

**ASSEMBLY BILL**

**No. 791**

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**Introduced by Assembly Member Ammiano**

February 17, 2011

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An act to amend Sections 361.5 and 366.21 of the Welfare and Institutions Code, relating to dependent children.

LEGISLATIVE COUNSEL'S DIGEST

AB 791, as introduced, Ammiano. Dependent children: birth certificates.

Existing law provides for the removal of a child from the custody of a parent or guardian on the basis of abuse or neglect, as specified. Existing law requires the juvenile court to order the social worker to provide family reunification services, unless specified conditions exist. Existing law requires the court to order that reunification services be terminated if it decides to permanently terminate parental rights with regard to, or establish legal guardianship of, the child.

This bill would require the court, when it terminates or declines to order reunification services, to order that the child receive his or her birth certificate.

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

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

- 1 SECTION 1. Section 361.5 of the Welfare and Institutions
- 2 Code, as amended by Section 13 of Chapter 559 of the Statutes of
- 3 2010, is amended to read:

1 361.5. (a) Except as provided in subdivision (b), or when the  
2 parent has voluntarily relinquished the child and the relinquishment  
3 has been filed with the State Department of Social Services, or  
4 upon the establishment of an order of guardianship pursuant to  
5 Section 360, whenever a child is removed from a parent's or  
6 guardian's custody, the juvenile court shall order the social worker  
7 to provide child welfare services to the child and the child's mother  
8 and statutorily presumed father or guardians. Upon a finding and  
9 declaration of paternity by the juvenile court or proof of a prior  
10 declaration of paternity by any court of competent jurisdiction, the  
11 juvenile court may order services for the child and the biological  
12 father, if the court determines that the services will benefit the  
13 child.

14 (1) Family reunification services, when provided, shall be  
15 provided as follows:

16 (A) Except as otherwise provided in subparagraph (C), for a  
17 child who, on the date of initial removal from the physical custody  
18 of his or her parent or guardian, was three years of age or older,  
19 court-ordered services shall be provided beginning with the  
20 dispositional hearing and ending 12 months after the date the child  
21 entered foster care as defined in Section 361.49, unless the child  
22 is returned to the home of the parent or guardian.

23 (B) For a child who, on the date of initial removal from the  
24 physical custody of his or her parent or guardian, was under three  
25 years of age, court-ordered services shall be provided for a period  
26 of six months from the dispositional hearing as provided in  
27 subdivision (e) of Section 366.21, but no longer than 12 months  
28 from the date the child entered foster care as defined in Section  
29 361.49 unless the child is returned to the home of the parent or  
30 guardian.

31 (C) For the purpose of placing and maintaining a sibling group  
32 together in a permanent home should reunification efforts fail, for  
33 a child in a sibling group whose members were removed from  
34 parental custody at the same time, and in which one member of  
35 the sibling group was under three years of age on the date of initial  
36 removal from the physical custody of his or her parent or guardian,  
37 court-ordered services for some or all of the sibling group may be  
38 limited as set forth in subparagraph (B). For the purposes of this  
39 paragraph, "a sibling group" shall mean two or more children who  
40 are related to each other as full or half siblings.

1 (2) Any motion to terminate court-ordered reunification services  
2 prior to the hearing set pursuant to subdivision (f) of Section 366.21  
3 for a child described by subparagraph (A) of paragraph (1), or  
4 prior to the hearing set pursuant to subdivision (e) of Section  
5 366.21 for a child described by subparagraph (B) or (C) of  
6 paragraph (1), shall be made pursuant to the requirements set forth  
7 in subdivision (c) of Section 388. A motion to terminate  
8 court-ordered reunification services shall not be required at the  
9 hearing set pursuant to subdivision (e) of Section 366.21 if the  
10 court finds by clear and convincing evidence one of the following:

11 (A) That the child was removed initially under subdivision (g)  
12 of Section 300 and the whereabouts of the parent are still unknown.

13 (B) That the parent has failed to contact and visit the child.

14 (C) That the parent has been convicted of a felony indicating  
15 parental unfitness.

16 (3) Notwithstanding subparagraphs (A), (B), and (C) of  
17 paragraph (1), court-ordered services may be extended up to a  
18 maximum time period not to exceed 18 months after the date the  
19 child was originally removed from physical custody of his or her  
20 parent or guardian if it can be shown, at the hearing held pursuant  
21 to subdivision (f) of Section 366.21, that the permanent plan for  
22 the child is that he or she will be returned and safely maintained  
23 in the home within the extended time period. The court shall extend  
24 the time period only if it finds that there is a substantial probability  
25 that the child will be returned to the physical custody of his or her  
26 parent or guardian within the extended time period or that  
27 reasonable services have not been provided to the parent or  
28 guardian. In determining whether court-ordered services may be  
29 extended, the court shall consider the special circumstances of an  
30 incarcerated or institutionalized parent or parents, or parent or  
31 parents court-ordered to a residential substance abuse treatment  
32 program, including, but not limited to, barriers to the parent's or  
33 guardian's access to services and ability to maintain contact with  
34 his or her child. The court shall also consider, among other factors,  
35 good faith efforts that the parent or guardian has made to maintain  
36 contact with the child. If the court extends the time period, the  
37 court shall specify the factual basis for its conclusion that there is  
38 a substantial probability that the child will be returned to the  
39 physical custody of his or her parent or guardian within the  
40 extended time period. The court also shall make findings pursuant

1 to subdivision (a) of Section 366 and subdivision (e) of Section  
2 358.1.

3 When counseling or other treatment services are ordered, the  
4 parent or guardian shall be ordered to participate in those services,  
5 unless the parent's or guardian's participation is deemed by the  
6 court to be inappropriate or potentially detrimental to the child, or  
7 unless a parent or guardian is incarcerated and the corrections  
8 facility in which he or she is incarcerated does not provide access  
9 to the treatment services ordered by the court. Physical custody of  
10 the child by the parents or guardians during the applicable time  
11 period under subparagraph (A), (B), or (C) of paragraph (1) shall  
12 not serve to interrupt the running of the period. If at the end of the  
13 applicable time period, a child cannot be safely returned to the  
14 care and custody of a parent or guardian without court supervision,  
15 but the child clearly desires contact with the parent or guardian,  
16 the court shall take the child's desire into account in devising a  
17 permanency plan.

18 In cases where the child was under three years of age on the date  
19 of the initial removal from the physical custody of his or her parent  
20 or guardian or is a member of a sibling group as described in  
21 subparagraph (C) of paragraph (1), the court shall inform the parent  
22 or guardian that the failure of the parent or guardian to participate  
23 regularly in any court-ordered treatment programs or to cooperate  
24 or avail himself or herself of services provided as part of the child  
25 welfare services case plan may result in a termination of efforts  
26 to reunify the family after six months. The court shall inform the  
27 parent or guardian of the factors used in subdivision (e) of Section  
28 366.21 to determine whether to limit services to six months for  
29 some or all members of a sibling group as described in  
30 subparagraph (C) of paragraph (1).

31 (4) Notwithstanding paragraph (3), court-ordered services may  
32 be extended up to a maximum time period not to exceed 24 months  
33 after the date the child was originally removed from physical  
34 custody of his or her parent or guardian if it is shown, at the hearing  
35 held pursuant to subdivision (b) of Section 366.22, that the  
36 permanent plan for the child is that he or she will be returned and  
37 safely maintained in the home within the extended time period.  
38 The court shall extend the time period only if it finds that it is in  
39 the child's best interest to have the time period extended and that  
40 there is a substantial probability that the child will be returned to

1 the physical custody of his or her parent or guardian who is  
2 described in subdivision (b) of Section 366.22 within the extended  
3 time period, or that reasonable services have not been provided to  
4 the parent or guardian. If the court extends the time period, the  
5 court shall specify the factual basis for its conclusion that there is  
6 a substantial probability that the child will be returned to the  
7 physical custody of his or her parent or guardian within the  
8 extended time period. The court also shall make findings pursuant  
9 to subdivision (a) of Section 366 and subdivision (e) of Section  
10 358.1.

11 When counseling or other treatment services are ordered, the  
12 parent or guardian shall be ordered to participate in those services,  
13 in order for substantial probability to be found. Physical custody  
14 of the child by the parents or guardians during the applicable time  
15 period under subparagraph (A), (B), or (C) of paragraph (1) shall  
16 not serve to interrupt the running of the period. If at the end of the  
17 applicable time period, the child cannot be safely returned to the  
18 care and custody of a parent or guardian without court supervision,  
19 but the child clearly desires contact with the parent or guardian,  
20 the court shall take the child's desire into account in devising a  
21 permanency plan.

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

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

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

34 (2) That the parent or guardian is suffering from a mental  
35 disability that is described in Chapter 2 (commencing with Section  
36 7820) of Part 4 of Division 12 of the Family Code and that renders  
37 him or her incapable of utilizing those services.

