

AMENDED IN ASSEMBLY MAY 6, 2009

AMENDED IN ASSEMBLY APRIL 21, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1325

Introduced by Assembly Members Cook and Beall
(Principal coauthor: ~~Assembly Member Coto~~ coauthors: *Assembly*
***Members Coto and Lieu*)**
(Principal coauthors: Senators Ducheny and Florez)

February 27, 2009

~~An act to add Section 8600.5 to the Family Code, and to amend Sections 294, 358.1, 361.5, 366.21, 366.22, 366.25, 366.26, 366.3, 16120, 16508, and 16508.1 of, and to add Section 366.24 to, the Welfare and Institutions Code, relating to Indian children.~~
An act to add and repeal Section 8600.5 of the Family Code, and to amend, repeal, and add Sections 294, 358.1, 361.5, 366.21, 366.22, 366.25, 366.26, 366.3, 16120, 16508, and 16508.1 of, and to add and repeal Section 366.24 of, the Welfare and Institutions Code, relating to Indian children.

LEGISLATIVE COUNSEL'S DIGEST

AB 1325, as amended, Cook. Tribal customary adoption.

(1) Existing law governs the removal of a child who has suffered or is at risk of suffering abuse or neglect from the home of the child's parent or guardian and the placement of that child in foster care. These provisions require the juvenile court to, among other things, conduct noticed detention, periodic status review, and dispositional hearings regarding the child, and direct the court to order, review, and receive into evidence social studies or evaluations regarding the child, including recommendations for placement. Under certain circumstances, the

juvenile court may terminate parental rights and place the child for adoption or in long-term foster care, among other options for permanent placement. These provisions require county social workers to conduct the social studies or evaluations and to prepare reports and make recommendations to the court regarding temporary and long-term placement of the child, as specified.

Existing federal law, the Indian Child Welfare Act, and state law govern the placement of children who are or who may be Indian children, as specified

This bill would revise those provisions to require the juvenile court and social workers to consider and recommend tribal customary adoption, as defined, as an additional permanent placement option, without termination of parental rights, for a dependent child. The bill would provide that a tribal customary adoption order would have the same force and effect as an order of adoption. By imposing new duties on social workers, the bill would impose a state-mandated local program.

(2) Existing law governs independent and agency adoptions.

This bill would specifically exempt tribal customary adoptions from those provisions.

(3) The bill would require the Judicial Council to adopt rules of court and necessary forms to implement tribal customary adoption as a permanent plan for Indian children before July 1, 2010. *The bill would also require the Judicial Council to complete a study of these provisions and report its findings to the Legislature on or before January 1, 2013.*

(4) The amendments implementing tribal customary adoption would become operative on July 1, 2010, *and would be repealed on January 1, 2014.*

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

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

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

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

1 *SECTION 1. Section 8600.5 is added to the Family Code, to*
2 *read:*

3 8600.5. (a) *With the exception of Section 8608, tribal*
4 *customary adoption as defined in Section 366.24 of the Welfare*
5 *and Institutions Code and as applied to Indian Children who are*
6 *dependents of the court, does not apply to this part.*

7 (b) *This section shall remain in effect only until January 1, 2014,*
8 *and as of that date is repealed, unless a later enacted statute, that*
9 *is enacted before January 1, 2014, deletes or extends that date.*

10 SEC. 2. *Section 294 of the Family Code is amended to read:*

11 294. The social worker or probation officer shall give notice
12 of a selection and implementation hearing held pursuant to Section
13 366.26 in the following manner:

14 (a) Notice of the hearing shall be given to the following persons:

15 (1) The mother.

16 (2) The fathers, presumed and alleged.

17 (3) The child, if the child is 10 years of age or older.

18 (4) Any known sibling of the child who is the subject of the
19 hearing if that sibling either is the subject of a dependency
20 proceeding or has been adjudged to be a dependent child of the
21 juvenile court. If the sibling is 10 years of age or older, the sibling,
22 the sibling's caregiver, and the sibling's attorney. If the sibling is
23 under 10 years of age, the sibling's caregiver and the sibling's
24 attorney. However, notice is not required to be given to any sibling
25 whose matter is calendared in the same court on the same day.

26 (5) The grandparents of the child, if their address is known and
27 if the parent's whereabouts are unknown.

28 (6) All counsel of record.

29 (7) To any unknown parent by publication, if ordered by the
30 court pursuant to paragraph (2) of subdivision (g).

31 (8) The current caregiver of the child, including foster parents,
32 relative caregivers, preadoptive parents, and nonrelative extended
33 family members. Any person notified may attend all hearings and
34 may submit any information he or she deems relevant to the court
35 in writing.

36 (b) The following persons shall not be notified of the hearing:

37 (1) A parent who has relinquished the child to the State
38 Department of Social Services or to a licensed adoption agency

1 for adoption, and the relinquishment has been accepted and filed
2 with notice as required under Section 8700 of the Family Code.

3 (2) An alleged father who has denied paternity and has executed
4 a waiver of the right to notice of further proceedings.

5 (3) A parent whose parental rights have been terminated.

6 (c) (1) Service of the notice shall be completed at least 45 days
7 before the hearing date. Service is deemed complete at the time
8 the notice is personally delivered to the person named in the notice
9 or 10 days after the notice has been placed in the mail, or at the
10 expiration of the time prescribed by the order for publication.

11 (2) Service of notice in cases where publication is ordered shall
12 be completed at least 30 days before the date of the hearing.

13 (d) Regardless of the type of notice required, or the manner in
14 which it is served, once the court has made the initial finding that
15 notice has properly been given to the parent, or to any person
16 entitled to receive notice pursuant to this section, subsequent notice
17 for any continuation of a Section 366.26 hearing may be by
18 first-class mail to any last known address, by an order made
19 pursuant to Section 296, or by any other means that the court
20 determines is reasonably calculated, under any circumstance, to
21 provide notice of the continued hearing. However, if the
22 recommendation changes from the recommendation contained in
23 the notice previously found to be proper, notice shall be provided
24 to the parent, and to any person entitled to receive notice pursuant
25 to this section, regarding that subsequent hearing.

26 (e) The notice shall contain the following information:

27 (1) The date, time, and place of the hearing.

28 (2) The right to appear.

29 (3) The parents' right to counsel.

30 (4) The nature of the proceedings.

31 (5) The recommendation of the supervising agency.

32 (6) A statement that, at the time of hearing, the court is required
33 to select a permanent plan of adoption, legal guardianship, or
34 long-term foster care for the child.

35 (f) Notice to the parents may be given in any one of the
36 following manners:

37 (1) If the parent is present at the hearing at which the court
38 schedules a hearing pursuant to Section 366.26, the court shall
39 advise the parent of the date, time, and place of the proceedings,
40 their right to counsel, the nature of the proceedings, and the

1 requirement that at the proceedings the court shall select and
2 implement a plan of adoption, legal guardianship, or long-term
3 foster care for the child. The court shall direct the parent to appear
4 for the proceedings and then direct that the parent be notified
5 thereafter by first-class mail to the parent's usual place of residence
6 or business only.

7 (2) Certified mail, return receipt requested, to the parent's last
8 known mailing address. This notice shall be sufficient if the child
9 welfare agency receives a return receipt signed by the parent.

10 (3) Personal service to the parent named in the notice.

11 (4) Delivery to a competent person who is at least 18 years of
12 age at the parent's usual place of residence or business, and
13 thereafter mailed to the parent named in the notice by first-class
14 mail at the place where the notice was delivered.

15 (5) If the residence of the parent is outside the state, service
16 may be made as described in paragraph (1), (3), or (4) or by
17 certified mail, return receipt requested.

18 (6) If the recommendation of the probation officer or social
19 worker is legal guardianship or long-term foster care, *or, in the*
20 *case of an Indian child, tribal customary adoption*, service may
21 be made by first-class mail to the parent's usual place of residence
22 or business.

23 (7) If a parent's identity is known but his or her whereabouts
24 are unknown and the parent cannot, with reasonable diligence, be
25 served in any manner specified in paragraphs (1) to (6), inclusive,
26 the petitioner shall file an affidavit with the court at least 75 days
27 before the hearing date, stating the name of the parent and
28 describing the efforts made to locate and serve the parent.

29 (A) If the court determines that there has been due diligence in
30 attempting to locate and serve the parent and the probation officer
31 or social worker recommends adoption, service shall be to that
32 parent's attorney of record, if any, by certified mail, return receipt
33 requested. If the parent does not have an attorney of record, the
34 court shall order that service be made by publication of citation
35 requiring the parent to appear at the date, time, and place stated in
36 the citation, and that the citation be published in a newspaper
37 designated as most likely to give notice to the parent. Publication
38 shall be made once a week for four consecutive weeks. Whether
39 notice is to the attorney of record or by publication, the court shall

1 also order that notice be given to the grandparents of the child, if
2 their identities and addresses are known, by first-class mail.

3 (B) If the court determines that there has been due diligence in
4 attempting to locate and serve the parent and the probation officer
5 or social worker recommends legal guardianship or long-term
6 foster care, no further notice is required to the parent, but the court
7 shall order that notice be given to the grandparents of the child, if
8 their identities and addresses are known, by first-class mail.

9 (C) In any case where the residence of the parent becomes
10 known, notice shall immediately be served upon the parent as
11 provided for in either paragraph (2), (3), (4), (5), or (6).

12 (g) (1) If the identity of one or both of the parents, or alleged
13 parents, of the child is unknown, or if the name of one or both
14 parents is uncertain, then that fact shall be set forth in the affidavit
15 filed with the court at least 75 days before the hearing date and
16 the court, consistent with the provisions of Sections 7665 and 7666
17 of the Family Code, shall issue an order dispensing with notice to
18 a natural parent or possible natural parent under this section if,
19 after inquiry and a determination that there has been due diligence
20 in attempting to identify the unknown parent, the court is unable
21 to identify the natural parent or possible natural parent and no
22 person has appeared claiming to be the natural parent.

23 (2) After a determination that there has been due diligence in
24 attempting to identify an unknown parent pursuant to paragraph
25 (1) and the probation officer or social worker recommends
26 adoption, the court shall consider whether publication notice would
27 be likely to lead to actual notice to the unknown parent. The court
28 may order publication notice if, on the basis of all information
29 before the court, the court determines that notice by publication
30 is likely to lead to actual notice to the parent. If publication notice
31 to an unknown parent is ordered, the court shall order the published
32 citation to be directed to either the father or mother, or both, of
33 the child, and to all persons claiming to be the father or mother of
34 the child, naming and otherwise describing the child. An order of
35 publication pursuant to this paragraph shall be based on an affidavit
36 describing efforts made to identify the unknown parent or parents.
37 Service made by publication pursuant to this paragraph shall
38 require the unknown parent or parents to appear at the date, time,
39 and place stated in the citation. Publication shall be made once a
40 week for four consecutive weeks.

(3) If the court determines that there has been due diligence in attempting to identify one or both of the parents, or alleged parents, of the child and the probation officer or social worker recommends legal guardianship or long-term foster care, no further notice to the parent shall be required.

(h) Notice to the child and all counsel of record shall be by first-class mail.

(i) If the court knows or has reason to know that an Indian child is involved, notice shall be given in accordance with Section 224.2.

(j) Notwithstanding subdivision (a), if the attorney of record is present at the time the court schedules a hearing pursuant to Section 366.26, no further notice is required, except as required by subparagraph (A) of paragraph (7) of subdivision (f).

(k) This section shall also apply to children adjudged wards pursuant to Section 727.31.

(l) The court shall state the reasons on the record explaining why good cause exists for granting any continuance of a hearing held pursuant to Section 366.26 to fulfill the requirements of this section.

(m) *This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.*

SEC. 3. Section 294 is added to the Welfare and Institutions Code, to read:

294. The social worker or probation officer shall give notice of a selection and implementation hearing held pursuant to Section 366.26 in the following manner:

(a) Notice of the hearing shall be given to the following persons:

(1) The mother.

(2) The fathers, presumed and alleged.

(3) The child, if the child is 10 years of age or older.

(4) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court. If the sibling is 10 years of age or older, the sibling, the sibling's caregiver, and the sibling's attorney. If the sibling is under 10 years of age, the sibling's caregiver and the sibling's attorney. However, notice is not required to be given to any sibling whose matter is calendared in the same court on the same day.

1 (5) *The grandparents of the child, if their address is known and*
2 *if the parent's whereabouts are unknown.*

3 (6) *All counsel of record.*

4 (7) *To any unknown parent by publication, if ordered by the*
5 *court pursuant to paragraph (2) of subdivision (g).*

6 (8) *The current caregiver of the child, including foster parents,*
7 *relative caregivers, preadoptive parents, and nonrelative extended*
8 *family members. Any person notified may attend all hearings and*
9 *may submit any information he or she deems relevant to the court*
10 *in writing.*

11 (b) *The following persons shall not be notified of the hearing:*

12 (1) *A parent who has relinquished the child to the State*
13 *Department of Social Services or to a licensed adoption agency*
14 *for adoption, and the relinquishment has been accepted and filed*
15 *with notice as required under Section 8700 of the Family Code.*

16 (2) *An alleged father who has denied paternity and has executed*
17 *a waiver of the right to notice of further proceedings.*

18 (3) *A parent whose parental rights have been terminated.*

19 (c) (1) *Service of the notice shall be completed at least 45 days*
20 *before the hearing date. Service is deemed complete at the time*
21 *the notice is personally delivered to the person named in the notice*
22 *or 10 days after the notice has been placed in the mail, or at the*
23 *expiration of the time prescribed by the order for publication.*

24 (2) *Service of notice in cases where publication is ordered shall*
25 *be completed at least 30 days before the date of the hearing.*

26 (d) *Regardless of the type of notice required, or the manner in*
27 *which it is served, once the court has made the initial finding that*
28 *notice has properly been given to the parent, or to any person*
29 *entitled to receive notice pursuant to this section, subsequent notice*
30 *for any continuation of a Section 366.26 hearing may be by*
31 *first-class mail to any last known address, by an order made*
32 *pursuant to Section 296, or by any other means that the court*
33 *determines is reasonably calculated, under any circumstance, to*
34 *provide notice of the continued hearing. However, if the*
35 *recommendation changes from the recommendation contained in*
36 *the notice previously found to be proper, notice shall be provided*
37 *to the parent, and to any person entitled to receive notice pursuant*
38 *to this section, regarding that subsequent hearing.*

39 (e) *The notice shall contain the following information:*

40 (1) *The date, time, and place of the hearing.*

1 (2) *The right to appear.*

2 (3) *The parents' right to counsel.*

3 (4) *The nature of the proceedings.*

4 (5) *The recommendation of the supervising agency.*

5 (6) *A statement that, at the time of hearing, the court is required*
6 *to select a permanent plan of adoption, legal guardianship, or*
7 *long-term foster care for the child.*

8 (f) *Notice to the parents may be given in any one of the following*
9 *manners:*

10 (1) *If the parent is present at the hearing at which the court*
11 *schedules a hearing pursuant to Section 366.26, the court shall*
12 *advise the parent of the date, time, and place of the proceedings,*
13 *their right to counsel, the nature of the proceedings, and the*
14 *requirement that at the proceedings the court shall select and*
15 *implement a plan of adoption, legal guardianship, or long-term*
16 *foster care for the child. The court shall direct the parent to appear*
17 *for the proceedings and then direct that the parent be notified*
18 *thereafter by first-class mail to the parent's usual place of*
19 *residence or business only.*

20 (2) *Certified mail, return receipt requested, to the parent's last*
21 *known mailing address. This notice shall be sufficient if the child*
22 *welfare agency receives a return receipt signed by the parent.*

23 (3) *Personal service to the parent named in the notice.*

24 (4) *Delivery to a competent person who is at least 18 years of*
25 *age at the parent's usual place of residence or business, and*
26 *thereafter mailed to the parent named in the notice by first-class*
27 *mail at the place where the notice was delivered.*

28 (5) *If the residence of the parent is outside the state, service*
29 *may be made as described in paragraph (1), (3), or (4) or by*
30 *certified mail, return receipt requested.*

31 (6) *If the recommendation of the probation officer or social*
32 *worker is legal guardianship or long-term foster care, service may*
33 *be made by first-class mail to the parent's usual place of residence*
34 *or business.*

35 (7) *If a parent's identity is known but his or her whereabouts*
36 *are unknown and the parent cannot, with reasonable diligence,*
37 *be served in any manner specified in paragraphs (1) to (6),*
38 *inclusive, the petitioner shall file an affidavit with the court at*
39 *least 75 days before the hearing date, stating the name of the*

1 parent and describing the efforts made to locate and serve the
2 parent.

3 (A) If the court determines that there has been due diligence in
4 attempting to locate and serve the parent and the probation officer
5 or social worker recommends adoption, service shall be to that
6 parent's attorney of record, if any, by certified mail, return receipt
7 requested. If the parent does not have an attorney of record, the
8 court shall order that service be made by publication of citation
9 requiring the parent to appear at the date, time, and place stated
10 in the citation, and that the citation be published in a newspaper
11 designated as most likely to give notice to the parent. Publication
12 shall be made once a week for four consecutive weeks. Whether
13 notice is to the attorney of record or by publication, the court shall
14 also order that notice be given to the grandparents of the child, if
15 their identities and addresses are known, by first-class mail.

16 (B) If the court determines that there has been due diligence in
17 attempting to locate and serve the parent and the probation officer
18 or social worker recommends legal guardianship or long-term
19 foster care, no further notice is required to the parent, but the
20 court shall order that notice be given to the grandparents of the
21 child, if their identities and addresses are known, by first-class
22 mail.

23 (C) In any case where the residence of the parent becomes
24 known, notice shall immediately be served upon the parent as
25 provided for in either paragraph (2), (3), (4), (5), or (6).

26 (g) (1) If the identity of one or both of the parents, or alleged
27 parents, of the child is unknown, or if the name of one or both
28 parents is uncertain, then that fact shall be set forth in the affidavit
29 filed with the court at least 75 days before the hearing date and
30 the court, consistent with the provisions of Sections 7665 and 7666
31 of the Family Code, shall issue an order dispensing with notice to
32 a natural parent or possible natural parent under this section if,
33 after inquiry and a determination that there has been due diligence
34 in attempting to identify the unknown parent, the court is unable
35 to identify the natural parent or possible natural parent and no
36 person has appeared claiming to be the natural parent.

37 (2) After a determination that there has been due diligence in
38 attempting to identify an unknown parent pursuant to paragraph
39 (1) and the probation officer or social worker recommends
40 adoption, the court shall consider whether publication notice would

1 *be likely to lead to actual notice to the unknown parent. The court*
2 *may order publication notice if, on the basis of all information*
3 *before the court, the court determines that notice by publication*
4 *is likely to lead to actual notice to the parent. If publication notice*
5 *to an unknown parent is ordered, the court shall order the*
6 *published citation to be directed to either the father or mother, or*
7 *both, of the child, and to all persons claiming to be the father or*
8 *mother of the child, naming and otherwise describing the child.*
9 *An order of publication pursuant to this paragraph shall be based*
10 *on an affidavit describing efforts made to identify the unknown*
11 *parent or parents. Service made by publication pursuant to this*
12 *paragraph shall require the unknown parent or parents to appear*
13 *at the date, time, and place stated in the citation. Publication shall*
14 *be made once a week for four consecutive weeks.*

15 *(3) If the court determines that there has been due diligence in*
16 *attempting to identify one or both of the parents, or alleged parents,*
17 *of the child and the probation officer or social worker recommends*
18 *legal guardianship or long-term foster care, no further notice to*
19 *the parent shall be required.*

20 *(h) Notice to the child and all counsel of record shall be by*
21 *first-class mail.*

22 *(i) If the court knows or has reason to know that an Indian child*
23 *is involved, notice shall be given in accordance with Section 224.2.*

24 *(j) Notwithstanding subdivision (a), if the attorney of record is*
25 *present at the time the court schedules a hearing pursuant to*
26 *Section 366.26, no further notice is required, except as required*
27 *by subparagraph (A) of paragraph (7) of subdivision (f).*

28 *(k) This section shall also apply to children adjudged wards*
29 *pursuant to Section 727.31.*

30 *(l) The court shall state the reasons on the record explaining*
31 *why good cause exists for granting any continuance of a hearing*
32 *held pursuant to Section 366.26 to fulfill the requirements of this*
33 *section.*

34 *(m) This section shall become operative on January 1, 2014.*

35 *SEC. 4. Section 358.1 of the Welfare and Institutions Code is*
36 *amended to read:*

37 *358.1. Each social study or evaluation made by a social worker*
38 *or child advocate appointed by the court, required to be received*
39 *in evidence pursuant to Section 358, shall include, but not be*
40 *limited to, a factual discussion of each of the following subjects:*

1 (a) Whether the county welfare department or social worker has
2 considered child protective services, as defined in Chapter 5
3 (commencing with Section 16500) of Part 4 of Division 9, as a
4 possible solution to the problems at hand, and has offered these
5 services to qualified parents if appropriate under the circumstances.

6 (b) What plan, if any, for return of the child to his or her parents
7 and for achieving legal permanence for the child if efforts to reunify
8 fail, is recommended to the court by the county welfare department
9 or probation officer.

10 (c) Whether the best interests of the child will be served by
11 granting reasonable visitation rights with the child to his or her
12 grandparents, in order to maintain and strengthen the child's family
13 relationships.

14 (d) (1) Whether the child has siblings under the court's
15 jurisdiction, and, if any siblings exist, all of the following:

16 (A) The nature of the relationship between the child and his or
17 her siblings.

18 (B) The appropriateness of developing or maintaining the sibling
19 relationships pursuant to Section 16002.

20 (C) If the siblings are not placed together in the same home,
21 why the siblings are not placed together and what efforts are being
22 made to place the siblings together, or why those efforts are not
23 appropriate.

24 (D) If the siblings are not placed together, the frequency and
25 nature of the visits between siblings.

26 (E) The impact of the sibling relationships on the child's
27 placement and planning for legal permanence.

28 (2) The factual discussion shall include a discussion of indicators
29 of the nature of the child's sibling relationships, including, but not
30 limited to, whether the siblings were raised together in the same
31 home, whether the siblings have shared significant common
32 experiences or have existing close and strong bonds, whether either
33 sibling expresses a desire to visit or live with his or her sibling, as
34 applicable, and whether ongoing contact is in the child's best
35 emotional interest.

36 (e) If the parent or guardian is unwilling or unable to participate
37 in making an educational decision for his or her child, or if other
38 circumstances exist that compromise the ability of the parent or
39 guardian to make educational decisions for the child, the county
40 welfare department or social worker shall consider whether the

1 right of the parent or guardian to make educational decisions for
2 the child should be limited. If the study or evaluation makes that
3 recommendation, it shall identify whether there is a responsible
4 adult available to make educational decisions for the child pursuant
5 to Section 361.

6 (f) Whether the child appears to be a person who is eligible to
7 be considered for further court action to free the child from parental
8 custody and control.

9 (g) Whether the parent has been advised of his or her option to
10 participate in adoption planning, including the option to enter into
11 a postadoption contact agreement as described in Section 8714.7
12 of the Family Code, and to voluntarily relinquish the child for
13 adoption if an adoption agency is willing to accept the
14 relinquishment.

15 (h) The appropriateness of any relative placement pursuant to
16 Section 361.3. However, this consideration may not be cause for
17 continuance of the dispositional hearing.

18 (i) Whether the caregiver desires, and is willing, to provide legal
19 permanency for the child if reunification is unsuccessful.

20 (j) *For an Indian child, in consultation with the Indian child's*
21 *tribe, whether tribal customary adoption is an appropriate*
22 *permanent plan for the child if reunification is unsuccessful.*

23 (k) *This section shall remain in effect only until January 1, 2014,*
24 *and as of that date is repealed, unless a later enacted statute, that*
25 *is enacted before January 1, 2014, deletes or extends that date.*

26 SEC. 5. Section 358.1 is added to the Welfare and Institutions
27 Code, to read:

28 358.1. *Each social study or evaluation made by a social worker*
29 *or child advocate appointed by the court, required to be received*
30 *in evidence pursuant to Section 358, shall include, but not be*
31 *limited to, a factual discussion of each of the following subjects:*

32 (a) *Whether the county welfare department or social worker*
33 *has considered child protective services, as defined in Chapter 5*
34 *(commencing with Section 16500) of Part 4 of Division 9, as a*
35 *possible solution to the problems at hand, and has offered these*
36 *services to qualified parents if appropriate under the*
37 *circumstances.*

38 (b) *What plan, if any, for return of the child to his or her parents*
39 *and for achieving legal permanence for the child if efforts to*

1 reunify fail, is recommended to the court by the county welfare
2 department or probation officer.

3 (c) Whether the best interests of the child will be served by
4 granting reasonable visitation rights with the child to his or her
5 grandparents, in order to maintain and strengthen the child's
6 family relationships.

7 (d) (1) Whether the child has siblings under the court's
8 jurisdiction, and, if any siblings exist, all of the following:

9 (A) The nature of the relationship between the child and his or
10 her siblings.

11 (B) The appropriateness of developing or maintaining the sibling
12 relationships pursuant to Section 16002.

13 (C) If the siblings are not placed together in the same home,
14 why the siblings are not placed together and what efforts are being
15 made to place the siblings together, or why those efforts are not
16 appropriate.

17 (D) If the siblings are not placed together, the frequency and
18 nature of the visits between siblings.

19 (E) The impact of the sibling relationships on the child's
20 placement and planning for legal permanence.

21 (2) The factual discussion shall include a discussion of
22 indicators of the nature of the child's sibling relationships,
23 including, but not limited to, whether the siblings were raised
24 together in the same home, whether the siblings have shared
25 significant common experiences or have existing close and strong
26 bonds, whether either sibling expresses a desire to visit or live
27 with his or her sibling, as applicable, and whether ongoing contact
28 is in the child's best emotional interest.

29 (e) If the parent or guardian is unwilling or unable to participate
30 in making an educational decision for his or her child, or if other
31 circumstances exist that compromise the ability of the parent or
32 guardian to make educational decisions for the child, the county
33 welfare department or social worker shall consider whether the
34 right of the parent or guardian to make educational decisions for
35 the child should be limited. If the study or evaluation makes that
36 recommendation, it shall identify whether there is a responsible
37 adult available to make educational decisions for the child
38 pursuant to Section 361.

1 (f) Whether the child appears to be a person who is eligible to
2 be considered for further court action to free the child from
3 parental custody and control.

4 (g) Whether the parent has been advised of his or her option to
5 participate in adoption planning, including the option to enter into
6 a postadoption contact agreement as described in Section 8714.7
7 of the Family Code, and to voluntarily relinquish the child for
8 adoption if an adoption agency is willing to accept the
9 relinquishment.

10 (h) The appropriateness of any relative placement pursuant to
11 Section 361.3. However, this consideration may not be cause for
12 continuance of the dispositional hearing.

13 (i) Whether the caregiver desires, and is willing, to provide
14 legal permanency for the child if reunification is unsuccessful.

15 (j) This section shall become operative on January 1, 2014.

16 SEC. 6. Section 361.5 of the Welfare and Institutions Code is
17 amended to read:

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

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

33 (A) Except as otherwise provided in subparagraph (C), for a
34 child who, on the date of initial removal from the physical custody
35 of his or her parent or guardian, was three years of age or older,
36 court-ordered services shall be provided during the period of time
37 beginning with the dispositional hearing and ending with the date
38 of the hearing set pursuant to subdivision (f) of Section 366.21,
39 unless the child is returned to the home of the parent or guardian.

1 (B) For a child who, on the date of initial removal from the
2 physical custody of his or her parent or guardian, was under three
3 years of age, court-ordered services shall be provided during the
4 period of time beginning with the dispositional hearing and ending
5 with the date of the hearing set pursuant to subdivision (e) of
6 Section 366.21, unless the child is returned to the home of the
7 parent or guardian.

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

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

24 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 paragraph (1), or within six months of the
27 initial dispositional hearing for a child described by paragraph (2)
28 or this paragraph, shall be made pursuant to the requirements set
29 forth in subdivision (c) of Section 388.

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

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

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

32 In cases where the child was under three years of age on the date
33 of the initial removal from the physical custody of his or her parent
34 or guardian or is a member of a sibling group as described in
35 subparagraph (C) of paragraph (1), the court shall inform the parent
36 or guardian that the failure of the parent or guardian to participate
37 regularly in any court-ordered treatment programs or to cooperate
38 or avail himself or herself of services provided as part of the child
39 welfare services case plan may result in a termination of efforts
40 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).

(3) Notwithstanding paragraph (2), 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.

When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, in order for substantial probability to be found. Physical custody of the child by the parents or guardians during the applicable time period under subparagraph (A), (B), or (C) of paragraph (1) shall not serve to interrupt the running of the period. If at the end of the applicable time period, the 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (10) That the court ordered termination of reunification services
37 for any siblings or half siblings of the child because the parent or
38 guardian failed to reunify with the sibling or half sibling after the
39 sibling or half sibling had been removed from that parent or
40 guardian pursuant to Section 361 and that parent or guardian is

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

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

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

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

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

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

38 (15) That the parent or guardian has on one or more occasions
39 willfully abducted the child or child's sibling or half sibling from
40 his or her placement and refused to disclose the child's or child's

1 sibling's or half sibling's whereabouts, refused to return physical
2 custody of the child or child's sibling or half sibling to his or her
3 placement, or refused to return physical custody of the child or
4 child's sibling or half sibling to the social worker.

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

15 The court shall not order reunification for a parent or guardian
16 described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12),
17 (13), (14), or (15) of subdivision (b) unless the court finds, by clear
18 and convincing evidence, that reunification is in the best interest
19 of the child.

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

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

1 court shall consider any pattern of behavior on the part of the parent
2 that has exposed the child to repeated abuse.

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

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

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

30 (B) Transportation services, where appropriate.

31 (C) Visitation services, where appropriate.

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

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

1 parent's access to those court-mandated services and ability to
2 maintain contact with his or her child.

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

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

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

39 (g) (1) Whenever a court orders that a hearing shall be held
40 pursuant to Section 366.26, *including when, in consultation with*

1 *the child's tribe, tribal customary adoption is recommended, it*
 2 shall direct the agency supervising the child and the licensed county
 3 adoption agency, or the State Department of Social Services when
 4 it is acting as an adoption agency in counties that are not served
 5 by a county adoption agency, to prepare an assessment that shall
 6 include:

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

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

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

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

35 (E) The relationship of the child to any identified prospective
 36 adoptive parent or guardian, *including a prospective tribal*
 37 *customary adoptive parent*, the duration and character of the
 38 relationship, the motivation for seeking adoption or guardianship,
 39 and a statement from the child concerning placement and the
 40 adoption or guardianship, unless the child's age or physical,

1 emotional, or other condition precludes his or her meaningful
2 response, and if so, a description of the condition.

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

5 (G) *In the case of an Indian child, in addition to subparagraphs*
6 *(A) to (F), inclusive, an assessment of the likelihood that the child*
7 *will be adopted, when, in consultation with the child's tribe, a*
8 *customary tribal adoption, as defined in Section 366.24, is*
9 *recommended. If tribal customary adoption is recommended, the*
10 *assessment shall include an analysis of both of the following:*

11 (i) *Whether tribal customary adoption would or would not be*
12 *detrimental to the Indian child and the reasons for reaching that*
13 *conclusion.*

14 (ii) *Whether the Indian child cannot or should not be returned*
15 *to the home of the Indian parent or Indian custodian and the*
16 *reasons for reaching that conclusion.*

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

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

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

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

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

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

38 (4) Any history of abuse of other children by the offending
39 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 (j) *This section shall remain in effect only until January 1, 2014,*
13 *and as of that date is repealed, unless a later enacted statute, that*
14 *is enacted before January 1, 2014, deletes or extends that date.*

15 *SEC. 7. Section 361.5 is added to the Welfare and Institutions*
16 *Code, to read:*

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

30 (1) *Family reunification services, when provided, shall be*
31 *provided as follows:*

32 (A) *Except as otherwise provided in subparagraph (C), for a*
33 *child who, on the date of initial removal from the physical custody*
34 *of his or her parent or guardian, was three years of age or older,*
35 *court-ordered services shall be provided during the period of time*
36 *beginning with the dispositional hearing and ending with the date*
37 *of the hearing set pursuant to subdivision (f) of Section 366.21,*
38 *unless the child is returned to the home of the parent or guardian.*

39 (B) *For a child who, on the date of initial removal from the*
40 *physical custody of his or her parent or guardian, was under three*

1 years of age, court-ordered services shall be provided during the
2 period of time beginning with the dispositional hearing and ending
3 with the date of the hearing set pursuant to subdivision (e) of
4 Section 366.21, unless the child is returned to the home of the
5 parent or guardian.

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

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

22 Any motion to terminate court-ordered reunification services
23 prior to the hearing set pursuant to subdivision (f) of Section
24 366.21 for a child described by paragraph (1), or within six months
25 of the initial dispositional hearing for a child described by
26 paragraph (2) or this paragraph, shall be made pursuant to the
27 requirements set forth in subdivision (c) of Section 388.

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

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

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

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

1 services to six months for some or all members of a sibling group
2 as described in subparagraph (C) of paragraph (1).

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

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

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

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

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

6 (2) That the parent or guardian is suffering from a mental
7 disability that is described in Chapter 2 (commencing with Section
8 7820) of Part 4 of Division 12 of the Family Code and that renders
9 him or her incapable of utilizing those services.

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

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

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

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

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

1 *parent or guardian, or for the sexual gratification of another*
2 *person with the actual or implied consent of the parent or guardian.*

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

12 *(7) That the parent is not receiving reunification services for a*
13 *sibling or a half sibling of the child pursuant to paragraph (3),*
14 *(5), or (6).*

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

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

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

1 *that led to removal of the sibling or half sibling of that child from*
2 *that parent or guardian.*

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

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

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

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

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

36 *(15) That the parent or guardian has on one or more occasions*
37 *willfully abducted the child or child's sibling or half sibling from*
38 *his or her placement and refused to disclose the child's or child's*
39 *sibling's or half sibling's whereabouts, refused to return physical*
40 *custody of the child or child's sibling or half sibling to his or her*

1 placement, or refused to return physical custody of the child or
2 child's sibling or half sibling to the social worker.

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

14 The court shall not order reunification for a parent or guardian
15 described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12),
16 (13), (14), or (15) of subdivision (b) unless the court finds, by clear
17 and convincing evidence, that reunification is in the best interest
18 of the child.

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

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

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

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

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

28 (B) Transportation services, where appropriate.

29 (C) Visitation services, where appropriate.

30 (D) Reasonable services to extended family members or foster
31 parents providing care for the child if the services are not
32 detrimental to the child.

