

AMENDED IN SENATE MAY 9, 2000
AMENDED IN SENATE APRIL 24, 2000

SENATE BILL

No. 1368

Introduced by Senator Brulte

~~(Coauthors: Senators Alpert, Haynes, Johnston, and~~
(Coauthors: Senators Alpert, Escutia, Haynes, Johnston,
McPherson, Schiff, and Vasconcellos)

(Coauthors: Assembly Members Ashburn, Bates, Campbell,
Cox, Leonard, Longville, Maldonado, and Zettel)

January 19, 2000

An act to add *and repeal* Section 1799.101~~—to~~ of the Health and Safety Code, to add *and repeal* Section 271.5~~—to~~ of the Penal Code, and to amend, *repeal, and add* Sections 300, 309, and 361.5 of, and to add *and repeal* Section 14005.24~~—to~~ of, the Welfare and Institutions Code, relating to abandonment of newborns.

LEGISLATIVE COUNSEL'S DIGEST

SB 1368, as amended, Brulte. Child abandonment: newborns.

Existing law makes it a crime for a parent of a minor child, without lawful excuse, to not furnish necessary clothing, food, shelter, or medical or remedial care for the child, or to refuse, without lawful excuse, to accept the child in his or her home or provide alternate shelter. Existing law also makes it a crime for a parent of a child under the age of 14 to desert the child with intent to abandon, or for any person to knowingly or

willfully abandon or, having the ability to refuse to do so, fail to maintain his or her child under the age of 14.

This bill would provide that no parent or other person having lawful custody of a minor child 72 hours old or younger may be prosecuted for a violation of the above crimes if he or she voluntarily surrenders physical custody of the child to any employee on duty at a public or private hospital emergency room, or any additional location designated by the board of supervisors, ~~unless the person clearly expresses an intent to return for the child.~~ The bill would require each such hospital or other designated entity to designate the employees required to take custody of these children.

This bill also would require the ~~local public~~ employees designated as specified above to take physical custody of a minor 72 hours old or younger if the parent or other person having lawful custody of the child voluntarily surrenders physical custody of the child to that person, ~~unless the person surrendering physical custody expresses an intent to return for the child.~~ The bill would require the person taking physical custody of such a child to perform any act necessary to protect the physical health or safety of the child, ~~and would declare that person immune from liability for any injury to the child that results from those acts, and to provide the person surrendering custody a specified medical information questionnaire.~~ The bill would require the person taking physical custody of such a minor to place a coded identification ankle bracelet on the child, and to notify child protective services or the county agency providing child welfare services of that fact as soon as possible; and would require that agency to assume temporary custody of the child, as specified, and to immediately notify the State Department of Social Services. The bill would authorize ~~the person who surrendered custody of the child~~ *a mother* to reclaim custody *of a child, as specified,* from the agency taking custody *under the bill* within 14 days *of the surrender of custody and the filing of a petition to declare the child a dependent child of the juvenile court* by means of the coded identification ankle bracelet. The bill would ~~authorize~~ *require* the filing of a petition to adjudge such a child a dependent child of the court ~~14 days after the date of the surrender~~ and would provide that



such a child qualifies to be adjudged a dependent child of the court on the basis of such a surrender if not reclaimed within 14 days, *would authorize the termination of the dependency proceedings under specified circumstances*, and would make corresponding changes. The bill would also specify that the child automatically qualifies for Medi-Cal benefits.

The bill would repeal these provisions on January 1, 2006, unless that date is extended or deleted by later enacted legislation. The bill would also require the State Department of Social Services to file specified reports with the Legislature regarding the effect of the bill.

The bill would impose a state-mandated local program by requiring new duties of local public entities and employees.

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.

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

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

1 SECTION 1. Section 1799.101 is added to the Health
2 and Safety Code, to read:
3 1799.101. (a) (1) A person designated pursuant to
4 Section 271.5 of the Penal Code shall take physical custody
5 of a minor child 72 hours old or younger pursuant to this
6 section if the parent or other person having lawful
7 custody of the child voluntarily surrenders physical
8 custody of the child to that person, ~~unless the person~~
9 ~~surrendering physical custody clearly expresses an intent~~
10 ~~to return for the child.~~ *For purposes of this section, a*
11 *person who voluntarily surrenders physical custody of a*



1 child to a designated person shall be presumed to have
2 lawful physical custody of the child. This presumption
3 shall be one affecting the burden of producing evidence.
4 The person designated shall place a coded, confidential
5 ankle bracelet on the child and provide the parent or
6 other person surrendering the child a copy of a unique,
7 coded, confidential ankle bracelet identification in order
8 to facilitate reclaiming the child pursuant to subdivision
9 (e).

10 (2) A person surrendering a child shall be provided a
11 medical information questionnaire, which may be
12 declined, voluntarily filled out and returned at the time
13 the child is surrendered, or later filled out and mailed in
14 the envelope provided for this purpose. This medical
15 information questionnaire shall not require any
16 identifying information about the child or the parent or
17 person surrendering the child, other than the
18 identification code provided in the ankle bracelet placed
19 on the child. Every questionnaire provided pursuant to
20 this section shall begin with the following notice in no less
21 than 12-point type:

22 NOTICE: THE BABY YOU HAVE BROUGHT IN
23 TODAY MAY HAVE SERIOUS MEDICAL NEEDS IN
24 THE FUTURE THAT WE DON'T KNOW ABOUT
25 TODAY. SOME ILLNESSES, INCLUDING CANCER,
26 ARE BEST TREATED WHEN WE KNOW ABOUT
27 FAMILY MEDICAL HISTORIES. IN ADDITION,
28 SOMETIMES RELATIVES ARE NEEDED FOR
29 LIFE-SAVING TREATMENTS. TO MAKE SURE THIS
30 BABY WILL HAVE A HEALTHY FUTURE, YOUR
31 ASSISTANCE IN COMPLETING THIS
32 QUESTIONNAIRE FULLY IS ESSENTIAL. THANK
33 YOU.

34 (b) A person taking physical custody of a minor child
35 pursuant to this section shall perform any act necessary
36 to protect the physical health or safety of the child, ~~and~~
37 ~~shall be immune from liability for any injury to the child~~
38 ~~that may result therefrom.~~

39 (c) As soon as possible, a person who takes physical
40 custody of a child under this section shall notify child



1 protective services or a county agency providing child
2 welfare services pursuant to Section 16501 of the Welfare
3 and Institutions Code, that the person has physical
4 custody of the child pursuant to this section.

5 (d) Child protective services or the county agency
6 providing child welfare services pursuant to Section
7 16501 of the Welfare and Institutions Code shall assume
8 temporary custody of the child pursuant to Section 300 of
9 the Welfare and Institutions Code immediately on
10 receipt of notice under subdivision (c). Child protective
11 services or the county agency providing child welfare
12 services pursuant to Section 16501 of the Welfare and
13 Institutions Code shall immediately investigate the
14 circumstances of the case and ~~may, after the 14-day~~
15 ~~period from the date of the surrender,~~ file a petition
16 pursuant to Section 311 of the Welfare and Institutions
17 Code. Child protective services or the county agency
18 providing child welfare services pursuant to Section
19 16501 of the Welfare and Institutions Code shall
20 immediately notify the State Department of Social
21 Services of each such child upon taking temporary
22 custody of the child pursuant to Section 300 of the Welfare
23 and Institutions Code.