38 (3) That the child or a sibling of the child has been previously  
39 adjudicated a dependent pursuant to any subdivision of Section  
40 300 as a result of physical or sexual abuse, that following that

1 adjudication the child had been removed from the custody of his  
2 or her parent or guardian pursuant to Section 361, that the child  
3 has been returned to the custody of the parent or guardian from  
4 whom the child had been taken originally, and that the child is  
5 being removed pursuant to Section 361, due to additional physical  
6 or sexual abuse.

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

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

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

19 A finding of severe sexual abuse, for the purposes of this  
20 subdivision, may be based on, but is not limited to, sexual  
21 intercourse, or stimulation involving genital-genital, oral-genital,  
22 anal-genital, or oral-anal contact, whether between the parent or  
23 guardian and the child or a sibling or half sibling of the child, or  
24 between the child or a sibling or half sibling of the child and  
25 another person or animal with the actual or implied consent of the  
26 parent or guardian; or the penetration or manipulation of the  
27 child's, sibling's, or half sibling's genital organs or rectum by any  
28 animate or inanimate object for the sexual gratification of the  
29 parent or guardian, or for the sexual gratification of another person  
30 with the actual or implied consent of the parent or guardian.

31 A finding of the infliction of severe physical harm, for the  
32 purposes of this subdivision, may be based on, but is not limited  
33 to, deliberate and serious injury inflicted to or on a child's body  
34 or the body of a sibling or half sibling of the child by an act or  
35 omission of the parent or guardian, or of another individual or  
36 animal with the consent of the parent or guardian; deliberate and  
37 torturous confinement of the child, sibling, or half sibling in a  
38 closed space; or any other torturous act or omission that would be  
39 reasonably understood to cause serious emotional damage.

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

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

9 (9) That the child has been found to be a child described in  
10 subdivision (g) of Section 300, that the parent or guardian of the  
11 child willfully abandoned the child, and the court finds that the  
12 abandonment itself constituted a serious danger to the child; or  
13 that the parent or other person having custody of the child  
14 voluntarily surrendered physical custody of the child pursuant to  
15 Section 1255.7 of the Health and Safety Code. For the purposes  
16 of this paragraph, “serious danger” means that without the  
17 intervention of another person or agency, the child would have  
18 sustained severe or permanent disability, injury, illness, or death.  
19 For purposes of this paragraph, “willful abandonment” shall not  
20 be construed as actions taken in good faith by the parent without  
21 the intent of placing the child in serious danger.

22 (10) That the court ordered termination of reunification services  
23 for any siblings or half siblings of the child because the parent or  
24 guardian failed to reunify with the sibling or half sibling after the  
25 sibling or half sibling had been removed from that parent or  
26 guardian pursuant to Section 361 and that parent or guardian is  
27 the same parent or guardian described in subdivision (a) and that,  
28 according to the findings of the court, this parent or guardian has  
29 not subsequently made a reasonable effort to treat the problems  
30 that led to removal of the sibling or half sibling of that child from  
31 that parent or guardian.

32 (11) That the parental rights of a parent over any sibling or half  
33 sibling of the child had been permanently severed, and this parent  
34 is the same parent described in subdivision (a), and that, according  
35 to the findings of the court, this parent has not subsequently made  
36 a reasonable effort to treat the problems that led to removal of the  
37 sibling or half sibling of that child from the parent.

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

1 (13) That the parent or guardian of the child has a history of  
2 extensive, abusive, and chronic use of drugs or alcohol and has  
3 resisted prior court-ordered treatment for this problem during a  
4 three-year period immediately prior to the filing of the petition  
5 that brought that child to the court's attention, or has failed or  
6 refused to comply with a program of drug or alcohol treatment  
7 described in the case plan required by Section 358.1 on at least  
8 two prior occasions, even though the programs identified were  
9 available and accessible.

10 (14) That the parent or guardian of the child has advised the  
11 court that he or she is not interested in receiving family  
12 maintenance or family reunification services or having the child  
13 returned to or placed in his or her custody and does not wish to  
14 receive family maintenance or reunification services.

15 The parent or guardian shall be represented by counsel and shall  
16 execute a waiver of services form to be adopted by the Judicial  
17 Council. The court shall advise the parent or guardian of any right  
18 to services and of the possible consequences of a waiver of  
19 services, including the termination of parental rights and placement  
20 of the child for adoption. The court shall not accept the waiver of  
21 services unless it states on the record its finding that the parent or  
22 guardian has knowingly and intelligently waived the right to  
23 services.

24 (15) That the parent or guardian has on one or more occasions  
25 willfully abducted the child or child's sibling or half sibling from  
26 his or her placement and refused to disclose the child's or child's  
27 sibling's or half sibling's whereabouts, refused to return physical  
28 custody of the child or child's sibling or half sibling to his or her  
29 placement, or refused to return physical custody of the child or  
30 child's sibling or half sibling to the social worker.

31 (c) In deciding whether to order reunification in any case in  
32 which this section applies, the court shall hold a dispositional  
33 hearing. The social worker shall prepare a report that discusses  
34 whether reunification services shall be provided. When it is alleged,  
35 pursuant to paragraph (2) of subdivision (b), that the parent is  
36 incapable of utilizing services due to mental disability, the court  
37 shall order reunification services unless competent evidence from  
38 mental health professionals establishes that, even with the provision  
39 of services, the parent is unlikely to be capable of adequately caring  
40 for the child within the time limits specified in subdivision (a).



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

6 In addition, the court shall not order reunification in any situation  
7 described in paragraph (5) of subdivision (b) unless it finds that,  
8 based on competent testimony, those services are likely to prevent  
9 reabuse or continued neglect of the child or that failure to try  
10 reunification will be detrimental to the child because the child is  
11 closely and positively attached to that parent. The social worker  
12 shall investigate the circumstances leading to the removal of the  
13 child and advise the court whether there are circumstances that  
14 indicate that reunification is likely to be successful or unsuccessful  
15 and whether failure to order reunification is likely to be detrimental  
16 to the child.

17 The failure of the parent to respond to previous services, the fact  
18 that the child was abused while the parent was under the influence  
19 of drugs or alcohol, a past history of violent behavior, or testimony  
20 by a competent professional that the parent's behavior is unlikely  
21 to be changed by services are among the factors indicating that  
22 reunification services are unlikely to be successful. The fact that  
23 a parent or guardian is no longer living with an individual who  
24 severely abused the child may be considered in deciding that  
25 reunification services are likely to be successful, provided that the  
26 court shall consider any pattern of behavior on the part of the parent  
27 that has exposed the child to repeated abuse.

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

33 (e) (1) If the parent or guardian is incarcerated or  
34 institutionalized, the court shall order reasonable services unless  
35 the court determines, by clear and convincing evidence, those  
36 services would be detrimental to the child. In determining  
37 detriment, the court shall consider the age of the child, the degree  
38 of parent-child bonding, the length of the sentence, the length and  
39 nature of the treatment, the nature of the crime or illness, the degree  
40 of detriment to the child if services are not offered and, for children

1 10 years of age or older, the child’s attitude toward the  
2 implementation of family reunification services, the likelihood of  
3 the parent’s discharge from incarceration or institutionalization  
4 within the reunification time limitations described in subdivision  
5 (a), and any other appropriate factors. In determining the content  
6 of reasonable services, the court shall consider the particular  
7 barriers to an incarcerated or otherwise institutionalized parent’s  
8 access to those court-mandated services and ability to maintain  
9 contact with his or her child, and shall document this information  
10 in the child’s case plan. Reunification services are subject to the  
11 applicable time limitations imposed in subdivision (a). Services  
12 may include, but shall not be limited to, all of the following:

13 (A) Maintaining contact between the parent and child through  
14 collect telephone calls.

15 (B) Transportation services, where appropriate.

16 (C) Visitation services, where appropriate.

17 (D) Reasonable services to extended family members or foster  
18 parents providing care for the child if the services are not  
19 detrimental to the child.

20 An incarcerated parent may be required to attend counseling,  
21 parenting classes, or vocational training programs as part of the  
22 reunification service plan if actual access to these services is  
23 provided. The social worker shall document in the child’s case  
24 plan the particular barriers to an incarcerated or institutionalized  
25 parent’s access to those court-mandated services and ability to  
26 maintain contact with his or her child.

27 (2) The presiding judge of the juvenile court of each county  
28 may convene representatives of the county welfare department,  
29 the sheriff’s department, and other appropriate entities for the  
30 purpose of developing and entering into protocols for ensuring the  
31 notification, transportation, and presence of an incarcerated or  
32 institutionalized parent at all court hearings involving proceedings  
33 affecting the child pursuant to Section 2625 of the Penal Code.  
34 The county welfare department shall utilize the prisoner locator  
35 system developed by the Department of Corrections and  
36 Rehabilitation to facilitate timely and effective notice of hearings  
37 for incarcerated parents.

