

AMENDED IN ASSEMBLY MAY 5, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

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 amended, 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 beginning with the
3 dispositional hearing and ending 12 months after the date the child
4 entered foster care as defined in Section 361.49, unless the child
5 is returned to the home of the parent or guardian.

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

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

24 (2) Any motion to terminate court-ordered reunification services
25 prior to the hearing set pursuant to subdivision (f) of Section 366.21
26 for a child described by *subparagraph (A) of paragraph (1)*, or
27 ~~within six months of the initial dispositional hearing for a child~~
28 ~~described by paragraph (3) or this paragraph~~ *the hearing set*
29 *pursuant to subdivision (e) of Section 366.21 for a child described*
30 *by subparagraph (B) or (C) of paragraph (1)*, shall be made
31 pursuant to the requirements set forth in subdivision (c) of Section
32 388.

33 (3) Notwithstanding subparagraphs (A), (B), and (C) of
34 paragraph (1), court-ordered services may be extended up to a
35 maximum time period not to exceed 18 months after the date the
36 child was originally removed from physical custody of his or her
37 parent or guardian if it can be shown, at the hearing held pursuant
38 to subdivision (f) of Section 366.21, that the permanent plan for
39 the child is that he or she will be returned and safely maintained
40 in the home within the extended time period. The court shall extend

1 the time period only if it finds that there is a substantial probability
2 that the child will be returned to the physical custody of his or her
3 parent or guardian within the extended time period or that
4 reasonable services have not been provided to the parent or
5 guardian. In determining whether court-ordered services may be
6 extended, the court shall consider the special circumstances of an
7 incarcerated or institutionalized parent or parents, or parent or
8 parents court-ordered to a residential substance abuse treatment
9 program, including, but not limited to, barriers to the parent's or
10 guardian's access to services and ability to maintain contact with
11 his or her child. The court shall also consider, among other factors,
12 good faith efforts that the parent or guardian has made to maintain
13 contact with the child. If the court extends the time period, the
14 court shall specify the factual basis for its conclusion that there is
15 a substantial probability that the child will be returned to the
16 physical custody of his or her parent or guardian within the
17 extended time period. The court also shall make findings pursuant
18 to subdivision (a) of Section 366 and subdivision (e) of Section
19 358.1.

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

35 In cases where the child was under three years of age on the date
36 of the initial removal from the physical custody of his or her parent
37 or guardian or is a member of a sibling group as described in
38 subparagraph (C) of paragraph (1), the court shall inform the parent
39 or guardian that the failure of the parent or guardian to participate
40 regularly in any court-ordered treatment programs or to cooperate

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

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

28 When counseling or other treatment services are ordered, the
29 parent or guardian shall be ordered to participate in those services,
30 in order for substantial probability to be found. Physical custody
31 of the child by the parents or guardians during the applicable time
32 period under subparagraph (A), (B), or (C) of paragraph (1) shall
33 not serve to interrupt the running of the period. If at the end of the
34 applicable time period, the child cannot be safely returned to the
35 care and custody of a parent or guardian without court supervision,
36 but the child clearly desires contact with the parent or guardian,
37 the court shall take the child's desire into account in devising a
38 permanency plan.

39 Except in cases where, pursuant to subdivision (b), the court
40 does not order reunification services, the court shall inform the

1 parent or parents of Section 366.26 and shall specify that the
2 parent's or parents' parental rights may be terminated.

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

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

11 (2) That the parent or guardian is suffering from a mental
12 disability that is described in Chapter 2 (commencing with Section
13 7820) of Part 4 of Division 12 of the Family Code and that renders
14 him or her incapable of utilizing those services.

15 (3) That the child or a sibling of the child has been previously
16 adjudicated a dependent pursuant to any subdivision of Section
17 300 as a result of physical or sexual abuse, that following that
18 adjudication the child had been removed from the custody of his
19 or her parent or guardian pursuant to Section 361, that the child
20 has been returned to the custody of the parent or guardian from
21 whom the child had been taken originally, and that the child is
22 being removed pursuant to Section 361, due to additional physical
23 or sexual abuse.