24 ~~(e) The parent or other person having lawful custody~~
25 ~~of the child, who surrenders custody pursuant to this~~
26 ~~section, may reclaim custody of the child within 14 days~~
27 ~~of surrender by providing the ankle bracelet~~
28 ~~identification code to child protective services or the~~
29 ~~county agency providing child welfare services pursuant~~
30 ~~to Section 16501 of the Welfare and Institutions Code.~~

31 *(e) Subsequent to the filing of a petition under*
32 *subdivision (d), if within 14 days of the voluntary*
33 *surrender described in this section a mother returns to*
34 *claim physical custody of the child, the child welfare*
35 *agency shall verify the identity of the mother, conduct an*
36 *assessment of the mother's circumstances and ability to*
37 *parent, and request that the juvenile court dismiss the*
38 *petition for dependency, if the child welfare agency*
39 *determines that none of the conditions described in*



1 subdivisions (a) to (d), inclusive, of Section 319 of the
2 Welfare and Institutions Code currently exist.

3 (f) This section shall be repealed on January 1, 2006,
4 unless a later enacted statute extends or repeals that date.

5 SEC. 2. Section 271.5 is added to the Penal Code, to
6 read:

7 271.5. (a) No parent or other person having lawful
8 custody of a minor child 72 hours old or younger may be
9 prosecuted for a violation of Section 270, 270.5, 271, or
10 271a if he or she voluntarily surrenders physical custody
11 of the child to any employee, designated pursuant to this
12 section, on duty at a public or private hospital emergency
13 room or any additional location designated by the county
14 board of supervisors by resolution, ~~unless the person~~
15 ~~clearly expresses an intent to return for the child.~~ Each
16 such hospital or other designated entity shall designate
17 the classes of employees required to take custody of these
18 children.

19 (b) This section shall be repealed on January 1, 2006,
20 unless a later enacted statute extends or deletes that date.

21 SEC. 3. Section 300 of the Welfare and Institutions
22 Code is amended to read:

23 300. Any child who comes within any of the following
24 descriptions is within the jurisdiction of the juvenile court
25 which may adjudge that person to be a dependent child
26 of the court:

27 (a) The child has suffered, or there is a substantial risk
28 that the child will suffer, serious physical harm inflicted
29 nonaccidentally upon the child by the child's parent or
30 guardian. For the purposes of this subdivision, a court
31 may find there is a substantial risk of serious future injury
32 based on the manner in which a less serious injury was
33 inflicted, a history of repeated inflictions of injuries on the
34 child or the child's siblings, or a combination of these and
35 other actions by the parent or guardian which indicate
36 the child is at risk of serious physical harm. For purposes
37 of this subdivision, "serious physical harm" does not
38 include reasonable and age-appropriate spanking to the
39 buttocks where there is no evidence of serious physical
40 injury.



1 (b) The child has suffered, or there is a substantial risk
2 that the child will suffer, serious physical harm or illness,
3 as a result of the failure or inability of his or her parent or
4 guardian to adequately supervise or protect the child, or
5 the willful or negligent failure of the child's parent or
6 guardian to adequately supervise or protect the child
7 from the conduct of the custodian with whom the child
8 has been left, or by the willful or negligent failure of the
9 parent or guardian to provide the child with adequate
10 food, clothing, shelter, or medical treatment, or by the
11 inability of the parent or guardian to provide regular care
12 for the child due to the parent's or guardian's mental
13 illness, developmental disability, or substance abuse. No
14 child shall be found to be a person described by this
15 subdivision solely due to the lack of an emergency shelter
16 for the family. Whenever it is alleged that a child comes
17 within the jurisdiction of the court on the basis of the
18 parent's or guardian's willful failure to provide adequate
19 medical treatment or specific decision to provide
20 spiritual treatment through prayer, the court shall give
21 deference to the parent's or guardian's medical
22 treatment, nontreatment, or spiritual treatment through
23 prayer alone in accordance with the tenets and practices
24 of a recognized church or religious denomination, by an
25 accredited practitioner thereof, and shall not assume
26 jurisdiction unless necessary to protect the child from
27 suffering serious physical harm or illness. In making its
28 determination, the court shall consider (1) the nature of
29 the treatment proposed by the parent or guardian, (2)
30 the risks to the child posed by the course of treatment or
31 nontreatment proposed by the parent or guardian, (3)
32 the risk, if any, of the course of treatment being proposed
33 by the petitioning agency, and (4) the likely success of the
34 courses of treatment or nontreatment proposed by the
35 parent or guardian and agency. The child shall continue
36 to be a dependent child pursuant to this subdivision only
37 so long as is necessary to protect the child from risk of
38 suffering serious physical harm or illness.

39 (c) The child is suffering serious emotional damage, or
40 is at substantial risk of suffering serious emotional



1 damage, evidenced by severe anxiety, depression,
2 withdrawal, or untoward aggressive behavior toward self
3 or others, as a result of the conduct of the parent or
4 guardian or who has no parent or guardian capable of
5 providing appropriate care. No child shall be found to be
6 a person described by this subdivision if the willful failure
7 of the parent or guardian to provide adequate mental
8 health treatment is based on a sincerely held religious
9 belief and if a less intrusive judicial intervention is
10 available.

11 (d) The child has been sexually abused, or there is a
12 substantial risk that the child will be sexually abused, as
13 defined in Section 11165.1 of the Penal Code, by his or her
14 parent or guardian or a member of his or her household,
15 or the parent or guardian has failed to adequately protect
16 the child from sexual abuse when the parent or guardian
17 knew or reasonably should have known that the child was
18 in danger of sexual abuse.

19 (e) The child is under the age of five and has suffered
20 severe physical abuse by a parent, or by any person
21 known by the parent, if the parent knew or reasonably
22 should have known that the person was physically
23 abusing the child. For the purposes of this subdivision,
24 “severe physical abuse” means any of the following: any
25 single act of abuse which causes physical trauma of
26 sufficient severity that, if left untreated, would cause
27 permanent physical disfigurement, permanent physical
28 disability, or death; any single act of sexual abuse which
29 causes significant bleeding, deep bruising, or significant
30 external or internal swelling; or more than one act of
31 physical abuse, each of which causes bleeding, deep
32 bruising, significant external or internal swelling, bone
33 fracture, or unconsciousness; or the willful, prolonged
34 failure to provide adequate food. A child may not be
35 removed from the physical custody of his or her parent or
36 guardian on the basis of a finding of severe physical abuse
37 unless the social worker has made an allegation of severe
38 physical abuse pursuant to Section 332.

39 (f) The child’s parent or guardian caused the death of
40 another child through abuse or neglect.



