

ASSEMBLY BILL

No. 706

**Introduced by Committee on Human Services (Beall (Chair),
Ammiano (Vice Chair), Tom Berryhill, Hall, Logue, Portantino,
and Torres)**

February 26, 2009

An act to amend Sections 361.5, 366.21, and 11404.1 of, and to add Section 361.49 to, the Welfare and Institutions Code, relating to dependent children, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 706, as introduced, Committee on Human Services. Dependent children.

Existing law requires the juvenile court to hold periodic hearings to review the status of a dependent child who is in foster care no less frequently than once every 6 months, including a review hearing held 6 months after the initial dispositional hearing in which the court must order the return of the child to the physical custody of his or her parent or legal guardian unless the court makes a specified finding. Existing law requires that the permanency hearing be held no later than 12 months after the date the child entered foster care. Existing law provides, with respect to various provisions of law governing dependency proceedings, that a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing, as specified, or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent or guardian. Existing law also requires that family reunification services be provided whenever a child

is removed from the custody of his or her parent or guardian, except as specified.

This bill would make technical, clarifying, and conforming changes to those provisions. The bill would also make the provision establishing the date a child shall be deemed to have entered foster care, as described above, generally applicable for purposes of provisions governing dependent children.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 361.49 is added to the Welfare and
2 Institutions Code, to read:

3 361.49. Regardless of his or her age, a child shall be deemed
4 to have entered foster care on the earlier of the date of the
5 jurisdictional hearing held pursuant to Section 356 or the date that
6 is 60 days after the date on which the child was initially removed
7 from the physical custody of his or her parent or guardian.

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

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

23 (1) Family reunification services, when provided, shall be
24 provided as follows:

25 (A) Except as otherwise provided in subparagraph (C), for a
26 child who, on the date of initial removal from the physical custody

1 of his or her parent or guardian, was three years of age or older,
2 court-ordered services shall be provided ~~during the period of time~~
3 beginning with the dispositional hearing and ending ~~with the date~~
4 ~~of the hearing set pursuant to subdivision (f) of Section 366.21~~ 12
5 *months after the date the child entered foster care as defined in*
6 *Section 361.49*, unless the child is returned to the home of the
7 parent or guardian.

8 (B) For a child who, on the date of initial removal from the
9 physical custody of his or her parent or guardian, was under three
10 years of age, court-ordered services shall be provided ~~during the~~
11 ~~period of time beginning with the dispositional hearing and ending~~
12 ~~with the date of the hearing set pursuant to~~ *for a period of six*
13 *months from the dispositional hearing as provided in* subdivision
14 (e) of Section 366.21, *but no longer than 12 months from the date*
15 *the child entered foster care as defined in Section 361.49* unless
16 the child is returned to the home of the parent or guardian.

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

28 ~~Regardless of the age of the child, a child shall be deemed to~~
29 ~~have entered foster care on the earlier of the date of the~~
30 ~~jurisdictional hearing held pursuant to Section 356 or the date that~~
31 ~~is 60 days after the date on which the child was initially removed~~
32 ~~from the physical custody of his or her parent or guardian.~~

33 ~~Any~~

34 (2) Any motion to terminate court-ordered reunification services
35 prior to the hearing set pursuant to subdivision (f) of Section 366.21
36 for a child described by paragraph (1), or within six months of the
37 initial dispositional hearing for a child described by paragraph ~~(2)~~
38 (3) or this paragraph, shall be made pursuant to the requirements
39 set forth in subdivision (c) of Section 388.

40 (2)

(3) Notwithstanding subparagraphs (A), (B), and (C) of paragraph (1), court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period or that reasonable services have not been provided to the parent or guardian. In determining whether court-ordered services may be extended, the court shall consider the special circumstances of an incarcerated or institutionalized parent or parents, or parent or parents court-ordered to a residential substance abuse treatment program, including, but not limited to, barriers to the parent's or guardian's access to services and ability to maintain contact with his or her child. The court shall also consider, among other factors, good faith efforts that the parent or guardian has made to maintain contact with the child. If the court extends the time period, the court shall specify the factual basis for its conclusion that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period. The court also shall make findings pursuant to subdivision (a) of Section 366 and subdivision (e) of Section 358.1.