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

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

29 (6) That the child has been adjudicated a dependent pursuant
30 to any subdivision of Section 300 as a result of severe sexual abuse
31 or the infliction of severe physical harm to the child, a sibling, or
32 a half sibling by a parent or guardian, as defined in this subdivision,
33 and the court makes a factual finding that it would not benefit the
34 child to pursue reunification services with the offending parent or
35 guardian.

36 A finding of severe sexual abuse, for the purposes of this
37 subdivision, may be based on, but is not limited to, sexual
38 intercourse, or stimulation involving genital-genital, oral-genital,
39 anal-genital, or oral-anal contact, whether between the parent or
40 guardian and the child or a sibling or half sibling of the child, or

1 between the child or a sibling or half sibling of the child and
2 another person or animal with the actual or implied consent of the
3 parent or guardian; or the penetration or manipulation of the
4 child's, sibling's, or half sibling's genital organs or rectum by any
5 animate or inanimate object for the sexual gratification of the
6 parent or guardian, or for the sexual gratification of another person
7 with the actual or implied consent of the parent or guardian.

8 A finding of the infliction of severe physical harm, for the
9 purposes of this subdivision, may be based on, but is not limited
10 to, deliberate and serious injury inflicted to or on a child's body
11 or the body of a sibling or half sibling of the child by an act or
12 omission of the parent or guardian, or of another individual or
13 animal with the consent of the parent or guardian; deliberate and
14 torturous confinement of the child, sibling, or half sibling in a
15 closed space; or any other torturous act or omission that would be
16 reasonably understood to cause serious emotional damage.

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

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

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

38 (10) That the court ordered termination of reunification services
39 for any siblings or half siblings of the child because the parent or
40 guardian failed to reunify with the sibling or half sibling after the

1 sibling or half sibling had been removed from that parent or
2 guardian pursuant to Section 361 and that parent or guardian is
3 the same parent or guardian described in subdivision (a) and that,
4 according to the findings of the court, this parent or guardian has
5 not subsequently made a reasonable effort to treat the problems
6 that led to removal of the sibling or half sibling of that child from
7 that parent or guardian.

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

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

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

26 (14) That the parent or guardian of the child has advised the
27 court that he or she is not interested in receiving family
28 maintenance or family reunification services or having the child
29 returned to or placed in his or her custody and does not wish to
30 receive family maintenance or reunification services.

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

1 (15) That the parent or guardian has on one or more occasions
2 willfully abducted the child or child's sibling or half sibling from
3 his or her placement and refused to disclose the child's or child's
4 sibling's or half sibling's whereabouts, refused to return physical
5 custody of the child or child's sibling or half sibling to his or her
6 placement, or refused to return physical custody of the child or
7 child's sibling or half sibling to the social worker.

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

18 The court shall not order reunification for a parent or guardian
19 described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12),
20 (13), (14), or (15) of subdivision (b) unless the court finds, by clear
21 and convincing evidence, that reunification is in the best interest
22 of the child.

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

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

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

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

10 (e) (1) If the parent or guardian is incarcerated or
11 institutionalized, the court shall order reasonable services unless
12 the court determines, by clear and convincing evidence, those
13 services would be detrimental to the child. In determining
14 detriment, the court shall consider the age of the child, the degree
15 of parent-child bonding, the length of the sentence, the length and
16 nature of the treatment, the nature of the crime or illness, the degree
17 of detriment to the child if services are not offered and, for children
18 10 years of age or older, the child's attitude toward the
19 implementation of family reunification services, the likelihood of
20 the parent's discharge from incarceration or institutionalization
21 within the reunification time limitations described in subdivision
22 (a), and any other appropriate factors. In determining the content
23 of reasonable services, the court shall consider the particular
24 barriers to an incarcerated or otherwise institutionalized parent's
25 access to those court-mandated services and ability to maintain
26 contact with his or her child, and shall document this information
27 in the child's case plan. Reunification services are subject to the
28 applicable time limitations imposed in subdivision (a). Services
29 may include, but shall not be limited to, all of the following:

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

32 (B) Transportation services, where appropriate.

