

AMENDED IN ASSEMBLY MARCH 7, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1702

Introduced by Assembly Members Mark Stone and Maienschein

January 25, 2016

An act to amend Section 361.5 of the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1702, as amended, Mark Stone. Juveniles: dependent children: reunification services.

Existing law establishes the jurisdiction of the juvenile court, which may adjudge 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 generally requires the court to order the social worker to provide designated child welfare services, including family reunification services, to the child and the child's mother and statutorily presumed father or guardians. Existing law provides that reunification services need not be provided to a parent or guardian when the court finds, by clear and convincing evidence, that a specified event has occurred, including that the child has been adjudicated a dependent as a result of severe sexual abuse or the infliction of severe physical harm to the child, a sibling, or a half sibling by a parent or guardian, and the

court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian.

This bill would also provide that reunification services need not be provided when the court finds that the parent or guardian participated in, or consented to, the sexual exploitation ~~or human trafficking~~ of the child, except if the parent or guardian ~~was also a victim of sexual exploitation or human trafficking~~ and was coerced into consenting to, or participating in, the sexual exploitation ~~or human trafficking~~ of the child.

Existing law requires the court, if it does not order reunification services pursuant to specified provisions, to determine at the dispositional hearing if a hearing shall be set in order to determine the most appropriate plan for the child.

This bill would require the court to make that ~~determine~~ *determination* if it does not order reunification services because it found that the parent or guardian participated in, or ~~consisted~~ *consented* to, the sexual exploitation or human trafficking of the child.

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

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

1 SECTION 1. Section 361.5 of the Welfare and Institutions
2 Code is amended to read:
3 361.5. (a) Except as provided in subdivision (b), or when the
4 parent has voluntarily relinquished the child and the relinquishment
5 has been filed with the State Department of Social Services, or
6 upon the establishment of an order of guardianship pursuant to
7 Section 360, or when a court adjudicates a petition under Section
8 329 to modify the court’s jurisdiction from delinquency jurisdiction
9 to dependency jurisdiction pursuant to subparagraph (A) of
10 paragraph (2) of subdivision (b) of Section 607.2 and the parents
11 or guardian of the ward have had reunification services terminated
12 under the delinquency jurisdiction, whenever a child is removed
13 from a parent’s or guardian’s custody, the juvenile court shall order
14 the social worker to provide child welfare services to the child and
15 the child’s mother and statutorily presumed father or guardians.
16 Upon a finding and declaration of paternity by the juvenile court
17 or proof of a prior declaration of paternity by any court of
18 competent jurisdiction, the juvenile court may order services for

1 the child and the biological father, if the court determines that the
2 services will benefit the child.

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

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

12 (B) For a child who, on the date of initial removal from the
13 physical custody of his or her parent or guardian, was under three
14 years of age, court-ordered services shall be provided for a period
15 of six months from the dispositional hearing as provided in
16 subdivision (e) of Section 366.21, but no longer than 12 months
17 from the date the child entered foster care as provided in Section
18 361.49 unless the child is returned to the home of the parent or
19 guardian.

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

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

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

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

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

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

35 (B) When counseling or other treatment services are ordered,
36 the parent or guardian shall be ordered to participate in those
37 services, unless the parent's or guardian's participation is deemed
38 by the court to be inappropriate or potentially detrimental to the
39 child, or unless a parent or guardian is incarcerated ~~of~~ or detained
40 by the United States Department of Homeland Security and the

1 corrections facility in which he or she is incarcerated does not
2 provide access to the treatment services ordered by the court, or
3 has been deported to his or her country of origin and services
4 ordered by the court are not accessible in that country. Physical
5 custody of the child by the parents or guardians during the
6 applicable time period under subparagraph (A), (B), or (C) of
7 paragraph (1) shall not serve to interrupt the running of the time
8 period. If at the end of the applicable time period, a child cannot
9 be safely returned to the care and custody of a parent or guardian
10 without court supervision, but the child clearly desires contact with
11 the parent or guardian, the court shall take the child's desire into
12 account in devising a permanency plan.

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

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

1 that there is a substantial probability that the child will be returned
2 to the physical custody of his or her parent or guardian within the
3 extended time period. The court also shall make findings pursuant
4 to subdivision (a) of Section 366 and subdivision (e) of Section
5 358.1.

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

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

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

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

29 (2) That the parent or guardian is suffering from a mental
30 disability that is described in Chapter 2 (commencing with Section
31 7820) of Part 4 of Division 12 of the Family Code and that renders
32 him or her incapable of utilizing those services.

