

AMENDED IN ASSEMBLY MARCH 30, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 791

Introduced by Assembly Member Ammiano

February 17, 2011

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 amended, 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's caregiver receive the child's birth certificate, or, if the child is 16 years of age or older, that the child receive his or her birth certificate, when appropriate.*

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:

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

17 (1) Family reunification services, when provided, shall be
18 provided as follows:

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

26 (B) For a child who, on the date of initial removal from the
27 physical custody of his or her parent or guardian, was under three
28 years of age, court-ordered services shall be provided for a period
29 of six months from the dispositional hearing as provided in
30 subdivision (e) of Section 366.21, but no longer than 12 months
31 from the date the child entered foster care as defined in Section
32 361.49 unless the child is returned to the home of the parent or
33 guardian.

34 (C) For the purpose of placing and maintaining a sibling group
35 together in a permanent home should reunification efforts fail, for
36 a child in a sibling group whose members were removed from
37 parental custody at the same time, and in which one member of
38 the sibling group was under three years of age on the date of initial

1 removal from the physical custody of his or her parent or guardian,
2 court-ordered services for some or all of the sibling group may be
3 limited as set forth in subparagraph (B). For the purposes of this
4 paragraph, “a sibling group” shall mean two or more children who
5 are related to each other as full or half siblings.

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

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

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

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

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

1 contact with the child. If the court extends the time period, the
2 court shall specify the factual basis for its conclusion that there is
3 a substantial probability that the child will be returned to the
4 physical custody of his or her parent or guardian within the
5 extended time period. The court also shall make findings pursuant
6 to subdivision (a) of Section 366 and subdivision (e) of Section
7 358.1.

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

23 In cases where the child was under three years of age on the date
24 of the initial removal from the physical custody of his or her parent
25 or guardian or is a member of a sibling group as described in
26 subparagraph (C) of paragraph (1), the court shall inform the parent
27 or guardian that the failure of the parent or guardian to participate
28 regularly in any court-ordered treatment programs or to cooperate
29 or avail himself or herself of services provided as part of the child
30 welfare services case plan may result in a termination of efforts
31 to reunify the family after six months. The court shall inform the
32 parent or guardian of the factors used in subdivision (e) of Section
33 366.21 to determine whether to limit services to six months for
34 some or all members of a sibling group as described in
35 subparagraph (C) of paragraph (1).

36 (4) Notwithstanding paragraph (3), court-ordered services may
37 be extended up to a maximum time period not to exceed 24 months
38 after the date the child was originally removed from physical
39 custody of his or her parent or guardian if it is shown, at the hearing
40 held pursuant to subdivision (b) of Section 366.22, that the

1 permanent plan for the child is that he or she will be returned and
2 safely maintained in the home within the extended time period.
3 The court shall extend the time period only if it finds that it is in
4 the child's best interest to have the time period extended and that
5 there is a substantial probability that the child will be returned to
6 the physical custody of his or her parent or guardian who is
7 described in subdivision (b) of Section 366.22 within the extended
8 time period, or that reasonable services have not been provided to
9 the parent or guardian. If the court extends the time period, the
10 court shall specify the factual basis for its conclusion that there is
11 a substantial probability that the child will be returned to the
12 physical custody of his or her parent or guardian within the
13 extended time period. The court also shall make findings pursuant
14 to subdivision (a) of Section 366 and subdivision (e) of Section
15 358.1.

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

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

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

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

39 (2) That the parent or guardian is suffering from a mental
40 disability that is described in Chapter 2 (commencing with Section

1 7820) of Part 4 of Division 12 of the Family Code and that renders
2 him or her incapable of utilizing those services.

3 (3) That the child or a sibling of the child has been previously
4 adjudicated a dependent pursuant to any subdivision of Section
5 300 as a result of physical or sexual abuse, that following that
6 adjudication the child had been removed from the custody of his
7 or her parent or guardian pursuant to Section 361, that the child
8 has been returned to the custody of the parent or guardian from
9 whom the child had been taken originally, and that the child is
10 being removed pursuant to Section 361, due to additional physical
11 or sexual abuse.

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

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

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

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

36 A finding of the infliction of severe physical harm, for the
37 purposes of this subdivision, may be based on, but is not limited
38 to, deliberate and serious injury inflicted to or on a child's body
39 or the body of a sibling or half sibling of the child by an act or
40 omission of the parent or guardian, or of another individual or

1 animal with the consent of the parent or guardian; deliberate and
2 torturous confinement of the child, sibling, or half sibling in a
3 closed space; or any other torturous act or omission that would be
4 reasonably understood to cause serious emotional damage.