When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the child, or unless a parent or guardian is incarcerated and the corrections facility in which he or she is incarcerated does not provide access to the treatment services ordered by the court. Physical custody of the child by the parents or guardians during the applicable time period under subparagraph (A), (B), or (C) of paragraph (1) shall not serve to interrupt the running of the period. If at the end of the applicable time period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian,

1 the court shall take the child's desire into account in devising a
2 permanency plan.

3 In cases where the child was under three years of age on the date
4 of the initial removal from the physical custody of his or her parent
5 or guardian or is a member of a sibling group as described in
6 subparagraph (C) of paragraph (1), the court shall inform the parent
7 or guardian that the failure of the parent or guardian to participate
8 regularly in any court-ordered treatment programs or to cooperate
9 or avail himself or herself of services provided as part of the child
10 welfare services case plan may result in a termination of efforts
11 to reunify the family after six months. The court shall inform the
12 parent or guardian of the factors used in subdivision (e) of Section
13 366.21 to determine whether to limit services to six months for
14 some or all members of a sibling group as described in
15 subparagraph (C) of paragraph (1).

16 ~~(3)~~

17 (4) Notwithstanding paragraph ~~(2)~~ (3), court-ordered services
18 may be extended up to a maximum time period not to exceed 24
19 months after the date the child was originally removed from
20 physical custody of his or her parent or guardian if it is shown, at
21 the hearing held pursuant to subdivision (b) of Section 366.22,
22 that the permanent plan for the child is that he or she will be
23 returned and safely maintained in the home within the extended
24 time period. The court shall extend the time period only if it finds
25 that it is in the child's best interest to have the time period extended
26 and that there is a substantial probability that the child will be
27 returned to the physical custody of his or her parent or guardian
28 who is described in subdivision (b) of Section 366.22 within the
29 extended time period, or that reasonable services have not been
30 provided to the parent or guardian. If the court extends the time
31 period, the court shall specify the factual basis for its conclusion
32 that there is a substantial probability that the child will be returned
33 to the physical custody of his or her parent or guardian within the
34 extended time period. The court also shall make findings pursuant
35 to subdivision (a) of Section 366 and subdivision (e) of Section
36 358.1.

37 When counseling or other treatment services are ordered, the
38 parent or guardian shall be ordered to participate in those services,
39 in order for substantial probability to be found. Physical custody
40 of the child by the parents or guardians during the applicable time

1 period under subparagraph (A), (B), or (C) of paragraph (1) shall
2 not serve to interrupt the running of the period. If at the end of the
3 applicable time period, the child cannot be safely returned to the
4 care and custody of a parent or guardian without court supervision,
5 but the child clearly desires contact with the parent or guardian,
6 the court shall take the child's desire into account in devising a
7 permanency plan.

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

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

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

20 (2) That the parent or guardian is suffering from a mental
21 disability that is described in Chapter 2 (commencing with Section
22 7820) of Part 4 of Division 12 of the Family Code and that renders
23 him or her incapable of utilizing those services.

24 (3) That the child or a sibling of the child has been previously
25 adjudicated a dependent pursuant to any subdivision of Section
26 300 as a result of physical or sexual abuse, that following that
27 adjudication the child had been removed from the custody of his
28 or her parent or guardian pursuant to Section 361, that the child
29 has been returned to the custody of the parent or guardian from
30 whom the child had been taken originally, and that the child is
31 being removed pursuant to Section 361, due to additional physical
32 or sexual abuse.

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

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

38 (6) That the child has been adjudicated a dependent pursuant
39 to any subdivision of Section 300 as a result of severe sexual abuse
40 or the infliction of severe physical harm to the child, a sibling, or

1 a half sibling by a parent or guardian, as defined in this subdivision,
2 and the court makes a factual finding that it would not benefit the
3 child to pursue reunification services with the offending parent or
4 guardian.

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

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

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

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

34 (9) That the child has been found to be a child described in
35 subdivision (g) of Section 300, that the parent or guardian of the
36 child willfully abandoned the child, and the court finds that the
37 abandonment itself constituted a serious danger to the child; or
38 that the parent or other person having custody of the child
39 voluntarily surrendered physical custody of the child pursuant to
40 Section 1255.7 of the Health and Safety Code. For the purposes

1 of this paragraph, “serious danger” means that without the
2 intervention of another person or agency, the child would have
3 sustained severe or permanent disability, injury, illness, or death.
4 For purposes of this paragraph, “willful abandonment” shall not
5 be construed as actions taken in good faith by the parent without
6 the intent of placing the child in serious danger.

