

AMENDED IN SENATE MAY 13, 2014

AMENDED IN SENATE MARCH 17, 2014

**SENATE BILL**

**No. 977**

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**Introduced by Senator Liu**

February 11, 2014

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An act to amend Sections 319, 358.1, 361, 361.2, 366.1, 366.21, 366.22, 366.25, ~~and 366.3~~ 366.3, and 16500.5 of the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

SB 977, as amended, Liu. ~~Juveniles: dependency court.~~ *Juveniles.*

Existing law establishes the jurisdiction of the juvenile court, which may adjudge certain children to be dependents of the court under certain circumstances, including when the child suffered, or there is a substantial risk that the child will suffer, serious physical harm, or a parent fails to provide the child with adequate food, clothing, shelter, or medical treatment. Existing law establishes the grounds for removal of a dependent child from the custody of his or her parents or guardian, and establishes procedures to determine temporary placement of a dependent child. Existing law prescribes various hearings, including specified review hearings, and other procedures for these purposes.

When a court orders the removal of a child from the physical custody of his or her parent, existing law generally requires the court to order the return of the child to the physical custody of his or her parent, unless the court finds that the return of the child would create a substantial risk of detriment, or substantial danger, to the safety, protection, or physical or emotional well-being of the child.

This bill would specify that the fact that a parent is enrolled in a certified substance abuse treatment facility that allows a dependent

child to reside with his or her parent is not, for that reason alone, prima facie evidence of detriment or substantial danger and would additionally require the court to consider at those hearings whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility.

*Prior to disposition in a dependency proceeding, existing law requires the court to receive in evidence the social study of the child made by the social worker, any study or evaluation made by a child advocate appointed by the court, and any other relevant and material evidence. Existing law requires the social study or evaluation to include a factual discussion of certain subjects. Existing law also requires the status of every dependent child in foster care to be reviewed periodically, and authorizes the court to require a social worker or any other agency to render periodic reports, as specified. Existing law requires each supplemental report under those provisions to include a factual discussion of certain subjects.*

*This bill would require the social study or evaluation and the supplemental report described above to include a discussion of whether a child may be returned to the custody of a parent who is enrolled in a certified substance abuse treatment program that allows a dependent child to reside with the parent. By imposing additional duties on county employees, the bill would impose a state-mandated local program.*

*Existing law provides for the Aid to Families with Dependent Children-Foster Care (AFDC-FC) program, under which, pursuant to a combination of federal, state, and county funds, aid on behalf of eligible children is paid to foster care providers. Existing law provides that certain services may be provided under the program to include mental health treatment and substance abuse treatment services.*

*This bill would specify that those treatment services may include treatment at a residential substance abuse treatment facility that accepts families.*

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

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

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

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

1 SECTION 1. Section 319 of the Welfare and Institutions Code  
2 is amended to read:

3 319. (a) At the initial petition hearing, the court shall examine  
4 the child's parents, guardians, or other persons having relevant  
5 knowledge and hear the relevant evidence as the child, the child's  
6 parents or guardians, the petitioner, or their counsel desires to  
7 present. The court may examine the child, as provided in Section  
8 350.

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

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

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

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

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

33 (c) If the matter is continued pursuant to Section 322 or for any  
34 other reason, the court shall find that the continuance of the child  
35 in the parent's or guardian's home is contrary to the child's welfare

1 at the initial petition hearing or order the release of the child from  
2 custody.

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

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

31 (3) In order to preserve the bond between the child and the  
32 parent and to facilitate family reunification, the court shall consider  
33 whether the child can be returned to the custody of his or her parent  
34 who is enrolled in a certified substance abuse treatment facility  
35 that allows a dependent child to reside with his or her parent. The  
36 fact that the parent is enrolled in a certified substance abuse  
37 treatment facility that allows a dependent child to reside with his  
38 or her parent shall not be, for that reason alone, prima facie  
39 evidence of substantial danger. The court shall specify the factual  
40 basis for its conclusion that the return of the child to the custody

1 of his or her parent would pose a substantial danger or would not  
2 pose a substantial danger to the physical health, safety, protection,  
3 or physical or emotional well-being of the child.

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

14 (f) (1) If the child is not released from custody, the court may  
15 order that the child shall be placed in the assessed home of a  
16 relative, in an emergency shelter or other suitable licensed place,  
17 in a place exempt from licensure designated by the juvenile court,  
18 or in the assessed home of a nonrelative extended family member  
19 as defined in Section 362.7 for a period not to exceed 15 judicial  
20 days. A runaway and homeless youth shelter licensed by the State  
21 Department of Social Services pursuant to Section 1502.35 of the  
22 Health and Safety Code shall not be a placement option pursuant  
23 to this section.

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

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

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

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

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

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

19 (C) The child's educational and developmental services needs  
20 cannot be met without the temporary appointment of a responsible  
21 adult.

22 (2) If the court limits the parent's educational rights under this  
23 subdivision, the court shall determine whether there is a responsible  
24 adult who is a relative, nonrelative extended family member, or  
25 other adult known to the child and who is available and willing to  
26 serve as the child's educational representative before appointing  
27 an educational representative or surrogate who is not known to the  
28 child.

29 (3) If the court cannot identify a responsible adult to make  
30 educational decisions for the child and the appointment of a  
31 surrogate parent, as defined in subdivision (a) of Section 56050  
32 of the Education Code, is not warranted, the court may, with the  
33 input of any interested person, make educational decisions for the  
34 child. If the child is receiving services from a regional center, the  
35 provision of any developmental services related to the court's  
36 decision must be consistent with the child's individual program  
37 plan and pursuant to the provisions of the Lanterman  
38 Developmental Disabilities Services Act (Division 4.5  
39 (commencing with Section 4500)). If the court cannot identify a  
40 responsible adult to make developmental services decisions for

1 the child, the court may, with the input of any interested person,  
2 make developmental services decisions for the child. If the court  
3 makes educational or developmental services decisions for the  
4 child, the court shall also issue appropriate orders to ensure that  
5 every effort is made to identify a responsible adult to make future  
6 educational or developmental services decisions for the child.

7 (4) Any temporary appointment of a responsible adult and  
8 temporary limitation on the right of the parent or guardian to make  
9 educational or developmental services decisions for the child shall  
10 be specifically addressed in the court order. Any order made under  
11 this section shall expire at the conclusion of the hearing held  
12 pursuant to Section 361 or upon dismissal of the petition. Upon  
13 the entering of disposition orders, any additional needed limitation  
14 on the parent's or guardian's educational or developmental services  
15 rights shall be addressed pursuant to Section 361.

16 (5) Nothing in this section in any way removes the obligation  
17 to appoint surrogate parents for students with disabilities who are  
18 without parental representation in special education procedures as  
19 required by state and federal law, including Section 1415(b)(2) of  
20 Title 20 of the United States Code, Section 56050 of the Education  
21 Code, Section 7579.5 of the Government Code, and Rule 5.650  
22 of the California Rules of Court.

23 (6) If the court appoints a developmental services decisionmaker  
24 pursuant to this section, he or she shall have the authority to access  
25 the child's information and records pursuant to subdivision (u) of  
26 Section 4514 and subdivision (y) of Section 5328, and to act on  
27 the child's behalf for the purposes of the individual program plan  
28 process pursuant to Sections 4646, 4646.5, and 4648 and the fair  
29 hearing process pursuant to Chapter 7 (commencing with Section  
30 4700), and as set forth in the court order.

31 *SEC. 2. Section 358.1 of the Welfare and Institutions Code is*  
32 *amended to read:*

33 358.1. Each social study or evaluation made by a social worker  
34 or child advocate appointed by the court, required to be received  
35 in evidence pursuant to Section 358, shall include, but not be  
36 limited to, a factual discussion of each of the following subjects:

37 (a) Whether the county welfare department or social worker has  
38 considered ~~child~~ *either of the following:*

39 (1) *Child* protective services, as defined in Chapter 5  
40 (commencing with Section 16500) of Part 4 of Division 9, as a

1 possible solution to the problems at hand, and has offered these  
2 services to qualified parents if appropriate under the circumstances.

3 (2) *Whether the child can be returned to the custody of his or*  
4 *her parent who is enrolled in a certified substance abuse treatment*  
5 *facility that allows a dependent child to reside with his or her*  
6 *parent.*

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

11 (c) Whether the best interests of the child will be served by  
12 granting reasonable visitation rights with the child to his or her  
13 grandparents, in order to maintain and strengthen the child's family  
14 relationships.

15 (d) (1) Whether the child has siblings under the court's  
16 jurisdiction, and, if any siblings exist, all of the following:

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

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

21 (C) If the siblings are not placed together in the same home,  
22 why the siblings are not placed together and what efforts are being  
23 made to place the siblings together, or why those efforts are not  
24 appropriate.

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

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

29 (2) The factual discussion shall include a discussion of indicators  
30 of the nature of the child's sibling relationships, including, but not  
31 limited to, whether the siblings were raised together in the same  
32 home, whether the siblings have shared significant common  
33 experiences or have existing close and strong bonds, whether either  
34 sibling expresses a desire to visit or live with his or her sibling, as  
35 applicable, and whether ongoing contact is in the child's best  
36 emotional interest.

37 (e) If the parent or guardian is unwilling or unable to participate  
38 in making an educational decision for his or her child, or if other  
39 circumstances exist that compromise the ability of the parent or  
40 guardian to make educational decisions for the child, the county

1 welfare department or social worker shall consider whether the  
2 right of the parent or guardian to make educational decisions for  
3 the child should be limited. If the study or evaluation makes that  
4 recommendation, it shall identify whether there is a responsible  
5 adult available to make educational decisions for the child pursuant  
6 to Section 361.

7 (f) Whether the child appears to be a person who is eligible to  
8 be considered for further court action to free the child from parental  
9 custody and control.

10 (g) Whether the parent has been advised of his or her option to  
11 participate in adoption planning, including the option to enter into  
12 a postadoption contact agreement as described in Section 8714.7  
13 of the Family Code, and to voluntarily relinquish the child for  
14 adoption if an adoption agency is willing to accept the  
15 relinquishment.

16 (h) The appropriateness of any relative placement pursuant to  
17 Section 361.3. However, this consideration may not be cause for  
18 continuance of the dispositional hearing.

19 (i) Whether the caregiver desires, and is willing, to provide legal  
20 permanency for the child if reunification is unsuccessful.

21 (j) For an Indian child, in consultation with the Indian child's  
22 tribe, whether tribal customary adoption is an appropriate  
23 permanent plan for the child if reunification is unsuccessful.

