

AMENDED IN SENATE AUGUST 19, 2009

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 coauthors: Assembly Members Coto and Lieu)
(Principal coauthors: Senators Ducheny and Florez)

February 27, 2009

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) *This bill would permit the Department of Social Services to adopt emergency regulations to implement and administer the provisions of this bill.*

(5)

(6) 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:

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

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

(b) 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. 2. Section 294 of the ~~Family Code~~ *Welfare and Institutions Code* is amended 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.

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

(6) All counsel of record.

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

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

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

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

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

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

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

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

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

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

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

30 (2) The right to appear.

31 (3) The parents' right to counsel.

32 (4) The nature of the proceedings.

33 (5) The recommendation of the supervising agency.

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

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

39 (1) If the parent is present at the hearing at which the court
40 schedules a hearing pursuant to Section 366.26, the court shall

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

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

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

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

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

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

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

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

1 notice is to the attorney of record or by publication, the court shall
2 also order that notice be given to the grandparents of the child, if
3 their identities and addresses are known, by first-class mail.

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

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

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

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

1 and place stated in the citation. Publication shall be made once a
2 week for four consecutive weeks.

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

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

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

12 (j) Notwithstanding subdivision (a), if the attorney of record is
13 present at the time the court schedules a hearing pursuant to Section
14 366.26, no further notice is required, except as required by
15 subparagraph (A) of paragraph (7) of subdivision (f).

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

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

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

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

27 294. The social worker or probation officer shall give notice
28 of a selection and implementation hearing held pursuant to Section
29 366.26 in the following manner:

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

31 (1) The mother.

32 (2) The fathers, presumed and alleged.

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

34 (4) Any known sibling of the child who is the subject of the
35 hearing if that sibling either is the subject of a dependency
36 proceeding or has been adjudged to be a dependent child of the
37 juvenile court. If the sibling is 10 years of age or older, the sibling,
38 the sibling's caregiver, and the sibling's attorney. If the sibling is
39 under 10 years of age, the sibling's caregiver and the sibling's

1 attorney. However, notice is not required to be given to any sibling
2 whose matter is calendared in the same court on the same day.

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

5 (6) All counsel of record.

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

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

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

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

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

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

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

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

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

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

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

3 (2) The right to appear.

4 (3) The parents' right to counsel.

5 (4) The nature of the proceedings.

6 (5) The recommendation of the supervising agency.

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

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

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

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

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

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

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

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

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

1 before the hearing date, stating the name of the parent and
2 describing the efforts made to locate and serve the 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 in
10 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 court
20 shall order that notice be given to the grandparents of the child, if
21 their identities and addresses are known, by first-class mail.

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

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

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

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

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

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

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

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

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

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

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

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

36 358.1. Each social study or evaluation made by a social worker
37 or child advocate appointed by the court, required to be received
38 in evidence pursuant to Section 358, shall include, but not be
39 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 has
33 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 circumstances.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 ~~SEC. 6. Section 361.5 of the Welfare and Institutions Code is~~
14 ~~amended to read:~~

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

28 ~~(1) Family reunification services, when provided, shall be~~
29 ~~provided as follows:~~

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

37 ~~(B) For a child who, on the date of initial removal from the~~
38 ~~physical custody of his or her parent or guardian, was under three~~
39 ~~years of age, court-ordered services shall be provided during the~~
40 ~~period of time beginning with the dispositional hearing and ending~~

1 with the date of the hearing set pursuant to subdivision (e) of
2 Section 366.21, unless the child is returned to the home of the
3 parent or guardian.

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

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

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

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

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

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

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

~~(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~~

1 affidavit or by proof that a reasonably diligent search has failed
2 to locate the parent or guardian. The posting or publication of
3 notices is not required in that search.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement~~

1 of the child, the court shall order the social worker to provide
2 family reunification services in accordance with this subdivision.

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

23 (A) Maintaining contact between the parent and child through
24 collect telephone calls.

25 (B) Transportation services, where appropriate.

