

AMENDED IN SENATE JUNE 25, 2009

AMENDED IN SENATE JUNE 16, 2009

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, 388, 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.

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

3 (A) Except as otherwise provided in subparagraph (C), for a
4 child who, on the date of initial removal from the physical custody
5 of his or her parent or guardian, was three years of age or older,
6 court-ordered services shall be provided beginning with the
7 dispositional hearing and ending 12 months after the date the child
8 entered foster care as defined in Section 361.49, unless the child
9 is returned to the home of the parent or guardian.

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

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

28 (2) Any motion to terminate court-ordered reunification services
29 prior to the hearing set pursuant to subdivision (f) of Section 366.21
30 for a child described by subparagraph (A) of paragraph (1), or
31 prior to the hearing set pursuant to subdivision (e) of Section
32 366.21 for a child described by subparagraph (B) or (C) of
33 paragraph (1), shall be made pursuant to the requirements set forth
34 in subdivision (c) of Section 388. A motion to terminate
35 court-ordered reunification services shall not be required at the
36 hearing set pursuant to subdivision (e) of Section 366.21 if the
37 ~~child was removed initially under subdivision (g) of Section 300~~
38 ~~and the court finds by clear and convincing evidence one of the~~
39 following:

1 (A) That *the child was removed initially under subdivision (g)*
2 *of Section 300 and the whereabouts of the parent are still unknown.*

3 (B) That the parent has failed to contact and visit the child.

4 (C) That the parent has been convicted of a felony indicating
5 parental unfitness.

6 (3) Notwithstanding subparagraphs (A), (B), and (C) of
7 paragraph (1), court-ordered services may be extended up to a
8 maximum time period not to exceed 18 months after the date the
9 child was originally removed from physical custody of his or her
10 parent or guardian if it can be shown, at the hearing held pursuant
11 to subdivision (f) of Section 366.21, that the permanent plan for
12 the child is that he or she will be returned and safely maintained
13 in the home within the extended time period. The court shall extend
14 the time period only if it finds that there is a substantial probability
15 that the child will be returned to the physical custody of his or her
16 parent or guardian within the extended time period or that
17 reasonable services have not been provided to the parent or
18 guardian. In determining whether court-ordered services may be
19 extended, the court shall consider the special circumstances of an
20 incarcerated or institutionalized parent or parents, or parent or
21 parents court-ordered to a residential substance abuse treatment
22 program, including, but not limited to, barriers to the parent's or
23 guardian's access to services and ability to maintain contact with
24 his or her child. The court shall also consider, among other factors,
25 good faith efforts that the parent or guardian has made to maintain
26 contact with the child. If the court extends the time period, the
27 court shall specify the factual basis for its conclusion that there is
28 a substantial probability that the child will be returned to the
29 physical custody of his or her parent or guardian within the
30 extended time period. The court also shall make findings pursuant
31 to subdivision (a) of Section 366 and subdivision (e) of Section
32 358.1.

33 When counseling or other treatment services are ordered, the
34 parent or guardian shall be ordered to participate in those services,
35 unless the parent's or guardian's participation is deemed by the
36 court to be inappropriate or potentially detrimental to the child, or
37 unless a parent or guardian is incarcerated and the corrections
38 facility in which he or she is incarcerated does not provide access
39 to the treatment services ordered by the court. Physical custody of
40 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, the court shall take the child's desire into account in devising a permanency plan.

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

(4) Notwithstanding paragraph (3), court-ordered services may be extended up to a maximum time period not to exceed 24 months after the date the child was originally removed from physical custody of his or her parent or guardian if it is shown, at the hearing held pursuant to subdivision (b) of Section 366.22, 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 it is in the child's best interest to have the time period extended and that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian who is described in subdivision (b) of Section 366.22 within the extended time period, or that reasonable services have not been provided to the parent or guardian. 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.