38 (3) Notwithstanding any other provision of law, if the  
39 incarcerated parent is a woman seeking to participate in the  
40 community treatment program operated by the Department of

1 Corrections and Rehabilitation pursuant to Chapter 4.8  
2 (commencing with Section 1174) of Title 7 of Part 2 of, Chapter  
3 4 (commencing with Section 3410) of Title 2 of Part 3 of, the Penal  
4 Code, the court shall determine whether the parent’s participation  
5 in a program is in the child’s best interest and whether it is suitable  
6 to meet the needs of the parent and child.

7 (f) If the court, pursuant to paragraph (2), (3), (4), (5), (6), (7),  
8 (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) or  
9 paragraph (1) of subdivision (e), does not order reunification  
10 services, it shall, at the dispositional hearing, that shall include a  
11 permanency hearing, determine if a hearing under Section 366.26  
12 shall be set in order to determine whether adoption, guardianship,  
13 or long-term foster care, or in the case of an Indian child, in  
14 consultation with the child’s tribe, tribal customary adoption, is  
15 the most appropriate plan for the child, and shall consider in-state  
16 and out-of-state placement options. If the court so determines, it  
17 shall conduct the hearing pursuant to Section 366.26 within 120  
18 days after the dispositional hearing. However, the court shall not  
19 schedule a hearing so long as the other parent is being provided  
20 reunification services pursuant to subdivision (a). The court may  
21 continue to permit the parent to visit the child unless it finds that  
22 visitation would be detrimental to the child.

23 (g) (1) Whenever a court orders that a hearing shall be held  
24 pursuant to Section 366.26, including, when, in consultation with  
25 the child’s tribe, tribal customary adoption is recommended, it  
26 shall direct the agency supervising the child and the licensed county  
27 adoption agency, or the State Department of Social Services when  
28 it is acting as an adoption agency in counties that are not served  
29 by a county adoption agency, to prepare an assessment that shall  
30 include:

31 (A) Current search efforts for an absent parent or parents and  
32 notification of a noncustodial parent in the manner provided for  
33 in Section 291.

34 (B) A review of the amount of and nature of any contact between  
35 the child and his or her parents and other members of his or her  
36 extended family since the time of placement. Although the  
37 extended family of each child shall be reviewed on a case-by-case  
38 basis, “extended family” for the purpose of this subparagraph shall  
39 include, but not be limited to, the child’s siblings, grandparents,  
40 aunts, and uncles.

- 1 (C) An evaluation of the child’s medical, developmental,  
2 scholastic, mental, and emotional status.
- 3 (D) A preliminary assessment of the eligibility and commitment  
4 of any identified prospective adoptive parent or guardian, including  
5 a prospective tribal customary adoptive parent, particularly the  
6 caretaker, to include a social history, including screening for  
7 criminal records and prior referrals for child abuse or neglect, the  
8 capability to meet the child’s needs, and the understanding of the  
9 legal and financial rights and responsibilities of adoption and  
10 guardianship. If a proposed guardian is a relative of the minor, the  
11 assessment shall also consider, but need not be limited to, all of  
12 the factors specified in subdivision (a) of Section 361.3 and in  
13 Section 361.4. As used in this subparagraph, “relative” means an  
14 adult who is related to the minor by blood, adoption, or affinity  
15 within the fifth degree of kinship, including stepparents,  
16 stepsiblings, and all relatives whose status is preceded by the words  
17 “great,” “great-great,” or “grand,” or the spouse of any of those  
18 persons even if the marriage was terminated by death or  
19 dissolution.
- 20 (E) The relationship of the child to any identified prospective  
21 adoptive parent or guardian, including a prospective tribal  
22 customary parent, the duration and character of the relationship,  
23 the degree of attachment of the child to the prospective relative  
24 guardian or adoptive parent, the relative’s or adoptive parent’s  
25 strong commitment to caring permanently for the child, the  
26 motivation for seeking adoption or guardianship, a statement from  
27 the child concerning placement and the adoption or guardianship,  
28 and whether the child over 12 years of age has been consulted  
29 about the proposed relative guardianship arrangements, unless the  
30 child’s age or physical, emotional, or other condition precludes  
31 his or her meaningful response, and if so, a description of the  
32 condition.
- 33 (F) An analysis of the likelihood that the child will be adopted  
34 if parental rights are terminated.
- 35 (G) In the case of an Indian child, in addition to subparagraphs  
36 (A) to (F), inclusive, an assessment of the likelihood that the child  
37 will be adopted, when, in consultation with the child’s tribe, a  
38 customary tribal adoption, as defined in Section 366.24, is  
39 recommended. If tribal customary adoption is recommended, the  
40 assessment shall include an analysis of both of the following:

1 (i) Whether tribal customary adoption would or would not be  
2 detrimental to the Indian child and the reasons for reaching that  
3 conclusion.

4 (ii) Whether the Indian child cannot or should not be returned  
5 to the home of the Indian parent or Indian custodian and the reasons  
6 for reaching that conclusion.

7 (2) (A) A relative caregiver's preference for legal guardianship  
8 over adoption, if it is due to circumstances that do not include an  
9 unwillingness to accept legal or financial responsibility for the  
10 child, shall not constitute the sole basis for recommending removal  
11 of the child from the relative caregiver for purposes of adoptive  
12 placement.

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

17 (h) If, at any hearing held pursuant to Section 366.26, a  
18 guardianship is established for the minor with an approved relative  
19 caregiver and juvenile court dependency is subsequently dismissed,  
20 the minor shall be eligible for aid under the Kin-GAP Program as  
21 provided for in Article 4.5 (commencing with Section 11360) or  
22 Article 4.7 (commencing with Section 11385) of Chapter 2, as  
23 applicable.

24 (i) In determining whether reunification services will benefit  
25 the child pursuant to paragraph (6) or (7) of subdivision (b), the  
26 court shall consider any information it deems relevant, including  
27 the following factors:

28 (1) The specific act or omission comprising the severe sexual  
29 abuse or the severe physical harm inflicted on the child or the  
30 child's sibling or half sibling.

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

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

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

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

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

3 (j) *When the court determines that reunification services will*  
4 *not be ordered, it shall order that the child receive his or her birth*  
5 *certificate.*

6 ~~(j)~~

7 (k) The court shall read into the record the basis for a finding  
8 of severe sexual abuse or the infliction of severe physical harm  
9 under paragraph (6) of subdivision (b), and shall also specify the  
10 factual findings used to determine that the provision of  
11 reunification services to the offending parent or guardian would  
12 not benefit the child.

13 ~~(k)~~

14 (l) This section shall remain in effect only until January 1, 2014,  
15 and as of that date is repealed, unless a later enacted statute, that  
16 is enacted before January 1, 2014, deletes or extends that date.

17 SEC. 2. Section 361.5 of the Welfare and Institutions Code,  
18 as amended by Section 14 of Chapter 559 of the Statutes of 2010,  
19 is amended to read:

20 361.5. (a) Except as provided in subdivision (b), or when the  
21 parent has voluntarily relinquished the child and the relinquishment  
22 has been filed with the State Department of Social Services, or  
23 upon the establishment of an order of guardianship pursuant to  
24 Section 360, whenever a child is removed from a parent's or  
25 guardian's custody, the juvenile court shall order the social worker  
26 to provide child welfare services to the child and the child's mother  
27 and statutorily presumed father or guardians. Upon a finding and  
28 declaration of paternity by the juvenile court or proof of a prior  
29 declaration of paternity by any court of competent jurisdiction, the  
30 juvenile court may order services for the child and the biological  
31 father, if the court determines that the services will benefit the  
32 child.

33 (1) Family reunification services, when provided, shall be  
34 provided as follows:

35 (A) Except as otherwise provided in subparagraph (C), for a  
36 child who, on the date of initial removal from the physical custody  
37 of his or her parent or guardian, was three years of age or older,  
38 court-ordered services shall be provided beginning with the  
39 dispositional hearing and ending 12 months after the date the child

1 entered foster care as defined in Section 361.49, unless the child  
2 is returned to the home of the parent or guardian.

3 (B) For a child who, on the date of initial removal from the  
4 physical custody of his or her parent or guardian, was under three  
5 years of age, court-ordered services shall be provided for a period  
6 of six months from the dispositional hearing as provided in  
7 subdivision (e) of Section 366.21, but no longer than 12 months  
8 from the date the child entered foster care as defined in Section  
9 361.49 unless the child is returned to the home of the parent or  
10 guardian.

11 (C) For the purpose of placing and maintaining a sibling group  
12 together in a permanent home should reunification efforts fail, for  
13 a child in a sibling group whose members were removed from  
14 parental custody at the same time, and in which one member of  
15 the sibling group was under three years of age on the date of initial  
16 removal from the physical custody of his or her parent or guardian,  
17 court-ordered services for some or all of the sibling group may be  
18 limited as set forth in subparagraph (B). For the purposes of this  
19 paragraph, “a sibling group” shall mean two or more children who  
20 are related to each other as full or half siblings.