26 (C) Visitation services, where appropriate.

27 (D) Reasonable services to extended family members or foster
28 parents providing care for the child if the services are not
29 detrimental to the child.

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

37 (2) The presiding judge of the juvenile court of each county
38 may convene representatives of the county welfare department,
39 the sheriff's department, and other appropriate entities for the
40 purpose of developing and entering into protocols for ensuring the

1 notification, transportation, and presence of an incarcerated or
2 institutionalized parent at all court hearings involving proceedings
3 affecting the child pursuant to Section 2625 of the Penal Code.
4 The county welfare department shall utilize the prisoner locator
5 system developed by the Department of Corrections and
6 Rehabilitation to facilitate timely and effective notice of hearings
7 for incarcerated parents.

8 (3) Notwithstanding any other provision of law, if the
9 incarcerated parent is a woman seeking to participate in the
10 community treatment program operated by the Department of
11 Corrections and Rehabilitation pursuant to Chapter 4.8
12 (commencing with Section 1174) of Title 7 of Part 2 of, Chapter
13 4 (commencing with Section 3410) of Title 2 of Part 3 of, the Penal
14 Code, the court shall determine whether the parent's participation
15 in a program is in the child's best interest and whether it is suitable
16 to meet the needs of the parent and child.

17 (f) If the court, pursuant to paragraph (2), (3), (4), (5), (6), (7),
18 (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) or
19 paragraph (1) of subdivision (c), does not order reunification
20 services, it shall, at the dispositional hearing, that shall include a
21 permanency hearing, determine if a hearing under Section 366.26
22 shall be set in order to determine whether adoption, guardianship,
23 or long-term foster care, or, in the case of an Indian child, in
24 consultation with the child's tribe, tribal customary adoption, is
25 the most appropriate plan for the child, and shall consider in-state
26 and out-of-state placement options. If the court so determines, it
27 shall conduct the hearing pursuant to Section 366.26 within 120
28 days after the dispositional hearing. However, the court shall not
29 schedule a hearing so long as the other parent is being provided
30 reunification services pursuant to subdivision (a). The court may
31 continue to permit the parent to visit the child unless it finds that
32 visitation would be detrimental to the child.

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

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

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

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

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

29 ~~(E) The relationship of the child to any identified prospective~~
30 ~~adoptive parent or guardian, including a prospective tribal~~
31 ~~customary adoptive parent, 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 ~~(G) In the case of an Indian child, in addition to subparagraphs~~
40 ~~(A) to (F), inclusive, an assessment of the likelihood that the child~~

1 will be adopted, when, in consultation with the child's tribe, a
2 customary tribal adoption, as defined in Section 366.24, is
3 recommended. If tribal customary adoption is recommended, the
4 assessment shall include an analysis of both of the following:

5 (i) Whether tribal customary adoption would or would not be
6 detrimental to the Indian child and the reasons for reaching that
7 conclusion.

8 (ii) Whether the Indian child cannot or should not be returned
9 to the home of the Indian parent or Indian custodian and the reasons
10 for reaching that conclusion.

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

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

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

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

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

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

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

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

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

39 (i) The court shall read into the record the basis for a finding of
40 severe sexual abuse or the infliction of severe physical harm under

paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the child.

(j) 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. 7. Section 361.5 is added to the Welfare and Institutions Code, to read:

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

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

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

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

(C) For the purpose of placing and maintaining a sibling group together in a permanent home should reunification efforts fail, for

1 a child in a sibling group whose members were removed from
2 parental custody at the same time, and in which one member of
3 the sibling group was under three years of age on the date of initial
4 removal from the physical custody of his or her parent or guardian,
5 court-ordered services to some or all of the sibling group may be
6 limited to a period of six months from the date the child entered
7 foster care. For the purposes of this paragraph, “a sibling group”
8 shall mean two or more children who are related to each other as
9 full or half siblings.

