

Assembly Bill No. 2292

CHAPTER 208

An act to amend Sections 366.21, 366.22, 366.25, 727.2, and 727.3 of the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor August 27, 2012. Filed with
Secretary of State August 27, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2292, Nielsen. Juveniles: reunification orders.

Existing law provides that a minor may be removed from the physical custody of his or her parents if there is a substantial danger to the physical health of the child or the child is suffering severe emotional damage and there are no reasonable means to protect the child without removing him or her. Additionally, a minor who is in wardship proceedings may be removed from the physical custody of his or her parents if the court finds that remaining in the home would be contrary to the minor's welfare in addition to other specified findings, including that removal is necessary to protect the minor or another person or the person's property. When a minor is removed from the physical custody of his or her parents in dependency or wardship proceedings, existing law generally requires that reunification services be provided to a minor and his or her family. Existing law also provides for periodic status review hearings, at which the court must return a minor to the physical custody of his or her parents unless the court makes specified findings.

This bill would require the court to consider the admissible and relevant evidence before issuing an order returning a minor to the physical custody of his or her parents in dependency or wardship proceedings.

This bill would incorporate additional changes in Sections 366.21, 366.22, and 366.25 of the Welfare and Institutions Code proposed by AB 1712 and SB 1064, that would become operative only if this bill and either or both of those bills are both chaptered and become effective on or before January 1, 2013, and this bill is chaptered last.

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

SECTION 1. Section 366.21 of the Welfare and Institutions Code is amended to read:

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

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

(c) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, including, but not limited to, efforts to maintain relationships between a child who is 10 years of age or older and has been in out-of-home placement for six months or longer and individuals who are important to the child, consistent with the child's best interests; the progress made; and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or legal guardian; and shall make his or her recommendation for disposition. If the child is a member of a sibling group described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, the report and recommendation may also take into account those factors described in subdivision (e) relating to the child's sibling group. If the recommendation is not to return the child to a parent or legal guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or legal guardian, counsel for the child, and any court-appointed child advocate with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or legal guardian, the social worker shall, at least 10 calendar days prior to the hearing, provide a summary of his or her recommendation for disposition to any foster parents, relative caregivers, and certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, community care facility, or foster family agency having the physical custody of the child. The social worker shall include a copy of the Judicial Council Caregiver Information Form (JV-290) with the summary of recommendations to the child's foster parents, relative caregivers, or foster parents approved for adoption, in the caregiver's primary language when available, along with information on how to file the form with the court.

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

Social Services when it is acting as an adoption agency or by a county adoption agency, may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

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

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

If the child was under three years of age on the date of the initial removal, or is a member of a sibling group described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, and the court finds by clear and

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

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

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

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

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

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

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to Section 361.49. At the permanency hearing, the court shall determine the permanent plan for the child, which shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. After considering the relevant and admissible evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. At the permanency hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal to the extent that the criminal record is substantially related to the welfare of the child or the parent's or legal guardian's ability to exercise custody and control regarding his or her child, provided that the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The court shall also determine whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian. For each youth 16 years of age and older, the court shall also determine whether services have been made available to assist him or her in making the transition from foster care to independent living. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5, shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, taking into account the particular barriers to an incarcerated or institutionalized parent's or legal guardian's access to those court-mandated services and ability to maintain contact with his or her child and shall make appropriate findings pursuant to subdivision (a) of Section 366.

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

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

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

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

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

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

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

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

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

(2) Order that a hearing be held within 120 days, pursuant to Section 366.26, but only if the court does not continue the case to the permanency planning review hearing and there is clear and convincing evidence that

reasonable services have been provided or offered to the parents or legal guardians. On and after January 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered if the child is a nonminor dependent.

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

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

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

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

(i) (1) Whenever a court orders that a hearing pursuant to Section 366.26, including, when, in consultation with the child's tribe, tribal customary adoption is recommended, shall be held, it shall direct the agency supervising the child and the county adoption agency, or the State Department of Social Services when it is acting as an adoption agency, to prepare an assessment that shall include:

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

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

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

(D) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, including the prospective tribal customary adoptive parent, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3 and in Section 361.4.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 1.1.1. Section 366.21 of the Welfare and Institutions Code is amended to read:

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

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

(c) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, including, but not limited to, efforts to maintain relationships between a child who is 10 years of age or older and has been in out-of-home placement for six months or longer and individuals who are important to the child, consistent with the child's best interests; the progress made; and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or legal guardian; and shall make his or her recommendation for disposition. If the child is a member of a sibling group described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, the report and recommendation may also take into account those factors described in subdivision (e) relating to the child's sibling group. If the recommendation is not to return the child to a parent or legal guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or legal guardian, counsel for the child, and any court-appointed child advocate with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or legal guardian, the social worker shall, at least 10 calendar days prior to the hearing, provide a summary of his or her recommendation for disposition to any foster parents, relative caregivers, and certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, community care facility, or foster family agency having the physical custody of the child. The social worker shall include a copy of the Judicial Council Caregiver Information Form (JV-290) with the summary of recommendations to the child's foster parents, relative caregivers, or foster parents approved for adoption, in the caregiver's primary language when available, along with information on how to file the form with the court.

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

recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

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

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

If the child was under three years of age on the date of the initial removal, or is a member of a sibling group described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may

schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under three years of age on the date of initial removal or is a member of a sibling group described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, may be returned to his or her parent or legal guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

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

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

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

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

If the child is not returned to his or her parent or legal guardian, the court shall determine whether reasonable services that were designed to aid the

parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child have been provided or offered to the parent or legal guardian. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to Section 361.49. At the permanency hearing, the court shall determine the permanent plan for the child, which shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. After considering the admissible and relevant evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. At the permanency hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal to the extent that the criminal record is substantially related to the welfare of the child or the parent's or legal guardian's ability to exercise custody and control regarding his or her child, provided that the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The court shall also determine whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian. For each youth 16 years of age and older, the court shall also determine whether services have been made available to assist him or her in making the transition from foster care to independent living. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5, shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, taking into account the particular barriers to an incarcerated or institutionalized parent's or legal guardian's access to those court-mandated services and ability to maintain contact with his or her child and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Regardless of whether the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366. If the child

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

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

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

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

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

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

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

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

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

366.26 shall not be ordered if the child is a nonminor dependent, unless the nonminor dependent is an Indian child and tribal customary adoption is recommended as the permanent plan.

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

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

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

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

(i) (1) Whenever a court orders that a hearing pursuant to Section 366.26, including, when, in consultation with the child's tribe, tribal customary adoption is recommended, shall be held, it shall direct the agency supervising the child and the county adoption agency, or the State Department of Social Services when it is acting as an adoption agency, to prepare an assessment that shall include:

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

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

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

(D) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, including the prospective tribal customary adoptive parent, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3 and in Section 361.4.

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

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

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

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

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

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

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

(B) A relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, as provided for in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, the relative caregiver shall be informed about the terms and conditions of the negotiated agreement pursuant to Section 11387 and shall agree to its execution prior to the hearing held pursuant to Section 366.26. A copy of the executed negotiated agreement shall be attached to the assessment.

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

(k) As used in this section, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program as provided in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, "relative" as used in this section has the same meaning as "relative" as defined in subdivision (c) of Section 11391.

