

**Introduced by Senators Dutton, Scott, and Simitian
(Coauthors: Senators Chesbro, Cox, Ducheny, Escutia, and
Runner)**

January 25, 2005

An act to amend Section 1255.7 of the Health and Safety Code, to amend Section 271.5 of the Penal Code, and to amend Section 14005.24 of, and to amend and repeal Sections 300 and 361.5 of, the Welfare and Institutions Code, relating to abandonment of newborns.

LEGISLATIVE COUNSEL'S DIGEST

SB 116, as introduced, Dutton. 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 years 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 years.

Existing law, until 2006, provides 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 an employee on duty at a public or private hospital emergency room, or any additional location designated by the board of supervisors. Existing law provides that within 48 hours of accepting the physical custody of a child who is surrendered pursuant to these provisions, the personnel that have custody of the child must notify child protective services or a county agency providing child welfare services. Existing law requires that agency to immediately notify the State Department of Social Services

of each child to whom this provision applies upon taking temporary custody of the child.

This bill would delete that date there by extending those provisions indefinitely. By expanding the duties of local public entities and employees, the bill would impose a state-mandated local program.

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

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

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

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

1 SECTION 1. Section 1255.7 of the Health and Safety Code is
2 amended to read:
3 1255.7. (a) (1) For purposes of this section, “safe-surrender
4 site” means either of the following:
5 (A) A location designated by the board of supervisors of a
6 county to be responsible for accepting physical custody of a
7 minor child who is 72 hours old or younger from a parent or
8 individual who has lawful custody of the child and who
9 surrenders the child pursuant to Section 271.5 of the Penal Code.
10 (B) A location within a public or private hospital that is
11 designated by that hospital to be responsible for accepting
12 physical custody of a minor child who is 72 hours old or younger
13 from a parent or individual who has lawful custody of the child
14 and who surrenders the child pursuant to Section 271.5 of the
15 Penal Code.
16 (2) For purposes of this section, “personnel” means any person
17 who is an officer or employee of a safe-surrender site or who has
18 staff privileges at the site.
19 (3) A hospital and any safe-surrender site designated by the
20 county board of supervisors shall post a sign utilizing a statewide
21 logo that has been adopted by the State Department of Social
22 Services that notifies the public of the location where a minor

1 child 72 hours old or younger may be safely surrendered
2 pursuant to this section.

3 (b) Any personnel on duty at a safe-surrender site shall accept
4 physical custody of a minor child 72 hours old or younger
5 pursuant to this section if a parent or other individual having
6 lawful custody of the child voluntarily surrenders physical
7 custody of the child to personnel who are on duty at the
8 safe-surrender site. Safe-surrender site personnel shall ensure that
9 a qualified person does all of the following:

10 (1) Places a coded, confidential ankle bracelet on the child.

11 (2) Provides, or makes a good faith effort to provide, to the
12 parent or other individual surrendering the child a copy of a
13 unique, coded, confidential ankle bracelet identification in order
14 to facilitate reclaiming the child pursuant to subdivision (f).
15 However, possession of the ankle bracelet identification, in and
16 of itself, does not establish parentage or a right to custody of the
17 child.

18 (3) Provides, or makes a good faith effort to provide, to the
19 parent or other individual surrendering the child a medical
20 information questionnaire, which may be declined, voluntarily
21 filled out and returned at the time the child is surrendered, or
22 later filled out and mailed in the envelope provided for this
23 purpose. This medical information questionnaire shall not require
24 any identifying information about the child or the parent or
25 individual surrendering the child, other than the identification
26 code provided in the ankle bracelet placed on the child. Every
27 questionnaire provided pursuant to this section shall begin with
28 the following notice in no less than 12-point type:

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

39 (c) Personnel of a safe-surrender site that has physical custody
40 of a minor child pursuant to this section shall ensure that a

1 medical screening examination and any necessary medical care is
2 provided to the minor child. Notwithstanding any other provision
3 of law, the consent of the parent or other relative shall not be
4 required to provide that care to the minor child.