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

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

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

1 agency in counties that are not served by a county adoption agency,
2 to prepare an assessment that shall include:

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

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

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

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

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

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

39 (2) (A) A relative caregiver’s preference for legal guardianship
40 over adoption, if it is due to circumstances that do not include an

1 *unwillingness to accept legal or financial responsibility for the*
2 *child, shall not constitute the sole basis for recommending removal*
3 *of the child from the relative caregiver for purposes of adoptive*
4 *placement.*

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

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

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

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

18 *(3) The severity of the emotional trauma suffered by the child*
19 *or the child's sibling or half sibling.*

20 *(4) Any history of abuse of other children by the offending parent*
21 *or guardian.*

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

25 *(6) Whether or not the child desires to be reunified with the*
26 *offending parent or guardian.*

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

33 *(j) This section shall become operative on January 1, 2014.*

34 *SEC. 8. Section 366.21 of the Welfare and Institutions Code*
35 *is amended to read:*

36 *366.21. (a) Every hearing conducted by the juvenile court*
37 *reviewing the status of a dependent child shall be placed on the*
38 *appearance calendar. The court shall advise all persons present at*
39 *the hearing of the date of the future hearing and of their right to*
40 *be present and represented by counsel.*

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

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

(d) Prior to any hearing involving a child in the physical custody of a community care facility or a foster family agency that may result in the return of the child to the physical custody of his or her parent or legal guardian, ~~or in adoption or the creation of a legal guardianship,~~ *the or, in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption, the* facility or agency shall file with the court a report, or a Judicial Council Caregiver Information Form (JV-290), containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, the foster parent, relative caregiver, or the certified foster parent who has been approved for adoption by 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 or by a licensed county adoption agency, may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. At the hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal to the extent that the criminal record is substantially related to the welfare of the child or the parent's or guardian's ability to exercise custody and control regarding his or her child, provided the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its

1 determination, the court shall review and consider the social
2 worker's report and recommendations and the report and
3 recommendations of any child advocate appointed pursuant to
4 Section 356.5; and shall consider the efforts or progress, or both,
5 demonstrated by the parent or legal guardian and the extent to
6 which he or she availed himself or herself to services provided,
7 taking into account the particular barriers to an incarcerated or
8 institutionalized parent or legal guardian's access to those
9 court-mandated services and ability to maintain contact with his
10 or her child.

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

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

38 For the purpose of placing and maintaining a sibling group
39 together in a permanent home, the court, in making its
40 determination to schedule a hearing pursuant to Section 366.26

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

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

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

37 In all other cases, the court shall direct that any reunification
38 services previously ordered shall continue to be offered to the
39 parent or legal guardian pursuant to the time periods set forth in

1 subdivision (a) of Section 361.5, provided that the court may
2 modify the terms and conditions of those services.

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

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

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

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

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

30 (1) Continue the case for up to six months for a permanency
31 review hearing, provided that the hearing shall occur within 18
32 months of the date the child was originally taken from the physical
33 custody of his or her parent or legal guardian. The court shall
34 continue the case only if it finds that there is a substantial
35 probability that the child will be returned to the physical custody
36 of his or her parent or legal guardian and safely maintained in the
37 home within the extended period of time or that reasonable services
38 have not been provided to the parent or legal guardian. For the
39 purposes of this section, in order to find a substantial probability
40 that the child will be returned to the physical custody of his or her

1 parent or legal guardian and safely maintained in the home within
2 the extended period of time, the court shall be required to find all
3 of the following:

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

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

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

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

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

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

31 (3) Order that the child remain in long-term foster care, but only
32 if the court finds by clear and convincing evidence, based upon
33 the evidence already presented to it, including a recommendation
34 by the State Department of Social Services when it is acting as an
35 adoption agency in counties that are not served by a county
36 adoption agency or by a licensed county adoption agency, that
37 there is a compelling reason for determining that a hearing held
38 pursuant to Section 366.26 is not in the best interest of the child
39 because the child is not a proper subject for adoption and has no
40 one willing to accept legal guardianship. For purposes of this

1 section, a recommendation by the State Department of Social
2 Services when it is acting as an adoption agency in counties that
3 are not served by a county adoption agency or by a licensed county
4 adoption agency that adoption is not in the best interest of the child
5 shall constitute a compelling reason for the court's determination.
6 That recommendation shall be based on the present circumstances
7 of the child and may not preclude a different recommendation at
8 a later date if the child's circumstances change.

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

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

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

31 (i) (1) Whenever a court orders that a hearing pursuant to
32 Section 366.26, *including when, in consultation with the child's*
33 *tribe, tribal customary adoption is recommended*, shall be held, it
34 shall direct the agency supervising the child and the licensed county
35 adoption agency, or the State Department of Social Services when
36 it is acting as an adoption agency in counties that are not served
37 by a county adoption agency, to prepare an assessment that shall
38 include:

39 (A) Current search efforts for an absent parent or parents or
40 legal guardians.

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

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

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

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

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

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

35 (H) *In the case of an Indian child, in addition to subparagraphs*
36 *(A) to (G), inclusive, an assessment of the likelihood that the child*
37 *will be adopted, when, in consultation with the child’s tribe, a*
38 *customary tribal adoption, as defined in Section 366.24, is*
39 *recommended. If tribal customary adoption is recommended, the*
40 *assessment shall include an analysis of both of the following:*

1 (i) *Whether tribal customary adoption would or would not be*
2 *detrimental to the Indian child and the reasons for reaching that*
3 *conclusion.*

4 (ii) *Whether the Indian child cannot or should not be returned*
5 *to the home of the Indian parent or Indian custodian and the*
6 *reasons for reaching that conclusion.*

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

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

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

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

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

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

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

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

39 (m) The implementation and operation of the amendments to
40 subdivisions (c) and (g) enacted at the 2005–06 Regular Session

1 shall be subject to appropriation through the budget process and
2 by phase, as provided in Section 366.35.

3 (n) *This section shall remain in effect only until January 1, 2014,*
4 *and as of that date is repealed, unless a later enacted statute, that*
5 *is enacted before January 1, 2014, deletes or extends that date.*

6 SEC. 9. Section 366.21 is added to the Welfare and Institutions
7 Code, to read:

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

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

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

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

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

33 *(e) At the review hearing held six months after the initial*
34 *dispositional hearing, the court shall order the return of the child*
35 *to the physical custody of his or her parent or legal guardian unless*
36 *the court finds, by a preponderance of the evidence, that the return*
37 *of the child to his or her parent or legal guardian would create a*
38 *substantial risk of detriment to the safety, protection, or physical*
39 *or emotional well-being of the child. The social worker shall have*
40 *the burden of establishing that detriment. At the hearing, the court*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (n) *This section shall become operative on January 1, 2014.*

2 SEC. 10. *Section 366.22 of the Welfare and Institutions Code*
3 *is amended to read:*

4 366.22. (a) When a case has been continued pursuant to
5 paragraph (1) of subdivision (g) of Section 366.21, the permanency
6 review hearing shall occur within 18 months after the date the
7 child was originally removed from the physical custody of his or
8 her parent or legal guardian. The court shall order the return of the
9 child to the physical custody of his or her parent or legal guardian
10 unless the court finds, by a preponderance of the evidence, that
11 the return of the child to his or her parent or legal guardian would
12 create a substantial risk of detriment to the safety, protection, or
13 physical or emotional well-being of the child. The social worker
14 shall have the burden of establishing that detriment. At the
15 permanency review hearing, the court shall consider the criminal
16 history, obtained pursuant to paragraph (1) of subdivision (f) of
17 Section 16504.5, of the parent or legal guardian subsequent to the
18 child's removal, to the extent that the criminal record is
19 substantially related to the welfare of the child or the parent's or
20 legal guardian's ability to exercise custody and control regarding
21 his or her child, provided that the parent or legal guardian agreed
22 to submit fingerprint images to obtain criminal history information
23 as part of the case plan. The failure of the parent or legal guardian
24 to participate regularly and make substantive progress in
25 court-ordered treatment programs shall be prima facie evidence
26 that return would be detrimental. In making its determination, the
27 court shall review and consider the social worker's report and
28 recommendations and the report and recommendations of any child
29 advocate appointed pursuant to Section 356.5; shall consider the
30 efforts or progress, or both, demonstrated by the parent or legal
31 guardian and the extent to which he or she availed himself or
32 herself of services provided, taking into account the particular
33 barriers of an incarcerated or institutionalized parent or legal
34 guardian's access to those court-mandated services and ability to
35 maintain contact with his or her child; and shall make appropriate
36 findings pursuant to subdivision (a) of Section 366.

37 Whether or not the child is returned to his or her parent or legal
38 guardian, the court shall specify the factual basis for its decision.
39 If the child is not returned to a parent or legal guardian, the court
40 shall specify the factual basis for its conclusion that return would

1 be detrimental. If the child is not returned to his or her parent or
2 legal guardian, the court shall consider, and state for the record,
3 in-state and out-of-state options for the child's permanent
4 placement. If the child is placed out of the state, the court shall
5 make a determination whether the out-of-state placement continues
6 to be appropriate and in the best interests of the child.

7 Unless the conditions in subdivision (b) are met and the child is
8 not returned to a parent or legal guardian at the permanency review
9 hearing, the court shall order that a hearing be held pursuant to
10 Section 366.26 in order to determine whether adoption, *or, in the*
11 *case of an Indian child, in consultation with the child's tribe, tribal*
12 *customary adoption*, guardianship, or long-term foster care is the
13 most appropriate plan for the child. However, if the court finds by
14 clear and convincing evidence, based on the evidence already
15 presented to it, including a recommendation by the State
16 Department of Social Services when it is acting as an adoption
17 agency in counties that are not served by a county adoption agency
18 or by a licensed county adoption agency, that there is a compelling
19 reason, as described in paragraph (3) of subdivision (g) of Section
20 366.21, for determining that a hearing held under Section 366.26
21 is not in the best interest of the child because the child is not a
22 proper subject for adoption and has no one willing to accept legal
23 guardianship, then the court may, only under these circumstances,
24 order that the child remain in foster care. If the court orders that a
25 child who is 10 years of age or older remain in long-term foster
26 care, the court shall determine whether the agency has made
27 reasonable efforts to maintain the child's relationships with
28 individuals other than the child's siblings who are important to the
29 child, consistent with the child's best interests, and may make any
30 appropriate order to ensure that those relationships are maintained.
31 The hearing shall be held no later than 120 days from the date of
32 the permanency review hearing. The court shall also order
33 termination of reunification services to the parent or legal guardian.
34 The court shall continue to permit the parent or legal guardian to
35 visit the child unless it finds that visitation would be detrimental
36 to the child. The court shall determine whether reasonable services
37 have been offered or provided to the parent or legal guardian. For
38 purposes of this subdivision, evidence of any of the following
39 circumstances shall not, in and of themselves, be deemed a failure
40 to provide or offer reasonable services:

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

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

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

8 (b) If the child is not returned to a parent or legal guardian at
9 the permanency review hearing and the court determines by clear
10 and convincing evidence that the best interests of the child would
11 be met by the provision of additional reunification services to a
12 parent or legal guardian who is making significant and consistent
13 progress in a substance abuse treatment program, or a parent
14 recently discharged from incarceration or institutionalization and
15 making significant and consistent progress in establishing a safe
16 home for the child's return, the court may continue the case for
17 up to six months for a subsequent permanency review hearing,
18 provided that the hearing shall occur within 24 months of the date
19 the child was originally taken from the physical custody of his or
20 her parent or legal guardian. The court shall continue the case only
21 if it finds that there is a substantial probability that the child will
22 be returned to the physical custody of his or her parent or legal
23 guardian and safely maintained in the home within the extended
24 period of time or that reasonable services have not been provided
25 to the parent or legal guardian. For the purposes of this section, in
26 order to find a substantial probability that the child will be returned
27 to the physical custody of his or her parent or legal guardian and
28 safely maintained in the home within the extended period of time,
29 the court shall be required to find all of the following:

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

32 (2) That the parent or legal guardian has made significant and
33 consistent progress in the prior 18 months in resolving problems
34 that led to the child's removal from the home.

35 (3) The parent or legal guardian has demonstrated the capacity
36 and ability both to complete the objectives of his or her substance
37 abuse treatment plan as evidenced by reports from a substance
38 abuse provider as applicable, or complete a treatment plan
39 postdischarge from incarceration or institutionalization, and to

1 provide for the child's safety, protection, physical and emotional
2 well-being, and special needs.

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

9 The court shall inform the parent or legal guardian that if the
10 child cannot be returned home by the subsequent permanency
11 review hearing, a proceeding pursuant to Section 366.26 may be
12 instituted. The court may not order that a hearing pursuant to
13 Section 366.26 be held unless there is clear and convincing
14 evidence that reasonable services have been provided or offered
15 to the parent or legal guardian.

16 (c) (1) Whenever a court orders that a hearing pursuant to
17 Section 366.26, *including when a tribal customary adoption is*
18 *recommended*, shall be held, it shall direct the agency supervising
19 the child and the licensed county adoption agency, or the State
20 Department of Social Services when it is acting as an adoption
21 agency in counties that are not served by a county adoption agency,
22 to prepare an assessment that shall include:

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

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

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

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

1 placement of the minor prior to January 1, 1998, the assessment
2 shall also consider, but need not be limited to, all of the factors
3 specified in subdivision (a) of Section 361.3.

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

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

13 (G) *In the case of an Indian child, in addition to subparagraphs*
14 *(A) to (F), inclusive, an assessment of the likelihood that the child*
15 *will be adopted, when, in consultation with the child's tribe, a*
16 *customary tribal adoption, as defined in Section 366.24, is*
17 *recommended. If tribal customary adoption is recommended, the*
18 *assessment shall include an analysis of both of the following:*

19 (i) *Whether tribal customary adoption would or would not be*
20 *detrimental to the Indian child and the reasons for reaching that*
21 *conclusion.*

22 (ii) *Whether the Indian child cannot or should not be returned*
23 *to the home of the Indian parent or Indian custodian and the*
24 *reasons for reaching that conclusion.*

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

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

35 (d) This section shall become operative January 1, 1999. If at
36 any hearing held pursuant to Section 366.26, a legal guardianship
37 is established for the minor with a relative, and juvenile court
38 dependency is subsequently dismissed, the relative shall be eligible
39 for aid under the Kin-GAP Program, as provided for in Article 4.5

1 (commencing with Section 11360) of Chapter 2 of Part 3 of
2 Division 9.

3 (e) As used in this section, “relative” means an adult who is
4 related to the child by blood, adoption, or affinity within the fifth
5 degree of kinship, including stepparents, stepsiblings, and all
6 relatives whose status is preceded by the words “great,”
7 “great-great,” or “grand,” or the spouse of any of those persons
8 even if the marriage was terminated by death or dissolution.

9 (f) The implementation and operation of the amendments to
10 subdivision (a) enacted at the 2005–06 Regular Session shall be
11 subject to appropriation through the budget process and by phase,
12 as provided in Section 366.35.

13 (g) *This section shall remain in effect only until January 1, 2014,*
14 *and as of that date is repealed, unless a later enacted statute, that*
15 *is enacted before January 1, 2014, deletes or extends that date.*

16 SEC. 11. Section 366.22 is added to the Welfare and Institutions
17 Code, to read:

18 366.22. (a) *When a case has been continued pursuant to*
19 *paragraph (1) of subdivision (g) of Section 366.21, the permanency*
20 *review hearing shall occur within 18 months after the date the*
21 *child was originally removed from the physical custody of his or*
22 *her parent or legal guardian. The court shall order the return of*
23 *the child to the physical custody of his or her parent or legal*
24 *guardian unless the court finds, by a preponderance of the*
25 *evidence, that the return of the child to his or her parent or legal*
26 *guardian would create a substantial risk of detriment to the safety,*
27 *protection, or physical or emotional well-being of the child. The*
28 *social worker shall have the burden of establishing that detriment.*
29 *At the permanency review hearing, the court shall consider the*
30 *criminal history, obtained pursuant to paragraph (1) of subdivision*
31 *(f) of Section 16504.5, of the parent or legal guardian subsequent*
32 *to the child’s removal, to the extent that the criminal record is*
33 *substantially related to the welfare of the child or the parent’s or*
34 *legal guardian’s ability to exercise custody and control regarding*
35 *his or her child, provided that the parent or legal guardian agreed*
36 *to submit fingerprint images to obtain criminal history information*
37 *as part of the case plan. The failure of the parent or legal guardian*
38 *to participate regularly and make substantive progress in*
39 *court-ordered treatment programs shall be prima facie evidence*
40 *that return would be detrimental. In making its determination, the*

1 court shall review and consider the social worker's report and
 2 recommendations and the report and recommendations of any
 3 child advocate appointed pursuant to Section 356.5; shall consider
 4 the efforts or progress, or both, demonstrated by the parent or
 5 legal guardian and the extent to which he or she availed himself
 6 or herself of services provided, taking into account the particular
 7 barriers of an incarcerated or institutionalized parent or legal
 8 guardian's access to those court-mandated services and ability to
 9 maintain contact with his or her child; and shall make appropriate
 10 findings pursuant to subdivision (a) of Section 366.

11 Whether or not the child is returned to his or her parent or legal
 12 guardian, the court shall specify the factual basis for its decision.
 13 If the child is not returned to a parent or legal guardian, the court
 14 shall specify the factual basis for its conclusion that return would
 15 be detrimental. If the child is not returned to his or her parent or
 16 legal guardian, the court shall consider, and state for the record,
 17 in-state and out-of-state options for the child's permanent
 18 placement. If the child is placed out of the state, the court shall
 19 make a determination whether the out-of-state placement continues
 20 to be appropriate and in the best interests of the child.

21 Unless the conditions in subdivision (b) are met and the child
 22 is not returned to a parent or legal guardian at the permanency
 23 review hearing, the court shall order that a hearing be held
 24 pursuant to Section 366.26 in order to determine whether adoption,
 25 guardianship, or long-term foster care is the most appropriate
 26 plan for the child. However, if the court finds by clear and
 27 convincing evidence, based on the evidence already presented to
 28 it, including a recommendation by the State Department of Social
 29 Services when it is acting as an adoption agency in counties that
 30 are not served by a county adoption agency or by a licensed county
 31 adoption agency, that there is a compelling reason, as described
 32 in paragraph (3) of subdivision (g) of Section 366.21, for
 33 determining that a hearing held under Section 366.26 is not in the
 34 best interest of the child because the child is not a proper subject
 35 for adoption and has no one willing to accept legal guardianship,
 36 then the court may, only under these circumstances, order that the
 37 child remain in foster care. If the court orders that a child who is
 38 10 years of age or older remain in long-term foster care, the court
 39 shall determine whether the agency has made reasonable efforts
 40 to maintain the child's relationships with individuals other than

1 the child's siblings who are important to the child, consistent with
2 the child's best interests, and may make any appropriate order to
3 ensure that those relationships are maintained. The hearing shall
4 be held no later than 120 days from the date of the permanency
5 review hearing. The court shall also order termination of
6 reunification services to the parent or legal guardian. The court
7 shall continue to permit the parent or legal guardian to visit the
8 child unless it finds that visitation would be detrimental to the
9 child. The court shall determine whether reasonable services have
10 been offered or provided to the parent or legal guardian. For
11 purposes of this subdivision, evidence of any of the following
12 circumstances shall not, in and of themselves, be deemed a failure
13 to provide or offer reasonable services:

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

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

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

21 (b) If the child is not returned to a parent or legal guardian at
22 the permanency review hearing and the court determines by clear
23 and convincing evidence that the best interests of the child would
24 be met by the provision of additional reunification services to a
25 parent or legal guardian who is making significant and consistent
26 progress in a substance abuse treatment program, or a parent
27 recently discharged from incarceration or institutionalization and
28 making significant and consistent progress in establishing a safe
29 home for the child's return, the court may continue the case for
30 up to six months for a subsequent permanency review hearing,
31 provided that the hearing shall occur within 24 months of the date
32 the child was originally taken from the physical custody of his or
33 her parent or legal guardian. The court shall continue the case
34 only if it finds that there is a substantial probability that the child
35 will be returned to the physical custody of his or her parent or
36 legal guardian and safely maintained in the home within the
37 extended period of time or that reasonable services have not been
38 provided to the parent or legal guardian. For the purposes of this
39 section, in order to find a substantial probability that the child
40 will be returned to the physical custody of his or her parent or

1 legal guardian and safely maintained in the home within the
2 extended period of time, the court shall be required to find all of
3 the following:

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

6 (2) That the parent or legal guardian has made significant and
7 consistent progress in the prior 18 months in resolving problems
8 that led to the child's removal from the home.

9 (3) The parent or legal guardian has demonstrated the capacity
10 and ability both to complete the objectives of his or her substance
11 abuse treatment plan as evidenced by reports from a substance
12 abuse provider as applicable, or complete a treatment plan
13 postdischarge from incarceration or institutionalization, and to
14 provide for the child's safety, protection, physical and emotional
15 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
19 legal guardian is a compelling reason for determining that a
20 hearing held pursuant to Section 366.26 is not in the best interests
21 of the child.

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

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

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

36 (B) A review of the amount of and nature of any contact between
37 the child and his or her parents and other members of his or her
38 extended family since the time of placement. Although the extended
39 family of each child shall be reviewed on a case-by-case basis,
40 "extended family" for the purposes of this subparagraph shall

1 include, but not be limited to, the child's siblings, grandparents,
2 aunts, and uncles.

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

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

16 (E) The relationship of the child to any identified prospective
17 adoptive parent or legal guardian, the duration and character of
18 the relationship, the motivation for seeking adoption or legal
19 guardianship, and a statement from the child concerning placement
20 and the adoption or legal guardianship, unless the child's age or
21 physical, emotional, or other condition precludes his or her
22 meaningful response, and if so, a description of the condition.

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

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

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

35 (d) This section shall become operative January 1, 1999. If at
36 any hearing held pursuant to Section 366.26, a legal guardianship
37 is established for the minor with a relative, and juvenile court
38 dependency is subsequently dismissed, the relative shall be eligible
39 for aid under the Kin-GAP Program, as provided for in Article

1 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of
2 Division 9.

3 (e) As used in this section, “relative” means an adult who is
4 related to the child by blood, adoption, or affinity within the fifth
5 degree of kinship, including stepparents, stepsiblings, and all
6 relatives whose status is preceded by the words “great,”
7 “great-great,” or “grand,” or the spouse of any of those persons
8 even if the marriage was terminated by death or dissolution.

9 (f) The implementation and operation of the amendments to
10 subdivision (a) enacted at the 2005–06 Regular Session shall be
11 subject to appropriation through the budget process and by phase,
12 as provided in Section 366.35.

13 (g) This section shall become operative on January 1, 2014.

14 SEC. 12. Section 366.24 is added to the Welfare and Institutions
15 Code, to read:

16 366.24. (a) For purposes of this section, “tribal customary
17 adoption” means adoption by and through the tribal custom,
18 traditions, or law of an Indian child’s tribe. Termination of
19 parental rights is not required to effect the adoption.

20 (b) Whenever an assessment is ordered pursuant to Section
21 361.5, 366.21, 366.22, 366.25, or 366.26 for Indian children, the
22 assessment shall address the option of tribal customary adoption.

23 (c) Notwithstanding any other provision of law, individuals who
24 may be, will be, or are adoptive parents through a tribal customary
25 adoption shall have all of the rights and privileges afforded to any
26 other prospective adoptive or adoptive parent pursuant to the laws
27 of this state.

28 (d) For purposes of Section 366.26, in the case of tribal
29 customary adoptions, all of the following apply:

30 (1) The child’s tribe or the tribe’s designee, which may include
31 the State Department of Social Services, when acting as an
32 adoptive agency in counties that are not served by a county
33 adoption agency, the county child welfare agency where the case
34 is being adjudicated, or a California licensed adoption agency,
35 shall conduct an adoptive home study prior to final approval of
36 the adoptive placement. The standard for the evaluation of the
37 prospective adoptive parents’ home shall be the prevailing social
38 and cultural standard of the child’s tribe.

39 (2) If the tribe chooses a designee to conduct the home study,
40 the designee shall perform a check of the Child Abuse Central

1 *Index pursuant to Section 1522.1 of the Health and Safety Code*
2 *as it applies to prospective adoptive parents and persons over 18*
3 *years of age residing in their household. If the tribe conducts its*
4 *own home study, the tribe, through the child welfare agency*
5 *responsible for the dependency action, shall check the Child Abuse*
6 *Central Index pursuant to Section 1522.1 of the Health and Safety*
7 *Code as it applies to prospective adoptive parents and persons*
8 *over 18 years of age residing in the household.*

9 *(3) If the tribe chooses a designee to conduct the home study,*
10 *the designee shall perform a state and federal criminal background*
11 *check through the Department of Justice prior to final approval*
12 *of the adoptive placement using prospective adoptive parents in*
13 *the State of California. If the tribe conducts its own home study,*
14 *the tribe, through the child welfare agency responsible for the*
15 *dependency action case, shall perform a state and federal check*
16 *through the Department of Justice prior to the final approval of*
17 *the prospective adoptive parents and persons over 18 years of age*
18 *residing in the household.*

19 *(4) If federal and state law provides that tribes may conduct all*
20 *required background checks for prospective adoptive parents, the*
21 *tribally administered background checks shall satisfy the*
22 *requirements of this section, so long as the standards for the*
23 *background checks are the same as those applied to all other*
24 *prospective adoptive parents in the State of California.*

25 *(5) Under no circumstances shall final approval be granted for*
26 *an adoptive placement in any home if the prospective adoptive*
27 *parent or any adult living in the prospective adoptive home has*
28 *any of the following:*

29 *(A) A felony conviction for child abuse or neglect, spousal abuse,*
30 *crimes against a child, including child pornography, or a crime*
31 *involving violence, including rape, sexual assault, or homicide,*
32 *but not including other physical assault and battery. For purposes*
33 *of this subdivision, crimes involving violence means those violent*
34 *crimes contained in clause (i) of subparagraph (A) and*
35 *subparagraph (B), or paragraph (1) of, subdivision (g) of Section*
36 *1522 of the Health and Safety Code.*

37 *(B) A felony conviction that occurred within the last five years*
38 *for physical assault, battery, or a drug-related offense.*

39 *(6) If the tribe identifies customary adoption as the permanent*
40 *placement plan for the Indian child, the court may continue the*

1 selection and implementation hearing governed by Section 366.26
2 for a period not to exceed 120 days to permit the tribe to complete
3 the process for tribal customary adoption and file with the court
4 a tribal customary adoption order evidencing that a tribal
5 customary adoption has been completed. The court shall have
6 discretion to grant an additional continuance to the tribe for filing
7 a tribal customary adoption order up to, but not exceeding, 60
8 days. If the child's tribe does not file the tribal customary adoption
9 order within the designated time period, the court shall make new
10 findings and orders pursuant to subdivision (b) of Section 366.26
11 and this subdivision to determine the best permanent plan for the
12 child.

13 (7) The child, birth parents, or Indian custodian and the tribal
14 customary adoptive parents and their counsel, if applicable, may
15 present evidence to the tribe regarding the tribal customary
16 adoption and the child's best interest.

17 (8) The tribal customary adoption order shall include, but not
18 be limited to, a description of (A) the modification of the legal
19 relationship of the birth parents or Indian custodian and the child,
20 including contact, if any, between the child and the birth parents
21 or Indian custodian, responsibilities of the birth parents or Indian
22 custodian, and the rights of inheritance of the child and (B) the
23 child's legal relationship with the tribe. The order shall not include
24 any child support obligation from the birth parents or Indian
25 custodian. There shall be a conclusive presumption that any
26 parental rights or obligations not specified in the tribal customary
27 adoption order shall vest in the tribal customary adoptive parents.

28 (9) Prior consent to a permanent plan of tribal customary
29 adoption of an Indian child shall not be required of an Indian
30 parent or Indian custodian whose parental relationship to the child
31 will be modified by the tribal customary adoption.

32 (10) Nothing in this paragraph is intended to prevent the transfer
33 of those proceedings to a tribal court where transfer is otherwise
34 permitted under applicable law.

35 (11) Consistent with Section 366.3, after the tribal customary
36 adoption has been completed, the tribal customary adoption order
37 of the tribe has been filed, and an order of adoption has been
38 issued, the court shall terminate its jurisdiction over the Indian
39 child.

1 (12) *This subdivision shall become operative on July 1, 2010,*
2 *and shall remain operative only to the extent that compliance with*
3 *its provisions is required by federal law as a condition of receiving*
4 *funding under Title IV-E or the federal Social Security Act (42*
5 *U.S.C. Sec. 670 et seq.).*

6 (e) *The Judicial Council shall adopt rules of court and necessary*
7 *forms required to implement tribal customary adoption as a*
8 *permanent plan for dependent Indian children. The Judicial*
9 *Council shall study California's tribal customary adoption*
10 *provisions and their affects on children, birth parents, adoptive*
11 *parents, Indian custodians, tribes, and the court, and shall report*
12 *all of its findings to the Legislature on or before January 1, 2013.*

13 (f) *This section shall remain in effect only until January 1, 2014,*
14 *and as of that date is repealed, unless a later enacted statute, that*
15 *is enacted before January 1, 2014, deletes or extends that date.*

16 SEC. 13. *Section 366.25 of the Welfare and Institutions Code*
17 *is amended to read:*

18 366.25. (a) (1) When a case has been continued pursuant to
19 subdivision (b) of Section 366.22, the subsequent permanency
20 review hearing shall occur within 24 months after the date the
21 child was originally removed from the physical custody of his or
22 her parent or legal guardian. The court shall order the return of the
23 child to the physical custody of his or her parent or legal guardian
24 unless the court finds, by a preponderance of the evidence, that
25 the return of the child to his or her parent or legal guardian would
26 create a substantial risk of detriment to the safety, protection, or
27 physical or emotional well-being of the child. The social worker
28 shall have the burden of establishing that detriment. At the
29 subsequent permanency review hearing, the court shall consider
30 the criminal history, obtained pursuant to paragraph (1) of
31 subdivision (f) of Section 16504.5, of the parent or legal guardian
32 subsequent to the child's removal to the extent that the criminal
33 record is substantially related to the welfare of the child or parent
34 or legal guardian's ability to exercise custody and control regarding
35 his or her child provided that the parent or legal guardian agreed
36 to submit fingerprint images to obtain criminal history information
37 as part of the case plan. The failure of the parent or legal guardian
38 to participate regularly and make substantive progress in
39 court-ordered treatment programs shall be prima facie evidence
40 that return would be detrimental. In making its determination, the

1 court shall review and consider the social worker's report and
2 recommendations and the report and recommendations of any child
3 advocate appointed pursuant to Section 356.5; shall consider the
4 efforts or progress, or both, demonstrated by the parent or legal
5 guardian and the extent to which he or she availed himself or
6 herself of services provided; and shall make appropriate findings
7 pursuant to subdivision (a) of Section 366.

8 (2) Whether or not the child is returned to his or her parent or
9 legal guardian, the court shall specify the factual basis for its
10 decision. If the child is not returned to a parent or legal guardian,
11 the court shall specify the factual basis for its conclusion that return
12 would be detrimental. If the child is not returned to his or her
13 parents or legal guardian, the court shall consider and state for the
14 record, in-state and out-of-state options for the child's permanent
15 placement. If the child is placed out of the state, the court shall
16 make a determination whether the out-of-state placement continues
17 to be appropriate and in best interests of the child.

18 (3) If the child is not returned to a parent or legal guardian at
19 the subsequent permanency review hearing, the court shall order
20 that a hearing be held pursuant to Section 366.26 in order to
21 determine whether adoption, *or, in the case of an Indian child,*
22 *tribal customary adoption*, guardianship, or long-term foster care
23 is the most appropriate plan for the child. However, if the court
24 finds by clear and convincing evidence, based on the evidence
25 already presented to it, including a recommendation by the State
26 Department of Social Services when it is acting as an adoption
27 agency in counties that are not served by a county adoption agency
28 or by a licensed county adoption agency, that there is a compelling
29 reason, as described in paragraph (3) of subdivision (g) of Section
30 366.21, for determining that a hearing held under Section 366.26
31 is not in the best interest of the child because the child is not a
32 proper subject for adoption *or, in the case of an Indian child, tribal*
33 *customary adoption*, and has no one willing to accept legal
34 guardianship, then the court may, only under these circumstances,
35 order that the child remain in foster care. If the court orders that a
36 child who is 10 years of age or older remain in long-term foster
37 care, the court shall determine whether the agency has made
38 reasonable efforts to maintain the child's relationships with
39 individuals other than the child's siblings who are important to the
40 child, consistent with the child's best interests, and may make any

1 appropriate order to ensure that those relationships are maintained.
2 The hearing shall be held no later than 120 days from the date of
3 the subsequent permanency review hearing. The court shall also
4 order termination of reunification services to the parent or legal
5 guardian. The court shall continue to permit the parent or legal
6 guardian to visit the child unless it finds that visitation would be
7 detrimental to the child. The court shall determine whether
8 reasonable services have been offered or provided to the parent or
9 legal guardian. For purposes of this subdivision, evidence of any
10 of the following circumstances shall not, in and of themselves, be
11 deemed a failure to provide or offer reasonable services:

12 (A) The child has been placed with a foster family that is eligible
13 to adopt a child, or has been placed in a preadoptive home.

14 (B) The case plan includes services to make and finalize a
15 permanent placement for the child if efforts to reunify fail.

16 (C) Services to make and finalize a permanent placement for
17 the child, if efforts to reunify fail, are provided concurrently with
18 services to reunify the family.

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

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

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

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

35 (D) A preliminary assessment of the eligibility and commitment
36 of any identified prospective adoptive parent or legal guardian,
37 *including a prospective tribal customary adoptive parent*,
38 particularly the caretaker, to include a social history including
39 screening for criminal records and prior referrals for child abuse
40 or neglect, the capability to meet the child's needs, and the

1 understanding of the legal and financial rights and responsibilities
2 of adoption and guardianship. If a proposed legal guardian is a
3 relative of the minor, and the relative was assessed for foster care
4 placement of the minor prior to January 1, 1998, the assessment
5 shall also consider, but need not be limited to, all of the factors
6 specified in subdivision (a) of Section 361.3.

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

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

17 (G) *In the case of an Indian child, in addition to subparagraphs*
18 *(A) to (F), inclusive, an assessment of the likelihood that the child*
19 *will be adopted, when, in consultation with the child's tribe, a*
20 *customary tribal adoption, as defined in Section 366.24, is*
21 *recommended. If tribal customary adoption is recommended, the*
22 *assessment shall include an analysis of both of the following:*

23 (i) *Whether tribal customary adoption would or would not be*
24 *detrimental to the Indian child and the reasons for reaching that*
25 *conclusion.*

26 (ii) *Whether the Indian child cannot or should not be returned*
27 *to the home of the Indian parent or Indian custodian and the*
28 *reasons for reaching that conclusion.*

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

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

39 (c) If, at any hearing held pursuant to Section 366.26, a
40 guardianship is established for the minor with a relative, and

1 juvenile court dependency is subsequently dismissed, the relative
2 shall be eligible for aid under the Kin-GAP Program, as provided
3 for in Article 4.5 (commencing with Section 11360) of Chapter 2
4 of Part 3 of Division 9.

5 (d) As used in this section, “relative” means an adult who is
6 related to the minor by blood, adoption, or affinity within the fifth
7 degree of kinship, including stepparents, stepsiblings, and all
8 relatives whose status is preceded by the words “great,”
9 “great-great,” or “grand,” or the spouse of any of those persons
10 even if the marriage was terminated by death or dissolution.

11 (e) The implementation and operation of subdivision (a) enacted
12 at the 2005–06 Regular Session shall be subject to appropriation
13 through the budget process and by phase, as provided in Section
14 366.35.

