

Assembly Bill No. 2921

CHAPTER 910

An act to amend Sections 8703, 8714, 8714.5, 8714.7, 8715, 9201, 9202, and 9203 of the Family Code, and to amend Sections 362, 366.21, 366.22, 366.26, and 366.3 of, and to repeal Sections 366.24 and 366.25 of, the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 29, 2000. Filed
with Secretary of State September 29, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2921, Committee on Human Services. Minors: adoption: dependent children.

(1) Existing law requires that, when the parental rights of a birth parent are terminated, the State Department of Social Services or licensed adoption agency responsible for the adoptive placement of the child, shall send written notice to the birth parent encouraging the birth parent to keep the department or agency informed of the birth parent's current address in order to permit a response to any inquiry concerning the medical or social history made by or on behalf of the child.

This bill would require the written notice to also inform the birth parent of an adopted person's right, upon attaining the age of 21 years, to request from the department or licensed adoption agency the name and address of the adoptee's birth parent or parents, and to give the birth parent or parents the opportunity to indicate whether or not to disclose this information.

Existing law authorizes written kinship adoption agreements providing for continuing contact between the adopting parent or parents, birth relatives including the birth parent or parents, and the child, provided the court finds this to be in the best interests of the child at the time the adoption petition is granted. These agreements are only authorized where the adopting parent is a specified relative of the child or a relative of the child's half sibling.

This bill would change all references to kinship adoption agreements to postadoption contact agreements, would authorize nonrelative adopting parents to enter into such an agreement, and would require the court to additionally find that such an agreement was entered into voluntarily by the above-specified persons. The bill would limit the terms of any postadoption contact agreement to the sharing of information about the child unless the child has an existing relationship with the birth relative. The bill would prohibit a prospective adoptive parent or birth relative, including a birth parent, of a child who is the subject of juvenile court proceedings,



from being required by juvenile court order to enter into a postadoption contact agreement or into mediation or other negotiations intended to develop a postadoption contact agreement. The bill would require that a copy of any postadoption contact agreement be attached to the petition.

Existing law provides that the department and any licensed adoption agency may furnish information relating to an adoption petition to the juvenile court, county welfare department, public welfare agency, or private welfare agency if the child's welfare will be promoted.

This bill would expand these provisions to include the furnishing of information with respect to a child in the custody of the department or licensed adoption agency to the above entities, and would specify additional specified persons to whom the information may be released. The bill would prohibit the department or a licensed adoption agency from releasing information that would identify persons who receive, or have received, adoption services with specified exceptions. The bill would require employees of the department and licensed adoption agencies to release any information, including identifying information, requested by the department at Sacramento for the purposes of recordkeeping, monitoring, evaluation, and regulation of adoption services. The bill would make other related changes.

By imposing new duties on local officials, the bill would create a state-mandated local program.

(2) Existing law requires that the juvenile court must conduct specified periodic hearings reviewing the status of dependent children who have been placed in foster care.

This bill, among other things, would revise and reorganize certain of these provisions relating to the effect of certain circumstances upon a determination of failure to provide or offer required reasonable services; specify that references in these provisions to "guardians" are to "legal guardians;" and eliminate certain duplicative provisions.

(3) This bill would incorporate additional changes in Section 362 of the Welfare and Institutions Code proposed by SB 1611, to be operative if this bill and SB 1611 are enacted and become effective on or before January 1, 2001, and this bill is enacted last.

This bill also would incorporate additional changes in Section 366.3 of the Welfare and Institutions Code proposed by AB 1987, to be operative if this bill and AB 1987 are enacted and become effective on or before January 1, 2001, and this bill is enacted last.

(4) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000



statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

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.

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

SECTION 1. Section 8703 of the Family Code is amended to read:

8703. When the parental rights of a birth parent are terminated pursuant to Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 or Part 4 (commencing with Section 7800) of Division 12, or pursuant to Section 366.25 or 366.26 of the Welfare and Institutions Code, the department or licensed adoption agency responsible for the adoptive placement of the child shall send a written notice to the birth parent, if the birth parent’s address is known, that contains the following statement:

(a) “You are encouraged to keep the department or this agency informed of your current address in order to permit a response to any inquiry concerning medical or social history made by or on behalf of the child who was the subject of the court action terminating parental rights.