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

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

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

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

35 (14) That the parent or guardian of the child has advised the
36 court that he or she is not interested in receiving family
37 maintenance or family reunification services or having the child
38 returned to or placed in his or her custody and does not wish to
39 receive family maintenance or reunification services.

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

10 (15) That the parent or guardian has on one or more occasions
11 willfully abducted the child or child's sibling or half sibling from
12 his or her placement and refused to disclose the child's or child's
13 sibling's or half sibling's whereabouts, refused to return physical
14 custody of the child or child's sibling or half sibling to his or her
15 placement, or refused to return physical custody of the child or
16 child's sibling or half sibling to the social worker.

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

27 The court shall not order reunification for a parent or guardian
28 described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12),
29 (13), (14), or (15) of subdivision (b) unless the court finds, by clear
30 and convincing evidence, that reunification is in the best interest
31 of the child.

32 In addition, the court shall not order reunification in any situation
33 described in paragraph (5) of subdivision (b) unless it finds that,
34 based on competent testimony, those services are likely to prevent
35 reabuse or continued neglect of the child or that failure to try
36 reunification will be detrimental to the child because the child is
37 closely and positively attached to that parent. The social worker
38 shall investigate the circumstances leading to the removal of the
39 child and advise the court whether there are circumstances that
40 indicate that reunification is likely to be successful or unsuccessful

1 and whether failure to order reunification is likely to be detrimental
2 to the child.

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

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

19 (e) (1) If the parent or guardian is incarcerated or
20 institutionalized, the court shall order reasonable services unless
21 the court determines, by clear and convincing evidence, those
22 services would be detrimental to the child. In determining
23 detriment, the court shall consider the age of the child, the degree
24 of parent-child bonding, the length of the sentence, the length and
25 nature of the treatment, the nature of the crime or illness, the degree
26 of detriment to the child if services are not offered and, for children
27 10 years of age or older, the child's attitude toward the
28 implementation of family reunification services, the likelihood of
29 the parent's discharge from incarceration or institutionalization
30 within the reunification time limitations described in subdivision
31 (a), and any other appropriate factors. In determining the content
32 of reasonable services, the court shall consider the particular
33 barriers to an incarcerated or otherwise institutionalized parent's
34 access to those court-mandated services and ability to maintain
35 contact with his or her child, and shall document this information
36 in the child's case plan. Reunification services are subject to the
37 applicable time limitations imposed in subdivision (a). Services
38 may include, but shall not be limited to, all of the following:

39 (A) Maintaining contact between the parent and child through
40 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 reunification service plan if actual access to these services is
9 provided. The social worker shall document in the child's case
10 plan the particular barriers to an incarcerated or institutionalized
11 parent's access to those court-mandated services and ability to
12 maintain contact with his or her child.

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 the
17 notification, transportation, and presence of an incarcerated or
18 institutionalized parent at all court hearings involving proceedings
19 affecting the child pursuant to Section 2625 of the Penal Code.
20 The county welfare department shall utilize the prisoner locator
21 system developed by the Department of Corrections and
22 Rehabilitation to facilitate timely and effective notice of hearings
23 for incarcerated parents.

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

33 (f) If the court, pursuant to paragraph (2), (3), (4), (5), (6), (7),
34 (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) or
35 paragraph (1) of subdivision (e), does not order reunification
36 services, it shall, at the dispositional hearing, that shall include a
37 permanency hearing, determine if a hearing under Section 366.26
38 shall be set in order to determine whether adoption, guardianship,
39 or long-term foster care is the most appropriate plan for the child,
40 and shall consider in-state and out-of-state placement options. If

1 the court so determines, it shall conduct the hearing pursuant to
2 Section 366.26 within 120 days after the dispositional hearing.
3 However, the court shall not schedule a hearing so long as the
4 other parent is being provided reunification services pursuant to
5 subdivision (a). The court may continue to permit the parent to
6 visit the child unless it finds that visitation would be detrimental
7 to the child.