21 (2) Any motion to terminate court-ordered reunification services  
22 prior to the hearing set pursuant to subdivision (f) of Section 366.21  
23 for a child described by subparagraph (A) of paragraph (1), or  
24 prior to the hearing set pursuant to subdivision (e) of Section  
25 366.21 for a child described by subparagraph (B) or (C) of  
26 paragraph (1), shall be made pursuant to the requirements set forth  
27 in subdivision (c) of Section 388. A motion to terminate  
28 court-ordered reunification services shall not be required at the  
29 hearing set pursuant to subdivision (e) of Section 366.21 if the  
30 court finds by clear and convincing evidence one of the following:

31 (A) That the child was removed initially under subdivision (g)  
32 of Section 300 and the whereabouts of the parent are still unknown.

33 (B) That the parent has failed to contact and visit the child.

34 (C) That the parent has been convicted of a felony indicating  
35 parental unfitness.

36 (3) Notwithstanding subparagraphs (A), (B), and (C) of  
37 paragraph (1), court-ordered services may be extended up to a  
38 maximum time period not to exceed 18 months after the date the  
39 child was originally removed from physical custody of his or her  
40 parent or guardian if it can be shown, at the hearing held pursuant

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

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

38 In cases where the child was under three years of age on the date  
39 of the initial removal from the physical custody of his or her parent  
40 or guardian or is a member of a sibling group as described in



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

11 (4) Notwithstanding paragraph (3), court-ordered services may  
12 be extended up to a maximum time period not to exceed 24 months  
13 after the date the child was originally removed from physical  
14 custody of his or her parent or guardian if it is shown, at the hearing  
15 held pursuant to subdivision (b) of Section 366.22, that the  
16 permanent plan for the child is that he or she will be returned and  
17 safely maintained in the home within the extended time period.  
18 The court shall extend the time period only if it finds that it is in  
19 the child's best interest to have the time period extended and that  
20 there is a substantial probability that the child will be returned to  
21 the physical custody of his or her parent or guardian who is  
22 described in subdivision (b) of Section 366.22 within the extended  
23 time period, or that reasonable services have not been provided to  
24 the parent or guardian. If the court extends the time period, the  
25 court shall specify the factual basis for its conclusion that there is  
26 a substantial probability that the child will be returned to the  
27 physical custody of his or her parent or guardian within the  
28 extended time period. The court also shall make findings pursuant  
29 to subdivision (a) of Section 366 and subdivision (e) of Section  
30 358.1.

31 When counseling or other treatment services are ordered, the  
32 parent or guardian shall be ordered to participate in those services,  
33 in order for substantial probability to be found. Physical custody  
34 of the child by the parents or guardians during the applicable time  
35 period under subparagraph (A), (B), or (C) of paragraph (1) shall  
36 not serve to interrupt the running of the period. If at the end of the  
37 applicable time period, the child cannot be safely returned to the  
38 care and custody of a parent or guardian without court supervision,  
39 but the child clearly desires contact with the parent or guardian,

1 the court shall take the child's desire into account in devising a  
2 permanency plan.

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

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

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

15 (2) That the parent or guardian is suffering from a mental  
16 disability that is described in Chapter 2 (commencing with Section  
17 7820) of Part 4 of Division 12 of the Family Code and that renders  
18 him or her incapable of utilizing those services.

19 (3) That the child or a sibling of the child has been previously  
20 adjudicated a dependent pursuant to any subdivision of Section  
21 300 as a result of physical or sexual abuse, that following that  
22 adjudication the child had been removed from the custody of his  
23 or her parent or guardian pursuant to Section 361, that the child  
24 has been returned to the custody of the parent or guardian from  
25 whom the child had been taken originally, and that the child is  
26 being removed pursuant to Section 361, due to additional physical  
27 or sexual abuse.

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

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

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

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

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

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

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

30 (9) That the child has been found to be a child described in  
31 subdivision (g) of Section 300, that the parent or guardian of the  
32 child willfully abandoned the child, and the court finds that the  
33 abandonment itself constituted a serious danger to the child; or  
34 that the parent or other person having custody of the child  
35 voluntarily surrendered physical custody of the child pursuant to  
36 Section 1255.7 of the Health and Safety Code. For the purposes  
37 of this paragraph, "serious danger" means that without the  
38 intervention of another person or agency, the child would have  
39 sustained severe or permanent disability, injury, illness, or death.  
40 For purposes of this paragraph, "willful abandonment" shall not

1 be construed as actions taken in good faith by the parent without  
2 the intent of placing the child in serious danger.

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

13 (11) That the parental rights of a parent over any sibling or half  
14 sibling of the child had been permanently severed, and this parent  
15 is the same parent described in subdivision (a), and that, according  
16 to the findings of the court, this parent has not subsequently made  
17 a reasonable effort to treat the problems that led to removal of the  
18 sibling or half sibling of that child from the parent.

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

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

31 (14) That the parent or guardian of the child has advised the  
32 court that he or she is not interested in receiving family  
33 maintenance or family reunification services or having the child  
34 returned to or placed in his or her custody and does not wish to  
35 receive family maintenance or reunification services.

36 The parent or guardian shall be represented by counsel and shall  
37 execute a waiver of services form to be adopted by the Judicial  
38 Council. The court shall advise the parent or guardian of any right  
39 to services and of the possible consequences of a waiver of  
40 services, including the termination of parental rights and placement

1 of the child for adoption. The court shall not accept the waiver of  
2 services unless it states on the record its finding that the parent or  
3 guardian has knowingly and intelligently waived the right to  
4 services.

5 (15) That the parent or guardian has on one or more occasions  
6 willfully abducted the child or child's sibling or half sibling from  
7 his or her placement and refused to disclose the child's or child's  
8 sibling's or half sibling's whereabouts, refused to return physical  
9 custody of the child or child's sibling or half sibling to his or her  
10 placement, or refused to return physical custody of the child or  
11 child's sibling or half sibling to the social worker.

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

22 The court shall not order reunification for a parent or guardian  
23 described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12),  
24 (13), (14), or (15) of subdivision (b) unless the court finds, by clear  
25 and convincing evidence, that reunification is in the best interest  
26 of the child.

27 In addition, the court shall not order reunification in any situation  
28 described in paragraph (5) of subdivision (b) unless it finds that,  
29 based on competent testimony, those services are likely to prevent  
30 reabuse or continued neglect of the child or that failure to try  
31 reunification will be detrimental to the child because the child is  
32 closely and positively attached to that parent. The social worker  
33 shall investigate the circumstances leading to the removal of the  
34 child and advise the court whether there are circumstances that  
35 indicate that reunification is likely to be successful or unsuccessful  
36 and whether failure to order reunification is likely to be detrimental  
37 to the child.

38 The failure of the parent to respond to previous services, the fact  
39 that the child was abused while the parent was under the influence  
40 of drugs or alcohol, a past history of violent behavior, or testimony

1 by a competent professional that the parent's behavior is unlikely  
2 to be changed by services are among the factors indicating that  
3 reunification services are unlikely to be successful. The fact that  
4 a parent or guardian is no longer living with an individual who  
5 severely abused the child may be considered in deciding that  
6 reunification services are likely to be successful, provided that the  
7 court shall consider any pattern of behavior on the part of the parent  
8 that has exposed the child to repeated abuse.

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

14 (e) (1) If the parent or guardian is incarcerated or  
15 institutionalized, the court shall order reasonable services unless  
16 the court determines, by clear and convincing evidence, those  
17 services would be detrimental to the child. In determining  
18 detriment, the court shall consider the age of the child, the degree  
19 of parent-child bonding, the length of the sentence, the length and  
20 nature of the treatment, the nature of the crime or illness, the degree  
21 of detriment to the child if services are not offered and, for children  
22 10 years of age or older, the child's attitude toward the  
23 implementation of family reunification services, the likelihood of  
24 the parent's discharge from incarceration or institutionalization  
25 within the reunification time limitations described in subdivision  
26 (a), and any other appropriate factors. In determining the content  
27 of reasonable services, the court shall consider the particular  
28 barriers to an incarcerated or otherwise institutionalized parent's  
29 access to those court-mandated services and ability to maintain  
30 contact with his or her child, and shall document this information  
31 in the child's case plan. 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 reunification service plan if actual access to these services is  
4 provided. The social worker shall document in the child's case  
5 plan the particular barriers to an incarcerated or institutionalized  
6 parent's access to those court-mandated services and ability to  
7 maintain contact with his or her child.

8 (2) The presiding judge of the juvenile court of each county  
9 may convene representatives of the county welfare department,  
10 the sheriff's department, and other appropriate entities for the  
11 purpose of developing and entering into protocols for ensuring the  
12 notification, transportation, and presence of an incarcerated or  
13 institutionalized parent at all court hearings involving proceedings  
14 affecting the child pursuant to Section 2625 of the Penal Code.  
15 The county welfare department shall utilize the prisoner locator  
16 system developed by the Department of Corrections and  
17 Rehabilitation to facilitate timely and effective notice of hearings  
18 for incarcerated parents.