5 (d) (1) As soon as possible, but in no event later than 48 hours
6 after the physical custody of a child has been accepted pursuant
7 to this section, personnel of the safe-surrender site that has
8 physical custody of the child shall notify child protective services
9 or a county agency providing child welfare services pursuant to
10 Section 16501 of the Welfare and Institutions Code, that the
11 safe-surrender site has physical custody of the child pursuant to
12 this section. In addition, any medical information pertinent to the
13 child's health, including, but not limited to, information obtained
14 pursuant to the medical information questionnaire described in
15 paragraph (3) of subdivision (b) that has been received by or is in
16 the possession of the safe-surrender site shall be provided to that
17 child protective services or county agency.

18 (2) Any personal identifying information that pertains to a
19 parent or individual who surrenders a child that is obtained
20 pursuant to the medical information questionnaire is confidential
21 and shall be exempt from disclosure by the child protective
22 services or county agency under the California Public Records
23 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
24 of Title 1 of the Government Code). Any personal identifying
25 information that pertains to a parent or individual who surrenders
26 a child shall be redacted from any medical information provided
27 to child protective services or the county agency providing child
28 welfare services.

29 (e) Child protective services or the county agency providing
30 child welfare services pursuant to Section 16501 of the Welfare
31 and Institutions Code shall assume temporary custody of the
32 child pursuant to Section 300 of the Welfare and Institutions
33 Code immediately upon receipt of notice under subdivision (d).
34 Child protective services or the county agency providing child
35 welfare services pursuant to Section 16501 of the Welfare and
36 Institutions Code shall immediately investigate the circumstances
37 of the case and file a petition pursuant to Section 311 of the
38 Welfare and Institutions Code. Child protective services or the
39 county agency providing child welfare services pursuant to
40 Section 16501 of the Welfare and Institutions Code shall

1 immediately notify the State Department of Social Services of
2 each child to whom this subdivision applies upon taking
3 temporary custody of the child pursuant to Section 300 of the
4 Welfare and Institutions Code. As soon as possible, but no later
5 than 24 hours after temporary custody is assumed, child
6 protective services or the county agency providing child welfare
7 services pursuant to Section 16501 of the Welfare and
8 Institutions Code shall report all known identifying information
9 concerning the child, except personal identifying information
10 pertaining to the parent or individual who surrendered the child,
11 to the California Missing Children Clearinghouse and to the
12 National Crime Information Center.

13 (f) If, prior to the filing of a petition under subdivision (e), a
14 parent or individual who has voluntarily surrendered a child
15 pursuant to this section requests that the safe-surrender site that
16 has physical custody of the child pursuant to this section return
17 the child and the safe-surrender site still has custody of the child,
18 personnel of the safe-surrender site shall either return the child to
19 the parent or individual or contact a child protective agency if
20 any personnel at the safe-surrender site knows or reasonably
21 suspects that the child has been the victim of child abuse or
22 neglect. The voluntary surrendering of a child pursuant to this
23 section is not in and of itself a sufficient basis for reporting child
24 abuse or neglect. The terms “child abuse,” “child protective
25 agency,” “mandated reporter,” “neglect,” and “reasonably
26 suspects” shall be given the same meanings as in Article 2.5
27 (commencing with Section 11164) of ~~Part 4~~ of Title 1 of *Part 4*
28 of the Penal Code.

29 (g) Subsequent to the filing of a petition under subdivision (e),
30 if within 14 days of the voluntary surrender described in this
31 section, the parent or individual who surrendered custody returns
32 to claim physical custody of the child, the child welfare agency
33 shall verify the identity of the parent or individual, conduct an
34 assessment of his or her circumstances and ability to parent, and
35 request that the juvenile court dismiss the petition for
36 dependency and order the release of the child, if the child welfare
37 agency determines that none of the conditions described in
38 subdivisions (a) to (d), inclusive, of Section 319 of the Welfare
39 and Institutions Code currently exist.

(h) A safe-surrender site, or personnel of the safe-surrender site, that accepts custody of a surrendered child pursuant to this section shall not be subject to civil, criminal, or administrative liability for accepting the child and caring for the child in the good faith belief that action is required or authorized by this section, including, but not limited to, instances where the child is older than 72 hours or the parent or individual surrendering the child did not have lawful physical custody of the child. This subdivision does not confer immunity from liability for personal injury or wrongful death, including, but not limited to, injury resulting from medical malpractice.