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

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

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

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

36 (11) That the parental rights of a parent over any sibling or half
37 sibling of the child had been permanently severed, and this parent
38 is the same parent described in subdivision (a), and that, according
39 to the findings of the court, this parent has not subsequently made

1 a reasonable effort to treat the problems that led to removal of the
2 sibling or half sibling of that child from the parent.

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

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

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

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

29 (15) That the parent or guardian has on one or more occasions
30 willfully abducted the child or child's sibling or half sibling from
31 his or her placement and refused to disclose the child's or child's
32 sibling's or half sibling's whereabouts, refused to return physical
33 custody of the child or child's sibling or half sibling to his or her
34 placement, or refused to return physical custody of the child or
35 child's sibling or half sibling to the social worker.

36 (c) In deciding whether to order reunification in any case in
37 which this section applies, the court shall hold a dispositional
38 hearing. The social worker shall prepare a report that discusses
39 whether reunification services shall be provided. When it is alleged,
40 pursuant to paragraph (2) of subdivision (b), that the parent is

1 incapable of utilizing services due to mental disability, the court
2 shall order reunification services unless competent evidence from
3 mental health professionals establishes that, even with the provision
4 of services, the parent is unlikely to be capable of adequately caring
5 for the child within the time limits specified in subdivision (a).

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

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

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

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

38 (e) (1) If the parent or guardian is incarcerated or
39 institutionalized, the court shall order reasonable services unless
40 the court determines, by clear and convincing evidence, those

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

18 (A) Maintaining contact between the parent and child through
19 collect telephone calls.

20 (B) Transportation services, where appropriate.

21 (C) Visitation services, where appropriate.

22 (D) Reasonable services to extended family members or foster
23 parents providing care for the child if the services are not
24 detrimental to the child.

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

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

1 Rehabilitation to facilitate timely and effective notice of hearings
2 for incarcerated parents.

3 (3) Notwithstanding any other provision of law, if the
4 incarcerated parent is a woman seeking to participate in the
5 community treatment program operated by the Department of
6 Corrections and Rehabilitation pursuant to Chapter 4.8
7 (commencing with Section 1174) of Title 7 of Part 2 of, Chapter
8 4 (commencing with Section 3410) of Title 2 of Part 3 of, the Penal
9 Code, the court shall determine whether the parent's participation
10 in a program is in the child's best interest and whether it is suitable
11 to meet the needs of the parent and child.

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

28 (g) (1) Whenever a court orders that a hearing shall be held
29 pursuant to Section 366.26, including, when, in consultation with
30 the child's tribe, tribal customary adoption is recommended, 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 and
37 notification of a noncustodial parent in the manner provided for
38 in Section 291.

39 (B) A review of the amount of and nature of any contact between
40 the child and his or her parents and other members of his or her

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

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

8 (D) A preliminary assessment of the eligibility and commitment
9 of any identified prospective adoptive parent or guardian, including
10 a prospective tribal customary adoptive parent, particularly the
11 caretaker, to include a social history, including screening for
12 criminal records and prior referrals for child abuse or neglect, the
13 capability to meet the child’s needs, and the understanding of the
14 legal and financial rights and responsibilities of adoption and
15 guardianship. If a proposed guardian is a relative of the minor, the
16 assessment shall also consider, but need not be limited to, all of
17 the factors specified in subdivision (a) of Section 361.3 and in
18 Section 361.4. As used in this subparagraph, “relative” means an
19 adult who is related to the minor by blood, adoption, or affinity
20 within the fifth degree of kinship, including stepparents,
21 stepsiblings, and all relatives whose status is preceded by the words
22 “great,” “great-great,” or “grand,” or the spouse of any of those
23 persons even if the marriage was terminated by death or
24 dissolution.

25 (E) The relationship of the child to any identified prospective
26 adoptive parent or guardian, including a prospective tribal
27 customary parent, the duration and character of the relationship,
28 the degree of attachment of the child to the prospective relative
29 guardian or adoptive parent, the relative’s or adoptive parent’s
30 strong commitment to caring permanently for the child, the
31 motivation for seeking adoption or guardianship, a statement from
32 the child concerning placement and the adoption or guardianship,
33 and whether the child over 12 years of age has been consulted
34 about the proposed relative guardianship arrangements, unless the
35 child’s age or physical, emotional, or other condition precludes
36 his or her meaningful response, and if so, a description of the
37 condition.