(b) Section 9203 of the Family Code authorizes a person who has been adopted and who attains the age of 21 years to make a request to the State Department of Social Services, or the licensed adoption agency, that joined in the adoption petition, for the name and address of the adoptee’s birth parents. Indicate by checking one of the boxes below whether or not you wish your name and address to be disclosed:

() YES

() NO

() UNCERTAIN AT THIS TIME; WILL NOTIFY AGENCY AT LATER DATE”

SEC. 2. Section 8714 of the Family Code is amended to read:

8714. (a) A person desiring to adopt a child may for that purpose file a petition in the county in which the petitioner resides. Where a child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and has thereafter been freed for adoption by the juvenile court, the petition may be filed either in the county where the petitioner resides or in the county where the child was freed for adoption.



(b) The court clerk shall immediately notify the department at Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(c) If the petitioner has entered into a postadoption contact agreement with the birth parent as set forth in Section 8714.7, the agreement, signed by the participating parties, shall be attached to and filed with the petition for adoption under subdivision (a).

(d) The caption of the adoption petition shall contain the names of the petitioners, but not the child's name. The petition shall state the child's sex and date of birth. The name the child had before adoption shall appear in the joinder signed by the licensed adoption agency.

(e) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioners shall notify the court of any petition for guardianship or temporary guardianship filed after the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(f) The order of adoption shall contain the child's adopted name, but not the name the child had before adoption.

SEC. 3. Section 8714.5 of the Family Code is amended to read:

8714.5. (a) The Legislature finds and declares the following:

(1) It is the intent of the Legislature to expedite legal permanency for children who cannot return to their parents and to remove barriers to adoption by relatives of children who are already in the dependency system or who are at risk of entering the dependency system.

(2) This goal will be achieved by empowering families, including extended families, to care for their own children safely and permanently whenever possible, by preserving existing family relationships, thereby causing the least amount of disruption to the child and the family, and by recognizing the importance of sibling and half-sibling relationships.

(b) A relative desiring to adopt a child may for that purpose file a petition in the county in which the petitioner resides. Where a child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and thereafter has been freed for adoption by the juvenile court, the petition may be filed either in the county where the petitioner resides or in the county where the child was freed for adoption.

(c) Upon the filing of a petition for adoption by a relative, the county clerk shall immediately notify the State Department of Social Services in Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(d) If the adopting relative has entered into a postadoption contact agreement with the birth parent as set forth in Section 8714.7,



the agreement, signed by the participating parties, shall be attached to and filed with the petition for adoption under subdivision (b).

(e) The caption of the adoption petition shall contain the name of the relative petitioner. The petition shall state the child's name, sex, and date of birth.

(f) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioner shall notify the court of any petition for adoption. The guardianship proceeding shall be consolidated with the adoption proceeding.

(g) The order of adoption shall contain the child's adopted name and, if requested by the adopting relative, or if requested by the child who is 12 years of age or older, the name the child had before adoption.

(h) For purposes of this section, "relative" means an adult who is related to the child or the child's half sibling by blood or affinity, including all relatives whose status is preceded by the words "step," "great," "great-great," or "grand," or the spouse of any of these persons, even if the marriage was terminated by death or dissolution.

SEC. 4. Section 8714.7 of the Family Code is amended to read:

8714.7. (a) The Legislature finds and declares that some adoptive children may benefit from either direct or indirect contact with birth relatives, including the birth parent or parents, after being adopted. Postadoption contact agreements are intended to ensure children of an achievable level of continuing contact when contact is beneficial to the children and the agreements are voluntarily entered into by birth relatives, including the birth parent or parents, and adoptive parents.