1 When counseling or other treatment services are ordered, the
2 parent or guardian shall be ordered to participate in those services,
3 in order for substantial probability to be found. Physical custody
4 of the child by the parents or guardians during the applicable time
5 period under subparagraph (A), (B), or (C) of paragraph (1) shall
6 not serve to interrupt the running of the period. If at the end of the
7 applicable time period, the child cannot be safely returned to the
8 care and custody of a parent or guardian without court supervision,
9 but the child clearly desires contact with the parent or guardian,
10 the court shall take the child's desire into account in devising a
11 permanency plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 In addition, the court shall not order reunification in any situation
40 described in paragraph (5) of subdivision (b) unless it finds that,

1 based on competent testimony, those services are likely to prevent
2 reabuse or continued neglect of the child or that failure to try
3 reunification will be detrimental to the child because the child is
4 closely and positively attached to that parent. The social worker
5 shall investigate the circumstances leading to the removal of the
6 child and advise the court whether there are circumstances that
7 indicate that reunification is likely to be successful or unsuccessful
8 and whether failure to order reunification is likely to be detrimental
9 to the child.

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

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

26 (e) (1) If the parent or guardian is incarcerated or
27 institutionalized, the court shall order reasonable services unless
28 the court determines, by clear and convincing evidence, those
29 services would be detrimental to the child. In determining
30 detriment, the court shall consider the age of the child, the degree
31 of parent-child bonding, the length of the sentence, the length and
32 nature of the treatment, the nature of the crime or illness, the degree
33 of detriment to the child if services are not offered and, for children
34 10 years of age or older, the child's attitude toward the
35 implementation of family reunification services, the likelihood of
36 the parent's discharge from incarceration or institutionalization
37 within the reunification time limitations described in subdivision
38 (a), and any other appropriate factors. In determining the content
39 of reasonable services, the court shall consider the particular
40 barriers to an incarcerated or otherwise institutionalized parent's

1 access to those court-mandated services and ability to maintain
2 contact with his or her child, and shall document this information
3 in the child's case plan. Reunification services are subject to the
4 applicable time limitations imposed in subdivision (a). Services
5 may include, but shall not be limited to, all of the following:

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

8 (B) Transportation services, where appropriate.

9 (C) Visitation services, where appropriate.

10 (D) Reasonable services to extended family members or foster
11 parents providing care for the child if the services are not
12 detrimental to the child.

13 An incarcerated parent may be required to attend counseling,
14 parenting classes, or vocational training programs as part of the
15 reunification service plan if actual access to these services is
16 provided. The social worker shall document in the child's case
17 plan the particular barriers to an incarcerated or institutionalized
18 parent's access to those court-mandated services and ability to
19 maintain contact with his or her child.

20 (2) The presiding judge of the juvenile court of each county
21 may convene representatives of the county welfare department,
22 the sheriff's department, and other appropriate entities for the
23 purpose of developing and entering into protocols for ensuring the
24 notification, transportation, and presence of an incarcerated or
25 institutionalized parent at all court hearings involving proceedings
26 affecting the child pursuant to Section 2625 of the Penal Code.
27 The county welfare department shall utilize the prisoner locator
28 system developed by the Department of Corrections and
29 Rehabilitation to facilitate timely and effective notice of hearings
30 for incarcerated parents.

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

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

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

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

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

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

(D) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child’s needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also

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

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

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

18 (2) (A) A relative caregiver’s preference for legal guardianship
19 over adoption, if it is due to circumstances that do not include an
20 unwillingness to accept legal or financial responsibility for the
21 child, shall not constitute the sole basis for recommending removal
22 of the child from the relative caregiver for purposes of adoptive
23 placement.

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

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

32 (1) The specific act or omission comprising the severe sexual
33 abuse or the severe physical harm inflicted on the child or the
34 child’s sibling or half sibling.

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

37 (3) The severity of the emotional trauma suffered by the child
38 or the child’s sibling or half sibling.

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

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

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

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

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

14 366.21. (a) Every hearing conducted by the juvenile court
15 reviewing the status of a dependent child shall be placed on the
16 appearance calendar. The court shall advise all persons present at
17 the hearing of the date of the future hearing and of their right to
18 be present and represented by counsel.