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

1 (G) In the case of an Indian child, in addition to subparagraphs
2 (A) to (F), inclusive, an assessment of the likelihood that the child
3 will be adopted, when, in consultation with the child's tribe, a
4 customary tribal adoption, as defined in Section 366.24, is
5 recommended. If tribal customary adoption is recommended, the
6 assessment shall include an analysis of both of the following:

7 (i) Whether tribal customary adoption would or would not be
8 detrimental to the Indian child and the reasons for reaching that
9 conclusion.

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

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

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

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

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

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

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

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

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

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

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

8 (j) When the court determines that reunification services will
9 not be ordered, it shall order that ~~the child receive his or her birth~~
10 ~~certificate.~~ *child's caregiver receive the child's birth certificate*
11 *in accordance with Sections 16010.4 and 16010.5. Additionally,*
12 *when the court determines that reunification services will not be*
13 *ordered, it shall order, when appropriate, that a child who is 16*
14 *years of age or older receive his or her birth certificate.*

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

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

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

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

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

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

10 (B) For a child who, on the date of initial removal from the
11 physical custody of his or her parent or guardian, was under three
12 years of age, court-ordered services shall be provided for a period
13 of six months from the dispositional hearing as provided in
14 subdivision (e) of Section 366.21, but no longer than 12 months
15 from the date the child entered foster care as defined in Section
16 361.49 unless the child is returned to the home of the parent or
17 guardian.

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

28 (2) Any motion to terminate court-ordered reunification services
29 prior to the hearing set pursuant to subdivision (f) of Section 366.21
30 for a child described by subparagraph (A) of paragraph (1), or
31 prior to the hearing set pursuant to subdivision (e) of Section
32 366.21 for a child described by subparagraph (B) or (C) of
33 paragraph (1), shall be made pursuant to the requirements set forth
34 in subdivision (c) of Section 388. A motion to terminate
35 court-ordered reunification services shall not be required at the
36 hearing set pursuant to subdivision (e) of Section 366.21 if the
37 court finds by clear and convincing evidence one of the following:

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

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

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

3 (3) Notwithstanding subparagraphs (A), (B), and (C) of
4 paragraph (1), court-ordered services may be extended up to a
5 maximum time period not to exceed 18 months after the date the
6 child was originally removed from physical custody of his or her
7 parent or guardian if it can be shown, at the hearing held pursuant
8 to subdivision (f) of Section 366.21, that the permanent plan for
9 the child is that he or she will be returned and safely maintained
10 in the home within the extended time period. The court shall extend
11 the time period only if it finds that there is a substantial probability
12 that the child will be returned to the physical custody of his or her
13 parent or guardian within the extended time period or that
14 reasonable services have not been provided to the parent or
15 guardian. In determining whether court-ordered services may be
16 extended, the court shall consider the special circumstances of an
17 incarcerated or institutionalized parent or parents, or parent or
18 parents court-ordered to a residential substance abuse treatment
19 program, including, but not limited to, barriers to the parent's or
20 guardian's access to services and ability to maintain contact with
21 his or her child. The court shall also consider, among other factors,
22 good faith efforts that the parent or guardian has made to maintain
23 contact with the child. If the court extends the time period, the
24 court shall specify the factual basis for its conclusion that there is
25 a substantial probability that the child will be returned to the
26 physical custody of his or her parent or guardian within the
27 extended time period. The court also shall make findings pursuant
28 to subdivision (a) of Section 366 and subdivision (e) of Section
29 358.1.

30 When counseling or other treatment services are ordered, the
31 parent or guardian shall be ordered to participate in those services,
32 unless the parent's or guardian's participation is deemed by the
33 court to be inappropriate or potentially detrimental to the child, or
34 unless a parent or guardian is incarcerated and the corrections
35 facility in which he or she is incarcerated does not provide access
36 to the treatment services ordered by the court. Physical custody of
37 the child by the parents or guardians during the applicable time
38 period under subparagraph (A), (B), or (C) of paragraph (1) shall
39 not serve to interrupt the running of the period. If at the end of the
40 applicable time period, a child cannot be safely returned to the

1 care and custody of a parent or guardian without court supervision,
2 but the child clearly desires contact with the parent or guardian,
3 the court shall take the child's desire into account in devising a
4 permanency plan.

5 In cases where the child was under three years of age on the date
6 of the initial removal from the physical custody of his or her parent
7 or guardian or is a member of a sibling group as described in
8 subparagraph (C) of paragraph (1), the court shall inform the parent
9 or guardian that the failure of the parent or guardian to participate
10 regularly in any court-ordered treatment programs or to cooperate
11 or avail himself or herself of services provided as part of the child
12 welfare services case plan may result in a termination of efforts
13 to reunify the family after six months. The court shall inform the
14 parent or guardian of the factors used in subdivision (e) of Section
15 366.21 to determine whether to limit services to six months for
16 some or all members of a sibling group as described in
17 subparagraph (C) of paragraph (1).