(b) Nothing in the adoption laws of this state shall be construed to prevent the adopting parent or parents, the birth relatives, including the birth parent or parents, and the child from voluntarily entering into a written agreement to permit continuing contact between the birth relatives, including the birth parent or parents, and the child if the agreement is found by the court to have been entered into voluntarily and to be in the best interest of the child at the time the adoption petition is granted.

(1) Except as provided in paragraph (2), the terms of any postadoption contact agreement executed under this section shall be limited to, but need not include, all of the following:

(A) Provisions for visitation between the child and a birth parent or parents and other birth relatives, including siblings.

(B) Provisions for future contact between a birth parent or parents or other birth relatives, including siblings, or both, and the child or an adoptive parent, or both.

(C) Provisions for the sharing of information about the child in the future.



(2) The terms of any postadoption contact agreement entered into pursuant to a petition filed under Section 8714 shall be limited to the sharing of information about the child unless the child has an existing relationship with the birth relative.

(c) At the time an adoption decree is entered pursuant to a petition filed under Section 8714 or 8714.5, the court entering the decree may grant postadoption privileges when an agreement for those privileges has been entered into pursuant to subdivision (a).

(d) The child who is the subject of the adoption petition shall be considered a party to the postadoption contact agreement. The written consent to the terms and conditions of the postadoption contact agreement and any subsequent modifications of the agreement by a child who is 12 years of age and older is a necessary condition to the granting of privileges regarding visitation, contact, or sharing of information about the child, unless the court finds by a preponderance of the evidence that the agreement, as written, is in the best interests of the child. Any child who has been found to come within Section 300 of the Welfare and Institutions Code or who is the subject of a petition for jurisdiction of the juvenile court under Section 300 of the Welfare and Institutions Code shall be represented by an attorney for purposes of consent to the postadoption contact agreement.

(e) A postadoption contact agreement shall contain the following warnings in bold type:

(1) After the adoption petition has been granted by the court, the adoption cannot be set aside due to the failure of an adopting parent, a birth parent, a birth relative, or the child to follow the terms of this agreement or a later change to this agreement.

(2) A disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the adoption and shall not serve as a basis for orders affecting the custody of the child.

(3) A court will not act on a petition to change or enforce this agreement unless the petitioner has participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings to resolve the dispute.

(f) Upon the granting of the adoption petition and the issuing of the order of adoption of a child who is a dependent of the juvenile court, juvenile court dependency jurisdiction shall be terminated. Enforcement of the postadoption contact agreement shall be under the continuing jurisdiction of the court granting the petition of adoption. The court may not order compliance with the agreement absent a finding that the party seeking the enforcement participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings regarding the conflict, prior to the filing of the enforcement action, and that the enforcement is in the best interests of the child. Documentary



evidence or offers of proof may serve as the basis for the court's decision regarding enforcement. No testimony or evidentiary hearing shall be required. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear and convincing evidence that the best interests of the child may be protected or advanced only by such inquiry and that the inquiry will not disturb the stability of the child's home to the detriment of the child.

(g) The court may not award monetary damages as a result of the filing of the civil action pursuant to subdivision (e) of this section.

(h) A postadoption contact agreement may be modified or terminated only if either of the following occurs:

(1) All parties, including the child if the child is 12 years of age or older at the time of the requested termination or modification, have signed a modified postadoption contact agreement and the agreement is filed with the court that granted the petition of adoption.

(2) The court finds all of the following:

(A) The termination or modification is necessary to serve the best interest of the child.

(B) There has been a substantial change of circumstances since the original agreement was executed and approved by the court.

(C) The party seeking the termination or modification has participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings prior to seeking court approval of the proposed termination or modification.

Documentary evidence or offers of proof may serve as the basis for the court's decision. No testimony or evidentiary hearing shall be required. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear and convincing evidence that the best interests of the child may be protected or advanced only by such inquiry and that the inquiry will not disturb the stability of the child's home to the detriment of the child.