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

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

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

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

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

SEC. 1.2. Section 366.21 of the Welfare and Institutions Code is amended to read:

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

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

(c) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, including, but not limited to, efforts to maintain relationships between a child who is 10 years of age or older and has been in out-of-home placement for six months or longer and individuals who are important to the child, consistent with the child's best interests; the progress made; and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or legal guardian; and shall make his or her recommendation for disposition. If the child is a member of a sibling group described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, the report and recommendation may also take into account those factors described in subdivision (e) relating to the child's sibling group. If the recommendation is not to return the child to a parent or legal guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or legal guardian, counsel for the child, and any court-appointed child advocate with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or legal guardian, the social worker shall, at least 10 calendar days prior to the hearing, provide a summary of his or her recommendation for disposition to any foster parents, relative caregivers, and certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, community care facility, or foster family agency having the physical custody of the child. The social worker shall include a copy of the Judicial Council Caregiver Information Form (JV-290) with the summary of recommendations to the child's foster parents, relative caregivers, or foster parents approved for adoption, in the caregiver's primary language when available, along with information on how to file the form with the court.

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

guardian, or in adoption or the creation of a legal guardianship, or in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption, the facility or agency shall file with the court a report, or a Judicial Council Caregiver Information Form (JV-290), containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, the foster parent, relative caregiver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

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

Regardless of whether the child is returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and, where

relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or legal guardian. The court shall also inform the parent or legal guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

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

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

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. The court shall take into account any particular barriers to a parent's ability to maintain contact with his or her child due to the parent's incarceration, institutionalization, detention by the United States Department of Homeland Security, or deportation. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating

parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

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

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

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

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to Section 361.49. At the permanency hearing, the court shall determine the permanent plan for the child, which shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. After considering the admissible and relevant evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. At the permanency hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal to the extent that the criminal record is substantially related to the welfare of the child or the parent's or legal guardian's ability to exercise custody and control regarding his or her child, provided that the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The court shall also determine whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian. For each youth 16 years of age and older, the court shall also determine whether services have been made available to assist him or her in making the transition from foster care to independent living. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review

and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5, shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, taking into account the particular barriers to an incarcerated, institutionalized, detained, or deported parent's or legal guardian's access to those court-mandated services and ability to maintain contact with his or her child and shall make appropriate findings pursuant to subdivision (a) of Section 366.

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

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

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

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

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

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

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

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

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

(2) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian, if the parent has been arrested and issued an immigration hold, detained by the United States Department of Homeland Security, or deported to his or her country of origin, and the court determines that either the parent has made reasonable efforts to regain custody of the child or that termination of parental rights would be detrimental to the child.

(3) A court shall not grant an extension under paragraph (2) if any of the following factors are present:

(A) The child is an abandoned infant.

(B) The parent has been accused of murder or voluntary manslaughter of another child of the parent, or has been accused of felony assault against this child or another child of the parent.

(C) Any other circumstance under subdivision (b) of Section 361.5 or federal law permits the court not to order reunification services.

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

(5) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and shall not preclude a different recommendation at a later date if the child's circumstances change. On and after January 1, 2012, the nonminor dependent's legal status as an adult is in and of itself a compelling reason not to hold a hearing pursuant to Section

366.26. The court may order that a nonminor dependent who otherwise is eligible pursuant to Section 11403 remain in a planned, permanent living arrangement.

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

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

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

(i) (1) Whenever a court orders that a hearing pursuant to Section 366.26, including, when, in consultation with the child's tribe, tribal customary adoption is recommended, shall be held, it shall direct the agency supervising the child and the county adoption agency, or the State Department of Social Services when it is acting as an adoption agency, to prepare an assessment that shall include:

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

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

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

(D) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, including the prospective tribal customary adoptive parent, particularly the caretaker, to

include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3 and in Section 361.4.

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

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

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

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

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

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

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

(B) Regardless of his or her immigration status, a relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with an approved relative caregiver, and juvenile court dependency is subsequently dismissed, the minor shall be eligible for aid under the Kin-GAP Program, as provided for in Article 4.5 (commencing

with Section 11360) or Article 4.7 (commencing with Section 11385), as applicable, of Chapter 2 of Part 3 of Division 9.

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

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

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

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

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

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

SEC. 1.3. Section 366.21 of the Welfare and Institutions Code is amended to read:

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

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

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

of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or legal guardian, the social worker shall, at least 10 calendar days prior to the hearing, provide a summary of his or her recommendation for disposition to any foster parents, relative caregivers, and certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, community care facility, or foster family agency having the physical custody of the child. The social worker shall include a copy of the Judicial Council Caregiver Information Form (JV-290) with the summary of recommendations to the child's foster parents, relative caregivers, or foster parents approved for adoption, in the caregiver's primary language when available, along with information on how to file the form with the court.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or a foster family agency that may result in the return of the child to the physical custody of his or her parent or legal guardian, or in adoption or the creation of a legal guardianship, or in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption, the facility or agency shall file with the court a report, or a Judicial Council Caregiver Information Form (JV-290), containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, the foster parent, relative caregiver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, but no later than 12 months after the date the child entered foster care as determined in Section 361.49, whichever occurs earlier, after considering the relevant and admissible evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. At the hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal to the extent that the criminal record is substantially related to the welfare of the child or the parent's or guardian's ability to exercise custody and control regarding his or her child, provided the parent or legal guardian

agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself to services provided, taking into account the particular barriers to an incarcerated, institutionalized, detained, or deported parent's or legal guardian's access to those court-mandated services and ability to maintain contact with his or her child.

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

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

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

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

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. The court shall take into account any particular barriers to a parent's ability to maintain contact with his or her child due to the parent's incarceration, institutionalization, detention by the United States Department of Homeland Security, or deportation. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

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

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

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

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

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

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

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

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the

home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

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

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

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

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

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

(2) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian, if the parent has been arrested and issued an immigration hold, detained by the United States Department of Homeland Security, or deported to his or her country of origin, and the court determines that either the parent has made reasonable efforts to regain custody of the child or that termination of parental rights would be detrimental to the child.

(3) A court shall not grant an extension under paragraph (2) if any of the following factors are present:

(A) The child is an abandoned infant.

(B) The parent has been accused of murder or voluntary manslaughter of another child of the parent, or has been accused of felony assault against this child or another child of the parent.

(C) Any other circumstance under subdivision (b) of Section 361.5 or federal law permits the court not to order reunification services.

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

nonminor dependent is an Indian child and tribal customary adoption is recommended as the permanent plan.

(5) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and shall not preclude a different recommendation at a later date if the child's circumstances change. On and after January 1, 2012, the nonminor dependent's legal status as an adult is in and of itself a compelling reason not to hold a hearing pursuant to Section 366.26. The court may order that a nonminor dependent who otherwise is eligible pursuant to Section 11403 remain in a planned, permanent living arrangement.

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

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

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

(i) (1) Whenever a court orders that a hearing pursuant to Section 366.26, including, when, in consultation with the child's tribe, tribal customary adoption is recommended, shall be held, it shall direct the agency supervising the child and the county adoption agency, or the State Department of Social Services when it is acting as an adoption agency, to prepare an assessment that shall include:

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

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

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

(D) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, including the prospective tribal customary adoptive parent, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3 and in Section 361.4.

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

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

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

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

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

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

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

(B) Regardless of his or her immigration status, a relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, as provided for in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, the relative caregiver shall be informed about the terms and conditions of the negotiated agreement pursuant to Section 11387 and shall agree to its execution prior to the hearing held pursuant to Section 366.26. A copy of the executed negotiated agreement shall be attached to the assessment.

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

(k) As used in this section, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program as provided in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, "relative" as used in this section has the same meaning as "relative" as defined in subdivision (c) of Section 11391.

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

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

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

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

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

SEC. 2. Section 366.22 of the Welfare and Institutions Code is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian. After considering the admissible and relevant evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. At the permanency review hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal, to the extent that the criminal record is substantially related to the welfare of the child or the parent's or legal guardian's ability to exercise custody and control regarding his or her child, provided that the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, taking into account the particular barriers of an incarcerated or institutionalized parent's or legal guardian's access to those court-mandated services and ability to maintain contact with his or her child; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that return would be detrimental. If the child is not returned to his or her parent or legal guardian, the court shall consider, and state for the record, in-state and out-of-state options for the child's permanent placement. If the child is placed out of the state, the court shall make a

determination whether the out-of-state placement continues to be appropriate and in the best interests of the child.