33 (C) Visitation services, where appropriate.

34 (D) Reasonable services to extended family members or foster
35 parents providing care for the child if the services are not
36 detrimental to the child.

37 An incarcerated parent may be required to attend counseling,
38 parenting classes, or vocational training programs as part of the
39 reunification service plan if actual access to these services is
40 provided. The social worker shall document in the child's case

1 plan the particular barriers to an incarcerated or institutionalized
2 parent's access to those court-mandated services and ability to
3 maintain contact with his or her child.

4 (2) The presiding judge of the juvenile court of each county
5 may convene representatives of the county welfare department,
6 the sheriff's department, and other appropriate entities for the
7 purpose of developing and entering into protocols for ensuring the
8 notification, transportation, and presence of an incarcerated or
9 institutionalized parent at all court hearings involving proceedings
10 affecting the child pursuant to Section 2625 of the Penal Code.
11 The county welfare department shall utilize the prisoner locator
12 system developed by the Department of Corrections and
13 Rehabilitation to facilitate timely and effective notice of hearings
14 for incarcerated parents.

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

24 (f) If the court, pursuant to paragraph (2), (3), (4), (5), (6), (7),
25 (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) or
26 paragraph (1) of subdivision (e), does not order reunification
27 services, it shall, at the dispositional hearing, that shall include a
28 permanency hearing, determine if a hearing under Section 366.26
29 shall be set in order to determine whether adoption, guardianship,
30 or long-term foster care is the most appropriate plan for the child,
31 and shall consider in-state and out-of-state placement options. If
32 the court so determines, it shall conduct the hearing pursuant to
33 Section 366.26 within 120 days after the dispositional hearing.
34 However, the court shall not schedule a hearing so long as the
35 other parent is being provided reunification services pursuant to
36 subdivision (a). The court may continue to permit the parent to
37 visit the child unless it finds that visitation would be detrimental
38 to the child.

39 (g) (1) Whenever a court orders that a hearing shall be held
40 pursuant to Section 366.26, it shall direct the agency supervising

1 the child and the licensed county adoption agency, or the State
2 Department of Social Services when it is acting as an adoption
3 agency in counties that are not served by a county adoption agency,
4 to prepare an assessment that shall include:

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

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

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

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

32 (E) The relationship of the child to any identified prospective
33 adoptive parent or guardian, the duration and character of the
34 relationship, the motivation for seeking adoption or guardianship,
35 and a statement from the child concerning placement and the
36 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) An analysis of the likelihood that the child will be adopted
40 if parental rights are terminated.

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

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

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

15 (1) The specific act or omission comprising the severe sexual
16 abuse or the severe physical harm inflicted on the child or the
17 child's sibling or half sibling.

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

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

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

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

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

29 (i) The court shall read into the record the basis for a finding of
30 severe sexual abuse or the infliction of severe physical harm under
31 paragraph (6) of subdivision (b), and shall also specify the factual
32 findings used to determine that the provision of reunification
33 services to the offending parent or guardian would not benefit the
34 child.

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

37 366.21. (a) Every hearing conducted by the juvenile court
38 reviewing the status of a dependent child shall be placed on the
39 appearance calendar. The court shall advise all persons present at

1 the hearing of the date of the future hearing and of their right to
2 be present and represented by counsel.