1 (g) The child has been left without any provision for
2 support; physical custody of the child has been voluntarily
3 surrendered pursuant to Section 1799.101 of the Health
4 and Safety Code and the child has not been reclaimed
5 within the 14-day period specified in subdivision (e) of
6 that section; the child's parent has been incarcerated or
7 institutionalized and cannot arrange for the care of the
8 child; or a relative or other adult custodian with whom the
9 child resides or has been left is unwilling or unable to
10 provide care or support for the child, the whereabouts of
11 the parent are unknown, and reasonable efforts to locate
12 the parent have been unsuccessful.

13 (h) The child has been freed for adoption by one or
14 both parents for 12 months by either relinquishment or
15 termination of parental rights or an adoption petition has
16 not been granted.

17 (i) The child has been subjected to an act or acts of
18 cruelty by the parent or guardian or a member of his or
19 her household, or the parent or guardian has failed to
20 adequately protect the child from an act or acts of cruelty
21 when the parent or guardian knew or reasonably should
22 have known that the child was in danger of being
23 subjected to an act or acts of cruelty.

24 (j) The child's sibling has been abused or neglected, as
25 defined in subdivision (a), (b), (d), (e), or (i), and there
26 is a substantial risk that the child will be abused or
27 neglected, as defined in those subdivisions. The court
28 shall consider the circumstances surrounding the abuse
29 or neglect of the sibling, the age and gender of each child,
30 the nature of the abuse or neglect of the sibling, the
31 mental condition of the parent or guardian, and any other
32 factors the court considers probative in determining
33 whether there is a substantial risk to the child.

34 It is the intent of the Legislature that nothing in this
35 section disrupt the family unnecessarily or intrude
36 inappropriately into family life, prohibit the use of
37 reasonable methods of parental discipline, or prescribe a
38 particular method of parenting. Further, nothing in this
39 section is intended to limit the offering of voluntary
40 services to those families in need of assistance but who do



1 not come within the descriptions of this section. To the
2 extent that savings accrue to the state from child welfare
3 services funding obtained as a result of the enactment of
4 the act that enacted this section, those savings shall be
5 used to promote services which support family
6 maintenance and family reunification plans, such as
7 client transportation, out-of-home respite care, parenting
8 training, and the provision of temporary or emergency
9 in-home caretakers and persons teaching and
10 demonstrating homemaking skills. The Legislature
11 further declares that a physical disability, such as
12 blindness or deafness, is no bar to the raising of happy and
13 well-adjusted children and that a court's determination
14 pursuant to this section shall center upon whether a
15 parent's disability prevents him or her from exercising
16 care and control.

17 As used in this section "guardian" means the legal
18 guardian of the child.

19 *(k) This section shall be repealed on January 1, 2006,*
20 *unless a later enacted statute extends or deletes that date.*

21 *SEC. 3.5. Section 300 is added to the Welfare and*
22 *Institutions Code, to read:*

23 *300. Any child who comes within any of the following*
24 *descriptions is within the jurisdiction of the juvenile court*
25 *which may adjudge that person to be a dependent child*
26 *of the court:*

27 *(a) The child has suffered, or there is a substantial risk*
28 *that the child will suffer, serious physical harm inflicted*
29 *nonaccidentally upon the child by the child's parent or*
30 *guardian. For the purposes of this subdivision, a court*
31 *may find there is a substantial risk of serious future injury*
32 *based on the manner in which a less serious injury was*
33 *inflicted, a history of repeated inflictions of injuries on the*
34 *child or the child's siblings, or a combination of these and*
35 *other actions by the parent or guardian which indicate*
36 *the child is at risk of serious physical harm. For purposes*
37 *of this subdivision, "serious physical harm" does not*
38 *include reasonable and age-appropriate spanking to the*
39 *buttocks where there is no evidence of serious physical*
40 *injury.*



1 (b) *The child has suffered, or there is a substantial risk*
2 *that the child will suffer, serious physical harm or illness,*
3 *as a result of the failure or inability of his or her parent or*
4 *guardian to adequately supervise or protect the child, or*
5 *the willful or negligent failure of the child's parent or*
6 *guardian to adequately supervise or protect the child*
7 *from the conduct of the custodian with whom the child*
8 *has been left, or by the willful or negligent failure of the*
9 *parent or guardian to provide the child with adequate*
10 *food, clothing, shelter, or medical treatment, or by the*
11 *inability of the parent or guardian to provide regular care*
12 *for the child due to the parent's or guardian's mental*
13 *illness, developmental disability, or substance abuse. No*
14 *child shall be found to be a person described by this*
15 *subdivision solely due to the lack of an emergency shelter*
16 *for the family. Whenever it is alleged that a child comes*
17 *within the jurisdiction of the court on the basis of the*
18 *parent's or guardian's willful failure to provide adequate*
19 *medical treatment or specific decision to provide*
20 *spiritual treatment through prayer, the court shall give*
21 *deference to the parent's or guardian's medical*
22 *treatment, nontreatment, or spiritual treatment through*
23 *prayer alone in accordance with the tenets and practices*
24 *of a recognized church or religious denomination, by an*
25 *accredited practitioner thereof, and shall not assume*
26 *jurisdiction unless necessary to protect the child from*
27 *suffering serious physical harm or illness. In making its*
28 *determination, the court shall consider (1) the nature of*
29 *the treatment proposed by the parent or guardian, (2)*
30 *the risks to the child posed by the course of treatment or*
31 *nontreatment proposed by the parent or guardian, (3)*
32 *the risk, if any, of the course of treatment being proposed*
33 *by the petitioning agency, and (4) the likely success of the*
34 *courses of treatment or nontreatment proposed by the*
35 *parent or guardian and agency. The child shall continue*
36 *to be a dependent child pursuant to this subdivision only*
37 *so long as is necessary to protect the child from risk of*
38 *suffering serious physical harm or illness.*

39 (c) *The child is suffering serious emotional damage, or*
40 *is at substantial risk of suffering serious emotional*



1 damage, evidenced by severe anxiety, depression,
2 withdrawal, or untoward aggressive behavior toward self
3 or others, as a result of the conduct of the parent or
4 guardian or who has no parent or guardian capable of
5 providing appropriate care. No child shall be found to be
6 a person described by this subdivision if the willful failure
7 of the parent or guardian to provide adequate mental
8 health treatment is based on a sincerely held religious
9 belief and if a less intrusive judicial intervention is
10 available.

11 (d) The child has been sexually abused, or there is a
12 substantial risk that the child will be sexually abused, as
13 defined in Section 11165.1 of the Penal Code, by his or her
14 parent or guardian or a member of his or her household,
15 or the parent or guardian has failed to adequately protect
16 the child from sexual abuse when the parent or guardian
17 knew or reasonably should have known that the child was
18 in danger of sexual abuse.