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

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

1 and any court-appointed child advocate with a copy of the report,
2 including his or her recommendation for disposition, at least 10
3 calendar days prior to the hearing. In the case of a child removed
4 from the physical custody of his or her parent or legal guardian,
5 the social worker shall, at least 10 calendar days prior to the
6 hearing, provide a summary of his or her recommendation for
7 disposition to any foster parents, relative caregivers, and certified
8 foster parents who have been approved for adoption by the State
9 Department of Social Services when it is acting as an adoption
10 agency in counties that are not served by a county adoption agency
11 or by a licensed county adoption agency, community care facility,
12 or foster family agency having the physical custody of the child.
13 The social worker shall include a copy of the Judicial Council
14 Caregiver Information Form (JV-290) with the summary of
15 recommendations to the child's foster parents, relative caregivers,
16 or foster parents approved for adoption, in the caregiver's primary
17 language when available, along with information on how to file
18 the form with the court.

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

39 (e) At the review hearing held six months after the initial
40 dispositional hearing, but no later than 12 months after the date

1 the child entered foster care as determined in Section 361.49,
2 whichever occurs earlier, the court shall order the return of the
3 child to the physical custody of his or her parent or legal guardian
4 unless the court finds, by a preponderance of the evidence, that
5 the return of the child to his or her parent or legal guardian would
6 create a substantial risk of detriment to the safety, protection, or
7 physical or emotional well-being of the child. The social worker
8 shall have the burden of establishing that detriment. At the hearing,
9 the court shall consider the criminal history, obtained pursuant to
10 paragraph (1) of subdivision (f) of Section 16504.5, of the parent
11 or legal guardian subsequent to the child's removal to the extent
12 that the criminal record is substantially related to the welfare of
13 the child or the parent's or guardian's ability to exercise custody
14 and control regarding his or her child, provided the parent or legal
15 guardian agreed to submit fingerprint images to obtain criminal
16 history information as part of the case plan. The failure of the
17 parent or legal guardian to participate regularly and make
18 substantive progress in court-ordered treatment programs shall be
19 prima facie evidence that return would be detrimental. In making
20 its determination, the court shall review and consider the social
21 worker's report and recommendations and the report and
22 recommendations of any child advocate appointed pursuant to
23 Section 356.5; and shall consider the efforts or progress, or both,
24 demonstrated by the parent or legal guardian and the extent to
25 which he or she availed himself or herself to services provided,
26 taking into account the particular barriers to an incarcerated or
27 institutionalized parent or legal guardian's access to those
28 court-mandated services and ability to maintain contact with his
29 or her child.

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

1 361.5, the court has ordered that reunification services shall not
2 be provided.

3 If the child was under three years of age on the date of the initial
4 removal, or is a member of a sibling group described in
5 subparagraph (C) of paragraph (1) of subdivision (a) of Section
6 361.5, and the court finds by clear and convincing evidence that
7 the parent failed to participate regularly and make substantive
8 progress in a court-ordered treatment plan, the court may schedule
9 a hearing pursuant to Section 366.26 within 120 days. If, however,
10 the court finds there is a substantial probability that the child, who
11 was under three years of age on the date of initial removal or is a
12 member of a sibling group described in subparagraph (C) of
13 paragraph (1) of subdivision (a) of Section 361.5, may be returned
14 to his or her parent or legal guardian within six months or that
15 reasonable services have not been provided, the court shall continue
16 the case to the 12-month permanency hearing.

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

39 If the child was removed initially under subdivision (g) of
40 Section 300 and the court finds by clear and convincing evidence

1 that the whereabouts of the parent are still unknown, or the parent
2 has failed to contact and visit the child, the court may schedule a
3 hearing pursuant to Section 366.26 within 120 days. The court
4 shall take into account any particular barriers to a parent's ability
5 to maintain contact with his or her child due to the parent's
6 incarceration or institutionalization. If the court finds by clear and
7 convincing evidence that the parent has been convicted of a felony
8 indicating parental unfitness, the court may schedule a hearing
9 pursuant to Section 366.26 within 120 days.