Unless the conditions in subdivision (b) are met and the child is not returned to a parent or legal guardian at the permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, or, in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption, guardianship, or long-term foster care is the most appropriate plan for the child. On and after January 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered if the child is a nonminor dependent. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, that there is a compelling reason, as described in paragraph (3) of subdivision (g) of Section 366.21, for determining that a hearing held under Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship, then the court may, only under these circumstances, order that the child remain in long-term foster care. On and after January 1, 2012, the nonminor dependent's legal status as an adult is in and of itself a compelling reason not to hold a hearing pursuant to Section 366.26. The court may order that a nonminor dependent who otherwise is eligible pursuant to Section 11403 remain in a planned, permanent living arrangement. If the court orders that a child who is 10 years of age or older remain in long-term foster care, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained. The hearing shall be held no later than 120 days from the date of the permanency review hearing. The court shall also order termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have been offered or provided to the parent or legal guardian. For purposes of this subdivision, evidence of any of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

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

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

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

(b) If the child is not returned to a parent or legal guardian at the permanency review hearing and the court determines by clear and convincing evidence that the best interests of the child would be met by the provision

of additional reunification services to a parent or legal guardian who is making significant and consistent progress in a court-ordered residential substance abuse treatment program, or a parent recently discharged from incarceration or institutionalization and making significant and consistent progress in establishing a safe home for the child's return, the court may continue the case for up to six months for a subsequent permanency review hearing, provided that the hearing shall occur within 24 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

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

(2) That the parent or legal guardian has made significant and consistent progress in the prior 18 months in resolving problems that led to the child's removal from the home.

(3) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her substance abuse treatment plan as evidenced by reports from a substance abuse provider as applicable, or complete a treatment plan postdischarge from incarceration or institutionalization, and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

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

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

(c) (1) Whenever a court orders that a hearing pursuant to Section 366.26, including when a tribal customary adoption is recommended, shall be held, it shall direct the agency supervising the child and the county adoption agency, or the State Department of Social Services when it is acting as an adoption agency, to prepare an assessment that shall include:

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

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

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

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

(D) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child’s needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed legal guardian is a relative of the minor, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3 and Section 361.4.

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

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

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

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

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

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

(B) A relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term

benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption.

(d) This section shall become operative January 1, 1999. If at any hearing held pursuant to Section 366.26, a legal guardianship is established for the minor with an approved relative caregiver, and juvenile court dependency is subsequently dismissed, the minor shall be eligible for aid under the Kin-GAP Program, as provided for in Article 4.5 (commencing with Section 11360) or Article 4.7 (commencing with Section 11385), as applicable, of Chapter 2 of Part 3 of Division 9.

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

(f) The implementation and operation of the amendments to subdivision (a) enacted at the 2005–06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 2.1. Section 366.22 of the Welfare and Institutions Code is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian. After considering the admissible and relevant evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. At the permanency review hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child’s removal, to the extent that the criminal record is substantially related to the welfare of the child or the parent’s or legal guardian’s ability to exercise custody and control regarding his or her child, provided that the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker’s report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, taking into account the particular barriers of an incarcerated or institutionalized parent’s or legal guardian’s access to those court-mandated services and ability to maintain contact with his or

her child; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that return would be detrimental. If the child is not returned to his or her parent or legal guardian, the court shall consider, and state for the record, in-state and out-of-state options for the child's permanent placement. If the child is placed out of the state, the court shall make a determination whether the out-of-state placement continues to be appropriate and in the best interests of the child.

Unless the conditions in subdivision (b) are met and the child is not returned to a parent or legal guardian at the permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, or, in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption, guardianship, or long-term foster care is the most appropriate plan for the child. On and after January 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered if the child is a nonminor dependent, unless the nonminor dependent is an Indian child with a permanent plan of tribal customary adoption. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, that there is a compelling reason, as described in paragraph (3) of subdivision (g) of Section 366.21, for determining that a hearing held under Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship, then the court may, only under these circumstances, order that the child remain in long-term foster care. On and after January 1, 2012, the nonminor dependent's legal status as an adult is in and of itself a compelling reason not to hold a hearing pursuant to Section 366.26. The court may order that a nonminor dependent who otherwise is eligible pursuant to Section 11403 remain in a planned, permanent living arrangement. If the court orders that a child who is 10 years of age or older remain in long-term foster care, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained. The hearing shall be held no later than 120 days from the date of the permanency review hearing. The court shall also order termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have been offered or provided to the parent or legal guardian. For purposes of this subdivision, evidence of any of the following circumstances

shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

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

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

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

(b) If the child is not returned to a parent or legal guardian at the permanency review hearing and the court determines by clear and convincing evidence that the best interests of the child would be met by the provision of additional reunification services to a parent or legal guardian who is making significant and consistent progress in a court-ordered residential substance abuse treatment program, or a parent recently discharged from incarceration or institutionalization and making significant and consistent progress in establishing a safe home for the child's return, the court may continue the case for up to six months for a subsequent permanency review hearing, provided that the hearing shall occur within 24 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

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

(2) That the parent or legal guardian has made significant and consistent progress in the prior 18 months in resolving problems that led to the child's removal from the home.

(3) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her substance abuse treatment plan as evidenced by reports from a substance abuse provider as applicable, or complete a treatment plan postdischarge from incarceration or institutionalization, and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

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

The court shall inform the parent or legal guardian that if the child cannot be returned home by the subsequent permanency review hearing, a

proceeding pursuant to Section 366.26 may be instituted. The court may not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.

(c) (1) Whenever a court orders that a hearing pursuant to Section 366.26, including when a tribal customary adoption is recommended, shall be held, it shall direct the agency supervising the child and the county adoption agency, or the State Department of Social Services when it is acting as an adoption agency, to prepare an assessment that shall include:

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

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

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

(D) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child’s needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed legal guardian is a relative of the minor, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3 and Section 361.4.

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

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

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

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

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

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

(B) A relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, as provided for in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, the relative caregiver shall be informed about the terms and conditions of the negotiated agreement pursuant to Section 11387 and shall agree to its execution prior to the hearing held pursuant to Section 366.26. A copy of the executed negotiated agreement shall be attached to the assessment.

(d) This section shall become operative January 1, 1999. If at any hearing held pursuant to Section 366.26, a legal guardianship is established for the minor with an approved relative caregiver, and juvenile court dependency is subsequently dismissed, the minor shall be eligible for aid under the Kin-GAP Program, as provided for in Article 4.5 (commencing with Section 11360) or Article 4.7 (commencing with Section 11385), as applicable, of Chapter 2 of Part 3 of Division 9.

(e) As used in this section, "relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, as provided for in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, "relative" as used in this section has the same meaning as "relative" as defined in subdivision (c) of Section 11391.

(f) The implementation and operation of the amendments to subdivision (a) enacted at the 2005–06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 2.2. Section 366.22 of the Welfare and Institutions Code is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) or (2) of subdivision (g) of Section 366.21, the permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian. After

considering the admissible and relevant evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. At the permanency review hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal, to the extent that the criminal record is substantially related to the welfare of the child or the parent's or legal guardian's ability to exercise custody and control regarding his or her child, provided that the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, taking into account the particular barriers of an incarcerated or institutionalized parent or legal guardian's access to those court-mandated services and ability to maintain contact with his or her child; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that return would be detrimental. If the child is not returned to his or her parent or legal guardian, the court shall consider, and state for the record, in-state and out-of-state options for the child's permanent placement. If the child is placed out of the state, the court shall make a determination whether the out-of-state placement continues to be appropriate and in the best interests of the child.