(i) (1) In order to encourage assistance to persons who voluntarily surrender physical custody of a child pursuant to this section or Section 271.5 of the Penal Code, no person who, without compensation and in good faith, provides assistance for the purpose of effecting the safe surrender of a minor 72 hours old or younger shall be civilly liable for injury to or death of the minor child as a result of any of his or her acts or omissions. This immunity does not apply to any act or omission constituting gross negligence, recklessness, or willful misconduct.

(2) For purposes of this section, “assistance” means transporting the minor child to the safe-surrender site as a person with lawful custody, or transporting or accompanying the parent or person with lawful custody at the request of that parent or person to effect the safe surrender, or performing any other act in good faith for the purpose of effecting the safe surrender of the minor.

(j) For purposes of this section “lawful custody” means physical custody of a minor 72 hours old or younger accepted by a person from a parent of the minor, who the person believes in good faith is the parent of the minor, with the specific intent and promise of effecting the safe surrender of the minor.

(k) Any identifying information that pertains to a parent or individual who surrenders a child pursuant to this section, that is obtained as a result of the questionnaire described in paragraph (3) of subdivision (b) or in any other manner, is confidential, shall be exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), and shall not be

1 disclosed by any personnel of a safe-surrender site that accepts
2 custody of a child pursuant to this section.

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

5 SEC. 2. Section 271.5 of the Penal Code is amended to read:

6 271.5. (a) No parent or other individual having lawful
7 custody of a minor child 72 hours old or younger may be
8 prosecuted for a violation of Section 270, 270.5, 271, or 271a if
9 he or she voluntarily surrenders physical custody of the child to
10 personnel on duty at a safe-surrender site.

11 (b) For purposes of this section, “safe-surrender site” has the
12 same meaning as defined in paragraph (1) of subdivision (a) of
13 Section 1255.7 of the Health and Safety Code.

14 (c) (1) For purposes of this section, “lawful custody” has the
15 same meaning as defined in subdivision (k) of Section 1255.7 of
16 the Health and Safety Code.

17 (2) For purposes of this section, “personnel” has the same
18 meaning as defined in paragraph (2) of subdivision (a) of Section
19 1255.7 of the Health and Safety Code.

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

22 SEC. 3. Section 300 of the Welfare and Institutions Code, as
23 amended by Section 3 of Chapter 824 of the Statutes of 2000, is
24 amended to read:

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

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

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

(c) The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. No child shall be

1 found to be a person described by this subdivision if the willful
2 failure of the parent or guardian to provide adequate mental
3 health treatment is based on a sincerely held religious belief and
4 if a less intrusive judicial intervention is available.

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

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

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

32 (g) The child has been left without any provision for support;
33 physical custody of the child has been voluntarily surrendered
34 pursuant to Section 1255.7 of the Health and Safety Code and the
35 child has not been reclaimed within the 14-day period specified
36 in subdivision (e) of that section; the child’s parent has been
37 incarcerated or institutionalized and cannot arrange for the care
38 of the child; or a relative or other adult custodian with whom the
39 child resides or has been left is unwilling or unable to provide
40 care or support for the child, the whereabouts of the parent are

1 unknown, and reasonable efforts to locate the parent have been
2 unsuccessful.

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

6 (i) The child has been subjected to an act or acts of cruelty by
7 the parent or guardian or a member of his or her household, or
8 the parent or guardian has failed to adequately protect the child
9 from an act or acts of cruelty when the parent or guardian knew
10 or reasonably should have known that the child was in danger of
11 being subjected to an act or acts of cruelty.

12 (j) The child's sibling has been abused or neglected, as defined
13 in subdivision (a), (b), (d), (e), or (i), and there is a substantial
14 risk that the child will be abused or neglected, as defined in those
15 subdivisions. The court shall consider the circumstances
16 surrounding the abuse or neglect of the sibling, the age and
17 gender of each child, the nature of the abuse or neglect of the
18 sibling, the mental condition of the parent or guardian, and any
19 other factors the court considers probative in determining
20 whether there is a substantial risk to the child.