8 (g) (1) Whenever a court orders that a hearing shall be held
9 pursuant to Section 366.26, it shall direct the agency supervising
10 the child and the licensed county adoption agency, or the State
11 Department of Social Services when it is acting as an adoption
12 agency in counties that are not served by a county adoption agency,
13 to prepare an assessment that shall include:

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

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

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

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

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

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

10 (2) (A) A relative caregiver's preference for legal guardianship
11 over adoption, if it is due to circumstances that do not include an
12 unwillingness to accept legal or financial responsibility for the
13 child, shall not constitute the sole basis for recommending removal
14 of the child from the relative caregiver for purposes of adoptive
15 placement.

16 (B) A relative caregiver shall be given information regarding
17 the permanency options of guardianship and adoption, including
18 the long-term benefits and consequences of each option, prior to
19 establishing legal guardianship or pursuing adoption.

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

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

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

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

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

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

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

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

1 findings used to determine that the provision of reunification
2 services to the offending parent or guardian would not benefit the
3 child.

4 SEC. 3. Section 366.21 of the Welfare and Institutions Code
5 is amended to read:

6 366.21. (a) Every hearing conducted by the juvenile court
7 reviewing the status of a dependent child shall be placed on the
8 appearance calendar. The court shall advise all persons present at
9 the hearing of the date of the future hearing and of their right to
10 be present and represented by counsel.

11 (b) Except as provided in Sections 294 and 295, notice of the
12 hearing shall be provided pursuant to Section 293.

13 (c) At least 10 calendar days prior to the hearing, the social
14 worker shall file a supplemental report with the court regarding
15 the services provided or offered to the parent or legal guardian to
16 enable him or her to assume custody and the efforts made to
17 achieve legal permanence for the child if efforts to reunify fail,
18 including, but not limited to, efforts to maintain relationships
19 between a child who is 10 years of age or older and has been in
20 out-of-home placement for six months or longer and individuals
21 who are important to the child, consistent with the child's best
22 interests; the progress made; and, where relevant, the prognosis
23 for return of the child to the physical custody of his or her parent
24 or legal guardian; and shall make his or her recommendation for
25 disposition. If the child is a member of a sibling group described
26 in subparagraph (C) of paragraph (1) of subdivision (a) of Section
27 361.5, the report and recommendation may also take into account
28 those factors described in subdivision (e) relating to the child's
29 sibling group. If the recommendation is not to return the child to
30 a parent or legal guardian, the report shall specify why the return
31 of the child would be detrimental to the child. The social worker
32 shall provide the parent or legal guardian, counsel for the child,
33 and any court-appointed child advocate with a copy of the report,
34 including his or her recommendation for disposition, at least 10
35 calendar days prior to the hearing. In the case of a child removed
36 from the physical custody of his or her parent or legal guardian,
37 the social worker shall, at least 10 calendar days prior to the
38 hearing, provide a summary of his or her recommendation for
39 disposition to any foster parents, relative caregivers, and certified
40 foster parents who have been approved for adoption by the State

1 Department of Social Services when it is acting as an adoption
2 agency in counties that are not served by a county adoption agency
3 or by a licensed county adoption agency, community care facility,
4 or foster family agency having the physical custody of the child.
5 The social worker shall include a copy of the Judicial Council
6 Caregiver Information Form (JV-290) with the summary of
7 recommendations to the child's foster parents, relative caregivers,
8 or foster parents approved for adoption, in the caregiver's primary
9 language when available, along with information on how to file
10 the form with the court.

11 (d) Prior to any hearing involving a child in the physical custody
12 of a community care facility or a foster family agency that may
13 result in the return of the child to the physical custody of his or
14 her parent or legal guardian, or in adoption or the creation of a
15 legal guardianship, the facility or agency shall file with the court
16 a report, or a Judicial Council Caregiver Information Form
17 (JV-290), containing its recommendation for disposition. Prior to
18 the hearing involving a child in the physical custody of a foster
19 parent, a relative caregiver, or a certified foster parent who has
20 been approved for adoption by the State Department of Social
21 Services when it is acting as an adoption agency or by a licensed
22 adoption agency, the foster parent, relative caregiver, or the
23 certified foster parent who has been approved for adoption by the
24 State Department of Social Services when it is acting as an
25 adoption agency in counties that are not served by a county
26 adoption agency or by a licensed county adoption agency, may
27 file with the court a report containing his or her recommendation
28 for disposition. The court shall consider the report and
29 recommendation filed pursuant to this subdivision prior to
30 determining any disposition.