Unless the conditions in subdivision (b) are met and the child is not returned to a parent or legal guardian at the permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, or, in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption, guardianship, or long-term foster care is the most appropriate plan for the child. On and after January 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered if the child is a nonminor dependent. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, that there is a compelling reason, as described in paragraph (5) of subdivision

(g) of Section 366.21, for determining that a hearing held under Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship, then the court may, only under these circumstances, order that the child remain in long-term foster care. On and after January 1, 2012, the nonminor dependent's legal status as an adult is in and of itself a compelling reason not to hold a hearing pursuant to Section 366.26. The court may order that a nonminor dependent who otherwise is eligible pursuant to Section 11403 remain in a planned, permanent living arrangement. If the court orders that a child who is 10 years of age or older remain in long-term foster care, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained. The hearing shall be held no later than 120 days from the date of the permanency review hearing. The court shall also order termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have been offered or provided to the parent or legal guardian. For purposes of this subdivision, evidence of any of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

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

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

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

(b) If the child is not returned to a parent or legal guardian at the permanency review hearing and the court determines by clear and convincing evidence that the best interests of the child would be met by the provision of additional reunification services to a parent or legal guardian who is making significant and consistent progress in a court-ordered residential substance abuse treatment program, or a parent recently discharged from incarceration, institutionalization, or the custody of the United States Department of Homeland Security, or recently returned to the United States following deportation to his or her country of origin and making significant and consistent progress in establishing a safe home for the child's return, the court may continue the case for up to six months for a subsequent permanency review hearing, provided that the hearing shall occur within 24 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or

that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

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

(2) That the parent or legal guardian has made significant and consistent progress in the prior 18 months in resolving problems that led to the child's removal from the home.

(3) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her substance abuse treatment plan as evidenced by reports from a substance abuse provider as applicable, or complete a treatment plan postdischarge from incarceration, institutionalization, or detention, or following his or her return to the United States following deportation to his or her country of origin, and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

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

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

(c) (1) Whenever a court orders that a hearing pursuant to Section 366.26, including when a tribal customary adoption is recommended, shall be held, it shall direct the agency supervising the child and the county adoption agency, or the State Department of Social Services when it is acting as an adoption agency, to prepare an assessment that shall include:

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

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

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

(D) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal records

and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed legal guardian is a relative of the minor, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3 and Section 361.4.

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

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

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

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

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

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

(B) Regardless of his or her immigration status, a relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption.

(d) This section shall become operative January 1, 1999. If at any hearing held pursuant to Section 366.26, a legal guardianship is established for the minor with an approved relative caregiver, and juvenile court dependency is subsequently dismissed, the minor shall be eligible for aid under the Kin-GAP Program, as provided for in Article 4.5 (commencing with Section 11360) or Article 4.7 (commencing with Section 11385), as applicable, of Chapter 2 of Part 3 of Division 9.

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

(f) The implementation and operation of the amendments to subdivision (a) enacted at the 2005–06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 2.3. Section 366.22 of the Welfare and Institutions Code is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) or (2) of subdivision (g) of Section 366.21, the permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian. After considering the admissible and relevant evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. At the permanency review hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child’s removal, to the extent that the criminal record is substantially related to the welfare of the child or the parent’s or legal guardian’s ability to exercise custody and control regarding his or her child, provided that the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker’s report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, taking into account the particular barriers of an incarcerated or institutionalized parent’s or legal guardian’s access to those court-mandated services and ability to maintain contact with his or her child; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that return would be detrimental. If the child is not returned to his or her parent or legal guardian, the court shall consider, and state for the record, in-state and out-of-state options for the child’s permanent placement. If the child is placed out of the state, the court shall make a

determination whether the out-of-state placement continues to be appropriate and in the best interests of the child.

Unless the conditions in subdivision (b) are met and the child is not returned to a parent or legal guardian at the permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, or, in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption, guardianship, or long-term foster care is the most appropriate plan for the child. On and after January 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered if the child is a nonminor dependent, unless the nonminor dependent is an Indian child with a permanent plan of tribal customary adoption. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, that there is a compelling reason, as described in paragraph (5) of subdivision (g) of Section 366.21, for determining that a hearing held under Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship, then the court may, only under these circumstances, order that the child remain in long-term foster care. On and after January 1, 2012, the nonminor dependent's legal status as an adult is in and of itself a compelling reason not to hold a hearing pursuant to Section 366.26. The court may order that a nonminor dependent who otherwise is eligible pursuant to Section 11403 remain in a planned, permanent living arrangement. If the court orders that a child who is 10 years of age or older remain in long-term foster care, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained. The hearing shall be held no later than 120 days from the date of the permanency review hearing. The court shall also order termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have been offered or provided to the parent or legal guardian. For purposes of this subdivision, evidence of any of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

- (1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.
- (2) The case plan includes services to make and finalize a permanent placement for the child if efforts to reunify fail.
- (3) Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(b) If the child is not returned to a parent or legal guardian at the permanency review hearing and the court determines by clear and convincing evidence that the best interests of the child would be met by the provision of additional reunification services to a parent or legal guardian who is making significant and consistent progress in a court-ordered residential substance abuse treatment program, or a parent recently discharged from incarceration, institutionalization, or the custody of the United States Department of Homeland Security, or recently returned to the United States following deportation to his or her country of origin and making significant and consistent progress in establishing a safe home for the child's return, the court may continue the case for up to six months for a subsequent permanency review hearing, provided that the hearing shall occur within 24 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

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

(2) That the parent or legal guardian has made significant and consistent progress in the prior 18 months in resolving problems that led to the child's removal from the home.

(3) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her substance abuse treatment plan as evidenced by reports from a substance abuse provider as applicable, or complete a treatment plan postdischarge from incarceration, institutionalization, or detention, or following his or her return to the United States following deportation to his or her country of origin, and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

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

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

(c) (1) Whenever a court orders that a hearing pursuant to Section 366.26, including when a tribal customary adoption is recommended, shall be held, it shall direct the agency supervising the child and the county adoption agency, or the State Department of Social Services when it is acting as an adoption agency, to prepare an assessment that shall include:

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

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

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

(D) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child’s needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed legal guardian is a relative of the minor, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3 and Section 361.4.

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

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

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

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

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

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

(B) Regardless of his or her immigration status, a relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, as provided for in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, the relative caregiver shall be informed about the terms and conditions of the negotiated agreement pursuant to Section 11387 and shall agree to its execution prior to the hearing held pursuant to Section 366.26. A copy of the executed negotiated agreement shall be attached to the assessment.

(d) This section shall become operative January 1, 1999. If at any hearing held pursuant to Section 366.26, a legal guardianship is established for the minor with an approved relative caregiver, and juvenile court dependency is subsequently dismissed, the minor shall be eligible for aid under the Kin-GAP Program, as provided for in Article 4.5 (commencing with Section 11360) or Article 4.7 (commencing with Section 11385), as applicable, of Chapter 2 of Part 3 of Division 9.

(e) As used in this section, "relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, as provided for in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, "relative" as used in this section has the same meaning as "relative" as defined in subdivision (c) of Section 11391.

(f) The implementation and operation of the amendments to subdivision (a) enacted at the 2005–06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 3. Section 366.25 of the Welfare and Institutions Code is amended to read:

366.25. (a) (1) When a case has been continued pursuant to subdivision (b) of Section 366.22, the subsequent permanency review hearing shall occur within 24 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian. After considering the relevant and admissible evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk

of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. At the subsequent permanency review hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal to the extent that the criminal record is substantially related to the welfare of the child or parent's or legal guardian's ability to exercise custody and control regarding his or her child provided that the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

(2) Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that return would be detrimental. If the child is not returned to his or her parents or legal guardian, the court shall consider and state for the record, in-state and out-of-state options for the child's permanent placement. If the child is placed out of the state, the court shall make a determination whether the out-of-state placement continues to be appropriate and in the best interests of the child.