21 It is the intent of the Legislature that nothing in this section
22 disrupt the family unnecessarily or intrude inappropriately into
23 family life, prohibit the use of reasonable methods of parental
24 discipline, or prescribe a particular method of parenting. Further,
25 nothing in this section is intended to limit the offering of
26 voluntary services to those families in need of assistance but who
27 do not come within the descriptions of this section. To the extent
28 that savings accrue to the state from child welfare services
29 funding obtained as a result of the enactment of the act that
30 enacted this section, those savings shall be used to promote
31 services which support family maintenance and family
32 reunification plans, such as client transportation, out-of-home
33 respite care, parenting training, and the provision of temporary or
34 emergency in-home caretakers and persons teaching and
35 demonstrating homemaking skills. The Legislature further
36 declares that a physical disability, such as blindness or deafness,
37 is no bar to the raising of happy and well-adjusted children and
38 that a court's determination pursuant to this section shall center
39 upon whether a parent's disability prevents him or her from
40 exercising care and control.

1 As used in this section “guardian” means the legal guardian of
2 the child.

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

5 SEC. 4. Section 300 of the Welfare and Institutions Code, as
6 added by Section 3.5 of Chapter 824 of the Statutes of 2000, is
7 repealed.

8 ~~300. Any child who comes within any of the following~~
9 ~~descriptions is within the jurisdiction of the juvenile court which~~
10 ~~may adjudge that person to be a dependent child of the court:~~

11 ~~(a) The child has suffered, or there is a substantial risk that the~~
12 ~~child will suffer, serious physical harm inflicted nonaccidentally~~
13 ~~upon the child by the child’s parent or guardian. For the purposes~~
14 ~~of this subdivision, a court may find there is a substantial risk of~~
15 ~~serious future injury based on the manner in which a less serious~~
16 ~~injury was inflicted, a history of repeated inflictions of injuries~~
17 ~~on the child or the child’s siblings, or a combination of these and~~
18 ~~other actions by the parent or guardian which indicate the child is~~
19 ~~at risk of serious physical harm. For purposes of this subdivision,~~
20 ~~“serious physical harm” does not include reasonable and~~
21 ~~age-appropriate spanking to the buttocks where there is no~~
22 ~~evidence of serious physical injury.~~

23 ~~(b) The child has suffered, or there is a substantial risk that the~~
24 ~~child will suffer, serious physical harm or illness, as a result of~~
25 ~~the failure or inability of his or her parent or guardian to~~
26 ~~adequately supervise or protect the child, or the willful or~~
27 ~~negligent failure of the child’s parent or guardian to adequately~~
28 ~~supervise or protect the child from the conduct of the custodian~~
29 ~~with whom the child has been left, or by the willful or negligent~~
30 ~~failure of the parent or guardian to provide the child with~~
31 ~~adequate food, clothing, shelter, or medical treatment, or by the~~
32 ~~inability of the parent or guardian to provide regular care for the~~
33 ~~child due to the parent’s or guardian’s mental illness,~~
34 ~~developmental disability, or substance abuse. No child shall be~~
35 ~~found to be a person described by this subdivision solely due to~~
36 ~~the lack of an emergency shelter for the family. Whenever it is~~
37 ~~alleged that a child comes within the jurisdiction of the court on~~
38 ~~the basis of the parent’s or guardian’s willful failure to provide~~
39 ~~adequate medical treatment or specific decision to provide~~
40 ~~spiritual treatment through prayer, the court shall give deference~~

1 to the parent's or guardian's medical treatment, nontreatment, or
2 spiritual treatment through prayer alone in accordance with the
3 tenets and practices of a recognized church or religious
4 denomination, by an accredited practitioner thereof, and shall not
5 assume jurisdiction unless necessary to protect the child from
6 suffering serious physical harm or illness. In making its
7 determination, the court shall consider (1) the nature of the
8 treatment proposed by the parent or guardian, (2) the risks to the
9 child posed by the course of treatment or nontreatment proposed
10 by the parent or guardian, (3) the risk, if any, of the course of
11 treatment being proposed by the petitioning agency, and (4) the
12 likely success of the courses of treatment or nontreatment
13 proposed by the parent or guardian and agency. The child shall
14 continue to be a dependent child pursuant to this subdivision only
15 so long as is necessary to protect the child from risk of suffering
16 serious physical harm or illness.