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

15 Any motion to terminate court-ordered reunification services
16 prior to the hearing set pursuant to subdivision (f) of Section 366.21
17 for a child described by paragraph (1), or within six months of the
18 initial dispositional hearing for a child described by paragraph (2)
19 or this paragraph, shall be made pursuant to the requirements set
20 forth in subdivision (c) of Section 388.

21 (2) Notwithstanding subparagraphs (A), (B), and (C) of
22 paragraph (1), court-ordered services may be extended up to a
23 maximum time period not to exceed 18 months after the date the
24 child was originally removed from physical custody of his or her
25 parent or guardian if it can be shown, at the hearing held pursuant
26 to subdivision (f) of Section 366.21, that the permanent plan for
27 the child is that he or she will be returned and safely maintained
28 in the home within the extended time period. The court shall extend
29 the time period only if it finds that there is a substantial probability
30 that the child will be returned to the physical custody of his or her
31 parent or guardian within the extended time period or that
32 reasonable services have not been provided to the parent or
33 guardian. In determining whether court-ordered services may be
34 extended, the court shall consider the special circumstances of an
35 incarcerated or institutionalized parent or parents, or parent or
36 parents court-ordered to a residential substance abuse treatment
37 program, including, but not limited to, barriers to the parent’s or
38 guardian’s access to services and ability to maintain contact with
39 his or her child. The court shall also consider, among other factors,
40 good faith efforts that the parent or guardian has made to maintain

1 contact with the child. If the court extends the time period, the
2 court shall specify the factual basis for its conclusion that there is
3 a substantial probability that the child will be returned to the
4 physical custody of his or her parent or guardian within the
5 extended time period. The court also shall make findings pursuant
6 to subdivision (a) of Section 366 and subdivision (e) of Section
7 358.1.

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

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

36 ~~(3) Notwithstanding paragraph (2), court-ordered services may~~
37 ~~be extended up to a maximum time period not to exceed 24 months~~
38 ~~after the date the child was originally removed from physical~~
39 ~~custody of his or her parent or guardian if it is shown, at the hearing~~
40 ~~held pursuant to subdivision (b) of Section 366.22, that the~~

1 permanent plan for the child is that he or she will be returned and
2 safely maintained in the home within the extended time period.
3 The court shall extend the time period only if it finds that it is in
4 the child's best interest to have the time period extended and that
5 there is a substantial probability that the child will be returned to
6 the physical custody of his or her parent or guardian who is
7 described in subdivision (b) of Section 366.22 within the extended
8 time period, or that reasonable services have not been provided to
9 the parent or guardian. If the court extends the time period, the
10 court shall specify the factual basis for its conclusion that there is
11 a substantial probability that the child will be returned to the
12 physical custody of his or her parent or guardian within the
13 extended time period. The court also shall make findings pursuant
14 to subdivision (a) of Section 366 and subdivision (e) of Section
15 358.1.

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

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

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

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

39 (2) That the parent or guardian is suffering from a mental
40 disability that is described in Chapter 2 (commencing with Section

1 7820) of Part 4 of Division 12 of the Family Code and that renders
2 him or her incapable of utilizing those services.

3 ~~(3) That the child or a sibling of the child has been previously~~
4 ~~adjudicated a dependent pursuant to any subdivision of Section~~
5 ~~300 as a result of physical or sexual abuse, that following that~~
6 ~~adjudication the child had been removed from the custody of his~~
7 ~~or her parent or guardian pursuant to Section 361, that the child~~
8 ~~has been returned to the custody of the parent or guardian from~~
9 ~~whom the child had been taken originally, and that the child is~~
10 ~~being removed pursuant to Section 361, due to additional physical~~
11 ~~or sexual abuse.~~

12 ~~(4) That the parent or guardian of the child has caused the death~~
13 ~~of another child through abuse or neglect.~~

14 ~~(5) That the child was brought within the jurisdiction of the~~
15 ~~court under subdivision (e) of Section 300 because of the conduct~~
16 ~~of that parent or guardian.~~