33 (3) That the child or a sibling of the child has been previously
34 adjudicated a dependent pursuant to any subdivision of Section
35 300 as a result of physical or sexual abuse, that following that
36 adjudication the child had been removed from the custody of his
37 or her parent or guardian pursuant to Section 361, that the child
38 has been returned to the custody of the parent or guardian from
39 whom the child had been taken originally, and that the child is

1 being removed pursuant to Section 361, due to additional physical
2 or sexual abuse.

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

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

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

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

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

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

39 (8) That the child was conceived by means of the commission
40 of an offense listed in Section 288 or 288.5 of the Penal Code, or

1 by an act committed outside of this state that, if committed in this
2 state, would constitute one of those offenses. This paragraph only
3 applies to the parent who committed the offense or act.

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

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

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

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

36 (13) That the parent or guardian of the child has a history of
37 extensive, abusive, and chronic use of drugs or alcohol and has
38 resisted prior court-ordered treatment for this problem during a
39 three-year period immediately prior to the filing of the petition
40 that brought that child to the court’s attention, or has failed or

1 refused to comply with a program of drug or alcohol treatment
2 described in the case plan required by Section 358.1 on at least
3 two prior occasions, even though the programs identified were
4 available and accessible.

5 (14) (A) That the parent or guardian of the child has advised
6 the court that he or she is not interested in receiving family
7 maintenance or family reunification services or having the child
8 returned to or placed in his or her custody and does not wish to
9 receive family maintenance or reunification services.

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

19 (15) That the parent or guardian has on one or more occasions
20 willfully abducted the child or child's sibling or half sibling from
21 his or her placement and refused to disclose the child's or child's
22 sibling's or half sibling's whereabouts, refused to return physical
23 custody of the child or child's sibling or half sibling to his or her
24 placement, or refused to return physical custody of the child or
25 child's sibling or half sibling to the social worker.

26 (16) That the parent or guardian has been required by the court
27 to be registered on a sex offender registry under the federal Adam
28 Walsh Child Protection and Safety Act of 2006 (42 U.S.C. Sec.
29 16913(a)), as required in Section 106(b)(2)(B)(xvi)(VI) of the
30 Child Abuse Prevention and Treatment Act of 2006 (42 U.S.C.
31 Sec. 5106a(2)(B)(xvi)(VI)).

32 (17) That the parent or guardian participated in, or consented
33 to, the sexual exploitation, as described in *subdivision (c) of* Section
34 11165.1 ~~of the Penal Code, or human trafficking, as described in~~
35 ~~of, or subdivision (c) of~~ Section 236.1 ~~of of~~, the Penal Code, of the
36 child. This shall not include instances in which the parent or
37 guardian ~~was also a victim of sexual exploitation or human~~
38 ~~trafficking and~~ was coerced into consenting to, or participating in,
39 the sexual exploitation ~~or human trafficking~~ of the child.

1 (c) (1) In deciding whether to order reunification in any case
2 in which this section applies, the court shall hold a dispositional
3 hearing. The social worker shall prepare a report that discusses
4 whether reunification services shall be provided. When it is alleged,
5 pursuant to paragraph (2) of subdivision (b), that the parent is
6 incapable of utilizing services due to mental disability, the court
7 shall order reunification services unless competent evidence from
8 mental health professionals establishes that, even with the provision
9 of services, the parent is unlikely to be capable of adequately caring
10 for the child within the time limits specified in subdivision (a).

11 (2) The court shall not order reunification for a parent or
12 guardian described in paragraph (3), (4), (6), (7), (8), (9), (10),
13 (11), (12), (13), (14), (15), (16), or (17) of subdivision (b) unless
14 the court finds, by clear and convincing evidence, that reunification
15 is in the best interest of the child.

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

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

38 (d) If reunification services are not ordered pursuant to
39 paragraph (1) of subdivision (b) and the whereabouts of a parent
40 become known within six months of the out-of-home placement

1 of the child, the court shall order the social worker to provide
2 family reunification services in accordance with this subdivision.

3 (e) (1) If the parent or guardian is incarcerated, institutionalized,
4 or detained by the United States Department of Homeland Security,
5 or has been deported to his or her country of origin, the court shall
6 order reasonable services unless the court determines, by clear and
7 convincing evidence, those services would be detrimental to the
8 child. In determining detriment, the court shall consider the age
9 of the child, the degree of parent-child bonding, the length of the
10 sentence, the length and nature of the treatment, the nature of the
11 crime or illness, the degree of detriment to the child if services are
12 not offered and, for children 10 years of age or older, the child's
13 attitude toward the implementation of family reunification services,
14 the likelihood of the parent's discharge from incarceration,
15 institutionalization, or detention within the reunification time
16 limitations described in subdivision (a), and any other appropriate
17 factors. In determining the content of reasonable services, the court
18 shall consider the particular barriers to an incarcerated,
19 institutionalized, detained, or deported parent's access to those
20 court-mandated services and ability to maintain contact with his
21 or her child, and shall document this information in the child's
22 case plan. Reunification services are subject to the applicable time
23 limitations imposed in subdivision (a). Services may include, but
24 shall not be limited to, all of the following:

25 (A) Maintaining contact between the parent and child through
26 collect telephone calls.