18 (4) Notwithstanding paragraph (3), court-ordered services may
19 be extended up to a maximum time period not to exceed 24 months
20 after the date the child was originally removed from physical
21 custody of his or her parent or guardian if it is shown, at the hearing
22 held pursuant to subdivision (b) of Section 366.22, that the
23 permanent plan for the child is that he or she will be returned and
24 safely maintained in the home within the extended time period.
25 The court shall extend the time period only if it finds that it is in
26 the child's best interest to have the time period extended and that
27 there is a substantial probability that the child will be returned to
28 the physical custody of his or her parent or guardian who is
29 described in subdivision (b) of Section 366.22 within the extended
30 time period, or that reasonable services have not been provided to
31 the parent or guardian. If the court extends the time period, the
32 court shall specify the factual basis for its conclusion that there is
33 a substantial probability that the child will be returned to the
34 physical custody of his or her parent or guardian within the
35 extended time period. The court also shall make findings pursuant
36 to subdivision (a) of Section 366 and subdivision (e) of Section
37 358.1.

38 When counseling or other treatment services are ordered, the
39 parent or guardian shall be ordered to participate in those services,
40 in order for substantial probability to be found. Physical custody

1 of the child by the parents or guardians during the applicable time
2 period under subparagraph (A), (B), or (C) of paragraph (1) shall
3 not serve to interrupt the running of the period. If at the end of the
4 applicable time period, the child cannot be safely returned to the
5 care and custody of a parent or guardian without court supervision,
6 but the child clearly desires contact with the parent or guardian,
7 the court shall take the child’s desire into account in devising a
8 permanency plan.

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

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

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

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

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

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

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

39 (6) That the child has been adjudicated a dependent pursuant
40 to any subdivision of Section 300 as a result of severe sexual abuse

1 or the infliction of severe physical harm to the child, a sibling, or
2 a half sibling by a parent or guardian, as defined in this subdivision,
3 and the court makes a factual finding that it would not benefit the
4 child to pursue reunification services with the offending parent or
5 guardian.

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

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

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

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

35 (9) That the child has been found to be a child described in
36 subdivision (g) of Section 300, that the parent or guardian of the
37 child willfully abandoned the child, and the court finds that the
38 abandonment itself constituted a serious danger to the child; or
39 that the parent or other person having custody of the child
40 voluntarily surrendered physical custody of the child pursuant to

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

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

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

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

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

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

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

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

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

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

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

1 and whether failure to order reunification is likely to be detrimental
2 to the child.

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

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

19 (e) (1) If the parent or guardian is incarcerated or
20 institutionalized, the court shall order reasonable services unless
21 the court determines, by clear and convincing evidence, those
22 services would be detrimental to the child. In determining
23 detriment, the court shall consider the age of the child, the degree
24 of parent-child bonding, the length of the sentence, the length and
25 nature of the treatment, the nature of the crime or illness, the degree
26 of detriment to the child if services are not offered and, for children
27 10 years of age or older, the child's attitude toward the
28 implementation of family reunification services, the likelihood of
29 the parent's discharge from incarceration or institutionalization
30 within the reunification time limitations described in subdivision
31 (a), and any other appropriate factors. In determining the content
32 of reasonable services, the court shall consider the particular
33 barriers to an incarcerated or otherwise institutionalized parent's
34 access to those court-mandated services and ability to maintain
35 contact with his or her child, and shall document this information
36 in the child's case plan. Reunification services are subject to the
37 applicable time limitations imposed in subdivision (a). Services
38 may include, but shall not be limited to, all of the following:

39 (A) Maintaining contact between the parent and child through
40 collect telephone calls.

- 1 (B) Transportation services, where appropriate.
- 2 (C) Visitation services, where appropriate.
- 3 (D) Reasonable services to extended family members or foster
- 4 parents providing care for the child if the services are not
- 5 detrimental to the child.

6 An incarcerated parent may be required to attend counseling,
7 parenting classes, or vocational training programs as part of the
8 reunification service plan if actual access to these services is
9 provided. The social worker shall document in the child's case
10 plan the particular barriers to an incarcerated or institutionalized
11 parent's access to those court-mandated services and ability to
12 maintain contact with his or her child.