17 (e) The child is suffering serious emotional damage, or is at
18 substantial risk of suffering serious emotional damage, evidenced
19 by severe anxiety, depression, withdrawal, or untoward
20 aggressive behavior toward self or others, as a result of the
21 conduct of the parent or guardian or who has no parent or
22 guardian capable of providing appropriate care. No child shall be
23 found to be a person described by this subdivision if the willful
24 failure of the parent or guardian to provide adequate mental
25 health treatment is based on a sincerely held religious belief and
26 if a less intrusive judicial intervention is available.

27 (d) The child has been sexually abused, or there is a
28 substantial risk that the child will be sexually abused, as defined
29 in Section 11165.1 of the Penal Code, by his or her parent or
30 guardian or a member of his or her household, or the parent or
31 guardian has failed to adequately protect the child from sexual
32 abuse when the parent or guardian knew or reasonably should
33 have known that the child was in danger of sexual abuse.

34 (e) The child is under the age of five and has suffered severe
35 physical abuse by a parent, or by any person known by the
36 parent, if the parent knew or reasonably should have known that
37 the person was physically abusing the child. For the purposes of
38 this subdivision, "severe physical abuse" means any of the
39 following: any single act of abuse which causes physical trauma
40 of sufficient severity that, if left untreated, would cause

1 permanent physical disfigurement, permanent physical disability,
2 or death; any single act of sexual abuse which causes significant
3 bleeding, deep bruising, or significant external or internal
4 swelling; or more than one act of physical abuse, each of which
5 causes bleeding, deep bruising, significant external or internal
6 swelling, bone fracture, or unconsciousness; or the willful,
7 prolonged failure to provide adequate food. A child may not be
8 removed from the physical custody of his or her parent or
9 guardian on the basis of a finding of severe physical abuse unless
10 the social worker has made an allegation of severe physical abuse
11 pursuant to Section 332.

12 (f) ~~The child's parent or guardian caused the death of another~~
13 ~~child through abuse or neglect.~~

14 (g) ~~The child has been left without any provision for support;~~
15 ~~the child's parent has been incarcerated or institutionalized and~~
16 ~~cannot arrange for the care of the child; or a relative or other~~
17 ~~adult custodian with whom the child resides or has been left is~~
18 ~~unwilling or unable to provide care or support for the child, the~~
19 ~~whereabouts of the parent are unknown, and reasonable efforts to~~
20 ~~locate the parent have been unsuccessful.~~

21 (h) ~~The child has been freed for adoption by one or both~~
22 ~~parents for 12 months by either relinquishment or termination of~~
23 ~~parental rights or an adoption petition has not been granted.~~

24 (i) ~~The child has been subjected to an act or acts of cruelty by~~
25 ~~the parent or guardian or a member of his or her household, or~~
26 ~~the parent or guardian has failed to adequately protect the child~~
27 ~~from an act or acts of cruelty when the parent or guardian knew~~
28 ~~or reasonably should have known that the child was in danger of~~
29 ~~being subjected to an act or acts of cruelty.~~

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

39 It is the intent of the Legislature that nothing in this section
40 disrupt the family unnecessarily or intrude inappropriately into

~~family life, prohibit the use of reasonable methods of parental discipline, or prescribe a particular method of parenting. Further, nothing in this section is intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this section. To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to promote services which support family maintenance and family reunification plans, such as client transportation, out-of-home respite care, parenting training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating homemaking skills. The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to this section shall center upon whether a parent's disability prevents him or her from exercising care and control.~~

~~As used in this section, "guardian" means the legal guardian of the child.~~

SEC. 5. Section 361.5 of the Welfare and Institutions Code, as amended by Section 7 of Chapter 918 of the Statutes of 2002, is amended to read:

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

(1) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was three years of age or older, court-ordered services shall not exceed a period

1 of 12 months from the date the child entered foster care, except
2 as otherwise provided in paragraph (3).

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

7 (3) For the purpose of placing and maintaining a sibling group
8 together in a permanent home should reunification efforts fail,
9 for a child in a sibling group whose members were removed from
10 parental custody at the same time, and in which one member of
11 the sibling group was under the age of three years on the date of
12 initial removal from the physical custody of his or her parent or
13 guardian, court-ordered services to some or all of the sibling
14 group may be limited to a period of six months from the date the
15 child entered foster care. For the purposes of this paragraph, “a
16 sibling group” shall mean two or more children who are related
17 to each other as full or half-siblings.