24 (k) On and after the date that the director executes a declaration  
25 pursuant to Section 11217, whether the child has been placed in  
26 an approved relative's home under a voluntary placement  
27 agreement for a period not to exceed 180 days, the parent or  
28 guardian is not interested in additional family maintenance or  
29 family reunification services, and the relative desires and is willing  
30 to be appointed the child's legal guardian.

31 ~~SEC. 2.~~

32 *SEC. 3.* Section 361 of the Welfare and Institutions Code is  
33 amended to read:

34 361. (a) (1) In all cases in which a minor is adjudged a  
35 dependent child of the court on the ground that the minor is a  
36 person described by Section 300, the court may limit the control  
37 to be exercised over the dependent child by any parent or guardian  
38 and shall by its order clearly and specifically set forth all those  
39 limitations. Any limitation on the right of the parent or guardian  
40 to make educational or developmental services decisions for the

1 child shall be specifically addressed in the court order. The  
2 limitations may not exceed those necessary to protect the child. If  
3 the court specifically limits the right of the parent or guardian to  
4 make educational or developmental services decisions for the child,  
5 or, for the nonminor dependent, if the court finds the appointment  
6 of a developmental services decisionmaker to be in the best  
7 interests of the nonminor dependent, the court shall at the same  
8 time appoint a responsible adult to make educational or  
9 developmental services decisions for the child or nonminor  
10 dependent until one of the following occurs:

11 (A) The minor reaches 18 years of age, unless the child or  
12 nonminor dependent chooses not to make educational or  
13 developmental services decisions for himself or herself, or is  
14 deemed by the court to be incompetent.

15 (B) Another responsible adult is appointed to make educational  
16 or developmental services decisions for the minor pursuant to this  
17 section.

18 (C) The right of the parent or guardian to make educational or  
19 developmental services decisions for the minor is fully restored.

20 (D) A successor guardian or conservator is appointed.

21 (E) The child is placed into a planned permanent living  
22 arrangement pursuant to paragraph (5) of subdivision (g) of Section  
23 366.21, Section 366.22, Section 366.26, or subdivision (i) of  
24 Section 366.3, at which time, for educational decisionmaking, the  
25 foster parent, relative caretaker, or nonrelative extended family  
26 member as defined in Section 362.7, has the right to represent the  
27 child in educational matters pursuant to Section 56055 of the  
28 Education Code, and for decisions relating to developmental  
29 services, unless the court specifies otherwise, the foster parent,  
30 relative caregiver, or nonrelative extended family member of the  
31 planned permanent living arrangement has the right to represent  
32 the child or nonminor dependent in matters related to  
33 developmental services.

34 (2) An individual who would have a conflict of interest in  
35 representing the child or nonminor dependent shall not be  
36 appointed to make educational or developmental services decisions.  
37 For purposes of this section, “an individual who would have a  
38 conflict of interest” means a person having any interests that might  
39 restrict or bias his or her ability to make educational or  
40 developmental services decisions, including, but not limited to,

1 those conflicts of interest prohibited by Section 1126 of the  
2 Government Code, and the receipt of compensation or attorney's  
3 fees for the provision of services pursuant to this section. A foster  
4 parent shall not be deemed to have a conflict of interest solely  
5 because he or she receives compensation for the provision of  
6 services pursuant to this section.

7 (3) If the court limits the parent's educational rights pursuant  
8 to this subdivision, the court shall determine whether there is a  
9 responsible adult who is a relative, nonrelative extended family  
10 member, or other adult known to the child who is available and  
11 willing to serve as the child's educational representative before  
12 appointing an educational representative or surrogate who is not  
13 known to the child.

14 If the court cannot identify a responsible adult who is known to  
15 the child and available to make educational decisions for the child,  
16 subparagraphs (A) to (E), inclusive, of paragraph (1) do not apply,  
17 and the child has either been referred to the local educational  
18 agency for special education and related services, or has a valid  
19 individualized education program, the court shall refer the child  
20 to the local educational agency for appointment of a surrogate  
21 parent pursuant to Section 7579.5 of the Government Code.

22 If the court cannot identify a responsible adult to make  
23 educational decisions for the child, the appointment of a surrogate  
24 parent as defined in subdivision (a) of Section 56050 of the  
25 Education Code is not warranted, and there is no foster parent to  
26 exercise the authority granted by Section 56055 of the Education  
27 Code, the court may, with the input of any interested person, make  
28 educational decisions for the child.

29 (4) If the court appoints a developmental services decisionmaker  
30 pursuant to this section, he or she shall have the authority to access  
31 the child's or nonminor dependent's information and records  
32 pursuant to subdivision (u) of Section 4514 and subdivision (y) of  
33 Section 5328, and to act on the child's or nonminor dependent's  
34 behalf for the purposes of the individual program plan process  
35 pursuant to Sections 4646, 4646.5, and 4648 and the fair hearing  
36 process pursuant to Chapter 7 (commencing with Section 4700)  
37 of Division 4.5, and as set forth in the court order.

38 If the court cannot identify a responsible adult to make  
39 developmental services decisions for the child or nonminor  
40 dependent, the court may, with the input of any interested person,

1 make developmental services decisions for the child or nonminor  
2 dependent. If the child is receiving services from a regional center,  
3 the provision of any developmental services related to the court's  
4 decision must be consistent with the child's or nonminor  
5 dependent's individual program plan and pursuant to the provisions  
6 of the Lanterman Developmental Disabilities Services Act  
7 (Division 4.5 (commencing with Section 4500)).

8 (5) All educational and school placement decisions shall seek  
9 to ensure that the child is in the least restrictive educational  
10 programs and has access to the academic resources, services, and  
11 extracurricular and enrichment activities that are available to all  
12 pupils. In all instances, educational and school placement decisions  
13 shall be based on the best interests of the child. If an educational  
14 representative or surrogate is appointed for the child, the  
15 representative or surrogate shall meet with the child, shall  
16 investigate the child's educational needs and whether those needs  
17 are being met, and shall, prior to each review hearing held under  
18 this article, provide information and recommendations concerning  
19 the child's educational needs to the child's social worker, make  
20 written recommendations to the court, or attend the hearing and  
21 participate in those portions of the hearing that concern the child's  
22 education.

23 (6) Nothing in this section in any way removes the obligation  
24 to appoint surrogate parents for students with disabilities who are  
25 without parental representation in special education procedures as  
26 required by state and federal law, including Section 1415(b)(2) of  
27 Title 20 of the United States Code, Section 56050 of the Education  
28 Code, Section 7579.5 of the Government Code, and Rule 5.650  
29 of the California Rules of Court.

30 (b) Subdivision (a) does not limit the ability of a parent to  
31 voluntarily relinquish his or her child to the State Department of  
32 Social Services or to a county adoption agency at any time while  
33 the child is a dependent child of the juvenile court, if the  
34 department or agency is willing to accept the relinquishment.

35 (c) A dependent child shall not be taken from the physical  
36 custody of his or her parents or guardian or guardians with whom  
37 the child resides at the time the petition was initiated, unless the  
38 juvenile court finds clear and convincing evidence of any of the  
39 following circumstances listed in paragraphs (1) to (5), inclusive,  
40 and, in an Indian child custody proceeding, paragraph (6):

1 (1) There is or would be a substantial danger to the physical  
2 health, safety, protection, or physical or emotional well-being of  
3 the minor if the minor were returned home, and there are no  
4 reasonable means by which the minor's physical health can be  
5 protected without removing the minor from the minor's parent's  
6 or guardian's physical custody. The fact that a minor has been  
7 adjudicated a dependent child of the court pursuant to subdivision  
8 (e) of Section 300 shall constitute prima facie evidence that the  
9 minor cannot be safely left in the physical custody of the parent  
10 or guardian with whom the minor resided at the time of injury.  
11 The court shall consider, as a reasonable means to protect the  
12 minor, each of the following:

13 (A) The option of removing an offending parent or guardian  
14 from the home.

15 (B) Allowing a nonoffending parent or guardian to retain  
16 physical custody as long as that parent or guardian presents a plan  
17 acceptable to the court demonstrating that he or she will be able  
18 to protect the child from future harm.

19 (C) Whether the child can be returned to the custody of his or  
20 her parent who is enrolled in a certified substance abuse treatment  
21 facility that allows a dependent child to reside with his or her  
22 parent.

23 (2) The parent or guardian of the minor is unwilling to have  
24 physical custody of the minor, and the parent or guardian has been  
25 notified that if the minor remains out of their physical custody for  
26 the period specified in Section 366.26, the minor may be declared  
27 permanently free from their custody and control.

28 (3) The minor is suffering severe emotional damage, as indicated  
29 by extreme anxiety, depression, withdrawal, or untoward aggressive  
30 behavior toward himself or herself or others, and there are no  
31 reasonable means by which the minor's emotional health may be  
32 protected without removing the minor from the physical custody  
33 of his or her parent or guardian.

34 (4) The minor or a sibling of the minor has been sexually abused,  
35 or is deemed to be at substantial risk of being sexually abused, by  
36 a parent, guardian, or member of his or her household, or other  
37 person known to his or her parent, and there are no reasonable  
38 means by which the minor can be protected from further sexual  
39 abuse or a substantial risk of sexual abuse without removing the

1 minor from his or her parent or guardian, or the minor does not  
2 wish to return to his or her parent or guardian.

3 (5) The minor has been left without any provision for his or her  
4 support, or a parent who has been incarcerated or institutionalized  
5 cannot arrange for the care of the minor, or a relative or other adult  
6 custodian with whom the child has been left by the parent is  
7 unwilling or unable to provide care or support for the child and  
8 the whereabouts of the parent is unknown and reasonable efforts  
9 to locate him or her have been unsuccessful.

10 (6) In an Indian child custody proceeding, continued custody  
11 of the child by the parent or Indian custodian is likely to result in  
12 serious emotional or physical damage to the child, and that finding  
13 is supported by testimony of a “qualified expert witness” as  
14 described in Section 224.6.

15 (A) Stipulation by the parent, Indian custodian, or the Indian  
16 child’s tribe, or failure to object, may waive the requirement of  
17 producing evidence of the likelihood of serious damage only if the  
18 court is satisfied that the party has been fully advised of the  
19 requirements of the federal Indian Child Welfare Act (25 U.S.C.  
20 Sec. 1901 et seq.), and has knowingly, intelligently, and voluntarily  
21 waived them.

22 (B) Failure to meet non-Indian family and child-rearing  
23 community standards, or the existence of other behavior or  
24 conditions that meet the removal standards of this section, will not  
25 support an order for placement in the absence of the finding in this  
26 paragraph.