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

24 (3) Notwithstanding any other provision of law, if the
25 incarcerated parent is a woman seeking to participate in the
26 community treatment program operated by the Department of
27 Corrections and Rehabilitation pursuant to Chapter 4.8
28 (commencing with Section 1174) of Title 7 of Part 2 of, Chapter
29 4 (commencing with Section 3410) of Title 2 of Part 3 of, the Penal
30 Code, the court shall determine whether the parent's participation
31 in a program is in the child's best interest and whether it is suitable
32 to meet the needs of the parent and child.

33 (f) If the court, pursuant to paragraph (2), (3), (4), (5), (6), (7),
34 (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) or
35 paragraph (1) of subdivision (e), does not order reunification
36 services, it shall, at the dispositional hearing, that shall include a
37 permanency hearing, determine if a hearing under Section 366.26
38 shall be set in order to determine whether adoption, guardianship,
39 or long-term foster care is the most appropriate plan for the child,
40 and shall consider in-state and out-of-state placement options. If

1 the court so determines, it shall conduct the hearing pursuant to
2 Section 366.26 within 120 days after the dispositional hearing.
3 However, the court shall not schedule a hearing so long as the
4 other parent is being provided reunification services pursuant to
5 subdivision (a). The court may continue to permit the parent to
6 visit the child unless it finds that visitation would be detrimental
7 to the child.

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

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

17 (B) A review of the amount of and nature of any contact between
18 the child and his or her parents and other members of his or her
19 extended family since the time of placement. Although the
20 extended family of each child shall be reviewed on a case-by-case
21 basis, “extended family” for the purpose of this subparagraph shall
22 include, but not be limited to, the child’s siblings, grandparents,
23 aunts, and uncles.

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

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

1 persons even if the marriage was terminated by death or
2 dissolution.

3 (E) The relationship of the child to any identified prospective
4 adoptive parent or guardian, the duration and character of the
5 relationship, the degree of attachment of the child to the prospective
6 relative guardian or adoptive parent, the relative's or adoptive
7 parent's strong commitment to caring permanently for the child,
8 the motivation for seeking adoption or guardianship, a statement
9 from the child concerning placement and the adoption or
10 guardianship, and whether the child over 12 years of age has been
11 consulted about the proposed relative guardianship arrangements
12 unless the child's age or physical, emotional, or other condition
13 precludes his or her meaningful response, and if so, a description
14 of the condition.

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

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

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

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

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

38 (1) The specific act or omission comprising the severe sexual
39 abuse or the severe physical harm inflicted on the child or the
40 child's sibling or half sibling.

1 (2) The circumstances under which the abuse or harm was
 2 inflicted on the child or the child’s sibling or half sibling.

3 (3) The severity of the emotional trauma suffered by the child
 4 or the child’s sibling or half sibling.

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

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

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

12 (j) When the court determines that reunification services will
 13 not be ordered, it shall order that the ~~child receive his or her birth~~
 14 ~~certificate.~~ *child’s caregiver receive the child’s birth certificate*
 15 *in accordance with Sections 16010.4 and 16010.5. Additionally,*
 16 *when the court determines that reunification services will not be*
 17 *ordered, it shall order, when appropriate, that a child who is 16*
 18 *years of age or older receive his or her birth certificate.*

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

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

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

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

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

36 (c) At least 10 calendar days prior to the hearing, the social
 37 worker shall file a supplemental report with the court regarding
 38 the services provided or offered to the parent or legal guardian to
 39 enable him or her to assume custody and the efforts made to
 40 achieve legal permanence for the child if efforts to reunify fail,

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

34 (d) Prior to any hearing involving a child in the physical custody
35 of a community care facility or a foster family agency that may
36 result in the return of the child to the physical custody of his or
37 her parent or legal guardian, or in adoption or the creation of a
38 legal guardianship, or in the case of an Indian child, in consultation
39 with the child's tribe, tribal customary adoption, the facility or
40 agency shall file with the court a report, or a Judicial Council

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

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

1 which he or she availed himself or herself to services provided,
2 taking into account the particular barriers to an incarcerated or
3 institutionalized parent or legal guardian's access to those
4 court-mandated services and ability to maintain contact with his
5 or her child.

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

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

33 For the purpose of placing and maintaining a sibling group
34 together in a permanent home, the court, in making its
35 determination to schedule a hearing pursuant to Section 366.26
36 for some or all members of a sibling group, as described in
37 subparagraph (C) of paragraph (1) of subdivision (a) of Section
38 361.5, shall review and consider the social worker's report and
39 recommendations. Factors the report shall address, and the court
40 shall consider, may include, but need not be limited to, whether

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

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

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

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

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

1 of the child have been provided or offered to the parent or legal
2 guardian. The court shall order that those services be initiated,
3 continued, or terminated.