(i) All costs and fees of mediation or other appropriate dispute resolution proceedings shall be borne by each party, excluding the child. All costs and fees of litigation shall be borne by the party filing the action to modify or enforce the agreement when no party has been found by the court as failing to comply with an existing postadoption contact agreement. Otherwise, a party, other than the child, found by the court as failing to comply without good cause with an existing agreement shall bear all the costs and fees of litigation.

(j) By July 1, 2001, the Judicial Council shall adopt rules of court and forms for motions to enforce, terminate, or modify postadoption contact agreements.

(k) The court shall not set aside a decree of adoption, rescind a relinquishment, or modify an order to terminate parental rights or



any other prior court order because of the failure of a birth parent, adoptive parent, birth relative, or the child to comply with any or all of the original terms of, or subsequent modifications to, the postadoption contact agreement.

SEC. 4.5. Section 8715 of the Family Code is amended to read:

8715. (a) The department or licensed adoption agency, whichever is a party to or joins in the petition, shall submit a full report of the facts of the case to the court.

(b) If the child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and has thereafter been freed for adoption by the juvenile court, the report required by this section shall describe whether the requirements of subdivision (e) of Section 16002 of the Welfare and Institutions Code have been completed and what, if any, plan exists for facilitation of postadoptive contact between the child who is the subject of the adoption petition and his or her siblings and half-siblings.

(c) Where a petition for adoption has been filed with a postadoption contact agreement pursuant to Section 8714.7, the report shall address whether the postadoption contact agreement has been entered into voluntarily and whether it is in the best interest of the child who is the subject of the petition.

(d) The department may also submit a report in those cases in which a licensed adoption agency is a party or joins in the adoption petition.

SEC. 5. Section 9201 of the Family Code is amended to read:

9201. (a) Except as otherwise permitted or required by statute, neither the department nor a licensed adoption agency shall release information that would identify persons who receive, or have received, adoption services.

(b) Employees of the department and licensed adoption agencies shall release to the department at Sacramento any requested information, including identifying information, for the purposes of recordkeeping and monitoring, evaluation, and regulation of the provision of adoption services.

(c) Prior to the placement of a child for adoption, the department or licensed adoption agency may, upon the written request of both a birth and a prospective adoptive parent, arrange for contact between these birth and prospective adoptive parents that may include the sharing of identifying information regarding these parents.

(d) The department and any licensed adoption agency may, upon written authorization for the release of specified information by the subject of that information, share information regarding a prospective adoptive parent or birth parent with other social service agencies, including the department and other licensed adoption



agencies, or providers of health care as defined in Section 56.05 of the Civil Code.

(e) Notwithstanding any other law, the department and any licensed adoption agency may furnish information relating to an adoption petition or to a child in the custody of the department or any licensed adoption agency to the juvenile court, county welfare department, public welfare agency, private welfare agency licensed by the department, provider of foster care services, potential adoptive parent, or provider of health care as defined in Section 56.05 of the Civil Code, if it is believed the child's welfare will be promoted thereby.

(f) The department and any licensed adoption agency may make adoptions case records, including identifying information, available for research purposes, provided that the research will not result in the disclosure of the identity of the child or the parties to the adoption to anyone other than the entity conducting the research.

SEC. 6. Section 9202 of the Family Code is amended to read:

9202. (a) Notwithstanding any other law, the department or licensed adoption agency that made a medical report required by Section 8706, 8817, or 8909 shall provide a copy of the medical report, in the manner the department prescribes by regulation, to any of the following persons upon the person's request:

(1) A person who has been adopted pursuant to this part and who has attained the age of 18 years or who presents a certified copy of the person's marriage certificate.

(2) The adoptive parent of a person under the age of 18 years who has been adopted pursuant to this part.

(b) A person who is denied access to a medical report pursuant to regulations adopted pursuant to this section may petition the court for review of the reasonableness of the department's or licensed adoption agency's decision.

(c) The names and addresses of any persons contained in the report shall be removed unless the person requesting the report has previously received the information.