27 (B) Transportation services, where appropriate.

28 (C) Visitation services, where appropriate.

29 (D) (i) Reasonable services to extended family members or
30 foster parents providing care for the child if the services are not
31 detrimental to the child.

32 (ii) An incarcerated or detained parent may be required to attend
33 counseling, parenting classes, or vocational training programs as
34 part of the reunification service plan if actual access to these
35 services is provided. The social worker shall document in the
36 child's case plan the particular barriers to an incarcerated,
37 institutionalized, or detained parent's access to those
38 court-mandated services and ability to maintain contact with his
39 or her child.

1 (E) Reasonable efforts to assist parents who have been deported
2 to contact child welfare authorities in their country of origin, to
3 identify any available services that would substantially comply
4 with case plan requirements, to document the parents' participation
5 in those services, and to accept reports from local child welfare
6 authorities as to the parents' living situation, progress, and
7 participation in services.

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

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

28 (f) If the court, pursuant to paragraph (2), (3), (4), (5), (6), (7),
29 (8), (9), (10), (11), (12), (13), (14), (15), (16), or (17) of subdivision
30 (b) or paragraph (1) of subdivision (e), does not order reunification
31 services, it shall, at the dispositional hearing, that shall include a
32 permanency hearing, determine if a hearing under Section 366.26
33 shall be set in order to determine whether adoption, guardianship,
34 or long-term foster care, or in the case of an Indian child, in
35 consultation with the child's tribe, tribal customary adoption, is
36 the most appropriate plan for the child, and shall consider in-state
37 and out-of-state placement options. If the court so determines, it
38 shall conduct the hearing pursuant to Section 366.26 within 120
39 days after the dispositional hearing. However, the court shall not
40 schedule a hearing so long as the other parent is being provided

1 reunification services pursuant to subdivision (a). The court may
2 continue to permit the parent to visit the child unless it finds that
3 visitation would be detrimental to the child.

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

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

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

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

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

1 the Kin-GAP Program, as provided for in Article 4.7 (commencing
2 with Section 11385) of Chapter 2 of Part 3 of Division 9, “relative”
3 as used in this section has the same meaning as “relative” as
4 defined in subdivision (c) of Section 11391.

5 (E) The relationship of the child to any identified prospective
6 adoptive parent or guardian, including a prospective tribal
7 customary parent, the duration and character of the relationship,
8 the degree of attachment of the child to the prospective relative
9 guardian or adoptive parent, the relative’s or adoptive parent’s
10 strong commitment to caring permanently for the child, the
11 motivation for seeking adoption or guardianship, a statement from
12 the child concerning placement and the adoption or guardianship,
13 and whether the child over 12 years of age has been consulted
14 about the proposed relative guardianship arrangements, unless the
15 child’s age or physical, emotional, or other condition precludes
16 his or her meaningful response, and if so, a description of the
17 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 customary adoption, as defined in Section 366.24, is recommended.
24 If tribal customary adoption is recommended, the assessment shall
25 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 (h) If, at any hearing held pursuant to Section 366.26, a
12 guardianship is established for the minor with an approved relative
13 caregiver and juvenile court dependency is subsequently dismissed,
14 the minor shall be eligible for aid under the Kin-GAP Program as
15 provided for in Article 4.5 (commencing with Section 11360) or
16 Article 4.7 (commencing with Section 11385), as applicable, of
17 Chapter 2 of Part 3 of Division 9.

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

22 (1) The specific act or omission comprising the severe sexual
23 abuse or the severe physical harm inflicted on the child or the
24 child's sibling or half sibling.

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

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

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

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

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

36 (j) When the court determines that reunification services will
37 not be ordered, it shall order that the child's caregiver receive the
38 child's birth certificate in accordance with Sections 16010.4 and
39 16010.5. Additionally, when the court determines that reunification
40 services will not be ordered, it shall order, when appropriate, that

1 a child who is 16 years of age or older receive his or her birth
2 certificate.
3 (k) The court shall read into the record the basis for a finding
4 of severe sexual abuse or the infliction of severe physical harm
5 under paragraph (6) of subdivision (b), and shall also specify the
6 factual findings used to determine that the provision of
7 reunification services to the offending parent or guardian would
8 not benefit the child.

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