chapter 2 (commencing
19 with Section 11200) and Chapter 7 (commencing with Section
20 14000) of Part 3, Chapter 1 (commencing with Section 17000) of
21 Part 5, and Chapter 10 (commencing with Section 18900) of Part
22 6 of Division 9 would have eliminated the need to take temporary
23 custody of the child or would prevent the need for further detention.

24 (2) If the child can be returned to the custody of his or her parent
25 or guardian through the provision of those services, the court shall
26 place the child with his or her parent or guardian and order that
27 the services shall be provided. If the child cannot be returned to
28 the physical custody of his or her parent or guardian, the court
29 shall determine if there is a relative who is able and willing to care
30 for the child, and has been assessed pursuant to paragraph (1) of
31 subdivision (e) of Section 309.

32 (f) If a court orders a child detained, the court shall state the
33 facts on which the decision is based, specify why the initial removal
34 was necessary, reference the social worker's report or other
35 evidence relied upon to make its determination whether
36 continuance in the home of the parent or legal guardian is contrary
37 to the child's welfare, order temporary placement and care of the
38 child to be vested with the county child welfare department pending
39 the hearing held pursuant to Section 355 or further order of the

1 court, and order services to be provided as soon as possible to
2 reunify the child and his or her family if appropriate.

3 (g) (1) If the child is not released from custody, the court may
4 order that the child shall be placed in the assessed home of a
5 relative, in an emergency shelter or other suitable licensed place,
6 in a place exempt from licensure designated by the juvenile court,
7 or in the assessed home of a nonrelative extended family member
8 as defined in Section 362.7 for a period not to exceed 15 judicial
9 days.

10 (2) As used in this section, “relative” means an adult who is
11 related to the child by blood, adoption, or affinity within the fifth
12 degree of kinship, including stepparents, stepsiblings, and all
13 relatives whose status is preceded by the words “great,”
14 “great-great,” or “grand,” or the spouse of any of these persons,
15 even if the marriage was terminated by death or dissolution.
16 However, only the following relatives shall be given preferential
17 consideration for placement of the child: an adult who is a
18 grandparent, aunt, uncle, or sibling of the child.

19 (3) The court shall consider the recommendations of the social
20 worker based on the assessment pursuant to paragraph (1) of
21 subdivision (e) of Section 309 of the relative’s home, including
22 the results of a criminal records check and prior child abuse
23 allegations, if any, prior to ordering that the child be placed with
24 a relative. The court shall order the parent to disclose to the social
25 worker the names, residences, and any known identifying
26 information of any maternal or paternal relatives of the child. The
27 social worker shall initiate the assessment pursuant to Section
28 361.3 of any relative to be considered for continuing placement.

29 (h) (1) At the initial hearing upon the petition filed in
30 accordance with subdivision (e) of Rule 5.520 of the California
31 Rules of Court or anytime thereafter up until the time that the
32 minor is adjudged a dependent child of the court or a finding is
33 made dismissing the petition, the court may temporarily limit the
34 right of the parent or guardian to make educational decisions for
35 the child and temporarily appoint a responsible adult to make
36 educational decisions for the child if all of the following conditions
37 are found:

38 (A) The parent or guardian is unavailable, unable, or unwilling
39 to exercise educational rights for the child.

1 ~~(B) The county placing agency has made diligent efforts to~~
2 ~~locate and secure the participation of the parent or guardian in~~
3 ~~educational decisionmaking.~~

4 ~~(C) The child’s educational needs cannot be met without the~~
5 ~~temporary appointment of a responsible adult.~~

6 ~~(2) If the court cannot identify a responsible adult to make~~
7 ~~educational decisions for the child and the appointment of a~~
8 ~~surrogate parent, as defined in subdivision (a) of Section 56050~~
9 ~~of the Education Code, is not warranted, the court may, with the~~
10 ~~input of any interested person, make educational decisions for the~~
11 ~~child. If the court makes educational decisions for the child, the~~
12 ~~court shall also issue appropriate orders to ensure that every effort~~
13 ~~is made to identify a responsible adult to make future educational~~
14 ~~decisions for the child.~~

