

AMENDED IN SENATE JUNE 16, 2016

AMENDED IN ASSEMBLY MARCH 16, 2016

AMENDED IN ASSEMBLY MARCH 7, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1702**

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**Introduced by Assembly Members Mark Stone and Maienschein**

January 25, 2016

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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 *knowingly* participated in, or ~~consented to~~ *permitted*, the sexual exploitation of the child, as prescribed, except if the parent or guardian *demonstrated by a preponderance of the evidence that he or she* was coerced into ~~consenting to, permitting,~~ or participating in, the sexual exploitation 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 determination if it does not order reunification services because it found that the parent or guardian *knowingly* participated in, or ~~consented to,~~ *permitted*, the sexual exploitation of the ~~child.~~ *child, as prescribed.*

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

1 or proof of a prior declaration of paternity by any court of  
2 competent jurisdiction, the juvenile court may order services for  
3 the child and the biological father, if the court determines that the  
4 services will benefit the child.

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

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

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

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

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

1 hearing set pursuant to subdivision (e) of Section 366.21 if the  
2 court finds by clear and convincing evidence one of the following:

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

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

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

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

37 (B) When counseling or other treatment services are ordered,  
38 the parent or guardian shall be ordered to participate in those  
39 services, unless the parent's or guardian's participation is deemed  
40 by the court to be inappropriate or potentially detrimental to the

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

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

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

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

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

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

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

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

31 (2) That the parent or guardian is suffering from a mental  
32 disability that is described in Chapter 2 (commencing with Section  
33 7820) of Part 4 of Division 12 of the Family Code and that renders  
34 him or her incapable of utilizing those services.

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

1 whom the child had been taken originally, and that the child is  
2 being removed pursuant to Section 361, due to additional physical  
3 or sexual abuse.

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

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

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

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

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

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

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

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

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

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

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

38 (13) That the parent or guardian of the child has a history of  
39 extensive, abusive, and chronic use of drugs or alcohol and has  
40 resisted prior court-ordered treatment for this problem during a

1 three-year period immediately prior to the filing of the petition  
2 that brought that child to the court's attention, or has failed or  
3 refused to comply with a program of drug or alcohol treatment  
4 described in the case plan required by Section 358.1 on at least  
5 two prior occasions, even though the programs identified were  
6 available and accessible.

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

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

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

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

34 (17) That the parent or guardian *knowingly* participated in, or  
35 ~~consented to,~~ *permitted*, the sexual exploitation, as described in  
36 subdivision (c) or (d) of Section 11165.1 of, or subdivision (c) of  
37 Section 236.1 of, the Penal Code, of the child. This shall not  
38 include instances in which the parent or guardian *demonstrated*  
39 *by a preponderance of the evidence that he or she was coerced*

1 into ~~consenting to~~, *permitting*, or participating in, the sexual  
2 exploitation of the child.

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

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

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

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

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

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

28 (A) Maintaining contact between the parent and child through  
29 collect telephone calls.

30 (B) Transportation services, where appropriate.

31 (C) Visitation services, where appropriate.

32 (D) (i) Reasonable services to extended family members or  
33 foster parents providing care for the child if the services are not  
34 detrimental to the child.

35 (ii) An incarcerated or detained parent may be required to attend  
36 counseling, parenting classes, or vocational training programs as  
37 part of the reunification service plan if actual access to these  
38 services is provided. The social worker shall document in the  
39 child's case plan the particular barriers to an incarcerated,  
40 institutionalized, or detained parent's access to those

1 court-mandated services and ability to maintain contact with his  
 2 or her child.

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

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

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

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

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

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

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

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

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

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

1 dissolution. If the proposed permanent plan is guardianship with  
 2 an approved relative caregiver for a minor eligible for aid under  
 3 the Kin-GAP Program, as provided for in Article 4.7 (commencing  
 4 with Section 11385) of Chapter 2 of Part 3 of Division 9, “relative”  
 5 as used in this section has the same meaning as “relative” as  
 6 defined in subdivision (c) of Section 11391.

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

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

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

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

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

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

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

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

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

25 (1) The specific act or omission comprising the severe sexual  
26 abuse or the severe physical harm inflicted on the child or the  
27 child's sibling or half sibling.

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

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

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

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

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

39 (j) When the court determines that reunification services will  
40 not be ordered, it shall order that the child's caregiver receive the

1 child's birth certificate in accordance with Sections 16010.4 and  
2 16010.5. Additionally, when the court determines that reunification  
3 services will not be ordered, it shall order, when appropriate, that  
4 a child who is 16 years of age or older receive his or her birth  
5 certificate.

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

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