27 (d) The court shall make a determination as to whether  
28 reasonable efforts were made to prevent or to eliminate the need  
29 for removal of the minor from his or her home or, if the minor is  
30 removed for one of the reasons stated in paragraph (5) of  
31 subdivision (c), whether it was reasonable under the circumstances  
32 not to make any of those efforts, or, in the case of an Indian child  
33 custody proceeding, whether active efforts as required in Section  
34 361.7 were made and that these efforts have proved unsuccessful.  
35 The court shall state the facts on which the decision to remove the  
36 minor is based.

37 (e) The court shall make all of the findings required by  
38 subdivision (a) of Section 366 in either of the following  
39 circumstances:

1 (1) The minor has been taken from the custody of his or her  
2 parent or guardian and has been living in an out-of-home placement  
3 pursuant to Section 319.

4 (2) The minor has been living in a voluntary out-of-home  
5 placement pursuant to Section 16507.4.

6 ~~SEC. 3.~~

7 *SEC. 4.* Section 361.2 of the Welfare and Institutions Code is  
8 amended to read:

9 361.2. (a) When a court orders removal of a child pursuant to  
10 Section 361, the court shall first determine whether there is a parent  
11 of the child, with whom the child was not residing at the time that  
12 the events or conditions arose that brought the child within the  
13 provisions of Section 300, who desires to assume custody of the  
14 child. If that parent requests custody, the court shall place the child  
15 with the parent unless it finds that placement with that parent would  
16 be detrimental to the safety, protection, or physical or emotional  
17 well-being of the child. The fact that the parent is enrolled in a  
18 certified substance abuse treatment facility that allows a dependent  
19 child to reside with his or her parent shall not be, for that reason  
20 alone, prima facie evidence that placement with that parent would  
21 be detrimental.

22 (b) If the court places the child with that parent it may do any  
23 of the following:

24 (1) Order that the parent become legal and physical custodian  
25 of the child. The court may also provide reasonable visitation by  
26 the noncustodial parent. The court shall then terminate its  
27 jurisdiction over the child. The custody order shall continue unless  
28 modified by a subsequent order of the superior court. The order  
29 of the juvenile court shall be filed in any domestic relation  
30 proceeding between the parents.

31 (2) Order that the parent assume custody subject to the  
32 jurisdiction of the juvenile court and require that a home visit be  
33 conducted within three months. In determining whether to take  
34 the action described in this paragraph, the court shall consider any  
35 concerns that have been raised by the child's current caregiver  
36 regarding the parent. After the social worker conducts the home  
37 visit and files his or her report with the court, the court may then  
38 take the action described in paragraph (1), (3), or this paragraph.  
39 However, nothing in this paragraph shall be interpreted to imply  
40 that the court is required to take the action described in this

1 paragraph as a prerequisite to the court taking the action described  
2 in either paragraph (1) or (3).

3 (3) Order that the parent assume custody subject to the  
4 supervision of the juvenile court. In that case the court may order  
5 that reunification services be provided to the parent or guardian  
6 from whom the child is being removed, or the court may order that  
7 services be provided solely to the parent who is assuming physical  
8 custody in order to allow that parent to retain later custody without  
9 court supervision, or that services be provided to both parents, in  
10 which case the court shall determine, at review hearings held  
11 pursuant to Section 366, which parent, if either, shall have custody  
12 of the child.

13 (c) The court shall make a finding either in writing or on the  
14 record of the basis for its determination under subdivisions (a) and  
15 (b).

16 (d) Part 6 (commencing with Section 7950) of Division 12 of  
17 the Family Code shall apply to the placement of a child pursuant  
18 to paragraphs (1) and (2) of subdivision (e).

19 (e) When the court orders removal pursuant to Section 361, the  
20 court shall order the care, custody, control, and conduct of the  
21 child to be under the supervision of the social worker who may  
22 place the child in any of the following:

23 (1) The home of a noncustodial parent as described in  
24 subdivision (a), regardless of the parent's immigration status.

25 (2) The approved home of a relative, regardless of the relative's  
26 immigration status.

27 (3) The approved home of a nonrelative extended family  
28 member as defined in Section 362.7.

29 (4) A foster home in which the child has been placed before an  
30 interruption in foster care, if that placement is in the best interest  
31 of the child and space is available.

32 (5) A suitable licensed community care facility, except a  
33 runaway and homeless youth shelter licensed by the State  
34 Department of Social Services pursuant to Section 1502.35 of the  
35 Health and Safety Code.

36 (6) With a foster family agency to be placed in a suitable  
37 licensed foster family home or certified family home which has  
38 been certified by the agency as meeting licensing standards.

39 (7) A home or facility in accordance with the federal Indian  
40 Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

1 (8) A child under the age of six years may be placed in a  
2 community care facility licensed as a group home for children, or  
3 a temporary shelter care facility as defined in Section 1530.8 of  
4 the Health and Safety Code, only under any of the following  
5 circumstances:

6 (A) (i) When a case plan indicates that placement is for purposes  
7 of providing short-term, specialized, and intensive treatment to  
8 the child, the case plan specifies the need for, nature of, and  
9 anticipated duration of this treatment, pursuant to paragraph (2)  
10 of subdivision (c) of Section 16501.1, the facility meets the  
11 applicable regulations adopted under Section 1530.8 of the Health  
12 and Safety Code and standards developed pursuant to Section  
13 11467.1, and the deputy director or director of the county child  
14 welfare department or an assistant chief probation officer or chief  
15 probation officer of the county probation department has approved  
16 the case plan.

17 (ii) The short term, specialized, and intensive treatment period  
18 shall not exceed 120 days, unless the county has made progress  
19 toward or is actively working toward implementing the case plan  
20 that identifies the services or supports necessary to transition the  
21 child to a family setting, circumstances beyond the county's control  
22 have prevented the county from obtaining those services or  
23 supports within the timeline documented in the case plan, and the  
24 need for additional time pursuant to the case plan is documented  
25 by the caseworker and approved by a deputy director or director  
26 of the county child welfare department or an assistant chief  
27 probation officer or chief probation officer of the county probation  
28 department.

29 (iii) To the extent that placements pursuant to this paragraph  
30 are extended beyond an initial 120 days, the requirements of  
31 clauses (i) and (ii) shall apply to each extension. In addition, the  
32 deputy director or director of the county child welfare department  
33 or an assistant chief probation officer or chief probation officer of  
34 the county probation department shall approve the continued  
35 placement no less frequently than every 60 days.

36 (B) When a case plan indicates that placement is for purposes  
37 of providing family reunification services. In addition, the facility  
38 offers family reunification services that meet the needs of the  
39 individual child and his or her family, permits parents to have  
40 reasonable access to their children 24 hours a day, encourages

1 extensive parental involvement in meeting the daily needs of their  
2 children, and employs staff trained to provide family reunification  
3 services. In addition, one of the following conditions exists:

4 (i) The child's parent is also a ward of the court and resides in  
5 the facility.

6 (ii) The child's parent is participating in a treatment program  
7 affiliated with the facility and the child's placement in the facility  
8 facilitates the coordination and provision of reunification services.

9 (iii) Placement in the facility is the only alternative that permits  
10 the parent to have daily 24-hour access to the child in accordance  
11 with the case plan, to participate fully in meeting all of the daily  
12 needs of the child, including feeding and personal hygiene, and to  
13 have access to necessary reunification services.

14 (9) (A) A child who is 6 to 12 years of age, inclusive, may be  
15 placed in a community care facility licensed as a group home for  
16 children only when a case plan indicates that placement is for  
17 purposes of providing short-term, specialized, and intensive  
18 treatment for the child, the case plan specifies the need for, nature  
19 of, and anticipated duration of this treatment, pursuant to paragraph  
20 (2) of subdivision (c) of Section 16501.1, and is approved by the  
21 deputy director or director of the county child welfare department  
22 or an assistant chief probation officer or chief probation officer of  
23 the county probation department.

24 (B) The short-term, specialized, and intensive treatment period  
25 shall not exceed six months, unless the county has made progress  
26 or is actively working toward implementing the case plan that  
27 identifies the services or supports necessary to transition the child  
28 to a family setting, circumstances beyond the county's control  
29 have prevented the county from obtaining those services or  
30 supports within the timeline documented in the case plan, and the  
31 need for additional time pursuant to the case plan is documented  
32 by the caseworker and approved by a deputy director or director  
33 of the county child welfare department or an assistant chief  
34 probation officer or chief probation officer of the county probation  
35 department.

36 (C) To the extent that placements pursuant to this paragraph are  
37 extended beyond an initial six months, the requirements of  
38 subparagraph (A) and (B) shall apply to each extension. In addition,  
39 the deputy director or director of the county child welfare  
40 department or an assistant chief probation officer or chief probation

1 officer of the county probation department shall approve the  
2 continued placement no less frequently than every 60 days.

3 (10) Nothing in this subdivision shall be construed to allow a  
4 social worker to place any dependent child outside the United  
5 States, except as specified in subdivision (f).

6 (f) (1) A child under the supervision of a social worker pursuant  
7 to subdivision (e) shall not be placed outside the United States  
8 prior to a judicial finding that the placement is in the best interest  
9 of the child, except as required by federal law or treaty.

10 (2) The party or agency requesting placement of the child outside  
11 the United States shall carry the burden of proof and shall show,  
12 by clear and convincing evidence, that placement outside the  
13 United States is in the best interest of the child.

14 (3) In determining the best interest of the child, the court shall  
15 consider, but not be limited to, the following factors:

16 (A) Placement with a relative.

17 (B) Placement of siblings in the same home.

18 (C) Amount and nature of any contact between the child and  
19 the potential guardian or caretaker.

20 (D) Physical and medical needs of the dependent child.

21 (E) Psychological and emotional needs of the dependent child.

22 (F) Social, cultural, and educational needs of the dependent  
23 child.

24 (G) Specific desires of any dependent child who is 12 years of  
25 age or older.

26 (4) If the court finds that a placement outside the United States  
27 is, by clear and convincing evidence, in the best interest of the  
28 child, the court may issue an order authorizing the social worker  
29 to make a placement outside the United States. A child subject to  
30 this subdivision shall not leave the United States prior to the  
31 issuance of the order described in this paragraph.

32 (5) For purposes of this subdivision, “outside the United States”  
33 shall not include the lands of any federally recognized American  
34 Indian tribe or Alaskan Natives.

35 (6) This subdivision shall not apply to the placement of a  
36 dependent child with a parent pursuant to subdivision (a).