17 ~~(6) That the child has been adjudicated a dependent pursuant~~
18 ~~to any subdivision of Section 300 as a result of severe sexual abuse~~
19 ~~or the infliction of severe physical harm to the child, a sibling, or~~
20 ~~a half sibling by a parent or guardian, as defined in this subdivision;~~
21 ~~and the court makes a factual finding that it would not benefit the~~
22 ~~child to pursue reunification services with the offending parent or~~
23 ~~guardian.~~

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

36 ~~A finding of the infliction of severe physical harm, for the~~
37 ~~purposes of this subdivision, may be based on, but is not limited~~
38 ~~to, deliberate and serious injury inflicted to or on a child's body~~
39 ~~or the body of a sibling or half sibling of the child by an act or~~
40 ~~omission of the parent or guardian, or of another individual or~~

1 animal with the consent of the parent or guardian; deliberate and
2 torturous confinement of the child, sibling, or half sibling in a
3 closed space; or any other torturous act or omission that would be
4 reasonably understood to cause serious emotional damage.

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

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

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

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

36 (11) That the parental rights of a parent over any sibling or half
37 sibling of the child had been permanently severed, and this parent
38 is the same parent described in subdivision (a), and that, according
39 to the findings of the court, this parent has not subsequently made

1 a reasonable effort to treat the problems that led to removal of the
2 sibling or half sibling of that child from the parent.

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

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

15 (14) That the parent or guardian of the child has advised the
16 court that he or she is not interested in receiving family
17 maintenance or family reunification services or having the child
18 returned to or placed in his or her custody and does not wish to
19 receive family maintenance or reunification services.

20 The parent or guardian shall be represented by counsel and shall
21 execute a waiver of services form to be adopted by the Judicial
22 Council. The court shall advise the parent or guardian of any right
23 to services and of the possible consequences of a waiver of
24 services, including the termination of parental rights and placement
25 of the child for adoption. The court shall not accept the waiver of
26 services unless it states on the record its finding that the parent or
27 guardian has knowingly and intelligently waived the right to
28 services.

29 (15) That the parent or guardian has on one or more occasions
30 willfully abducted the child or child's sibling or half sibling from
31 his or her placement and refused to disclose the child's or child's
32 sibling's or half sibling's whereabouts, refused to return physical
33 custody of the child or child's sibling or half sibling to his or her
34 placement, or refused to return physical custody of the child or
35 child's sibling or half sibling to the social worker.

36 (c) In deciding whether to order reunification in any case in
37 which this section applies, the court shall hold a dispositional
38 hearing. The social worker shall prepare a report that discusses
39 whether reunification services shall be provided. When it is alleged,
40 pursuant to paragraph (2) of subdivision (b), that the parent is

1 incapable of utilizing services due to mental disability, the court
2 shall order reunification services unless competent evidence from
3 mental health professionals establishes that, even with the provision
4 of services, the parent is unlikely to be capable of adequately caring
5 for the child within the time limits specified in subdivision (a).

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

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

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

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

38 (e) (1) If the parent or guardian is incarcerated or
39 institutionalized, the court shall order reasonable services unless
40 the court determines, by clear and convincing evidence, those

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

18 ~~(A) Maintaining contact between the parent and child through~~
19 ~~collect telephone calls.~~

20 ~~(B) Transportation services, where appropriate.~~

21 ~~(C) Visitation services, where appropriate.~~

22 ~~(D) Reasonable services to extended family members or foster~~
23 ~~parents providing care for the child if the services are not~~
24 ~~detrimental to the child.~~

25 ~~An incarcerated parent may be required to attend counseling,~~
26 ~~parenting classes, or vocational training programs as part of the~~
27 ~~reunification service plan if actual access to these services is~~
28 ~~provided. The social worker shall document in the child's case~~
29 ~~plan the particular barriers to an incarcerated or institutionalized~~
30 ~~parent's access to those court-mandated services and ability to~~
31 ~~maintain contact with his or her child.~~