19 (e) The child is under the age of five and has suffered
20 severe physical abuse by a parent, or by any person
21 known by the parent, if the parent knew or reasonably
22 should have known that the person was physically
23 abusing the child. For the purposes of this subdivision,
24 “severe physical abuse” means any of the following: any
25 single act of abuse which causes physical trauma of
26 sufficient severity that, if left untreated, would cause
27 permanent physical disfigurement, permanent physical
28 disability, or death; any single act of sexual abuse which
29 causes significant bleeding, deep bruising, or significant
30 external or internal swelling; or more than one act of
31 physical abuse, each of which causes bleeding, deep
32 bruising, significant external or internal swelling, bone
33 fracture, or unconsciousness; or the willful, prolonged
34 failure to provide adequate food. A child may not be
35 removed from the physical custody of his or her parent or
36 guardian on the basis of a finding of severe physical abuse
37 unless the social worker has made an allegation of severe
38 physical abuse pursuant to Section 332.

39 (f) The child’s parent or guardian caused the death of
40 another child through abuse or neglect.



1 (g) *The child has been left without any provision for*
2 *support; the child's parent has been incarcerated or*
3 *institutionalized and cannot arrange for the care of the*
4 *child; or a relative or other adult custodian with whom the*
5 *child resides or has been left is unwilling or unable to*
6 *provide care or support for the child, the whereabouts of*
7 *the parent are unknown, and reasonable efforts to locate*
8 *the parent have been unsuccessful.*

9 (h) *The child has been freed for adoption by one or*
10 *both parents for 12 months by either relinquishment or*
11 *termination of parental rights or an adoption petition has*
12 *not been granted.*

13 (i) *The child has been subjected to an act or acts of*
14 *cruelty by the parent or guardian or a member of his or*
15 *her household, or the parent or guardian has failed to*
16 *adequately protect the child from an act or acts of cruelty*
17 *when the parent or guardian knew or reasonably should*
18 *have known that the child was in danger of being*
19 *subjected to an act or acts of cruelty.*

20 (j) *The child's sibling has been abused or neglected, as*
21 *defined in subdivision (a), (b), (d), (e), or (i), and there*
22 *is a substantial risk that the child will be abused or*
23 *neglected, as defined in those subdivisions. The court*
24 *shall consider the circumstances surrounding the abuse*
25 *or neglect of the sibling, the age and gender of each child,*
26 *the nature of the abuse or neglect of the sibling, the*
27 *mental condition of the parent or guardian, and any other*
28 *factors the court considers probative in determining*
29 *whether there is a substantial risk to the child.*

30 *It is the intent of the Legislature that nothing in this*
31 *section disrupt the family unnecessarily or intrude*
32 *inappropriately into family life, prohibit the use of*
33 *reasonable methods of parental discipline, or prescribe a*
34 *particular method of parenting. Further, nothing in this*
35 *section is intended to limit the offering of voluntary*
36 *services to those families in need of assistance but who do*
37 *not come within the descriptions of this section. To the*
38 *extent that savings accrue to the state from child welfare*
39 *services funding obtained as a result of the enactment of*
40 *the act that enacted this section, those savings shall be*



1 *used to promote services which support family*
2 *maintenance and family reunification plans, such as*
3 *client transportation, out-of-home respite care, parenting*
4 *training, and the provision of temporary or emergency*
5 *in-home caretakers and persons teaching and*
6 *demonstrating homemaking skills. The Legislature*
7 *further declares that a physical disability, such as*
8 *blindness or deafness, is no bar to the raising of happy and*
9 *well-adjusted children and that a court's determination*
10 *pursuant to this section shall center upon whether a*
11 *parent's disability prevents him or her from exercising*
12 *care and control.*

13 *As used in this section "guardian" means the legal*
14 *guardian of the child.*

15 SEC. 4. Section 309 of the Welfare and Institutions
16 Code is amended to read:

17 309. (a) Upon delivery to the social worker of a child
18 who has been taken into temporary custody under this
19 article, the social worker shall immediately investigate
20 the circumstances of the child and the facts surrounding
21 the child's being taken into custody and attempt to
22 maintain the child with the child's family through the
23 provision of services. The social worker shall immediately
24 release the child to the custody of the child's parent,
25 guardian, or responsible relative unless one or more of the
26 following conditions exist:

27 (1) The child has no parent, guardian, or responsible
28 relative; or the child's parent, guardian, or responsible
29 relative is not willing to provide care for the child.

30 (2) Continued detention of the child is a matter of
31 immediate and urgent necessity for the protection of the
32 child and there are no reasonable means by which the
33 child can be protected in his or her home or the home of
34 a responsible relative.

35 (3) There is substantial evidence that a parent,
36 guardian, or custodian of the child is likely to flee the
37 jurisdiction of the court.

38 (4) The child has left a placement in which he or she
39 was placed by the juvenile court.



1 (5) The parent or other person having lawful custody
2 of the child voluntarily surrendered physical custody of
3 the child pursuant to Section 1799.101 of the Health and
4 Safety Code and did not reclaim the child within the
5 14-day period specified in subdivision (e) of that section.

6 (b) In any case in which there is reasonable cause for
7 believing that a child who is under the care of a physician
8 or surgeon or a hospital, clinic, or other medical facility
9 and cannot be immediately moved is a person described
10 in Section 300, the child shall be deemed to have been
11 taken into temporary custody and delivered to the social
12 worker for the purposes of this chapter while the child is
13 at the office of the physician or surgeon or the medical
14 facility.

15 (c) If the child is not released to his or her parent or
16 guardian, the child shall be deemed detained for purposes
17 of this chapter.

18 (d) If an able and willing relative, as defined in Section
19 319, is available and requests temporary placement of the
20 child pending the detention hearing, the social worker
21 shall initiate an emergency assessment of the relative's
22 suitability, which shall include an in-home visit to assess
23 the safety of the home and the ability of the relative to
24 care for the child on a temporary basis, and a
25 consideration of the results of a criminal records check
26 and allegations of prior child abuse or neglect concerning
27 the relative and other adults in the home. The results of
28 the assessment shall be provided to the court in the social
29 worker's report as required by Section 319.

30 (e) *This section shall be repealed on January 1, 2006,*
31 *unless a later enacted statute extends or deletes that date.*

32 *SEC. 4.5. Section 309 is added to the Welfare and*
33 *Institutions Code, to read:*

34 *309. (a) Upon delivery to the social worker of a child*
35 *who has been taken into temporary custody under this*
36 *article, the social worker shall immediately investigate*
37 *the circumstances of the child and the facts surrounding*
38 *the child's being taken into custody and attempt to*
39 *maintain the child with the child's family through the*
40 *provision of services. The social worker shall immediately*



1 *release the child to the custody of the child's parent,*
2 *guardian, or responsible relative unless one or more of the*
3 *following conditions exist:*

4 *(1) The child has no parent, guardian, or responsible*
5 *relative; or the child's parent, guardian, or responsible*
6 *relative is not willing to provide care for the child.*

7 *(2) Continued detention of the child is a matter of*
8 *immediate and urgent necessity for the protection of the*
9 *child and there are no reasonable means by which the*
10 *child can be protected in his or her home or the home of*
11 *a responsible relative.*

12 *(3) There is substantial evidence that a parent,*
13 *guardian, or custodian of the child is likely to flee the*
14 *jurisdiction of the court.*

15 *(4) The child has left a placement in which he or she*
16 *was placed by the juvenile court.*