18 Regardless of the age of the child, a child shall be deemed to
19 have entered foster care on the earlier of the date of the
20 jurisdictional hearing held pursuant to Section 356 or the date
21 that is 60 days after the date on which the child was initially
22 removed from the physical custody of his or her parent or
23 guardian.

24 Notwithstanding paragraphs (1), (2), and (3), court-ordered
25 services may be extended up to a maximum time period not to
26 exceed 18 months after the date the child was originally removed
27 from physical custody of his or her parent or guardian if it can be
28 shown, at the hearing held pursuant to subdivision (f) of Section
29 366.21, that the permanent plan for the child is that he or she will
30 be returned and safely maintained in the home within the
31 extended time period. The court shall extend the time period only
32 if it finds that there is a substantial probability that the child will
33 be returned to the physical custody of his or her parent or
34 guardian within the extended time period or that reasonable
35 services have not been provided to the parent or guardian. If the
36 court extends the time period, the court shall specify the factual
37 basis for its conclusion that there is a substantial probability that
38 the child will be returned to the physical custody of his or her
39 parent or guardian within the extended time period. The court

1 also shall make findings pursuant to subdivision (a) of Section
2 366 and subdivision (e) of Section 358.1.

3 When counseling or other treatment services are ordered, the
4 parent or guardian shall be ordered to participate in those
5 services, unless the parent's or guardian's participation is deemed
6 by the court to be inappropriate or potentially detrimental to the
7 child. Physical custody of the child by the parents or guardians
8 during the applicable time period under paragraph (1), (2), or (3)
9 shall not serve to interrupt the running of the period. If at the end
10 of the applicable time period, a child cannot be safely returned to
11 the care and custody of a parent or guardian without court
12 supervision, but the child clearly desires contact with the parent
13 or guardian, the court shall take the child's desire into account in
14 devising a permanency plan.

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

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

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

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

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

5 (3) That the child or a sibling of the child has been previously
6 adjudicated a dependent pursuant to any subdivision of Section
7 300 as a result of physical or sexual abuse, that following that
8 adjudication the child had been removed from the custody of his
9 or her parent or guardian pursuant to Section 361, that the child
10 has been returned to the custody of the parent or guardian from
11 whom the child had been taken originally, and that the child is
12 being removed pursuant to Section 361, due to additional
13 physical or sexual abuse.

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

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

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

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

39 A finding of the infliction of severe physical harm, for the
40 purposes of this subdivision, may be based on, but is not limited

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

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

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

16 (9) That the child has been found to be a child described in
17 subdivision (g) of Section 300, that the parent or guardian of the
18 child willfully abandoned the child, and the court finds that the
19 abandonment itself constituted a serious danger to the child; or
20 that the parent or other person having custody of the child
21 voluntarily surrendered physical custody of the child pursuant to
22 Section 1255.7 of the Health and Safety Code. For the purposes
23 of this paragraph, "serious danger" means that without the
24 intervention of another person or agency, the child would have
25 sustained severe or permanent disability, injury, illness, or death.
26 For purposes of this paragraph, "willful abandonment" shall not
27 be construed as actions taken in good faith by the parent without
28 the intent of placing the child in serious danger.

29 (10) That the court ordered termination of reunification
30 services for any siblings or half-siblings of the child because the
31 parent or guardian failed to reunify with the sibling or
32 half-sibling after the sibling or half-sibling had been removed
33 from that parent or guardian pursuant to Section 361 and that
34 parent or guardian is the same parent or guardian described in
35 subdivision (a) and that, according to the findings of the court,
36 this parent or guardian has not subsequently made a reasonable
37 effort to treat the problems that led to removal of the sibling or
38 half-sibling of that child from that parent or guardian.

39 (11) That the parental rights of a parent over any sibling or
40 half-sibling of the child had been permanently severed, and this

1 parent is the same parent described in subdivision (a), and that,
2 according to the findings of the court, this parent has not
3 subsequently made a reasonable effort to treat the problems that
4 led to removal of the sibling or half-sibling of that child from the
5 parent.