31 (e) At the review hearing held six months after the initial
32 dispositional hearing, *but no later than 12 months after the date*
33 *the child entered foster care, whichever occurs earlier*, the court
34 shall order the return of the child to the physical custody of his or
35 her parent or legal guardian unless the court finds, by a
36 preponderance of the evidence, that the return of the child to his
37 or her parent or legal guardian would create a substantial risk of
38 detriment to the safety, protection, or physical or emotional
39 well-being of the child. The social worker shall have the burden
40 of establishing that detriment. At the hearing, the court shall

1 consider the criminal history, obtained pursuant to paragraph (1)
2 of subdivision (f) of Section 16504.5, of the parent or legal
3 guardian subsequent to the child's removal to the extent that the
4 criminal record is substantially related to the welfare of the child
5 or the parent's or guardian's ability to exercise custody and control
6 regarding his or her child, provided the parent or legal guardian
7 agreed to submit fingerprint images to obtain criminal history
8 information as part of the case plan. The failure of the parent or
9 legal guardian to participate regularly and make substantive
10 progress in court-ordered treatment programs shall be prima facie
11 evidence that return would be detrimental. In making its
12 determination, the court shall review and consider the social
13 worker's report and recommendations and the report and
14 recommendations of any child advocate appointed pursuant to
15 Section 356.5; and shall consider the efforts or progress, or both,
16 demonstrated by the parent or legal guardian and the extent to
17 which he or she availed himself or herself to services provided,
18 taking into account the particular barriers to an incarcerated or
19 institutionalized parent or legal guardian's access to those
20 court-mandated services and ability to maintain contact with his
21 or her child.

22 Regardless of whether the child is returned to a parent or legal
23 guardian, the court shall specify the factual basis for its conclusion
24 that the return would be detrimental or would not be detrimental.
25 The court also shall make appropriate findings pursuant to
26 subdivision (a) of Section 366; and, where relevant, shall order
27 any additional services reasonably believed to facilitate the return
28 of the child to the custody of his or her parent or legal guardian.
29 The court shall also inform the parent or legal guardian that if the
30 child cannot be returned home by the 12-month permanency
31 hearing, a proceeding pursuant to Section 366.26 may be instituted.
32 This section does not apply in a case where, pursuant to Section
33 361.5, the court has ordered that reunification services shall not
34 be provided.

35 If the child was under three years of age on the date of the initial
36 removal, or is a member of a sibling group described in
37 subparagraph (C) of paragraph (1) of subdivision (a) of Section
38 361.5, and the court finds by clear and convincing evidence that
39 the parent failed to participate regularly and make substantive
40 progress in a court-ordered treatment plan, the court may schedule

1 a hearing pursuant to Section 366.26 within 120 days. If, however,
2 the court finds there is a substantial probability that the child, who
3 was under three years of age on the date of initial removal or is a
4 member of a sibling group described in subparagraph (C) of
5 paragraph (1) of subdivision (a) of Section 361.5, may be returned
6 to his or her parent or legal guardian within six months or that
7 reasonable services have not been provided, the court shall continue
8 the case to the 12-month permanency hearing.

9 For the purpose of placing and maintaining a sibling group
10 together in a permanent home, the court, in making its
11 determination to schedule a hearing pursuant to Section 366.26
12 for some or all members of a sibling group, as described in
13 subparagraph (C) of paragraph (1) of subdivision (a) of Section
14 361.5, shall review and consider the social worker's report and
15 recommendations. Factors the report shall address, and the court
16 shall consider, may include, but need not be limited to, whether
17 the sibling group was removed from parental care as a group, the
18 closeness and strength of the sibling bond, the ages of the siblings,
19 the appropriateness of maintaining the sibling group together, the
20 detriment to the child if sibling ties are not maintained, the
21 likelihood of finding a permanent home for the sibling group,
22 whether the sibling group is currently placed together in a
23 preadoptive home or has a concurrent plan goal of legal
24 permanency in the same home, the wishes of each child whose
25 age and physical and emotional condition permits a meaningful
26 response, and the best interest of each child in the sibling group.
27 The court shall specify the factual basis for its finding that it is in
28 the best interest of each child to schedule a hearing pursuant to
29 Section 366.26 in 120 days for some or all of the members of the
30 sibling group.