15 (f) *This section shall remain in effect only until January 1, 2014,*
16 *and as of that date is repealed, unless a later enacted statute, that*
17 *is enacted before January 1, 2014, deletes or extends that date.*

18 SEC. 14. Section 366.25 is added to the Welfare and Institutions
19 Code, to read:

20 366.25. (a) (1) *When a case has been continued pursuant to*
21 *subdivision (b) of Section 366.22, the subsequent permanency*
22 *review hearing shall occur within 24 months after the date the*
23 *child was originally removed from the physical custody of his or*
24 *her parent or legal guardian. The court shall order the return of*
25 *the child to the physical custody of his or her parent or legal*
26 *guardian unless the court finds, by a preponderance of the*
27 *evidence, that the return of the child to his or her parent or legal*
28 *guardian would create a substantial risk of detriment to the safety,*
29 *protection, or physical or emotional well-being of the child. The*
30 *social worker shall have the burden of establishing that detriment.*
31 *At the subsequent permanency review hearing, the court shall*
32 *consider the criminal history, obtained pursuant to paragraph (1)*
33 *of subdivision (f) of Section 16504.5, of the parent or legal*
34 *guardian subsequent to the child’s removal to the extent that the*
35 *criminal record is substantially related to the welfare of the child*
36 *or parent or legal guardian’s ability to exercise custody and*
37 *control regarding his or her child provided that the parent or legal*
38 *guardian agreed to submit fingerprint images to obtain criminal*
39 *history information as part of the case plan. The failure of the*
40 *parent or legal guardian to participate regularly and make*

1 substantive progress in court-ordered treatment programs shall
2 be prima facie evidence that return would be detrimental. In
3 making its determination, the court shall review and consider the
4 social worker's report and recommendations and the report and
5 recommendations of any child advocate appointed pursuant to
6 Section 356.5; shall consider the efforts or progress, or both,
7 demonstrated by the parent or legal guardian and the extent to
8 which he or she availed himself or herself of services provided;
9 and shall make appropriate findings pursuant to subdivision (a)
10 of Section 366.

11 (2) Whether or not the child is returned to his or her parent or
12 legal guardian, the court shall specify the factual basis for its
13 decision. If the child is not returned to a parent or legal guardian,
14 the court shall specify the factual basis for its conclusion that
15 return would be detrimental. If the child is not returned to his or
16 her parents or legal guardian, the court shall consider and state
17 for the record, in-state and out-of-state options for the child's
18 permanent placement. If the child is placed out of the state, the
19 court shall make a determination whether the out-of-state
20 placement continues to be appropriate and in best interests of the
21 child.

22 (3) If the child is not returned to a parent or legal guardian at
23 the subsequent permanency review hearing, the court shall order
24 that a hearing be held pursuant to Section 366.26 in order to
25 determine whether adoption, guardianship, or long-term foster
26 care is the most appropriate plan for the child. However, if the
27 court finds by clear and convincing evidence, based on the evidence
28 already presented to it, including a recommendation by the State
29 Department of Social Services when it is acting as an adoption
30 agency in counties that are not served by a county adoption agency
31 or by a licensed county adoption agency, that there is a compelling
32 reason, as described in paragraph (3) of subdivision (g) of Section
33 366.21, for determining that a hearing held under Section 366.26
34 is not in the best interest of the child because the child is not a
35 proper subject for adoption and has no one willing to accept legal
36 guardianship, then the court may, only under these circumstances,
37 order that the child remain in foster care. If the court orders that
38 a child who is 10 years of age or older remain in long-term foster
39 care, the court shall determine whether the agency has made
40 reasonable efforts to maintain the child's relationships with

1 individuals other than the child's siblings who are important to
2 the child, consistent with the child's best interests, and may make
3 any appropriate order to ensure that those relationships are
4 maintained. The hearing shall be held no later than 120 days from
5 the date of the subsequent permanency review hearing. The court
6 shall also order termination of reunification services to the parent
7 or legal guardian. The court shall continue to permit the parent
8 or legal guardian to visit the child unless it finds that visitation
9 would be detrimental to the child. The court shall determine
10 whether reasonable services have been offered or provided to the
11 parent or legal guardian. For purposes of this subdivision,
12 evidence of any of the following circumstances shall not, in and
13 of themselves, be deemed a failure to provide or offer reasonable
14 services:

15 (A) The child has been placed with a foster family that is eligible
16 to adopt a child, or has been placed in a preadoptive home.

17 (B) The case plan includes services to make and finalize a
18 permanent placement for the child if efforts to reunify fail.

19 (C) Services to make and finalize a permanent placement for
20 the child, if efforts to reunify fail, are provided concurrently with
21 services to reunify the family.

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

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

29 (B) A review of the amount of, and nature of, any contact
30 between the child and his or her parents and other members of his
31 or her extended family since the time of placement. Although the
32 extended family of each child shall be reviewed on a case-by-case
33 basis, "extended family" for the purposes of this paragraph shall
34 include, but not be limited to, the child's siblings, grandparents,
35 aunts, and uncles.

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

38 (D) A preliminary assessment of the eligibility and commitment
39 of any identified prospective adoptive parent or legal guardian,
40 particularly the caretaker, to include a social history including

1 screening for criminal records and prior referrals for child abuse
2 or neglect, the capability to meet the child's needs, and the
3 understanding of the legal and financial rights and responsibilities
4 of adoption and guardianship. If a proposed legal guardian is a
5 relative of the minor, and the relative was assessed for foster care
6 placement of the minor prior to January 1, 1998, the assessment
7 shall also consider, but need not be limited to, all of the factors
8 specified in subdivision (a) of Section 361.3.

9 (E) The relationship of the child to any identified prospective
10 adoptive parent or legal guardian, the duration and character of
11 the relationship, the motivation for seeking adoption or legal
12 guardianship, and a statement from the child concerning placement
13 and the adoption or legal guardianship, unless the child's age or
14 physical, emotional, or other condition precludes his or her
15 meaningful 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 (c) If, at any hearing held pursuant to Section 366.26, a
29 guardianship is established for the minor with a relative, and
30 juvenile court dependency is subsequently dismissed, the relative
31 shall be eligible for aid under the Kin-GAP Program, as provided
32 for in Article 4.5 (commencing with Section 11360) of Chapter 2
33 of Part 3 of Division 9.

34 (d) As used in this section, "relative" means an adult who is
35 related to the minor by blood, adoption, or affinity within the fifth
36 degree of kinship, including stepparents, stepsiblings, and all
37 relatives whose status is preceded by the words "great,"
38 "great-great," or "grand," or the spouse of any of those persons
39 even if the marriage was terminated by death or dissolution.

1 (e) *The implementation and operation of subdivision (a) enacted*
2 *at the 2005–06 Regular Session shall be subject to appropriation*
3 *through the budget process and by phase, as provided in Section*
4 *366.35.*

5 (f) *This section shall become operative on January 1, 2014.*

6 SEC. 15. *Section 366.26 of the Welfare and Institutions Code*
7 *is amended to read:*

8 366.26. (a) This section applies to children who are adjudged
9 dependent children of the juvenile court pursuant to subdivision
10 (d) of Section 360. The procedures specified herein are the
11 exclusive procedures for conducting these hearings; Part 2
12 (commencing with Section 3020) of Division 8 of the Family Code
13 is not applicable to these proceedings. Section 8616.5 of the Family
14 Code is applicable and available to all dependent children meeting
15 the requirements of that section, if the postadoption contact
16 agreement has been entered into voluntarily. For children who are
17 adjudged dependent children of the juvenile court pursuant to
18 subdivision (d) of Section 360, this section and Sections 8604,
19 8605, 8606, and 8700 of the Family Code and Chapter 5
20 (commencing with Section 7660) of Part 3 of Division 12 of the
21 Family Code specify the exclusive procedures for permanently
22 terminating parental rights with regard to, or establishing legal
23 guardianship of, the child while the child is a dependent child of
24 the juvenile court.

25 (b) At the hearing, which shall be held in juvenile court for all
26 children who are dependents of the juvenile court, the court, in
27 order to provide stable, permanent homes for these children, shall
28 review the report as specified in Section 361.5, 366.21, 366.22, or
29 366.25, shall indicate that the court has read and considered it,
30 shall receive other evidence that the parties may present, and then
31 shall make findings and orders in the following order of preference:

32 (1) Terminate the rights of the parent or parents and order that
33 the child be placed for adoption and, upon the filing of a petition
34 for adoption in the juvenile court, order that a hearing be set. The
35 court shall proceed with the adoption after the appellate rights of
36 the natural parents have been exhausted.

37 (2) *Order, without termination of parental rights, the plan of*
38 *tribal customary adoption, as described in Section 366.24, through*
39 *the Indian child's tribe's custom, traditions, or tribal law, and*

1 *upon the filing of the tribal customary adoption order, order that*
2 *a hearing be set pursuant to paragraph (2) of subdivision (e)*

3 ~~(2)~~

4 (3) Appoint a relative or relatives with whom the child is
5 currently residing as legal guardian or guardians for the child, and
6 order that letters of guardianship issue.

7 ~~(3)~~

8 (4) On making a finding under paragraph (3) of subdivision (c),
9 identify adoption *or tribal customary adoption* as the permanent
10 placement goal and order that efforts be made to locate an
11 appropriate adoptive family for the child within a period not to
12 exceed 180 days.

13 ~~(4)~~

14 (5) Appoint a nonrelative legal guardian for the child and order
15 that letters of guardianship issue.

16 ~~(5)~~

17 (6) Order that the child be placed in long-term foster care,
18 subject to the periodic review of the juvenile court under Section
19 366.3.

20 In choosing among the above alternatives the court shall proceed
21 pursuant to subdivision (c).

22 (c) (1) If the court determines, based on the assessment provided
23 as ordered under subdivision (i) of Section 366.21, subdivision (b)
24 of Section 366.22, or subdivision (b) of Section 366.25, and any
25 other relevant evidence, by a clear and convincing standard, that
26 it is likely the child will be adopted, the court shall terminate
27 parental rights and order the child placed for adoption. The fact
28 that the child is not yet placed in a preadoptive home nor with a
29 relative or foster family who is prepared to adopt the child, shall
30 not constitute a basis for the court to conclude that it is not likely
31 the child will be adopted. A finding under subdivision (b) or
32 paragraph (1) of subdivision (e) of Section 361.5 that reunification
33 services shall not be offered, under subdivision (e) of Section
34 366.21 that the whereabouts of a parent have been unknown for
35 six months or that the parent has failed to visit or contact the child
36 for six months, or that the parent has been convicted of a felony
37 indicating parental unfitness, or, under Section 366.21 or 366.22,
38 that the court has continued to remove the child from the custody
39 of the parent or guardian and has terminated reunification services,
40 shall constitute a sufficient basis for termination of parental rights.

1 Under these circumstances, the court shall terminate parental rights
2 unless either of the following applies:

3 (A) The child is living with a relative who is unable or unwilling
4 to adopt the child because of circumstances that do not include an
5 unwillingness to accept legal or financial responsibility for the
6 child, but who is willing and capable of providing the child with
7 a stable and permanent environment through legal guardianship,
8 and the removal of the child from the custody of his or her relative
9 would be detrimental to the emotional well-being of the child. For
10 purposes of an Indian child, “relative” shall include an “extended
11 family member,” as defined in the federal Indian Child Welfare
12 Act (25 U.S.C. Sec. 1903(2)).

13 (B) The court finds a compelling reason for determining that
14 termination would be detrimental to the child due to one or more
15 of the following circumstances:

16 (i) The parents have maintained regular visitation and contact
17 with the child and the child would benefit from continuing the
18 relationship.

19 (ii) A child 12 years of age or older objects to termination of
20 parental rights.

21 (iii) The child is placed in a residential treatment facility,
22 adoption is unlikely or undesirable, and continuation of parental
23 rights will not prevent finding the child a permanent family
24 placement if the parents cannot resume custody when residential
25 care is no longer needed.

26 (iv) The child is living with a foster parent or Indian custodian
27 who is unable or unwilling to adopt the child because of
28 exceptional circumstances, that do not include an unwillingness
29 to accept legal or financial responsibility for the child, but who is
30 willing and capable of providing the child with a stable and
31 permanent environment and the removal of the child from the
32 physical custody of his or her foster parent or Indian custodian
33 would be detrimental to the emotional well-being of the child. This
34 clause does not apply to any child who is either (I) under six years
35 of age or (II) a member of a sibling group where at least one child
36 is under six years of age and the siblings are, or should be,
37 permanently placed together.

38 (v) There would be substantial interference with a child’s sibling
39 relationship, taking into consideration the nature and extent of the
40 relationship, including, but not limited to, whether the child was

1 raised with a sibling in the same home, whether the child shared
2 significant common experiences or has existing close and strong
3 bonds with a sibling, and whether ongoing contact is in the child's
4 best interest, including the child's long-term emotional interest,
5 as compared to the benefit of legal permanence through adoption.

6 (vi) The child is an Indian child and there is a compelling reason
7 for determining that termination of parental rights would not be
8 in the best interest of the child, including, but not limited to:

9 (I) Termination of parental rights would substantially interfere
10 with the child's connection to his or her tribal community or the
11 child's tribal membership rights.

12 (II) The child's tribe has identified guardianship, long-term
13 foster care with a fit and willing relative, *tribal customary adoption*,
14 or another planned permanent living arrangement for the child.

15 (C) *For purposes of subparagraph (B), in the case of tribal*
16 *customary adoptions, Section 366.24 shall apply.*

17 If

18 (D) *If the court finds that termination of parental rights would*
19 *be detrimental to the child pursuant to clause (i), (ii), (iii), (iv),*
20 *(v), or (vi), it shall state its reasons in writing or on the record.*

21 (2) The court shall not terminate parental rights if:

22 (A) At each hearing at which the court was required to consider
23 reasonable efforts or services, the court has found that reasonable
24 efforts were not made or that reasonable services were not offered
25 or provided.

26 (B) In the case of an Indian child:

27 (i) At the hearing terminating parental rights, the court has found
28 that active efforts were not made as required in Section 361.7.

29 (ii) The court does not make a determination at the hearing
30 terminating parental rights, supported by evidence beyond a
31 reasonable doubt, including testimony of one or more "qualified
32 expert witnesses" as defined in Section 224.6, that the continued
33 custody of the child by the parent is likely to result in serious
34 emotional or physical damage to the child.

35 (iii) *The court has ordered tribal customary adoption pursuant*
36 *to Section 366.24.*

37 (3) If the court finds that termination of parental rights would
38 not be detrimental to the child pursuant to paragraph (1) and that
39 the child has a probability for adoption but is difficult to place for
40 adoption and there is no identified or available prospective adoptive

1 parent, the court may identify adoption as the permanent placement
2 goal and without terminating parental rights, order that efforts be
3 made to locate an appropriate adoptive family for the child, within
4 the state or out of the state, within a period not to exceed 180 days.
5 During this 180-day period, the public agency responsible for
6 seeking adoptive parents for each child shall, to the extent possible,
7 ask each child who is 10 years of age or older, to identify any
8 individuals, other than the child's siblings, who are important to
9 the child, in order to identify potential adoptive parents. The public
10 agency may ask any other child to provide that information, as
11 appropriate. During the 180-day period, the public agency shall,
12 to the extent possible, contact other private and public adoption
13 agencies regarding the availability of the child for adoption. During
14 the 180-day period, the public agency shall conduct the search for
15 adoptive parents in the same manner as prescribed for children in
16 Sections 8708 and 8709 of the Family Code. At the expiration of
17 this period, another hearing shall be held and the court shall
18 proceed pursuant to paragraph ~~(1) or (4)~~ (1), (2), (3), (5), or (6) of
19 subdivision (b). For purposes of this section, a child may only be
20 found to be difficult to place for adoption if there is no identified
21 or available prospective adoptive parent for the child because of
22 the child's membership in a sibling group, or the presence of a
23 diagnosed medical, physical, or mental handicap, or the child is
24 seven years of age or more.

25 (4) (A) If the court finds that adoption of the child or
26 termination of parental rights is not in the best interest of the child,
27 because one of the conditions in clause (i), (ii), (iii), (iv), (v), or
28 (vi) of subparagraph (B) of paragraph (1) or in paragraph (2)
29 applies, the court shall either order that the present caretakers or
30 other appropriate persons shall become legal guardians of the ~~child~~
31 ~~or child~~ order that the child remain in long-term foster care, *or, in*
32 *the case of an Indian child, consider a tribal customary adoption*
33 *pursuant to Section 366.24.* Legal guardianship shall be considered
34 before long-term foster care, if it is in the best interests of the child
35 and if a suitable guardian can be found. A child who is 10 years
36 of age or older, shall be asked to identify any individuals, other
37 than the child's siblings, who are important to the child, in order
38 to identify potential guardians *or, in the case of an Indian child,*
39 *prospective tribal customary adoptive parents.* The agency may
40 ask any other child to provide that information, as appropriate.

1 (B) If the child is living with a relative or a foster parent who
2 is willing and capable of providing a stable and permanent
3 environment, but not willing to become a legal guardian, the child
4 shall not be removed from the home if the court finds the removal
5 would be seriously detrimental to the emotional well-being of the
6 child because the child has substantial psychological ties to the
7 relative caretaker or foster parents.

8 (C) The court shall also make an order for visitation with the
9 parents or guardians unless the court finds by a preponderance of
10 the evidence that the visitation would be detrimental to the physical
11 or emotional well-being of the child.

12 (5) If the court finds that the child should not be placed for
13 adoption, that legal guardianship shall not be established, and that
14 there are no suitable foster parents except exclusive-use homes
15 available to provide the child with a stable and permanent
16 environment, the court may order the care, custody, and control
17 of the child transferred from the county welfare department to a
18 licensed foster family agency. The court shall consider the written
19 recommendation of the county welfare director regarding the
20 suitability of the transfer. The transfer shall be subject to further
21 court orders.

22 The licensed foster family agency shall place the child in a
23 suitable licensed or exclusive-use home that has been certified by
24 the agency as meeting licensing standards. The licensed foster
25 family agency shall be responsible for supporting the child and
26 providing appropriate services to the child, including those services
27 ordered by the court. Responsibility for the support of the child
28 shall not, in and of itself, create liability on the part of the foster
29 family agency to third persons injured by the child. Those children
30 whose care, custody, and control are transferred to a foster family
31 agency shall not be eligible for foster care maintenance payments
32 or child welfare services, except for emergency response services
33 pursuant to Section 16504.

34 (d) The proceeding for the appointment of a guardian for a child
35 who is a dependent of the juvenile court shall be in the juvenile
36 court. If the court finds pursuant to this section that legal
37 guardianship is the appropriate permanent plan, it shall appoint
38 the legal guardian and issue letters of guardianship. The assessment
39 prepared pursuant to subdivision (g) of Section 361.5, subdivision
40 (i) of Section 366.21, subdivision (b) of Section 366.22, and

subdivision (b) of Section 366.25 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) (1) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(2) *In the case of an Indian child, if the Indian child's tribe has elected a permanent plan of tribal customary adoption, the court shall order that an adoption hearing be set, at which time the tribal customary adoption order shall be filed in the court. The court, upon receiving the tribal customary adoption order, will afford the tribal customary adoption order full faith and credit to the same extent that the court would afford full faith and credit to the public acts, records, judicial proceedings, and judgments of any other entity, and upon a determination that the tribal customary adoption order may be afforded full faith and credit, consistent with Section 224.5, the court shall thereafter issue an order of adoption consistent with Section 366.24.*

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the

1 appointment of counsel. The court shall state on the record its
2 reasons for that finding.

3 (2) If a parent appears without counsel and is unable to afford
4 counsel, the court shall appoint counsel for the parent, unless this
5 representation is knowingly and intelligently waived. The same
6 counsel shall not be appointed to represent both the child and his
7 or her parent. The public defender or private counsel may be
8 appointed as counsel for the parent.

9 (3) Private counsel appointed under this section shall receive a
10 reasonable sum for compensation and expenses, the amount of
11 which shall be determined by the court. The amount shall be paid
12 by the real parties in interest, other than the child, in any
13 proportions the court deems just. However, if the court finds that
14 any of the real parties in interest are unable to afford counsel, the
15 amount shall be paid out of the general fund of the county.

16 (g) The court may continue the proceeding for a period of time
17 not to exceed 30 days as necessary to appoint counsel, and to
18 enable counsel to become acquainted with the case.

19 (h) (1) At all proceedings under this section, the court shall
20 consider the wishes of the child and shall act in the best interests
21 of the child.

22 (2) In accordance with Section 349, the child shall be present
23 in court if the child or the child's counsel so requests or the court
24 so orders. If the child is 10 years of age or older and is not present
25 at a hearing held pursuant to this section, the court shall determine
26 whether the minor was properly notified of his or her right to attend
27 the hearing and inquire as to the reason why the child is not present.

28 (3) (A) The testimony of the child may be taken in chambers
29 and outside the presence of the child's parent or parents, if the
30 child's parent or parents are represented by counsel, the counsel
31 is present, and any of the following circumstances exists:

32 (i) The court determines that testimony in chambers is necessary
33 to ensure truthful testimony.

34 (ii) The child is likely to be intimidated by a formal courtroom
35 setting.

36 (iii) The child is afraid to testify in front of his or her parent or
37 parents.

38 (B) After testimony in chambers, the parent or parents of the
39 child may elect to have the court reporter read back the testimony

1 or have the testimony summarized by counsel for the parent or
2 parents.

3 (C) The testimony of a child also may be taken in chambers and
4 outside the presence of the guardian or guardians of a child under
5 the circumstances specified in this subdivision.

6 (i) (1) Any order of the court permanently terminating parental
7 rights under this section shall be conclusive and binding upon the
8 child, upon the parent or parents and upon all other persons who
9 have been served with citation by publication or otherwise as
10 provided in this chapter. After making the order, the juvenile court
11 shall have no power to set aside, change, or modify it, except as
12 provided in paragraph (2), but nothing in this section shall be
13 construed to limit the right to appeal the order.

14 (2) *A tribal customary adoption order evidencing that the Indian*
15 *child has been the subject of a tribal customary adoption shall be*
16 *afforded full faith and credit and shall have the same force and*
17 *effect as an order of adoption authorized by this section. The rights*
18 *and obligations of the parties as to the matters determined by the*
19 *Indian child's tribe shall be binding on all parties. A court shall*
20 *not order compliance with the order absent a finding that the party*
21 *seeking the enforcement participated, or attempted to participate,*
22 *in good faith, in family mediation services of the court or dispute*
23 *resolution through the tribe regarding the conflict, prior to the*
24 *filing of the enforcement action.*

25 (2)

26 (3) A child who has not been adopted after the passage of at
27 least three years from the date the court terminated parental rights
28 and for whom the court has determined that adoption is no longer
29 the permanent plan may petition the juvenile court to reinstate
30 parental rights pursuant to the procedure prescribed by Section
31 388. The child may file the petition prior to the expiration of this
32 three-year period if the State Department of Social Services or
33 licensed adoption agency that is responsible for custody and
34 supervision of the child as described in subdivision (j) and the
35 child stipulate that the child is no longer likely to be adopted. A
36 child over 12 years of age shall sign the petition in the absence of
37 a showing of good cause as to why the child could not do so. If it
38 appears that the best interests of the child may be promoted by
39 reinstatement of parental rights, the court shall order that a hearing
40 be held and shall give prior notice, or cause prior notice to be

1 given, to the social worker or probation officer and to the child's
2 attorney of record, or, if there is no attorney of record for the child,
3 to the child, and the child's tribe, if applicable, by means prescribed
4 by subdivision (c) of Section 297. The court shall order the child
5 or the social worker or probation officer to give prior notice of the
6 hearing to the child's former parent or parents whose parental
7 rights were terminated in the manner prescribed by subdivision
8 (f) of Section 294 where the recommendation is adoption. The
9 juvenile court shall grant the petition if it finds by clear and
10 convincing evidence that the child is no longer likely to be adopted
11 and that reinstatement of parental rights is in the child's best
12 interest. If the court reinstates parental rights over a child who is
13 under 12 years of age and for whom the new permanent plan will
14 not be reunification with a parent or legal guardian, the court shall
15 specify the factual basis for its findings that it is in the best interest
16 of the child to reinstate parental rights. This subdivision is intended
17 to be retroactive and applies to any child who is under the
18 jurisdiction of the juvenile court at the time of the hearing
19 regardless of the date parental rights were terminated.

20 (j) If the court, by order or judgment, declares the child free
21 from the custody and control of both parents, or one parent if the
22 other does not have custody and control, the court shall at the same
23 time order the child referred to the State Department of Social
24 Services or a licensed adoption agency for adoptive placement by
25 the agency. However, a petition for adoption may not be granted
26 until the appellate rights of the natural parents have been exhausted.
27 The State Department of Social Services or licensed adoption
28 agency shall be responsible for the custody and supervision of the
29 child and shall be entitled to the exclusive care and control of the
30 child at all times until a petition for adoption is granted, except as
31 specified in subdivision (n). With the consent of the agency, the
32 court may appoint a guardian of the child, who shall serve until
33 the child is adopted.

34 (k) Notwithstanding any other provision of law, the application
35 of any person who, as a relative caretaker or foster parent, has
36 cared for a dependent child for whom the court has approved a
37 permanent plan for adoption, or who has been freed for adoption,
38 shall be given preference with respect to that child over all other
39 applications for adoptive placement if the agency making the
40 placement determines that the child has substantial emotional ties

1 to the relative caretaker or foster parent and removal from the
2 relative caretaker or foster parent would be seriously detrimental
3 to the child's emotional well-being.

4 As used in this subdivision, "preference" means that the
5 application shall be processed and, if satisfactory, the family study
6 shall be completed before the processing of the application of any
7 other person for the adoptive placement of the child.

8 (I) (1) An order by the court that a hearing pursuant to this
9 section be held is not appealable at any time unless all of the
10 following apply:

11 (A) A petition for extraordinary writ review was filed in a timely
12 manner.

13 (B) The petition substantively addressed the specific issues to
14 be challenged and supported that challenge by an adequate record.

15 (C) The petition for extraordinary writ review was summarily
16 denied or otherwise not decided on the merits.

17 (2) Failure to file a petition for extraordinary writ review within
18 the period specified by rule, to substantively address the specific
19 issues challenged, or to support that challenge by an adequate
20 record shall preclude subsequent review by appeal of the findings
21 and orders made pursuant to this section.

22 (3) The Judicial Council shall adopt rules of court, effective
23 January 1, 1995, to ensure all of the following:

24 (A) A trial court, after issuance of an order directing a hearing
25 pursuant to this section be held, shall advise all parties of the
26 requirement of filing a petition for extraordinary writ review as
27 set forth in this subdivision in order to preserve any right to appeal
28 in these issues. This notice shall be made orally to a party if the
29 party is present at the time of the making of the order or by
30 first-class mail by the clerk of the court to the last known address
31 of a party not present at the time of the making of the order.

32 (B) The prompt transmittal of the records from the trial court
33 to the appellate court.

34 (C) That adequate time requirements for counsel and court
35 personnel exist to implement the objective of this subdivision.

36 (D) That the parent or guardian, or their trial counsel or other
37 counsel, is charged with the responsibility of filing a petition for
38 extraordinary writ relief pursuant to this subdivision.

39 (4) The intent of this subdivision is to do both of the following:

1 (A) Make every reasonable attempt to achieve a substantive and
2 meritorious review by the appellate court within the time specified
3 in Sections 366.21, 366.22, and 366.25 for holding a hearing
4 pursuant to this section.

5 (B) Encourage the appellate court to determine all writ petitions
6 filed pursuant to this subdivision on their merits.

7 (5) This subdivision shall only apply to cases in which an order
8 to set a hearing pursuant to this section is issued on or after January
9 1, 1995.

10 (m) Except for subdivision (j), this section shall also apply to
11 minors adjudged wards pursuant to Section 727.31.

12 (n) (1) Notwithstanding Section 8704 of the Family Code or
13 any other provision of law, the court, at a hearing held pursuant
14 to this section or anytime thereafter, may designate a current
15 caretaker as a prospective adoptive parent if the child has lived
16 with the caretaker for at least six months, the caretaker currently
17 expresses a commitment to adopt the child, and the caretaker has
18 taken at least one step to facilitate the adoption process. In
19 determining whether to make that designation, the court may take
20 into consideration whether the caretaker is listed in the preliminary
21 assessment prepared by the county department in accordance with
22 subdivision (i) of Section 366.21 as an appropriate person to be
23 considered as an adoptive parent for the child and the
24 recommendation of the State Department of Social Services or
25 licensed adoption agency.

26 (2) For purposes of this subdivision, steps to facilitate the
27 adoption process include, but are not limited to, the following:

28 (A) Applying for an adoption home study.

29 (B) Cooperating with an adoption home study.

30 (C) Being designated by the court or the licensed adoption
31 agency as the adoptive family.

32 (D) Requesting de facto parent status.

33 (E) Signing an adoptive placement agreement.

34 (F) Engaging in discussions regarding a postadoption contact
35 agreement.

36 (G) Working to overcome any impediments that have been
37 identified by the State Department of Social Services and the
38 licensed adoption agency.

39 (H) Attending classes required of prospective adoptive parents.

1 (3) Prior to a change in placement and as soon as possible after
2 a decision is made to remove a child from the home of a designated
3 prospective adoptive parent, the agency shall notify the court, the
4 designated prospective adoptive parent or the current caretaker, if
5 that caretaker would have met the threshold criteria to be
6 designated as a prospective adoptive parent pursuant to paragraph
7 (1) on the date of service of this notice, the child's attorney, and
8 the child, if the child is 10 years of age or older, of the proposal
9 in the manner described in Section 16010.6.

10 (A) Within five court days or seven calendar days, whichever
11 is longer, of the date of notification, the child, the child's attorney,
12 or the designated prospective adoptive parent may file a petition
13 with the court objecting to the proposal to remove the child, or the
14 court, upon its own motion, may set a hearing regarding the
15 proposal. The court may, for good cause, extend the filing period.
16 A caretaker who would have met the threshold criteria to be
17 designated as a prospective adoptive parent pursuant to paragraph
18 (1) on the date of service of the notice of proposed removal of the
19 child may file, together with the petition under this subparagraph,
20 a petition for an order designating the caretaker as a prospective
21 adoptive parent for purposes of this subdivision.

22 (B) A hearing ordered pursuant to this paragraph shall be held
23 as soon as possible and not later than five court days after the
24 petition is filed with the court or the court sets a hearing upon its
25 own motion, unless the court for good cause is unable to set the
26 matter for hearing five court days after the petition is filed, in
27 which case the court shall set the matter for hearing as soon as
28 possible. At the hearing, the court shall determine whether the
29 caretaker has met the threshold criteria to be designated as a
30 prospective adoptive parent pursuant to paragraph (1), and whether
31 the proposed removal of the child from the home of the designated
32 prospective adoptive parent is in the child's best interest, and the
33 child may not be removed from the home of the designated
34 prospective adoptive parent unless the court finds that removal is
35 in the child's best interest. If the court determines that the caretaker
36 did not meet the threshold criteria to be designated as a prospective
37 adoptive parent on the date of service of the notice of proposed
38 removal of the child, the petition objecting to the proposed removal
39 filed by the caretaker shall be dismissed. If the caretaker was
40 designated as a prospective adoptive parent prior to this hearing,

1 the court shall inquire into any progress made by the caretaker
2 towards the adoption of the child since the caretaker was designated
3 as a prospective adoptive parent.

4 (C) A determination by the court that the caretaker is a
5 designated prospective adoptive parent pursuant to paragraph (1)
6 or subparagraph (B) does not make the caretaker a party to the
7 dependency proceeding nor does it confer on the caretaker any
8 standing to object to any other action of the department or licensed
9 adoption agency, unless the caretaker has been declared a de facto
10 parent by the court prior to the notice of removal served pursuant
11 to paragraph (3).

12 (D) If a petition objecting to the proposal to remove the child
13 is not filed, and the court, upon its own motion, does not set a
14 hearing, the child may be removed from the home of the designated
15 prospective adoptive parent without a hearing.

16 (4) Notwithstanding paragraph (3), if the State Department of
17 Social Services or a licensed adoption agency determines that the
18 child must be removed from the home of the caretaker who is or
19 may be a designated prospective adoptive parent immediately, due
20 to a risk of physical or emotional harm, the agency may remove
21 the child from that home and is not required to provide notice prior
22 to the removal. However, as soon as possible and not longer than
23 two court days after the removal, the agency shall notify the court,
24 the caretaker who is or may be a designated prospective adoptive
25 parent, the child's attorney, and the child, if the child is 10 years
26 of age or older, of the removal. Within five court days or seven
27 calendar days, whichever is longer, of the date of notification of
28 the removal, the child, the child's attorney, or the caretaker who
29 is or may be a designated prospective adoptive parent may petition
30 for, or the court on its own motion may set, a noticed hearing
31 pursuant to paragraph (3). The court may, for good cause, extend
32 the filing period.

33 (5) Except as provided in subdivision (b) of Section 366.28, an
34 order by the court issued after a hearing pursuant to this subdivision
35 shall not be appealable.

36 (6) Nothing in this section shall preclude a county child
37 protective services agency from fully investigating and responding
38 to alleged abuse or neglect of a child pursuant to Section 11165.5
39 of the Penal Code.

1 (7) The Judicial Council shall prepare forms to facilitate the
2 filing of the petitions described in this subdivision, which shall
3 become effective on January 1, 2006.

4 (o) The implementation and operation of the amendments to
5 paragraph (3) of subdivision (c) and subparagraph (A) of paragraph
6 (4) of subdivision (c) enacted at the 2005–06 Regular Session shall
7 be subject to appropriation through the budget process and by
8 phase, as provided in Section 366.35.

9 (p) *This section shall remain in effect only until January 1, 2014,*
10 *and as of that date is repealed, unless a later enacted statute, that*
11 *is enacted before January 1, 2014, deletes or extends that date.*

12 SEC. 16. Section 366.26 is added to the Welfare and Institutions
13 Code, to read:

14 366.26. (a) *This section applies to children who are adjudged*
15 *dependent children of the juvenile court pursuant to subdivision*
16 *(d) of Section 360. The procedures specified herein are the*
17 *exclusive procedures for conducting these hearings; Part 2*
18 *(commencing with Section 3020) of Division 8 of the Family Code*
19 *is not applicable to these proceedings. Section 8616.5 of the Family*
20 *Code is applicable and available to all dependent children meeting*
21 *the requirements of that section, if the postadoption contact*
22 *agreement has been entered into voluntarily. For children who*
23 *are adjudged dependent children of the juvenile court pursuant to*
24 *subdivision (d) of Section 360, this section and Sections 8604,*
25 *8605, 8606, and 8700 of the Family Code and Chapter 5*
26 *(commencing with Section 7660) of Part 3 of Division 12 of the*
27 *Family Code specify the exclusive procedures for permanently*
28 *terminating parental rights with regard to, or establishing legal*
29 *guardianship of, the child while the child is a dependent child of*
30 *the juvenile court.*

31 (b) *At the hearing, which shall be held in juvenile court for all*
32 *children who are dependents of the juvenile court, the court, in*
33 *order to provide stable, permanent homes for these children, shall*
34 *review the report as specified in Section 361.5, 366.21, 366.22, or*
35 *366.25, shall indicate that the court has read and considered it,*
36 *shall receive other evidence that the parties may present, and then*
37 *shall make findings and orders in the following order of preference:*

38 (1) *Terminate the rights of the parent or parents and order that*
39 *the child be placed for adoption and, upon the filing of a petition*
40 *for adoption in the juvenile court, order that a hearing be set. The*

1 court shall proceed with the adoption after the appellate rights of
2 the natural parents have been exhausted.