(3) If the child is not returned to a parent or legal guardian at the subsequent permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, or, in the case of an Indian child, tribal customary adoption, guardianship, or long-term foster care is the most appropriate plan for the child. On and after January 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered if the child is a nonminor dependent. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, that there is a compelling reason, as described in paragraph (3) of subdivision (g) of Section 366.21, for determining that a hearing held under Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption or, in the case of an Indian child, tribal customary adoption, and has no one willing to accept legal guardianship, then the court may, only under these circumstances, order that the child remain in long-term foster care. On and after January 1, 2012, the nonminor dependent's legal status as an adult is in and of itself a compelling reason not to hold a hearing pursuant to Section 366.26. The court may order that a nonminor dependent

who otherwise is eligible pursuant to Section 11403 remain in a planned, permanent living arrangement. If the court orders that a child who is 10 years of age or older remain in long-term foster care, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained. The hearing shall be held no later than 120 days from the date of the subsequent permanency review hearing. The court shall also order termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have been offered or provided to the parent or legal guardian. For purposes of this subdivision, evidence of any of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

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

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

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

(b) (1) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the county adoption agency, or the State Department of Social Services when it is acting as an adoption agency, to prepare an assessment that shall include:

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

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

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

(D) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, including a prospective tribal customary adoptive parent, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed legal guardian is a relative of the minor, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3 and in Section 361.4.

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

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

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

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

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

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

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

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

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

(e) The implementation and operation of subdivision (a) enacted at the 2005–06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 3.1. Section 366.25 of the Welfare and Institutions Code is amended to read:

366.25. (a) (1) When a case has been continued pursuant to subdivision (b) of Section 366.22, the subsequent permanency review hearing shall occur within 24 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian. After considering the admissible and relevant evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. At the subsequent permanency review hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal to the extent that the criminal record is substantially related to the welfare of the child or parent's or legal guardian's ability to exercise custody and control regarding his or her child provided that the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

(2) Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that return would be detrimental. If the child is not returned to his or her parents or legal guardian, the court shall consider and state for the record, in-state and out-of-state options for the child's permanent placement. If the child is placed out of the state, the court shall make a determination whether the out-of-state placement continues to be appropriate and in the best interests of the child.

(3) If the child is not returned to a parent or legal guardian at the subsequent permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, or, in the case of an Indian child, tribal customary adoption, guardianship, or long-term foster care is the most appropriate plan for the child. On and after January 1, 2012, a hearing pursuant to Section 366.26 shall not be

ordered if the child is a nonminor dependent, unless the nonminor dependent is an Indian child and tribal customary adoption is recommended as the permanent plan. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, that there is a compelling reason, as described in paragraph (3) of subdivision (g) of Section 366.21, for determining that a hearing held under Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption or, in the case of an Indian child, tribal customary adoption, and has no one willing to accept legal guardianship, then the court may, only under these circumstances, order that the child remain in long-term foster care. On and after January 1, 2012, the nonminor dependent's legal status as an adult is in and of itself a compelling reason not to hold a hearing pursuant to Section 366.26. The court may order that a nonminor dependent who otherwise is eligible pursuant to Section 11403 remain in a planned, permanent living arrangement. If the court orders that a child who is 10 years of age or older remain in long-term foster care, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained. The hearing shall be held no later than 120 days from the date of the subsequent permanency review hearing. The court shall also order termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have been offered or provided to the parent or legal guardian. For purposes of this subdivision, evidence of any of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

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

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

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

(b) (1) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the county adoption agency, or the State Department of Social Services when it is acting as an adoption agency, to prepare an assessment that shall include:

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

(B) A review of the amount of, and nature of, any contact between the child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purposes

of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

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

(D) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, including a prospective tribal customary adoptive parent, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed legal guardian is a relative of the minor, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3 and in Section 361.4.

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

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

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

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

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

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

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

guardianship or pursuing adoption. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, as provided for in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, the relative caregiver shall be informed about the terms and conditions of the negotiated agreement pursuant to Section 11387 and shall agree to its execution prior to the hearing held pursuant to Section 366.26. A copy of the executed negotiated agreement shall be attached to the assessment.

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

(d) As used in this section, “relative” means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words “great,” “great-great,” or “grand,” or the spouse of any of those persons even if the marriage was terminated by death or dissolution. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, as provided for in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, “relative” as used in this section has the same meaning as “relative” as defined in subdivision (c) of Section 11391.

(e) The implementation and operation of subdivision (a) enacted at the 2005–06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 3.2. Section 366.25 of the Welfare and Institutions Code is amended to read:

366.25. (a) (1) When a case has been continued pursuant to subdivision (b) of Section 366.22, the subsequent permanency review hearing shall occur within 24 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian. After considering the admissible and relevant evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. At the subsequent permanency review hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child’s removal to the extent that the criminal record is substantially related to the welfare of the child or parent’s or legal guardian’s ability to exercise custody and control regarding his or her child provided that the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The failure of the parent

or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

(2) Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that return would be detrimental. If the child is not returned to his or her parents or legal guardian, the court shall consider and state for the record, in-state and out-of-state options for the child's permanent placement. If the child is placed out of the state, the court shall make a determination whether the out-of-state placement continues to be appropriate and in the best interests of the child.

(3) If the child is not returned to a parent or legal guardian at the subsequent permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, or, in the case of an Indian child, tribal customary adoption, guardianship, or long-term foster care is the most appropriate plan for the child. On and after January 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered if the child is a nonminor dependent. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, that there is a compelling reason, as described in paragraph (5) of subdivision (g) of Section 366.21, for determining that a hearing held under Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption or, in the case of an Indian child, tribal customary adoption, and has no one willing to accept legal guardianship, then the court may, only under these circumstances, order that the child remain in long-term foster care. On and after January 1, 2012, the nonminor dependent's legal status as an adult is in and of itself a compelling reason not to hold a hearing pursuant to Section 366.26. The court may order that a nonminor dependent who otherwise is eligible pursuant to Section 11403 remain in a planned, permanent living arrangement. If the court orders that a child who is 10 years of age or older remain in long-term foster care, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained. The hearing shall be held no later than 120 days from the date of the subsequent permanency review hearing. The court shall also order termination of reunification services to the parent or legal guardian. The

court shall continue to permit the parent or legal guardian to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have been offered or provided to the parent or legal guardian. For purposes of this subdivision, evidence of any of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

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

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

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

(b) (1) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the county adoption agency, or the State Department of Social Services when it is acting as an adoption agency, to prepare an assessment that shall include:

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

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

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

(D) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, including a prospective tribal customary adoptive parent, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child’s needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed legal guardian is a relative of the minor, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3 and in Section 361.4.

(E) The relationship of the child to any identified prospective adoptive parent or legal guardian, including a prospective tribal customary adoptive parent, the duration and character of the relationship, the degree of attachment of the child to the prospective relative guardian or adoptive parent, the relative’s or adoptive parent’s strong commitment to caring permanently for the child, the motivation for seeking adoption or legal guardianship, a statement from the child concerning placement and the adoption or legal guardianship, and whether the child, if over 12 years of age, has been consulted about the proposed relative guardianship arrangements, unless the child’s age or physical, emotional, or other

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

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

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

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

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

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

(B) Regardless of his or her immigration status, a relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption.