SEC. 7. Section 9203 of the Family Code is amended to read:

9203. (a) The department or a licensed adoption agency shall do the following:

(1) Upon the request of a person who has been adopted pursuant to this part and who has attained the age of 21 years, disclose the identity of the person's birth parent or parents and their most current address shown in the records of the department or licensed adoption agency, if the birth parent or parents have indicated consent to the disclosure in writing.

(2) Upon the request of the birth parent of a person who has been adopted pursuant to this part and who has attained the age of 21 years, disclose the adopted name of the adoptee and the adoptee's most current address shown in the records of the department or



licensed adoption agency, if the adult adoptee has indicated in writing, pursuant to the registration program developed by the department, that the adult adoptee wishes the adult adoptee's name and address to be disclosed.

(3) Upon the request of the adoptive parent of a person under the age of 21 years who has been adopted pursuant to this part, disclose the identity of a birth parent and the birth parent's most current address shown in the records of the department or licensed adoption agency if the department or licensed adoption agency finds that a medical necessity or other extraordinary circumstances justify the disclosure.

(b) The department shall prescribe the form of the request required by this section. The form shall provide for an affidavit to be executed by the requester that to the best of the requester's knowledge the requester is an adoptee, the adoptee's birth parent, or the adoptee's adoptive parent. The department may adopt regulations requiring any additional means of identification from a requester that it deems necessary. The request shall advise an adoptee that if the adoptee consents, the adoptee's adoptive parents will be notified of the filing of the request before the release of the name and address of the adoptee's birth parent.

(c) Subdivision (a) is not applicable if a birth parent or an adoptee has indicated that he or she does not wish his or her name or address to be disclosed.

(d) Within 20 working days of receipt of a request for information pursuant to this section, the department shall either respond to the request or forward the request to a licensed adoption agency that was a party to the adoption.

(e) Notwithstanding any other law, the department shall announce the availability of the present method of arranging contact among an adult adoptee, the adult adoptee's birth parents, and adoptive parents authorized by Section 9204 utilizing a means of communication appropriate to inform the public effectively.

(f) The department or licensed adoption agency may charge a reasonable fee in an amount the department establishes by regulation to cover the costs of processing requests for information made pursuant to subdivision (a). The department or licensed adoption agency shall waive fees authorized by this section for any person who is receiving public assistance pursuant to Part 3 (commencing with Section 11000) of Division 9 of the Welfare and Institutions Code. The revenue resulting from the fees so charged shall be utilized by the department or licensed adoption agency to increase existing staff as needed to process these requests. Fees received by the department shall be deposited in the Adoption Information Fund. This revenue shall be in addition to any other funds appropriated in support of the state adoption program.



(g) This section applies only to adoptions in which the relinquishment for or consent to adoption was signed or the birth parent's rights were involuntarily terminated by court action on or after January 1, 1984.

SEC. 8. Section 362 of the Welfare and Institutions Code is amended to read:

362. (a) When a child is adjudged a dependent child of the court on the ground that the child is a person described by Section 300, the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child, including medical treatment, subject to further order of the court. To facilitate coordination and cooperation among government agencies, the court may, after giving notice and an opportunity to be heard, join in the juvenile court proceedings any agency that the court determines has failed to meet a legal obligation to provide services to the child. In any proceeding in which an agency is joined, the court shall not impose duties upon the agency beyond those mandated by law. Nothing in this section shall prohibit agencies which have received notice of the hearing on joinder from meeting prior to the hearing to coordinate services for the child.

The court has no authority to order services unless it has been determined through the administrative process of an agency that has been joined as a party, that the child is eligible for those services. With respect to mental health assessment, treatment, and case management services pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, the court's determination shall be limited to whether the agency has complied with that chapter.

(b) When a child is adjudged a dependent child of the court, on the ground that the child is a person described by Section 300 and the court orders that a parent or guardian shall retain custody of the child subject to the supervision of the social worker, the parents or guardians shall be required to participate in child welfare services or services provided by an appropriate agency designated by the court.