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

5 (c) At least 10 calendar days prior to the hearing, the social
6 worker shall file a supplemental report with the court regarding
7 the services provided or offered to the parent or legal guardian to
8 enable him or her to assume custody and the efforts made to
9 achieve legal permanence for the child if efforts to reunify fail,
10 including, but not limited to, efforts to maintain relationships
11 between a child who is 10 years of age or older and has been in
12 out-of-home placement for six months or longer and individuals
13 who are important to the child, consistent with the child's best
14 interests; the progress made; and, where relevant, the prognosis
15 for return of the child to the physical custody of his or her parent
16 or legal guardian; and shall make his or her recommendation for
17 disposition. If the child is a member of a sibling group described
18 in subparagraph (C) of paragraph (1) of subdivision (a) of Section
19 361.5, the report and recommendation may also take into account
20 those factors described in subdivision (e) relating to the child's
21 sibling group. If the recommendation is not to return the child to
22 a parent or legal guardian, the report shall specify why the return
23 of the child would be detrimental to the child. The social worker
24 shall provide the parent or legal guardian, counsel for the child,
25 and any court-appointed child advocate with a copy of the report,
26 including his or her recommendation for disposition, at least 10
27 calendar days prior to the hearing. In the case of a child removed
28 from the physical custody of his or her parent or legal guardian,
29 the social worker shall, at least 10 calendar days prior to the
30 hearing, provide a summary of his or her recommendation for
31 disposition to any foster parents, relative caregivers, and certified
32 foster parents who have been approved for adoption by the State
33 Department of Social Services when it is acting as an adoption
34 agency in counties that are not served by a county adoption agency
35 or by a licensed county adoption agency, community care facility,
36 or foster family agency having the physical custody of the child.
37 The social worker shall include a copy of the Judicial Council
38 Caregiver Information Form (JV-290) with the summary of
39 recommendations to the child's foster parents, relative caregivers,
40 or foster parents approved for adoption, in the caregiver's primary

1 language when available, along with information on how to file
2 the form with the court.

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

23 (e) At the review hearing held six months after the initial
24 dispositional hearing, but no later than 12 months after the date
25 the child entered foster care *as determined in Section 361.49*,
26 whichever occurs earlier, the court shall order the return of the
27 child to the physical custody of his or her parent or legal guardian
28 unless the court finds, by a preponderance of the evidence, that
29 the return of the child to his or her parent or legal guardian would
30 create a substantial risk of detriment to the safety, protection, or
31 physical or emotional well-being of the child. The social worker
32 shall have the burden of establishing that detriment. At the hearing,
33 the court shall consider the criminal history, obtained pursuant to
34 paragraph (1) of subdivision (f) of Section 16504.5, of the parent
35 or legal guardian subsequent to the child's removal to the extent
36 that the criminal record is substantially related to the welfare of
37 the child or the parent's or guardian's ability to exercise custody
38 and control regarding his or her child, provided the parent or legal
39 guardian agreed to submit fingerprint images to obtain criminal
40 history information as part of the case plan. The failure of the

1 parent or legal guardian to participate regularly and make
2 substantive progress in court-ordered treatment programs shall be
3 prima facie evidence that return would be detrimental. In making
4 its determination, the court shall review and consider the social
5 worker's report and recommendations and the report and
6 recommendations of any child advocate appointed pursuant to
7 Section 356.5; and shall consider the efforts or progress, or both,
8 demonstrated by the parent or legal guardian and the extent to
9 which he or she availed himself or herself to services provided,
10 taking into account the particular barriers to an incarcerated or
11 institutionalized parent or legal guardian's access to those
12 court-mandated services and ability to maintain contact with his
13 or her child.

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

27 If the child was under three years of age on the date of the initial
28 removal, or is a member of a sibling group described in
29 subparagraph (C) of paragraph (1) of subdivision (a) of Section
30 361.5, and the court finds by clear and convincing evidence that
31 the parent failed to participate regularly and make substantive
32 progress in a court-ordered treatment plan, the court may schedule
33 a hearing pursuant to Section 366.26 within 120 days. If, however,
34 the court finds there is a substantial probability that the child, who
35 was under three years of age on the date of initial removal or is a
36 member of a sibling group described in subparagraph (C) of
37 paragraph (1) of subdivision (a) of Section 361.5, may be returned
38 to his or her parent or legal guardian within six months or that
39 reasonable services have not been provided, the court shall continue
40 the case to the 12-month permanency hearing.