32 ~~(2) The presiding judge of the juvenile court of each county~~
33 ~~may convene representatives of the county welfare department,~~
34 ~~the sheriff's department, and other appropriate entities for the~~
35 ~~purpose of developing and entering into protocols for ensuring the~~
36 ~~notification, transportation, and presence of an incarcerated or~~
37 ~~institutionalized parent at all court hearings involving proceedings~~
38 ~~affecting the child pursuant to Section 2625 of the Penal Code.~~
39 ~~The county welfare department shall utilize the prisoner locator~~
40 ~~system developed by the Department of Corrections and~~

1 Rehabilitation to facilitate timely and effective notice of hearings
2 for incarcerated parents.

3 ~~(3) Notwithstanding any other provision of law, if the~~
4 ~~incarcerated parent is a woman seeking to participate in the~~
5 ~~community treatment program operated by the Department of~~
6 ~~Corrections and Rehabilitation pursuant to Chapter 4.8~~
7 ~~(commencing with Section 1174) of Title 7 of Part 2 of, Chapter~~
8 ~~4 (commencing with Section 3410) of Title 2 of Part 3 of, the Penal~~
9 ~~Code, the court shall determine whether the parent's participation~~
10 ~~in a program is in the child's best interest and whether it is suitable~~
11 ~~to meet the needs of the parent and child.~~

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

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

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

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

1 ~~(C) An evaluation of the child's medical, developmental,~~
2 ~~scholastic, mental, and emotional status.~~

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

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

27 ~~(F) An analysis of the likelihood that the child will be adopted~~
28 ~~if parental rights are terminated.~~

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 ~~(h) In determining whether reunification services will benefit~~
40 ~~the child pursuant to paragraph (6) or (7) of subdivision (b), the~~

1 court shall consider any information it deems relevant, including
2 the following factors:

3 (1) ~~The specific act or omission comprising the severe sexual~~
4 ~~abuse or the severe physical harm inflicted on the child or the~~
5 ~~child's sibling or half sibling.~~

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

8 (3) ~~The severity of the emotional trauma suffered by the child~~
9 ~~or the child's sibling or half sibling.~~

10 (4) ~~Any history of abuse of other children by the offending~~
11 ~~parent or guardian.~~

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

15 (6) ~~Whether or not the child desires to be reunified with the~~
16 ~~offending parent or guardian.~~

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

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

24 SEC. 8. ~~Section 366.21 of the Welfare and Institutions Code~~
25 ~~is amended to read:~~

26 366.21. ~~(a) Every hearing conducted by the juvenile court~~
27 ~~reviewing the status of a dependent child shall be placed on the~~
28 ~~appearance calendar. The court shall advise all persons present at~~
29 ~~the hearing of the date of the future hearing and of their right to~~
30 ~~be present and represented by counsel.~~

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

33 (c) ~~At least 10 calendar days prior to the hearing, the social~~
34 ~~worker shall file a supplemental report with the court regarding~~
35 ~~the services provided or offered to the parent or legal guardian to~~
36 ~~enable him or her to assume custody and the efforts made to~~
37 ~~achieve legal permanence for the child if efforts to reunify fail,~~
38 ~~including, but not limited to, efforts to maintain relationships~~
39 ~~between a child who is 10 years of age or older and has been in~~
40 ~~out-of-home placement for six months or longer and individuals~~

1 who are important to the child, consistent with the child's best
2 interests; the progress made; and, where relevant, the prognosis
3 for return of the child to the physical custody of his or her parent
4 or legal guardian; and shall make his or her recommendation for
5 disposition. If the child is a member of a sibling group described
6 in subparagraph (C) of paragraph (1) of subdivision (a) of Section
7 361.5, the report and recommendation may also take into account
8 those factors described in subdivision (e) relating to the child's
9 sibling group. If the recommendation is not to return the child to
10 a parent or legal guardian, the report shall specify why the return
11 of the child would be detrimental to the child. The social worker
12 shall provide the parent or legal guardian, counsel for the child,
13 and any court-appointed child advocate with a copy of the report,
14 including his or her recommendation for disposition, at least 10
15 calendar days prior to the hearing. In the case of a child removed
16 from the physical custody of his or her parent or legal guardian,
17 the social worker shall, at least 10 calendar days prior to the
18 hearing, provide a summary of his or her recommendation for
19 disposition to any foster parents, relative caregivers, and certified
20 foster parents who have been approved for adoption 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, community care facility,
24 or foster family agency having the physical custody of the child.
25 The social worker shall include a copy of the Judicial Council
26 Caregiver Information Form (JV-290) with the summary of
27 recommendations to the child's foster parents, relative caregivers,
28 or foster parents approved for adoption, in the caregiver's primary
29 language when available, along with information on how to file
30 the form with the court.