(c) The juvenile court may direct any and all reasonable orders to the parents or guardians of the child who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out the provisions of this section, including orders to appear before a county financial evaluation officer. That order may include a direction to participate in a counseling or education program, including, but not limited to, a parent education and parenting program operated by a community college, school district, or other appropriate agency designated by the court. A foster parent or relative with whom the child is placed may be directed to participate in such a program in cases in which the court deems participation is appropriate and in the child's best interest. The program in which a parent or guardian is required to participate shall



be designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300.

(d) Notwithstanding subdivision (c), no prospective adoptive parent or birth relative, including a birth parent, shall be required by court order to enter into a postadoption contact agreement or into mediation or any other negotiation intended to develop a postadoption contact agreement.

SEC. 8.5. Section 362 of the Welfare and Institutions Code is amended to read:

362. (a) When a child is adjudged a dependent child of the court on the ground that the child is a person described by Section 300, the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child, including medical treatment, subject to further order of the court. To facilitate coordination and cooperation among government agencies or private service providers, or both, the court may, after giving notice and an opportunity to be heard, join in the juvenile court proceedings any agency or private service provider that the court determines has failed to meet a legal obligation to provide services to the child. In any proceeding in which an agency or private service provider is joined, the court shall not impose duties upon the agency or private service provider beyond those mandated by law. Nothing in this section shall prohibit agencies or private service providers that have received notice of the hearing on joinder from meeting prior to the hearing to coordinate services for the child.

The court has no authority to order services unless it has been determined through the administrative process of an agency that has been joined as a party, that the child is eligible for those services. With respect to mental health assessment, treatment, and case management services pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, the court's determination shall be limited to whether the agency or private service provider has complied with that chapter.

(b) When a child is adjudged a dependent child of the court, on the ground that the child is a person described by Section 300 and the court orders that a parent or guardian shall retain custody of the child subject to the supervision of the social worker, the parents or guardians shall be required to participate in child welfare services or services provided by an appropriate agency designated by the court.

(c) The juvenile court may direct any and all reasonable orders to the parents or guardians of the child who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out the provisions of this section, including orders to appear before a county financial evaluation officer. That order may include a direction to participate in a counseling or education program, including, but not limited to, a parent education and parenting program operated by a community college, school district,



or other appropriate agency designated by the court. A foster parent or relative with whom the child is placed may be directed to participate in such a program in cases in which the court deems participation is appropriate and in the child's best interest. The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300.

(d) Notwithstanding subdivision (c), no prospective adoptive parent or birth relative, including a birth parent, shall be required by court order to enter into a postadoption contact agreement or into mediation or any other negotiation intended to develop a postadoption contact agreement.

(e) "Private service provider" means any agency or individual that receives federal, state, or local government funding or reimbursement for providing services directly to foster children.

SEC. 9. Section 366.21 of the Welfare and Institutions Code is amended to read:

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

(b) Except as provided in Section 366.23 and subdivision (a) of Section 366.3, notice of the hearing shall be mailed by the social worker to the same persons as in the original proceeding, to the child's parent or legal guardian, to the foster parents, relative caregivers, community care facility, or foster family agency having physical custody of the child in the case of a child removed from the physical custody of his or her parent or legal guardian, and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued. Service of a copy of the notice personally or by certified mail return receipt requested, or any other form of actual notice is equivalent to service by first-class mail.

The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the child being recommended by the supervising agency. The notice to the foster parent, relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency shall indicate that the foster parent, relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting



as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency may attend all hearings or may submit any information he or she deems relevant to the court in writing.

(c) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, the progress made, and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or legal guardian, and make his or her recommendation for disposition. If the child is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, the report and recommendation may also take into account those factors described in subdivision (e) relating to the child's sibling group. If the recommendation is not to return the child to a parent or legal guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or legal guardian with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or legal guardian, the social worker shall provide a summary of his or her recommendation for disposition to the counsel for the child, any court-appointed child advocate, foster parents, relative caregivers, certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, community care facility, or foster family agency having the physical custody of the child at least 10 calendar days before the hearing.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or foster family agency that may result in the return of the child to the physical custody of his or her parent or legal guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, the foster parent, relative caregiver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, may file with the court a report containing his or her recommendation for disposition. The court shall consider the report



and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided.

