

AMENDED IN ASSEMBLY AUGUST 25, 2005

AMENDED IN SENATE MARCH 30, 2005

SENATE BILL

No. 116

**Introduced by Senators Dutton, Scott, and Simitian
(Coauthors: Senators Chesbro, Cox, Ducheny, Escutia, Figueroa,
Margett, 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 amended, 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 thereby 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, “parent” means a birth parent
- 17 of a minor child who is 72 hours old or younger.

1 (3) For purposes of this section, “personnel” means any person
2 who is an officer or employee of a safe-surrender site or who has
3 staff privileges at the site.

4 (4) A hospital and any safe-surrender site designated by the
5 county board of supervisors shall post a sign utilizing a statewide
6 logo that has been adopted by the State Department of Social
7 Services that notifies the public of the location where a minor
8 child 72 hours old or younger may be safely surrendered
9 pursuant to this section.

10 (b) Any personnel on duty at a safe-surrender site shall accept
11 physical custody of a minor child 72 hours old or younger
12 pursuant to this section if a parent or other individual having
13 lawful custody of the child voluntarily surrenders physical
14 custody of the child to personnel who are on duty at the
15 safe-surrender site. Safe-surrender site personnel shall ensure that
16 a qualified person does all of the following:

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

18 (2) Provides, or makes a good faith effort to provide, to the
19 parent or other individual surrendering the child a copy of a
20 unique, coded, confidential ankle bracelet identification in order
21 to facilitate reclaiming the child pursuant to subdivision (f).
22 However, possession of the ankle bracelet identification, in and
23 of itself, does not establish parentage or a right to custody of the
24 child.

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

36 NOTICE: THE BABY YOU HAVE BROUGHT IN TODAY
37 MAY HAVE SERIOUS MEDICAL NEEDS IN THE FUTURE
38 THAT WE DON'T KNOW ABOUT TODAY. SOME
39 ILLNESSES, INCLUDING CANCER, ARE BEST TREATED
40 WHEN WE KNOW ABOUT FAMILY MEDICAL

1 HISTORIES. IN ADDITION, SOMETIMES RELATIVES ARE
2 NEEDED FOR LIFE-SAVING TREATMENTS. TO MAKE
3 SURE THIS BABY WILL HAVE A HEALTHY FUTURE,
4 YOUR ASSISTANCE IN COMPLETING THIS
5 QUESTIONNAIRE FULLY IS ESSENTIAL. THANK YOU.

6 (c) Personnel of a safe-surrender site that has physical custody
7 of a minor child pursuant to this section shall ensure that a
8 medical screening examination and any necessary medical care is
9 provided to the minor child. Notwithstanding any other provision
10 of law, the consent of the parent or other relative shall not be
11 required to provide that care to the minor child.

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

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

36 (e) Child protective services or the county agency providing
37 child welfare services pursuant to Section 16501 of the Welfare
38 and Institutions Code shall assume temporary custody of the
39 child pursuant to Section 300 of the Welfare and Institutions
40 Code immediately upon receipt of notice under subdivision (d).

Child protective services or the county agency providing child welfare services pursuant to Section 16501 of the Welfare and Institutions Code shall immediately investigate the circumstances of the case and file a petition pursuant to Section 311 of the Welfare and Institutions Code. Child protective services or the county agency providing child welfare services pursuant to Section 16501 of the Welfare and Institutions Code shall immediately notify the State Department of Social Services of each child to whom this subdivision applies upon taking temporary custody of the child pursuant to Section 300 of the Welfare and Institutions Code. As soon as possible, but no later than 24 hours after temporary custody is assumed, child protective services or the county agency providing child welfare services pursuant to Section 16501 of the Welfare and Institutions Code shall report all known identifying information concerning the child, except personal identifying information pertaining to the parent or individual who surrendered the child, to the California Missing Children Clearinghouse and to the National Crime Information Center.

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

(g) Subsequent to the filing of a petition under subdivision (e), if within 14 days of the voluntary surrender described in this section, the parent or individual who surrendered custody returns to claim physical custody of the child, the child welfare agency shall verify the identity of the parent or individual, conduct an

1 assessment of his or her circumstances and ability to parent, and
2 request that the juvenile court dismiss the petition for
3 dependency and order the release of the child, if the child welfare
4 agency determines that none of the conditions described in
5 subdivisions (a) to (d), inclusive, of Section 319 of the Welfare
6 and Institutions Code currently exist.

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

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

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

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

39 (k) Any identifying information that pertains to a parent or
40 individual who surrenders a child pursuant to this section, that is

1 obtained as a result of the questionnaire described in paragraph
2 (3) of subdivision (b) or in any other manner, is confidential,
3 shall be exempt from disclosure under the California Public
4 Records Act (Chapter 3.5 (commencing with Section 6250) of
5 Division 7 of Title 1 of the Government Code), and shall not be
6 disclosed by any personnel of a safe-surrender site that accepts
7 custody of a child pursuant to this section.

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

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

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

17 (c) (1) For purposes of this section, “lawful custody” has the
18 same meaning as defined in subdivision ~~(k)~~ (j) of Section 1255.7
19 of the Health and Safety Code.

20 (2) For purposes of this section, “personnel” has the same
21 meaning as defined in paragraph (2) of subdivision (a) of Section
22 1255.7 of the Health and Safety Code.

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

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

29 (a) The child has suffered, or there is a substantial risk that the
30 child will suffer,

(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 years and has suffered
13 severe 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 SEC. 4. Section 300 of the Welfare and Institutions Code, as
4 added by Section 3.5 of Chapter 824 of the Statutes of 2000, is
5 repealed.

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

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

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

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

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

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 (e) 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

1 (5) That the child was brought within the jurisdiction of the
2 court under subdivision (e) 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

(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; or that the parent or other person having custody of the child voluntarily surrendered physical custody of the child pursuant to Section 1255.7 of the Health and Safety Code. 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

1 two prior occasions, even though the programs identified were
2 available and accessible.

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

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

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

24 (c) In deciding whether to order reunification in any case in
25 which this section applies, the court shall hold a dispositional
26 hearing. The social worker shall prepare a report that discusses
27 whether reunification services shall be provided. When it is
28 alleged, pursuant to paragraph (2) of subdivision (b), that the
29 parent is incapable of utilizing services

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

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

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

29 (e) (1) If the parent or guardian is incarcerated or
30 institutionalized, the court shall

1 applicable time limitations imposed in subdivision (a). Services
2 may include, but shall not be limited to, all of the following:

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

5 (B) Transportation services, where appropriate.

6 (C) Visitation services, where appropriate.

7 (D) Reasonable services to extended family members or foster
8 parents providing care for the child if the services are not
9 detrimental to the child.

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

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

21 (3) Notwithstanding any other provision of law, if the
22 incarcerated parent is a woman seeking to participate in the
23 community treatment program operated by the Department of

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

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

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

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

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

20 (4) A preliminary assessment of the eligibility and
21 commitment of any identified prospective adoptive parent or
22 guardian, particularly the caret

1 adoption or guardianship, unless the child's age or physical,
2 emotional, or other condition precludes his or her meaningful
3 response, and if so, a description of the condition.

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

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

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

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

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

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

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

1 commencing on the date physical custody is surrendered and
2 ending on the earliest of the following dates:

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

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

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

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