17 *(b) In any case in which there is reasonable cause for*
18 *believing that a child who is under the care of a physician*
19 *or surgeon or a hospital, clinic, or other medical facility*
20 *and cannot be immediately moved is a person described*
21 *in Section 300, the child shall be deemed to have been*
22 *taken into temporary custody and delivered to the social*
23 *worker for the purposes of this chapter while the child is*
24 *at the office of the physician or surgeon or the medical*
25 *facility.*

26 *(c) If the child is not released to his or her parent or*
27 *guardian, the child shall be deemed detained for purposes*
28 *of this chapter.*

29 *(d) If an able and willing relative, as defined in Section*
30 *319, is available and requests temporary placement of the*
31 *child pending the detention hearing, the social worker*
32 *shall initiate an emergency assessment of the relative's*
33 *suitability, which shall include an in-home visit to assess*
34 *the safety of the home and the ability of the relative to*
35 *care for the child on a temporary basis, and a*
36 *consideration of the results of a criminal records check*
37 *and allegations of prior child abuse or neglect concerning*
38 *the relative and other adults in the home. The results of*
39 *the assessment shall be provided to the court in the social*
40 *worker's report as required by Section 319.*



1 SEC. 5. Section 361.5 of the Welfare and Institutions
2 Code is amended to read:

3 361.5. (a) Except as provided in subdivision (b) of
4 this section or when the parent has voluntarily
5 relinquished the child and the relinquishment has been
6 filed with the State Department of Social Services, or
7 upon the establishment of an order of guardianship
8 pursuant to Section 360, whenever a child is removed
9 from a parent's or guardian's custody, the juvenile court
10 shall order the social worker to provide child welfare
11 services to the child and the child's mother and statutorily
12 presumed father or guardians. Upon a finding and
13 declaration of paternity by the juvenile court or proof of
14 a prior declaration of paternity by any court of competent
15 jurisdiction, the juvenile court may order services for the
16 child and the biological father, if the court determines
17 that the services will benefit the child. Child welfare
18 services, when provided, shall be provided as follows:

19 (1) For a child who, on the date of initial removal from
20 the physical custody of his or her parent or guardian, was
21 three years of age or older, court-ordered services shall
22 not exceed a period of 12 months from the date the child
23 entered foster care, except as otherwise provided in
24 paragraph (3).

25 (2) For a child who, on the date of initial removal from
26 the physical custody of his or her parent or guardian, was
27 under the age of three years, court-ordered services shall
28 not exceed a period of six months from the date the child
29 entered foster care.

30 (3) For the purpose of placing and maintaining a
31 sibling group together in a permanent home should
32 reunification efforts fail, for a child in a sibling group
33 whose members were removed from parental custody at
34 the same time, and in which one member of the sibling
35 group was under the age of three years on the date of
36 initial removal from the physical custody of his or her
37 parent or guardian, court-ordered services to some or all
38 of the sibling group may be limited to a period of six
39 months from the date the child entered foster care. For
40 the purposes of this paragraph, "a sibling group" shall



1 mean two or more children who are related to each other
2 as full or half-siblings.

3 Regardless of the age of the child, a child shall be
4 deemed to have entered foster care on the earlier of the
5 date of the jurisdictional hearing held pursuant to Section
6 356 or the date that is 60 days after the date on which the
7 child was initially removed from the physical custody of
8 his or her parent or guardian.

9 Notwithstanding paragraphs (1), (2), and (3),
10 court-ordered services may be extended up to a
11 maximum time period not to exceed 18 months after the
12 date the child was originally removed from physical
13 custody of his or her parent or guardian if it can be shown,
14 at the hearing held pursuant to subdivision (f) of Section
15 366.21, that the permanent plan for the child is that he or
16 she will be returned and safely maintained in the home
17 within the extended time period. The court shall extend
18 the time period only if it finds that there is a substantial
19 probability that the child will be returned to the physical
20 custody of his or her parent or guardian within the
21 extended time period or that reasonable services have not
22 been provided to the parent or guardian. If the court
23 extends the time period, the court shall specify the factual
24 basis for its conclusion that there is a substantial
25 probability that the child will be returned to the physical
26 custody of his or her parent or guardian within the
27 extended time period. The court also shall make findings
28 pursuant to subdivision (a) of Section 366 and subdivision
29 (e) of Section 358.1.

30 When counseling or other treatment services are
31 ordered, the parent or guardian shall be ordered to
32 participate in those services, unless the parent's or
33 guardian's participation is deemed by the court to be
34 inappropriate or potentially detrimental to the child.
35 Physical custody of the child by the parents or guardians
36 during the applicable time period under paragraph (1),
37 (2), or (3) shall not serve to interrupt the running of the
38 period. If at the end of the applicable time period, a child
39 cannot be safely returned to the care and custody of a
40 parent or guardian without court supervision, but the



1 child clearly desires contact with the parent or guardian,
2 the court shall take the child's desire into account in
3 devising a permanency plan.

4 In cases where the child was under the age of three
5 years on the date of the initial removal from the physical
6 custody of his or her parent or guardian or is a member
7 of a sibling group as described in paragraph (3), the court
8 shall inform the parent or guardian that the failure of the
9 parent or guardian to participate regularly in any
10 court-ordered treatment programs or to cooperate or
11 avail himself or herself of services provided as part of the
12 child welfare services case plan may result in a
13 termination of efforts to reunify the family after six
14 months. The court shall inform the parent or guardian of
15 the factors used in subdivision (e) of Section 366.21 to
16 determine whether to limit services to six months for
17 some or all members of a sibling group as described in
18 paragraph (3).

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

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

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

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

39 (3) That the child or a sibling of the child has been
40 previously adjudicated a dependent pursuant to any



1 subdivision of Section 300 as a result of physical or sexual
2 abuse, that following that adjudication the child had been
3 removed from the custody of his or her parent or
4 guardian pursuant to Section 361, that the child has been
5 returned to the custody of the parent or guardian from
6 whom the child had been taken originally, and that the
7 child is being removed pursuant to Section 361, due to
8 additional physical or sexual abuse.

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

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

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

22 A finding of severe sexual abuse, for the purposes of this
23 subdivision, may be based on, but is not limited to, sexual
24 intercourse, or stimulation involving genital-genital,
25 oral-genital, anal-genital, or oral-anal contact, whether
26 between the parent or guardian and the child or a sibling
27 or half-sibling of the child, or between the child or a
28 sibling or half-sibling of the child and another person or
29 animal with the actual or implied consent of the parent
30 or guardian; or the penetration or manipulation of the
31 child's, sibling's, or half-sibling's genital organs or rectum
32 by any animate or inanimate object for the sexual
33 gratification of the parent or guardian, or for the sexual
34 gratification of another person with the actual or implied
35 consent of the parent or guardian.

36 A finding of the infliction of severe physical harm, for
37 the purposes of this subdivision, may be based on, but is
38 not limited to, deliberate and serious injury inflicted to or
39 on a child's body or the body of a sibling or half-sibling of
40 the child by an act or omission of the parent or guardian,



1 or of another individual or animal with the consent of the
2 parent or guardian; deliberate and torturous
3 confinement of the child, sibling, or half-sibling in a closed
4 space; or any other torturous act or omission that would
5 be reasonably understood to cause serious emotional
6 damage.