4 (f) The permanency hearing shall be held no later than 12
5 months after the date the child entered foster care, as that date is
6 determined pursuant to Section 361.49. At the permanency hearing,
7 the court shall determine the permanent plan for the child, which
8 shall include a determination of whether the child will be returned
9 to the child's home and, if so, when, within the time limits of
10 subdivision (a) of Section 361.5. The court shall order the return
11 of the child to the physical custody of his or her parent or legal
12 guardian unless the court finds, by a preponderance of the evidence,
13 that the return of the child to his or her parent or legal guardian
14 would create a substantial risk of detriment to the safety, protection,
15 or physical or emotional well-being of the child. The social worker
16 shall have the burden of establishing that detriment. At the
17 permanency hearing, the court shall consider the criminal history,
18 obtained pursuant to paragraph (1) of subdivision (f) of Section
19 16504.5, of the parent or legal guardian subsequent to the child's
20 removal to the extent that the criminal record is substantially related
21 to the welfare of the child or the parent or legal guardian's ability
22 to exercise custody and control regarding his or her child, provided
23 that the parent or legal guardian agreed to submit fingerprint images
24 to obtain criminal history information as part of the case plan. The
25 court shall also determine whether reasonable services that were
26 designed to aid the parent or legal guardian to overcome the
27 problems that led to the initial removal and continued custody of
28 the child have been provided or offered to the parent or legal
29 guardian. For each youth 16 years of age and older, the court shall
30 also determine whether services have been made available to assist
31 him or her in making the transition from foster care to independent
32 living. The failure of the parent or legal guardian to participate
33 regularly and make substantive progress in court-ordered treatment
34 programs shall be prima facie evidence that return would be
35 detrimental. In making its determination, the court shall review
36 and consider the social worker's report and recommendations and
37 the report and recommendations of any child advocate appointed
38 pursuant to Section 356.5, shall consider the efforts or progress,
39 or both, demonstrated by the parent or legal guardian and the extent
40 to which he or she availed himself or herself of services provided,

1 taking into account the particular barriers to an incarcerated or
2 institutionalized parent or legal guardian's access to those
3 court-mandated services and ability to maintain contact with his
4 or her child and shall make appropriate findings pursuant to
5 subdivision (a) of Section 366.

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

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

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

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

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

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

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

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

21 (2) Order that a hearing be held within 120 days, pursuant to
22 Section 366.26, but only if the court does not continue the case to
23 the permanency planning review hearing and there is clear and
24 convincing evidence that reasonable services have been provided
25 or offered to the parents or legal guardians. On and after January
26 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered
27 if the child is a nonminor dependent.

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

1 adoption agency that adoption is not in the best interest of the child
2 shall constitute a compelling reason for the court's determination.
3 That recommendation shall be based on the present circumstances
4 of the child and shall not preclude a different recommendation at
5 a later date if the child's circumstances change. On and after
6 January 1, 2012, the nonminor dependent's legal status as an adult
7 is in and of itself a compelling reason not to hold a hearing pursuant
8 to Section 366.26. The court may order that a nonminor dependent
9 who otherwise is eligible pursuant to Section 11403 remain in a
10 planned, permanent living arrangement.

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

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

24 (h) In any case in which the court orders that a hearing pursuant
25 to Section 366.26 shall be held, it shall also order the termination
26 of reunification services to the parent or legal guardian. The court
27 shall continue to permit the parent or legal guardian to visit the
28 child pending the hearing unless it finds that visitation would be
29 detrimental to the child. The court shall make any other appropriate
30 orders to enable the child to maintain relationships with individuals,
31 other than the child's siblings, who are important to the child,
32 consistent with the child's best interests. When the court orders a
33 termination of reunification services to the parent or legal guardian,
34 it shall also order that ~~the child receive his or her birth certificate.~~
35 *child's caregiver receive the child's birth certificate in accordance*
36 *with Sections 16010.4 and 16010.5. Additionally, when the court*
37 *orders a termination of reunification services to the parent of legal*
38 *guardian, it shall order, when appropriate, that a child who is 16*
39 *years of age or older receive his or her birth certificate.*

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

9 (A) Current search efforts for an absent parent or parents or
10 legal guardians.

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

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

20 (D) A preliminary assessment of the eligibility and commitment
21 of any identified prospective adoptive parent or legal guardian,
22 including the prospective tribal customary adoptive parent,
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.