37 (g) (1) If the child is taken from the physical custody of the  
38 child’s parent or guardian and unless the child is placed with  
39 relatives, the child shall be placed in foster care in the county of

1 residence of the child's parent or guardian in order to facilitate  
2 reunification of the family.

3 (2) In the event that there are no appropriate placements  
4 available in the parent's or guardian's county of residence, a  
5 placement may be made in an appropriate place in another county,  
6 preferably a county located adjacent to the parent's or guardian's  
7 community of residence.

8 (3) Nothing in this section shall be interpreted as requiring  
9 multiple disruptions of the child's placement corresponding to  
10 frequent changes of residence by the parent or guardian. In  
11 determining whether the child should be moved, the social worker  
12 shall take into consideration the potential harmful effects of  
13 disrupting the placement of the child and the parent's or guardian's  
14 reason for the move.

15 (4) When it has been determined that it is necessary for a child  
16 to be placed in a county other than the child's parent's or guardian's  
17 county of residence, the specific reason the out-of-county  
18 placement is necessary shall be documented in the child's case  
19 plan. If the reason the out-of-county placement is necessary is the  
20 lack of resources in the sending county to meet the specific needs  
21 of the child, those specific resource needs shall be documented in  
22 the case plan.

23 (5) When it has been determined that a child is to be placed out  
24 of county either in a group home or with a foster family agency  
25 for subsequent placement in a certified foster family home, and  
26 the sending county is to maintain responsibility for supervision  
27 and visitation of the child, the sending county shall develop a plan  
28 of supervision and visitation that specifies the supervision and  
29 visitation activities to be performed and specifies that the sending  
30 county is responsible for performing those activities. In addition  
31 to the plan of supervision and visitation, the sending county shall  
32 document information regarding any known or suspected dangerous  
33 behavior of the child that indicates the child may pose a safety  
34 concern in the receiving county. Upon implementation of the Child  
35 Welfare Services Case Management System, the plan of  
36 supervision and visitation, as well as information regarding any  
37 known or suspected dangerous behavior of the child, shall be made  
38 available to the receiving county upon placement of the child in  
39 the receiving county. If placement occurs on a weekend or holiday,

1 the information shall be made available to the receiving county on  
2 or before the end of the next business day.

3 (6) When it has been determined that a child is to be placed out  
4 of county and the sending county plans that the receiving county  
5 shall be responsible for the supervision and visitation of the child,  
6 the sending county shall develop a formal agreement between the  
7 sending and receiving counties. The formal agreement shall specify  
8 the supervision and visitation to be provided the child, and shall  
9 specify that the receiving county is responsible for providing the  
10 supervision and visitation. The formal agreement shall be approved  
11 and signed by the sending and receiving counties prior to placement  
12 of the child in the receiving county. In addition, upon completion  
13 of the case plan, the sending county shall provide a copy of the  
14 completed case plan to the receiving county. The case plan shall  
15 include information regarding any known or suspected dangerous  
16 behavior of the child that indicates the child may pose a safety  
17 concern to the receiving county.

18 (h) Whenever the social worker must change the placement of  
19 the child and is unable to find a suitable placement within the  
20 county and must place the child outside the county, the placement  
21 shall not be made until he or she has served written notice on the  
22 parent or guardian at least 14 days prior to the placement, unless  
23 the child's health or well-being is endangered by delaying the  
24 action or would be endangered if prior notice were given. The  
25 notice shall state the reasons which require placement outside the  
26 county. The parent or guardian may object to the placement not  
27 later than seven days after receipt of the notice and, upon objection,  
28 the court shall hold a hearing not later than five days after the  
29 objection and prior to the placement. The court shall order  
30 out-of-county placement if it finds that the child's particular needs  
31 require placement outside the county.

32 (i) Where the court has ordered removal of the child from the  
33 physical custody of his or her parents pursuant to Section 361, the  
34 court shall consider whether the family ties and best interest of the  
35 child will be served by granting visitation rights to the child's  
36 grandparents. The court shall clearly specify those rights to the  
37 social worker.

38 (j) Where the court has ordered removal of the child from the  
39 physical custody of his or her parents pursuant to Section 361, the  
40 court shall consider whether there are any siblings under the court's

1 jurisdiction, the nature of the relationship between the child and  
 2 his or her siblings, the appropriateness of developing or maintaining  
 3 the sibling relationships pursuant to Section 16002, and the impact  
 4 of the sibling relationships on the child's placement and planning  
 5 for legal permanence.

6 (k) (1) When an agency has placed a child with a relative  
 7 caregiver, a nonrelative extended family member, a licensed foster  
 8 family home, or a group home, the agency shall ensure placement  
 9 of the child in a home that, to the fullest extent possible, best meets  
 10 the day-to-day needs of the child. A home that best meets the  
 11 day-to-day needs of the child shall satisfy all of the following  
 12 criteria:

13 (A) The child's caregiver is able to meet the day-to-day health,  
 14 safety, and well-being needs of the child.

15 (B) The child's caregiver is permitted to maintain the least  
 16 restrictive and most family-like environment that serves the  
 17 day-to-day needs of the child.

18 (C) The child is permitted to engage in reasonable,  
 19 age-appropriate day-to-day activities that promote the most  
 20 family-like environment for the foster child.

21 (2) The foster child's caregiver shall use a reasonable and  
 22 prudent parent standard, as defined in paragraph (2) of subdivision  
 23 (a) of Section 362.04, to determine day-to-day activities that are  
 24 age-appropriate to meet the needs of the child. Nothing in this  
 25 section shall be construed to permit a child's caregiver to permit  
 26 the child to engage in day-to-day activities that carry an  
 27 unreasonable risk of harm, or subject the child to abuse or neglect.

28 *SEC. 5. Section 366.1 of the Welfare and Institutions Code is*  
 29 *amended to read:*

30 366.1. Each supplemental report required to be filed pursuant  
 31 to Section 366 shall include, but not be limited to, a factual  
 32 discussion of each of the following subjects:

33 (a) Whether the county welfare department social worker has  
 34 considered ~~child~~ *either of the following:*

35 (1) *Child* protective services, as defined in Chapter 5  
 36 (commencing with Section 16500) of Part 4 of Division 9, as a  
 37 possible solution to the problems at hand, and has offered those  
 38 services to qualified parents, if appropriate under the circumstances.

39 (2) *Whether the child can be returned to the custody of his or*  
 40 *her parent who is enrolled in a certified substance abuse treatment*

1 *facility that allows a dependent child to reside with his or her*  
2 *parent.*

3 (b) What plan, if any, for the return and maintenance of the  
4 child in a safe home is recommended to the court by the county  
5 welfare department social worker.

6 (c) Whether the subject child appears to be a person who is  
7 eligible to be considered for further court action to free the child  
8 from parental custody and control.

9 (d) What actions, if any, have been taken by the parent to correct  
10 the problems that caused the child to be made a dependent child  
11 of the court.

12 (e) If the parent or guardian is unwilling or unable to participate  
13 in making an educational decision for his or her child, or if other  
14 circumstances exist that compromise the ability of the parent or  
15 guardian to make educational decisions for the child, the county  
16 welfare department or social worker shall consider whether the  
17 right of the parent or guardian to make educational decisions for  
18 the child should be limited. If the supplemental report makes that  
19 recommendation, the report shall identify whether there is a  
20 responsible adult available to make educational decisions for the  
21 child pursuant to Section 361.

22 (f) (1) Whether the child has any siblings under the court's  
23 jurisdiction, and, if any siblings exist, all of the following:

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

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

28 (C) If the siblings are not placed together in the same home,  
29 why the siblings are not placed together and what efforts are being  
30 made to place the siblings together, or why those efforts are not  
31 appropriate.

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

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

36 (2) The factual discussion shall include a discussion of indicators  
37 of the nature of the child's sibling relationships, including, but not  
38 limited to, whether the siblings were raised together in the same  
39 home, whether the siblings have shared significant common  
40 experiences or have existing close and strong bonds, whether either

1 sibling expresses a desire to visit or live with his or her sibling, as  
2 applicable, and whether ongoing contact is in the child's best  
3 emotional interests.

4 (g) Whether a child who is 10 years of age or older and who  
5 has been in an out-of-home placement for six months or longer  
6 has relationships with individuals other than the child's siblings  
7 that are important to the child, consistent with the child's best  
8 interests, and actions taken to maintain those relationships. The  
9 social worker shall ask every child who is 10 years of age or older  
10 and who has been in an out-of-home placement for six months or  
11 longer to identify any individuals other than the child's siblings  
12 who are important to the child, consistent with the child's best  
13 interest. The social worker may ask any other child to provide that  
14 information, as appropriate.

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

19 ~~SEC. 4.~~

20 *SEC. 6.* Section 366.21 of the Welfare and Institutions Code  
21 is amended to read:

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

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

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

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

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

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

6 (e) At the review hearing held six months after the initial  
7 dispositional hearing, but no later than 12 months after the date  
8 the child entered foster care as determined in Section 361.49,  
9 whichever occurs earlier, after considering the admissible and  
10 relevant evidence, the court shall order the return of the child to  
11 the physical custody of his or her parent or legal guardian unless  
12 the court finds, by a preponderance of the evidence, that the return  
13 of the child to his or her parent or legal guardian would create a  
14 substantial risk of detriment to the safety, protection, or physical  
15 or emotional well-being of the child. The social worker shall have  
16 the burden of establishing that detriment. At the hearing, the court  
17 shall consider the criminal history, obtained pursuant to paragraph  
18 (1) of subdivision (f) of Section 16504.5, of the parent or legal  
19 guardian subsequent to the child's removal to the extent that the  
20 criminal record is substantially related to the welfare of the child  
21 or the parent's or guardian's ability to exercise custody and control  
22 regarding his or her child, provided the parent or legal guardian  
23 agreed to submit fingerprint images to obtain criminal history  
24 information as part of the case plan. The court shall also consider  
25 whether the child can be returned to the custody of his or her parent  
26 who is enrolled in a certified substance abuse treatment facility  
27 that allows a dependent child to reside with his or her parent. The  
28 fact that the parent is enrolled in a certified substance abuse  
29 treatment facility shall not be, for that reason alone, prima facie  
30 evidence of detriment. The failure of the parent or legal guardian  
31 to participate regularly and make substantive progress in  
32 court-ordered treatment programs shall be prima facie evidence  
33 that return would be detrimental. In making its determination, the  
34 court shall review and consider the social worker's report and  
35 recommendations and the report and recommendations of any child  
36 advocate appointed pursuant to Section 356.5; and shall consider  
37 the efforts or progress, or both, demonstrated by the parent or legal  
38 guardian and the extent to which he or she availed himself or  
39 herself to services provided, taking into account the particular  
40 barriers to an incarcerated, institutionalized, detained, or deported

1 parent's or legal guardian's access to those court-mandated services  
2 and ability to maintain contact with his or her child.