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

10 (8) That the child was conceived by means of the
11 commission of an offense listed in Section 288 or 288.5 of
12 the Penal Code, or by an act committed outside of this
13 state that, if committed in this state, would constitute one
14 of those offenses. This paragraph only applies to the
15 parent who committed the offense or act.

16 (9) That the child has been found to be a child
17 described in subdivision (g) of Section 300, that the
18 parent or guardian of the child willfully abandoned the
19 child, and the court finds that the abandonment itself
20 constituted a serious danger to the child; or that the
21 parent or other person having custody of the child
22 voluntarily surrendered physical custody of the child
23 pursuant to Section 1799.101 of the Health and Safety
24 Code. For the purposes of this paragraph, “serious
25 danger” means that without the intervention of another
26 person or agency, the child would have sustained severe
27 or permanent disability, injury, illness, or death. For
28 purposes of this paragraph, “willful abandonment” shall
29 not be construed as actions taken in good faith by the
30 parent without the intent of placing the child in serious
31 danger.

32 (10) That (A) the court ordered termination of
33 reunification services for any siblings or half-siblings of
34 the child because the parent or guardian failed to reunify
35 with the sibling or half-sibling after the sibling or
36 half-sibling had been removed from that parent or
37 guardian pursuant to Section 361 and that parent or
38 guardian is the same parent or guardian described in
39 subdivision (a), or (B) the parental rights of a parent or
40 guardian over any sibling or half-sibling of the child had



1 been permanently severed, and that, according to the
2 findings of the court, this parent or guardian has not
3 subsequently made a reasonable effort to treat the
4 problems that led to removal of the sibling or half-sibling
5 of that child from that parent or guardian.

6 (11) That the parent or guardian of the child has been
7 convicted of a violent felony, as defined in subdivision (c)
8 of Section 667.5 of the Penal Code.

9 (12) That the parent or guardian of the child has a
10 history of extensive, abusive, and chronic use of drugs or
11 alcohol and has resisted prior treatment for this problem
12 during a three-year period immediately prior to the filing
13 of the petition that brought that child to the court's
14 attention, or has failed or refused to comply with a
15 program of drug or alcohol treatment described in the
16 case plan required by Section 358.1 on at least two prior
17 occasions, even though the programs identified were
18 available and accessible.

19 (13) That the parent or guardian of the child has
20 advised the court that he or she is not interested in
21 receiving family maintenance or family reunification
22 services or having the child returned to or placed in his
23 or her custody and does not wish to receive family
24 maintenance or reunification services.

25 The parent or guardian shall be represented by counsel
26 and shall execute a waiver of services form to be adopted
27 by the Judicial Council. The court shall advise the parent
28 or guardian of any right to services and of the possible
29 consequences of a waiver of services, including the
30 termination of parental rights and placement of the child
31 for adoption. The court shall not accept the waiver of
32 services unless it states on the record its finding that the
33 parent or guardian has knowingly and intelligently
34 waived the right to services.

35 (14) That the parent or guardian has on one or more
36 occasions willfully abducted the child or child's sibling or
37 half-sibling from his or her placement and refused to
38 disclose the child's or child's sibling or half-sibling's
39 whereabouts, refused to return physical custody of the
40 child or child's sibling or half-sibling to his or her



1 placement, or refused to return physical custody of the
2 child or child's sibling or half-sibling to the social worker.

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

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

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

32 The failure of the parent to respond to previous
33 services, the fact that the child was abused while the
34 parent was under the influence of drugs or alcohol, a past
35 history of violent behavior, or testimony by a competent
36 professional that the parent's behavior is unlikely to be
37 changed by services are among the factors indicating that
38 reunification services are unlikely to be successful. The
39 fact that a parent or guardian is no longer living with an
40 individual who severely abused the child may be



1 considered in deciding that reunification services are
2 likely to be successful, provided that the court shall
3 consider any pattern of behavior on the part of the parent
4 that has exposed the child to repeated abuse.

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

11 (e) (1) If the parent or guardian is incarcerated or
12 institutionalized, the court shall order reasonable services
13 unless the court determines, by clear and convincing
14 evidence, those services would be detrimental to the
15 child. In determining detriment, the court shall consider
16 the age of the child, the degree of parent-child bonding,
17 the length of the sentence, the nature of the treatment,
18 the nature of the crime or illness, the degree of detriment
19 to the child if services are not offered and, for children 10
20 years of age or older, the child's attitude toward the
21 implementation of family reunification services, and any
22 other appropriate factors. Reunification services are
23 subject to the applicable time limitations imposed in
24 subdivision (a). Services may include, but shall not be
25 limited to, all of the following:

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

28 (B) Transportation services, where appropriate.

29 (C) Visitation services, where appropriate.

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

33 An incarcerated parent may be required to attend
34 counseling, parenting classes, or vocational training
35 programs as part of the service plan if these programs are
36 available.

37 (2) The presiding judge of the juvenile court of each
38 county may convene representatives of the county
39 welfare department, the sheriff's department, and other
40 appropriate entities for the purpose of developing and



1 entering into protocols for ensuring the notification,
2 transportation, and presence of an incarcerated or
3 institutionalized parent at all court hearings involving
4 proceedings affecting the child pursuant to Section 2625
5 of the Penal Code.

6 (3) Notwithstanding any other provision of law, if the
7 incarcerated parent is a woman seeking to participate in
8 the community treatment program operated by the
9 Department of Corrections pursuant to Chapter 4.8
10 (commencing with Section 1174) of Title 7 of Part 2 of,
11 Chapter 4 (commencing with Section 3410) of Title 2 of
12 Part 3 of, the Penal Code, the court shall determine
13 whether the parent's participation in a program is in the
14 child's best interest and whether it is suitable to meet the
15 needs of the parent and child.

16 (f) If the court, pursuant to paragraph (2), (3), (4),
17 (5), (6), (7), (8), (9), (10), (11), (12), (13), or (14) of
18 subdivision (b) or paragraph (1) of subdivision (e), does
19 not order reunification services, it shall, at the
20 dispositional hearing, that shall include a permanency
21 hearing, determine if a hearing under Section 366.26 shall
22 be set in order to determine whether adoption,
23 guardianship, or long-term foster care is the most
24 appropriate plan for the child. If the court so determines,
25 it shall conduct the hearing pursuant to Section 366.26
26 within 120 days after the dispositional hearing. However,
27 the court shall not schedule a hearing so long as the other
28 parent is being provided reunification services pursuant
29 to subdivision (a). The court may continue to permit the
30 parent to visit the child unless it finds that visitation
31 would be detrimental to the child.