31 If the child was removed initially under subdivision (g) of
32 Section 300 and the court finds by clear and convincing evidence
33 that the whereabouts of the parent are still unknown, or the parent
34 has failed to contact and visit the child, the court may schedule a
35 hearing pursuant to Section 366.26 within 120 days. The court
36 shall take into account any particular barriers to a parent's ability
37 to maintain contact with his or her child due to the parent's
38 incarceration or institutionalization. If the court finds by clear and
39 convincing evidence that the parent has been convicted of a felony

1 indicating parental unfitness, the court may schedule a hearing
2 pursuant to Section 366.26 within 120 days.

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

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

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

21 (f) The permanency hearing shall be held no later than 12
22 months after the date the child entered foster care, as that date is
23 determined pursuant to ~~subdivision (a) of Section 361.5~~ 361.49.
24 At the permanency hearing, the court shall determine the permanent
25 plan for the child, which shall include a determination of whether
26 the child will be returned to the child's home and, if so, when,
27 within the time limits of subdivision (a) of Section 361.5. The
28 court shall order the return of the child to the physical custody of
29 his or her parent or legal guardian unless the court finds, by a
30 preponderance of the evidence, that the return of the child to his
31 or her parent or legal guardian would create a substantial risk of
32 detriment to the safety, protection, or physical or emotional
33 well-being of the child. The social worker shall have the burden
34 of establishing that detriment. At the permanency hearing, the
35 court shall consider the criminal history, obtained pursuant to
36 paragraph (1) of subdivision (f) of Section 16504.5, of the parent
37 or legal guardian subsequent to the child's removal to the extent
38 that the criminal record is substantially related to the welfare of
39 the child or the parent or legal guardian's ability to exercise custody
40 and control regarding his or her child, provided that the parent or

1 legal guardian agreed to submit fingerprint images to obtain
2 criminal history information as part of the case plan. The court
3 shall also determine whether reasonable services that were designed
4 to aid the parent or legal guardian to overcome the problems that
5 led to the initial removal and continued custody of the child have
6 been provided or offered to the parent or legal guardian. For each
7 youth 16 years of age and older, the court shall also determine
8 whether services have been made available to assist him or her in
9 making the transition from foster care to independent living. The
10 failure of the parent or legal guardian to participate regularly and
11 make substantive progress in court-ordered treatment programs
12 shall be prima facie evidence that return would be detrimental. In
13 making its determination, the court shall review and consider the
14 social worker's report and recommendations and the report and
15 recommendations of any child advocate appointed pursuant to
16 Section 356.5, shall consider the efforts or progress, or both,
17 demonstrated by the parent or legal guardian and the extent to
18 which he or she availed himself or herself of services provided,
19 taking into account the particular barriers to an incarcerated or
20 institutionalized parent or legal guardian's access to those
21 court-mandated services and ability to maintain contact with his
22 or her child and shall make appropriate findings pursuant to
23 subdivision (a) of Section 366.

24 Regardless of whether the child is returned to his or her parent
25 or legal guardian, the court shall specify the factual basis for its
26 decision. If the child is not returned to a parent or legal guardian,
27 the court shall specify the factual basis for its conclusion that the
28 return would be detrimental. The court also shall make a finding
29 pursuant to subdivision (a) of Section 366. If the child is not
30 returned to his or her parent or legal guardian, the court shall
31 consider, and state for the record, in-state and out-of-state
32 placement options. If the child is placed out of the state, the court
33 shall make a determination whether the out-of-state placement
34 continues to be appropriate and in the best interests of the child.