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

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

(e) The implementation and operation of subdivision (a) enacted at the 2005-06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 3.3. Section 366.25 of the Welfare and Institutions Code is amended to read:

366.25. (a) (1) When a case has been continued pursuant to subdivision (b) of Section 366.22, the subsequent permanency review hearing shall occur within 24 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian. After considering the admissible and relevant evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the

child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. At the subsequent permanency review hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal to the extent that the criminal record is substantially related to the welfare of the child or parent's or legal guardian's ability to exercise custody and control regarding his or her child provided that the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

(2) Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that return would be detrimental. If the child is not returned to his or her parents or legal guardian, the court shall consider and state for the record, in-state and out-of-state options for the child's permanent placement. If the child is placed out of the state, the court shall make a determination whether the out-of-state placement continues to be appropriate and in the best interests of the child.

(3) If the child is not returned to a parent or legal guardian at the subsequent permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, or, in the case of an Indian child, tribal customary adoption, guardianship, or long-term foster care is the most appropriate plan for the child. On and after January 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered if the child is a nonminor dependent, unless the nonminor dependent is an Indian child and tribal customary adoption is recommended as the permanent plan. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, that there is a compelling reason, as described in paragraph (5) of subdivision (g) of Section 366.21, for determining that a hearing held under Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption or, in the case of an Indian child, tribal customary adoption, and has no one willing to accept legal guardianship, then the court may, only under these circumstances, order that the child remain in long-term

foster care. On and after January 1, 2012, the nonminor dependent's legal status as an adult is in and of itself a compelling reason not to hold a hearing pursuant to Section 366.26. The court may order that a nonminor dependent who otherwise is eligible pursuant to Section 11403 remain in a planned, permanent living arrangement. If the court orders that a child who is 10 years of age or older remain in long-term foster care, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained. The hearing shall be held no later than 120 days from the date of the subsequent permanency review hearing. The court shall also order termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have been offered or provided to the parent or legal guardian. For purposes of this subdivision, evidence of any of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

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

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

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

(b) (1) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the county adoption agency, or the State Department of Social Services when it is acting as an adoption agency, to prepare an assessment that shall include:

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

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

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

(D) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, including a prospective tribal customary adoptive parent, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed legal guardian is a relative of the minor, the assessment shall also consider, but need not be limited to, all

of the factors specified in subdivision (a) of Section 361.3 and in Section 361.4.

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

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

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

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

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

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

(B) Regardless of his or her immigration status, a relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, as provided for in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, the relative caregiver shall be informed about the terms and conditions of the negotiated agreement pursuant to Section 11387 and shall agree to its execution prior to the hearing held pursuant to Section 366.26. A copy of the executed negotiated agreement shall be attached to the assessment.

(c) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with an approved relative caregiver, and juvenile court dependency is subsequently dismissed, the minor shall be eligible for

aid under the Kin-GAP Program, as provided for in Article 4.5 (commencing with Section 11360) or Article 4.7 (commencing with Section 11385), as applicable, of Chapter 2 of Part 3 of Division 9.

(d) As used in this section, “relative” means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words “great,” “great-great,” or “grand,” or the spouse of any of those persons even if the marriage was terminated by death or dissolution. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, as provided for in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, “relative” as used in this section has the same meaning as “relative” as defined in subdivision (c) of Section 11391.

(e) The implementation and operation of subdivision (a) enacted at the 2005–06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 4. Section 727.2 of the Welfare and Institutions Code is amended to read:

727.2. The purpose of this section is to provide a means to monitor the safety and well-being of every minor in foster care who has been declared a ward of the juvenile court pursuant to Section 601 or 602 and to ensure that everything reasonably possible is done to facilitate the safe and early return of the minor to his or her home or to establish an alternative permanent plan for the minor.

(a) If the court orders the care, custody, and control of the minor to be under the supervision of the probation officer for placement pursuant to subdivision (a) of Section 727, the juvenile court shall order the probation department to ensure the provision of reunification services to facilitate the safe return of the minor to his or her home or the permanent placement of the minor, and to address the needs of the minor while in foster care, except as provided in subdivision (b).

(b) Reunification services need not be provided to a parent or legal guardian if the court finds by clear and convincing evidence that one or more of the following is true:

(1) Reunification services were previously terminated for that parent or guardian, pursuant to Section 366.21, 366.22, or 366.25, or not offered, pursuant to subdivision (b) of Section 361.5, in reference to the same minor.

(2) The parent has been convicted of any of the following:

(A) Murder of another child of the parent.

(B) Voluntary manslaughter of another child of the parent.

(C) Aiding or abetting, attempting, conspiring, or soliciting to commit that murder or manslaughter described in subparagraph (A) or (B).

(D) A felony assault that results in serious bodily injury to the minor or another child of the parent.

(3) The parental rights of the parent with respect to a sibling have been terminated involuntarily, and it is not in the best interest of the minor to reunify with his or her parent or legal guardian.

If no reunification services are offered to the parent or guardian, the permanency planning hearing, as described in Section 727.3, shall occur within 30 days of the date of the hearing at which the decision is made not to offer services.

(c) The status of every minor declared a ward and ordered to be placed in foster care shall be reviewed by the court no less frequently than once every six months. The six-month time periods shall be calculated from the date the minor entered foster care, as defined in paragraph (4) of subdivision (d) of Section 727.4. If the court so elects, the court may declare the hearing at which the court orders the care, custody, and control of the minor to be under the supervision of the probation officer for foster care placement pursuant to subdivision (a) of Section 727 at the first status review hearing. It shall be the duty of the probation officer to prepare a written social study report including an updated case plan, pursuant to subdivision (b) of Section 706.5, and submit the report to the court prior to each status review hearing, pursuant to subdivision (b) of Section 727.4. The social study report shall include all reports the probation officer relied upon in making his or her recommendations.

(d) Prior to any status review hearing involving a minor in the physical custody of a community care facility or foster family agency, the facility or agency may provide the probation officer with a report containing its recommendations. Prior to any status review hearing involving the physical custody of a foster parent, relative caregiver, preadoptive parent, or legal guardian, that person may present to the court a report containing his or her recommendations. The court shall consider all reports and recommendations filed pursuant to subdivision (c) and pursuant to this subdivision.

(e) At any status review hearing prior to the first permanency planning hearing, the court shall consider the safety of the minor and make findings and orders which determine the following:

- (1) The continuing necessity for and appropriateness of the placement.
- (2) The extent of the probation department's compliance with the case plan in making reasonable efforts to safely return the minor to the minor's home or to complete whatever steps are necessary to finalize the permanent placement of the minor.
- (3) Whether there should be any limitation on the right of the parent or guardian to make educational decisions for the minor. That limitation shall be specifically addressed in the court order and may not exceed what is necessary to protect the minor. If the court specifically limits the right of the parent or guardian to make educational decisions for the minor, the court shall at the same time appoint a responsible adult to make educational decisions for the minor pursuant to Section 726.
- (4) The extent of progress that has been made by the minor and parent or guardian toward alleviating or mitigating the causes necessitating placement in foster care.
- (5) The likely date by which the minor may be returned to and safely maintained in the home or placed for adoption, appointed a legal guardian,

permanently placed with a fit and willing relative or referred to another planned permanent living arrangement.

(6) In the case of a minor who has reached 16 years of age, the court shall, in addition, determine the services needed to assist the minor to make the transition from foster care to independent living.

The court shall make these determinations on a case-by-case basis and reference in its written findings the probation officer's report and any other evidence relied upon in reaching its decision.

(f) At any status review hearing prior to the first permanency hearing, after considering the admissible and relevant evidence, the court shall order return of the minor to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of evidence, that the return of the minor to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation department shall have the burden of establishing that detriment. In making its determination, the court shall review and consider the social study report, recommendations, and the case plan pursuant to subdivision (b) of Section 706.5, the report and recommendations of any child advocate appointed for the minor in the case, and any other reports submitted to the court pursuant to subdivision (d), and shall consider the efforts or progress, or both, demonstrated by the minor and family and the extent to which the minor availed himself or herself of the services provided.