15 ~~(3) Any temporary appointment of a responsible adult and~~
16 ~~temporary limitation on the right of the parent or guardian to make~~
17 ~~educational decisions for the child shall be specifically addressed~~
18 ~~in the court order. Any order made under this section shall expire~~
19 ~~at the conclusion of the hearing held pursuant to Section 361 or~~
20 ~~upon dismissal of the petition. Upon the entering of disposition~~
21 ~~orders, any additional needed limitation on the parent’s or~~
22 ~~guardian’s educational rights shall be addressed pursuant to Section~~
23 ~~361.~~

24 ~~SEC. 5. Section 366.21 of the Welfare and Institutions Code~~
25 ~~is amended to read:~~

26 ~~366.21. (a) Every hearing conducted by the juvenile court~~
27 ~~reviewing the status of a dependent child shall be placed on the~~
28 ~~appearance calendar. The court shall advise all persons present at~~
29 ~~the hearing of the date of the future hearing and of their right to~~
30 ~~be present and represented by counsel.~~

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

33 ~~(c) At least 10 calendar days prior to the hearing, the social~~
34 ~~worker shall file a supplemental report with the court regarding~~
35 ~~the services provided or offered to the parent or legal guardian to~~
36 ~~enable him or her to assume custody and the efforts made to~~
37 ~~achieve legal permanence for the child if efforts to reunify fail,~~
38 ~~including, but not limited to, efforts to maintain relationships~~
39 ~~between a child who is 10 years of age or older and has been in~~
40 ~~out-of-home placement for six months or longer and individuals~~

1 who are important to the child, consistent with the child's best
2 interests; the progress made; and, where relevant, the prognosis
3 for return of the child to the physical custody of his or her parent
4 or legal guardian; and shall make his or her recommendation for
5 disposition. If the child is a member of a sibling group described
6 in subparagraph (C) of paragraph (1) of subdivision (a) of Section
7 361.5, the report and recommendation may also take into account
8 those factors described in subdivision (e) relating to the child's
9 sibling group. If the recommendation is not to return the child to
10 a parent or legal guardian, the report shall specify why the return
11 of the child would be detrimental to the child. The social worker
12 shall provide the parent or legal guardian, counsel for the child,
13 and any court-appointed child advocate with a copy of the report,
14 including his or her recommendation for disposition, at least 10
15 calendar days prior to the hearing. In the case of a child removed
16 from the physical custody of his or her parent or legal guardian,
17 the social worker shall, at least 10 calendar days prior to the
18 hearing, provide a summary of his or her recommendation for
19 disposition to any foster parents, relative caregivers, and certified
20 foster parents who have been approved for adoption by 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 or by a licensed county adoption agency, community care facility,
24 or foster family agency having the physical custody of the child.
25 The social worker shall include a copy of the Judicial Council
26 Caregiver Information Form (JV-290) with the summary of
27 recommendations to the child's foster parents, relative caregivers,
28 or foster parents approved for adoption, in the caregiver's primary
29 language when available, along with information on how to file
30 the form with the court.

31 (d) Prior to any hearing involving a child in the physical custody
32 of a community care facility or a foster family agency that may
33 result in the return of the child to the physical custody of his or
34 her parent or legal guardian, or in adoption or the creation of a
35 legal guardianship, the facility or agency shall file with the court
36 a report, or a Judicial Council Caregiver Information Form
37 (JV-290), containing its recommendation for disposition. Prior to
38 the hearing involving a child in the physical custody of a foster
39 parent, a relative caregiver, or a certified foster parent who has
40 been approved for adoption by the State Department of Social