19 (3) Notwithstanding any other provision of law, if the  
20 incarcerated parent is a woman seeking to participate in the  
21 community treatment program operated by the Department of  
22 Corrections and Rehabilitation pursuant to Chapter 4.8  
23 (commencing with Section 1174) of Title 7 of Part 2 of, Chapter  
24 4 (commencing with Section 3410) of Title 2 of Part 3 of, the Penal  
25 Code, the court shall determine whether the parent's participation  
26 in a program is in the child's best interest and whether it is suitable  
27 to meet the needs of the parent and child.

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

1 visit the child unless it finds that visitation would be detrimental  
2 to the child.

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

9 (A) Current search efforts for an absent parent or parents and  
10 notification of a noncustodial parent in the manner provided for  
11 in Section 291.

12 (B) A review of the amount of and nature of any contact between  
13 the child and his or her parents and other members of his or her  
14 extended family since the time of placement. Although the  
15 extended family of each child shall be reviewed on a case-by-case  
16 basis, "extended family" for the purpose of this subparagraph shall  
17 include, but not be limited to, the child's siblings, grandparents,  
18 aunts, and uncles.

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

21 (D) A preliminary assessment of the eligibility and commitment  
22 of any identified prospective adoptive parent or guardian,  
23 particularly the caretaker, to include a social history, including  
24 screening for criminal records and prior referrals for child abuse  
25 or neglect, the capability to meet the child's needs, and the  
26 understanding of the legal and financial rights and responsibilities  
27 of adoption and guardianship. If a proposed guardian is a relative  
28 of the minor, the assessment shall also consider, but need not be  
29 limited to, all of the factors specified in subdivision (a) of Section  
30 361.3 and in Section 361.4. As used in this subparagraph, "relative"  
31 means an adult who is related to the minor by blood, adoption, or  
32 affinity within the fifth degree of kinship, including stepparents,  
33 stepsiblings, and all relatives whose status is preceded by the words  
34 "great," "great-great," or "grand," or the spouse of any of those  
35 persons even if the marriage was terminated by death or  
36 dissolution.

37 (E) The relationship of the child to any identified prospective  
38 adoptive parent or guardian, the duration and character of the  
39 relationship, the degree of attachment of the child to the prospective  
40 relative guardian or adoptive parent, the relative's or adoptive



1 parent's strong commitment to caring permanently for the child,  
2 the motivation for seeking adoption or guardianship, a statement  
3 from the child concerning placement and the adoption or  
4 guardianship, and whether the child over 12 years of age has been  
5 consulted about the proposed relative guardianship arrangements  
6 unless the child's age or physical, emotional, or other condition  
7 precludes his or her meaningful response, and if so, a description  
8 of the condition.

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

11 (2) (A) A relative caregiver's preference for legal guardianship  
12 over adoption, if it is due to circumstances that do not include an  
13 unwillingness to accept legal or financial responsibility for the  
14 child, shall not constitute the sole basis for recommending removal  
15 of the child from the relative caregiver for purposes of adoptive  
16 placement.

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

21 (h) If, at any hearing held pursuant to Section 366.26, a  
22 guardianship is established for the minor with an approved relative  
23 caregiver and juvenile court dependency is subsequently dismissed,  
24 the minor shall be eligible for aid under the Kin-GAP Program as  
25 provided for in Article 4.5 (commencing with Section 11360) or  
26 Article 4.7 (commencing with Section 11385) of Chapter 2, as  
27 applicable.

28 (i) In determining whether reunification services will benefit  
29 the child pursuant to paragraph (6) or (7) of subdivision (b), the  
30 court shall consider any information it deems relevant, including  
31 the following factors:

32 (1) The specific act or omission comprising the severe sexual  
33 abuse or the severe physical harm inflicted on the child or the  
34 child's sibling or half sibling.

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

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

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

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

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

6 (j) *When the court determines that reunification services will*  
7 *not be ordered, it shall order that the child receive his or her birth*  
8 *certificate.*

9 ~~(j)~~

10 (k) The court shall read into the record the basis for a finding  
11 of severe sexual abuse or the infliction of severe physical harm  
12 under paragraph (6) of subdivision (b), and shall also specify the  
13 factual findings used to determine that the provision of  
14 reunification services to the offending parent or guardian would  
15 not benefit the child.

16 ~~(k)~~

17 (l) This section shall become operative on January 1, 2014.

18 SEC. 3. Section 366.21 of the Welfare and Institutions Code,  
19 as amended by Section 16 of Chapter 559 of the Statutes of 2010,  
20 is amended to read:

21 366.21. (a) Every hearing conducted by the juvenile court  
22 reviewing the status of a dependent child shall be placed on the  
23 appearance calendar. The court shall advise all persons present at  
24 the hearing of the date of the future hearing and of their right to  
25 be present and represented by counsel.

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

28 (c) At least 10 calendar days prior to the hearing, the social  
29 worker shall file a supplemental report with the court regarding  
30 the services provided or offered to the parent or legal guardian to  
31 enable him or her to assume custody and the efforts made to  
32 achieve legal permanence for the child if efforts to reunify fail,  
33 including, but not limited to, efforts to maintain relationships  
34 between a child who is 10 years of age or older and has been in  
35 out-of-home placement for six months or longer and individuals  
36 who are important to the child, consistent with the child's best  
37 interests; the progress made; and, where relevant, the prognosis  
38 for return of the child to the physical custody of his or her parent  
39 or legal guardian; and shall make his or her recommendation for  
40 disposition. If the child is a member of a sibling group described

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

26 (d) Prior to any hearing involving a child in the physical custody  
27 of a community care facility or a foster family agency that may  
28 result in the return of the child to the physical custody of his or  
29 her parent or legal guardian, or in adoption or the creation of a  
30 legal guardianship, or in the case of an Indian child, in consultation  
31 with the child's tribe, tribal customary adoption, the facility or  
32 agency shall file with the court a report, or a Judicial Council  
33 Caregiver Information Form (JV-290), containing its  
34 recommendation for disposition. Prior to the hearing involving a  
35 child in the physical custody of a foster parent, a relative caregiver,  
36 or a certified foster parent who has been approved for adoption by  
37 the State Department of Social Services when it is acting as an  
38 adoption agency or by a licensed adoption agency, the foster parent,  
39 relative caregiver, or the certified foster parent who has been  
40 approved for adoption by the State Department of Social Services

1 when it is acting as an adoption agency in counties that are not  
2 served by a county adoption agency or by a licensed county  
3 adoption agency, may file with the court a report containing his  
4 or her recommendation for disposition. The court shall consider  
5 the report and recommendation filed pursuant to this subdivision  
6 prior to determining any disposition.

7 (e) At the review hearing held six months after the initial  
8 dispositional hearing, but no later than 12 months after the date  
9 the child entered foster care as determined in Section 361.49,  
10 whichever occurs earlier, the court shall order the return of the  
11 child to the physical custody of his or her parent or legal guardian  
12 unless the court finds, by a preponderance of the evidence, that  
13 the return of the child to his or her parent or legal guardian would  
14 create a substantial risk of detriment to the safety, protection, or  
15 physical or emotional well-being of the child. The social worker  
16 shall have the burden of establishing that detriment. At the hearing,  
17 the court shall consider the criminal history, obtained pursuant to  
18 paragraph (1) of subdivision (f) of Section 16504.5, of the parent  
19 or legal guardian subsequent to the child's removal to the extent  
20 that the criminal record is substantially related to the welfare of  
21 the child or the parent's or guardian's ability to exercise custody  
22 and control regarding his or her child, provided the parent or legal  
23 guardian agreed to submit fingerprint images to obtain criminal  
24 history information as part of the case plan. The failure of the  
25 parent or legal guardian to participate regularly and make  
26 substantive progress in court-ordered treatment programs shall be  
27 prima facie evidence that return would be detrimental. In making  
28 its determination, the court shall review and consider the social  
29 worker's report and recommendations and the report and  
30 recommendations of any child advocate appointed pursuant to  
31 Section 356.5; and shall consider the efforts or progress, or both,  
32 demonstrated by the parent or legal guardian and the extent to  
33 which he or she availed himself or herself to services provided,  
34 taking into account the particular barriers to an incarcerated or  
35 institutionalized parent or legal guardian's access to those  
36 court-mandated services and ability to maintain contact with his  
37 or her child.

38 Regardless of whether the child is returned to a parent or legal  
39 guardian, the court shall specify the factual basis for its conclusion  
40 that the return would be detrimental or would not be detrimental.

1 The court also shall make appropriate findings pursuant to  
2 subdivision (a) of Section 366; and, where relevant, shall order  
3 any additional services reasonably believed to facilitate the return  
4 of the child to the custody of his or her parent or legal guardian.  
5 The court shall also inform the parent or legal guardian that if the  
6 child cannot be returned home by the 12-month permanency  
7 hearing, a proceeding pursuant to Section 366.26 may be instituted.  
8 This section does not apply in a case where, pursuant to Section  
9 361.5, the court has ordered that reunification services shall not  
10 be provided.