31 (d) Prior to any hearing involving a child in the physical custody
32 of a community care facility or a foster family agency that may
33 result in the return of the child to the physical custody of his or
34 her parent or legal guardian, in adoption or the creation of a legal
35 guardianship, or, in the case of an Indian child, in consultation
36 with the child's tribe, tribal customary adoption, the facility or
37 agency shall file with the court a report, or a Judicial Council
38 Caregiver Information Form (JV-290), containing its
39 recommendation for disposition. Prior to the hearing involving a
40 child in the physical custody of a foster parent, a relative caregiver,

1 or a certified foster parent who has been approved for adoption by
2 the State Department of Social Services when it is acting as an
3 adoption agency or by a licensed adoption agency, the foster parent,
4 relative caregiver, or the certified foster parent who has been
5 approved for adoption by the State Department of Social Services
6 when it is acting as an adoption agency in counties that are not
7 served by a county adoption agency or by a licensed county
8 adoption agency, may file with the court a report containing his
9 or her recommendation for disposition. The court shall consider
10 the report and recommendation filed pursuant to this subdivision
11 prior to determining any disposition.

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

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

14 If the child was under three years of age on the date of the initial
15 removal, or is a member of a sibling group described in
16 subparagraph (C) of paragraph (1) of subdivision (a) of Section
17 361.5, and the court finds by clear and convincing evidence that
18 the parent failed to participate regularly and make substantive
19 progress in a court-ordered treatment plan, the court may schedule
20 a hearing pursuant to Section 366.26 within 120 days. If, however,
21 the court finds there is a substantial probability that the child, who
22 was under three years of age on the date of initial removal or is a
23 member of a sibling group described in subparagraph (C) of
24 paragraph (1) of subdivision (a) of Section 361.5, may be returned
25 to his or her parent or legal guardian within six months or that
26 reasonable services have not been provided, the court shall continue
27 the case to the 12-month permanency hearing.

28 For the purpose of placing and maintaining a sibling group
29 together in a permanent home, the court, in making its
30 determination to schedule a hearing pursuant to Section 366.26
31 for some or all members of a sibling group, as described in
32 subparagraph (C) of paragraph (1) of subdivision (a) of Section
33 361.5, shall review and consider the social worker's report and
34 recommendations. Factors the report shall address, and the court
35 shall consider, may include, but need not be limited to, whether
36 the sibling group was removed from parental care as a group, the
37 closeness and strength of the sibling bond, the ages of the siblings,
38 the appropriateness of maintaining the sibling group together, the
39 detriment to the child if sibling ties are not maintained, the
40 likelihood of finding a permanent home for the sibling group,

~~whether the sibling group is currently placed together in a preadoptive home or has a concurrent plan goal of legal permanency in the same home, the wishes of each child whose age and physical and emotional condition permits a meaningful response, and the best interest of each child in the sibling group. The court shall specify the factual basis for its finding that it is in the best interest of each child to schedule a hearing pursuant to Section 366.26 in 120 days for some or all of the members of the sibling group.~~