1 Services when it is acting as an adoption agency or by a licensed
2 adoption agency, the foster parent, relative caregiver, or the
3 certified foster parent who has been approved for adoption by the
4 State Department of Social Services when it is acting as an
5 adoption agency in counties that are not served by a county
6 adoption agency or by a licensed county adoption agency, may
7 file with the court a report containing his or her recommendation
8 for disposition and may, on and after January 1, 2011, include in
9 that report a request to address the court. The court shall consider
10 the report and recommendation filed pursuant to this subdivision
11 prior to determining any disposition and shall determine whether,
12 in the court's discretion, to grant the request of a foster parent,
13 relative caregiver, or the certified foster parent to address the court.

14 (e) Prior to any hearing pursuant to this section, other than a
15 hearing described in subdivision (d), the social worker shall file
16 with the court any relative caregiver information form, as provided
17 for pursuant to Section 309, that has been completed and received.
18 The court shall consider that information and shall determine
19 whether, in the court's discretion, to grant the request of a relative
20 caregiver to address the court.

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

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

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

23 If the child was under three years of age on the date of the initial
24 removal, or is a member of a sibling group described in
25 subparagraph (C) of paragraph (1) of subdivision (a) of Section
26 361.5, and the court finds by clear and convincing evidence that
27 the parent failed to participate regularly and make substantive
28 progress in a court-ordered treatment plan, the court may schedule
29 a hearing pursuant to Section 366.26 within 120 days. If, however,
30 the court finds there is a substantial probability that the child, who
31 was under three years of age on the date of initial removal or is a
32 member of a sibling group described in subparagraph (C) of
33 paragraph (1) of subdivision (a) of Section 361.5, may be returned
34 to his or her parent or legal guardian within six months or that
35 reasonable services have not been provided, the court shall continue
36 the case to the 12-month permanency hearing.

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

1 subparagraph (C) of paragraph (1) of subdivision (a) of Section
2 361.5, shall review and consider the social worker's report and
3 recommendations. Factors the report shall address, and the court
4 shall consider, may include, but need not be limited to, whether
5 the sibling group was removed from parental care as a group, the
6 closeness and strength of the sibling bond, the ages of the siblings,
7 the appropriateness of maintaining the sibling group together, the
8 detriment to the child if sibling ties are not maintained, the
9 likelihood of finding a permanent home for the sibling group,
10 whether the sibling group is currently placed together in a
11 preadoptive home or has a concurrent plan goal of legal
12 permanency in the same home, the wishes of each child whose
13 age and physical and emotional condition permits a meaningful
14 response, and the best interest of each child in the sibling group.
15 The court shall specify the factual basis for its finding that it is in
16 the best interest of each child to schedule a hearing pursuant to
17 Section 366.26 in 120 days for some or all of the members of the
18 sibling group.

19 If the child was removed initially under subdivision (g) of
20 Section 300 and the court finds by clear and convincing evidence
21 that the whereabouts of the parent are still unknown, or the parent
22 has failed to contact and visit the child, the court may schedule a
23 hearing pursuant to Section 366.26 within 120 days. The court
24 shall take into account any particular barriers to a parent's ability
25 to maintain contact with his or her child due to the parent's
26 incarceration or institutionalization. If the court finds by clear and
27 convincing evidence that the parent has been convicted of a felony
28 indicating parental unfitness, the court may schedule a hearing
29 pursuant to Section 366.26 within 120 days.

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

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

1 If the child is not returned to his or her parent or legal guardian,
2 the court shall determine whether reasonable services that were
3 designed to aid the parent or legal guardian in overcoming the
4 problems that led to the initial removal and the continued custody
5 of the child have been provided or offered to the parent or legal
6 guardian. The court shall order that those services be initiated,
7 continued, or terminated.