31 (E) The relationship of the child to any identified prospective
32 adoptive parent or legal guardian, the duration and character of
33 the relationship, the degree of attachment of the child to the
34 prospective relative guardian or adoptive parent, the relative’s or
35 adoptive parent’s strong commitment to caring permanently for
36 the child, the motivation for seeking adoption or guardianship, a
37 statement from the child concerning placement and the adoption
38 or guardianship, and whether the child, if over 12 years of age,
39 has been consulted about the proposed relative guardianship
40 arrangements, unless the child’s age or physical, emotional, or

1 other condition precludes his or her meaningful response, and if
2 so, a description of the condition.

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

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

9 (H) In the case of an Indian child, in addition to subparagraphs
10 (A) to (G), inclusive, an assessment of the likelihood that the child
11 will be adopted, when, in consultation with the child's tribe, a
12 customary tribal adoption, as defined in Section 366.24, is
13 recommended. If tribal customary adoption is recommended, the
14 assessment shall include an analysis of both of the following:

15 (i) Whether tribal customary adoption would or would not be
16 detrimental to the Indian child and the reasons for reaching that
17 conclusion.

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

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

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

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

38 (k) As used in this section, "relative" means an adult who is
39 related to the minor by blood, adoption, or affinity within the fifth
40 degree of kinship, including stepparents, stepsiblings, and all

1 relatives whose status is preceded by the words “great,”
2 “great-great,” or “grand,” or the spouse of any of those persons
3 even if the marriage was terminated by death or dissolution.

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

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

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

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

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

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

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

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

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

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

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

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

1 certified foster parent who has been approved for adoption by the
2 State Department of Social Services when it is acting as an
3 adoption agency in counties that are not served by a county
4 adoption agency or by a licensed county adoption agency, may
5 file with the court a report containing his or her recommendation
6 for disposition. The court shall consider the report and
7 recommendation filed pursuant to this subdivision prior to
8 determining any disposition.

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

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

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

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

1 whether the sibling group is currently placed together in a
2 preadoptive home or has a concurrent plan goal of legal
3 permanency in the same home, the wishes of each child whose
4 age and physical and emotional condition permits a meaningful
5 response, and the best interest of each child in the sibling group.
6 The court shall specify the factual basis for its finding that it is in
7 the best interest of each child to schedule a hearing pursuant to
8 Section 366.26 in 120 days for some or all of the members of the
9 sibling group.

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

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

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

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

39 (f) The permanency hearing shall be held no later than 12
40 months after the date the child entered foster care, as that date is

1 determined pursuant to Section 361.49. At the permanency hearing,
2 the court shall determine the permanent plan for the child, which
3 shall include a determination of whether the child will be returned
4 to the child's home and, if so, when, within the time limits of
5 subdivision (a) of Section 361.5. The court shall order the return
6 of the child to the physical custody of his or her parent or legal
7 guardian unless the court finds, by a preponderance of the evidence,
8 that the return of the child to his or her parent or legal guardian
9 would create a substantial risk of detriment to the safety, protection,
10 or physical or emotional well-being of the child. The social worker
11 shall have the burden of establishing that detriment. At the
12 permanency hearing, the court shall consider the criminal history,
13 obtained pursuant to paragraph (1) of subdivision (f) of Section
14 16504.5, of the parent or legal guardian subsequent to the child's
15 removal to the extent that the criminal record is substantially related
16 to the welfare of the child or the parent or legal guardian's ability
17 to exercise custody and control regarding his or her child, provided
18 that the parent or legal guardian agreed to submit fingerprint images
19 to obtain criminal history information as part of the case plan. The
20 court shall also determine whether reasonable services that were
21 designed to aid the parent or legal guardian to overcome the
22 problems that led to the initial removal and continued custody of
23 the child have been provided or offered to the parent or legal
24 guardian. For each youth 16 years of age and older, the court shall
25 also determine whether services have been made available to assist
26 him or her in making the transition from foster care to independent
27 living. The failure of the parent or legal guardian to participate
28 regularly and make substantive progress in court-ordered treatment
29 programs shall be prima facie evidence that return would be
30 detrimental. In making its determination, the court shall review
31 and consider the social worker's report and recommendations and
32 the report and recommendations of any child advocate appointed
33 pursuant to Section 356.5, shall consider the efforts or progress,
34 or both, demonstrated by the parent or legal guardian and the extent
35 to which he or she availed himself or herself of services provided,
36 taking into account the particular barriers to an incarcerated or
37 institutionalized parent or legal guardian's access to those
38 court-mandated services and ability to maintain contact with his
39 or her child and shall make appropriate findings pursuant to
40 subdivision (a) of Section 366.