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

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



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

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

11 (4) A preliminary assessment of the eligibility and
12 commitment of any identified prospective adoptive
13 parent or guardian, particularly the caretaker, to include
14 a social history including screening for criminal records
15 and prior referrals for child abuse or neglect, the
16 capability to meet the child’s needs, and the
17 understanding of the legal and financial rights and
18 responsibilities of adoption and guardianship. If a
19 proposed guardian is a relative of the minor, and the
20 relative was assessed for foster care placement of the
21 minor prior to January 1, 1998, the assessment shall also
22 consider, but need not be limited to, all of the factors
23 specified in subdivision (a) of Section 361.3. As used in this
24 paragraph, “relative” means an adult who is related to the
25 minor by blood, adoption, or affinity within the fifth
26 degree of kinship, including stepparents, stepsiblings,
27 and all relatives whose status is preceded by the words
28 “great,” “great-great,” or “grand,” or the spouse of any of
29 those persons even if the marriage was terminated by
30 death or dissolution.

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



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

3 (h) In determining whether reunification services will
4 benefit the child pursuant to paragraph (6) or (7) of
5 subdivision (b), the court shall consider any information
6 it deems relevant, including the following factors:

7 (1) The specific act or omission comprising the severe
8 sexual abuse or the severe physical harm inflicted on the
9 child or the child's sibling or half-sibling.

10 (2) The circumstances under which the abuse or harm
11 was inflicted on the child or the child's sibling or
12 half-sibling.

13 (3) The severity of the emotional trauma suffered by
14 the child or the child's sibling or half-sibling.

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

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

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

22 (i) The court shall read into the record the basis for a
23 finding of severe sexual abuse or the infliction of severe
24 physical harm under paragraph (6) of subdivision (b),
25 and shall also specify the factual findings used to
26 determine that the provision of reunification services to
27 the offending parent or guardian would not benefit the
28 child.

29 (j) *This section shall be repealed on January 1, 2006,*
30 *unless a later enacted statute extends or deletes that date.*

31 *SEC. 5.5. Section 361.5 is added to the Welfare and*
32 *Institutions Code, to read:*

33 *361.5. (a) Except as provided in subdivision (b) of*
34 *this section or when the parent has voluntarily*
35 *relinquished the child and the relinquishment has been*
36 *filed with the State Department of Social Services, or*
37 *upon the establishment of an order of guardianship*
38 *pursuant to Section 360, whenever a child is removed*
39 *from a parent's or guardian's custody, the juvenile court*
40 *shall order the social worker to provide child welfare*



1 services to the child and the child's mother and statutorily
2 presumed father or guardians. Upon a finding and
3 declaration of paternity by the juvenile court or proof of
4 a prior declaration of paternity by any court of competent
5 jurisdiction, the juvenile court may order services for the
6 child and the biological father, if the court determines
7 that the services will benefit the child. Child welfare
8 services, when provided, shall be provided as follows:

9 (1) For a child who, on the date of initial removal from
10 the physical custody of his or her parent or guardian, was
11 three years of age or older, court-ordered services shall
12 not exceed a period of 12 months from the date the child
13 entered foster care, except as otherwise provided in
14 paragraph (3).

15 (2) For a child who, on the date of initial removal from
16 the physical custody of his or her parent or guardian, was
17 under the age of three years, court-ordered services shall
18 not exceed a period of six months from the date the child
19 entered foster care.

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

33 Regardless of the age of the child, a child shall be
34 deemed to have entered foster care on the earlier of the
35 date of the jurisdictional hearing held pursuant to Section
36 356 or the date that is 60 days after the date on which the
37 child was initially removed from the physical custody of
38 his or her parent or guardian.

39 Notwithstanding paragraphs (1), (2), and (3),
40 court-ordered services may be extended up to a



1 maximum time period not to exceed 18 months after the
2 date the child was originally removed from physical
3 custody of his or her parent or guardian if it can be shown,
4 at the hearing held pursuant to subdivision (f) of Section
5 366.21, that the permanent plan for the child is that he or
6 she will be returned and safely maintained in the home
7 within the extended time period. The court shall extend
8 the time period only if it finds that there is a substantial
9 probability that the child will be returned to the physical
10 custody of his or her parent or guardian within the
11 extended time period or that reasonable services have not
12 been provided to the parent or guardian. If the court
13 extends the time period, the court shall specify the factual
14 basis for its conclusion that there is a substantial
15 probability that the child will be returned to the physical
16 custody of his or her parent or guardian within the
17 extended time period. The court also shall make findings
18 pursuant to subdivision (a) of Section 366 and subdivision
19 (e) of Section 358.1.

20 When counseling or other treatment services are
21 ordered, the parent or guardian shall be ordered to
22 participate in those services, unless the parent's or
23 guardian's participation is deemed by the court to be
24 inappropriate or potentially detrimental to the child.
25 Physical custody of the child by the parents or guardians
26 during the applicable time period under paragraph (1),
27 (2), or (3) shall not serve to interrupt the running of the
28 period. If at the end of the applicable time period, a child
29 cannot be safely returned to the care and custody of a
30 parent or guardian without court supervision, but the
31 child clearly desires contact with the parent or guardian,
32 the court shall take the child's desire into account in
33 devising a permanency plan.

34 In cases where the child was under the age of three
35 years on the date of the initial removal from the physical
36 custody of his or her parent or guardian or is a member
37 of a sibling group as described in paragraph (3), the court
38 shall inform the parent or guardian that the failure of the
39 parent or guardian to participate regularly in any
40 court-ordered treatment programs or to cooperate or



1 avail himself or herself of services provided as part of the
2 child welfare services case plan may result in a
3 termination of efforts to reunify the family after six
4 months. The court shall inform the parent or guardian of
5 the factors used in subdivision (e) of Section 366.21 to
6 determine whether to limit services to six months for
7 some or all members of a sibling group as described in
8 paragraph (3).

9 Except in cases where, pursuant to subdivision (b), the
10 court does not order reunification services, the court shall
11 inform the parent or parents of Section 366.26 and shall
12 specify that the parent's or parents' parental rights may
13 be terminated.

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

18 (1) That the whereabouts of the parent or guardian is
19 unknown. A finding pursuant to this paragraph shall be
20 supported by an affidavit or by proof that a reasonably
21 diligent search has failed to locate the parent or guardian.
22 The posting or publication of notices is not required in
23 that search.

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

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

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



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

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

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

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

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



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

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

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

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

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



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

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

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

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

30 (c) In deciding whether to order reunification in any
31 case in which this section applies, the court shall hold a
32 dispositional hearing. The social worker shall prepare a
33 report that discusses whether reunification services shall
34 be provided. When it is alleged, pursuant to paragraph
35 (2) of subdivision (b), that the parent is incapable of
36 utilizing services due to mental disability, the court shall
37 order reunification services unless competent evidence
38 from mental health professionals establishes that, even
39 with the provision of services, the parent is unlikely to be



1 *capable of adequately caring for the child within the time*
2 *limits specified in subdivision (a).*

3 *The court shall not order reunification for a parent or*
4 *guardian described in paragraph (3), (4), (6), (7), (8),*
5 *(9), (10), (11), (12), (13), or (14) of subdivision (b)*
6 *unless the court finds, by clear and convincing evidence,*
7 *that reunification is in the best interest of the child.*

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

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

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

39 *(e) (1) If the parent or guardian is incarcerated or*
40 *institutionalized, the court shall order reasonable services*



1 unless the court determines, by clear and convincing
2 evidence, those services would be detrimental to the
3 child. In determining detriment, the court shall consider
4 the age of the child, the degree of parent-child bonding,
5 the length of the sentence, the nature of the treatment,
6 the nature of the crime or illness, the degree of detriment
7 to the child if services are not offered and, for children 10
8 years of age or older, the child's attitude toward the
9 implementation of family reunification services, and any
10 other appropriate factors. Reunification services are
11 subject to the applicable time limitations imposed in
12 subdivision (a). Services may include, but shall not be
13 limited to, all of the following:

14 (A) Maintaining contact between the parent and child
15 through collect telephone calls.