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

10 Regardless of whether the child is returned to his or her parent
11 or legal guardian, the court shall specify the factual basis for its
12 decision. If the child is not returned to a parent or legal guardian,
13 the court shall specify the factual basis for its conclusion that the
14 return would be detrimental. The court also shall make a finding
15 pursuant to subdivision (a) of Section 366. If the child is not
16 returned to his or her parent or legal guardian, the court shall
17 consider, and state for the record, in-state and out-of-state
18 placement options. If the child is placed out of the state, the court
19 shall make a determination whether the out-of-state placement
20 continues to be appropriate and in the best interests of the child.

21 (h) If the time period in which the court-ordered services were
22 provided has met or exceeded the time period set forth in
23 subparagraph (A), (B), or (C) of paragraph (1) of subdivision (a)
24 of Section 361.5, as appropriate, and a child is not returned to the
25 custody of a parent or legal guardian at the permanency hearing
26 held pursuant to subdivision (f), the court shall do one of the
27 following:

28 (1) Continue the case for up to six months for a permanency
29 review hearing, provided that the hearing shall occur within 18
30 months of the date the child was originally taken from the physical
31 custody of his or her parent or legal guardian. The court shall
32 continue the case only if it finds that there is a substantial
33 probability that the child will be returned to the physical custody
34 of his or her parent or legal guardian and safely maintained in the
35 home within the extended period of time or that reasonable services
36 have not been provided to the parent or legal guardian. For the
37 purposes of this section, in order to find a substantial probability
38 that the child will be returned to the physical custody of his or her
39 parent or legal guardian and safely maintained in the home within

1 the extended period of time, the court shall be required to find all
2 of the following:

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

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

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

12 For purposes of this subdivision, the court's decision to continue
13 the case based on a finding or substantial probability that the child
14 will be returned to the physical custody of his or her parent or legal
15 guardian is a compelling reason for determining that a hearing
16 held pursuant to Section 366.26 is not in the best interests of the
17 child.

18 The court shall inform the parent or legal guardian that if the
19 child cannot be returned home by the next permanency review
20 hearing, a proceeding pursuant to Section 366.26 may be instituted.
21 The court may not order that a hearing pursuant to Section 366.26
22 be held unless there is clear and convincing evidence that
23 reasonable services have been provided or offered to the parent or
24 legal guardian.

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

30 (3) Order that the child remain in long-term foster care, but only
31 if the court finds by clear and convincing evidence, based upon
32 the evidence already presented to it, including a recommendation
33 by the State Department of Social Services when it is acting as an
34 adoption agency in counties that are not served by a county
35 adoption agency or by a licensed county adoption agency, that
36 there is a compelling reason for determining that a hearing held
37 pursuant to Section 366.26 is not in the best interest of the child
38 because the child is not a proper subject for adoption and has no
39 one willing to accept legal guardianship. For purposes of this
40 section, a recommendation by the State Department of Social

1 Services when it is acting as an adoption agency in counties that
 2 are not served by a county adoption agency or by a licensed county
 3 adoption agency that adoption is not in the best interest of the child
 4 shall constitute a compelling reason for the court's determination.
 5 That recommendation shall be based on the present circumstances
 6 of the child and may not preclude a different recommendation at
 7 a later date if the child's circumstances change.

8 If the court orders that a child who is 10 years of age or older
 9 remain in long-term foster care, the court shall determine whether
 10 the agency has made reasonable efforts to maintain the child's
 11 relationships with individuals other than the child's siblings who
 12 are important to the child, consistent with the child's best interests,
 13 and may make any appropriate order to ensure that those
 14 relationships are maintained.

15 If the child is not returned to his or her parent or legal guardian,
 16 the court shall consider, and state for the record, in-state and
 17 out-of-state options for permanent placement. If the child is placed
 18 out of the state, the court shall make a determination whether the
 19 out-of-state placement continues to be appropriate and in the best
 20 interests of the child.