11 If the child was under three years of age on the date of the initial  
12 removal, or is a member of a sibling group described in  
13 subparagraph (C) of paragraph (1) of subdivision (a) of Section  
14 361.5, and the court finds by clear and convincing evidence that  
15 the parent failed to participate regularly and make substantive  
16 progress in a court-ordered treatment plan, the court may schedule  
17 a hearing pursuant to Section 366.26 within 120 days. If, however,  
18 the court finds there is a substantial probability that the child, who  
19 was under three years of age on the date of initial removal or is a  
20 member of a sibling group described in subparagraph (C) of  
21 paragraph (1) of subdivision (a) of Section 361.5, may be returned  
22 to his or her parent or legal guardian within six months or that  
23 reasonable services have not been provided, the court shall continue  
24 the case to the 12-month permanency hearing.

25 For the purpose of placing and maintaining a sibling group  
26 together in a permanent home, the court, in making its  
27 determination to schedule a hearing pursuant to Section 366.26  
28 for some or all members of a sibling group, as described in  
29 subparagraph (C) of paragraph (1) of subdivision (a) of Section  
30 361.5, shall review and consider the social worker's report and  
31 recommendations. Factors the report shall address, and the court  
32 shall consider, may include, but need not be limited to, whether  
33 the sibling group was removed from parental care as a group, the  
34 closeness and strength of the sibling bond, the ages of the siblings,  
35 the appropriateness of maintaining the sibling group together, the  
36 detriment to the child if sibling ties are not maintained, the  
37 likelihood of finding a permanent home for the sibling group,  
38 whether the sibling group is currently placed together in a  
39 preadoptive home or has a concurrent plan goal of legal  
40 permanency in the same home, the wishes of each child whose

1 age and physical and emotional condition permits a meaningful  
2 response, and the best interest of each child in the sibling group.  
3 The court shall specify the factual basis for its finding that it is in  
4 the best interest of each child to schedule a hearing pursuant to  
5 Section 366.26 in 120 days for some or all of the members of the  
6 sibling group.

7 If the child was removed initially under subdivision (g) of  
8 Section 300 and the court finds by clear and convincing evidence  
9 that the whereabouts of the parent are still unknown, or the parent  
10 has failed to contact and visit the child, the court may schedule a  
11 hearing pursuant to Section 366.26 within 120 days. The court  
12 shall take into account any particular barriers to a parent's ability  
13 to maintain contact with his or her child due to the parent's  
14 incarceration or institutionalization. If the court finds by clear and  
15 convincing evidence that the parent has been convicted of a felony  
16 indicating parental unfitness, the court may schedule a hearing  
17 pursuant to Section 366.26 within 120 days.

18 If the child had been placed under court supervision with a  
19 previously noncustodial parent pursuant to Section 361.2, the court  
20 shall determine whether supervision is still necessary. The court  
21 may terminate supervision and transfer permanent custody to that  
22 parent, as provided for by paragraph (1) of subdivision (b) of  
23 Section 361.2.

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

29 If the child is not returned to his or her parent or legal guardian,  
30 the court shall determine whether reasonable services that were  
31 designed to aid the parent or legal guardian in overcoming the  
32 problems that led to the initial removal and the continued custody  
33 of the child have been provided or offered to the parent or legal  
34 guardian. The court shall order that those services be initiated,  
35 continued, or terminated.

36 (f) The permanency hearing shall be held no later than 12  
37 months after the date the child entered foster care, as that date is  
38 determined pursuant to Section 361.49. At the permanency hearing,  
39 the court shall determine the permanent plan for the child, which  
40 shall include a determination of whether the child will be returned

1 to the child's home and, if so, when, within the time limits of  
2 subdivision (a) of Section 361.5. The court shall order the return  
3 of the child to the physical custody of his or her parent or legal  
4 guardian unless the court finds, by a preponderance of the evidence,  
5 that the return of the child to his or her parent or legal guardian  
6 would create a substantial risk of detriment to the safety, protection,  
7 or physical or emotional well-being of the child. The social worker  
8 shall have the burden of establishing that detriment. At the  
9 permanency hearing, the court shall consider the criminal history,  
10 obtained pursuant to paragraph (1) of subdivision (f) of Section  
11 16504.5, of the parent or legal guardian subsequent to the child's  
12 removal to the extent that the criminal record is substantially related  
13 to the welfare of the child or the parent or legal guardian's ability  
14 to exercise custody and control regarding his or her child, provided  
15 that the parent or legal guardian agreed to submit fingerprint images  
16 to obtain criminal history information as part of the case plan. The  
17 court shall also determine whether reasonable services that were  
18 designed to aid the parent or legal guardian to overcome the  
19 problems that led to the initial removal and continued custody of  
20 the child have been provided or offered to the parent or legal  
21 guardian. For each youth 16 years of age and older, the court shall  
22 also determine whether services have been made available to assist  
23 him or her in making the transition from foster care to independent  
24 living. The failure of the parent or legal guardian to participate  
25 regularly and make substantive progress in court-ordered treatment  
26 programs shall be prima facie evidence that return would be  
27 detrimental. In making its determination, the court shall review  
28 and consider the social worker's report and recommendations and  
29 the report and recommendations of any child advocate appointed  
30 pursuant to Section 356.5, shall consider the efforts or progress,  
31 or both, demonstrated by the parent or legal guardian and the extent  
32 to which he or she availed himself or herself of services provided,  
33 taking into account the particular barriers to an incarcerated or  
34 institutionalized parent or legal guardian's access to those  
35 court-mandated services and ability to maintain contact with his  
36 or her child and shall make appropriate findings pursuant to  
37 subdivision (a) of Section 366.

38 Regardless of whether the child is returned to his or her parent  
39 or legal guardian, the court shall specify the factual basis for its  
40 decision. If the child is not returned to a parent or legal guardian,

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

9 (g) If the time period in which the court-ordered services were  
10 provided has met or exceeded the time period set forth in  
11 subparagraph (A), (B), or (C) of paragraph (1) of subdivision (a)  
12 of Section 361.5, as appropriate, and a child is not returned to the  
13 custody of a parent or legal guardian at the permanency hearing  
14 held pursuant to subdivision (f), the court shall do one of the  
15 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. On and after January  
17 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered  
18 if the child is a nonminor dependent.

19 (3) Order that the child remain in long-term foster care, but only  
20 if the court finds by clear and convincing evidence, based upon  
21 the evidence already presented to it, including a recommendation  
22 by the State Department of Social Services when it is acting as an  
23 adoption agency in counties that are not served by a county  
24 adoption agency or by a licensed county adoption agency, that  
25 there is a compelling reason for determining that a hearing held  
26 pursuant to Section 366.26 is not in the best interest of the child  
27 because the child is not a proper subject for adoption and has no  
28 one willing to accept legal guardianship. For purposes of this  
29 section, a recommendation by the State Department of Social  
30 Services when it is acting as an adoption agency in counties that  
31 are not served by a county adoption agency or by a licensed county  
32 adoption agency that adoption is not in the best interest of the child  
33 shall constitute a compelling reason for the court's determination.  
34 That recommendation shall be based on the present circumstances  
35 of the child and shall not preclude a different recommendation at  
36 a later date if the child's circumstances change. On and after  
37 January 1, 2012, the nonminor dependent's legal status as an adult  
38 is in and of itself a compelling reason not to hold a hearing pursuant  
39 to Section 366.26. The court may order that a nonminor dependent

1 who otherwise is eligible pursuant to Section 11403 remain in a  
2 planned, permanent living arrangement.

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

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

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

28 (i) (1) Whenever a court orders that a hearing pursuant to  
29 Section 366.26, including, when, in consultation with the child's  
30 tribe, tribal customary adoption is recommended, shall be held, it  
31 shall direct the agency supervising the child and the licensed county  
32 adoption agency, or the State Department of Social Services when  
33 it is acting as an adoption agency in counties that are not served  
34 by a county adoption agency, to prepare an assessment that shall  
35 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 including the prospective tribal customary adoptive parent,  
10 particularly the caretaker, to include a social history including  
11 screening for criminal records and prior referrals for child abuse  
12 or neglect, the capability to meet the child’s needs, and the  
13 understanding of the legal and financial rights and responsibilities  
14 of adoption and guardianship. If a proposed guardian is a relative  
15 of the minor, the assessment shall also consider, but need not be  
16 limited to, all of the factors specified in subdivision (a) of Section  
17 361.3 and in Section 361.4.

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 degree of attachment of the child to the  
21 prospective relative guardian or adoptive parent, the relative’s or  
22 adoptive parent’s strong commitment to caring permanently for  
23 the child, the motivation for seeking adoption or guardianship, a  
24 statement from the child concerning placement and the adoption  
25 or guardianship, and whether the child, if over 12 years of age,  
26 has been consulted about the proposed relative guardianship  
27 arrangements, unless the child’s age or physical, emotional, or  
28 other condition precludes his or her meaningful response, and if  
29 so, a description of the condition.