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

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

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

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

32 (15) That the parent or guardian has on one or more occasions
33 willfully abducted the child or child's sibling or half-sibling from
34 his or her placement and refused to disclose the child's or child's
35 sibling's or half-sibling's whereabouts, refused to return physical
36 custody of the child or child's sibling or half-sibling to his or her
37 placement, or refused to return physical custody of the child or
38 child's sibling or half-sibling to the social worker.

39 (c) In deciding whether to order reunification in any case in
40 which this section applies, the court shall hold a dispositional

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

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

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

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

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

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

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

16 (A) Maintaining contact between the parent and child through
17 collect telephone calls.

18 (B) Transportation services, where appropriate.

19 (C) Visitation services, where appropriate.

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

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

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

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

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

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

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

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

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

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

33 (4) A preliminary assessment of the eligibility and
34 commitment of any identified prospective adoptive parent or
35 guardian, particularly the caretaker, to include a social history
36 including screening for criminal records and prior referrals for
37 child abuse or neglect, the capability to meet the child's needs,
38 and the understanding of the legal and financial rights and
39 responsibilities of adoption and guardianship. If a proposed
40 guardian is a relative of the minor, and the relative was assessed

1 for foster care placement of the minor prior to January 1, 1998,
2 the assessment shall also consider, but need not be limited to, all
3 of the factors specified in subdivision (a) of Section 361.3. As
4 used in this paragraph, “relative” means an adult who is related
5 to the minor by blood, adoption, or affinity within the fifth
6 degree of kinship, including stepparents, stepsiblings, and all
7 relatives whose status is preceded by the words “great,”
8 “great-great,” or “grand,” or the spouse of any of those persons
9 even if the marriage was terminated by death or dissolution.

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

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

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

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

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

28 (3) The severity of the emotional trauma suffered by the child
29 or the child’s sibling or half-sibling.

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

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

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

37 (i) The court shall read into the record the basis for a finding
38 of severe sexual abuse or the infliction of severe physical harm
39 under paragraph (6) of subdivision (b), and shall also specify the
40 factual findings used to determine that the provision of

1 reunification services to the offending parent or guardian would
2 not benefit the child.

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

5 SEC. 6. Section 361.5 of the Welfare and Institutions Code,
6 as amended by Section 8 of Chapter 918 of the Statutes of 2002,
7 is repealed.

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

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

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

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

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

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

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

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

39 In cases where the child was under the age of three years on the
40 date of the initial removal from the physical custody of his or her

1 ~~parent or guardian or is a member of a sibling group as described~~
2 ~~in paragraph (3), the court shall inform the parent or guardian~~
3 ~~that the failure of the parent or guardian to participate regularly~~
4 ~~in any court-ordered treatment programs or to cooperate or avail~~
5 ~~himself or herself of services provided as part of the child~~
6 ~~welfare services case plan may result in a termination of efforts~~
7 ~~to reunify the family after six months. The court shall inform the~~
8 ~~parent or guardian of the factors used in subdivision (c) of~~
9 ~~Section 366.21 to determine whether to limit services to six~~
10 ~~months for some or all members of a sibling group as described~~
11 ~~in paragraph (3).~~

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

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

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

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

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

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

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

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

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

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

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

36 ~~(8) That the child was conceived by means of the commission~~
37 ~~of an offense listed in Section 288 or 288.5 of the Penal Code, or~~
38 ~~by an act committed outside of this state that, if committed in this~~
39 ~~state, would constitute one of those offenses. This paragraph only~~
40 ~~applies to the parent who committed the offense or act.~~

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

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

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

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

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

1 ~~(14) That the parent or guardian of the child has advised the~~
2 ~~court that he or she is not interested in receiving family~~
3 ~~maintenance or family reunification services or having the child~~
4 ~~returned to or placed in his or her custody and does not wish to~~
5 ~~receive family maintenance or reunification services.~~

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

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

22 ~~(e) In deciding whether to order reunification in any case in~~
23 ~~which this section applies, the court shall hold a dispositional~~
24 ~~hearing. The social worker shall prepare a report that discusses~~
25 ~~whether reunification services shall be provided. When it is~~
26 ~~alleged, pursuant to paragraph (2) of subdivision (b), that the~~
27 ~~parent is incapable of utilizing services due to mental disability,~~
28 ~~the court shall order reunification services unless competent~~
29 ~~evidence from mental health professionals establishes that, even~~
30 ~~with the provision of services, the parent is unlikely to be capable~~
31 ~~of adequately caring for the child within the time limits specified~~
32 ~~in subdivision (a).~~