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

If the child was under the age of three years on the date of the initial removal or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5 and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, may be returned to his or her parent or legal guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

For the purpose of placing and maintaining a sibling group together in a permanent home, the court, in making its determination to schedule a hearing pursuant to Section 366.26 for



some or all members of a sibling group, as described in paragraph (3) of subdivision (a) of Section 361.5, shall review and consider the social worker's report and recommendations. Factors the report shall address, and the court shall consider, may include, but need not be limited to, whether the sibling group was removed from parental care as a group, the closeness and strength of the sibling bond, the ages of the siblings, the appropriateness of maintaining the sibling group together, the detriment to the child if sibling ties are not maintained, the likelihood of finding a permanent home for the sibling group, whether the sibling group is currently placed together in a preadoptive home or has a concurrent plan goal of legal permanency in the same home, the wishes of each child whose age and physical and emotional condition permits a meaningful response, and the best interest of each child in the sibling group. The court shall specify the factual basis for its finding that it is in the best interest of each child to schedule a hearing pursuant to Section 366.26 in 120 days for some or all of the members of the sibling group.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

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

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

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

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to subdivision (a) of Section 361.5. At the permanency hearing, the court shall determine the permanent plan for the child,



that shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The court shall also determine whether reasonable services have been provided or offered to the parent or legal guardian that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

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

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1), (2), or (3) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or legal guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

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



and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

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

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

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

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

The court shall inform the parent or legal guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.36 may be instituted. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.

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

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

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of



reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child pending the hearing unless it finds that visitation would be detrimental to the child.

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

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

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

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

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child’s needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child’s age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

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

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



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

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

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

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

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

SEC. 10. Section 366.22 of the Welfare and Institutions Code is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian. The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker’s report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that return would be detrimental.

If the child is not returned to a parent or legal guardian at the permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether



adoption, guardianship, or long-term foster care is the most appropriate plan for the child. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, that there is a compelling reason, as described in paragraph (2) of subdivision (g) of Section 366.21, for determining that a hearing held under Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship, then the court may, only under these circumstances, order that the child remain in long-term foster care. The hearing shall be held no later than 120 days from the date of the permanency review hearing. The court shall also order termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have been offered or provided to the parent or legal guardian. For purposes of this subdivision, evidence of any of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

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

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

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

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

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

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

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

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian,



particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed legal guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the motivation for seeking adoption or legal guardianship, and a statement from the child concerning placement and the adoption or legal guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

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

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

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

SEC. 11. Section 366.24 of the Welfare and Institutions Code is repealed.

SEC. 12. Section 366.25 of the Welfare and Institutions Code is repealed.

SEC. 13. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this



section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, that shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be



detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), or (D), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b). For



purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), or (D) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. When the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and for providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the



appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the child require the appointment of counsel. If the court finds that the interests of the child do require this protection, the court shall appoint counsel to represent the child. If the court finds that the interests of the child require the representation of counsel, counsel shall be appointed whether or not the child is able to afford counsel. The child shall not be present in court unless the child or the child's counsel so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real



parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The child is likely to be intimidated by a formal courtroom setting.

(3) The child is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making the order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, no petition for adoption may be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given



preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(l) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if they are present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.



(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

SEC. 14. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or legal guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the legal guardianship, as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except where the relative guardian objects, or upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the legal guardianship, as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

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

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a legal guardianship which has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate legal guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the guardian's



home, without terminating the legal guardianship, if services were provided to the child or legal guardian. If applicable, the report shall also identify recommended services to maintain the legal guardianship and set forth a plan for providing those services. If the petition to terminate legal guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the legal guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued legal guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed at least every six months. The review of the status of a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or



an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or legal guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to Section 366.21, 366.22, 366.26, or subdivision (g).