10 If the child had been placed under court supervision with a
11 previously noncustodial parent pursuant to Section 361.2, the court
12 shall determine whether supervision is still necessary. The court
13 may terminate supervision and transfer permanent custody to that
14 parent, as provided for by paragraph (1) of subdivision (b) of
15 Section 361.2.

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

21 If the child is not returned to his or her parent or legal guardian,
22 the court shall determine whether reasonable services that were
23 designed to aid the parent or legal guardian in overcoming the
24 problems that led to the initial removal and the continued custody
25 of the child have been provided or offered to the parent or legal
26 guardian. The court shall order that those services be initiated,
27 continued, or terminated.

28 (f) The permanency hearing shall be held no later than 12
29 months after the date the child entered foster care, as that date is
30 determined pursuant to Section 361.49. At the permanency hearing,
31 the court shall determine the permanent plan for the child, which
32 shall include a determination of whether the child will be returned
33 to the child's home and, if so, when, within the time limits of
34 subdivision (a) of Section 361.5. The court shall order the return
35 of the child to the physical custody of his or her parent or legal
36 guardian unless the court finds, by a preponderance of the evidence,
37 that the return of the child to his or her parent or legal guardian
38 would create a substantial risk of detriment to the safety, protection,
39 or physical or emotional well-being of the child. The social worker
40 shall have the burden of establishing that detriment. At the

1 permanency hearing, the court shall consider the criminal history,
2 obtained pursuant to paragraph (1) of subdivision (f) of Section
3 16504.5, of the parent or legal guardian subsequent to the child's
4 removal to the extent that the criminal record is substantially related
5 to the welfare of the child or the parent or legal guardian's ability
6 to exercise custody and control regarding his or her child, provided
7 that the parent or legal guardian agreed to submit fingerprint images
8 to obtain criminal history information as part of the case plan. The
9 court shall also determine whether reasonable services that were
10 designed to aid the parent or legal guardian to overcome the
11 problems that led to the initial removal and continued custody of
12 the child have been provided or offered to the parent or legal
13 guardian. For each youth 16 years of age and older, the court shall
14 also determine whether services have been made available to assist
15 him or her in making the transition from foster care to independent
16 living. The failure of the parent or legal guardian to participate
17 regularly and make substantive progress in court-ordered treatment
18 programs shall be prima facie evidence that return would be
19 detrimental. In making its determination, the court shall review
20 and consider the social worker's report and recommendations and
21 the report and recommendations of any child advocate appointed
22 pursuant to Section 356.5, shall consider the efforts or progress,
23 or both, demonstrated by the parent or legal guardian and the extent
24 to which he or she availed himself or herself of services provided,
25 taking into account the particular barriers to an incarcerated or
26 institutionalized parent or legal guardian's access to those
27 court-mandated services and ability to maintain contact with his
28 or her child and shall make appropriate findings pursuant to
29 subdivision (a) of Section 366.

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

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

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case 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 legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

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

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

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

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

The court shall inform the parent or legal guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.26 may be instituted. The court may not order that a hearing pursuant to Section 366.26

1 be held unless there is clear and convincing evidence that
2 reasonable services have been provided or offered to the parent or
3 legal guardian.

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

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

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

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

1 (h) In any case in which the court orders that a hearing pursuant
2 to Section 366.26 shall be held, it shall also order the termination
3 of reunification services to the parent or legal guardian. The court
4 shall continue to permit the parent or legal guardian to visit the
5 child pending the hearing unless it finds that visitation would be
6 detrimental to the child. The court shall make any other appropriate
7 orders to enable the child to maintain relationships with individuals,
8 other than the child's siblings, who are important to the child,
9 consistent with the child's best interests.

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

16 (A) Current search efforts for an absent parent or parents or
17 legal guardians.