3 (2) Appoint a relative or relatives with whom the child is
4 currently residing as legal guardian or guardians for the child,
5 and order that letters of guardianship issue.

6 (3) On making a finding under paragraph (3) of subdivision
7 (c), identify adoption as the permanent placement goal and order
8 that efforts be made to locate an appropriate adoptive family for
9 the child within a period not to exceed 180 days.

10 (4) Appoint a nonrelative legal guardian for the child and order
11 that letters of guardianship issue.

12 (5) Order that the child be placed in long-term foster care,
13 subject to the periodic review of the juvenile court under Section
14 366.3.

15 In choosing among the above alternatives the court shall proceed
16 pursuant to subdivision (c).

17 (c) (1) If the court determines, based on the assessment provided
18 as ordered under subdivision (i) of Section 366.21, subdivision (b)
19 of Section 366.22, or subdivision (b) of Section 366.25, and any
20 other relevant evidence, by a clear and convincing standard, that
21 it is likely the child will be adopted, the court shall terminate
22 parental rights and order the child placed for adoption. The fact
23 that the child is not yet placed in a preadoptive home nor with a
24 relative or foster family who is prepared to adopt the child, shall
25 not constitute a basis for the court to conclude that it is not likely
26 the child will be adopted. A finding under subdivision (b) or
27 paragraph (1) of subdivision (e) of Section 361.5 that reunification
28 services shall not be offered, under subdivision (e) of Section
29 366.21 that the whereabouts of a parent have been unknown for
30 six months or that the parent has failed to visit or contact the child
31 for six months, or that the parent has been convicted of a felony
32 indicating parental unfitness, or, under Section 366.21 or 366.22,
33 that the court has continued to remove the child from the custody
34 of the parent or guardian and has terminated reunification services,
35 shall constitute a sufficient basis for termination of parental rights.
36 Under these circumstances, the court shall terminate parental
37 rights unless either of the following applies:

38 (A) The child is living with a relative who is unable or unwilling
39 to adopt the child because of circumstances that do not include
40 an unwillingness to accept legal or financial responsibility for the

1 child, but who is willing and capable of providing the child with
2 a stable and permanent environment through legal guardianship,
3 and the removal of the child from the custody of his or her relative
4 would be detrimental to the emotional well-being of the child. For
5 purposes of an Indian child, “relative” shall include an “extended
6 family member,” as defined in the federal Indian Child Welfare
7 Act (25 U.S.C. Sec. 1903(2)).

8 (B) The court finds a compelling reason for determining that
9 termination would be detrimental to the child due to one or more
10 of the following circumstances:

11 (i) The parents have maintained regular visitation and contact
12 with the child and the child would benefit from continuing the
13 relationship.

14 (ii) A child 12 years of age or older objects to termination of
15 parental rights.

16 (iii) The child is placed in a residential treatment facility,
17 adoption is unlikely or undesirable, and continuation of parental
18 rights will not prevent finding the child a permanent family
19 placement if the parents cannot resume custody when residential
20 care is no longer needed.

21 (iv) The child is living with a foster parent or Indian custodian
22 who is unable or unwilling to adopt the child because of
23 exceptional circumstances, that do not include an unwillingness
24 to accept legal or financial responsibility for the child, but who is
25 willing and capable of providing the child with a stable and
26 permanent environment and the removal of the child from the
27 physical custody of his or her foster parent or Indian custodian
28 would be detrimental to the emotional well-being of the child. This
29 clause does not apply to any child who is either (I) under six years
30 of age or (II) a member of a sibling group where at least one child
31 is under six years of age and the siblings are, or should be,
32 permanently placed together.

33 (v) There would be substantial interference with a child’s sibling
34 relationship, taking into consideration the nature and extent of
35 the relationship, including, but not limited to, whether the child
36 was raised with a sibling in the same home, whether the child
37 shared significant common experiences or has existing close and
38 strong bonds with a sibling, and whether ongoing contact is in the
39 child’s best interest, including the child’s long-term emotional

1 interest, as compared to the benefit of legal permanence through
2 adoption.

3 (vi) The child is an Indian child and there is a compelling reason
4 for determining that termination of parental rights would not be
5 in the best interest of the child, including, but not limited to:

6 (I) Termination of parental rights would substantially interfere
7 with the child's connection to his or her tribal community or the
8 child's tribal membership rights.

9 (II) The child's tribe has identified guardianship, long-term
10 foster care with a fit and willing relative, or another planned
11 permanent living arrangement for the child.

12 If the court finds that termination of parental rights would be
13 detrimental to the child pursuant to clause (i), (ii), (iii), (iv), (v),
14 or (vi), it shall state its reasons in writing or on the record.

15 (2) The court shall not terminate parental rights if:

16 (A) At each hearing at which the court was required to consider
17 reasonable efforts or services, the court has found that reasonable
18 efforts were not made or that reasonable services were not offered
19 or provided.

20 (B) In the case of an Indian child:

21 (i) At the hearing terminating parental rights, the court has
22 found that active efforts were not made as required in Section
23 361.7.

24 (ii) The court does not make a determination at the hearing
25 terminating parental rights, supported by evidence beyond a
26 reasonable doubt, including testimony of one or more "qualified
27 expert witnesses" as defined in Section 224.6, that the continued
28 custody of the child by the parent is likely to result in serious
29 emotional or physical damage to the child.

30 (3) If the court finds that termination of parental rights would
31 not be detrimental to the child pursuant to paragraph (1) and that
32 the child has a probability for adoption but is difficult to place for
33 adoption and there is no identified or available prospective
34 adoptive parent, the court may identify adoption as the permanent
35 placement goal and without terminating parental rights, order
36 that efforts be made to locate an appropriate adoptive family for
37 the child, within the state or out of the state, within a period not
38 to exceed 180 days. During this 180-day period, the public agency
39 responsible for seeking adoptive parents for each child shall, to
40 the extent possible, ask each child who is 10 years of age or older,

1 to identify any individuals, other than the child's siblings, who are
2 important to the child, in order to identify potential adoptive
3 parents. The public agency may ask any other child to provide that
4 information, as appropriate. During the 180-day period, the public
5 agency shall, to the extent possible, contact other private and
6 public adoption agencies regarding the availability of the child
7 for adoption. During the 180-day period, the public agency shall
8 conduct the search for adoptive parents in the same manner as
9 prescribed for children in Sections 8708 and 8709 of the Family
10 Code. At the expiration of this period, another hearing shall be
11 held and the court shall proceed pursuant to paragraph (1) or (4)
12 of subdivision (b). For purposes of this section, a child may only
13 be found to be difficult to place for adoption if there is no identified
14 or available prospective adoptive parent for the child because of
15 the child's membership in a sibling group, or the presence of a
16 diagnosed medical, physical, or mental handicap, or the child is
17 seven years of age or more.

18 (4) (A) If the court finds that adoption of the child or
19 termination of parental rights is not in the best interest of the child,
20 because one of the conditions in clause (i), (ii), (iii), (iv), (v), or
21 (vi) of subparagraph (B) of paragraph (1) or in paragraph (2)
22 applies, the court shall either order that the present caretakers or
23 other appropriate persons shall become legal guardians of the
24 child or order that the child remain in long-term foster care. Legal
25 guardianship shall be considered before long-term foster care, if
26 it is in the best interests of the child and if a suitable guardian can
27 be found. A child who is 10 years of age or older, shall be asked
28 to identify any individuals, other than the child's siblings, who are
29 important to the child, in order to identify potential guardians.
30 The agency may ask any other child to provide that information,
31 as appropriate.

32 (B) If the child is living with a relative or a foster parent who
33 is willing and capable of providing a stable and permanent
34 environment, but not willing to become a legal guardian, the child
35 shall not be removed from the home if the court finds the removal
36 would be seriously detrimental to the emotional well-being of the
37 child because the child has substantial psychological ties to the
38 relative caretaker or foster parents.

39 (C) The court shall also make an order for visitation with the
40 parents or guardians unless the court finds by a preponderance

1 of the evidence that the visitation would be detrimental to the
2 physical or emotional well-being of the child.

3 (5) If the court finds that the child should not be placed for
4 adoption, that legal guardianship shall not be established, and
5 that there are no suitable foster parents except exclusive-use homes
6 available to provide the child with a stable and permanent
7 environment, the court may order the care, custody, and control
8 of the child transferred from the county welfare department to a
9 licensed foster family agency. The court shall consider the written
10 recommendation of the county welfare director regarding the
11 suitability of the transfer. The transfer shall be subject to further
12 court orders.

13 The licensed foster family agency shall place the child in a
14 suitable licensed or exclusive-use home that has been certified by
15 the agency as meeting licensing standards. The licensed foster
16 family agency shall be responsible for supporting the child and
17 providing appropriate services to the child, including those services
18 ordered by the court. Responsibility for the support of the child
19 shall not, in and of itself, create liability on the part of the foster
20 family agency to third persons injured by the child. Those children
21 whose care, custody, and control are transferred to a foster family
22 agency shall not be eligible for foster care maintenance payments
23 or child welfare services, except for emergency response services
24 pursuant to Section 16504.

25 (d) The proceeding for the appointment of a guardian for a child
26 who is a dependent of the juvenile court shall be in the juvenile
27 court. If the court finds pursuant to this section that legal
28 guardianship is the appropriate permanent plan, it shall appoint
29 the legal guardian and issue letters of guardianship. The
30 assessment prepared pursuant to subdivision (g) of Section 361.5,
31 subdivision (i) of Section 366.21, subdivision (b) of Section 366.22,
32 and subdivision (b) of Section 366.25 shall be read and considered
33 by the court prior to the appointment, and this shall be reflected
34 in the minutes of the court. The person preparing the assessment
35 may be called and examined by any party to the proceeding.

36 (e) The proceeding for the adoption of a child who is a
37 dependent of the juvenile court shall be in the juvenile court if the
38 court finds pursuant to this section that adoption is the appropriate
39 permanent plan and the petition for adoption is filed in the juvenile
40 court. Upon the filing of a petition for adoption, the juvenile court

1 shall order that an adoption hearing be set. The court shall proceed
2 with the adoption after the appellate rights of the natural parents
3 have been exhausted. The full report required by Section 8715 of
4 the Family Code shall be read and considered by the court prior
5 to the adoption and this shall be reflected in the minutes of the
6 court. The person preparing the report may be called and examined
7 by any party to the proceeding. It is the intent of the Legislature,
8 pursuant to this subdivision, to give potential adoptive parents the
9 option of filing in the juvenile court the petition for the adoption
10 of a child who is a dependent of the juvenile court. Nothing in this
11 section is intended to prevent the filing of a petition for adoption
12 in any other court as permitted by law, instead of in the juvenile
13 court.

14 (f) At the beginning of any proceeding pursuant to this section,
15 if the child or the parents are not being represented by previously
16 retained or appointed counsel, the court shall proceed as follows:

17 (1) In accordance with subdivision (c) of Section 317, if a child
18 before the court is without counsel, the court shall appoint counsel
19 unless the court finds that the child would not benefit from the
20 appointment of counsel. The court shall state on the record its
21 reasons for that finding.

22 (2) If a parent appears without counsel and is unable to afford
23 counsel, the court shall appoint counsel for the parent, unless this
24 representation is knowingly and intelligently waived. The same
25 counsel shall not be appointed to represent both the child and his
26 or her parent. The public defender or private counsel may be
27 appointed as counsel for the parent.

28 (3) Private counsel appointed under this section shall receive
29 a reasonable sum for compensation and expenses, the amount of
30 which shall be determined by the court. The amount shall be paid
31 by the real parties in interest, other than the child, in any
32 proportions the court deems just. However, if the court finds that
33 any of the real parties in interest are unable to afford counsel, the
34 amount shall be paid out of the general fund of the county.

35 (g) The court may continue the proceeding for a period of time
36 not to exceed 30 days as necessary to appoint counsel, and to
37 enable counsel to become acquainted with the case.

38 (h) (1) At all proceedings under this section, the court shall
39 consider the wishes of the child and shall act in the best interests
40 of the child.

1 (2) *In accordance with Section 349, the child shall be present*
2 *in court if the child or the child's counsel so requests or the court*
3 *so orders. If the child is 10 years of age or older and is not present*
4 *at a hearing held pursuant to this section, the court shall determine*
5 *whether the minor was properly notified of his or her right to*
6 *attend the hearing and inquire as to the reason why the child is*
7 *not present.*

8 (3) (A) *The testimony of the child may be taken in chambers*
9 *and outside the presence of the child's parent or parents, if the*
10 *child's parent or parents are represented by counsel, the counsel*
11 *is present, and any of the following circumstances exists:*

12 (i) *The court determines that testimony in chambers is necessary*
13 *to ensure truthful testimony.*

14 (ii) *The child is likely to be intimidated by a formal courtroom*
15 *setting.*

16 (iii) *The child is afraid to testify in front of his or her parent or*
17 *parents.*

18 (B) *After testimony in chambers, the parent or parents of the*
19 *child may elect to have the court reporter read back the testimony*
20 *or have the testimony summarized by counsel for the parent or*
21 *parents.*

22 (C) *The testimony of a child also may be taken in chambers and*
23 *outside the presence of the guardian or guardians of a child under*
24 *the circumstances specified in this subdivision.*

25 (i) (1) *Any order of the court permanently terminating parental*
26 *rights under this section shall be conclusive and binding upon the*
27 *child, upon the parent or parents and upon all other persons who*
28 *have been served with citation by publication or otherwise as*
29 *provided in this chapter. After making the order, the juvenile court*
30 *shall have no power to set aside, change, or modify it, except as*
31 *provided in paragraph (2), but nothing in this section shall be*
32 *construed to limit the right to appeal the order.*

33 (2) *A child who has not been adopted after the passage of at*
34 *least three years from the date the court terminated parental rights*
35 *and for whom the court has determined that adoption is no longer*
36 *the permanent plan may petition the juvenile court to reinstate*
37 *parental rights pursuant to the procedure prescribed by Section*
38 *388. The child may file the petition prior to the expiration of this*
39 *three-year period if the State Department of Social Services or*
40 *licensed adoption agency that is responsible for custody and*

1 supervision of the child as described in subdivision (j) and the
2 child stipulate that the child is no longer likely to be adopted. A
3 child over 12 years of age shall sign the petition in the absence of
4 a showing of good cause as to why the child could not do so. If it
5 appears that the best interests of the child may be promoted by
6 reinstatement of parental rights, the court shall order that a
7 hearing be held and shall give prior notice, or cause prior notice
8 to be given, to the social worker or probation officer and to the
9 child's attorney of record, or, if there is no attorney of record for
10 the child, to the child, and the child's tribe, if applicable, by means
11 prescribed by subdivision (c) of Section 297. The court shall order
12 the child or the social worker or probation officer to give prior
13 notice of the hearing to the child's former parent or parents whose
14 parental rights were terminated in the manner prescribed by
15 subdivision (f) of Section 294 where the recommendation is
16 adoption. The juvenile court shall grant the petition if it finds by
17 clear and convincing evidence that the child is no longer likely to
18 be adopted and that reinstatement of parental rights is in the
19 child's best interest. If the court reinstates parental rights over a
20 child who is under 12 years of age and for whom the new
21 permanent plan will not be reunification with a parent or legal
22 guardian, the court shall specify the factual basis for its findings
23 that it is in the best interest of the child to reinstate parental rights.
24 This subdivision is intended to be retroactive and applies to any
25 child who is under the jurisdiction of the juvenile court at the time
26 of the hearing regardless of the date parental rights were
27 terminated.

28 (j) If the court, by order or judgment, declares the child free
29 from the custody and control of both parents, or one parent if the
30 other does not have custody and control, the court shall at the
31 same time order the child referred to the State Department of
32 Social Services or a licensed adoption agency for adoptive
33 placement by the agency. However, a petition for adoption may
34 not be granted until the appellate rights of the natural parents
35 have been exhausted. The State Department of Social Services or
36 licensed adoption agency shall be responsible for the custody and
37 supervision of the child and shall be entitled to the exclusive care
38 and control of the child at all times until a petition for adoption
39 is granted, except as specified in subdivision (n). With the consent

1 of the agency, the court may appoint a guardian of the child, who
2 shall serve until the child is adopted.

3 (k) Notwithstanding any other provision of law, the application
4 of any person who, as a relative caretaker or foster parent, has
5 cared for a dependent child for whom the court has approved a
6 permanent plan for adoption, or who has been freed for adoption,
7 shall be given preference with respect to that child over all other
8 applications for adoptive placement if the agency making the
9 placement determines that the child has substantial emotional ties
10 to the relative caretaker or foster parent and removal from the
11 relative caretaker or foster parent would be seriously detrimental
12 to the child's emotional well-being.

13 As used in this subdivision, "preference" means that the
14 application shall be processed and, if satisfactory, the family study
15 shall be completed before the processing of the application of any
16 other person for the adoptive placement of the child.

17 (l) (1) An order by the court that a hearing pursuant to this
18 section be held is not appealable at any time unless all of the
19 following apply:

20 (A) A petition for extraordinary writ review was filed in a timely
21 manner.

22 (B) The petition substantively addressed the specific issues to
23 be challenged and supported that challenge by an adequate record.

24 (C) The petition for extraordinary writ review was summarily
25 denied or otherwise not decided on the merits.

26 (2) Failure to file a petition for extraordinary writ review within
27 the period specified by rule, to substantively address the specific
28 issues challenged, or to support that challenge by an adequate
29 record shall preclude subsequent review by appeal of the findings
30 and orders made pursuant to this section.

31 (3) The Judicial Council shall adopt rules of court, effective
32 January 1, 1995, to ensure all of the following:

33 (A) A trial court, after issuance of an order directing a hearing
34 pursuant to this section be held, shall advise all parties of the
35 requirement of filing a petition for extraordinary writ review as
36 set forth in this subdivision in order to preserve any right to appeal
37 in these issues. This notice shall be made orally to a party if the
38 party is present at the time of the making of the order or by
39 first-class mail by the clerk of the court to the last known address
40 of a party not present at the time of the making of the order.

1 (B) The prompt transmittal of the records from the trial court
2 to the appellate court.

3 (C) That adequate time requirements for counsel and court
4 personnel exist to implement the objective of this subdivision.

5 (D) That the parent or guardian, or their trial counsel or other
6 counsel, is charged with the responsibility of filing a petition for
7 extraordinary writ relief pursuant to this subdivision.

8 (4) The intent of this subdivision is to do both of the following:

9 (A) Make every reasonable attempt to achieve a substantive
10 and meritorious review by the appellate court within the time
11 specified in Sections 366.21, 366.22, and 366.25 for holding a
12 hearing pursuant to this section.

13 (B) Encourage the appellate court to determine all writ petitions
14 filed pursuant to this subdivision on their merits.

15 (5) This subdivision shall only apply to cases in which an order
16 to set a hearing pursuant to this section is issued on or after
17 January 1, 1995.

18 (m) Except for subdivision (j), this section shall also apply to
19 minors adjudged wards pursuant to Section 727.31.

20 (n) (1) Notwithstanding Section 8704 of the Family Code or
21 any other provision of law, the court, at a hearing held pursuant
22 to this section or anytime thereafter, may designate a current
23 caretaker as a prospective adoptive parent if the child has lived
24 with the caretaker for at least six months, the caretaker currently
25 expresses a commitment to adopt the child, and the caretaker has
26 taken at least one step to facilitate the adoption process. In
27 determining whether to make that designation, the court may take
28 into consideration whether the caretaker is listed in the preliminary
29 assessment prepared by the county department in accordance with
30 subdivision (i) of Section 366.21 as an appropriate person to be
31 considered as an adoptive parent for the child and the
32 recommendation of the State Department of Social Services or
33 licensed adoption agency.

34 (2) For purposes of this subdivision, steps to facilitate the
35 adoption process include, but are not limited to, the following:

36 (A) Applying for an adoption home study.

37 (B) Cooperating with an adoption home study.

38 (C) Being designated by the court or the licensed adoption
39 agency as the adoptive family.

40 (D) Requesting de facto parent status.

1 (E) *Signing an adoptive placement agreement.*

2 (F) *Engaging in discussions regarding a postadoption contact*
3 *agreement.*

4 (G) *Working to overcome any impediments that have been*
5 *identified by the State Department of Social Services and the*
6 *licensed adoption agency.*

7 (H) *Attending classes required of prospective adoptive parents.*

8 (3) *Prior to a change in placement and as soon as possible after*
9 *a decision is made to remove a child from the home of a designated*
10 *prospective adoptive parent, the agency shall notify the court, the*
11 *designated prospective adoptive parent or the current caretaker,*
12 *if that caretaker would have met the threshold criteria to be*
13 *designated as a prospective adoptive parent pursuant to paragraph*
14 *(1) on the date of service of this notice, the child's attorney, and*
15 *the child, if the child is 10 years of age or older, of the proposal*
16 *in the manner described in Section 16010.6.*

17 (A) *Within five court days or seven calendar days, whichever*
18 *is longer, of the date of notification, the child, the child's attorney,*
19 *or the designated prospective adoptive parent may file a petition*
20 *with the court objecting to the proposal to remove the child, or*
21 *the court, upon its own motion, may set a hearing regarding the*
22 *proposal. The court may, for good cause, extend the filing period.*
23 *A caretaker who would have met the threshold criteria to be*
24 *designated as a prospective adoptive parent pursuant to paragraph*
25 *(1) on the date of service of the notice of proposed removal of the*
26 *child may file, together with the petition under this subparagraph,*
27 *a petition for an order designating the caretaker as a prospective*
28 *adoptive parent for purposes of this subdivision.*

29 (B) *A hearing ordered pursuant to this paragraph shall be held*
30 *as soon as possible and not later than five court days after the*
31 *petition is filed with the court or the court sets a hearing upon its*
32 *own motion, unless the court for good cause is unable to set the*
33 *matter for hearing five court days after the petition is filed, in*
34 *which case the court shall set the matter for hearing as soon as*
35 *possible. At the hearing, the court shall determine whether the*
36 *caretaker has met the threshold criteria to be designated as a*
37 *prospective adoptive parent pursuant to paragraph (1), and*
38 *whether the proposed removal of the child from the home of the*
39 *designated prospective adoptive parent is in the child's best*
40 *interest, and the child may not be removed from the home of the*

1 designated prospective adoptive parent unless the court finds that
2 removal is in the child's best interest. If the court determines that
3 the caretaker did not meet the threshold criteria to be designated
4 as a prospective adoptive parent on the date of service of the notice
5 of proposed removal of the child, the petition objecting to the
6 proposed removal filed by the caretaker shall be dismissed. If the
7 caretaker was designated as a prospective adoptive parent prior
8 to this hearing, the court shall inquire into any progress made by
9 the caretaker towards the adoption of the child since the caretaker
10 was designated as a prospective adoptive parent.

11 (C) A determination by the court that the caretaker is a
12 designated prospective adoptive parent pursuant to paragraph (1)
13 or subparagraph (B) does not make the caretaker a party to the
14 dependency proceeding nor does it confer on the caretaker any
15 standing to object to any other action of the department or licensed
16 adoption agency, unless the caretaker has been declared a *de facto*
17 parent by the court prior to the notice of removal served pursuant
18 to paragraph (3).

19 (D) If a petition objecting to the proposal to remove the child
20 is not filed, and the court, upon its own motion, does not set a
21 hearing, the child may be removed from the home of the designated
22 prospective adoptive parent without a hearing.

23 (4) Notwithstanding paragraph (3), if the State Department of
24 Social Services or a licensed adoption agency determines that the
25 child must be removed from the home of the caretaker who is or
26 may be a designated prospective adoptive parent immediately, due
27 to a risk of physical or emotional harm, the agency may remove
28 the child from that home and is not required to provide notice
29 prior to the removal. However, as soon as possible and not longer
30 than two court days after the removal, the agency shall notify the
31 court, the caretaker who is or may be a designated prospective
32 adoptive parent, the child's attorney, and the child, if the child is
33 10 years of age or older, of the removal. Within five court days or
34 seven calendar days, whichever is longer, of the date of notification
35 of the removal, the child, the child's attorney, or the caretaker
36 who is or may be a designated prospective adoptive parent may
37 petition for, or the court on its own motion may set, a noticed
38 hearing pursuant to paragraph (3). The court may, for good cause,
39 extend the filing period.

1 (5) *Except as provided in subdivision (b) of Section 366.28, an*
2 *order by the court issued after a hearing pursuant to this*
3 *subdivision shall not be appealable.*

4 (6) *Nothing in this section shall preclude a county child*
5 *protective services agency from fully investigating and responding*
6 *to alleged abuse or neglect of a child pursuant to Section 11165.5*
7 *of the Penal Code.*

8 (7) *The Judicial Council shall prepare forms to facilitate the*
9 *filing of the petitions described in this subdivision, which shall*
10 *become effective on January 1, 2006.*

11 (o) *The implementation and operation of the amendments to*
12 *paragraph (3) of subdivision (c) and subparagraph (A) of*
13 *paragraph (4) of subdivision (c) enacted at the 2005–06 Regular*
14 *Session shall be subject to appropriation through the budget*
15 *process and by phase, as provided in Section 366.35.*

16 (p) *This section shall become operative on January 1, 2014.*

17 SEC. 17. *Section 366.3 of the Welfare and Institutions Code*
18 *is amended to read:*

19 366.3. (a) *If a juvenile court orders a permanent plan of*
20 *adoption, tribal customary adoption, or legal guardianship pursuant*
21 *to Section 360 or 366.26, the court shall retain jurisdiction over*
22 *the child until the child is adopted or the legal guardianship is*
23 *established, except as provided for in Section 366.29. The status*
24 *of the child shall be reviewed every six months to ensure that the*
25 *adoption or legal guardianship is completed as expeditiously as*
26 *possible. When the adoption of the child has been granted, ~~the~~*
27 *~~court~~ or the tribal customary adoption order has been filed with*
28 *the court pursuant to Section 366.26, the court shall terminate its*
29 *jurisdiction over the child. Following establishment of a legal*
30 *guardianship, the court may continue jurisdiction over the child*
31 *as a dependent child of the juvenile court or may terminate its*
32 *dependency jurisdiction and retain jurisdiction over the child as a*
33 *ward of the legal guardianship, as authorized by Section 366.4. If,*
34 *however, a relative of the child is appointed the legal guardian of*
35 *the child and the child has been placed with the relative for at least*
36 *12 months, the court shall, except if the relative guardian objects,*
37 *or upon a finding of exceptional circumstances, terminate its*
38 *dependency jurisdiction and retain jurisdiction over the child as a*
39 *ward of the guardianship, as authorized by Section 366.4.*
40 *Following a termination of parental rights, the parent or parents*

1 shall not be a party to, or receive notice of, any subsequent
2 proceedings regarding the child.

3 (b) If the court has dismissed dependency jurisdiction following
4 the establishment of a legal guardianship, or no dependency
5 jurisdiction attached because of the granting of a legal guardianship
6 pursuant to Section 360, and the legal guardianship is subsequently
7 revoked or otherwise terminated, the county department of social
8 services or welfare department shall notify the juvenile court of
9 this fact. The court may vacate its previous order dismissing
10 dependency jurisdiction over the child.

11 Notwithstanding Section 1601 of the Probate Code, the
12 proceedings to terminate a legal guardianship that has been granted
13 pursuant to Section 360 or 366.26 shall be held either in the
14 juvenile court that retains jurisdiction over the guardianship as
15 authorized by Section 366.4 or the juvenile court in the county
16 where the guardian and child currently reside, based on the best
17 interests of the child, unless the termination is due to the
18 emancipation or adoption of the child. The juvenile court having
19 jurisdiction over the guardianship shall receive notice from the
20 court in which the petition is filed within five calendar days of the
21 filing. Prior to the hearing on a petition to terminate legal
22 guardianship pursuant to this subdivision, the court shall order the
23 county department of social services or welfare department having
24 jurisdiction or jointly with the county department where the
25 guardian and child currently reside to prepare a report, for the
26 court's consideration, that shall include an evaluation of whether
27 the child could safely remain in, or be returned to, the legal
28 guardian's home, without terminating the legal guardianship, if
29 services were provided to the child or legal guardian. If applicable,
30 the report shall also identify recommended family maintenance or
31 reunification services to maintain the legal guardianship and set
32 forth a plan for providing those services. If the petition to terminate
33 legal guardianship is granted, either juvenile court may resume
34 dependency jurisdiction over the child, and may order the county
35 department of social services or welfare department to develop a
36 new permanent plan, which shall be presented to the court within
37 60 days of the termination. If no dependency jurisdiction has
38 attached, the social worker shall make any investigation he or she
39 deems necessary to determine whether the child may be within the
40 jurisdiction of the juvenile court, as provided in Section 328.

1 Unless the parental rights of the child's parent or parents have
2 been terminated, they shall be notified that the legal guardianship
3 has been revoked or terminated and shall be entitled to participate
4 in the new permanency planning hearing. The court shall try to
5 place the child in another permanent placement. At the hearing,
6 the parents may be considered as custodians but the child shall not
7 be returned to the parent or parents unless they prove, by a
8 preponderance of the evidence, that reunification is the best
9 alternative for the child. The court may, if it is in the best interests
10 of the child, order that reunification services again be provided to
11 the parent or parents.

12 (c) If, following the establishment of a legal guardianship, the
13 county welfare department becomes aware of changed
14 circumstances that indicate adoption *or, for an Indian child, tribal*
15 *customary adoption*, may be an appropriate plan for the child, the
16 department shall so notify the court. The court may vacate its
17 previous order dismissing dependency jurisdiction over the child
18 and order that a hearing be held pursuant to Section 366.26 to
19 determine whether adoption or continued legal guardianship is the
20 most appropriate plan for the child. The hearing shall be held no
21 later than 120 days from the date of the order. If the court orders
22 that a hearing shall be held pursuant to Section 366.26, the court
23 shall direct the agency supervising the child and the licensed county
24 adoption agency, or the State Department of Social Services if it
25 is acting as an adoption agency in counties that are not served by
26 a county adoption agency, to prepare an assessment under
27 subdivision (b) of Section 366.22.

28 (d) If the child is in a placement other than the home of a legal
29 guardian and jurisdiction has not been dismissed, the status of the
30 child shall be reviewed at least every six months. The review of
31 the status of a child for whom the court has ordered parental rights
32 terminated and who has been ordered placed for adoption shall be
33 conducted by the court. The review of the status of a child for
34 whom the court has not ordered parental rights terminated and
35 who has not been ordered placed for adoption may be conducted
36 by the court or an appropriate local agency. The court shall conduct
37 the review under the following circumstances:

- 38 (1) Upon the request of the child's parents or legal guardians.
39 (2) Upon the request of the child.

1 (3) It has been 12 months since a hearing held pursuant to
2 Section 366.26 or an order that the child remain in long-term foster
3 care pursuant to Section 366.21, 366.22, 366.25, 366.26, or
4 subdivision (h).

5 (4) It has been 12 months since a review was conducted by the
6 court.

7 The court shall determine whether or not reasonable efforts to
8 make and finalize a permanent placement for the child have been
9 made.

10 (e) Except as provided in subdivision (g), at the review held
11 every six months pursuant to subdivision (d), the reviewing body
12 shall inquire about the progress being made to provide a permanent
13 home for the child, shall consider the safety of the child, and shall
14 determine all of the following:

15 (1) The continuing necessity for, and appropriateness of, the
16 placement.

17 (2) Identification of individuals other than the child's siblings
18 who are important to a child who is 10 years of age or older and
19 has been in out-of-home placement for six months or longer, and
20 actions necessary to maintain the child's relationship with those
21 individuals, provided that those relationships are in the best interest
22 of the child. The social worker shall ask every child who is 10
23 years of age or older and who has been in out-of-home placement
24 for six months or longer to identify individuals other than the
25 child's siblings who are important to the child, and may ask any
26 other child to provide that information, as appropriate. The social
27 worker shall make efforts to identify other individuals who are
28 important to the child, consistent with the child's best interests.

29 (3) The continuing appropriateness and extent of compliance
30 with the permanent plan for the child, including efforts to maintain
31 relationships between a child who is 10 years of age or older and
32 who has been in out-of-home placement for six months or longer
33 and individuals who are important to the child and efforts to
34 identify a prospective adoptive parent or legal guardian, including,
35 but not limited to, child-specific recruitment efforts and listing on
36 an adoption exchange.

37 (4) The extent of the agency's compliance with the child welfare
38 services case plan in making reasonable efforts either to return the
39 child to the safe home of the parent or to complete whatever steps
40 are necessary to finalize the permanent placement of the child. If

1 the reviewing body determines that a second period of reunification
2 services is in the child's best interests, and that there is a significant
3 likelihood of the child's return to a safe home due to changed
4 circumstances of the parent, pursuant to subdivision (f), the specific
5 reunification services required to effect the child's return to a safe
6 home shall be described.

7 (5) Whether there should be any limitation on the right of the
8 parent or guardian to make educational decisions for the child.
9 That limitation shall be specifically addressed in the court order
10 and may not exceed what is necessary to protect the child. If the
11 court specifically limits the right of the parent or guardian to make
12 educational decisions for the child, the court shall at the same time
13 appoint a responsible adult to make educational decisions for the
14 child pursuant to Section 361.

15 (6) The adequacy of services provided to the child. The court
16 shall consider the progress in providing the information and
17 documents to the child, as described in Section 391. The court
18 shall also consider the need for, and progress in providing, the
19 assistance and services described in paragraphs (3) and (4) of
20 subdivision (b) of Section 391.

21 (7) The extent of progress the parents or legal guardians have
22 made toward alleviating or mitigating the causes necessitating
23 placement in foster care.

24 (8) The likely date by which the child may be returned to, and
25 safely maintained in, the home, placed for adoption, legal
26 guardianship, ~~or~~ in another planned permanent living arrangement,
27 *or, for an Indian child, in consultation with the child's tribe, placed*
28 *for tribal customary adoption.*

29 (9) Whether the child has any siblings under the court's
30 jurisdiction, and, if any siblings exist, all of the following:

31 (A) The nature of the relationship between the child and his or
32 her siblings.

33 (B) The appropriateness of developing or maintaining the sibling
34 relationships pursuant to Section 16002.

35 (C) If the siblings are not placed together in the same home,
36 why the siblings are not placed together and what efforts are being
37 made to place the siblings together, or why those efforts are not
38 appropriate.

39 (D) If the siblings are not placed together, the frequency and
40 nature of the visits between siblings.

1 (E) The impact of the sibling relationships on the child's
2 placement and planning for legal permanence.

3 The factors the court may consider as indicators of the nature of
4 the child's sibling relationships include, but are not limited to,
5 whether the siblings were raised together in the same home,
6 whether the siblings have shared significant common experiences
7 or have existing close and strong bonds, whether either sibling
8 expresses a desire to visit or live with his or her sibling, as
9 applicable, and whether ongoing contact is in the child's best
10 emotional interests.

11 (10) For a child who is 16 years of age or older, the services
12 needed to assist the child to make the transition from foster care
13 to independent living.

14 The reviewing body shall determine whether or not reasonable
15 efforts to make and finalize a permanent placement for the child
16 have been made.

17 Each licensed foster family agency shall submit reports for each
18 child in its care, custody, and control to the court concerning the
19 continuing appropriateness and extent of compliance with the
20 child's permanent plan, the extent of compliance with the case
21 plan, and the type and adequacy of services provided to the child.