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

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

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

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

~~(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is~~

1 determined pursuant to subdivision (a) of Section 361.5. At the
2 permanency hearing, the court shall determine the permanent plan
3 for the child, which shall include a determination of whether the
4 child will be returned to the child's home and, if so, when, within
5 the time limits of subdivision (a) of Section 361.5. The court shall
6 order the return of the child to the physical custody of his or her
7 parent or legal guardian unless the court finds, by a preponderance
8 of the evidence, that the return of the child to his or her parent or
9 legal guardian would create a substantial risk of detriment to the
10 safety, protection, or physical or emotional well-being of the child.
11 The social worker shall have the burden of establishing that
12 detriment. At the permanency hearing, the court shall consider the
13 criminal history, obtained pursuant to paragraph (1) of subdivision
14 (f) of Section 16504.5, of the parent or legal guardian subsequent
15 to the child's removal to the extent that the criminal record is
16 substantially related to the welfare of the child or the parent or
17 legal guardian's ability to exercise custody and control regarding
18 his or her child, provided that the parent or legal guardian agreed
19 to submit fingerprint images to obtain criminal history information
20 as part of the case plan. The court shall also determine whether
21 reasonable services that were designed to aid the parent or legal
22 guardian to overcome the problems that led to the initial removal
23 and continued custody of the child have been provided or offered
24 to the parent or legal guardian. For each youth 16 years of age and
25 older, the court shall also determine whether services have been
26 made available to assist him or her in making the transition from
27 foster care to independent living. The failure of the parent or legal
28 guardian to participate regularly and make substantive progress in
29 court-ordered treatment programs shall be prima facie evidence
30 that return would be detrimental. In making its determination, the
31 court shall review and consider the social worker's report and
32 recommendations and the report and recommendations of any child
33 advocate appointed pursuant to Section 356.5, shall consider the
34 efforts or progress, or both, demonstrated by the parent or legal
35 guardian and the extent to which he or she availed himself or
36 herself of services provided, taking into account the particular
37 barriers to an incarcerated or institutionalized parent or legal
38 guardian's access to those court-mandated services and ability to
39 maintain contact with his or her child and shall make appropriate
40 findings pursuant to subdivision (a) of Section 366.

1 Regardless of whether the child is returned to his or her parent
2 or legal guardian, the court shall specify the factual basis for its
3 decision. If the child is not returned to a parent or legal guardian,
4 the court shall specify the factual basis for its conclusion that the
5 return would be detrimental. The court also shall make a finding
6 pursuant to subdivision (a) of Section 366. If the child is not
7 returned to his or her parent or legal guardian, the court shall
8 consider, and state for the record, in-state and out-of-state
9 placement options. If the child is placed out of the state, the court
10 shall make a determination whether the out-of-state placement
11 continues to be appropriate and in the best interests of the child.

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

19 (1) Continue the case for up to six months for a permanency
20 review hearing, provided that the hearing shall occur within 18
21 months of the date the child was originally taken from the physical
22 custody of his or her parent or legal guardian. The court shall
23 continue the case only if it finds that there is a substantial
24 probability that the child will be returned to the physical custody
25 of his or her parent or legal guardian and safely maintained in the
26 home within the extended period of time or that reasonable services
27 have not been provided to the parent or legal guardian. For the
28 purposes of this section, in order to find a substantial probability
29 that the child will be returned to the physical custody of his or her
30 parent or legal guardian and safely maintained in the home within
31 the extended period of time, the court shall be required to find all
32 of the following:

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

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

38 (C) The parent or legal guardian has demonstrated the capacity
39 and ability both to complete the objectives of his or her treatment

1 plan and to provide for the child's safety, protection, physical and
2 emotional 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 next permanency review
11 hearing, a proceeding pursuant to Section 366.26 may be instituted.
12 The court may not order that a hearing pursuant to Section 366.26
13 be held unless there is clear and convincing evidence that
14 reasonable services have been provided or offered to the parent or
15 legal guardian.

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

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

39 If the court orders that a child who is 10 years of age or older
40 remain in long-term foster care, the court shall determine whether

1 the agency has made reasonable efforts to maintain the child's
2 relationships with individuals other than the child's siblings who
3 are important to the child, consistent with the child's best interests;
4 and may make any appropriate order to ensure that those
5 relationships are maintained.