1 For the purpose of placing and maintaining a sibling group
2 together in a permanent home, the court, in making its
3 determination to schedule a hearing pursuant to Section 366.26
4 for some or all members of a sibling group, as described in
5 subparagraph (C) of paragraph (1) of subdivision (a) of Section
6 361.5, shall review and consider the social worker's report and
7 recommendations. Factors the report shall address, and the court
8 shall consider, may include, but need not be limited to, whether
9 the sibling group was removed from parental care as a group, the
10 closeness and strength of the sibling bond, the ages of the siblings,
11 the appropriateness of maintaining the sibling group together, the
12 detriment to the child if sibling ties are not maintained, the
13 likelihood of finding a permanent home for the sibling group,
14 whether the sibling group is currently placed together in a
15 preadoptive home or has a concurrent plan goal of legal
16 permanency in the same home, the wishes of each child whose
17 age and physical and emotional condition permits a meaningful
18 response, and the best interest of each child in the sibling group.
19 The court shall specify the factual basis for its finding that it is in
20 the best interest of each child to schedule a hearing pursuant to
21 Section 366.26 in 120 days for some or all of the members of the
22 sibling group.

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

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

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

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

13 (f) The permanency hearing shall be held no later than 12
14 months after the date the child entered foster care, as that date is
15 determined pursuant to Section 361.49. At the permanency hearing,
16 the court shall determine the permanent plan for the child, which
17 shall include a determination of whether the child will be returned
18 to the child's home and, if so, when, within the time limits of
19 subdivision (a) of Section 361.5. The court shall order the return
20 of the child to the physical custody of his or her parent or legal
21 guardian unless the court finds, by a preponderance of the evidence,
22 that the return of the child to his or her parent or legal guardian
23 would create a substantial risk of detriment to the safety, protection,
24 or physical or emotional well-being of the child. The social worker
25 shall have the burden of establishing that detriment. At the
26 permanency hearing, the court shall consider the criminal history,
27 obtained pursuant to paragraph (1) of subdivision (f) of Section
28 16504.5, of the parent or legal guardian subsequent to the child's
29 removal to the extent that the criminal record is substantially related
30 to the welfare of the child or the parent or legal guardian's ability
31 to exercise custody and control regarding his or her child, provided
32 that the parent or legal guardian agreed to submit fingerprint images
33 to obtain criminal history information as part of the case plan. The
34 court shall also determine whether reasonable services that were
35 designed to aid the parent or legal guardian to overcome the
36 problems that led to the initial removal and continued custody of
37 the child have been provided or offered to the parent or legal
38 guardian. For each youth 16 years of age and older, the court shall
39 also determine whether services have been made available to assist
40 him or her in making the transition from foster care to independent

1 living. The failure of the parent or legal guardian to participate
2 regularly and make substantive progress in court-ordered treatment
3 programs shall be prima facie evidence that return would be
4 detrimental. In making its determination, the court shall review
5 and consider the social worker's report and recommendations and
6 the report and recommendations of any child advocate appointed
7 pursuant to Section 356.5, shall consider the efforts or progress,
8 or both, demonstrated by the parent or legal guardian and the extent
9 to which he or she availed himself or herself of services provided,
10 taking into account the particular barriers to an incarcerated or
11 institutionalized parent or legal guardian's access to those
12 court-mandated services and ability to maintain contact with his
13 or her child and shall make appropriate findings pursuant to
14 subdivision (a) of Section 366.

15 Regardless of whether the child is returned to his or her parent
16 or legal guardian, the court shall specify the factual basis for its
17 decision. If the child is not returned to a parent or legal guardian,
18 the court shall specify the factual basis for its conclusion that the
19 return would be detrimental. The court also shall make a finding
20 pursuant to subdivision (a) of Section 366. If the child is not
21 returned to his or her parent or legal guardian, the court shall
22 consider, and state for the record, in-state and out-of-state
23 placement options. If the child is placed out of the state, the court
24 shall make a determination whether the out-of-state placement
25 continues to be appropriate and in the best interests of the child.