22 (f) Unless their parental rights have been permanently
23 terminated, the parent or parents of the child are entitled to receive
24 notice of, and participate in, those hearings. It shall be presumed
25 that continued care is in the best interests of the child, unless the
26 parent or parents prove, by a preponderance of the evidence, that
27 further efforts at reunification are the best alternative for the child.
28 In those cases, the court may order that further reunification
29 services to return the child to a safe home environment be provided
30 to the parent or parents up to a period of six months, and family
31 maintenance services, as needed for an additional six months in
32 order to return the child to a safe home environment.

33 (g) At the review conducted by the court and held at least every
34 six months, regarding a child for whom the court has ordered
35 parental rights terminated and who has been ordered placed for
36 adoption, *or, for an Indian child for whom parental rights are not*
37 *being terminated and a tribal customary adoption is being*
38 *considered*, the county welfare department shall prepare and present
39 to the court a report describing the following:

40 (1) The child's present placement.

1 (2) The child's current physical, mental, emotional, and
2 educational status.

3 (3) If the child has not been placed with a prospective adoptive
4 parent or guardian, identification of individuals, other than the
5 child's siblings, who are important to the child and actions
6 necessary to maintain the child's relationship with those
7 individuals, provided that those relationships are in the best interest
8 of the child. The agency shall ask every child who is 10 years of
9 age or older to identify any individuals who are important to him
10 or her, consistent with the child's best interest, and may ask any
11 child who is younger than 10 years of age to provide that
12 information as appropriate. The agency shall make efforts to
13 identify other individuals who are important to the child.

14 (4) Whether the child has been placed with a prospective
15 adoptive parent or parents.

16 (5) Whether an adoptive placement agreement has been signed
17 and filed.

18 (6) If the child has not been placed with a prospective adoptive
19 parent or parents, the efforts made to identify an appropriate
20 prospective adoptive parent or legal guardian, including, but not
21 limited to, child-specific recruitment efforts and listing on an
22 adoption exchange.

23 (7) Whether the final adoption order should include provisions
24 for postadoptive sibling contact pursuant to Section 366.29.

25 (8) The progress of the search for an adoptive placement if one
26 has not been identified.

27 (9) Any impediments to the adoption or the adoptive placement.

28 (10) The anticipated date by which the child will be adopted or
29 placed in an adoptive home.

30 (11) The anticipated date by which an adoptive placement
31 agreement will be signed.

32 (12) Recommendations for court orders that will assist in the
33 placement of the child for adoption or in the finalization of the
34 adoption.

35 The court shall determine whether or not reasonable efforts to
36 make and finalize a permanent placement for the child have been
37 made.

38 The court shall make appropriate orders to protect the stability
39 of the child and to facilitate and expedite the permanent placement
40 and adoption of the child.

1 (h) At the review held pursuant to subdivision (d) for a child in
2 long-term foster care, the court shall consider all permanency
3 planning options for the child including whether the child should
4 be returned to the home of the parent, placed for adoption, *or, for*
5 *an Indian child, in consultation with the child's tribe, placed for*
6 *tribal customary adoption*, or appointed a legal guardian, or, if
7 compelling reasons exist for finding that none of the foregoing
8 options are in the best interest of the child, whether the child should
9 be placed in another planned permanent living arrangement. The
10 court shall order that a hearing be held pursuant to Section 366.26,
11 unless it determines by clear and convincing evidence that there
12 is a compelling reason for determining that a hearing held pursuant
13 to Section 366.26 is not in the best interest of the child because
14 the child is being returned to the home of the parent, the child is
15 not a proper subject for adoption, or no one is willing to accept
16 legal guardianship. If the licensed county adoption agency, or the
17 department when it is acting as an adoption agency in counties
18 that are not served by a county adoption agency, has determined
19 it is unlikely that the child will be adopted or one of the conditions
20 described in paragraph (1) of subdivision (c) of Section 366.26
21 applies, that fact shall constitute a compelling reason for purposes
22 of this subdivision. Only upon that determination may the court
23 order that the child remain in foster care, without holding a hearing
24 pursuant to Section 366.26.

25 (i) If, as authorized by subdivision (h), the court orders a hearing
26 pursuant to Section 366.26, the court shall direct the agency
27 supervising the child and the licensed county adoption agency, or
28 the State Department of Social Services when it is acting as an
29 adoption agency in counties that are not served by a county
30 adoption agency, to prepare an assessment as provided for in
31 subdivision (i) of Section 366.21 or subdivision (b) of Section
32 366.22. A hearing held pursuant to Section 366.26 shall be held
33 no later than 120 days from the date of the 12-month review at
34 which it is ordered, and at that hearing the court shall determine
35 whether adoption, *tribal customary adoption*, legal guardianship,
36 or long-term foster care is the most appropriate plan for the child.

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

1 (k) The reviews conducted pursuant to subdivision (a) or (d)
2 may be conducted earlier than every six months if the court
3 determines that an earlier review is in the best interests of the child
4 or as court rules prescribe.

5 (l) *This section shall remain in effect only until January 1, 2014,*
6 *and as of that date is repealed, unless a later enacted statute, that*
7 *is enacted before January 1, 2014, deletes or extends that date.*

8 SEC. 18. Section 366.3 is added to the Welfare and Institutions
9 Code, to read:

10 366.3. (a) *If a juvenile court orders a permanent plan of*
11 *adoption or legal guardianship pursuant to Section 360 or 366.26,*
12 *the court shall retain jurisdiction over the child until the child is*
13 *adopted or the legal guardianship is established, except as*
14 *provided for in Section 366.29. The status of the child shall be*
15 *reviewed every six months to ensure that the adoption or legal*
16 *guardianship is completed as expeditiously as possible. When the*
17 *adoption of the child has been granted, the court shall terminate*
18 *its jurisdiction over the child. Following establishment of a legal*
19 *guardianship, the court may continue jurisdiction over the child*
20 *as a dependent child of the juvenile court or may terminate its*
21 *dependency jurisdiction and retain jurisdiction over the child as*
22 *a ward of the legal guardianship, as authorized by Section 366.4.*
23 *If, however, a relative of the child is appointed the legal guardian*
24 *of the child and the child has been placed with the relative for at*
25 *least 12 months, the court shall, except if the relative guardian*
26 *objects, or upon a finding of exceptional circumstances, terminate*
27 *its dependency jurisdiction and retain jurisdiction over the child*
28 *as a ward of the guardianship, as authorized by Section 366.4.*
29 *Following a termination of parental rights, the parent or parents*
30 *shall not be a party to, or receive notice of, any subsequent*
31 *proceedings regarding the child.*

32 (b) *If the court has dismissed dependency jurisdiction following*
33 *the establishment of a legal guardianship, or no dependency*
34 *jurisdiction attached because of the granting of a legal*
35 *guardianship pursuant to Section 360, and the legal guardianship*
36 *is subsequently revoked or otherwise terminated, the county*
37 *department of social services or welfare department shall notify*
38 *the juvenile court of this fact. The court may vacate its previous*
39 *order dismissing dependency jurisdiction over the child.*

1 Notwithstanding Section 1601 of the Probate Code, the
2 proceedings to terminate a legal guardianship that has been
3 granted pursuant to Section 360 or 366.26 shall be held either in
4 the juvenile court that retains jurisdiction over the guardianship
5 as authorized by Section 366.4 or the juvenile court in the county
6 where the guardian and child currently reside, based on the best
7 interests of the child, unless the termination is due to the
8 emancipation or adoption of the child. The juvenile court having
9 jurisdiction over the guardianship shall receive notice from the
10 court in which the petition is filed within five calendar days of the
11 filing. Prior to the hearing on a petition to terminate legal
12 guardianship pursuant to this subdivision, the court shall order
13 the county department of social services or welfare department
14 having jurisdiction or jointly with the county department where
15 the guardian and child currently reside to prepare a report, for
16 the court's consideration, that shall include an evaluation of
17 whether the child could safely remain in, or be returned to, the
18 legal guardian's home, without terminating the legal guardianship,
19 if services were provided to the child or legal guardian. If
20 applicable, the report shall also identify recommended family
21 maintenance or reunification services to maintain the legal
22 guardianship and set forth a plan for providing those services. If
23 the petition to terminate legal guardianship is granted, either
24 juvenile court may resume dependency jurisdiction over the child,
25 and may order the county department of social services or welfare
26 department to develop a new permanent plan, which shall be
27 presented to the court within 60 days of the termination. If no
28 dependency jurisdiction has attached, the social worker shall make
29 any investigation he or she deems necessary to determine whether
30 the child may be within the jurisdiction of the juvenile court, as
31 provided in Section 328.

32 Unless the parental rights of the child's parent or parents have
33 been terminated, they shall be notified that the legal guardianship
34 has been revoked or terminated and shall be entitled to participate
35 in the new permanency planning hearing. The court shall try to
36 place the child in another permanent placement. At the hearing,
37 the parents may be considered as custodians but the child shall
38 not be returned to the parent or parents unless they prove, by a
39 preponderance of the evidence, that reunification is the best
40 alternative for the child. The court may, if it is in the best interests

1 of the child, order that reunification services again be provided
2 to the parent or parents.

3 (c) If, following the establishment of a legal guardianship, the
4 county welfare department becomes aware of changed
5 circumstances that indicate adoption may be an appropriate plan
6 for the child, the department shall so notify the court. The court
7 may vacate its previous order dismissing dependency jurisdiction
8 over the child and order that a hearing be held pursuant to Section
9 366.26 to determine whether adoption or continued legal
10 guardianship is the most appropriate plan for the child. The
11 hearing shall be held no later than 120 days from the date of the
12 order. If the court orders that a hearing shall be held pursuant to
13 Section 366.26, the court shall direct the agency supervising the
14 child and the licensed county adoption agency, or the State
15 Department of Social Services if it is acting as an adoption agency
16 in counties that are not served by a county adoption agency, to
17 prepare an assessment under subdivision (b) of Section 366.22.

18 (d) If the child is in a placement other than the home of a legal
19 guardian and jurisdiction has not been dismissed, the status of the
20 child shall be reviewed at least every six months. The review of
21 the status of a child for whom the court has ordered parental rights
22 terminated and who has been ordered placed for adoption shall
23 be conducted by the court. The review of the status of a child for
24 whom the court has not ordered parental rights terminated and
25 who has not been ordered placed for adoption may be conducted
26 by the court or an appropriate local agency. The court shall
27 conduct the review under the following circumstances:

28 (1) Upon the request of the child's parents or legal guardians.

29 (2) Upon the request of the child.

30 (3) It has been 12 months since a hearing held pursuant to
31 Section 366.26 or an order that the child remain in long-term
32 foster care pursuant to Section 366.21, 366.22, 366.25, 366.26,
33 or subdivision (h).

34 (4) It has been 12 months since a review was conducted by the
35 court.

36 The court shall determine whether or not reasonable efforts to
37 make and finalize a permanent placement for the child have been
38 made.

39 (e) Except as provided in subdivision (g), at the review held
40 every six months pursuant to subdivision (d), the reviewing body

1 shall inquire about the progress being made to provide a
2 permanent home for the child, shall consider the safety of the child,
3 and shall determine all of the following:

4 (1) The continuing necessity for, and appropriateness of, the
5 placement.

6 (2) Identification of individuals other than the child's siblings
7 who are important to a child who is 10 years of age or older and
8 has been in out-of-home placement for six months or longer, and
9 actions necessary to maintain the child's relationship with those
10 individuals, provided that those relationships are in the best
11 interest of the child. The social worker shall ask every child who
12 is 10 years of age or older and who has been in out-of-home
13 placement for six months or longer to identify individuals other
14 than the child's siblings who are important to the child, and may
15 ask any other child to provide that information, as appropriate.
16 The social worker shall make efforts to identify other individuals
17 who are important to the child, consistent with the child's best
18 interests.

19 (3) The continuing appropriateness and extent of compliance
20 with the permanent plan for the child, including efforts to maintain
21 relationships between a child who is 10 years of age or older and
22 who has been in out-of-home placement for six months or longer
23 and individuals who are important to the child and efforts to
24 identify a prospective adoptive parent or legal guardian, including,
25 but not limited to, child-specific recruitment efforts and listing on
26 an adoption exchange.

27 (4) The extent of the agency's compliance with the child welfare
28 services case plan in making reasonable efforts either to return
29 the child to the safe home of the parent or to complete whatever
30 steps are necessary to finalize the permanent placement of the
31 child. If the reviewing body determines that a second period of
32 reunification services is in the child's best interests, and that there
33 is a significant likelihood of the child's return to a safe home due
34 to changed circumstances of the parent, pursuant to subdivision
35 (f), the specific reunification services required to effect the child's
36 return to a safe home shall be described.

37 (5) Whether there should be any limitation on the right of the
38 parent or guardian to make educational decisions for the child.
39 That limitation shall be specifically addressed in the court order
40 and may not exceed what is necessary to protect the child. If the

1 court specifically limits the right of the parent or guardian to make
2 educational decisions for the child, the court shall at the same
3 time appoint a responsible adult to make educational decisions
4 for the child pursuant to Section 361.

5 (6) The adequacy of services provided to the child. The court
6 shall consider the progress in providing the information and
7 documents to the child, as described in Section 391. The court
8 shall also consider the need for, and progress in providing, the
9 assistance and services described in paragraphs (3) and (4) of
10 subdivision (b) of Section 391.

11 (7) The extent of progress the parents or legal guardians have
12 made toward alleviating or mitigating the causes necessitating
13 placement in foster care.

14 (8) The likely date by which the child may be returned to, and
15 safely maintained in, the home, placed for adoption, legal
16 guardianship, or in another planned permanent living
17 arrangement.

18 (9) Whether the child has any siblings under the court's
19 jurisdiction, and, if any siblings exist, all of the following:

20 (A) The nature of the relationship between the child and his or
21 her siblings.

22 (B) The appropriateness of developing or maintaining the sibling
23 relationships pursuant to Section 16002.

24 (C) If the siblings are not placed together in the same home,
25 why the siblings are not placed together and what efforts are being
26 made to place the siblings together, or why those efforts are not
27 appropriate.

28 (D) If the siblings are not placed together, the frequency and
29 nature of the visits between siblings.

30 (E) The impact of the sibling relationships on the child's
31 placement and planning for legal permanence.

32 The factors the court may consider as indicators of the nature
33 of the child's sibling relationships include, but are not limited to,
34 whether the siblings were raised together in the same home,
35 whether the siblings have shared significant common experiences
36 or have existing close and strong bonds, whether either sibling
37 expresses a desire to visit or live with his or her sibling, as
38 applicable, and whether ongoing contact is in the child's best
39 emotional interests.

1 (10) For a child who is 16 years of age or older, the services
2 needed to assist the child to make the transition from foster care
3 to independent living.

4 The reviewing body shall determine whether or not reasonable
5 efforts to make and finalize a permanent placement for the child
6 have been made.

7 Each licensed foster family agency shall submit reports for each
8 child in its care, custody, and control to the court concerning the
9 continuing appropriateness and extent of compliance with the
10 child's permanent plan, the extent of compliance with the case
11 plan, and the type and adequacy of services provided to the child.

12 (f) Unless their parental rights have been permanently
13 terminated, the parent or parents of the child are entitled to receive
14 notice of, and participate in, those hearings. It shall be presumed
15 that continued care is in the best interests of the child, unless the
16 parent or parents prove, by a preponderance of the evidence, that
17 further efforts at reunification are the best alternative for the child.
18 In those cases, the court may order that further reunification
19 services to return the child to a safe home environment be provided
20 to the parent or parents up to a period of six months, and family
21 maintenance services, as needed for an additional six months in
22 order to return the child to a safe home environment.

23 (g) At the review conducted by the court and held at least every
24 six months, regarding a child for whom the court has ordered
25 parental rights terminated and who has been ordered placed for
26 adoption, the county welfare department shall prepare and present
27 to the court a report describing the following:

28 (1) The child's present placement.

29 (2) The child's current physical, mental, emotional, and
30 educational status.

31 (3) If the child has not been placed with a prospective adoptive
32 parent or guardian, identification of individuals, other than the
33 child's siblings, who are important to the child and actions
34 necessary to maintain the child's relationship with those
35 individuals, provided that those relationships are in the best
36 interest of the child. The agency shall ask every child who is 10
37 years of age or older to identify any individuals who are important
38 to him or her, consistent with the child's best interest, and may
39 ask any child who is younger than 10 years of age to provide that

1 *information as appropriate. The agency shall make efforts to*
2 *identify other individuals who are important to the child.*

3 *(4) Whether the child has been placed with a prospective*
4 *adoptive parent or parents.*

5 *(5) Whether an adoptive placement agreement has been signed*
6 *and filed.*

7 *(6) If the child has not been placed with a prospective adoptive*
8 *parent or parents, the efforts made to identify an appropriate*
9 *prospective adoptive parent or legal guardian, including, but not*
10 *limited to, child-specific recruitment efforts and listing on an*
11 *adoption exchange.*

12 *(7) Whether the final adoption order should include provisions*
13 *for postadoptive sibling contact pursuant to Section 366.29.*

14 *(8) The progress of the search for an adoptive placement if one*
15 *has not been identified.*

16 *(9) Any impediments to the adoption or the adoptive placement.*

17 *(10) The anticipated date by which the child will be adopted or*
18 *placed in an adoptive home.*

19 *(11) The anticipated date by which an adoptive placement*
20 *agreement will be signed.*

21 *(12) Recommendations for court orders that will assist in the*
22 *placement of the child for adoption or in the finalization of the*
23 *adoption.*

24 *The court shall determine whether or not reasonable efforts to*
25 *make and finalize a permanent placement for the child have been*
26 *made.*

27 *The court shall make appropriate orders to protect the stability*
28 *of the child and to facilitate and expedite the permanent placement*
29 *and adoption of the child.*

30 *(h) At the review held pursuant to subdivision (d) for a child in*
31 *long-term foster care, the court shall consider all permanency*
32 *planning options for the child including whether the child should*
33 *be returned to the home of the parent, placed for adoption, or*
34 *appointed a legal guardian, or, if compelling reasons exist for*
35 *finding that none of the foregoing options are in the best interest*
36 *of the child, whether the child should be placed in another planned*
37 *permanent living arrangement. The court shall order that a hearing*
38 *be held pursuant to Section 366.26, unless it determines by clear*
39 *and convincing evidence that there is a compelling reason for*
40 *determining that a hearing held pursuant to Section 366.26 is not*

1 *in the best interest of the child because the child is being returned*
2 *to the home of the parent, the child is not a proper subject for*
3 *adoption, or no one is willing to accept legal guardianship. If the*
4 *licensed county adoption agency, or the department when it is*
5 *acting as an adoption agency in counties that are not served by a*
6 *county adoption agency, has determined it is unlikely that the child*
7 *will be adopted or one of the conditions described in paragraph*
8 *(1) of subdivision (c) of Section 366.26 applies, that fact shall*
9 *constitute a compelling reason for purposes of this subdivision.*
10 *Only upon that determination may the court order that the child*
11 *remain in foster care, without holding a hearing pursuant to*
12 *Section 366.26.*

13 *(i) If, as authorized by subdivision (h), the court orders a*
14 *hearing pursuant to Section 366.26, the court shall direct the*
15 *agency supervising the child and the licensed county adoption*
16 *agency, or the State Department of Social Services when it is acting*
17 *as an adoption agency in counties that are not served by a county*
18 *adoption agency, to prepare an assessment as provided for in*
19 *subdivision (i) of Section 366.21 or subdivision (b) of Section*
20 *366.22. A hearing held pursuant to Section 366.26 shall be held*
21 *no later than 120 days from the date of the 12-month review at*
22 *which it is ordered, and at that hearing the court shall determine*
23 *whether adoption, legal guardianship, or long-term foster care is*
24 *the most appropriate plan for the child.*

25 *(j) The implementation and operation of the amendments to*
26 *subdivision (e) enacted at the 2005–06 Regular Session shall be*
27 *subject to appropriation through the budget process and by phase,*
28 *as provided in Section 366.35.*

29 *(k) The reviews conducted pursuant to subdivision (a) or (d)*
30 *may be conducted earlier than every six months if the court*
31 *determines that an earlier review is in the best interests of the child*
32 *or as court rules prescribe.*

33 *(l) This section shall become operative on January 1, 2014.*

34 *SEC. 19. Section 16120 of the Welfare and Institutions Code*
35 *is amended to read:*

36 *16120. A child shall be eligible for Adoption Assistance*
37 *Program benefits if all of the conditions specified in subdivisions*
38 *(a) through (g), inclusive, are met or if the conditions specified in*
39 *subdivision (h) are met.*

1 (a) The child has at least one of the following characteristics
2 that are barriers to his or her adoption:

3 (1) Adoptive placement without financial assistance is unlikely
4 because of membership in a sibling group that should remain intact
5 or by virtue of race, ethnicity, color, language, age of three years
6 or older, or parental background of a medical or behavioral nature
7 that can be determined to adversely affect the development of the
8 child.

9 (2) Adoptive placement without financial assistance is unlikely
10 because the child has a mental, physical, emotional, or medical
11 disability that has been certified by a licensed professional
12 competent to make an assessment and operating within the scope
13 of his or her profession. This paragraph shall also apply to children
14 with a developmental disability as defined in subdivision (a) of
15 Section 4512, including those determined to require out-of-home
16 nonmedical care as described in Section 11464.

17 (b) The need for adoption subsidy is evidenced by an
18 unsuccessful search for an adoptive home to take the child without
19 financial assistance, as documented in the case file of the
20 prospective adoptive child. The requirement for this search shall
21 be waived when it would be against the best interest of the child
22 because of the existence of significant emotional ties with
23 prospective adoptive parents while in the care of these persons as
24 a foster child.

25 (c) The child meets either of the following criteria:

26 (1) At the time a petition for an agency adoption, as defined in
27 Section 8506 of the Family Code, or an independent adoption, as
28 defined in Section 8524 of the Family Code, is filed, the child has
29 met the requirements to receive federal supplemental security
30 income benefits pursuant to Subchapter 16 (commencing with
31 Section 1381) of Chapter 7 of Title 42 of the United States Code,
32 as determined and documented by the federal Social Security
33 Administration.

34 (2) The child is the subject of an agency adoption as defined in
35 Section 8506 of the Family Code and was any of the following:

36 (A) Under the supervision of a county welfare department as
37 the subject of a legal guardianship or juvenile court dependency.

38 (B) Relinquished for adoption to a licensed California private
39 or public adoption agency, or the department, and would have

1 otherwise been at risk of dependency as certified by the responsible
2 public child welfare agency.

3 (C) Committed to the care of the department pursuant to Section
4 8805 or 8918 of the Family Code.

5 (3) *The child is an Indian child and the subject of an order of*
6 *adoption based on tribal customary adoption of an Indian child,*
7 *as described in Section 366.24.*

8 (d) The child is under 18 years of age, or under 21 years of age
9 and has a mental or physical handicap that warrants the
10 continuation of assistance.

11 (e) The adoptive family is responsible for the child pursuant to
12 the terms of an adoptive placement agreement or a final decree of
13 adoption and has signed an adoption assistance agreement.

14 (f) The adoptive family is legally responsible for the support of
15 the child and the child is receiving support from the adoptive
16 parent.

17 (g) The department or the county responsible for determining
18 the child's Adoption Assistance Program eligibility status and for
19 providing financial aid, and the prospective adoptive parent, prior
20 to or at the time the adoption decree is issued by the court, have
21 signed an adoption assistance agreement that stipulates the need
22 for, and the amount of, Adoption Assistance Program benefits.

23 (h) A child shall be eligible for Adoption Assistance Program
24 benefits if the child received Adoption Assistance Program benefits
25 with respect to a prior adoption and the child is again available for
26 adoption because the prior adoption was dissolved and the parental
27 rights of the adoptive parents were terminated or because the
28 child's adoptive parents died.

29 (i) *This section shall remain in effect only until January 1, 2014,*
30 *and as of that date is repealed, unless a later enacted statute, that*
31 *is enacted before January 1, 2014, deletes or extends that date.*

32 SEC. 20. Section 16120 is added to the Welfare and Institutions
33 Code, to read:

34 16120. A child shall be eligible for Adoption Assistance
35 Program benefits if all of the conditions specified in subdivisions
36 (a) through (g), inclusive, are met or if the conditions specified in
37 subdivision (h) are met.

38 (a) The child has at least one of the following characteristics
39 that are barriers to his or her adoption:

1 (1) *Adoptive placement without financial assistance is unlikely*
2 *because of membership in a sibling group that should remain intact*
3 *or by virtue of race, ethnicity, color, language, age of three years*
4 *or older, or parental background of a medical or behavioral nature*
5 *that can be determined to adversely affect the development of the*
6 *child.*

7 (2) *Adoptive placement without financial assistance is unlikely*
8 *because the child has a mental, physical, emotional, or medical*
9 *disability that has been certified by a licensed professional*
10 *competent to make an assessment and operating within the scope*
11 *of his or her profession. This paragraph shall also apply to children*
12 *with a developmental disability as defined in subdivision (a) of*
13 *Section 4512, including those determined to require out-of-home*
14 *nonmedical care as described in Section 11464.*

15 (b) *The need for adoption subsidy is evidenced by an*
16 *unsuccessful search for an adoptive home to take the child without*
17 *financial assistance, as documented in the case file of the*
18 *prospective adoptive child. The requirement for this search shall*
19 *be waived when it would be against the best interest of the child*
20 *because of the existence of significant emotional ties with*
21 *prospective adoptive parents while in the care of these persons as*
22 *a foster child.*

23 (c) *The child meets either of the following criteria:*

24 (1) *At the time a petition for an agency adoption, as defined in*
25 *Section 8506 of the Family Code, or an independent adoption, as*
26 *defined in Section 8524 of the Family Code, is filed, the child has*
27 *met the requirements to receive federal supplemental security*
28 *income benefits pursuant to Subchapter 16 (commencing with*
29 *Section 1381) of Chapter 7 of Title 42 of the United States Code,*
30 *as determined and documented by the federal Social Security*
31 *Administration.*

32 (2) *The child is the subject of an agency adoption as defined in*
33 *Section 8506 of the Family Code and was any of the following:*

34 (A) *Under the supervision of a county welfare department as*
35 *the subject of a legal guardianship or juvenile court dependency.*

36 (B) *Relinquished for adoption to a licensed California private*
37 *or public adoption agency, or the department, and would have*
38 *otherwise been at risk of dependency as certified by the responsible*
39 *public child welfare agency.*

1 (C) Committed to the care of the department pursuant to Section
2 8805 or 8918 of the Family Code.

3 (d) The child is under 18 years of age, or under 21 years of age
4 and has a mental or physical handicap that warrants the
5 continuation of assistance.

6 (e) The adoptive family is responsible for the child pursuant to
7 the terms of an adoptive placement agreement or a final decree
8 of adoption and has signed an adoption assistance agreement.

9 (f) The adoptive family is legally responsible for the support of
10 the child and the child is receiving support from the adoptive
11 parent.

12 (g) The department or the county responsible for determining
13 the child's Adoption Assistance Program eligibility status and for
14 providing financial aid, and the prospective adoptive parent, prior
15 to or at the time the adoption decree is issued by the court, have
16 signed an adoption assistance agreement that stipulates the need
17 for, and the amount of, Adoption Assistance Program benefits.

18 (h) A child shall be eligible for Adoption Assistance Program
19 benefits if the child received Adoption Assistance Program benefits
20 with respect to a prior adoption and the child is again available
21 for adoption because the prior adoption was dissolved and the
22 parental rights of the adoptive parents were terminated or because
23 the child's adoptive parents died.

24 (i) This section shall become operative on January 1, 2014.

25 SEC. 21. Section 16508 of the Welfare and Institutions Code
26 is amended to read:

27 16508. Permanent placement services shall be provided or
28 arranged for by county welfare department staff for children who
29 cannot safely live with their parents and are not likely to return to
30 their own homes. Permanent placement services shall be available
31 without regard to income to the following children:

32 (a) Children judged dependent under Section 300 where a review
33 has determined that reunification, adoption, *tribal customary*
34 *adoption*, or guardianship is inappropriate.

35 (b) Recipients of public assistance under nonfederally funded
36 Aid to Families with Dependent Children programs who are wards
37 of a legal guardian where a review has determined that reunification
38 or adoption is inappropriate.

1 (c) *This section shall remain in effect only until January 1, 2014,*
2 *and as of that date is repealed, unless a later enacted statute, that*
3 *is enacted before January 1, 2014, deletes or extends that date.*

4 SEC. 22. *Section 16508 is added to the Welfare and Institutions*
5 *Code, to read:*

6 16508. *Permanent placement services shall be provided or*
7 *arranged for by county welfare department staff for children who*
8 *cannot safely live with their parents and are not likely to return*
9 *to their own homes. Permanent placement services shall be*
10 *available without regard to income to the following children:*

11 (a) *Children judged dependent under Section 300 where a*
12 *review has determined that reunification, adoption, or*
13 *guardianship is inappropriate.*

14 (b) *Recipients of public assistance under nonfederally funded*
15 *Aid to Families with Dependent Children programs who are wards*
16 *of a legal guardian where a review has determined that*
17 *reunification or adoption is inappropriate.*

18 (c) *This section shall become operative on January 1, 2014.*

19 SEC. 23. *Section 16508.1 of the Welfare and Institutions Code*
20 *is amended to read:*

21 16508.1. (a) *For every child who is in foster care, or who*
22 *enters foster care, on or after January 1, 1999, and has been in*
23 *foster care for 15 of the most recent 22 months, the social worker*
24 *shall submit to the court a recommendation that the court set a*
25 *hearing pursuant to Section 366.26 for the purpose of terminating*
26 *parental rights. The social worker shall concurrently initiate and*
27 *describe a plan to identify, recruit, process and approve a qualified*
28 *family for adoption of the child.*

29 (b) *The social worker is not required to submit the*
30 *recommendation as described in subdivision (a) if any of the*
31 *following applies:*

32 (1) *The case plan for the child has documented a compelling*
33 *reason or reasons why it is unlikely that the child will be adopted,*
34 *as determined by the department when it is acting as an adoption*
35 *agency or by the licensed adoption agency, and therefore*
36 *termination of parental rights would not be in the best interest of*
37 *the child or that one of the conditions set forth in paragraph (1) of*
38 *subdivision (c) of Section 366.26 applies.*

39 (2) *A hearing under Section 366.26 is already set.*

1 (3) The court has found at the previous hearing under Section
2 366.21 that there is a substantial probability that the child will be
3 returned to the child's home within the extended period of time
4 permitted.

5 (4) The court has found at the previous hearing under Section
6 366.21 that reasonable reunification services have not been offered
7 or provided.

8 (5) The court has found at each and every hearing at which the
9 court was required to consider reasonable efforts or services that
10 reasonable efforts were not made or that reasonable services were
11 not offered or provided.

12 (6) The incarceration or institutionalization of the parent or
13 parents, or the court-ordered participation of the parent or parents
14 in a residential substance abuse treatment program, constitutes a
15 significant factor in the child's placement in foster care for a period
16 of 15 of the most recent 22 months, and termination of parental
17 rights is not in the child's best interests, considering factors such
18 as the age of the child, the degree of parent and child bonding, the
19 length of the sentence, and the nature of the treatment and the
20 nature of the crime or illness.

21 (7) *Tribal customary adoption is recommended.*

22 (c) A recommendation to the court pursuant to subdivision (a)
23 shall not be made if the social worker documents in the case record
24 a compelling reason why a hearing pursuant to Section 366.26 is
25 not in the best interest of the child, or that reasonable efforts to
26 safely return the child home are continuing consistent with the
27 time period provided for in paragraph (1) of subdivision (g) of
28 Section 366.21.

29 (d) Beginning January 1, 1999, the county welfare department
30 shall implement a procedure for reviewing the application of this
31 section to the case plans of all children who have been in foster
32 care for 15 out of the most recent 22 months. The review shall
33 proceed within the following timeframes:

34 (1) By July 1, 1999, one-third of the children shall have been
35 reviewed, giving priority to children who have been in foster care
36 the greatest length of time.

37 (2) By January 1, 2000, at least two-thirds of the children shall
38 have been reviewed.

39 (3) By July 1, 2000, all children shall have been reviewed.

1 (e) For purposes of this section, a child shall be considered to
2 have entered foster care on the earlier of the date of the
3 jurisdictional hearing held pursuant to Section 356 or the date that
4 is 60 days after the date on which the child was initially removed
5 from the home of his or her parent or guardian.

6 (f) *This section shall remain in effect only until January 1, 2014,*
7 *and as of that date is repealed, unless a later enacted statute, that*
8 *is enacted before January 1, 2014, deletes or extends that date.*

9 SEC. 24. Section 16508.1 is added to the Welfare and
10 Institutions Code, to read:

11 16508.1. (a) For every child who is in foster care, or who
12 enters foster care, on or after January 1, 1999, and has been in
13 foster care for 15 of the most recent 22 months, the social worker
14 shall submit to the court a recommendation that the court set a
15 hearing pursuant to Section 366.26 for the purpose of terminating
16 parental rights. The social worker shall concurrently initiate and
17 describe a plan to identify, recruit, process and approve a qualified
18 family for adoption of the child.

19 (b) The social worker is not required to submit the
20 recommendation as described in subdivision (a) if any of the
21 following applies:

22 (1) The case plan for the child has documented a compelling
23 reason or reasons why it is unlikely that the child will be adopted,
24 as determined by the department when it is acting as an adoption
25 agency or by the licensed adoption agency, and therefore
26 termination of parental rights would not be in the best interest of
27 the child or that one of the conditions set forth in paragraph (1)
28 of subdivision (c) of Section 366.26 applies.

29 (2) A hearing under Section 366.26 is already set.

30 (3) The court has found at the previous hearing under Section
31 366.21 that there is a substantial probability that the child will be
32 returned to the child's home within the extended period of time
33 permitted.

34 (4) The court has found at the previous hearing under Section
35 366.21 that reasonable reunification services have not been offered
36 or provided.

37 (5) The court has found at each and every hearing at which the
38 court was required to consider reasonable efforts or services that
39 reasonable efforts were not made or that reasonable services were
40 not offered or provided.

(6) The incarceration or institutionalization of the parent or parents, or the court-ordered participation of the parent or parents in a residential substance abuse treatment program, constitutes a significant factor in the child's placement in foster care for a period of 15 of the most recent 22 months, and termination of parental rights is not in the child's best interests, considering factors such as the age of the child, the degree of parent and child bonding, the length of the sentence, and the nature of the treatment and the nature of the crime or illness.

(c) A recommendation to the court pursuant to subdivision (a) shall not be made if the social worker documents in the case record a compelling reason why a hearing pursuant to Section 366.26 is not in the best interest of the child, or that reasonable efforts to safely return the child home are continuing consistent with the time period provided for in paragraph (1) of subdivision (g) of Section 366.21.

(d) Beginning January 1, 1999, the county welfare department shall implement a procedure for reviewing the application of this section to the case plans of all children who have been in foster care for 15 out of the most recent 22 months. The review shall proceed within the following timeframes:

(1) By July 1, 1999, one-third of the children shall have been reviewed, giving priority to children who have been in foster care the greatest length of time.

(2) By January 1, 2000, at least two-thirds of the children shall have been reviewed.

(3) By July 1, 2000, all children shall have been reviewed.

(e) For purposes of this section, a child shall be considered to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to Section 356 or the date that is 60 days after the date on which the child was initially removed from the home of his or her parent or guardian.

(f) This section shall become operative on January 1, 2014.