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

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

36 (H) In the case of an Indian child, in addition to subparagraphs  
37 (A) to (G), inclusive, an assessment of the likelihood that the child  
38 will be adopted, when, in consultation with the child’s tribe, a  
39 customary tribal adoption, as defined in Section 366.24, is

1 recommended. If tribal customary adoption is recommended, the  
2 assessment shall include an analysis of both of the following:

3 (i) Whether tribal customary adoption would or would not be  
4 detrimental to the Indian child and the reasons for reaching that  
5 conclusion.

6 (ii) Whether the Indian child cannot or should not be returned  
7 to the home of the Indian parent or Indian custodian and the reasons  
8 for reaching that conclusion.

9 (2) (A) A relative caregiver's preference for legal guardianship  
10 over adoption, if it is due to circumstances that do not include an  
11 unwillingness to accept legal or financial responsibility for the  
12 child, shall not constitute the sole basis for recommending removal  
13 of the child from the relative caregiver for purposes of adoptive  
14 placement.

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

19 (j) If, at any hearing held pursuant to Section 366.26, a  
20 guardianship is established for the minor with an approved relative  
21 caregiver, and juvenile court dependency is subsequently  
22 dismissed, the minor shall be eligible for aid under the Kin-GAP  
23 Program, as provided for in Article 4.5 (commencing with Section  
24 11360) or Article 4.7 (commencing with Section 11385), as  
25 applicable, of Chapter 2 of Part 3 of Division 9.

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

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

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

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

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

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

8 (n) This section shall remain in effect only until January 1, 2014,  
9 and as of that date is repealed, unless a later enacted statute, that  
10 is enacted before January 1, 2014, deletes or extends that date.

11 SEC. 4. Section 366.21 of the Welfare and Institutions Code,  
12 as amended by Section 17 of Chapter 559 of the Statutes of 2010,  
13 is amended to read:

14 366.21. (a) Every hearing conducted by the juvenile court  
15 reviewing the status of a dependent child shall be placed on the  
16 appearance calendar. The court shall advise all persons present at  
17 the hearing of the date of the future hearing and of their right to  
18 be present and represented by counsel.

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

21 (c) At least 10 calendar days prior to the hearing, the social  
22 worker shall file a supplemental report with the court regarding  
23 the services provided or offered to the parent or legal guardian to  
24 enable him or her to assume custody and the efforts made to  
25 achieve legal permanence for the child if efforts to reunify fail,  
26 including, but not limited to, efforts to maintain relationships  
27 between a child who is 10 years of age or older and has been in  
28 out-of-home placement for six months or longer and individuals  
29 who are important to the child, consistent with the child's best  
30 interests; the progress made; and, where relevant, the prognosis  
31 for return of the child to the physical custody of his or her parent  
32 or legal guardian; and shall make his or her recommendation for  
33 disposition. If the child is a member of a sibling group described  
34 in subparagraph (C) of paragraph (1) of subdivision (a) of Section  
35 361.5, the report and recommendation may also take into account  
36 those factors described in subdivision (e) relating to the child's  
37 sibling group. If the recommendation is not to return the child to  
38 a parent or legal guardian, the report shall specify why the return  
39 of the child would be detrimental to the child. The social worker  
40 shall provide the parent or legal guardian, counsel for the child,

1 and any court-appointed child advocate with a copy of the report,  
2 including his or her recommendation for disposition, at least 10  
3 calendar days prior to the hearing. In the case of a child removed  
4 from the physical custody of his or her parent or legal guardian,  
5 the social worker shall, at least 10 calendar days prior to the  
6 hearing, provide a summary of his or her recommendation for  
7 disposition to any foster parents, relative caregivers, and certified  
8 foster parents who have been approved for adoption by the State  
9 Department of Social Services when it is acting as an adoption  
10 agency in counties that are not served by a county adoption agency  
11 or by a licensed county adoption agency, community care facility,  
12 or foster family agency having the physical custody of the child.  
13 The social worker shall include a copy of the Judicial Council  
14 Caregiver Information Form (JV-290) with the summary of  
15 recommendations to the child's foster parents, relative caregivers,  
16 or foster parents approved for adoption, in the caregiver's primary  
17 language when available, along with information on how to file  
18 the form with the court.

19 (d) Prior to any hearing involving a child in the physical custody  
20 of a community care facility or a foster family agency that may  
21 result in the return of the child to the physical custody of his or  
22 her parent or legal guardian, or in adoption or the creation of a  
23 legal guardianship, the facility or agency shall file with the court  
24 a report, or a Judicial Council Caregiver Information Form  
25 (JV-290), containing its recommendation for disposition. Prior to  
26 the hearing involving a child in the physical custody of a foster  
27 parent, a relative caregiver, or a certified foster parent who has  
28 been approved for adoption by the State Department of Social  
29 Services when it is acting as an adoption agency or by a licensed  
30 adoption agency, the foster parent, relative caregiver, or the  
31 certified foster parent who has been approved for adoption by the  
32 State Department of Social Services when it is acting as an  
33 adoption agency in counties that are not served by a county  
34 adoption agency or by a licensed county adoption agency, may  
35 file with the court a report containing his or her recommendation  
36 for disposition. The court shall consider the report and  
37 recommendation filed pursuant to this subdivision prior to  
38 determining any disposition.

39 (e) At the review hearing held six months after the initial  
40 dispositional hearing, but no later than 12 months after the date

1 the child entered foster care as determined in Section 361.49,  
2 whichever occurs earlier, the court shall order the return of the  
3 child to the physical custody of his or her parent or legal guardian  
4 unless the court finds, by a preponderance of the evidence, that  
5 the return of the child to his or her parent or legal guardian would  
6 create a substantial risk of detriment to the safety, protection, or  
7 physical or emotional well-being of the child. The social worker  
8 shall have the burden of establishing that detriment. At the hearing,  
9 the court shall consider the criminal history, obtained pursuant to  
10 paragraph (1) of subdivision (f) of Section 16504.5, of the parent  
11 or legal guardian subsequent to the child's removal to the extent  
12 that the criminal record is substantially related to the welfare of  
13 the child or the parent's or guardian's ability to exercise custody  
14 and control regarding his or her child, provided the parent or legal  
15 guardian agreed to submit fingerprint images to obtain criminal  
16 history information as part of the case plan. The failure of the  
17 parent or legal guardian to participate regularly and make  
18 substantive progress in court-ordered treatment programs shall be  
19 prima facie evidence that return would be detrimental. In making  
20 its determination, the court shall review and consider the social  
21 worker's report and recommendations and the report and  
22 recommendations of any child advocate appointed pursuant to  
23 Section 356.5; and shall consider the efforts or progress, or both,  
24 demonstrated by the parent or legal guardian and the extent to  
25 which he or she availed himself or herself to services provided,  
26 taking into account the particular barriers to an incarcerated or  
27 institutionalized parent or legal guardian's access to those  
28 court-mandated services and ability to maintain contact with his  
29 or her child.

30 Regardless of whether the child is returned to a parent or legal  
31 guardian, the court shall specify the factual basis for its conclusion  
32 that the return would be detrimental or would not be detrimental.  
33 The court also shall make appropriate findings pursuant to  
34 subdivision (a) of Section 366; and, where relevant, shall order  
35 any additional services reasonably believed to facilitate the return  
36 of the child to the custody of his or her parent or legal guardian.  
37 The court shall also inform the parent or legal guardian that if the  
38 child cannot be returned home by the 12-month permanency  
39 hearing, a proceeding pursuant to Section 366.26 may be instituted.  
40 This section does not apply in a case where, pursuant to Section

1 361.5, the court has ordered that reunification services shall not  
2 be provided.

3 If the child was under three years of age on the date of the initial  
4 removal, or is a member of a sibling group described in  
5 subparagraph (C) of paragraph (1) of subdivision (a) of Section  
6 361.5, and the court finds by clear and convincing evidence that  
7 the parent failed to participate regularly and make substantive  
8 progress in a court-ordered treatment plan, the court may schedule  
9 a hearing pursuant to Section 366.26 within 120 days. If, however,  
10 the court finds there is a substantial probability that the child, who  
11 was under three years of age on the date of initial removal or is a  
12 member of a sibling group described in subparagraph (C) of  
13 paragraph (1) of subdivision (a) of Section 361.5, may be returned  
14 to his or her parent or legal guardian within six months or that  
15 reasonable services have not been provided, the court shall continue  
16 the case to the 12-month permanency hearing.

17 For the purpose of placing and maintaining a sibling group  
18 together in a permanent home, the court, in making its  
19 determination to schedule a hearing pursuant to Section 366.26  
20 for some or all members of a sibling group, as described in  
21 subparagraph (C) of paragraph (1) of subdivision (a) of Section  
22 361.5, shall review and consider the social worker's report and  
23 recommendations. Factors the report shall address, and the court  
24 shall consider, may include, but need not be limited to, whether  
25 the sibling group was removed from parental care as a group, the  
26 closeness and strength of the sibling bond, the ages of the siblings,  
27 the appropriateness of maintaining the sibling group together, the  
28 detriment to the child if sibling ties are not maintained, the  
29 likelihood of finding a permanent home for the sibling group,  
30 whether the sibling group is currently placed together in a  
31 preadoptive home or has a concurrent plan goal of legal  
32 permanency in the same home, the wishes of each child whose  
33 age and physical and emotional condition permits a meaningful  
34 response, and the best interest of each child in the sibling group.  
35 The court shall specify the factual basis for its finding that it is in  
36 the best interest of each child to schedule a hearing pursuant to  
37 Section 366.26 in 120 days for some or all of the members of the  
38 sibling group.