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

33 (1) Continue the case for up to six months for a permanency
34 review hearing, provided that the hearing shall occur within 18
35 months of the date the child was originally taken from the physical
36 custody of his or her parent or legal guardian. The court shall
37 continue the case only if it finds that there is a substantial
38 probability that the child will be returned to the physical custody
39 of his or her parent or legal guardian and safely maintained in the
40 home within the extended period of time or that reasonable services

1 have not been provided to the parent or legal guardian. For the
2 purposes of this section, in order to find a substantial probability
3 that the child will be returned to the physical custody of his or her
4 parent or legal guardian and safely maintained in the home within
5 the extended period of time, the court shall be required to find all
6 of the following:

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

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

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

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

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

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

34 (3) Order that the child remain in long-term foster care, but only
35 if the court finds by clear and convincing evidence, based upon
36 the evidence already presented to it, including a recommendation
37 by the State Department of Social Services when it is acting as an
38 adoption agency in counties that are not served by a county
39 adoption agency or by a licensed county adoption agency, that
40 there is a compelling reason for determining that a hearing held

1 pursuant to Section 366.26 is not in the best interest of the child
2 because the child is not a proper subject for adoption and has no
3 one willing to accept legal guardianship. For purposes of this
4 section, a recommendation by the State Department of Social
5 Services when it is acting as an adoption agency in counties that
6 are not served by a county adoption agency or by a licensed county
7 adoption agency that adoption is not in the best interest of the child
8 shall constitute a compelling reason for the court's determination.
9 That recommendation shall be based on the present circumstances
10 of the child and may not preclude a different recommendation at
11 a later date if the child's circumstances change.

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

19 If the child is not returned to his or her parent or legal guardian,
20 the court shall consider, and state for the record, in-state and
21 out-of-state options for permanent placement. If the child is placed
22 out of the state, the court shall make a determination whether the
23 out-of-state placement continues to be appropriate and in the best
24 interests of the child.

25 (h) In any case in which the court orders that a hearing pursuant
26 to Section 366.26 shall be held, it shall also order the termination
27 of reunification services to the parent or legal guardian. The court
28 shall continue to permit the parent or legal guardian to visit the
29 child pending the hearing unless it finds that visitation would be
30 detrimental to the child. The court shall make any other appropriate
31 orders to enable the child to maintain relationships with individuals,
32 other than the child's siblings, who are important to the child,
33 consistent with the child's best interests.

34 (i) (1) Whenever a court orders that a hearing pursuant to
35 Section 366.26 shall be held, it shall direct the agency supervising
36 the child and the licensed county adoption agency, or the State
37 Department of Social Services when it is acting as an adoption
38 agency in counties that are not served by a county adoption agency,
39 to prepare an assessment that shall include:

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

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

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

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

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

30 (F) A description of efforts to be made to identify a prospective
31 adoptive parent or legal guardian, including, but not limited to,
32 child-specific recruitment and listing on an adoption exchange
33 within the state or out of the state.

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

36 (2) (A) A relative caregiver’s preference for legal guardianship
37 over adoption, if it is due to circumstances that do not include an
38 unwillingness to accept legal or financial responsibility for the
39 child, shall not constitute the sole basis for recommending removal

1 of the child from the relative caregiver for purposes of adoptive
2 placement.

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

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

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

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

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

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

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

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

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

35 11404.1. In order to be eligible for AFDC-FC, the child shall
36 receive a periodic review no less frequently than once every six
37 months and a permanency hearing within 12 months after the date
38 the child entered foster care, pursuant to Section 361.49. The child
39 shall also receive permanency planning hearings periodically, but
40 no less frequently than once each 12 months thereafter, as required

1 by subdivision (d) of Section 366.3 throughout the period of foster
2 care placement. Periodic reviews and permanency planning
3 hearings shall not be required for a child who is residing with a
4 nonrelated legal guardian.

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

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