SEC. 25. (a) Sections 1, 2, 4, 6, 8, 10, 12, 13, 15, 17, 19, 21, and 23 of this act shall become operative on July 1, 2010.

(b) The Judicial Council shall adopt rules of court and necessary forms required to implement tribal customary adoption as a permanent plan for dependent Indian children before July 1, 2010.

SEC. 26. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to

1 *local agencies and school districts for those costs shall be made*
2 *pursuant to Part 7 (commencing with Section 17500) of Division*
3 *4 of Title 2 of the Government Code.*

4 ~~SECTION 1. Section 8600.5 is added to the Family Code, to~~
5 ~~read:~~

6 ~~8600.5. With the exception of Section 8608, this part does not~~
7 ~~apply to a tribal customary adoption as defined in Section 366.24~~
8 ~~of the Welfare and Institutions Code.~~

9 ~~SEC. 2. Section 294 of the Welfare and Institutions Code is~~
10 ~~amended to read:~~

11 ~~294. The social worker or probation officer shall give notice~~
12 ~~of a selection and implementation hearing held pursuant to Section~~
13 ~~366.26 in the following manner:~~

14 ~~(a) Notice of the hearing shall be given to the following persons:~~

15 ~~(1) The mother.~~

16 ~~(2) The fathers, presumed and alleged.~~

17 ~~(3) The child, if the child is 10 years of age or older.~~

18 ~~(4) Any known sibling of the child who is the subject of the~~
19 ~~hearing if that sibling either is the subject of a dependency~~
20 ~~proceeding or has been adjudged to be a dependent child of the~~
21 ~~juvenile court. If the sibling is 10 years of age or older, the sibling,~~
22 ~~the sibling's caregiver, and the sibling's attorney. If the sibling is~~
23 ~~under 10 years of age, the sibling's caregiver and the sibling's~~
24 ~~attorney. However, notice is not required to be given to any sibling~~
25 ~~whose matter is calendared in the same court on the same day.~~

26 ~~(5) The grandparents of the child, if their address is known and~~
27 ~~if the parent's whereabouts are unknown.~~

28 ~~(6) All counsel of record.~~

29 ~~(7) To any unknown parent by publication, if ordered by the~~
30 ~~court pursuant to paragraph (2) of subdivision (g).~~

31 ~~(8) The current caregiver of the child, including foster parents,~~
32 ~~relative caregivers, preadoptive parents, and nonrelative extended~~
33 ~~family members. Any person notified may attend all hearings and~~
34 ~~may submit any information he or she deems relevant to the court~~
35 ~~in writing.~~

36 ~~(b) The following persons shall not be notified of the hearing:~~

37 ~~(1) A parent who has relinquished the child to the State~~
38 ~~Department of Social Services or to a licensed adoption agency~~
39 ~~for adoption, and the relinquishment has been accepted and filed~~
40 ~~with notice as required under Section 8700 of the Family Code.~~

~~(2) An alleged father who has denied paternity and has executed a waiver of the right to notice of further proceedings.~~

~~(3) A parent whose parental rights have been terminated.~~

~~(c) (1) Service of the notice shall be completed at least 45 days before the hearing date. Service is deemed complete at the time the notice is personally delivered to the person named in the notice or 10 days after the notice has been placed in the mail, or at the expiration of the time prescribed by the order for publication.~~

~~(2) Service of notice in cases where publication is ordered shall be completed at least 30 days before the date of the hearing.~~

~~(d) Regardless of the type of notice required, or the manner in which it is served, once the court has made the initial finding that notice has properly been given to the parent, or to any person entitled to receive notice pursuant to this section, subsequent notice for any continuation of a Section 366.26 hearing may be by first-class mail to any last known address, by an order made pursuant to Section 296, or by any other means that the court determines is reasonably calculated, under any circumstance, to provide notice of the continued hearing. However, if the recommendation changes from the recommendation contained in the notice previously found to be proper, notice shall be provided to the parent, and to any person entitled to receive notice pursuant to this section, regarding that subsequent hearing.~~

~~(e) The notice shall contain the following information:~~

~~(1) The date, time, and place of the hearing.~~

~~(2) The right to appear.~~

~~(3) The parents' right to counsel.~~

~~(4) The nature of the proceedings.~~

~~(5) The recommendation of the supervising agency.~~

~~(6) A statement that, at the time of hearing, the court is required to select a permanent plan of adoption, legal guardianship, or long-term foster care for the child.~~

~~(f) Notice to the parents may be given in any one of the following manners:~~

~~(1) If the parent is present at the hearing at which the court schedules a hearing pursuant to Section 366.26, the court shall advise the parent of the date, time, and place of the proceedings, their right to counsel, the nature of the proceedings, and the requirement that at the proceedings the court shall select and implement a plan of adoption, legal guardianship, or long-term~~

1 foster care for the child. The court shall direct the parent to appear
2 for the proceedings and then direct that the parent be notified
3 thereafter by first-class mail to the parent's usual place of residence
4 or business only.

5 (2) Certified mail, return receipt requested, to the parent's last
6 known mailing address. This notice shall be sufficient if the child
7 welfare agency receives a return receipt signed by the parent.

8 (3) Personal service to the parent named in the notice.

9 (4) Delivery to a competent person who is at least 18 years of
10 age at the parent's usual place of residence or business, and
11 thereafter mailed to the parent named in the notice by first-class
12 mail at the place where the notice was delivered.

13 (5) If the residence of the parent is outside the state, service
14 may be made as described in paragraph (1), (3), or (4) or by
15 certified mail, return receipt requested.

16 (6) If the recommendation of the probation officer or social
17 worker is legal guardianship or long-term foster care, or, in the
18 case of an Indian child, tribal customary adoption, service may be
19 made by first-class mail to the parent's usual place of residence
20 or business.

21 (7) If a parent's identity is known but his or her whereabouts
22 are unknown and the parent cannot, with reasonable diligence, be
23 served in any manner specified in paragraphs (1) to (6), inclusive,
24 the petitioner shall file an affidavit with the court at least 75 days
25 before the hearing date, stating the name of the parent and
26 describing the efforts made to locate and serve the parent.

27 (A) If the court determines that there has been due diligence in
28 attempting to locate and serve the parent and the probation officer
29 or social worker recommends adoption, service shall be to that
30 parent's attorney of record, if any, by certified mail, return receipt
31 requested. If the parent does not have an attorney of record, the
32 court shall order that service be made by publication of citation
33 requiring the parent to appear at the date, time, and place stated in
34 the citation, and that the citation be published in a newspaper
35 designated as most likely to give notice to the parent. Publication
36 shall be made once a week for four consecutive weeks. Whether
37 notice is to the attorney of record or by publication, the court shall
38 also order that notice be given to the grandparents of the child, if
39 their identities and addresses are known, by first-class mail.

1 (B) If the court determines that there has been due diligence in
2 attempting to locate and serve the parent and the probation officer
3 or social worker recommends legal guardianship or long-term
4 foster care, no further notice is required to the parent, but the court
5 shall order that notice be given to the grandparents of the child, if
6 their identities and addresses are known, by first-class mail.

7 (C) In any case where the residence of the parent becomes
8 known, notice shall immediately be served upon the parent as
9 provided for in either paragraph (2), (3), (4), (5), or (6).

10 (g) (1) If the identity of one or both of the parents, or alleged
11 parents, of the child is unknown, or if the name of one or both
12 parents is uncertain, then that fact shall be set forth in the affidavit
13 filed with the court at least 75 days before the hearing date and
14 the court, consistent with the provisions of Sections 7665 and 7666
15 of the Family Code, shall issue an order dispensing with notice to
16 a natural parent or possible natural parent under this section if,
17 after inquiry and a determination that there has been due diligence
18 in attempting to identify the unknown parent, the court is unable
19 to identify the natural parent or possible natural parent and no
20 person has appeared claiming to be the natural parent.

21 (2) After a determination that there has been due diligence in
22 attempting to identify an unknown parent pursuant to paragraph
23 (1) and the probation officer or social worker recommends
24 adoption, the court shall consider whether publication notice would
25 be likely to lead to actual notice to the unknown parent. The court
26 may order publication notice if, on the basis of all information
27 before the court, the court determines that notice by publication
28 is likely to lead to actual notice to the parent. If publication notice
29 to an unknown parent is ordered, the court shall order the published
30 citation to be directed to either the father or mother, or both, of
31 the child, and to all persons claiming to be the father or mother of
32 the child, naming and otherwise describing the child. An order of
33 publication pursuant to this paragraph shall be based on an affidavit
34 describing efforts made to identify the unknown parent or parents.
35 Service made by publication pursuant to this paragraph shall
36 require the unknown parent or parents to appear at the date, time,
37 and place stated in the citation. Publication shall be made once a
38 week for four consecutive weeks.

39 (3) If the court determines that there has been due diligence in
40 attempting to identify one or both of the parents, or alleged parents,

1 of the child and the probation officer or social worker recommends
2 legal guardianship or long-term foster care, no further notice to
3 the parent shall be required.

4 (h) Notice to the child and all counsel of record shall be by
5 first-class mail.

6 (i) If the court knows or has reason to know that an Indian child
7 is involved, notice shall be given in accordance with Section 224.2.

8 (j) Notwithstanding subdivision (a), if the attorney of record is
9 present at the time the court schedules a hearing pursuant to Section
10 366.26, no further notice is required, except as required by
11 subparagraph (A) of paragraph (7) of subdivision (f).

12 (k) This section shall also apply to children adjudged wards
13 pursuant to Section 727.31.

14 (l) The court shall state the reasons on the record explaining
15 why good cause exists for granting any continuance of a hearing
16 held pursuant to Section 366.26 to fulfill the requirements of this
17 section.

18 SEC. 3. Section 358.1 of the Welfare and Institutions Code is
19 amended to read:

20 358.1. Each social study or evaluation made by a social worker
21 or child advocate appointed by the court, required to be received
22 in evidence pursuant to Section 358, shall include, but not be
23 limited to, a factual discussion of each of the following subjects:

24 (a) Whether the county welfare department or social worker has
25 considered child protective services, as defined in Chapter 5
26 (commencing with Section 16500) of Part 4 of Division 9, as a
27 possible solution to the problems at hand, and has offered these
28 services to qualified parents if appropriate under the circumstances.

29 (b) What plan, if any, for return of the child to his or her parents
30 and for achieving legal permanence for the child if efforts to reunify
31 fail, is recommended to the court by the county welfare department
32 or probation officer.

33 (c) Whether the best interests of the child will be served by
34 granting reasonable visitation rights with the child to his or her
35 grandparents, in order to maintain and strengthen the child's family
36 relationships.

37 (d) (1) Whether the child has siblings under the court's
38 jurisdiction, and, if any siblings exist, all of the following:

39 (A) The nature of the relationship between the child and his or
40 her siblings.

1 ~~(B) The appropriateness of developing or maintaining the sibling~~
2 ~~relationships pursuant to Section 16002.~~

3 ~~(C) If the siblings are not placed together in the same home,~~
4 ~~why the siblings are not placed together and what efforts are being~~
5 ~~made to place the siblings together, or why those efforts are not~~
6 ~~appropriate.~~

7 ~~(D) If the siblings are not placed together, the frequency and~~
8 ~~nature of the visits between siblings.~~

9 ~~(E) The impact of the sibling relationships on the child's~~
10 ~~placement and planning for legal permanence.~~

11 ~~(2) The factual discussion shall include a discussion of indicators~~
12 ~~of the nature of the child's sibling relationships, including, but not~~
13 ~~limited to, whether the siblings were raised together in the same~~
14 ~~home, whether the siblings have shared significant common~~
15 ~~experiences or have existing close and strong bonds, whether either~~
16 ~~sibling expresses a desire to visit or live with his or her sibling, as~~
17 ~~applicable, and whether ongoing contact is in the child's best~~
18 ~~emotional interest.~~

19 ~~(e) If the parent or guardian is unwilling or unable to participate~~
20 ~~in making an educational decision for his or her child, or if other~~
21 ~~circumstances exist that compromise the ability of the parent or~~
22 ~~guardian to make educational decisions for the child, the county~~
23 ~~welfare department or social worker shall consider whether the~~
24 ~~right of the parent or guardian to make educational decisions for~~
25 ~~the child should be limited. If the study or evaluation makes that~~
26 ~~recommendation, it shall identify whether there is a responsible~~
27 ~~adult available to make educational decisions for the child pursuant~~
28 ~~to Section 361.~~

29 ~~(f) Whether the child appears to be a person who is eligible to~~
30 ~~be considered for further court action to free the child from parental~~
31 ~~custody and control.~~

32 ~~(g) Whether the parent has been advised of his or her option to~~
33 ~~participate in adoption planning, including the option to enter into~~
34 ~~a postadoption contact agreement as described in Section 8714.7~~
35 ~~of the Family Code, and to voluntarily relinquish the child for~~
36 ~~adoption if an adoption agency is willing to accept the~~
37 ~~relinquishment.~~

38 ~~(h) The appropriateness of any relative placement pursuant to~~
39 ~~Section 361.3. However, this consideration may not be cause for~~
40 ~~continuance of the dispositional hearing.~~

1 (i) Whether the caregiver desires, and is willing, to provide legal
2 permanency for the child if reunification is unsuccessful.

3 (j) For an Indian child, in consultation with the Indian child's
4 tribe, whether tribal customary adoption is an appropriate
5 permanent plan for the child if reunification is unsuccessful.

6 SEC. 4. Section 361.5 of the Welfare and Institutions Code is
7 amended to read:

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

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

23 (A) Except as otherwise provided in subparagraph (C), for a
24 child who, on the date of initial removal from the physical custody
25 of his or her parent or guardian, was three years of age or older,
26 court-ordered services shall be provided during the period of time
27 beginning with the dispositional hearing and ending with the date
28 of the hearing set pursuant to subdivision (f) of Section 366.21,
29 unless the child is returned to the home of the parent or guardian.

30 (B) For a child who, on the date of initial removal from the
31 physical custody of his or her parent or guardian, was under three
32 years of age, court-ordered services shall be provided during the
33 period of time beginning with the dispositional hearing and ending
34 with the date of the hearing set pursuant to subdivision (e) of
35 Section 366.21, unless the child is returned to the home of the
36 parent or guardian.

37 (C) For the purpose of placing and maintaining a sibling group
38 together in a permanent home should reunification efforts fail, for
39 a child in a sibling group whose members were removed from
40 parental custody at the same time, and in which one member of

1 the sibling group was under three years of age on the date of initial
2 removal from the physical custody of his or her parent or guardian;
3 court-ordered services to some or all of the sibling group may be
4 limited to a period of six months from the date the child entered
5 foster care. For the purposes of this paragraph, “a sibling group”
6 shall mean two or more children who are related to each other as
7 full or half siblings.

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

13 Any motion to terminate court-ordered reunification services
14 prior to the hearing set pursuant to subdivision (f) of Section 366.21
15 for a child described by paragraph (1), or within six months of the
16 initial dispositional hearing for a child described by paragraph (2)
17 or this paragraph, shall be made pursuant to the requirements set
18 forth in subdivision (c) of Section 388.

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

1 a substantial probability that the child will be returned to the
2 physical custody of his or her parent or guardian within the
3 extended time period. The court also shall make findings pursuant
4 to subdivision (a) of Section 366 and subdivision (e) of Section
5 358.1.

6 ~~When counseling or other treatment services are ordered, the~~
7 ~~parent or guardian shall be ordered to participate in those services,~~
8 ~~unless the parent's or guardian's participation is deemed by the~~
9 ~~court to be inappropriate or potentially detrimental to the child, or~~
10 ~~unless a parent or guardian is incarcerated and the corrections~~
11 ~~facility in which he or she is incarcerated does not provide access~~
12 ~~to the treatment services ordered by the court. Physical custody of~~
13 ~~the child by the parents or guardians during the applicable time~~
14 ~~period under subparagraph (A), (B), or (C) of paragraph (1) shall~~
15 ~~not serve to interrupt the running of the period. If at the end of the~~
16 ~~applicable time period, a child cannot be safely returned to the~~
17 ~~care and custody of a parent or guardian without court supervision,~~
18 ~~but the child clearly desires contact with the parent or guardian,~~
19 ~~the court shall take the child's desire into account in devising a~~
20 ~~permanency plan.~~

21 In cases where the child was under three years of age on the date
22 of the initial removal from the physical custody of his or her parent
23 or guardian or is a member of a sibling group as described in
24 subparagraph (C) of paragraph (1), the court shall inform the parent
25 or guardian that the failure of the parent or guardian to participate
26 regularly in any court-ordered treatment programs or to cooperate
27 or avail himself or herself of services provided as part of the child
28 welfare services case plan may result in a termination of efforts
29 to reunify the family after six months. The court shall inform the
30 parent or guardian of the factors used in subdivision (e) of Section
31 366.21 to determine whether to limit services to six months for
32 some or all members of a sibling group as described in
33 subparagraph (C) of paragraph (1).

34 (3) ~~Notwithstanding paragraph (2), court-ordered services may~~
35 ~~be extended up to a maximum time period not to exceed 24 months~~
36 ~~after the date the child was originally removed from physical~~
37 ~~custody of his or her parent or guardian if it is shown, at the hearing~~
38 ~~held pursuant to subdivision (b) of Section 366.22, that the~~
39 ~~permanent plan for the child is that he or she will be returned and~~
40 ~~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.~~

~~When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, in order for substantial probability to be found. Physical custody of the child by the parents or guardians during the applicable time period under subparagraph (A), (B), or (C) of paragraph (1) shall not serve to interrupt the running of the period. If at the end of the applicable time period, the 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.~~

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

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

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

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

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

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

12 ~~(5) That the child was brought within the jurisdiction of the~~
13 ~~court under subdivision (e) of Section 300 because of the conduct~~
14 ~~of that parent or guardian.~~

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

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

34 ~~A finding of the infliction of severe physical harm, for the~~
35 ~~purposes of this subdivision, may be based on, but is not limited~~
36 ~~to, deliberate and serious injury inflicted to or on a child's body~~
37 ~~or the body of a sibling or half sibling of the child by an act or~~
38 ~~omission of the parent or guardian, or of another individual or~~
39 ~~animal with the consent of the parent or guardian; deliberate and~~
40 ~~torturous confinement of the child, sibling, or half sibling in a~~

1 closed space; or any other torturous act or omission that would be
2 reasonably understood to cause serious emotional damage.

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

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

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

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

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

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

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

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

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

27 ~~(15) That the parent or guardian has on one or more occasions~~
28 ~~willfully abducted the child or child's sibling or half sibling from~~
29 ~~his or her placement and refused to disclose the child's or child's~~
30 ~~sibling's or half sibling's whereabouts, refused to return physical~~
31 ~~custody of the child or child's sibling or half sibling to his or her~~
32 ~~placement, or refused to return physical custody of the child or~~
33 ~~child's sibling or half sibling to the social worker.~~

34 ~~(c) In deciding whether to order reunification in any case in~~
35 ~~which this section applies, the court shall hold a dispositional~~
36 ~~hearing. The social worker shall prepare a report that discusses~~
37 ~~whether reunification services shall be provided. When it is alleged,~~
38 ~~pursuant to paragraph (2) of subdivision (b), that the parent is~~
39 ~~incapable of utilizing services due to mental disability, the court~~
40 ~~shall order reunification services unless competent evidence from~~

1 mental health professionals establishes that, even with the provision
2 of services, the parent is unlikely to be capable of adequately caring
3 for the child within the time limits specified in subdivision (a).

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

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

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

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

36 (e) (1) If the parent or guardian is incarcerated or
37 institutionalized, the court shall order reasonable services unless
38 the court determines, by clear and convincing evidence, those
39 services would be detrimental to the child. In determining
40 detriment, the court shall consider the age of the child, the degree

1 of parent-child bonding, the length of the sentence, the length and
2 nature of the treatment, the nature of the crime or illness, the degree
3 of detriment to the child if services are not offered and, for children
4 10 years of age or older, the child's attitude toward the
5 implementation of family reunification services, the likelihood of
6 the parent's discharge from incarceration or institutionalization
7 within the reunification time limitations described in subdivision
8 (a), and any other appropriate factors. In determining the content
9 of reasonable services, the court shall consider the particular
10 barriers to an incarcerated or otherwise institutionalized parent's
11 access to those court-mandated services and ability to maintain
12 contact with his or her child, and shall document this information
13 in the child's case plan. Reunification services are subject to the
14 applicable time limitations imposed in subdivision (a). Services
15 may include, but shall not be limited to, all of the following:

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

18 (B) Transportation services, where appropriate.

19 (C) Visitation services, where appropriate.

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

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

30 (2) The presiding judge of the juvenile court of each county
31 may convene representatives of the county welfare department,
32 the sheriff's department, and other appropriate entities for the
33 purpose of developing and entering into protocols for ensuring the
34 notification, transportation, and presence of an incarcerated or
35 institutionalized parent at all court hearings involving proceedings
36 affecting the child pursuant to Section 2625 of the Penal Code.
37 The county welfare department shall utilize the prisoner locator
38 system developed by the Department of Corrections and
39 Rehabilitation to facilitate timely and effective notice of hearings
40 for incarcerated parents.

~~(3) Notwithstanding any other provision of law, if the incarcerated parent is a woman seeking to participate in the community treatment program operated by the Department of Corrections and Rehabilitation pursuant to Chapter 4.8 (commencing with Section 1174) of Title 7 of Part 2 of, Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of, the Penal Code, the court shall determine whether the parent's participation in a program is in the child's best interest and whether it is suitable 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 (c), 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, or, in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption, 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, including when, in consultation with the child's tribe, tribal customary adoption is recommended, 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~~

1 include, but not be limited to, the child's siblings, grandparents,
2 aunts, and uncles.

3 (C) ~~An evaluation of the child's medical, developmental,~~
4 ~~scholastic, mental, and emotional status.~~

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

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

31 (F) ~~An analysis of the likelihood that the child will be adopted~~
32 ~~if parental rights are terminated.~~

33 (G) ~~In the case of an Indian child, in addition to subparagraphs~~
34 ~~(A) to (F), inclusive, an assessment of the likelihood that the child~~
35 ~~will be adopted, when, in consultation with the child's tribe, a~~
36 ~~customary tribal adoption, as defined in Section 366.24, is~~
37 ~~recommended. If tribal customary adoption is recommended, the~~
38 ~~assessment shall include an analysis of both of the following:~~

1 ~~(i) Whether tribal customary adoption would or would not be~~
2 ~~detrimental to the Indian child and the reasons for reaching that~~
3 ~~conclusion.~~

4 ~~(ii) Whether the Indian child cannot or should not be returned~~
5 ~~to the home of the Indian parent or Indian custodian and the reasons~~
6 ~~for reaching that conclusion.~~

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

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

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

21 ~~(1) The specific act or omission comprising the severe sexual~~
22 ~~abuse or the severe physical harm inflicted on the child or the~~
23 ~~child's sibling or half sibling.~~

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

26 ~~(3) The severity of the emotional trauma suffered by the child~~
27 ~~or the child's sibling or half sibling.~~

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

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

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

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

1 ~~SEC. 5. Section 366.21 of the Welfare and Institutions Code~~
2 ~~is amended to read:~~

3 ~~366.21. (a) Every hearing conducted by the juvenile court~~
4 ~~reviewing the status of a dependent child shall be placed on the~~
5 ~~appearance calendar. The court shall advise all persons present at~~
6 ~~the hearing of the date of the future hearing and of their right to~~
7 ~~be present and represented by counsel.~~

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

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

1 or foster family agency having the physical custody of the child.
2 The social worker shall include a copy of the Judicial Council
3 Caregiver Information Form (JV-290) with the summary of
4 recommendations to the child's foster parents, relative caregivers,
5 or foster parents approved for adoption, in the caregiver's primary
6 language when available, along with information on how to file
7 the form with the court.

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

29 (e) At the review hearing held six months after the initial
30 dispositional hearing, the court shall order the return of the child
31 to the physical custody of his or her parent or legal guardian unless
32 the court finds, by a preponderance of the evidence, that the return
33 of the child to his or her parent or legal guardian would create a
34 substantial risk of detriment to the safety, protection, or physical
35 or emotional well-being of the child. The social worker shall have
36 the burden of establishing that detriment. At the hearing, the court
37 shall consider the criminal history, obtained pursuant to paragraph
38 (1) of subdivision (f) of Section 16504.5, of the parent or legal
39 guardian subsequent to the child's removal to the extent that the
40 criminal record is substantially related to the welfare of the child

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

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

31 If the child was under three years of age on the date of the initial
32 removal, or is a member of a sibling group described in
33 subparagraph (C) of paragraph (1) of subdivision (a) of Section
34 361.5, and the court finds by clear and convincing evidence that
35 the parent failed to participate regularly and make substantive
36 progress in a court-ordered treatment plan, the court may schedule
37 a hearing pursuant to Section 366.26 within 120 days. If, however,
38 the court finds there is a substantial probability that the child, who
39 was under three years of age on the date of initial removal or is a
40 member of a sibling group described in subparagraph (C) of

1 paragraph (1) of subdivision (a) of Section 361.5, may be returned
2 to his or her parent or legal guardian within six months or that
3 reasonable services have not been provided, the court shall continue
4 the case to the 12-month permanency hearing.

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

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

38 If the child had been placed under court supervision with a
39 previously noncustodial parent pursuant to Section 361.2, the court
40 shall determine whether supervision is still necessary. The court

1 may terminate supervision and transfer permanent custody to that
2 parent, as provided for by paragraph (1) of subdivision (b) of
3 Section 361.2.

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

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

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

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

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

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

36 (1) Continue the case for up to six months for a permanency
37 review hearing, provided that the hearing shall occur within 18
38 months of the date the child was originally taken from the physical
39 custody of his or her parent or legal guardian. The court shall
40 continue the case only if it finds that there is a substantial

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

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

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

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

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

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

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

37 (3) Order that the child remain in long-term foster care, but only
38 if the court finds by clear and convincing evidence, based upon
39 the evidence already presented to it, including a recommendation
40 by the State Department of Social Services when it is acting as an

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

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

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

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

~~37 (i) (1) Whenever a court orders that a hearing pursuant to
38 Section 366.26, including when, in consultation with the child's
39 tribe, tribal customary adoption is recommended, shall be held, it
40 shall direct the agency supervising the child and the licensed county~~

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

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

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

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

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

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

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

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

1 (H) ~~In the case of an Indian child, in addition to subparagraphs~~
2 (A) to (G), inclusive, an assessment of the likelihood that the child
3 will be adopted, when, in consultation with the child's tribe, a
4 customary tribal adoption, as defined in Section 366.24, is
5 recommended. If tribal customary adoption is recommended, the
6 assessment shall include an analysis of both of the following:

7 (i) ~~Whether tribal customary adoption would or would not be~~
8 detrimental to the Indian child and the reasons for reaching that
9 conclusion.

10 (ii) ~~Whether the Indian child cannot or should not be returned~~
11 to the home of the Indian parent or Indian custodian and the reasons
12 for reaching that conclusion.

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

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

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

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

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

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

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

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

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

10 ~~SEC. 6. Section 366.22 of the Welfare and Institutions Code~~
11 ~~is amended to read:~~

12 ~~366.22. (a) When a case has been continued pursuant to~~
13 ~~paragraph (1) of subdivision (g) of Section 366.21, the permanency~~
14 ~~review hearing shall occur within 18 months after the date the~~
15 ~~child was originally removed from the physical custody of his or~~
16 ~~her parent or legal guardian. The court shall order the return of the~~
17 ~~child to the physical custody of his or her parent or legal guardian~~
18 ~~unless the court finds, by a preponderance of the evidence, that~~
19 ~~the return of the child to his or her parent or legal guardian would~~
20 ~~create a substantial risk of detriment to the safety, protection, or~~
21 ~~physical or emotional well-being of the child. The social worker~~
22 ~~shall have the burden of establishing that detriment. At the~~
23 ~~permanency review hearing, the court shall consider the criminal~~
24 ~~history, obtained pursuant to paragraph (1) of subdivision (f) of~~
25 ~~Section 16504.5, of the parent or legal guardian subsequent to the~~
26 ~~child's removal, to the extent that the criminal record is~~
27 ~~substantially related to the welfare of the child or the parent's or~~
28 ~~legal guardian's ability to exercise custody and control regarding~~
29 ~~his or her child, provided that the parent or legal guardian agreed~~
30 ~~to submit fingerprint images to obtain criminal history information~~
31 ~~as part of the case plan. The failure of the parent or legal guardian~~
32 ~~to participate regularly and make substantive progress in~~
33 ~~court-ordered treatment programs shall be prima facie evidence~~
34 ~~that return would be detrimental. In making its determination, the~~
35 ~~court shall review and consider the social worker's report and~~
36 ~~recommendations and the report and recommendations of any child~~
37 ~~advocate appointed pursuant to Section 356.5; shall consider the~~
38 ~~efforts or progress, or both, demonstrated by the parent or legal~~
39 ~~guardian and the extent to which he or she availed himself or~~
40 ~~herself of services provided, taking into account the particular~~

1 ~~barriers of an incarcerated or institutionalized parent or legal~~
2 ~~guardian's access to those court-mandated services and ability to~~
3 ~~maintain contact with his or her child; and shall make appropriate~~
4 ~~findings pursuant to subdivision (a) of Section 366.~~

5 ~~Whether or not the child is returned to his or her parent or legal~~
6 ~~guardian, the court shall specify the factual basis for its decision.~~
7 ~~If the child is not returned to a parent or legal guardian, the court~~
8 ~~shall specify the factual basis for its conclusion that return would~~
9 ~~be detrimental. If the child is not returned to his or her parent or~~
10 ~~legal guardian, the court shall consider, and state for the record,~~
11 ~~in-state and out-of-state options for the child's permanent~~
12 ~~placement. If the child is placed out of the state, the court shall~~
13 ~~make a determination whether the out-of-state placement continues~~
14 ~~to be appropriate and in the best interests of the child.~~

15 ~~Unless the conditions in subdivision (b) are met and the child is~~
16 ~~not returned to a parent or legal guardian at the permanency review~~
17 ~~hearing, the court shall order that a hearing be held pursuant to~~
18 ~~Section 366.26 in order to determine whether adoption, or, in the~~
19 ~~case of an Indian child, in consultation with the child's tribe, tribal~~
20 ~~customary adoption, guardianship, or long-term foster care is the~~
21 ~~most appropriate plan for the child. However, if the court finds by~~
22 ~~clear and convincing evidence, based on the evidence already~~
23 ~~presented to it, including a recommendation by the State~~
24 ~~Department of Social Services when it is acting as an adoption~~
25 ~~agency in counties that are not served by a county adoption agency~~
26 ~~or by a licensed county adoption agency, that there is a compelling~~
27 ~~reason, as described in paragraph (3) of subdivision (g) of Section~~
28 ~~366.21, for determining that a hearing held under Section 366.26~~
29 ~~is not in the best interest of the child because the child is not a~~
30 ~~proper subject for adoption and has no one willing to accept legal~~
31 ~~guardianship, then the court may, only under these circumstances,~~
32 ~~order that the child remain in foster care. If the court orders that a~~
33 ~~child who is 10 years of age or older remain in long-term foster~~
34 ~~care, the court shall determine whether the agency has made~~
35 ~~reasonable efforts to maintain the child's relationships with~~
36 ~~individuals other than the child's siblings who are important to the~~
37 ~~child, consistent with the child's best interests, and may make any~~
38 ~~appropriate order to ensure that those relationships are maintained.~~
39 ~~The hearing shall be held no later than 120 days from the date of~~
40 ~~the permanency review hearing. The court shall also order~~

1 termination of reunification services to the parent or legal guardian.
2 The court shall continue to permit the parent or legal guardian to
3 visit the child unless it finds that visitation would be detrimental
4 to the child. The court shall determine whether reasonable services
5 have been offered or provided to the parent or legal guardian. For
6 purposes of this subdivision, evidence of any of the following
7 circumstances shall not, in and of themselves, be deemed a failure
8 to provide or offer reasonable services:

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

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

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

16 (b) If the child is not returned to a parent or legal guardian at
17 the permanency review hearing and the court determines by clear
18 and convincing evidence that the best interests of the child would
19 be met by the provision of additional reunification services to a
20 parent or legal guardian who is making significant and consistent
21 progress in a substance abuse treatment program, or a parent
22 recently discharged from incarceration or institutionalization and
23 making significant and consistent progress in establishing a safe
24 home for the child's return, the court may continue the case for
25 up to six months for a subsequent permanency review hearing,
26 provided that the hearing shall occur within 24 months of the date
27 the child was originally taken from the physical custody of his or
28 her parent or legal guardian. The court shall continue the case only
29 if it finds that there is a substantial probability that the child will
30 be returned to the physical custody of his or her parent or legal
31 guardian and safely maintained in the home within the extended
32 period of time or that reasonable services have not been provided
33 to the parent or legal guardian. For the purposes of this section, in
34 order to find a substantial probability that the child will be returned
35 to the physical custody of his or her parent or legal guardian and
36 safely maintained in the home within the extended period of time,
37 the court shall be required to find all of the following:

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

1 ~~(2) That the parent or legal guardian has made significant and~~
2 ~~consistent progress in the prior 18 months in resolving problems~~
3 ~~that led to the child's removal from the home.~~

4 ~~(3) The parent or legal guardian has demonstrated the capacity~~
5 ~~and ability both to complete the objectives of his or her substance~~
6 ~~abuse treatment plan as evidenced by reports from a substance~~
7 ~~abuse provider as applicable, or complete a treatment plan~~
8 ~~postdischarge from incarceration or institutionalization, and to~~
9 ~~provide for the child's safety, protection, physical and emotional~~
10 ~~well-being, and special needs.~~

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

17 ~~The court shall inform the parent or legal guardian that if the~~
18 ~~child cannot be returned home by the subsequent permanency~~
19 ~~review hearing, a proceeding pursuant to Section 366.26 may be~~
20 ~~instituted. The court may not order that a hearing pursuant to~~
21 ~~Section 366.26 be held unless there is clear and convincing~~
22 ~~evidence that reasonable services have been provided or offered~~
23 ~~to the parent or legal guardian.~~

24 ~~(c) (1) Whenever a court orders that a hearing pursuant to~~
25 ~~Section 366.26, including when a tribal customary adoption is~~
26 ~~recommended, shall be held, it shall direct the agency supervising~~
27 ~~the child and the licensed county adoption agency, or the State~~
28 ~~Department of Social Services when it is acting as an adoption~~
29 ~~agency in counties that are not served by a county adoption agency,~~
30 ~~to prepare an assessment that shall include:~~

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

32 ~~(B) A review of the amount of and nature of any contact between~~
33 ~~the child and his or her parents and other members of his or her~~
34 ~~extended family since the time of placement. Although the~~
35 ~~extended family of each child shall be reviewed on a case-by-case~~
36 ~~basis, "extended family" for the purposes of this subparagraph~~
37 ~~shall include, but not be limited to, the child's siblings,~~
38 ~~grandparents, aunts, and uncles.~~

39 ~~(C) An evaluation of the child's medical, developmental,~~
40 ~~scholastic, mental, and emotional status.~~

1 ~~(D) A preliminary assessment of the eligibility and commitment~~
2 ~~of any identified prospective adoptive parent or legal guardian;~~
3 ~~particularly the caretaker, to include a social history including~~
4 ~~screening for criminal records and prior referrals for child abuse~~
5 ~~or neglect, the capability to meet the child's needs, and the~~
6 ~~understanding of the legal and financial rights and responsibilities~~
7 ~~of adoption and guardianship. If a proposed legal guardian is a~~
8 ~~relative of the minor, and the relative was assessed for foster care~~
9 ~~placement of the minor prior to January 1, 1998, the assessment~~
10 ~~shall also consider, but need not be limited to, all of the factors~~
11 ~~specified in subdivision (a) of Section 361.3.~~

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

19 ~~(F) An analysis of the likelihood that the child will be adopted~~
20 ~~if parental rights are terminated.~~

21 ~~(G) In the case of an Indian child, in addition to subparagraphs~~
22 ~~(A) to (F), inclusive, an assessment of the likelihood that the child~~
23 ~~will be adopted, when, in consultation with the child's tribe, a~~
24 ~~customary tribal adoption, as defined in Section 366.24, is~~
25 ~~recommended. If tribal customary adoption is recommended, the~~
26 ~~assessment shall include an analysis of both of the following:~~

27 ~~(i) Whether tribal customary adoption would or would not be~~
28 ~~detrimental to the Indian child and the reasons for reaching that~~
29 ~~conclusion.~~

30 ~~(ii) Whether the Indian child cannot or should not be returned~~
31 ~~to the home of the Indian parent or Indian custodian and the reasons~~
32 ~~for reaching that conclusion.~~

33 ~~(2) (A) A relative caregiver's preference for legal guardianship~~
34 ~~over adoption, if it is due to circumstances that do not include an~~
35 ~~unwillingness to accept legal or financial responsibility for the~~
36 ~~child, shall not constitute the sole basis for recommending removal~~
37 ~~of the child from the relative caregiver for purposes of adoptive~~
38 ~~placement.~~

39 ~~(B) A relative caregiver shall be given information regarding~~
40 ~~the permanency options of guardianship and adoption, including~~

1 the long-term benefits and consequences of each option, prior to
2 establishing legal guardianship or pursuing adoption.