33 ~~The court shall not order reunification for a parent or guardian~~
34 ~~described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12),~~
35 ~~(13), (14), or (15) of subdivision (b) unless the court finds, by~~
36 ~~clear and convincing evidence, that reunification is in the best~~
37 ~~interest of the child.~~

38 ~~In addition, the court shall not order reunification in any~~
39 ~~situation described in paragraph (5) of subdivision (b) unless it~~
40 ~~finds that, based on competent testimony, those services are~~

likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

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

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

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

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

1 ~~(B) Transportation services, where appropriate.~~

2 ~~(C) Visitation services, where appropriate.~~

3 ~~(D) Reasonable services to extended family members or foster~~
4 ~~parents providing care for the child if the services are not~~
5 ~~detrimental to the child.~~

6 ~~An incarcerated parent may be required to attend counseling,~~
7 ~~parenting classes, or vocational training programs as part of the~~
8 ~~service plan if these programs are available.~~

9 ~~(2) The presiding judge of the juvenile court of each county~~
10 ~~may convene representatives of the county welfare department,~~
11 ~~the sheriff's department, and other appropriate entities for the~~
12 ~~purpose of developing and entering into protocols for ensuring~~
13 ~~the notification, transportation, and presence of an incarcerated~~
14 ~~or institutionalized parent at all court hearings involving~~
15 ~~proceedings affecting the child pursuant to Section 2625 of the~~
16 ~~Penal Code.~~

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

26 ~~(f) If the court, pursuant to paragraph (2), (3), (4), (5), (6), (7),~~
27 ~~(8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) or~~
28 ~~paragraph (1) of subdivision (c), does not order reunification~~
29 ~~services, it shall, at the dispositional hearing, that shall include a~~
30 ~~permanency hearing, determine if a hearing under Section 366.26~~
31 ~~shall be set in order to determine whether adoption, guardianship,~~
32 ~~or long-term foster care is the most appropriate plan for the child.~~
33 ~~If the court so determines, it shall conduct the hearing pursuant to~~
34 ~~Section 366.26 within 120 days after the dispositional hearing.~~
35 ~~However, the court shall not schedule a hearing so long as the~~
36 ~~other parent is being provided reunification services pursuant to~~
37 ~~subdivision (a). The court may continue to permit the parent to~~
38 ~~visit the child unless it finds that visitation would be detrimental~~
39 ~~to the child.~~

~~(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.26, 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 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 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. As used in this paragraph, “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.~~

~~(5) The relationship of the child to any identified prospective adoptive parent or 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.~~

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

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

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

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

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

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

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

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

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

27 ~~(j) This section shall become operative on January 1, 2006,~~
28 ~~unless a later enacted statute extends or deletes that date.~~

29 SEC. 7. Section 14005.24 of the Welfare and Institutions
30 Code is amended to read:

31 14005.24. ~~(a)~~ The department shall instruct counties, by
32 means of an all county letter or similar instruction, as to the
33 process that is to be used to ensure that each child, physical
34 custody of whom has been voluntarily surrendered pursuant to
35 Section 1255.7 of the Health and Safety Code, shall be
36 determined eligible for benefits under this chapter for, at a
37 minimum, a period of time commencing on the date physical
38 custody is surrendered and ending on the earliest of the following
39 dates:

40 ~~(1)–~~

1 (a) The last day of the month following the month in which
2 the child was voluntarily surrendered under Section 1255.7 of the
3 Health and Safety Code.

4 ~~(2)~~

5 (b) The date the child is reclaimed under Section 1255.7 of the
6 Health and Safety Code.

7 ~~(3)~~

8 (c) The date the child ceases to reside in California.

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

11 SEC. 8. If the Commission on State Mandates determines that
12 this act contains costs mandated by the state, reimbursement to
13 local agencies and school districts for those costs shall be made
14 pursuant to Part 7 (commencing with Section 17500) of Division
15 4 of Title 2 of the Government Code.