39 If the child was removed initially under subdivision (g) of  
40 Section 300 and the court finds by clear and convincing evidence



1 that the whereabouts of the parent are still unknown, or the parent  
2 has failed to contact and visit the child, the court may schedule a  
3 hearing pursuant to Section 366.26 within 120 days. The court  
4 shall take into account any particular barriers to a parent's ability  
5 to maintain contact with his or her child due to the parent's  
6 incarceration or institutionalization. If the court finds by clear and  
7 convincing evidence that the parent has been convicted of a felony  
8 indicating parental unfitness, the court may schedule a hearing  
9 pursuant to Section 366.26 within 120 days.

10 If the child had been placed under court supervision with a  
11 previously noncustodial parent pursuant to Section 361.2, the court  
12 shall determine whether supervision is still necessary. The court  
13 may terminate supervision and transfer permanent custody to that  
14 parent, as provided for by paragraph (1) of subdivision (b) of  
15 Section 361.2.

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

21 If the child is not returned to his or her parent or legal guardian,  
22 the court shall determine whether reasonable services that were  
23 designed to aid the parent or legal guardian in overcoming the  
24 problems that led to the initial removal and the continued custody  
25 of the child have been provided or offered to the parent or legal  
26 guardian. The court shall order that those services be initiated,  
27 continued, or terminated.

28 (f) The permanency hearing shall be held no later than 12  
29 months after the date the child entered foster care, as that date is  
30 determined pursuant to Section 361.49. At the permanency hearing,  
31 the court shall determine the permanent plan for the child, which  
32 shall include a determination of whether the child will be returned  
33 to the child's home and, if so, when, within the time limits of  
34 subdivision (a) of Section 361.5. The court shall order the return  
35 of the child to the physical custody of his or her parent or legal  
36 guardian unless the court finds, by a preponderance of the evidence,  
37 that the return of the child to his or her parent or legal guardian  
38 would create a substantial risk of detriment to the safety, protection,  
39 or physical or emotional well-being of the child. The social worker  
40 shall have the burden of establishing that detriment. At the

1 permanency hearing, the court shall consider the criminal history,  
2 obtained pursuant to paragraph (1) of subdivision (f) of Section  
3 16504.5, of the parent or legal guardian subsequent to the child's  
4 removal to the extent that the criminal record is substantially related  
5 to the welfare of the child or the parent or legal guardian's ability  
6 to exercise custody and control regarding his or her child, provided  
7 that the parent or legal guardian agreed to submit fingerprint images  
8 to obtain criminal history information as part of the case plan. The  
9 court shall also determine whether reasonable services that were  
10 designed to aid the parent or legal guardian to overcome the  
11 problems that led to the initial removal and continued custody of  
12 the child have been provided or offered to the parent or legal  
13 guardian. For each youth 16 years of age and older, the court shall  
14 also determine whether services have been made available to assist  
15 him or her in making the transition from foster care to independent  
16 living. The failure of the parent or legal guardian to participate  
17 regularly and make substantive progress in court-ordered treatment  
18 programs shall be prima facie evidence that return would be  
19 detrimental. In making its determination, the court shall review  
20 and consider the social worker's report and recommendations and  
21 the report and recommendations of any child advocate appointed  
22 pursuant to Section 356.5, shall consider the efforts or progress,  
23 or both, demonstrated by the parent or legal guardian and the extent  
24 to which he or she availed himself or herself of services provided,  
25 taking into account the particular barriers to an incarcerated or  
26 institutionalized parent or legal guardian's access to those  
27 court-mandated services and ability to maintain contact with his  
28 or her child and shall make appropriate findings pursuant to  
29 subdivision (a) of Section 366.

30 Regardless of whether the child is returned to his or her parent  
31 or legal guardian, the court shall specify the factual basis for its  
32 decision. If the child is not returned to a parent or legal guardian,  
33 the court shall specify the factual basis for its conclusion that the  
34 return would be detrimental. The court also shall make a finding  
35 pursuant to subdivision (a) of Section 366. If the child is not  
36 returned to his or her parent or legal guardian, the court shall  
37 consider, and state for the record, in-state and out-of-state  
38 placement options. If the child is placed out of the state, the court  
39 shall make a determination whether the out-of-state placement  
40 continues to be appropriate and in the best interests of the child.

1 (g) If the time period in which the court-ordered services were  
2 provided has met or exceeded the time period set forth in  
3 subparagraph (A), (B), or (C) of paragraph (1) of subdivision (a)  
4 of Section 361.5, as appropriate, and a child is not returned to the  
5 custody of a parent or legal guardian at the permanency hearing  
6 held pursuant to subdivision (f), the court shall do one of the  
7 following:

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

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

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

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

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

37 The court shall inform the parent or legal guardian that if the  
38 child cannot be returned home by the next permanency review  
39 hearing, a proceeding pursuant to Section 366.26 may be instituted.  
40 The court may not order that a hearing pursuant to Section 366.26

1 be held unless there is clear and convincing evidence that  
2 reasonable services have been provided or offered to the parent or  
3 legal guardian.

4 (2) Order that a hearing be held within 120 days, pursuant to  
5 Section 366.26, but only if the court does not continue the case to  
6 the permanency planning review hearing and there is clear and  
7 convincing evidence that reasonable services have been provided  
8 or offered to the parents or legal guardians. On or after January 1,  
9 2012, a hearing pursuant to Section 366.26 shall not be ordered if  
10 the child is a nonminor dependent.

11 (3) Order that the child remain in long-term foster care, but only  
12 if the court finds by clear and convincing evidence, based upon  
13 the evidence already presented to it, including a recommendation  
14 by the State Department of Social Services when it is acting as an  
15 adoption agency in counties that are not served by a county  
16 adoption agency or by a licensed county adoption agency, that  
17 there is a compelling reason for determining that a hearing held  
18 pursuant to Section 366.26 is not in the best interest of the child  
19 because the child is not a proper subject for adoption and has no  
20 one willing to accept legal guardianship. For purposes of this  
21 section, a recommendation by the State Department of Social  
22 Services when it is acting as an adoption agency in counties that  
23 are not served by a county adoption agency or by a licensed county  
24 adoption agency that adoption is not in the best interest of the child  
25 shall constitute a compelling reason for the court's determination.  
26 That recommendation shall be based on the present circumstances  
27 of the child and shall not preclude a different recommendation at  
28 a later date if the child's circumstances change. On and after  
29 January 1, 2012, the nonminor dependent's legal status as an adult  
30 is in and of itself a compelling reason not to hold a hearing pursuant  
31 to Section 366.26. The court may order that a nonminor dependent  
32 who otherwise is eligible pursuant to Section 11403 remain in a  
33 planned, permanent living arrangement.

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

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

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

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

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

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

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

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

1 understanding of the legal and financial rights and responsibilities  
2 of adoption and guardianship. If a proposed guardian is a relative  
3 of the minor, the assessment shall also consider, but need not be  
4 limited to, all of the factors specified in subdivision (a) of Section  
5 361.3 and in Section 361.4.

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 degree of attachment of the child to the  
9 prospective relative guardian or adoptive parent, the relative's or  
10 adoptive parent's strong commitment to caring permanently for  
11 the child, the motivation for seeking adoption or guardianship, a  
12 statement from the child concerning placement and the adoption  
13 or guardianship, and whether the child, if over 12 years of age,  
14 has been consulted about the proposed relative guardianship  
15 arrangements, unless the child's age or physical, emotional, or  
16 other condition precludes his or her meaningful response, and if  
17 so, a description of the condition.

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

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

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

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

34 (j) If, at any hearing held pursuant to Section 366.26, a  
35 guardianship is established for the minor with a an approved  
36 relative caregiver, and juvenile court dependency is subsequently  
37 dismissed, the minor shall be eligible for aid under the Kin-GAP  
38 Program, as provided for in Article 4.5 (commencing with Section  
39 11360) or Article 4.7 (commencing with Section 11385), as  
40 applicable, of Chapter 2 of Part 3 of Division 9.

1 (k) As used in this section, “relative” means an adult who is  
2 related to the minor by blood, adoption, or affinity within the fifth  
3 degree of kinship, including stepparents, stepsiblings, and all  
4 relatives whose status is preceded by the words “great,”  
5 “great-great,” or “grand,” or the spouse of any of those persons  
6 even if the marriage was terminated by death or dissolution.

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

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

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

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

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

21 (n) This section shall become operative on January 1, 2014.