(g) At all status review hearings subsequent to the first permanency planning hearing, the court shall consider the safety of the minor and make the findings and orders as described in paragraphs (1) to (4), inclusive, and (6) of subdivision (e). The court shall either make a finding that the previously ordered permanent plan continues to be appropriate or shall order that a new permanent plan be adopted pursuant to subdivision (b) of Section 727.3. However, the court shall not order a permanent plan of "return to the physical custody of the parent or legal guardian after further reunification services are offered," as described in paragraph (2) of subdivision (b) of Section 727.3.

(h) The status review hearings required by subdivision (c) may be heard by an administrative review panel, provided that the administrative panel meets all of the requirements listed in subparagraph (B) of paragraph (7) of subdivision (d) of Section 727.4.

(i) (1) On and after January 1, 2012, at any status review hearing at which a recommendation to terminate delinquency jurisdiction is being considered, or at the status review hearing held closest to the ward attaining 18 years of age, but no fewer than 90 days before the ward's 18th birthday, the court shall consider whether to modify its jurisdiction pursuant to Section 601 or 602 and assume transition jurisdiction over the minor pursuant to Section 450. The probation department shall address this issue in its report to the court and make a recommendation as to whether transition jurisdiction is appropriate for the minor.

(2) The court shall order the probation department or the minor's attorney to submit an application to the child welfare services department pursuant to Section 329 to declare the minor a dependent of the court and modify its jurisdiction from delinquency to dependency jurisdiction if it finds both of the following:

(A) The ward does not come within the description set forth in Section 450, but jurisdiction as a ward may no longer be required.

(B) The ward appears to come within the description of Section 300 and cannot be returned home safely.

(3) The court shall set a hearing within 20 judicial days of the date of its order issued pursuant to paragraph (2) to review the decision of the child welfare services department and may either affirm the decision not to file a petition pursuant to Section 300 or order the child welfare services department to file a petition pursuant to Section 300.

(j) On and after January 1, 2012, if a review hearing pursuant to this section is the last review hearing to be held before the minor attains 18 years of age, the court shall ensure that the minor's transitional independent living case plan includes a plan for the minor to meet one or more of the criteria in paragraphs (1) to (5), inclusive, of subdivision (b) of Section 11403, so that the minor can become a nonminor dependent, and that the minor has been informed of his or her right to decline to become a nonminor dependent and to seek termination of the court's jurisdiction pursuant to Section 607.2.

SEC. 5. Section 727.3 of the Welfare and Institutions Code is amended to read:

727.3. The purpose of this section is to provide a means to monitor the safety and well-being of every minor in foster care who has been declared a ward of the juvenile court pursuant to Section 601 or 602 and to ensure that everything reasonably possible is done to facilitate the safe and early return of the minor to his or her own home or to establish an alternative permanent plan for the minor.

(a) (1) For every minor declared a ward and ordered to be placed in foster care, a permanency planning hearing shall be conducted within 12 months of the date the minor entered foster care, as defined in paragraph (4) of subdivision (d) of Section 727.4. Subsequent permanency planning hearings shall be conducted periodically, but no less frequently than once every 12 months thereafter during the period of placement. It shall be the duty of the probation officer to prepare a written social study report including an updated case plan and a recommendation for a permanent plan, pursuant to subdivision (c) of Section 706.5, and submit the report to the court prior to each permanency planning hearing, pursuant to subdivision (b) of Section 727.4.

(2) Prior to any permanency planning hearing involving a minor in the physical custody of a community care facility or foster family agency, the facility or agency may file with the court a report containing its recommendations, in addition to the probation officer's social study. Prior to any permanency planning hearing involving the physical custody of a foster parent, relative caregiver, preadoptive parent, or legal guardian, that

person may present to the court a report containing his or her recommendations. The court shall consider all reports and recommendations filed pursuant to this subdivision.

(3) If the minor has a continuing involvement with his or her parents or legal guardians, the parents or legal guardians shall be involved in the planning for a permanent placement. The court order placing the minor in a permanent placement shall include a specification of the nature and frequency of visiting arrangements with the parents or legal guardians.

(4) At each permanency planning hearing, the court shall order a permanent plan for the minor, as described in subdivision (b). The court shall also make findings, as described in subdivision (e) of Section 727.2. In the case of a minor who has reached 16 years of age or older, the court shall, in addition, determine the services needed to assist the minor to make the transition from foster care to independent living. The court shall make all of these determinations on a case-by-case basis and make reference to the probation officer's report, the case plan, or other evidence relied upon in making its decisions.

(b) At all permanency planning hearings, the court shall determine the permanent plan for the minor. The court shall order one of the following permanent plans, which are, in order of priority:

(1) Return of the minor to the physical custody of the parent or legal guardian. After considering the admissible and relevant evidence, the court shall order the return of the minor to the physical custody of his or her parent or legal guardian unless:

(A) Reunification services were not offered, pursuant to subdivision (b) of Section 727.2.

(B) The court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation department shall have the burden of establishing that detriment. In making its determination, the court shall review and consider the social study report and recommendations pursuant to Section 706.5, the report and recommendations of any child advocate appointed for the minor in the case, and any other reports submitted pursuant to paragraph (2) of subdivision (a), and shall consider the efforts or progress, or both, demonstrated by the minor and family and the extent to which the minor availed himself or herself of the services provided.

(2) Order that the permanent plan for the minor will be to return the minor to the physical custody of the parent or legal guardian, order further reunification services to be provided to the minor and his or her parent or legal guardian for a period not to exceed six months and continue the case for up to six months for a subsequent permanency planning hearing, provided that the subsequent hearing shall occur within 18 months of the date the minor was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the minor will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the

home within the extended period of time or that reasonable services have not been provided to the parent or guardian. For purposes of this section, in order to find that there is a substantial probability that the minor will be returned to the physical custody of his or her parent or legal guardian, the court shall be required to find that the minor and his or her parent or legal guardian have demonstrated the capacity and ability to complete the objectives of the case plan.

The court shall inform the parent or legal guardian that if the minor cannot be returned home by the next permanency planning hearing, a proceeding pursuant to Section 727.31 may be initiated.

The court shall not continue the case for further reunification services if it has been 18 months or more since the date the minor was originally taken from the physical custody of his or her parent or legal guardian.

(3) Identify adoption as the permanent plan and order that a hearing be held within 120 days, pursuant to the procedures described in Section 727.31. The court shall only set a hearing pursuant to Section 727.31 if there is clear and convincing evidence that reasonable services have been provided or offered to the parents. When the court sets a hearing pursuant to Section 727.31, it shall order that an adoption assessment report be prepared, pursuant to subdivision (b) of Section 727.31.

(4) Order a legal guardianship, pursuant to procedures described in subdivisions (c) to (f), inclusive, of Section 728.

(5) Place the minor with a fit and willing relative. “Placement with a fit and willing relative” means placing the minor with an appropriate relative on a permanent basis. When a minor is placed with a fit and willing relative, the court may authorize the relative to provide the same legal consent for the minor’s medical, surgical, and dental care, and education as the custodial parent of the minor.

(6) Place the minor in a planned permanent living arrangement. A “planned permanent living arrangement” means any permanent living arrangement described in Section 11402 and not listed in paragraphs (1) to (5), inclusive, such as placement in a specific, identified foster family home, program, or facility on a permanent basis, or placement in a transitional housing placement facility. When the court places a minor in a planned permanent living arrangement, the court shall specify the goal of the placement, which may include, but shall not be limited to, return home, emancipation, guardianship, or permanent placement with a relative.