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

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

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

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

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

38 (C) The parent or legal guardian has demonstrated the capacity
39 and ability both to complete the objectives of his or her treatment

1 plan and to provide for the child's safety, protection, physical and
2 emotional well-being, and special needs.

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

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

16 (2) Order that a hearing be held within 120 days, pursuant to
17 Section 366.26, but only if the court does not continue the case to
18 the permanency planning review hearing and there is clear and
19 convincing evidence that reasonable services have been provided
20 or offered to the parents or legal guardians. On or after January 1,
21 2012, a hearing pursuant to Section 366.26 shall not be ordered if
22 the child is a nonminor dependent.

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

1 January 1, 2012, the nonminor dependent's legal status as an adult
2 is in and of itself a compelling reason not to hold a hearing pursuant
3 to Section 366.26. The court may order that a nonminor dependent
4 who otherwise is eligible pursuant to Section 11403 remain in a
5 planned, permanent living arrangement.

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

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

19 (h) In any case in which the court orders that a hearing pursuant
20 to Section 366.26 shall be held, it shall also order the termination
21 of reunification services to the parent or legal guardian. The court
22 shall continue to permit the parent or legal guardian to visit the
23 child pending the hearing unless it finds that visitation would be
24 detrimental to the child. The court shall make any other appropriate
25 orders to enable the child to maintain relationships with individuals,
26 other than the child's siblings, who are important to the child,
27 consistent with the child's best interests. When the court orders a
28 termination of reunification services to the parent or legal guardian,
29 it shall also order that ~~the child receive his or her birth certificate.~~
30 *child's caregiver receive the child's birth certificate in accordance*
31 *with Sections 16010.4 and 16010.5. Additionally, when the court*
32 *orders a termination of reunification services to the parent of legal*
33 *guardian, it shall order, when appropriate, that a child who is 16*
34 *years of age or older receive his or her birth certificate.*

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

- 1 (A) Current search efforts for an absent parent or parents or
2 legal guardians.
- 3 (B) A review of the amount of and nature of any contact between
4 the child and his or her parents or legal guardians and other
5 members of his or her extended family since the time of placement.
6 Although the extended family of each child shall be reviewed on
7 a case-by-case basis, “extended family” for the purpose of this
8 subparagraph shall include, but not be limited to, the child’s
9 siblings, grandparents, aunts, and uncles.
- 10 (C) An evaluation of the child’s medical, developmental,
11 scholastic, mental, and emotional status.
- 12 (D) A preliminary assessment of the eligibility and commitment
13 of any identified prospective adoptive parent or legal guardian,
14 particularly the caretaker, to include a social history including
15 screening for criminal records and prior referrals for child abuse
16 or neglect, the capability to meet the child’s needs, and the
17 understanding of the legal and financial rights and responsibilities
18 of adoption and guardianship. If a proposed guardian is a relative
19 of the minor, the assessment shall also consider, but need not be
20 limited to, all of the factors specified in subdivision (a) of Section
21 361.3 and in Section 361.4.
- 22 (E) The relationship of the child to any identified prospective
23 adoptive parent or legal guardian, the duration and character of
24 the relationship, the degree of attachment of the child to the
25 prospective relative guardian or adoptive parent, the relative’s or
26 adoptive parent’s strong commitment to caring permanently for
27 the child, the motivation for seeking adoption or guardianship, a
28 statement from the child concerning placement and the adoption
29 or guardianship, and whether the child, if over 12 years of age,
30 has been consulted about the proposed relative guardianship
31 arrangements, unless the child’s age or physical, emotional, or
32 other condition precludes his or her meaningful response, and if
33 so, a description of the condition.
- 34 (F) A description of efforts to be made to identify a prospective
35 adoptive parent or legal guardian, including, but not limited to,
36 child-specific recruitment and listing on an adoption exchange
37 within the state or out of the state.
- 38 (G) An analysis of the likelihood that the child will be adopted
39 if parental rights are terminated.

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

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

11 (j) If, at any hearing held pursuant to Section 366.26, a
12 guardianship is established for the minor with ~~a~~ an approved
13 relative caregiver, and juvenile court dependency is subsequently
14 dismissed, the minor shall be eligible for aid under the Kin-GAP
15 Program, as provided for in Article 4.5 (commencing with Section
16 11360) or Article 4.7 (commencing with Section 11385), as
17 applicable, of Chapter 2 of Part 3 of Division 9.

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

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

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

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

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

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

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

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