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

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

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

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

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

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

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

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

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

3 (f) The permanency hearing shall be held no later than 12  
4 months after the date the child entered foster care, as that date is  
5 determined pursuant to Section 361.49. At the permanency hearing,  
6 the court shall determine the permanent plan for the child, which  
7 shall include a determination of whether the child will be returned  
8 to the child's home and, if so, when, within the time limits of  
9 subdivision (a) of Section 361.5. After considering the relevant  
10 and admissible evidence, the court shall order the return of the  
11 child to the physical custody of his or her parent or legal guardian  
12 unless the court finds, by a preponderance of the evidence, that  
13 the return of the child to his or her parent or legal guardian would  
14 create a substantial risk of detriment to the safety, protection, or  
15 physical or emotional well-being of the child. The social worker  
16 shall have the burden of establishing that detriment. At the  
17 permanency hearing, the court shall consider the criminal history,  
18 obtained pursuant to paragraph (1) of subdivision (f) of Section  
19 16504.5, of the parent or legal guardian subsequent to the child's  
20 removal to the extent that the criminal record is substantially related  
21 to the welfare of the child or the parent's or legal guardian's ability  
22 to exercise custody and control regarding his or her child, provided  
23 that the parent or legal guardian agreed to submit fingerprint images  
24 to obtain criminal history information as part of the case plan. The  
25 court shall also determine whether reasonable services that were  
26 designed to aid the parent or legal guardian to overcome the  
27 problems that led to the initial removal and continued custody of  
28 the child have been provided or offered to the parent or legal  
29 guardian. For each youth 16 years of age and older, the court shall  
30 also determine whether services have been made available to assist  
31 him or her in making the transition from foster care to independent  
32 living. The court shall also consider whether the child can be  
33 returned to the custody of his or her parent who is enrolled in a  
34 certified substance abuse treatment facility that allows a dependent  
35 child to reside with his or her parent. The fact that the parent is  
36 enrolled in a certified substance abuse treatment facility shall not  
37 be, for that reason alone, prima facie evidence of detriment. The  
38 failure of the parent or legal guardian to participate regularly and  
39 make substantive progress in court-ordered treatment programs  
40 shall be prima facie evidence that return would be detrimental. In

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

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

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

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

1 parent or legal guardian and safely maintained in the home within  
2 the extended period of time, the court shall be required to find all  
3 of the following:

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

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

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

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

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

26 (2) Continue the case for up to six months for a permanency  
27 review hearing, provided that the hearing shall occur within 18  
28 months of the date the child was originally taken from the physical  
29 custody of his or her parent or legal guardian, if the parent has  
30 been arrested and issued an immigration hold, detained by the  
31 United States Department of Homeland Security, or deported to  
32 his or her country of origin, and the court determines either that  
33 there is a substantial probability that the child will be returned to  
34 the physical custody of his or her parent or legal guardian and  
35 safely maintained in the home within the extended period of time  
36 or that reasonable services have not been provided to the parent  
37 or legal guardian.

38 (3) For purposes of paragraph (2), in order to find a substantial  
39 probability that the child will be returned to the physical custody  
40 of his or her parent or legal guardian and safely maintained in the

1 home within the extended period of time, the court shall find all  
2 of the following:

3 (A) The parent or legal guardian has consistently and regularly  
4 contacted and visited with the child, taking into account any  
5 particular barriers to a parent's ability to maintain contact with his  
6 or her child due to the parent's arrest and receipt of an immigration  
7 hold, detention by the United States Department of Homeland  
8 Security, or deportation.

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

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

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

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

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

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

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

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

35 (i) (1) Whenever a court orders that a hearing pursuant to  
36 Section 366.26, including, when, in consultation with the child’s  
37 tribe, tribal customary adoption is recommended, shall be held, it  
38 shall direct the agency supervising the child and the county  
39 adoption agency, or the State Department of Social Services when

1 it is acting as an adoption agency, to prepare an assessment that  
2 shall include:

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

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

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

14 (D) A preliminary assessment of the eligibility and commitment  
15 of any identified prospective adoptive parent or legal guardian,  
16 including the prospective tribal customary adoptive parent,  
17 particularly the caretaker, to include a social history including  
18 screening for criminal records and prior referrals for child abuse  
19 or neglect, the capability to meet the child’s needs, and the  
20 understanding of the legal and financial rights and responsibilities  
21 of adoption and guardianship. If a proposed guardian is a relative  
22 of the minor, the assessment shall also consider, but need not be  
23 limited to, all of the factors specified in subdivision (a) of Section  
24 361.3 and in Section 361.4.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 ~~SEC. 5.~~

28 *SEC. 7.* Section 366.22 of the Welfare and Institutions Code  
29 is amended to read:

30 366.22. (a) When a case has been continued pursuant to  
31 paragraph (1) or (2) of subdivision (g) of Section 366.21, the  
32 permanency review hearing shall occur within 18 months after the  
33 date the child was originally removed from the physical custody  
34 of his or her parent or legal guardian. After considering the  
35 admissible and relevant evidence, the court shall order the return  
36 of the child to the physical custody of his or her parent or legal  
37 guardian unless the court finds, by a preponderance of the evidence,  
38 that the return of the child to his or her parent or legal guardian  
39 would create a substantial risk of detriment to the safety, protection,  
40 or physical or emotional well-being of the child. The social worker

1 shall have the burden of establishing that detriment. At the  
2 permanency review hearing, the court shall consider the criminal  
3 history, obtained pursuant to paragraph (1) of subdivision (f) of  
4 Section 16504.5, of the parent or legal guardian subsequent to the  
5 child's removal, to the extent that the criminal record is  
6 substantially related to the welfare of the child or the parent's or  
7 legal guardian's ability to exercise custody and control regarding  
8 his or her child, provided that the parent or legal guardian agreed  
9 to submit fingerprint images to obtain criminal history information  
10 as part of the case plan. The court shall also consider whether the  
11 child can be returned to the custody of his or her parent who is  
12 enrolled in a certified substance abuse treatment facility that allows  
13 a dependent child to reside with his or her parent. The fact that the  
14 parent is enrolled in a certified substance abuse treatment facility  
15 shall not be, for that reason alone, prima facie evidence of  
16 detriment. The failure of the parent or legal guardian to participate  
17 regularly and make substantive progress in court-ordered treatment  
18 programs shall be prima facie evidence that return would be  
19 detrimental. In making its determination, the court shall review  
20 and consider the social worker's report and recommendations and  
21 the report and recommendations of any child advocate appointed  
22 pursuant to Section 356.5; shall consider the efforts or progress,  
23 or both, demonstrated by the parent or legal guardian and the extent  
24 to which he or she availed himself or herself of services provided,  
25 taking into account the particular barriers of an incarcerated or  
26 institutionalized parent's or legal guardian's access to those  
27 court-mandated services and ability to maintain contact with his  
28 or her child; and shall make appropriate findings pursuant to  
29 subdivision (a) of Section 366.

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

1 Unless the conditions in subdivision (b) are met and the child is  
2 not returned to a parent or legal guardian at the permanency review  
3 hearing, the court shall order that a hearing be held pursuant to  
4 Section 366.26 in order to determine whether adoption, or, in the  
5 case of an Indian child, in consultation with the child's tribe, tribal  
6 customary adoption, guardianship, or long-term foster care is the  
7 most appropriate plan for the child. On and after January 1, 2012,  
8 a hearing pursuant to Section 366.26 shall not be ordered if the  
9 child is a nonminor dependent, unless the nonminor dependent is  
10 an Indian child, and tribal customary adoption is recommended as  
11 the permanent plan. However, if the court finds by clear and  
12 convincing evidence, based on the evidence already presented to  
13 it, including a recommendation by the State Department of Social  
14 Services when it is acting as an adoption agency or by a county  
15 adoption agency, that there is a compelling reason, as described  
16 in paragraph (5) of subdivision (g) of Section 366.21, for  
17 determining that a hearing held under Section 366.26 is not in the  
18 best interests of the child because the child is not a proper subject  
19 for adoption and has no one willing to accept legal guardianship,  
20 the court may, only under these circumstances, order that the child  
21 remain in long-term foster care. On and after January 1, 2012, the  
22 nonminor dependent's legal status as an adult is in and of itself a  
23 compelling reason not to hold a hearing pursuant to Section 366.26.  
24 The court may order that a nonminor dependent who otherwise is  
25 eligible pursuant to Section 11403 remain in a planned, permanent  
26 living arrangement. If the court orders that a child who is 10 years  
27 of age or older remain in long-term foster care, the court shall  
28 determine whether the agency has made reasonable efforts to  
29 maintain the child's relationships with individuals other than the  
30 child's siblings who are important to the child, consistent with the  
31 child's best interests, and may make any appropriate order to ensure  
32 that those relationships are maintained. The hearing shall be held  
33 no later than 120 days from the date of the permanency review  
34 hearing. The court shall also order termination of reunification  
35 services to the parent or legal guardian. The court shall continue  
36 to permit the parent or legal guardian to visit the child unless it  
37 finds that visitation would be detrimental to the child. The court  
38 shall determine whether reasonable services have been offered or  
39 provided to the parent or legal guardian. For purposes of this  
40 subdivision, evidence of any of the following circumstances shall

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

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

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

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

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

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

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

39 (3) The parent or legal guardian has demonstrated the capacity  
40 and ability both to complete the objectives of his or her substance

1 abuse treatment plan as evidenced by reports from a substance  
2 abuse provider as applicable, or complete a treatment plan  
3 postdischarge from incarceration, institutionalization, or detention,  
4 or following deportation to his or her country of origin and his or  
5 her return to the United States, and to provide for the child's safety,  
6 protection, physical and emotional well-being, and special needs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (B) Regardless of his or her immigration status, a relative  
39 caregiver shall be given information regarding the permanency  
40 options of guardianship and adoption, including the long-term

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

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

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

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

35 ~~SEC. 6.~~

36 *SEC. 8.* Section 366.25 of the Welfare and Institutions Code  
37 is amended to read:

38 366.25. (a) (1) When a case has been continued pursuant to  
39 subdivision (b) of Section 366.22, the subsequent permanency  
40 review hearing shall occur within 24 months after the date the