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

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

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

38 (E) The relationship of the child to any identified prospective
39 adoptive parent or legal guardian, the duration and character of
40 the relationship, the motivation for seeking adoption or

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

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

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

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

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

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

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

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

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

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

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

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

8 SEC. 4. Section 388 of the Welfare and Institutions Code is
9 amended to read:

10 388. (a) Any parent or other person having an interest in a
11 child who is a dependent child of the juvenile court or the child
12 himself or herself through a properly appointed guardian may,
13 upon grounds of change of circumstance or new evidence, petition
14 the court in the same action in which the child was found to be a
15 dependent child of the juvenile court or in which a guardianship
16 was ordered pursuant to Section 360 for a hearing to change,
17 modify, or set aside any order of court previously made or to
18 terminate the jurisdiction of the court. The petition shall be verified
19 and, if made by a person other than the child, shall state the
20 petitioner's relationship to or interest in the child and shall set forth
21 in concise language any change of circumstance or new evidence
22 which are alleged to require the change of order or termination of
23 jurisdiction.

24 (b) Any person, including a child who is a dependent of the
25 juvenile court, may petition the court to assert a relationship as a
26 sibling related by blood, adoption, or affinity through a common
27 legal or biological parent to a child who is, or is the subject of a
28 petition for adjudication as, a dependent of the juvenile court, and
29 may request visitation with the dependent child, placement with
30 or near the dependent child, or consideration when determining
31 or implementing a case plan or permanent plan for the dependent
32 child or make any other request for an order which may be shown
33 to be in the best interest of the dependent child. The court may
34 appoint a guardian ad litem to file the petition for the dependent
35 child asserting the sibling relationship if the court determines that
36 the appointment is necessary for the best interests of the dependent
37 child. The petition shall be verified and shall set forth the
38 following:

39 (1) Through which parent he or she is related to the dependent
40 child.

1 (2) Whether he or she is related to the dependent child by blood,
2 adoption, or affinity.

3 (3) The request or order that the petitioner is seeking.

4 (4) Why that request or order is in the best interest of the
5 dependent child.

6 (c) (1) Any party, including a child who is a dependent of the
7 juvenile court, may petition the court, prior to the hearing set
8 pursuant to subdivision (f) of Section 366.21 for a child described
9 by subparagraph (A) of paragraph (1) of subdivision (a) of Section
10 361.5, or prior to the hearing set pursuant to subdivision (e) of
11 Section 366.21 for a child described by subparagraph (B) or (C)
12 of paragraph (1) of subdivision (a) of Section 361.5, to terminate
13 court-ordered reunification services provided under subdivision
14 (a) of Section 361.5 only if one of the following conditions exists:

15 (A) It appears that a change of circumstance or new evidence
16 exists that satisfies a condition set forth in subdivision (b) or (e)
17 of Section 361.5 justifying termination of court-ordered
18 reunification services.

19 (B) The action or inaction of the parent or guardian creates a
20 substantial likelihood that reunification will not occur, including,
21 but not limited to, the parent or guardian's failure to visit the child,
22 or the failure of the parent or guardian to participate regularly and
23 make substantive progress in a court-ordered treatment plan.

24 (2) In determining whether the parent or guardian has failed to
25 visit the child or participate regularly or make progress in the
26 treatment plan, the court shall consider factors including, but not
27 limited to, the parent or guardian's incarceration,
28 institutionalization, or participation in a residential substance abuse
29 treatment program.

30 (3) The court shall terminate reunification services during the
31 above-described time periods only upon a finding by a
32 preponderance of evidence that reasonable services have been
33 offered or provided, and upon a finding of clear and convincing
34 evidence that one of the conditions in subparagraph (A) or (B) of
35 paragraph (1) exists.

36 (4) If the court terminates reunification services, it shall order
37 that a hearing pursuant to Section 366.26 be held within 120 days.

38 (d) If it appears that the best interests of the child may be
39 promoted by the proposed change of order, recognition of a sibling
40 relationship, termination of jurisdiction, or clear and convincing

1 evidence supports revocation or termination of court-ordered
2 reunification services, the court shall order that a hearing be held
3 and shall give prior notice, or cause prior notice to be given, to the
4 persons and by the means prescribed by Section 386, and, in those
5 instances in which the means of giving notice is not prescribed by
6 those sections, then by means the court prescribes.

7 SEC. 5. Section 11404.1 of the Welfare and Institutions Code
8 is amended to read:

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

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

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