3 ~~(d) This section shall become operative January 1, 1999. If at~~
4 ~~any hearing held pursuant to Section 366.26, a legal guardianship~~
5 ~~is established for the minor with a relative, and juvenile court~~
6 ~~dependency is subsequently dismissed, the relative shall be eligible~~
7 ~~for aid under the Kin-GAP Program, as provided for in Article 4.5~~
8 ~~(commencing with Section 11360) of Chapter 2 of Part 3 of~~
9 ~~Division 9.~~

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

16 ~~(f) The implementation and operation of the amendments to~~
17 ~~subdivision (a) enacted at the 2005–06 Regular Session shall be~~
18 ~~subject to appropriation through the budget process and by phase,~~
19 ~~as provided in Section 366.35.~~

20 ~~SEC. 7. Section 366.24 is added to the Welfare and Institutions~~
21 ~~Code, to read:~~

22 ~~366.24. (a) For purposes of this section, “tribal customary~~
23 ~~adoption” means adoption by and through the tribal custom,~~
24 ~~traditions, or law of an Indian child’s tribe. Termination of parental~~
25 ~~rights is not required to effect the adoption.~~

26 ~~(b) Whenever an assessment is ordered pursuant to Section~~
27 ~~361.5, 366.21, 366.22, 366.25, or 366.26 for Indian children, the~~
28 ~~assessment shall address the option of tribal customary adoption.~~

29 ~~(c) Notwithstanding any other provision of law, individuals who~~
30 ~~may be, will be, or are adoptive parents through a tribal customary~~
31 ~~adoption shall have all of the rights and privileges afforded to any~~
32 ~~other prospective adoptive or adoptive parent pursuant to the laws~~
33 ~~of this state.~~

34 ~~(d) For purposes of Section 366.26, in the case of tribal~~
35 ~~customary adoptions, all of the following apply:~~

36 ~~(1) The child’s tribe or the tribe’s designee, which may include~~
37 ~~the State Department of Social Services, when acting as an adoptive~~
38 ~~agency in counties that are not served by a county adoption agency,~~
39 ~~the county child welfare agency where the case is being~~
40 ~~adjudicated, or a California licensed adoption agency, shall conduct~~

1 an adoptive home study prior to final approval of the adoptive
2 placement. The standard for the evaluation of the prospective
3 adoptive parents' home shall be the prevailing social and cultural
4 standard of the child's tribe.

5 (2) If the tribe chooses a designee to conduct the home study,
6 the designee shall perform a check of the Child Abuse Central
7 Index pursuant to Section 1522.1 of the Health and Safety Code
8 as it applies to prospective adoptive parents and persons over 18
9 years of age residing in their household. If the tribe conducts its
10 own home study, the tribe, through the child welfare agency
11 responsible for the dependency action, shall check the Child Abuse
12 Central Index pursuant to Section 1522.1 of the Health and Safety
13 Code as it applies to prospective adoptive parents and persons over
14 18 years of age residing in the household.

15 (3) If the tribe chooses a designee to conduct the home study,
16 the designee shall perform a state and federal criminal background
17 check through the Department of Justice prior to final approval of
18 the adoptive placement using prospective adoptive parents in the
19 State of California. If the tribe conducts its own home study, the
20 tribe, through the child welfare agency responsible for the
21 dependency case, shall perform a state and federal check through
22 the Department of Justice prior to the final approval of the
23 prospective adoptive parents and persons over 18 years of age
24 residing in the household.

25 (4) If federal and state law provides that tribes may conduct all
26 required background checks for prospective adoptive parents, the
27 tribally administered background checks shall satisfy the
28 requirements of this section, so long as the standards for the
29 background checks are the same as those applied to all other
30 prospective adoptive parents in the State of California.

31 (5) Under no circumstances shall final approval be granted for
32 an adoptive placement in any home if the prospective adoptive
33 parent or any adult living in the prospective adoptive home has
34 any of the following:

35 (A) A felony conviction for child abuse or neglect, spousal
36 abuse, crimes against a child, including child pornography, or a
37 crime involving violence, including rape, sexual assault, or
38 homicide, but not including other physical assault and battery. For
39 purposes of this subdivision, crimes involving violence means
40 those violent crimes contained in clause (i) of subparagraph (A)

1 and subparagraph (B), or paragraph (1) of, subdivision (g) of
2 Section 1522 of the Health and Safety Code.

3 (B) A felony conviction that occurred within the last five years
4 for physical assault, battery, or a drug-related offense.

5 (6) If the tribe identifies customary adoption as the permanent
6 placement plan for the Indian child, the court may continue the
7 selection and implementation hearing governed by Section 366.26
8 for a period not to exceed 120 days to permit the tribe to complete
9 the process for tribal customary adoption and file with the court a
10 tribal customary adoption order evidencing that a tribal customary
11 adoption has been completed. The court shall have discretion to
12 grant an additional continuance to the tribe for filing a tribal
13 customary adoption order up to, but not exceeding, 60 days. If the
14 child's tribe does not file the tribal customary adoption order within
15 the designated time period, the court shall make new findings and
16 orders pursuant to subdivision (b) of Section 366.26 and this
17 subdivision to determine the best permanent plan for the child.

18 (7) The child, birth parents, or Indian custodian and the tribal
19 customary adoptive parents and their counsel, if applicable, may
20 present evidence to the tribe regarding the tribal customary
21 adoption and the child's best interest.

22 (8) The tribal customary adoption order shall include, but not
23 be limited to, a description of (A) the modification of the legal
24 relationship of the birth parents or Indian custodian and the child,
25 including contact, if any, between the child and the birth parents
26 or Indian custodian, responsibilities of the birth parents or Indian
27 custodian, and the rights of inheritance of the child and (B) the
28 child's legal relationship with the tribe. There shall be a conclusive
29 presumption that any parental rights or obligations not specified
30 in the tribal customary adoption order shall vest in the tribal
31 customary adoptive parents.

32 (9) Prior consent to a permanent plan of tribal customary
33 adoption of an Indian child shall not be required of an Indian parent
34 or Indian custodian whose parental relationship to the child will
35 be modified by the tribal customary adoption.

36 (10) Nothing in this paragraph is intended to prevent the transfer
37 of those proceedings to a tribal court where transfer is otherwise
38 permitted under applicable law.

39 (11) Consistent with Section 366.3, after the tribal customary
40 adoption has been completed, the tribal customary adoption order

1 of the tribe has been filed, and an order of adoption has been issued,
2 the court shall terminate its jurisdiction over the Indian child.

3 (12) This subdivision shall become operative on July 1, 2010,
4 and shall remain operative only to the extent that compliance with
5 its provisions is required by federal law as a condition of receiving
6 funding under Title IV-E or the federal Social Security Act (42
7 U.S.C. Sec. 670 et seq.).

8 (e) The Judicial Council shall adopt rules of court and necessary
9 forms required to implement tribal customary adoption as a
10 permanent plan for dependent Indian children.

11 SEC. 8. Section 366.25 of the Welfare and Institutions Code
12 is amended to read:

13 366.25. (a) (1) When a case has been continued pursuant to
14 subdivision (b) of Section 366.22, the subsequent permanency
15 review hearing shall occur within 24 months after the date the
16 child was originally removed from the physical custody of his or
17 her parent or legal guardian. The court shall order the return of the
18 child to the physical custody of his or her parent or legal guardian
19 unless the court finds, by a preponderance of the evidence, that
20 the return of the child to his or her parent or legal guardian would
21 create a substantial risk of detriment to the safety, protection, or
22 physical or emotional well-being of the child. The social worker
23 shall have the burden of establishing that detriment. At the
24 subsequent permanency review hearing, the court shall consider
25 the criminal history, obtained pursuant to paragraph (1) of
26 subdivision (f) of Section 16504.5, of the parent or legal guardian
27 subsequent to the child's removal to the extent that the criminal
28 record is substantially related to the welfare of the child or parent
29 or legal guardian's ability to exercise custody and control regarding
30 his or her child provided that the parent or legal guardian agreed
31 to submit fingerprint images to obtain criminal history information
32 as part of the case plan. The failure of the parent or legal guardian
33 to participate regularly and make substantive progress in
34 court-ordered treatment programs shall be prima facie evidence
35 that return would be detrimental. In making its determination, the
36 court shall review and consider the social worker's report and
37 recommendations and the report and recommendations of any child
38 advocate appointed pursuant to Section 356.5; shall consider the
39 efforts or progress, or both, demonstrated by the parent or legal
40 guardian and the extent to which he or she availed himself or

1 herself of services provided; and shall make appropriate findings
2 pursuant to subdivision (a) of Section 366.

3 (2) Whether or not the child is returned to his or her parent or
4 legal guardian, the court shall specify the factual basis for its
5 decision. If the child is not returned to a parent or legal guardian,
6 the court shall specify the factual basis for its conclusion that return
7 would be detrimental. If the child is not returned to his or her
8 parents or legal guardian, the court shall consider and state for the
9 record, in-state and out-of-state options for the child's permanent
10 placement. If the child is placed out of the state, the court shall
11 make a determination whether the out-of-state placement continues
12 to be appropriate and in best interests of the child.

13 (3) If the child is not returned to a parent or legal guardian at
14 the subsequent permanency review hearing, the court shall order
15 that a hearing be held pursuant to Section 366.26 in order to
16 determine whether adoption, or in the case of an Indian child, tribal
17 customary adoption, guardianship, or long-term foster care is the
18 most appropriate plan for the child. However, if the court finds by
19 clear and convincing evidence, based on the evidence already
20 presented to it, including a recommendation by the State
21 Department of Social Services when it is acting as an adoption
22 agency in counties that are not served by a county adoption agency
23 or by a licensed county adoption agency, that there is a compelling
24 reason, as described in paragraph (3) of subdivision (g) of Section
25 366.21, for determining that a hearing held under Section 366.26
26 is not in the best interest of the child because the child is not a
27 proper subject for adoption or, in the case of an Indian child, tribal
28 customary adoption, and has no one willing to accept legal
29 guardianship, then the court may, only under these circumstances,
30 order that the child remain in foster care. If the court orders that a
31 child who is 10 years of age or older remain in long-term foster
32 care, the court shall determine whether the agency has made
33 reasonable efforts to maintain the child's relationships with
34 individuals other than the child's siblings who are important to the
35 child, consistent with the child's best interests, and may make any
36 appropriate order to ensure that those relationships are maintained.
37 The hearing shall be held no later than 120 days from the date of
38 the subsequent permanency review hearing. The court shall also
39 order termination of reunification services to the parent or legal
40 guardian. The court shall continue to permit the parent or legal

1 guardian to visit the child unless it finds that visitation would be
2 detrimental to the child. The court shall determine whether
3 reasonable services have been offered or provided to the parent or
4 legal guardian. For purposes of this subdivision, evidence of any
5 of the following circumstances shall not, in and of themselves, be
6 deemed a failure to provide or offer reasonable services:

7 (A) The child has been placed with a foster family that is eligible
8 to adopt a child, or has been placed in a preadoptive home.

9 (B) The case plan includes services to make and finalize a
10 permanent placement for the child if efforts to reunify fail.

11 (C) Services to make and finalize a permanent placement for
12 the child, if efforts to reunify fail, are provided concurrently with
13 services to reunify the family.

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

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

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

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

30 (D) A preliminary assessment of the eligibility and commitment
31 of any identified prospective adoptive parent or legal guardian,
32 including a prospective tribal customary adoptive parent,
33 particularly the caretaker, to include a social history including
34 screening for criminal records and prior referrals for child abuse
35 or neglect, the capability to meet the child's needs, and the
36 understanding of the legal and financial rights and responsibilities
37 of adoption and guardianship. If a proposed legal guardian is a
38 relative of the minor, and the relative was assessed for foster care
39 placement of the minor prior to January 1, 1998, the assessment

1 shall also consider, but need not be limited to, all of the factors
2 specified in subdivision (a) of Section 361.3.

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

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

13 (G) In the case of an Indian child, in addition to subparagraphs
14 (A) to (F), inclusive, an assessment of the likelihood that the child
15 will be adopted, when, in consultation with the child's tribe, a
16 customary tribal adoption, as defined in Section 366.24, is
17 recommended. If tribal customary adoption is recommended, the
18 assessment shall include an analysis of both of the following:

19 (i) Whether tribal customary adoption would or would not be
20 detrimental to the Indian child and the reasons for reaching that
21 conclusion.

22 (ii) Whether the Indian child cannot or should not be returned
23 to the home of the Indian parent or Indian custodian and the reasons
24 for reaching that conclusion.

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

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

35 (c) If, at any hearing held pursuant to Section 366.26, a
36 guardianship is established for the minor with a relative, and
37 juvenile court dependency is subsequently dismissed, the relative
38 shall be eligible for aid under the Kin-GAP Program, as provided
39 for in Article 4.5 (commencing with Section 11360) of Chapter 2
40 of Part 3 of Division 9.

1 ~~(d) As used in this section, “relative” means an adult who is~~
2 ~~related to the minor by blood, adoption, or affinity within the fifth~~
3 ~~degree of kinship, including stepparents, stepsiblings, and all~~
4 ~~relatives whose status is preceded by the words “great,”~~
5 ~~“great-great,” or “grand,” or the spouse of any of those persons~~
6 ~~even if the marriage was terminated by death or dissolution.~~

7 ~~(e) The implementation and operation of subdivision (a) enacted~~
8 ~~at the 2005–06 Regular Session shall be subject to appropriation~~
9 ~~through the budget process and by phase, as provided in Section~~
10 ~~366.35.~~

11 ~~SEC. 9. Section 366.26 of the Welfare and Institutions Code~~
12 ~~is amended to read:~~

13 ~~366.26. (a) This section applies to children who are adjudged~~
14 ~~dependent children of the juvenile court pursuant to subdivision~~
15 ~~(d) of Section 360. The procedures specified herein are the~~
16 ~~exclusive procedures for conducting these hearings; Part 2~~
17 ~~(commencing with Section 3020) of Division 8 of the Family Code~~
18 ~~is not applicable to these proceedings. Section 8616.5 of the Family~~
19 ~~Code is applicable and available to all dependent children meeting~~
20 ~~the requirements of that section, if the postadoption contact~~
21 ~~agreement has been entered into voluntarily. For children who are~~
22 ~~adjudged dependent children of the juvenile court pursuant to~~
23 ~~subdivision (d) of Section 360, this section and Sections 8604,~~
24 ~~8605, 8606, and 8700 of the Family Code and Chapter 5~~
25 ~~(commencing with Section 7660) of Part 3 of Division 12 of the~~
26 ~~Family Code specify the exclusive procedures for permanently~~
27 ~~terminating parental rights with regard to, or establishing legal~~
28 ~~guardianship of, the child while the child is a dependent child of~~
29 ~~the juvenile court.~~

30 ~~(b) At the hearing, which shall be held in juvenile court for all~~
31 ~~children who are dependents of the juvenile court, the court, in~~
32 ~~order to provide stable, permanent homes for these children, shall~~
33 ~~review the report as specified in Section 361.5, 366.21, 366.22, or~~
34 ~~366.25, shall indicate that the court has read and considered it,~~
35 ~~shall receive other evidence that the parties may present, and then~~
36 ~~shall make findings and orders in the following order of preference:~~

37 ~~(1) Terminate the rights of the parent or parents and order that~~
38 ~~the child be placed for adoption and, upon the filing of a petition~~
39 ~~for adoption in the juvenile court, order that a hearing be set. The~~

1 court shall proceed with the adoption after the appellate rights of
2 the natural parents have been exhausted.

3 ~~(2) Order, without termination of parental rights, the plan of~~
4 ~~tribal customary adoption, as described in Section 366.24, through~~
5 ~~the Indian child's tribe's custom, traditions, or tribal law, and upon~~
6 ~~the filing of the tribal customary adoption order, order that a~~
7 ~~hearing be set pursuant to paragraph (2) of subdivision (e).~~

8 ~~(3) Appoint a relative or relatives with whom the child is~~
9 ~~currently residing as legal guardian or guardians for the child, and~~
10 ~~order that letters of guardianship issue.~~

11 ~~(4) On making a finding under paragraph (3) of subdivision (c),~~
12 ~~identify adoption or tribal customary adoption as the permanent~~
13 ~~placement goal and order that efforts be made to locate an~~
14 ~~appropriate adoptive family for the child within a period not to~~
15 ~~exceed 180 days.~~

16 ~~(5) Appoint a nonrelative legal guardian for the child and order~~
17 ~~that letters of guardianship issue.~~

18 ~~(6) Order that the child be placed in long-term foster care,~~
19 ~~subject to the periodic review of the juvenile court under Section~~
20 ~~366.3.~~

21 In choosing among the above alternatives the court shall proceed
22 pursuant to subdivision (c).

23 (c) (1) If the court determines, based on the assessment provided
24 as ordered under subdivision (i) of Section 366.21, subdivision (b)
25 of Section 366.22, or subdivision (b) of Section 366.25, and any
26 other relevant evidence, by a clear and convincing standard, that
27 it is likely the child will be adopted, the court shall terminate
28 parental rights and order the child placed for adoption. The fact
29 that the child is not yet placed in a preadoptive home nor with a
30 relative or foster family who is prepared to adopt the child, shall
31 not constitute a basis for the court to conclude that it is not likely
32 the child will be adopted. A finding under subdivision (b) or
33 paragraph (1) of subdivision (e) of Section 361.5 that reunification
34 services shall not be offered, under subdivision (e) of Section
35 366.21 that the whereabouts of a parent have been unknown for
36 six months or that the parent has failed to visit or contact the child
37 for six months, or that the parent has been convicted of a felony
38 indicating parental unfitness, or, under Section 366.21 or 366.22,
39 that the court has continued to remove the child from the custody
40 of the parent or guardian and has terminated reunification services;

1 shall constitute a sufficient basis for termination of parental rights.
2 Under these circumstances, the court shall terminate parental rights
3 unless either of the following applies:

4 (A) The child is living with a relative who is unable or unwilling
5 to adopt the child because of circumstances that do not include an
6 unwillingness to accept legal or financial responsibility for the
7 child, but who is willing and capable of providing the child with
8 a stable and permanent environment through legal guardianship;
9 and the removal of the child from the custody of his or her relative
10 would be detrimental to the emotional well-being of the child. For
11 purposes of an Indian child, "relative" shall include an "extended
12 family member," as defined in the federal Indian Child Welfare
13 Act (25 U.S.C. Sec. 1903(2)).

14 (B) The court finds a compelling reason for determining that
15 termination would be detrimental to the child due to one or more
16 of the following circumstances:

17 (i) The parents have maintained regular visitation and contact
18 with the child and the child would benefit from continuing the
19 relationship.

20 (ii) A child 12 years of age or older objects to termination of
21 parental rights.

22 (iii) The child is placed in a residential treatment facility,
23 adoption is unlikely or undesirable, and continuation of parental
24 rights will not prevent finding the child a permanent family
25 placement if the parents cannot resume custody when residential
26 care is no longer needed.

27 (iv) The child is living with a foster parent or Indian custodian
28 who is unable or unwilling to adopt the child because of
29 exceptional circumstances, that do not include an unwillingness
30 to accept legal or financial responsibility for the child, but who is
31 willing and capable of providing the child with a stable and
32 permanent environment and the removal of the child from the
33 physical custody of his or her foster parent or Indian custodian
34 would be detrimental to the emotional well-being of the child. This
35 clause does not apply to any child who is either (I) under six years
36 of age or (II) a member of a sibling group where at least one child
37 is under six years of age and the siblings are, or should be,
38 permanently placed together.

39 (v) There would be substantial interference with a child's sibling
40 relationship, taking into consideration the nature and extent of the

1 relationship, including, but not limited to, whether the child was
2 raised with a sibling in the same home, whether the child shared
3 significant common experiences or has existing close and strong
4 bonds with a sibling, and whether ongoing contact is in the child's
5 best interest, including the child's long-term emotional interest,
6 as compared to the benefit of legal permanence through adoption.

7 (vi) The child is an Indian child and there is a compelling reason
8 for determining that termination of parental rights would not be
9 in the best interest of the child, including, but not limited to:

10 (I) Termination of parental rights would substantially interfere
11 with the child's connection to his or her tribal community or the
12 child's tribal membership rights.

13 (II) The child's tribe has identified guardianship, long-term
14 foster care with a fit and willing relative, tribal customary adoption,
15 or another planned permanent living arrangement for the child.

16 (C) For purposes of subparagraph (B), in the case of tribal
17 customary adoptions, Section 366.24 shall apply.

18 (D) If the court finds that termination of parental rights would
19 be detrimental to the child pursuant to clause (i), (ii), (iii), (iv),
20 (v), or (vi), it shall state its reasons in writing or on the record.

21 (2) The court shall not terminate parental rights if:

22 (A) At each hearing at which the court was required to consider
23 reasonable efforts or services, the court has found that reasonable
24 efforts were not made or that reasonable services were not offered
25 or provided.

26 (B) In the case of an Indian child:

27 (i) At the hearing terminating parental rights, the court has found
28 that active efforts were not made as required in Section 361.7.

29 (ii) The court does not make a determination at the hearing
30 terminating parental rights, supported by evidence beyond a
31 reasonable doubt, including testimony of one or more "qualified
32 expert witnesses" as defined in Section 224.6, that the continued
33 custody of the child by the parent is likely to result in serious
34 emotional or physical damage to the child.

35 (iii) The court has ordered tribal customary adoption pursuant
36 to Section 366.24.

37 (3) If the court finds that termination of parental rights would
38 not be detrimental to the child pursuant to paragraph (1) and that
39 the child has a probability for adoption but is difficult to place for
40 adoption and there is no identified or available prospective adoptive

parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child, within the state or out of the state, within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (2), (3), (5), or (6) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is seven years of age or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in clause (i), (ii), (iii), (iv), (v), or (vi) of subparagraph (B) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child, order that the child remain in long-term foster care, or, in the case of an Indian child, consider a tribal customary adoption pursuant to Section 366.24. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. A child who is 10 years of age or older, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians or, in the case of an Indian child, prospective tribal customary adoptive parents. The agency may ask any other child to provide that information, as appropriate.

1 ~~(B) If the child is living with a relative or a foster parent who~~
2 ~~is willing and capable of providing a stable and permanent~~
3 ~~environment, but not willing to become a legal guardian, the child~~
4 ~~shall not be removed from the home if the court finds the removal~~
5 ~~would be seriously detrimental to the emotional well-being of the~~
6 ~~child because the child has substantial psychological ties to the~~
7 ~~relative caretaker or foster parents.~~

8 ~~(C) The court shall also make an order for visitation with the~~
9 ~~parents or guardians unless the court finds by a preponderance of~~
10 ~~the evidence that the visitation would be detrimental to the physical~~
11 ~~or emotional well-being of the child.~~

12 ~~(5) If the court finds that the child should not be placed for~~
13 ~~adoption, that legal guardianship shall not be established, and that~~
14 ~~there are no suitable foster parents except exclusive-use homes~~
15 ~~available to provide the child with a stable and permanent~~
16 ~~environment, the court may order the care, custody, and control~~
17 ~~of the child transferred from the county welfare department to a~~
18 ~~licensed foster family agency. The court shall consider the written~~
19 ~~recommendation of the county welfare director regarding the~~
20 ~~suitability of the transfer. The transfer shall be subject to further~~
21 ~~court orders.~~

22 ~~The licensed foster family agency shall place the child in a~~
23 ~~suitable licensed or exclusive-use home that has been certified by~~
24 ~~the agency as meeting licensing standards. The licensed foster~~
25 ~~family agency shall be responsible for supporting the child and~~
26 ~~providing appropriate services to the child, including those services~~
27 ~~ordered by the court. Responsibility for the support of the child~~
28 ~~shall not, in and of itself, create liability on the part of the foster~~
29 ~~family agency to third persons injured by the child. Those children~~
30 ~~whose care, custody, and control are transferred to a foster family~~
31 ~~agency shall not be eligible for foster care maintenance payments~~
32 ~~or child welfare services, except for emergency response services~~
33 ~~pursuant to Section 16504.~~

34 ~~(d) The proceeding for the appointment of a guardian for a child~~
35 ~~who is a dependent of the juvenile court shall be in the juvenile~~
36 ~~court. If the court finds pursuant to this section that legal~~
37 ~~guardianship is the appropriate permanent plan, it shall appoint~~
38 ~~the legal guardian and issue letters of guardianship. The assessment~~
39 ~~prepared pursuant to subdivision (g) of Section 361.5, subdivision~~
40 ~~(i) of Section 366.21, subdivision (b) of Section 366.22, and~~

1 subdivision (b) of Section 366.25 shall be read and considered by
2 the court prior to the appointment, and this shall be reflected in
3 the minutes of the court. The person preparing the assessment may
4 be called and examined by any party to the proceeding.

5 (e) (1) The proceeding for the adoption of a child who is a
6 dependent of the juvenile court shall be in the juvenile court if the
7 court finds pursuant to this section that adoption is the appropriate
8 permanent plan and the petition for adoption is filed in the juvenile
9 court. Upon the filing of a petition for adoption, the juvenile court
10 shall order that an adoption hearing be set. The court shall proceed
11 with the adoption after the appellate rights of the natural parents
12 have been exhausted. The full report required by Section 8715 of
13 the Family Code shall be read and considered by the court prior
14 to the adoption and this shall be reflected in the minutes of the
15 court. The person preparing the report may be called and examined
16 by any party to the proceeding. It is the intent of the Legislature,
17 pursuant to this subdivision, to give potential adoptive parents the
18 option of filing in the juvenile court the petition for the adoption
19 of a child who is a dependent of the juvenile court. Nothing in this
20 section is intended to prevent the filing of a petition for adoption
21 in any other court as permitted by law, instead of in the juvenile
22 court.

23 (2) In the case of an Indian child, if the Indian child's tribe has
24 elected a permanent plan of tribal customary adoption, the court
25 shall order that an adoption hearing be set, at which time the tribal
26 customary adoption order shall be filed in the court. The court,
27 upon receiving the tribal customary adoption order, will afford the
28 tribal customary adoption order full faith and credit to the same
29 extent that the court would afford full faith and credit to the public
30 acts, records, judicial proceedings, and judgments of any other
31 entity, consistent with Section 224.5, and thereafter issue an order
32 of adoption consistent with Section 366.24.

33 (f) At the beginning of any proceeding pursuant to this section,
34 if the child or the parents are not being represented by previously
35 retained or appointed counsel, the court shall proceed as follows:

36 (1) In accordance with subdivision (c) of Section 317, if a child
37 before the court is without counsel, the court shall appoint counsel
38 unless the court finds that the child would not benefit from the
39 appointment of counsel. The court shall state on the record its
40 reasons for that finding.

1 ~~(2) If a parent appears without counsel and is unable to afford~~
2 ~~counsel, the court shall appoint counsel for the parent, unless this~~
3 ~~representation is knowingly and intelligently waived. The same~~
4 ~~counsel shall not be appointed to represent both the child and his~~
5 ~~or her parent. The public defender or private counsel may be~~
6 ~~appointed as counsel for the parent.~~

7 ~~(3) Private counsel appointed under this section shall receive a~~
8 ~~reasonable sum for compensation and expenses, the amount of~~
9 ~~which shall be determined by the court. The amount shall be paid~~
10 ~~by the real parties in interest, other than the child, in any~~
11 ~~proportions the court deems just. However, if the court finds that~~
12 ~~any of the real parties in interest are unable to afford counsel, the~~
13 ~~amount shall be paid out of the general fund of the county.~~

14 ~~(g) The court may continue the proceeding for a period of time~~
15 ~~not to exceed 30 days as necessary to appoint counsel, and to~~
16 ~~enable counsel to become acquainted with the case.~~

17 ~~(h) (1) At all proceedings under this section, the court shall~~
18 ~~consider the wishes of the child and shall act in the best interests~~
19 ~~of the child.~~

20 ~~(2) In accordance with Section 349, the child shall be present~~
21 ~~in court if the child or the child's counsel so requests or the court~~
22 ~~so orders. If the child is 10 years of age or older and is not present~~
23 ~~at a hearing held pursuant to this section, the court shall determine~~
24 ~~whether the minor was properly notified of his or her right to attend~~
25 ~~the hearing and inquire as to the reason why the child is not present.~~

26 ~~(3) (A) The testimony of the child may be taken in chambers~~
27 ~~and outside the presence of the child's parent or parents, if the~~
28 ~~child's parent or parents are represented by counsel, the counsel~~
29 ~~is present, and any of the following circumstances exists:~~

30 ~~(i) The court determines that testimony in chambers is necessary~~
31 ~~to ensure truthful testimony.~~

32 ~~(ii) The child is likely to be intimidated by a formal courtroom~~
33 ~~setting.~~

34 ~~(iii) The child is afraid to testify in front of his or her parent or~~
35 ~~parents.~~

36 ~~(B) After testimony in chambers, the parent or parents of the~~
37 ~~child may elect to have the court reporter read back the testimony~~
38 ~~or have the testimony summarized by counsel for the parent or~~
39 ~~parents.~~

1 ~~(C) The testimony of a child also may be taken in chambers and~~
2 ~~outside the presence of the guardian or guardians of a child under~~
3 ~~the circumstances specified in this subdivision.~~

4 ~~(i) (1) Any order of the court permanently terminating parental~~
5 ~~rights under this section shall be conclusive and binding upon the~~
6 ~~child, upon the parent or parents and upon all other persons who~~
7 ~~have been served with citation by publication or otherwise as~~
8 ~~provided in this chapter. After making the order, the juvenile court~~
9 ~~shall have no power to set aside, change, or modify it, except as~~
10 ~~provided in paragraph (2), but nothing in this section shall be~~
11 ~~construed to limit the right to appeal the order.~~

12 ~~(2) A tribal customary adoption order evidencing that the Indian~~
13 ~~child has been the subject of a tribal customary adoption shall be~~
14 ~~afforded full faith and credit and shall have the same force and~~
15 ~~effect as an order of adoption authorized by this section. The rights~~
16 ~~and obligations of the parties as to the matters determined by the~~
17 ~~Indian child's tribe shall be binding on all parties. A court shall~~
18 ~~not order compliance with the order absent a finding that the party~~
19 ~~seeking the enforcement participated, or attempted to participate,~~
20 ~~in good faith, in family mediation services of the court or dispute~~
21 ~~resolution through the tribe regarding the conflict, prior to the~~
22 ~~filing of the enforcement action.~~

23 ~~(3) A child who has not been adopted after the passage of at~~
24 ~~least three years from the date the court terminated parental rights~~
25 ~~and for whom the court has determined that adoption is no longer~~
26 ~~the permanent plan may petition the juvenile court to reinstate~~
27 ~~parental rights pursuant to the procedure prescribed by Section~~
28 ~~388. The child may file the petition prior to the expiration of this~~
29 ~~three-year period if the State Department of Social Services or~~
30 ~~licensed adoption agency that is responsible for custody and~~
31 ~~supervision of the child as described in subdivision (j) and the~~
32 ~~child stipulate that the child is no longer likely to be adopted. A~~
33 ~~child over 12 years of age shall sign the petition in the absence of~~
34 ~~a showing of good cause as to why the child could not do so. If it~~
35 ~~appears that the best interests of the child may be promoted by~~
36 ~~reinstatement of parental rights, the court shall order that a hearing~~
37 ~~be held and shall give prior notice, or cause prior notice to be~~
38 ~~given, to the social worker or probation officer and to the child's~~
39 ~~attorney of record, or, if there is no attorney of record for the child,~~
40 ~~to the child, and the child's tribe, if applicable, by means prescribed~~

1 by subdivision (c) of Section 297. The court shall order the child
2 or the social worker or probation officer to give prior notice of the
3 hearing to the child's former parent or parents whose parental
4 rights were terminated in the manner prescribed by subdivision
5 (f) of Section 294 where the recommendation is adoption. The
6 juvenile court shall grant the petition if it finds by clear and
7 convincing evidence that the child is no longer likely to be adopted
8 and that reinstatement of parental rights is in the child's best
9 interest. If the court reinstates parental rights over a child who is
10 under 12 years of age and for whom the new permanent plan will
11 not be reunification with a parent or legal guardian, the court shall
12 specify the factual basis for its findings that it is in the best interest
13 of the child to reinstate parental rights. This subdivision is intended
14 to be retroactive and applies to any child who is under the
15 jurisdiction of the juvenile court at the time of the hearing
16 regardless of the date parental rights were terminated.

17 (j) If the court, by order or judgment, declares the child free
18 from the custody and control of both parents, or one parent if the
19 other does not have custody and control, the court shall at the same
20 time order the child referred to the State Department of Social
21 Services or a licensed adoption agency for adoptive placement by
22 the agency. However, a petition for adoption may not be granted
23 until the appellate rights of the natural parents have been exhausted.
24 The State Department of Social Services or licensed adoption
25 agency shall be responsible for the custody and supervision of the
26 child and shall be entitled to the exclusive care and control of the
27 child at all times until a petition for adoption is granted, except as
28 specified in subdivision (n). With the consent of the agency, the
29 court may appoint a guardian of the child, who shall serve until
30 the child is adopted.

31 (k) Notwithstanding any other provision of law, the application
32 of any person who, as a relative caretaker or foster parent, has
33 cared for a dependent child for whom the court has approved a
34 permanent plan for adoption, or who has been freed for adoption,
35 shall be given preference with respect to that child over all other
36 applications for adoptive placement if the agency making the
37 placement determines that the child has substantial emotional ties
38 to the relative caretaker or foster parent and removal from the
39 relative caretaker or foster parent would be seriously detrimental
40 to the child's emotional well-being.