16 (B) Transportation services, where appropriate.

17 (C) Visitation services, where appropriate.

18 (D) Reasonable services to extended family members
19 or foster parents providing care for the child if the
20 services are not detrimental to the child.

21 An incarcerated parent may be required to attend
22 counseling, parenting classes, or vocational training
23 programs as part of the service plan if these programs are
24 available.

25 (2) The presiding judge of the juvenile court of each
26 county may convene representatives of the county
27 welfare department, the sheriff's department, and other
28 appropriate entities for the purpose of developing and
29 entering into protocols for ensuring the notification,
30 transportation, and presence of an incarcerated or
31 institutionalized parent at all court hearings involving
32 proceedings affecting the child pursuant to Section 2625
33 of the Penal Code.

34 (3) Notwithstanding any other provision of law, if the
35 incarcerated parent is a woman seeking to participate in
36 the community treatment program operated by the
37 Department of Corrections pursuant to Chapter 4.8
38 (commencing with Section 1174) of Title 7 of Part 2 of,
39 Chapter 4 (commencing with Section 3410) of Title 2 of
40 Part 3 of, the Penal Code, the court shall determine



1 *whether the parent's participation in a program is in the*
2 *child's best interest and whether it is suitable to meet the*
3 *needs of the parent and child.*

4 *(f) If the court, pursuant to paragraph (2), (3), (4),*
5 *(5), (6), (7), (8), (9), (10), (11), (12), (13), or (14) of*
6 *subdivision (b) or paragraph (1) of subdivision (e), does*
7 *not order reunification services, it shall, at the*
8 *dispositional hearing, that shall include a permanency*
9 *hearing, determine if a hearing under Section 366.26 shall*
10 *be set in order to determine whether adoption,*
11 *guardianship, or long-term foster care is the most*
12 *appropriate plan for the child. If the court so determines,*
13 *it shall conduct the hearing pursuant to Section 366.26*
14 *within 120 days after the dispositional hearing. However,*
15 *the court shall not schedule a hearing so long as the other*
16 *parent is being provided reunification services pursuant*
17 *to subdivision (a). The court may continue to permit the*
18 *parent to visit the child unless it finds that visitation*
19 *would be detrimental to the child.*

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

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

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

37 *(3) An evaluation of the child's medical,*
38 *developmental, scholastic, mental, and emotional status.*

39 *(4) A preliminary assessment of the eligibility and*
40 *commitment of any identified prospective adoptive*



1 *parent or guardian, particularly the caretaker, to include*
2 *a social history including screening for criminal records*
3 *and prior referrals for child abuse or neglect, the*
4 *capability to meet the child's needs, and the*
5 *understanding of the legal and financial rights and*
6 *responsibilities of adoption and guardianship. If a*
7 *proposed guardian is a relative of the minor, and the*
8 *relative was assessed for foster care placement of the*
9 *minor prior to January 1, 1998, the assessment shall also*
10 *consider, but need not be limited to, all of the factors*
11 *specified in subdivision (a) of Section 361.3. As used in this*
12 *paragraph, "relative" means an adult who is related to the*
13 *minor by blood, adoption, or affinity within the fifth*
14 *degree of kinship, including stepparents, stepsiblings,*
15 *and all relatives whose status is preceded by the words*
16 *"great," "great-great," or "grand," or the spouse of any of*
17 *those persons even if the marriage was terminated by*
18 *death or dissolution.*

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

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

30 *(h) In determining whether reunification services will*
31 *benefit the child pursuant to paragraph (6) or (7) of*
32 *subdivision (b), the court shall consider any information*
33 *it deems relevant, including the following factors:*

34 *(1) The specific act or omission comprising the severe*
35 *sexual abuse or the severe physical harm inflicted on the*
36 *child or the child's sibling or half-sibling.*

37 *(2) The circumstances under which the abuse or harm*
38 *was inflicted on the child or the child's sibling or*
39 *half-sibling.*



1 (3) *The severity of the emotional trauma suffered by*
2 *the child or the child's sibling or half-sibling.*

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

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

8 (6) *Whether or not the child desires to be reunified*
9 *with the offending parent or guardian.*

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

17 SEC. 6. Section 14005.24 is added to the Welfare and
18 Institutions Code, to read:

19 14005.24. (a) A child, physical custody of whom has
20 been voluntarily surrendered pursuant to Section
21 1799.101 of the Health and Safety Code, is automatically
22 eligible under this chapter.

23 (b) *This section shall be repealed on January 1, 2006,*
24 *unless a later enacted statute extends or deletes that date.*

25 SEC. 6.1. Sections 3.5, 4.5, and 5.5 of this act shall
26 become operative on January 1, 2006.

27 SEC. 6.5. On or before January 1, 2003, January 1, 2004,
28 and January 1, 2005, the State Department of Social
29 Services shall report to the Legislature regarding the
30 effect of this act, including, but not limited to, the
31 following information:

32 (a) *The number of children one year old or younger*
33 *who are found abandoned, dead or alive, in the state for*
34 *each year in which reporting is required under this act.*

35 (b) *The number of infants surrendered pursuant to*
36 *this act, with their approximate age.*

37 (c) *The number of medical history questionnaires*
38 *completed in those cases.*

39 (d) *The number of instances in which a parent or legal*
40 *guardian seeks to reclaim custody of a surrendered child,*



1 *both during and after the initial 14-day period following*
2 *surrender, and the outcome of those cases.*

3 *(e) Whether a parent or guardian seeking to reclaim*
4 *custody is the individual who surrendered the child.*

5 *(f) The number of children surrendered pursuant to*
6 *this act who show signs of neglect or abuse and the*
7 *disposition of those cases.*

8 *(g) The number of parents or legal guardians*
9 *eventually located and contacted by social workers.*

10 SEC. 7. Notwithstanding Section 17610 of the
11 Government Code, if the Commission on State Mandates
12 determines that this act contains costs mandated by the
13 state, reimbursement to local agencies and school
14 districts for those costs shall be made pursuant to Part 7
15 (commencing with Section 17500) of Division 4 of Title
16 2 of the Government Code. If the statewide cost of the
17 claim for reimbursement does not exceed one million
18 dollars (\$1,000,000), reimbursement shall be made from
19 the State Mandates Claims Fund.