(4) It has been 12 months since a review was conducted by the court.

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

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

(1) The continuing necessity for and appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of the agency's compliance with the child welfare services case plan in making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) The adequacy of services provided to the child.

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

(6) The likely date by which the child may be returned to and safely maintained in the home, placed for adoption, legal guardianship, or in another planned permanent living arrangement.

(7) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

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

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

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interests of the child, unless the parent or parents



prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review conducted by the court and held at least every six months, regarding a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, the county welfare department shall prepare and present to the court a report describing the following:

- (1) The child's present placement.
- (2) The child's current physical, mental, emotional, and educational status.
- (3) Whether the child has been placed with a prospective adoptive parent or parents.
- (4) Whether an adoptive placement agreement has been signed and filed.
- (5) The progress of the search for an adoptive placement if one has not been identified.
- (6) Any impediments to the adoption or the adoptive placement.
- (7) The anticipated date by which the child will be adopted, or placed in an adoptive home.
- (8) The anticipated date by which an adoptive placement agreement will be signed.
- (9) Recommendations for court orders that will assist in the placement of the child for adoption or in the finalization of the adoption.

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

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

(g) At the review held pursuant to subdivision (d) for a child in long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is being returned to the home of the parent, the child is not a proper subject for adoption, or no one is willing to accept legal guardianship. If the licensed county adoption agency, or the department when it is acting as an adoption agency in counties that are not served by a county adoption agency, has determined it is



unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(h) If, as authorized by subdivision (g), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, legal guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 14.1. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or legal guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except where the relative guardian objects, or upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the legal guardianship, as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this



fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a legal guardianship which has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate legal guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the guardian's home, without terminating the legal guardianship, if services were provided to the child or legal guardian. If applicable, the report shall also identify recommended services to maintain the guardianship and set forth a plan for providing those services. If the petition to terminate legal guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the legal guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued legal guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a



county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed at least every six months. The review of the status of a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or legal guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to Section 366.21, 366.22, 366.26, or subdivision (g).

(4) It has been 12 months since a review was conducted by the court.

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

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

(1) The continuing necessity for and appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of the agency's compliance with the child welfare services case plan in making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) The adequacy of services provided to the child.

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

(6) The likely date by which the child may be returned to and safely maintained in the home, placed for adoption, legal guardianship, or in another planned permanent living arrangement.

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

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



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

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

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

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

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

(8) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

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

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

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review conducted by the court and held at least every six months, regarding a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, the county welfare department shall prepare and present to the court a report describing the following:

(1) The child's present placement.

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

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



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

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

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

(7) Any impediments to the adoption or the adoptive placement.

(8) The anticipated date by which the child will be adopted, or placed in an adoptive home.

(9) The anticipated date by which an adoptive placement agreement will be signed.

(10) Recommendations for court orders that will assist in the placement of the child for adoption or in the finalization of the adoption.

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

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

(g) At the review held pursuant to subdivision (d) for a child in long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is being returned to the home of the parent, the child is not a proper subject for adoption, or no one is willing to accept legal guardianship. If the licensed county adoption agency, or the department when it is acting as an adoption agency in counties that are not served by a county adoption agency, has determined it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(h) If, as authorized by subdivision (g), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant



to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, legal guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 15. Section 8.5 of this bill incorporates amendments to Section 362 of the Welfare and Institutions Code proposed by both this bill and SB 1611. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 362 of the Welfare and Institutions Code, (3) this bill is enacted after SB 1611, in which case Section 8 of this bill shall not become operative.

SEC. 16. Section 14.5 of this bill incorporates amendments to Section 366.3 of the Welfare and Institutions Code proposed by both this bill and AB 1987. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 366.3 of the Welfare and Institutions Code, (3) this bill is enacted after AB 1987, in which case Section 14 of this bill shall not become operative.

SEC. 17. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