21 (i) In any case in which the court orders that a hearing pursuant
 22 to Section 366.26 shall be held, it shall also order the termination
 23 of reunification services to the parent or legal guardian. The court
 24 shall continue to permit the parent or legal guardian to visit the
 25 child pending the hearing unless it finds that visitation would be
 26 detrimental to the child. The court shall make any other appropriate
 27 orders to enable the child to maintain relationships with individuals,
 28 other than the child's siblings, who are important to the child,
 29 consistent with the child's best interests.

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

36 (A) Current search efforts for an absent parent or parents or
 37 legal guardians.

38 (B) A review of the amount of and nature of any contact between
 39 the child and his or her parents or legal guardians and other
 40 members of his or her extended family since the time of placement.

1 Although the extended family of each child shall be reviewed on
2 a case-by-case basis, “extended family” for the purpose of this
3 subparagraph shall include, but not be limited to, the child’s
4 siblings, grandparents, aunts, and uncles.

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

7 (D) A preliminary assessment of the eligibility and commitment
8 of any identified prospective adoptive parent or legal guardian,
9 particularly the caretaker, to include a social history including
10 screening for criminal records and prior referrals for child abuse
11 or neglect, the capability to meet the child’s needs, and the
12 understanding of the legal and financial rights and responsibilities
13 of adoption and guardianship. If a proposed guardian is a relative
14 of the minor, and the relative was assessed for foster care placement
15 of the minor prior to January 1, 1998, the assessment shall also
16 consider, but need not be limited to, all of the factors specified in
17 subdivision (a) of Section 361.3.

18 (E) The relationship of the child to any identified prospective
19 adoptive parent or legal guardian, the duration and character of
20 the relationship, the motivation for seeking adoption or
21 guardianship, and a statement from the child concerning placement
22 and the adoption or guardianship, unless the child’s age or physical,
23 emotional, or other condition precludes his or her meaningful
24 response, and if so, a description of the condition.

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

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

31 (2) (A) A relative caregiver’s preference for legal guardianship
32 over adoption, if it is due to circumstances that do not include an
33 unwillingness to accept legal or financial responsibility for the
34 child, shall not constitute the sole basis for recommending removal
35 of the child from the relative caregiver for purposes of adoptive
36 placement.

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

1 ~~(k) If, at any hearing held pursuant to Section 366.26, a~~
2 ~~guardianship is established for the minor with a relative, and~~
3 ~~juvenile court dependency is subsequently dismissed, the relative~~
4 ~~shall be eligible for aid under the Kin-GAP Program, as provided~~
5 ~~for in Article 4.5 (commencing with Section 11360) of Chapter 2~~
6 ~~of Part 3 of Division 9.~~

7 ~~(l) As used in this section, “relative” means an adult who is~~
8 ~~related to the minor by blood, adoption, or affinity within the fifth~~
9 ~~degree of kinship, including stepparents, stepsiblings, and all~~
10 ~~relatives whose status is preceded by the words “great,”~~
11 ~~“great-great,” or “grand,” or the spouse of any of those persons~~
12 ~~even if the marriage was terminated by death or dissolution.~~

13 ~~(m) For purposes of this section, evidence of any of the~~
14 ~~following circumstances may not, in and of itself, be deemed a~~
15 ~~failure to provide or offer reasonable services:~~

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

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

20 ~~(3) Services to make and finalize a permanent placement for~~
21 ~~the child, if efforts to reunify fail, are provided concurrently with~~
22 ~~services to reunify the family.~~

23 ~~(n) The implementation and operation of the amendments to~~
24 ~~subdivisions (c) and (h) enacted at the 2005–06 Regular Session~~
25 ~~shall be subject to appropriation through the budget process and~~
26 ~~by phase, as provided in Section 366.35.~~

27 ~~SEC. 6. If the Commission on State Mandates determines that~~
28 ~~this act contains costs mandated by the state, reimbursement to~~
29 ~~local agencies and school districts for those costs shall be made~~
30 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
31 ~~4 of Title 2 of the Government Code.~~