The court shall only order that the minor remain in a planned permanent living arrangement if the court finds by clear and convincing evidence, based upon the evidence already presented to it that there is a compelling reason, as defined in subdivision (c), for determining that a plan of termination of parental rights and adoption is not in the best interest of the minor.

(c) A compelling reason for determining that a plan of termination of parental rights and adoption is not in the best interest of the minor is any of the following:

(1) Documentation by the probation department that adoption is not in the best interest of the minor and is not an appropriate permanency goal. That documentation may include, but is not limited to, documentation that:

(A) The minor is 12 years of age or older and objects to termination of parental rights.

(B) The minor is 17 years of age or older and specifically requests that transition to independent living with the identification of a caring adult to serve as a lifelong connection be established as his or her permanent plan. On and after January 1, 2012, this includes a minor who requests that his or her transitional independent living case plan include modification of his or her jurisdiction to that of dependency jurisdiction pursuant to subdivision (b) of Section 607.2 or subdivision (i) of Section 727.2, or to that of transition jurisdiction pursuant to Section 450, in order to be eligible as a nonminor dependent for the extended benefits pursuant to Section 11403.

(C) The parent or guardian and the minor have a significant bond, but the parent or guardian is unable to care for the minor because of an emotional or physical disability, and the minor's caregiver has committed to raising the minor to the age of majority and facilitating visitation with the disabled parent or guardian.

(D) The minor agrees to continued placement in a residential treatment facility that provides services specifically designed to address the minor's treatment needs, and the minor's needs could not be served by a less restrictive placement.

The probation department's recommendation that adoption is not in the best interest of the minor shall be based on the present family circumstances of the minor and shall not preclude a different recommendation at a later date if the minor's family circumstances change.

(2) Documentation by the probation department that no grounds exist to file for termination of parental rights.

(3) Documentation by the probation department that the minor is an unaccompanied refugee minor, or there are international legal obligations or foreign policy reasons that would preclude terminating parental rights.

(4) A finding by the court that the probation department was required to make reasonable efforts to reunify the minor with the family pursuant to subdivision (a) of Section 727.2, and did not make those efforts.

(5) Documentation by the probation department that the minor is living with a relative who is unable or unwilling to adopt the minor because of exceptional circumstances that do not include an unwillingness to accept legal or financial responsibility for the minor, but who is willing and capable of providing the minor with a stable and permanent home environment, and the removal of the minor from the physical custody of his or her relative would be detrimental to the minor's emotional well-being.

(d) Nothing in this section shall be construed to limit the ability of a parent to voluntarily relinquish his or her child to the State Department of Social Services when it is acting as an adoption agency or to a county adoption agency at any time while the minor is a ward of the juvenile court

if the department or county adoption agency is willing to accept the relinquishment.

(e) Any change in the permanent plan of a minor placed with a fit and willing relative or in a planned permanent living arrangement shall be made only by order of the court pursuant to a Section 778 petition or at a regularly scheduled and noticed status review hearing or permanency planning hearing. Any change in the permanent plan of a minor placed in a guardianship shall be made only by order of the court pursuant to a motion filed in accordance with Section 728.

SEC. 6. (a) Section 1.1 of this bill incorporates amendments to Section 366.21 of the Welfare and Institutions Code proposed by both this bill and Assembly Bill 1712. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2013, (2) each bill amends Section 366.21 of the Welfare and Institutions Code, (3) Senate Bill 1064 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 1712, in which case Section 366.21 of the Welfare and Institutions Code, as amended by Assembly Bill 1712, shall remain operative only until the operative date of this bill, at which time Section 1.1 of this bill shall become operative, and Sections 1, 1.2, and 1.3 of this bill shall not become operative.

(b) Section 1.2 of this bill incorporates amendments to Section 366.21 of the Welfare and Institutions Code proposed by both this bill and Senate Bill 1064. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2013, (2) each bill amends Section 366.21 of the Welfare and Institutions Code, (3) Assembly Bill 1712 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Senate Bill 1064, in which case Sections 1, 1.1, and 1.3 of this bill shall not become operative.

(c) Section 1.3 of this bill incorporates amendments to Section 366.21 of the Welfare and Institutions Code proposed by this bill, Assembly Bill 1712, and Senate Bill 1064. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2013, (2) all three bills amend Section 366.21 of the Welfare and Institutions Code, and (3) this bill is enacted after Assembly Bill 1712 and Senate Bill 1064, in which case Section 366.21 of the Welfare and Institutions Code, as amended by Assembly Bill 1712, shall remain operative only until the operative date of this bill, at which time Section 1.3 of this bill shall become operative, and Sections 1, 1.1, and 1.2 of this bill shall not become operative.

SEC. 7. (a) Section 2.1 of this bill incorporates amendments to Section 366.22 of the Welfare and Institutions Code proposed by both this bill and Assembly Bill 1712. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2013, (2) each bill amends Section 366.22 of the Welfare and Institutions Code, (3) Senate Bill 1064 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 1712, in which case Section 366.22 of the Welfare and Institutions Code, as amended by Assembly Bill 1712, shall remain operative only until the operative date of this bill, at which

time Section 2.1 of this bill shall become operative, and Sections 2, 2.2, and 2.3 of this bill shall not become operative.

(b) Section 2.2 of this bill incorporates amendments to Section 366.22 of the Welfare and Institutions Code proposed by both this bill and Senate Bill 1064. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2013, (2) each bill amends Section 366.22 of the Welfare and Institutions Code, (3) Assembly Bill 1712 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Senate Bill 1064, in which case Sections 2, 2.1, and 2.3 of this bill shall not become operative.

(c) Section 2.3 of this bill incorporates amendments to Section 366.22 of the Welfare and Institutions Code proposed by this bill, Assembly Bill 1712, and Senate Bill 1064. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2013, (2) all three bills amend Section 366.22 of the Welfare and Institutions Code, and (3) this bill is enacted after Assembly Bill 1712 and Senate Bill 1064, in which case Section 366.22 of the Welfare and Institutions Code, as amended by Assembly Bill 1712, shall remain operative only until the operative date of this bill, at which time Section 2.3 of this bill shall become operative, and Sections 2, 2.1, and 2.2 of this bill shall not become operative.

SEC. 8. (a) Section 3.1 of this bill incorporates amendments to Section 366.25 of the Welfare and Institutions Code proposed by both this bill and Assembly Bill 1712. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2013, (2) each bill amends Section 366.25 of the Welfare and Institutions Code, (3) Senate Bill 1064 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 1712, in which case Section 366.25 of the Welfare and Institutions Code, as amended by Assembly Bill 1712, shall remain operative only until the operative date of this bill, at which time Section 3.1 of this bill shall become operative, and Sections 3, 3.2, and 3.3 of this bill shall not become operative.

(b) Section 3.2 of this bill incorporates amendments to Section 366.25 of the Welfare and Institutions Code proposed by both this bill and Senate Bill 1064. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2013, (2) each bill amends Section 366.25 of the Welfare and Institutions Code, (3) Assembly Bill 1712 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Senate Bill 1064, in which case Sections 3, 3.1, and 3.3 of this bill shall not become operative.

(c) Section 3.3 of this bill incorporates amendments to Section 366.25 of the Welfare and Institutions Code proposed by this bill, Assembly Bill 1712, and Senate Bill 1064. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2013, (2) all three bills amend Section 366.25 of the Welfare and Institutions Code, and (3) this bill is enacted after Assembly Bill 1712 and Senate Bill 1064, in which case Section 366.25 of the Welfare and Institutions Code, as amended by Assembly Bill 1712, shall remain operative only until the operative date

of this bill, at which time Section 3.3 of this bill shall become operative, and Sections 3, 3.1, and 3.2 of this bill shall not become operative.

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