1 child was originally removed from the physical custody of his or  
2 her parent or legal guardian. After considering the relevant and  
3 admissible evidence, the court shall order the return of the child  
4 to the physical custody of his or her parent or legal guardian unless  
5 the court finds, by a preponderance of the evidence, that the return  
6 of the child to his or her parent or legal guardian would create a  
7 substantial risk of detriment to the safety, protection, or physical  
8 or emotional well-being of the child. The social worker shall have  
9 the burden of establishing that detriment. At the subsequent  
10 permanency review hearing, the court shall consider the criminal  
11 history, obtained pursuant to paragraph (1) of subdivision (f) of  
12 Section 16504.5, of the parent or legal guardian subsequent to the  
13 child's removal to the extent that the criminal record is substantially  
14 related to the welfare of the child or parent's or legal guardian's  
15 ability to exercise custody and control regarding his or her child  
16 provided that the parent or legal guardian agreed to submit  
17 fingerprint images to obtain criminal history information as part  
18 of the case plan. The court shall also consider whether the child  
19 can be returned to the custody of a parent who is enrolled in a  
20 certified substance abuse treatment facility that allows a dependent  
21 child to reside with his or her parent. The fact that the parent is  
22 enrolled in a certified substance abuse treatment facility shall not  
23 be, for that reason alone, prima facie evidence of detriment. The  
24 failure of the parent or legal guardian to participate regularly and  
25 make substantive progress in court-ordered treatment programs  
26 shall be prima facie evidence that return would be detrimental. In  
27 making its determination, the court shall review and consider the  
28 social worker's report and recommendations and the report and  
29 recommendations of any child advocate appointed pursuant to  
30 Section 356.5; shall consider the efforts or progress, or both,  
31 demonstrated by the parent or legal guardian and the extent to  
32 which he or she availed himself or herself of services provided;  
33 and shall make appropriate findings pursuant to subdivision (a) of  
34 Section 366.

35 (2) Whether or not the child is returned to his or her parent or  
36 legal guardian, the court shall specify the factual basis for its  
37 decision. If the child is not returned to a parent or legal guardian,  
38 the court shall specify the factual basis for its conclusion that return  
39 would be detrimental. If the child is not returned to his or her parent  
40 or legal guardian, the court shall consider and state for the record,

1 in-state and out-of-state options for the child's permanent  
2 placement. If the child is placed out of the state, the court shall  
3 make a determination whether the out-of-state placement continues  
4 to be appropriate and in the best interests of the child.

5 (3) If the child is not returned to a parent or legal guardian at  
6 the subsequent permanency review hearing, the court shall order  
7 that a hearing be held pursuant to Section 366.26 in order to  
8 determine whether adoption, or, in the case of an Indian child,  
9 tribal customary adoption, guardianship, or long-term foster care  
10 is the most appropriate plan for the child. On and after January 1,  
11 2012, a hearing pursuant to Section 366.26 shall not be ordered if  
12 the child is a nonminor dependent, unless the nonminor dependent  
13 is an Indian child and tribal customary adoption is recommended  
14 as the permanent plan. However, if the court finds by clear and  
15 convincing evidence, based on the evidence already presented to  
16 it, including a recommendation by the State Department of Social  
17 Services when it is acting as an adoption agency or by a county  
18 adoption agency, that there is a compelling reason, as described  
19 in paragraph (5) of subdivision (g) of Section 366.21, for  
20 determining that a hearing held under Section 366.26 is not in the  
21 best interest of the child because the child is not a proper subject  
22 for adoption or, in the case of an Indian child, tribal customary  
23 adoption, and has no one willing to accept legal guardianship, then  
24 the court may, only under these circumstances, order that the child  
25 remain in long-term foster care. On and after January 1, 2012, the  
26 nonminor dependent's legal status as an adult is in and of itself a  
27 compelling reason not to hold a hearing pursuant to Section 366.26.  
28 The court may order that a nonminor dependent who otherwise is  
29 eligible pursuant to Section 11403 remain in a planned, permanent  
30 living arrangement. If the court orders that a child who is 10 years  
31 of age or older remain in long-term foster care, the court shall  
32 determine whether the agency has made reasonable efforts to  
33 maintain the child's relationships with individuals other than the  
34 child's siblings who are important to the child, consistent with the  
35 child's best interests, and may make any appropriate order to ensure  
36 that those relationships are maintained. The hearing shall be held  
37 no later than 120 days from the date of the subsequent permanency  
38 review hearing. The court shall also order termination of  
39 reunification services to the parent or legal guardian. The court  
40 shall continue to permit the parent or legal guardian to visit the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (B) Regardless of his or her immigration status, a relative  
35 caregiver shall be given information regarding the permanency  
36 options of guardianship and adoption, including the long-term  
37 benefits and consequences of each option, prior to establishing  
38 legal guardianship or pursuing adoption. If the proposed permanent  
39 plan is guardianship with an approved relative caregiver for a  
40 minor eligible for aid under the Kin-GAP Program, as provided

1 for in Article 4.7 (commencing with Section 11385) of Chapter 2  
2 of Part 3 of Division 9, the relative caregiver shall be informed  
3 about the terms and conditions of the negotiated agreement  
4 pursuant to Section 11387 and shall agree to its execution prior to  
5 the hearing held pursuant to Section 366.26. A copy of the executed  
6 negotiated agreement shall be attached to the assessment.

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

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

26 (e) The implementation and operation of subdivision (a) enacted  
27 at the 2005–06 Regular Session shall be subject to appropriation  
28 through the budget process and by phase, as provided in Section  
29 366.35.

30 ~~SEC. 7.~~

31 *SEC. 9.* Section 366.3 of the Welfare and Institutions Code is  
32 amended to read:

33 366.3. (a) If a juvenile court orders a permanent plan of  
34 adoption, tribal customary adoption, adoption of a nonminor  
35 dependent pursuant to subdivision (f) of Section 366.31, or legal  
36 guardianship pursuant to Section 360 or 366.26, the court shall  
37 retain jurisdiction over the child or nonminor dependent until the  
38 child or nonminor dependent is adopted or the legal guardianship  
39 is established, except as provided for in Section 366.29 or, on and  
40 after January 1, 2012, Section 366.32. The status of the child or

1 nonminor dependent shall be reviewed every six months to ensure  
2 that the adoption or legal guardianship is completed as  
3 expeditiously as possible. When the adoption of the child or  
4 nonminor dependent has been granted, or in the case of a tribal  
5 customary adoption, when the tribal customary adoption order has  
6 been afforded full faith and credit and the petition for adoption  
7 has been granted, the court shall terminate its jurisdiction over the  
8 child or nonminor dependent. Following establishment of a legal  
9 guardianship, the court may continue jurisdiction over the child  
10 as a dependent child of the juvenile court or may terminate its  
11 dependency jurisdiction and retain jurisdiction over the child as a  
12 ward of the legal guardianship, as authorized by Section 366.4. If,  
13 however, a relative of the child is appointed the legal guardian of  
14 the child and the child has been placed with the relative for at least  
15 six months, the court shall, except if the relative guardian objects,  
16 or upon a finding of exceptional circumstances, terminate its  
17 dependency jurisdiction and retain jurisdiction over the child as a  
18 ward of the guardianship, as authorized by Section 366.4.  
19 Following a termination of parental rights, the parent or parents  
20 shall not be a party to, or receive notice of, any subsequent  
21 proceedings regarding the child.

22 (b) If the court has dismissed dependency jurisdiction following  
23 the establishment of a legal guardianship, or no dependency  
24 jurisdiction attached because of the granting of a legal guardianship  
25 pursuant to Section 360, and the legal guardianship is subsequently  
26 revoked or otherwise terminated, the county department of social  
27 services or welfare department shall notify the juvenile court of  
28 this fact. The court may vacate its previous order dismissing  
29 dependency jurisdiction over the child.

30 Notwithstanding Section 1601 of the Probate Code, the  
31 proceedings to terminate a legal guardianship that has been granted  
32 pursuant to Section 360 or 366.26 shall be held either in the  
33 juvenile court that retains jurisdiction over the guardianship as  
34 authorized by Section 366.4 or the juvenile court in the county  
35 where the guardian and child currently reside, based on the best  
36 interests of the child, unless the termination is due to the  
37 emancipation or adoption of the child. The juvenile court having  
38 jurisdiction over the guardianship shall receive notice from the  
39 court in which the petition is filed within five calendar days of the  
40 filing. Prior to the hearing on a petition to terminate legal

1 guardianship pursuant to this subdivision, the court shall order the  
2 county department of social services or welfare department having  
3 jurisdiction or jointly with the county department where the  
4 guardian and child currently reside to prepare a report, for the  
5 court's consideration, that shall include an evaluation of whether  
6 the child could safely remain in, or be returned to, the legal  
7 guardian's home, without terminating the legal guardianship, if  
8 services were provided to the child or legal guardian. If applicable,  
9 the report shall also identify recommended family maintenance or  
10 reunification services to maintain the legal guardianship and set  
11 forth a plan for providing those services. If the petition to terminate  
12 legal guardianship is granted, either juvenile court may resume  
13 dependency jurisdiction over the child, and may order the county  
14 department of social services or welfare department to develop a  
15 new permanent plan, which shall be presented to the court within  
16 60 days of the termination. If no dependency jurisdiction has  
17 attached, the social worker shall make any investigation he or she  
18 deems necessary to determine whether the child may be within the  
19 jurisdiction of the juvenile court, as provided in Section 328.

20 Unless the parental rights of the child's parent or parents have  
21 been terminated, they shall be notified that the legal guardianship  
22 has been revoked or terminated and shall be entitled to participate  
23 in the new permanency planning hearing. The court shall try to  
24 place the child in another permanent placement. At the hearing,  
25 the parents may be considered as custodians but the child shall not  
26 be returned to the parent or parents unless they prove, by a  
27 preponderance of the evidence, that reunification is the best  
28 alternative for the child. The court shall consider whether the child  
29 can be returned to the custody of his or her parent who is enrolled  
30 in a certified substance abuse treatment facility that allows a  
31 dependent child to reside with his or her parent. The court may, if  
32 it is in the best interests of the child, order that reunification  
33 services again be provided to the parent or parents.

34 (c) If, following the establishment of a legal guardianship, the  
35 county welfare department becomes aware of changed  
36 circumstances that indicate adoption or, for an Indian child, tribal  
37 customary adoption, may be an appropriate plan for the child, the  
38 department shall so notify the court. The court may vacate its  
39 previous order dismissing dependency jurisdiction over the child  
40 and order that a hearing be held pursuant to Section 366.26 to

1 determine whether adoption or continued legal guardianship is the  
2 most appropriate plan for the child. The hearing shall be held no  
3 later than 120 days from the date of the order. If the court orders  
4 that a hearing shall be held pursuant to Section 366.26, the court  
5 shall direct the agency supervising the child and the county  
6 adoption agency, or the State Department of Social Services if it  
7 is acting as an adoption agency, to prepare an assessment under  
8 subdivision (b) of Section 366.22.