35 (g) If the time period in which the court-ordered services were
36 provided has met or exceeded the time period set forth in
37 subparagraph (A), (B), or (C) of paragraph (1) of subdivision (a)
38 of Section 361.5, as appropriate, and a child is not returned to the
39 custody of a parent or legal guardian at the permanency hearing

1 held pursuant to subdivision (f), the court shall do one of the
2 following:

3 (1) Continue the case for up to six months for a permanency
4 review hearing, provided that the hearing shall occur within 18
5 months of the date the child was originally taken from the physical
6 custody of his or her parent or legal guardian. The court shall
7 continue the case only if it finds that there is a substantial
8 probability that the child will be returned to the physical custody
9 of his or her parent or legal guardian and safely maintained in the
10 home within the extended period of time or that reasonable services
11 have not been provided to the parent or legal guardian. For the
12 purposes of this section, in order to find a substantial probability
13 that the child will be returned to the physical custody of his or her
14 parent or legal guardian and safely maintained in the home within
15 the extended period of time, the court shall be required to find all
16 of the following:

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

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

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

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

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

39 (2) Order that a hearing be held within 120 days, pursuant to
40 Section 366.26, but only if the court does not continue the case to

1 the permanency planning review hearing and there is clear and
2 convincing evidence that reasonable services have been provided
3 or offered to the parents or legal guardians.

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

22 If the court orders that a child who is 10 years of age or older
23 remain in long-term foster care, the court shall determine whether
24 the agency has made reasonable efforts to maintain the child's
25 relationships with individuals other than the child's siblings who
26 are important to the child, consistent with the child's best interests,
27 and may make any appropriate order to ensure that those
28 relationships are maintained.

29 If the child is not returned to his or her parent or legal guardian,
30 the court shall consider, and state for the record, in-state and
31 out-of-state options for permanent placement. If the child is placed
32 out of the state, the court shall make a determination whether the
33 out-of-state placement continues to be appropriate and in the best
34 interests of the child.

35 (h) In any case in which the court orders that a hearing pursuant
36 to Section 366.26 shall be held, it shall also order the termination
37 of reunification services to the parent or legal guardian. The court
38 shall continue to permit the parent or legal guardian to visit the
39 child pending the hearing unless it finds that visitation would be
40 detrimental to the child. The court shall make any other appropriate

1 orders to enable the child to maintain relationships with individuals,
2 other than the child's siblings, who are important to the child,
3 consistent with the child's best interests.

4 (i) (1) Whenever a court orders that a hearing pursuant to
5 Section 366.26 shall be held, 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 agency,
9 to prepare an assessment that shall include:

10 (A) Current search efforts for an absent parent or parents or
11 legal guardians.

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

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

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

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

39 (F) A description of efforts to be made to identify a prospective
40 adoptive parent or legal guardian, including, but not limited to,

1 child-specific recruitment and listing on an adoption exchange
2 within the state or out of the state.

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

5 (2) (A) A relative caregiver's preference for legal guardianship
6 over adoption, if it is due to circumstances that do not include an
7 unwillingness to accept legal or financial responsibility for the
8 child, shall not constitute the sole basis for recommending removal
9 of the child from the relative caregiver for purposes of adoptive
10 placement.

11 (B) A relative caregiver shall be given information regarding
12 the permanency options of guardianship and adoption, including
13 the long-term benefits and consequences of each option, prior to
14 establishing legal guardianship or pursuing adoption.

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

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

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

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

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

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

37 (m) The implementation and operation of the amendments to
38 subdivisions (c) and (g) enacted at the 2005–06 Regular Session
39 shall be subject to appropriation through the budget process and
40 by phase, as provided in Section 366.35.

1 SEC. 4. Section 11404.1 of the Welfare and Institutions Code
2 is amended to read:

3 11404.1. In order to be eligible for AFDC-FC, the child shall
4 receive a periodic review no less frequently than once every six
5 months and a permanency hearing within 12 months after the date
6 the child entered foster care, ~~as provided in subdivision (a) of~~
7 ~~pursuant to Section 361.5~~ 361.49. The child shall also receive
8 permanency planning hearings periodically, but no less frequently
9 than once each 12 months thereafter, as required by subdivision
10 (d) of Section 366.3 throughout the period of foster care placement.
11 Periodic reviews and permanency planning hearings shall not be
12 required for a child who is residing with a nonrelated legal
13 guardian.

14 SEC. 5. This act is an urgency statute necessary for the
15 immediate preservation of the public peace, health, or safety within
16 the meaning of Article IV of the Constitution and shall go into
17 immediate effect. The facts constituting the necessity are:

18 In order to ensure uniform interpretation and application of the
19 law governing the timing of status review hearings in dependency
20 proceedings as soon as possible, it is necessary that this act take
21 effect immediately.