1 As used in this subdivision, “preference” means that the
2 application shall be processed and, if satisfactory, the family study
3 shall be completed before the processing of the application of any
4 other person for the adoptive placement of the child.

5 (I) (1) An order by the court that a hearing pursuant to this
6 section be held is not appealable at any time unless all of the
7 following apply:

8 (A) A petition for extraordinary writ review was filed in a timely
9 manner.

10 (B) The petition substantively addressed the specific issues to
11 be challenged and supported that challenge by an adequate record.

12 (C) The petition for extraordinary writ review was summarily
13 denied or otherwise not decided on the merits.

14 (2) Failure to file a petition for extraordinary writ review within
15 the period specified by rule, to substantively address the specific
16 issues challenged, or to support that challenge by an adequate
17 record shall preclude subsequent review by appeal of the findings
18 and orders made pursuant to this section.

19 (3) The Judicial Council shall adopt rules of court, effective
20 January 1, 1995, to ensure all of the following:

21 (A) A trial court, after issuance of an order directing a hearing
22 pursuant to this section be held, shall advise all parties of the
23 requirement of filing a petition for extraordinary writ review as
24 set forth in this subdivision in order to preserve any right to appeal
25 in these issues. This notice shall be made orally to a party if the
26 party is present at the time of the making of the order or by
27 first-class mail by the clerk of the court to the last known address
28 of a party not present at the time of the making of the order.

29 (B) The prompt transmittal of the records from the trial court
30 to the appellate court.

31 (C) That adequate time requirements for counsel and court
32 personnel exist to implement the objective of this subdivision.

33 (D) That the parent or guardian, or their trial counsel or other
34 counsel, is charged with the responsibility of filing a petition for
35 extraordinary writ relief pursuant to this subdivision.

36 (4) The intent of this subdivision is to do both of the following:

37 (A) Make every reasonable attempt to achieve a substantive and
38 meritorious review by the appellate court within the time specified
39 in Sections 366.21, 366.22, and 366.25 for holding a hearing
40 pursuant to this section.

1 ~~(B) Encourage the appellate court to determine all writ petitions~~
2 ~~filed pursuant to this subdivision on their merits.~~

3 ~~(5) This subdivision shall only apply to cases in which an order~~
4 ~~to set a hearing pursuant to this section is issued on or after January~~
5 ~~1, 1995.~~

6 ~~(m) Except for subdivision (j), this section shall also apply to~~
7 ~~minors adjudged wards pursuant to Section 727.31.~~

8 ~~(n) (1) Notwithstanding Section 8704 of the Family Code or~~
9 ~~any other provision of law, the court, at a hearing held pursuant~~
10 ~~to this section or anytime thereafter, may designate a current~~
11 ~~caretaker as a prospective adoptive parent if the child has lived~~
12 ~~with the caretaker for at least six months, the caretaker currently~~
13 ~~expresses a commitment to adopt the child, and the caretaker has~~
14 ~~taken at least one step to facilitate the adoption process. In~~
15 ~~determining whether to make that designation, the court may take~~
16 ~~into consideration whether the caretaker is listed in the preliminary~~
17 ~~assessment prepared by the county department in accordance with~~
18 ~~subdivision (i) of Section 366.21 as an appropriate person to be~~
19 ~~considered as an adoptive parent for the child and the~~
20 ~~recommendation of the State Department of Social Services or~~
21 ~~licensed adoption agency.~~

22 ~~(2) For purposes of this subdivision, steps to facilitate the~~
23 ~~adoption process include, but are not limited to, the following:~~

24 ~~(A) Applying for an adoption home study.~~

25 ~~(B) Cooperating with an adoption home study.~~

26 ~~(C) Being designated by the court or the licensed adoption~~
27 ~~agency as the adoptive family.~~

28 ~~(D) Requesting de facto parent status.~~

29 ~~(E) Signing an adoptive placement agreement.~~

30 ~~(F) Engaging in discussions regarding a postadoption contact~~
31 ~~agreement.~~

32 ~~(G) Working to overcome any impediments that have been~~
33 ~~identified by the State Department of Social Services and the~~
34 ~~licensed adoption agency.~~

35 ~~(H) Attending classes required of prospective adoptive parents.~~

36 ~~(3) Prior to a change in placement and as soon as possible after~~
37 ~~a decision is made to remove a child from the home of a designated~~
38 ~~prospective adoptive parent, the agency shall notify the court, the~~
39 ~~designated prospective adoptive parent or the current caretaker, if~~
40 ~~that caretaker would have met the threshold criteria to be~~

1 designated as a prospective adoptive parent pursuant to paragraph
2 (1) on the date of service of this notice, the child's attorney, and
3 the child, if the child is 10 years of age or older, of the proposal
4 in the manner described in Section 16010.6.

5 (A) Within five court days or seven calendar days, whichever
6 is longer, of the date of notification, the child, the child's attorney,
7 or the designated prospective adoptive parent may file a petition
8 with the court objecting to the proposal to remove the child, or the
9 court, upon its own motion, may set a hearing regarding the
10 proposal. The court may, for good cause, extend the filing period.
11 A caretaker who would have met the threshold criteria to be
12 designated as a prospective adoptive parent pursuant to paragraph
13 (1) on the date of service of the notice of proposed removal of the
14 child may file, together with the petition under this subparagraph,
15 a petition for an order designating the caretaker as a prospective
16 adoptive parent for purposes of this subdivision.

17 (B) A hearing ordered pursuant to this paragraph shall be held
18 as soon as possible and not later than five court days after the
19 petition is filed with the court or the court sets a hearing upon its
20 own motion, unless the court for good cause is unable to set the
21 matter for hearing five court days after the petition is filed, in
22 which case the court shall set the matter for hearing as soon as
23 possible. At the hearing, the court shall determine whether the
24 caretaker has met the threshold criteria to be designated as a
25 prospective adoptive parent pursuant to paragraph (1), and whether
26 the proposed removal of the child from the home of the designated
27 prospective adoptive parent is in the child's best interest, and the
28 child may not be removed from the home of the designated
29 prospective adoptive parent unless the court finds that removal is
30 in the child's best interest. If the court determines that the caretaker
31 did not meet the threshold criteria to be designated as a prospective
32 adoptive parent on the date of service of the notice of proposed
33 removal of the child, the petition objecting to the proposed removal
34 filed by the caretaker shall be dismissed. If the caretaker was
35 designated as a prospective adoptive parent prior to this hearing,
36 the court shall inquire into any progress made by the caretaker
37 towards the adoption of the child since the caretaker was designated
38 as a prospective adoptive parent.

39 (C) A determination by the court that the caretaker is a
40 designated prospective adoptive parent pursuant to paragraph (1)

1 or subparagraph (B) does not make the caretaker a party to the
2 dependency proceeding nor does it confer on the caretaker any
3 standing to object to any other action of the department or licensed
4 adoption agency, unless the caretaker has been declared a de facto
5 parent by the court prior to the notice of removal served pursuant
6 to paragraph (3).

7 (D) If a petition objecting to the proposal to remove the child
8 is not filed, and the court, upon its own motion, does not set a
9 hearing, the child may be removed from the home of the designated
10 prospective adoptive parent without a hearing.

11 (4) Notwithstanding paragraph (3), if the State Department of
12 Social Services or a licensed adoption agency determines that the
13 child must be removed from the home of the caretaker who is or
14 may be a designated prospective adoptive parent immediately, due
15 to a risk of physical or emotional harm, the agency may remove
16 the child from that home and is not required to provide notice prior
17 to the removal. However, as soon as possible and not longer than
18 two court days after the removal, the agency shall notify the court,
19 the caretaker who is or may be a designated prospective adoptive
20 parent, the child's attorney, and the child, if the child is 10 years
21 of age or older, of the removal. Within five court days or seven
22 calendar days, whichever is longer, of the date of notification of
23 the removal, the child, the child's attorney, or the caretaker who
24 is or may be a designated prospective adoptive parent may petition
25 for, or the court on its own motion may set, a noticed hearing
26 pursuant to paragraph (3). The court may, for good cause, extend
27 the filing period.

28 (5) Except as provided in subdivision (b) of Section 366.28, an
29 order by the court issued after a hearing pursuant to this subdivision
30 shall not be appealable.

31 (6) Nothing in this section shall preclude a county child
32 protective services agency from fully investigating and responding
33 to alleged abuse or neglect of a child pursuant to Section 11165.5
34 of the Penal Code.

35 (7) The Judicial Council shall prepare forms to facilitate the
36 filing of the petitions described in this subdivision, which shall
37 become effective on January 1, 2006.

38 (o) The implementation and operation of the amendments to
39 paragraph (3) of subdivision (c) and subparagraph (A) of paragraph
40 (4) of subdivision (c) enacted at the 2005-06 Regular Session shall

1 ~~be subject to appropriation through the budget process and by~~
2 ~~phase, as provided in Section 366.35.~~

3 ~~SEC. 10. Section 366.3 of the Welfare and Institutions Code~~
4 ~~is amended to read:~~

5 ~~366.3. (a) If a juvenile court orders a permanent plan of~~
6 ~~adoption, tribal customary adoption, or legal guardianship pursuant~~
7 ~~to Section 360 or 366.26, the court shall retain jurisdiction over~~
8 ~~the child until the child is adopted or the legal guardianship is~~
9 ~~established, except as provided for in Section 366.29. The status~~
10 ~~of the child shall be reviewed every six months to ensure that the~~
11 ~~adoption or legal guardianship is completed as expeditiously as~~
12 ~~possible. When the adoption of the child has been granted, or the~~
13 ~~tribal customary adoption order has been filed with the court~~
14 ~~pursuant to Section 366.26, the court shall terminate its jurisdiction~~
15 ~~over the child. Following establishment of a legal guardianship,~~
16 ~~the court may continue jurisdiction over the child as a dependent~~
17 ~~child of the juvenile court or may terminate its dependency~~
18 ~~jurisdiction and retain jurisdiction over the child as a ward of the~~
19 ~~legal guardianship, as authorized by Section 366.4. If, however, a~~
20 ~~relative of the child is appointed the legal guardian of the child~~
21 ~~and the child has been placed with the relative for at least 12~~
22 ~~months, the court shall, except if the relative guardian objects, or~~
23 ~~upon a finding of exceptional circumstances, terminate its~~
24 ~~dependency jurisdiction and retain jurisdiction over the child as a~~
25 ~~ward of the guardianship, as authorized by Section 366.4.~~
26 ~~Following a termination of parental rights, the parent or parents~~
27 ~~shall not be a party to, or receive notice of, any subsequent~~
28 ~~proceedings regarding the child.~~

29 ~~(b) If the court has dismissed dependency jurisdiction following~~
30 ~~the establishment of a legal guardianship, or no dependency~~
31 ~~jurisdiction attached because of the granting of a legal guardianship~~
32 ~~pursuant to Section 360, and the legal guardianship is subsequently~~
33 ~~revoked or otherwise terminated, the county department of social~~
34 ~~services or welfare department shall notify the juvenile court of~~
35 ~~this fact. The court may vacate its previous order dismissing~~
36 ~~dependency jurisdiction over the child.~~

37 ~~Notwithstanding Section 1601 of the Probate Code, the~~
38 ~~proceedings to terminate a legal guardianship that has been granted~~
39 ~~pursuant to Section 360 or 366.26 shall be held either in the~~
40 ~~juvenile court that retains jurisdiction over the guardianship as~~

1 authorized by Section 366.4 or the juvenile court in the county
2 where the guardian and child currently reside, based on the best
3 interests of the child, unless the termination is due to the
4 emancipation or adoption of the child. The juvenile court having
5 jurisdiction over the guardianship shall receive notice from the
6 court in which the petition is filed within five calendar days of the
7 filing. Prior to the hearing on a petition to terminate legal
8 guardianship pursuant to this subdivision, the court shall order the
9 county department of social services or welfare department having
10 jurisdiction or jointly with the county department where the
11 guardian and child currently reside to prepare a report, for the
12 court's consideration, that shall include an evaluation of whether
13 the child could safely remain in, or be returned to, the legal
14 guardian's home, without terminating the legal guardianship, if
15 services were provided to the child or legal guardian. If applicable,
16 the report shall also identify recommended family maintenance or
17 reunification services to maintain the legal guardianship and set
18 forth a plan for providing those services. If the petition to terminate
19 legal guardianship is granted, either juvenile court may resume
20 dependency jurisdiction over the child, and may order the county
21 department of social services or welfare department to develop a
22 new permanent plan, which shall be presented to the court within
23 60 days of the termination. If no dependency jurisdiction has
24 attached, the social worker shall make any investigation he or she
25 deems necessary to determine whether the child may be within the
26 jurisdiction of the juvenile court, as provided in Section 328.

27 Unless the parental rights of the child's parent or parents have
28 been terminated, they shall be notified that the legal guardianship
29 has been revoked or terminated and shall be entitled to participate
30 in the new permanency planning hearing. The court shall try to
31 place the child in another permanent placement. At the hearing,
32 the parents may be considered as custodians but the child shall not
33 be returned to the parent or parents unless they prove, by a
34 preponderance of the evidence, that reunification is the best
35 alternative for the child. The court may, if it is in the best interests
36 of the child, order that reunification services again be provided to
37 the parent or parents.

38 (c) If, following the establishment of a legal guardianship, the
39 county welfare department becomes aware of changed
40 circumstances that indicate adoption or, for an Indian child, tribal

1 customary adoption, may be an appropriate plan for the child, the
2 department shall so notify the court. The court may vacate its
3 previous order dismissing dependency jurisdiction over the child
4 and order that a hearing be held pursuant to Section 366.26 to
5 determine whether adoption or continued legal guardianship is the
6 most appropriate plan for the child. The hearing shall be held no
7 later than 120 days from the date of the order. If the court orders
8 that a hearing shall be held pursuant to Section 366.26, the court
9 shall direct the agency supervising the child and the licensed county
10 adoption agency, or the State Department of Social Services if it
11 is acting as an adoption agency in counties that are not served by
12 a county adoption agency, to prepare an assessment under
13 subdivision (b) of Section 366.22.

14 (d) If the child is in a placement other than the home of a legal
15 guardian and jurisdiction has not been dismissed, the status of the
16 child shall be reviewed at least every six months. The review of
17 the status of a child for whom the court has ordered parental rights
18 terminated and who has been ordered placed for adoption shall be
19 conducted by the court. The review of the status of a child for
20 whom the court has not ordered parental rights terminated and
21 who has not been ordered placed for adoption may be conducted
22 by the court or an appropriate local agency. The court shall conduct
23 the review under the following circumstances:

24 (1) Upon the request of the child's parents or legal guardians.

25 (2) Upon the request of the child.

26 (3) It has been 12 months since a hearing held pursuant to
27 Section 366.26 or an order that the child remain in long-term foster
28 care pursuant to Section 366.21, 366.22, 366.25, 366.26, or
29 subdivision (h):

30 (4) It has been 12 months since a review was conducted by the
31 court.

32 The court shall determine whether or not reasonable efforts to
33 make and finalize a permanent placement for the child have been
34 made.

35 (e) Except as provided in subdivision (g), at the review held
36 every six months pursuant to subdivision (d), the reviewing body
37 shall inquire about the progress being made to provide a permanent
38 home for the child, shall consider the safety of the child, and shall
39 determine all of the following:

1 ~~(1) The continuing necessity for, and appropriateness of, the~~
2 ~~placement.~~

3 ~~(2) Identification of individuals other than the child's siblings~~
4 ~~who are important to a child who is 10 years of age or older and~~
5 ~~has been in out-of-home placement for six months or longer, and~~
6 ~~actions necessary to maintain the child's relationship with those~~
7 ~~individuals, provided that those relationships are in the best interest~~
8 ~~of the child. The social worker shall ask every child who is 10~~
9 ~~years of age or older and who has been in out-of-home placement~~
10 ~~for six months or longer to identify individuals other than the~~
11 ~~child's siblings who are important to the child, and may ask any~~
12 ~~other child to provide that information, as appropriate. The social~~
13 ~~worker shall make efforts to identify other individuals who are~~
14 ~~important to the child, consistent with the child's best interests.~~

15 ~~(3) The continuing appropriateness and extent of compliance~~
16 ~~with the permanent plan for the child, including efforts to maintain~~
17 ~~relationships between a child who is 10 years of age or older and~~
18 ~~who has been in out-of-home placement for six months or longer~~
19 ~~and individuals who are important to the child and efforts to~~
20 ~~identify a prospective adoptive parent or legal guardian, including,~~
21 ~~but not limited to, child-specific recruitment efforts and listing on~~
22 ~~an adoption exchange.~~

23 ~~(4) The extent of the agency's compliance with the child welfare~~
24 ~~services case plan in making reasonable efforts either to return the~~
25 ~~child to the safe home of the parent or to complete whatever steps~~
26 ~~are necessary to finalize the permanent placement of the child. If~~
27 ~~the reviewing body determines that a second period of reunification~~
28 ~~services is in the child's best interests, and that there is a significant~~
29 ~~likelihood of the child's return to a safe home due to changed~~
30 ~~circumstances of the parent, pursuant to subdivision (f), the specific~~
31 ~~reunification services required to effect the child's return to a safe~~
32 ~~home shall be described.~~

33 ~~(5) Whether there should be any limitation on the right of the~~
34 ~~parent or guardian to make educational decisions for the child.~~
35 ~~That limitation shall be specifically addressed in the court order~~
36 ~~and may not exceed what is necessary to protect the child. If the~~
37 ~~court specifically limits the right of the parent or guardian to make~~
38 ~~educational decisions for the child, the court shall at the same time~~
39 ~~appoint a responsible adult to make educational decisions for the~~
40 ~~child pursuant to Section 361.~~

1 ~~(6) The adequacy of services provided to the child. The court~~
2 ~~shall consider the progress in providing the information and~~
3 ~~documents to the child, as described in Section 391. The court~~
4 ~~shall also consider the need for, and progress in providing, the~~
5 ~~assistance and services described in paragraphs (3) and (4) of~~
6 ~~subdivision (b) of Section 391.~~

7 ~~(7) The extent of progress the parents or legal guardians have~~
8 ~~made toward alleviating or mitigating the causes necessitating~~
9 ~~placement in foster care.~~

10 ~~(8) The likely date by which the child may be returned to, and~~
11 ~~safely maintained in, the home, placed for adoption, legal~~
12 ~~guardianship, in another planned permanent living arrangement,~~
13 ~~or, for an Indian child, in consultation with the child's tribe, placed~~
14 ~~for tribal customary adoption.~~

15 ~~(9) Whether the child has any siblings under the court's~~
16 ~~jurisdiction, and, if any siblings exist, all of the following:~~

17 ~~(A) The nature of the relationship between the child and his or~~
18 ~~her siblings.~~

19 ~~(B) The appropriateness of developing or maintaining the sibling~~
20 ~~relationships pursuant to Section 16002.~~

21 ~~(C) If the siblings are not placed together in the same home,~~
22 ~~why the siblings are not placed together and what efforts are being~~
23 ~~made to place the siblings together, or why those efforts are not~~
24 ~~appropriate.~~

25 ~~(D) If the siblings are not placed together, the frequency and~~
26 ~~nature of the visits between siblings.~~

27 ~~(E) The impact of the sibling relationships on the child's~~
28 ~~placement and planning for legal permanence.~~

29 ~~The factors the court may consider as indicators of the nature of~~
30 ~~the child's sibling relationships include, but are not limited to,~~
31 ~~whether the siblings were raised together in the same home,~~
32 ~~whether the siblings have shared significant common experiences~~
33 ~~or have existing close and strong bonds, whether either sibling~~
34 ~~expresses a desire to visit or live with his or her sibling, as~~
35 ~~applicable, and whether ongoing contact is in the child's best~~
36 ~~emotional interests.~~

37 ~~(10) For a child who is 16 years of age or older, the services~~
38 ~~needed to assist the child to make the transition from foster care~~
39 ~~to independent living.~~

1 The reviewing body shall determine whether or not reasonable
2 efforts to make and finalize a permanent placement for the child
3 have been made.

4 Each licensed foster family agency shall submit reports for each
5 child in its care, custody, and control to the court concerning the
6 continuing appropriateness and extent of compliance with the
7 child's permanent plan, the extent of compliance with the case
8 plan, and the type and adequacy of services provided to the child.

9 (f) Unless their parental rights have been permanently
10 terminated, the parent or parents of the child are entitled to receive
11 notice of, and participate in, those hearings. It shall be presumed
12 that continued care is in the best interests of the child, unless the
13 parent or parents prove, by a preponderance of the evidence, that
14 further efforts at reunification are the best alternative for the child.
15 In those cases, the court may order that further reunification
16 services to return the child to a safe home environment be provided
17 to the parent or parents up to a period of six months, and family
18 maintenance services, as needed for an additional six months in
19 order to return the child to a safe home environment.

20 (g) At the review conducted by the court and held at least every
21 six months, regarding a child for whom the court has ordered
22 parental rights terminated and who has been ordered placed for
23 adoption, or, for an Indian child for whom parental rights are not
24 being terminated and a tribal customary adoption is being
25 considered, the county welfare department shall prepare and present
26 to the court a report describing the following:

27 (1) The child's present placement.

28 (2) The child's current physical, mental, emotional, and
29 educational status.

30 (3) If the child has not been placed with a prospective adoptive
31 parent or guardian, identification of individuals, other than the
32 child's siblings, who are important to the child and actions
33 necessary to maintain the child's relationship with those
34 individuals, provided that those relationships are in the best interest
35 of the child. The agency shall ask every child who is 10 years of
36 age or older to identify any individuals who are important to him
37 or her, consistent with the child's best interest, and may ask any
38 child who is younger than 10 years of age to provide that
39 information as appropriate. The agency shall make efforts to
40 identify other individuals who are important to the child.

1 ~~(4) Whether the child has been placed with a prospective~~
2 ~~adoptive parent or parents.~~

3 ~~(5) Whether an adoptive placement agreement has been signed~~
4 ~~and filed.~~

5 ~~(6) If the child has not been placed with a prospective adoptive~~
6 ~~parent or parents, the efforts made to identify an appropriate~~
7 ~~prospective adoptive parent or legal guardian, including, but not~~
8 ~~limited to, child-specific recruitment efforts and listing on an~~
9 ~~adoption exchange.~~

10 ~~(7) Whether the final adoption order should include provisions~~
11 ~~for postadoptive sibling contact pursuant to Section 366.29.~~

12 ~~(8) The progress of the search for an adoptive placement if one~~
13 ~~has not been identified.~~

14 ~~(9) Any impediments to the adoption or the adoptive placement.~~

15 ~~(10) The anticipated date by which the child will be adopted or~~
16 ~~placed in an adoptive home.~~

17 ~~(11) The anticipated date by which an adoptive placement~~
18 ~~agreement will be signed.~~

19 ~~(12) Recommendations for court orders that will assist in the~~
20 ~~placement of the child for adoption or in the finalization of the~~
21 ~~adoption.~~

22 ~~The court shall determine whether or not reasonable efforts to~~
23 ~~make and finalize a permanent placement for the child have been~~
24 ~~made.~~

25 ~~The court shall make appropriate orders to protect the stability~~
26 ~~of the child and to facilitate and expedite the permanent placement~~
27 ~~and adoption of the child.~~

28 ~~(h) At the review held pursuant to subdivision (d) for a child in~~
29 ~~long-term foster care, the court shall consider all permanency~~
30 ~~planning options for the child including whether the child should~~
31 ~~be returned to the home of the parent, placed for adoption, or, for~~
32 ~~an Indian child, in consultation with the child's tribe, placed for~~
33 ~~tribal customary adoption, or appointed a legal guardian, or, if~~
34 ~~compelling reasons exist for finding that none of the foregoing~~
35 ~~options are in the best interest of the child, whether the child should~~
36 ~~be placed in another planned permanent living arrangement. The~~
37 ~~court shall order that a hearing be held pursuant to Section 366.26,~~
38 ~~unless it determines by clear and convincing evidence that there~~
39 ~~is a compelling reason for determining that a hearing held pursuant~~
40 ~~to Section 366.26 is not in the best interest of the child because~~

1 the child is being returned to the home of the parent, the child is
2 not a proper subject for adoption, or no one is willing to accept
3 legal guardianship. If the licensed county adoption agency, or the
4 department when it is acting as an adoption agency in counties
5 that are not served by a county adoption agency, has determined
6 it is unlikely that the child will be adopted or one of the conditions
7 described in paragraph (1) of subdivision (c) of Section 366.26
8 applies, that fact shall constitute a compelling reason for purposes
9 of this subdivision. Only upon that determination may the court
10 order that the child remain in foster care, without holding a hearing
11 pursuant to Section 366.26.

12 (i) If, as authorized by subdivision (h), the court orders a hearing
13 pursuant to Section 366.26, the court shall direct the agency
14 supervising the child and the licensed county adoption agency, or
15 the State Department of Social Services when it is acting as an
16 adoption agency in counties that are not served by a county
17 adoption agency, to prepare an assessment as provided for in
18 subdivision (i) of Section 366.21 or subdivision (b) of Section
19 366.22. A hearing held pursuant to Section 366.26 shall be held
20 no later than 120 days from the date of the 12-month review at
21 which it is ordered, and at that hearing the court shall determine
22 whether adoption, tribal customary adoption, legal guardianship,
23 or long-term foster care is the most appropriate plan for the child.

24 (j) The implementation and operation of the amendments to
25 subdivision (e) enacted at the 2005–06 Regular Session shall be
26 subject to appropriation through the budget process and by phase,
27 as provided in Section 366.35.

28 (k) The reviews conducted pursuant to subdivision (a) or (d)
29 may be conducted earlier than every six months if the court
30 determines that an earlier review is in the best interests of the child
31 or as court rules prescribe.

32 SEC. 11. Section 16120 of the Welfare and Institutions Code
33 is amended to read:

34 16120. A child shall be eligible for Adoption Assistance
35 Program benefits if all of the conditions specified in subdivisions
36 (a) through (g), inclusive, are met or if the conditions specified in
37 subdivision (h) are met.

38 (a) The child has at least one of the following characteristics
39 that are barriers to his or her adoption:

1 ~~(1) Adoptive placement without financial assistance is unlikely~~
2 ~~because of membership in a sibling group that should remain intact~~
3 ~~or by virtue of race, ethnicity, color, language, age of three years~~
4 ~~or older, or parental background of a medical or behavioral nature~~
5 ~~that can be determined to adversely affect the development of the~~
6 ~~child.~~

7 ~~(2) Adoptive placement without financial assistance is unlikely~~
8 ~~because the child has a mental, physical, emotional, or medical~~
9 ~~disability that has been certified by a licensed professional~~
10 ~~competent to make an assessment and operating within the scope~~
11 ~~of his or her profession. This paragraph shall also apply to children~~
12 ~~with a developmental disability as defined in subdivision (a) of~~
13 ~~Section 4512, including those determined to require out-of-home~~
14 ~~nonmedical care as described in Section 11464.~~

15 ~~(b) The need for adoption subsidy is evidenced by an~~
16 ~~unsuccessful search for an adoptive home to take the child without~~
17 ~~financial assistance, as documented in the case file of the~~
18 ~~prospective adoptive child. The requirement for this search shall~~
19 ~~be waived when it would be against the best interest of the child~~
20 ~~because of the existence of significant emotional ties with~~
21 ~~prospective adoptive parents while in the care of these persons as~~
22 ~~a foster child.~~

23 ~~(c) The child meets either of the following criteria:~~

24 ~~(1) At the time a petition for an agency adoption, as defined in~~
25 ~~Section 8506 of the Family Code, or an independent adoption, as~~
26 ~~defined in Section 8524 of the Family Code, is filed, the child has~~
27 ~~met the requirements to receive federal supplemental security~~
28 ~~income benefits pursuant to Subchapter 16 (commencing with~~
29 ~~Section 1381) of Chapter 7 of Title 42 of the United States Code,~~
30 ~~as determined and documented by the federal Social Security~~
31 ~~Administration.~~

32 ~~(2) The child is the subject of an agency adoption as defined in~~
33 ~~Section 8506 of the Family Code and was any of the following:~~

34 ~~(A) Under the supervision of a county welfare department as~~
35 ~~the subject of a legal guardianship or juvenile court dependency.~~

36 ~~(B) Relinquished for adoption to a licensed California private~~
37 ~~or public adoption agency, or the department, and would have~~
38 ~~otherwise been at risk of dependency as certified by the responsible~~
39 ~~public child welfare agency.~~

1 ~~(C) Committed to the care of the department pursuant to Section~~
2 ~~8805 or 8918 of the Family Code.~~

3 ~~(3) The child is an Indian child and the subject of an order of~~
4 ~~adoption based on tribal customary adoption of an Indian child,~~
5 ~~as described in Section 366.24.~~

6 ~~(d) The child is under 18 years of age, or under 21 years of age~~
7 ~~and has a mental or physical handicap that warrants the~~
8 ~~continuation of assistance.~~

9 ~~(e) The adoptive family is responsible for the child pursuant to~~
10 ~~the terms of an adoptive placement agreement or a final decree of~~
11 ~~adoption and has signed an adoption assistance agreement.~~

12 ~~(f) The adoptive family is legally responsible for the support of~~
13 ~~the child and the child is receiving support from the adoptive~~
14 ~~parent.~~

15 ~~(g) The department or the county responsible for determining~~
16 ~~the child's Adoption Assistance Program eligibility status and for~~
17 ~~providing financial aid, and the prospective adoptive parent, prior~~
18 ~~to or at the time the adoption decree is issued by the court, have~~
19 ~~signed an adoption assistance agreement that stipulates the need~~
20 ~~for, and the amount of, Adoption Assistance Program benefits.~~

21 ~~(h) A child shall be eligible for Adoption Assistance Program~~
22 ~~benefits if the child received Adoption Assistance Program benefits~~
23 ~~with respect to a prior adoption and the child is again available for~~
24 ~~adoption because the prior adoption was dissolved and the parental~~
25 ~~rights of the adoptive parents were terminated or because the~~
26 ~~child's adoptive parents died.~~

27 ~~SEC. 12. Section 16508 of the Welfare and Institutions Code~~
28 ~~is amended to read:~~

29 ~~16508. Permanent placement services shall be provided or~~
30 ~~arranged for by county welfare department staff for children who~~
31 ~~cannot safely live with their parents and are not likely to return to~~
32 ~~their own homes. Permanent placement services shall be available~~
33 ~~without regard to income to the following children:~~

34 ~~(a) Children judged dependent under Section 300 where a review~~
35 ~~has determined that reunification, adoption, tribal customary~~
36 ~~adoption, or guardianship is inappropriate.~~

37 ~~(b) Recipients of public assistance under nonfederally funded~~
38 ~~Aid to Families with Dependent Children programs who are wards~~
39 ~~of a legal guardian where a review has determined that reunification~~
40 ~~or adoption is inappropriate.~~

1 ~~SEC. 13.—Section 16508.1 of the Welfare and Institutions Code~~
2 ~~is amended to read:~~

3 ~~16508.1. (a) For every child who is in foster care, or who~~
4 ~~enters foster care, on or after January 1, 1999, and has been in~~
5 ~~foster care for 15 of the most recent 22 months, the social worker~~
6 ~~shall submit to the court a recommendation that the court set a~~
7 ~~hearing pursuant to Section 366.26 for the purpose of terminating~~
8 ~~parental rights. The social worker shall concurrently initiate and~~
9 ~~describe a plan to identify, recruit, process and approve a qualified~~
10 ~~family for adoption of the child.~~

11 ~~(b) The social worker is not required to submit the~~
12 ~~recommendation as described in subdivision (a) if any of the~~
13 ~~following applies:~~

14 ~~(1) The case plan for the child has documented a compelling~~
15 ~~reason or reasons why it is unlikely that the child will be adopted,~~
16 ~~as determined by the department when it is acting as an adoption~~
17 ~~agency or by the licensed adoption agency, and therefore~~
18 ~~termination of parental rights would not be in the best interest of~~
19 ~~the child or that one of the conditions set forth in paragraph (1) of~~
20 ~~subdivision (c) of Section 366.26 applies.~~

21 ~~(2) A hearing under Section 366.26 is already set.~~

22 ~~(3) The court has found at the previous hearing under Section~~
23 ~~366.21 that there is a substantial probability that the child will be~~
24 ~~returned to the child's home within the extended period of time~~
25 ~~permitted.~~

26 ~~(4) The court has found at the previous hearing under Section~~
27 ~~366.21 that reasonable reunification services have not been offered~~
28 ~~or provided.~~

29 ~~(5) The court has found at each and every hearing at which the~~
30 ~~court was required to consider reasonable efforts or services that~~
31 ~~reasonable efforts were not made or that reasonable services were~~
32 ~~not offered or provided.~~

33 ~~(6) The incarceration or institutionalization of the parent or~~
34 ~~parents, or the court-ordered participation of the parent or parents~~
35 ~~in a residential substance abuse treatment program, constitutes a~~
36 ~~significant factor in the child's placement in foster care for a period~~
37 ~~of 15 of the most recent 22 months, and termination of parental~~
38 ~~rights is not in the child's best interests, considering factors such~~
39 ~~as the age of the child, the degree of parent and child bonding, the~~

1 length of the sentence, and the nature of the treatment and the
2 nature of the crime or illness.

3 ~~(7) Tribal customary adoption is recommended.~~

4 ~~(c) A recommendation to the court pursuant to subdivision (a)~~
5 ~~shall not be made if the social worker documents in the case record~~
6 ~~a compelling reason why a hearing pursuant to Section 366.26 is~~
7 ~~not in the best interest of the child, or that reasonable efforts to~~
8 ~~safely return the child home are continuing consistent with the~~
9 ~~time period provided for in paragraph (1) of subdivision (g) of~~
10 ~~Section 366.21.~~

11 ~~(d) Beginning January 1, 1999, the county welfare department~~
12 ~~shall implement a procedure for reviewing the application of this~~
13 ~~section to the case plans of all children who have been in foster~~
14 ~~care for 15 out of the most recent 22 months. The review shall~~
15 ~~proceed within the following timeframes:~~

16 ~~(1) By July 1, 1999, one-third of the children shall have been~~
17 ~~reviewed, giving priority to children who have been in foster care~~
18 ~~the greatest length of time.~~

19 ~~(2) By January 1, 2000, at least two-thirds of the children shall~~
20 ~~have been reviewed.~~

21 ~~(3) By July 1, 2000, all children shall have been reviewed.~~

22 ~~(e) For purposes of this section, a child shall be considered to~~
23 ~~have entered foster care on the earlier of the date of the~~
24 ~~jurisdictional hearing held pursuant to Section 356 or the date that~~
25 ~~is 60 days after the date on which the child was initially removed~~
26 ~~from the home of his or her parent or guardian.~~

27 ~~SEC. 14. (a) Sections 1 to 13, inclusive, of this act shall~~
28 ~~become operative on July 1, 2010.~~

29 ~~(b) The Judicial Council shall adopt rules of court and necessary~~
30 ~~forms required to implement tribal customary adoption as a~~
31 ~~permanent plan for dependent Indian children before July 1, 2010.~~

32 ~~SEC. 15. If the Commission on State Mandates determines~~
33 ~~that this act contains costs mandated by the state, reimbursement~~
34 ~~to local agencies and school districts for those costs shall be made~~
35 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
36 ~~4 of Title 2 of the Government Code.~~