9 (d) If the child or, on and after January 1, 2012, nonminor  
10 dependent is in a placement other than the home of a legal guardian  
11 and jurisdiction has not been dismissed, the status of the child shall  
12 be reviewed at least every six months. The review of the status of  
13 a child for whom the court has ordered parental rights terminated  
14 and who has been ordered placed for adoption shall be conducted  
15 by the court. The review of the status of a child or, on and after  
16 January 1, 2012, nonminor dependent for whom the court has not  
17 ordered parental rights terminated and who has not been ordered  
18 placed for adoption may be conducted by the court or an  
19 appropriate local agency. The court shall conduct the review under  
20 the following circumstances:

- 21 (1) Upon the request of the child's parents or legal guardians.
- 22 (2) Upon the request of the child or, on and after January 1,  
23 2012, nonminor dependent.
- 24 (3) It has been 12 months since a hearing held pursuant to  
25 Section 366.26 or an order that the child remain in long-term foster  
26 care pursuant to Section 366.21, 366.22, 366.25, 366.26, or  
27 subdivision (h).
- 28 (4) It has been 12 months since a review was conducted by the  
29 court.

30 The court shall determine whether or not reasonable efforts to  
31 make and finalize a permanent placement for the child have been  
32 made.

33 (e) Except as provided in subdivision (g), at the review held  
34 every six months pursuant to subdivision (d), the reviewing body  
35 shall inquire about the progress being made to provide a permanent  
36 home for the child, shall consider the safety of the child, and shall  
37 determine all of the following:

- 38 (1) The continuing necessity for, and appropriateness of, the  
39 placement.

1 (2) Identification of individuals other than the child's siblings  
2 who are important to a child who is 10 years of age or older and  
3 has been in out-of-home placement for six months or longer, and  
4 actions necessary to maintain the child's relationship with those  
5 individuals, provided that those relationships are in the best interest  
6 of the child. The social worker shall ask every child who is 10  
7 years of age or older and who has been in out-of-home placement  
8 for six months or longer to identify individuals other than the  
9 child's siblings who are important to the child, and may ask any  
10 other child to provide that information, as appropriate. The social  
11 worker shall make efforts to identify other individuals who are  
12 important to the child, consistent with the child's best interests.

13 (3) The continuing appropriateness and extent of compliance  
14 with the permanent plan for the child, including efforts to maintain  
15 relationships between a child who is 10 years of age or older and  
16 who has been in out-of-home placement for six months or longer  
17 and individuals who are important to the child and efforts to  
18 identify a prospective adoptive parent or legal guardian, including,  
19 but not limited to, child-specific recruitment efforts and listing on  
20 an adoption exchange.

21 (4) The extent of the agency's compliance with the child welfare  
22 services case plan in making reasonable efforts either to return the  
23 child to the safe home of the parent or to complete whatever steps  
24 are necessary to finalize the permanent placement of the child. If  
25 the reviewing body determines that a second period of reunification  
26 services is in the child's best interests, and that there is a significant  
27 likelihood of the child's return to a safe home due to changed  
28 circumstances of the parent, pursuant to subdivision (f), the specific  
29 reunification services required to effect the child's return to a safe  
30 home shall be described.

31 (5) Whether there should be any limitation on the right of the  
32 parent or guardian to make educational decisions or developmental  
33 services decisions for the child. That limitation shall be specifically  
34 addressed in the court order and may not exceed what is necessary  
35 to protect the child. If the court specifically limits the right of the  
36 parent or guardian to make educational decisions or developmental  
37 services decisions for the child, the court shall at the same time  
38 appoint a responsible adult to make educational decisions or  
39 developmental services decisions for the child pursuant to Section  
40 361.

1 (6) The adequacy of services provided to the child. The court  
2 shall consider the progress in providing the information and  
3 documents to the child, as described in Section 391. The court  
4 shall also consider the need for, and progress in providing, the  
5 assistance and services described in Section 391.

6 (7) The extent of progress the parents or legal guardians have  
7 made toward alleviating or mitigating the causes necessitating  
8 placement in foster care.

9 (8) The likely date by which the child may be returned to, and  
10 safely maintained in, the home, placed for adoption, legal  
11 guardianship, in another planned permanent living arrangement,  
12 or, for an Indian child, in consultation with the child's tribe, placed  
13 for tribal customary adoption.

14 (9) Whether the child has any siblings under the court's  
15 jurisdiction, and, if any siblings exist, all of the following:

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

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

20 (C) If the siblings are not placed together in the same home,  
21 why the siblings are not placed together and what efforts are being  
22 made to place the siblings together, or why those efforts are not  
23 appropriate.

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

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

28 The factors the court may consider as indicators of the nature of  
29 the child's sibling relationships include, but are not limited to,  
30 whether the siblings were raised together in the same home,  
31 whether the siblings have shared significant common experiences  
32 or have existing close and strong bonds, whether either sibling  
33 expresses a desire to visit or live with his or her sibling, as  
34 applicable, and whether ongoing contact is in the child's best  
35 emotional interests.

36 (10) For a child who is 16 years of age or older, and, effective  
37 January 1, 2012, for a nonminor dependent, the services needed  
38 to assist the child or nonminor dependent to make the transition  
39 from foster care to independent living.

1 The reviewing body shall determine whether or not reasonable  
2 efforts to make and finalize a permanent placement for the child  
3 have been made.

4 Each licensed foster family agency shall submit reports for each  
5 child in its care, custody, and control to the court concerning the  
6 continuing appropriateness and extent of compliance with the  
7 child's permanent plan, the extent of compliance with the case  
8 plan, and the type and adequacy of services provided to the child.

9 (f) Unless their parental rights have been permanently  
10 terminated, the parent or parents of the child are entitled to receive  
11 notice of, and participate in, those hearings. It shall be presumed  
12 that continued care is in the best interests of the child, unless the  
13 parent or parents prove, by a preponderance of the evidence, that  
14 further efforts at reunification are the best alternative for the child.  
15 In those cases, the court may order that further reunification  
16 services to return the child to a safe home environment be provided  
17 to the parent or parents up to a period of six months, and family  
18 maintenance services, as needed for an additional six months in  
19 order to return the child to a safe home environment. On and after  
20 January 1, 2012, this subdivision shall not apply to the parents of  
21 a nonminor dependent.

22 (g) At the review conducted by the court and held at least every  
23 six months, regarding a child for whom the court has ordered  
24 parental rights terminated and who has been ordered placed for  
25 adoption, or, for an Indian child for whom parental rights are not  
26 being terminated and a tribal customary adoption is being  
27 considered, the county welfare department shall prepare and present  
28 to the court a report describing the following:

29 (1) The child's present placement.

30 (2) The child's current physical, mental, emotional, and  
31 educational status.

32 (3) If the child has not been placed with a prospective adoptive  
33 parent or guardian, identification of individuals, other than the  
34 child's siblings, who are important to the child and actions  
35 necessary to maintain the child's relationship with those  
36 individuals, provided that those relationships are in the best interest  
37 of the child. The agency shall ask every child who is 10 years of  
38 age or older to identify any individuals who are important to him  
39 or her, consistent with the child's best interest, and may ask any  
40 child who is younger than 10 years of age to provide that

1 information as appropriate. The agency shall make efforts to  
2 identify other individuals who are important to the child.

3 (4) Whether the child has been placed with a prospective  
4 adoptive parent or parents.

5 (5) Whether an adoptive placement agreement has been signed  
6 and filed.

7 (6) If the child has not been placed with a prospective adoptive  
8 parent or parents, the efforts made to identify an appropriate  
9 prospective adoptive parent or legal guardian, including, but not  
10 limited to, child-specific recruitment efforts and listing on an  
11 adoption exchange.

12 (7) Whether the final adoption order should include provisions  
13 for postadoptive sibling contact pursuant to Section 366.29.

14 (8) The progress of the search for an adoptive placement if one  
15 has not been identified.

16 (9) Any impediments to the adoption or the adoptive placement.

17 (10) The anticipated date by which the child will be adopted or  
18 placed in an adoptive home.

19 (11) The anticipated date by which an adoptive placement  
20 agreement will be signed.

21 (12) Recommendations for court orders that will assist in the  
22 placement of the child for adoption or in the finalization of the  
23 adoption.

24 The court shall determine whether or not reasonable efforts to  
25 make and finalize a permanent placement for the child have been  
26 made.

27 The court shall make appropriate orders to protect the stability  
28 of the child and to facilitate and expedite the permanent placement  
29 and adoption of the child.

30 (h) At the review held pursuant to subdivision (d) for a child in  
31 long-term foster care, the court shall consider all permanency  
32 planning options for the child including whether the child should  
33 be returned to the home of the parent, placed for adoption, or, for  
34 an Indian child, in consultation with the child's tribe, placed for  
35 tribal customary adoption, or appointed a legal guardian, or, if  
36 compelling reasons exist for finding that none of the foregoing  
37 options are in the best interest of the child, whether the child should  
38 be placed in another planned permanent living arrangement. The  
39 court shall order that a hearing be held pursuant to Section 366.26,  
40 unless it determines by clear and convincing evidence that there

1 is a compelling reason for determining that a hearing held pursuant  
2 to Section 366.26 is not in the best interest of the child because  
3 the child is being returned to the home of the parent, the child is  
4 not a proper subject for adoption, or no one is willing to accept  
5 legal guardianship. If the county adoption agency, or the  
6 department when it is acting as an adoption agency, has determined  
7 it is unlikely that the child will be adopted or one of the conditions  
8 described in paragraph (1) of subdivision (c) of Section 366.26  
9 applies, that fact shall constitute a compelling reason for purposes  
10 of this subdivision. Only upon that determination may the court  
11 order that the child remain in long-term foster care, without holding  
12 a hearing pursuant to Section 366.26. On and after January 1, 2012,  
13 the nonminor dependent's legal status as an adult is in and of itself  
14 a compelling reason not to hold a hearing pursuant to Section  
15 366.26.

16 (i) If, as authorized by subdivision (h), the court orders a hearing  
17 pursuant to Section 366.26, the court shall direct the agency  
18 supervising the child and the county adoption agency, or the State  
19 Department of Social Services when it is acting as an adoption  
20 agency, to prepare an assessment as provided for in subdivision  
21 (i) of Section 366.21 or subdivision (b) of Section 366.22. A  
22 hearing held pursuant to Section 366.26 shall be held no later than  
23 120 days from the date of the 12-month review at which it is  
24 ordered, and at that hearing the court shall determine whether  
25 adoption, tribal customary adoption, legal guardianship, or  
26 long-term foster care is the most appropriate plan for the child. On  
27 and after January 1, 2012, a hearing pursuant to Section 366.26  
28 shall not be ordered if the child is a nonminor dependent, unless  
29 the nonminor dependent is an Indian child and tribal customary  
30 adoption is recommended as the permanent plan. The court may  
31 order that a nonminor dependent who otherwise is eligible pursuant  
32 to Section 11403 remain in a planned, permanent living  
33 arrangement. At the request of the nonminor dependent who has  
34 an established relationship with an adult determined to be the  
35 nonminor dependent's permanent connection, the court may order  
36 adoption of the nonminor dependent pursuant to subdivision (f)  
37 of Section 366.31.

38 (j) The implementation and operation of the amendments to  
39 subdivision (e) enacted at the 2005–06 Regular Session shall be

1 subject to appropriation through the budget process and by phase,  
2 as provided in Section 366.35.

3 (k) The reviews conducted pursuant to subdivision (a) or (d)  
4 may be conducted earlier than every six months if the court  
5 determines that an earlier review is in the best interests of the child  
6 or as court rules prescribe.

7 *SEC. 10. Section 16500.5 of the Welfare and Institutions Code*  
8 *is amended to read:*

9 16500.5. (a) (1) The Legislature hereby declares its intent to  
10 encourage the continuity of the family unit by:

11 (A) (i) Providing family preservation services.

12 (ii) For purposes of this subdivision, “family preservation  
13 services” means intensive services for families whose children,  
14 without these services, would be subject to any of the following:

15 (I) Be at imminent risk of out-of-home placement.

16 (II) Remain in existing out-of-home placement for longer periods  
17 of time.

18 (III) Be placed in a more restrictive out-of-home placement.

19 (B) Providing supportive services for those children within the  
20 meaning of Sections 360, 361, and 364 when they are returned to  
21 the family unit or when a minor will probably soon be within the  
22 jurisdiction of the juvenile court pursuant to Section 301.

23 (C) Providing counseling and family support services designed  
24 to eradicate the situation that necessitated intervention.

25 (2) The Legislature finds that maintaining abused and neglected  
26 children in foster care grows increasingly costly each year, and  
27 that adequate funding for family services ~~which~~ *that* might enable  
28 these children to remain in their homes is not as readily available  
29 as funding for foster care placement.

30 (3) The Legislature further finds that other state bodies have  
31 addressed this problem through various systems of flexible  
32 reimbursement in child welfare programs that provide for more  
33 intensive and appropriate services to prevent foster care placement  
34 or significantly reduce the length of stay in foster care.

35 (b) It is the intent of the Legislature that family preservation  
36 and support services in California conform to the federal definitions  
37 contained in Section 431 of the Social Security Act as contained  
38 in Public Law 103-66, the Omnibus Budget Reconciliation Act of  
39 1987. The Legislature finds and declares that California’s existing

1 family preservation programs meet the intent of the federal  
2 Promoting Safe and Stable Families program.

3 (c) (1) Services ~~which~~ *that* may be provided under this program  
4 may include, but are not limited to, counseling, mental health  
5 treatment and substance abuse treatment services, *including*  
6 *treatment at a residential substance abuse treatment facility that*  
7 *accepts families*, parenting, respite, day treatment, transportation,  
8 homemaking, and family support services. Each county that  
9 chooses to provide mental health treatment and substance abuse  
10 treatment shall identify and develop these services in consultation  
11 with county mental health treatment and substance abuse treatment  
12 agencies. Additional services may include those enumerated in  
13 Sections 16506 and 16507. The services to be provided pursuant  
14 to this section may be determined by each participating county.  
15 Each county may contract with individuals and organizations for  
16 services to be provided pursuant to this section. Each county shall  
17 utilize available private nonprofit resources in the county prior to  
18 developing new county-operated resources when these private  
19 nonprofit resources are of at least equal quality and costs as  
20 county-operated resources and shall utilize available county  
21 resources of at least equal quality and cost prior to new private  
22 nonprofit resources.

23 (2) Participating counties authorized by this subdivision shall  
24 provide specific programs of direct services based on individual  
25 family needs as reflected in the service plans to families of the  
26 following:

27 (A) Children who are dependent children not taken from  
28 physical custody of their parents or guardians pursuant to Section  
29 364.

30 (B) Children who are dependent children removed from the  
31 physical custody of their parents or guardian pursuant to Section  
32 361.

33 (C) Children who it is determined will probably soon be within  
34 the jurisdiction of the juvenile court pursuant to Section 301.

35 (D) Upon approval of the department, children who have been  
36 adjudged wards of the court pursuant to Sections 601 and 602.

37 (E) Upon approval of the department, families of children  
38 subject to Sections 726 and 727.

1 (F) Upon approval of the department, children who are  
2 determined to require out-of-home placement pursuant to Section  
3 7572.5 of the Government Code.

4 (3) The services shall only be provided to families whose  
5 children will be placed in out-of-home care without the provision  
6 of services or to children who can be returned to their families  
7 with the provision of services.

8 (4) The services selected by any participating county shall be  
9 reasonable and meritorious and shall demonstrate cost-effectiveness  
10 and success at avoiding out-of-home placement, or reducing the  
11 length of stay in out-of-home placement. A county shall not expend  
12 more funds for services under this subdivision than that amount  
13 which would be expended for placement in out-of-home care.

14 (5) The program in each county shall be deemed successful if  
15 it meets the following standards:

16 (A) Enables families to resolve their own problems, effectively  
17 utilize service systems, and advocate for their children in  
18 educational and social agencies.

19 (B) Enhancing family functioning by building on family  
20 strengths.

21 (C) At least 75 percent of the children receiving services remain  
22 in their own home for six months after termination of services.

23 (D) During the first year after services are terminated:

24 (i) At least 60 percent of the children receiving services remain  
25 at home one year after services are terminated.

26 (ii) The average length of stay in out-of-home care of children  
27 selected to receive services who have already been removed from  
28 their home and placed in out-of-home care is 50 percent less than  
29 the average length of stay in out-of-home care of children who do  
30 not receive program services.

31 (E) Two years after the termination of family preservation  
32 services:

33 (i) The average length of out-of-home stay of children selected  
34 to receive services under this section who, at the time of selection,  
35 are in out-of-home care, is 50 percent less than the average length  
36 of stay in out-of-home care for children in out-of-home care who  
37 do not receive services pursuant to this section.

38 (ii) At least 60 percent of the children who were returned home  
39 pursuant to this section remain at home.

1 (6) Funds used for services provided under this section shall  
2 supplement, not supplant, child welfare services funds available  
3 for services pursuant to Sections 16506 and 16507.

4 (7) Programs authorized after the original pilot projects shall  
5 submit data to the department upon the department's request.

6 (d) (1) A county welfare department social worker or probation  
7 officer may, pursuant to an appropriate court order, return a  
8 dependent minor or ward of the court removed from the home  
9 pursuant to Section 361 to his or her home, with appropriate  
10 interagency family preservation program services.

11 (2) The county probation department may, with the approval of  
12 the State Department of Social Services, through an interagency  
13 agreement with the county welfare department, refer cases to the  
14 county welfare department for the direct provision of services  
15 under this subdivision.

16 (e) Foster care funds shall remain within the administrative  
17 authority of the county welfare department and shall be used only  
18 for placement services or placement prevention services or county  
19 welfare department administrative cost related to the interagency  
20 family preservation program.

21 (f) To the extent permitted by federal law, any federal funds  
22 provided for services to families and children may be utilized for  
23 the purposes of this section.

24 (g) A county may establish family preservation programs that  
25 serve one or more geographic areas of the county, subject to the  
26 approval of the State Department of Social Services.

27 (1) All funds expended by a county for activities under this  
28 section shall be expended by the county in a manner that will  
29 maximize eligibility for federal financial participation.

30 (2) Any county, subject to the approval of the State Department  
31 of Social Services, may claim federal financial participation, if  
32 allowable and available, as provided by the State Department of  
33 Social Services in the federal Promoting Safe and Stable Families  
34 program in accordance with the federal guidelines and regulations  
35 for that county's AFDC-FC expenditures pursuant to subdivision  
36 (d) of Section 11450, for children subject to Sections 300, 301,  
37 360, and 364, in advance, provided that the county conducts a  
38 program of family reunification and family maintenance services  
39 for families receiving these services pursuant to Sections 300, 301,  
40 360, and 364, and as permitted by the department, children subject

1 to Sections 601, 602, 726, and 727, and Section 7572.5 of the  
2 Government Code.

3 (h) In order to maintain federal funding and meet federal  
4 requirements, the State Department of Social Services and the  
5 Office of Child Abuse Prevention shall provide administrative  
6 oversight, monitoring, and consultation to ensure both of the  
7 following:

8 (1) Each county includes in its county plan information that  
9 details what services are to be funded under this section and who  
10 will be served, and how the services are coordinated with the array  
11 of services available in the county. In order to maintain federal  
12 funding to meet federal requirements, the State Department of  
13 Social Services shall review these plans and provide technical  
14 assistance as needed, as provided in Section 10601.2. In order to  
15 meet federal requirements, the Office of Child Abuse Prevention  
16 shall require counties to submit annual reports, as part of the current  
17 reporting process, on program services and children and families  
18 served. The annual reporting process shall be developed jointly  
19 by the department and county agencies for the purpose of meeting  
20 federal reporting requirements.

21 (2) In order to maximize federal financial participation for the  
22 federal Promoting Safe and Stable Families grant, funds expended  
23 from this program are in compliance with data-reporting  
24 requirements in order to meet federal nonsupplantation  
25 requirements in accordance with Section 1357.32 (f) of Title 45  
26 of the Code of Federal Regulations, and the 25 percent state match  
27 requirement in accordance with Section 1357.32(d) of Title 45 of  
28 the Code of Federal Regulations.

29 (i) Beginning in the 2011–12 fiscal year, and for each fiscal  
30 year thereafter, funding and expenditures for programs and  
31 activities under this section shall be made with moneys allocated  
32 pursuant to Sections 30025 and 30029.2 of the Government Code.

33 *SEC. 11. If the Commission on State Mandates determines that*  
34 *this act contains costs mandated by the state, reimbursement to*  
35 *local agencies and school districts for those costs shall be made*  
36 *pursuant to Part 7 (commencing with Section 17500) of Division*  
37 *4 of Title 2 of the Government Code.*

O