6 If the child is not returned to his or her parent or legal guardian,
7 the court shall consider, and state for the record, in-state and
8 out-of-state options for permanent placement. If the child is placed
9 out of the state, the court shall make a determination whether the
10 out-of-state placement continues to be appropriate and in the best
11 interests of the child.

12 (h) In any case in which the court orders that a hearing pursuant
13 to Section 366.26 shall be held, it shall also order the termination
14 of reunification services to the parent or legal guardian. The court
15 shall continue to permit the parent or legal guardian to visit the
16 child pending the hearing unless it finds that visitation would be
17 detrimental to the child. The court shall make any other appropriate
18 orders to enable the child to maintain relationships with individuals,
19 other than the child's siblings, who are important to the child,
20 consistent with the child's best interests.

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

29 (A) Current search efforts for an absent parent or parents or
30 legal guardians.

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

38 (C) An evaluation of the child's medical, developmental,
39 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 ~~including the prospective tribal customary adoptive parent,~~
4 ~~particularly the caretaker, to include a social history including~~
5 ~~screening for criminal records and prior referrals for child abuse~~
6 ~~or neglect, the capability to meet the child's needs, and the~~
7 ~~understanding of the legal and financial rights and responsibilities~~
8 ~~of adoption and guardianship. If a proposed guardian is a relative~~
9 ~~of the minor, and the relative was assessed for foster care placement~~
10 ~~of the minor prior to January 1, 1998, the assessment shall also~~
11 ~~consider, but need not be limited to, all of the factors specified in~~
12 ~~subdivision (a) of Section 361.3.~~

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

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

24 ~~(G) An analysis of the likelihood that the child will be adopted~~
25 ~~if parental rights are terminated.~~

26 ~~(H) In the case of an Indian child, in addition to subparagraphs~~
27 ~~(A) to (G), inclusive, an assessment of the likelihood that the child~~
28 ~~will be adopted, when, in consultation with the child's tribe, a~~
29 ~~customary tribal adoption, as defined in Section 366.24, is~~
30 ~~recommended. If tribal customary adoption is recommended, the~~
31 ~~assessment shall include an analysis of both of the following:~~

32 ~~(i) Whether tribal customary adoption would or would not be~~
33 ~~detrimental to the Indian child and the reasons for reaching that~~
34 ~~conclusion.~~

35 ~~(ii) Whether the Indian child cannot or should not be returned~~
36 ~~to the home of the Indian parent or Indian custodian and the reasons~~
37 ~~for reaching that conclusion.~~

38 ~~(2) (A) A relative caregiver's preference for legal guardianship~~
39 ~~over adoption, if it is due to circumstances that do not include an~~
40 ~~unwillingness to accept legal or financial responsibility for the~~

1 child, shall not constitute the sole basis for recommending removal
2 of the child from the relative caregiver for purposes of adoptive
3 placement.

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

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

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

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

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

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

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

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

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

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

39 366.21. (a) Every hearing conducted by the juvenile court
40 reviewing the status of a dependent child shall be placed on the

1 appearance calendar. The court shall advise all persons present at
2 the hearing of the date of the future hearing and of their right to
3 be present and represented by counsel.

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

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

1 or foster parents approved for adoption, in the caregiver's primary
2 language when available, along with information on how to file
3 the form with the court.

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

24 (e) ~~At the review hearing held six months after the initial~~
25 ~~dispositional hearing, the court shall order the return of the child~~
26 ~~to the physical custody of his or her parent or legal guardian unless~~
27 ~~the court finds, by a preponderance of the evidence, that the return~~
28 ~~of the child to his or her parent or legal guardian would create a~~
29 ~~substantial risk of detriment to the safety, protection, or physical~~
30 ~~or emotional well-being of the child. The social worker shall have~~
31 ~~the burden of establishing that detriment. At the hearing, the court~~
32 ~~shall consider the criminal history, obtained pursuant to paragraph~~
33 ~~(1) 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 the parent's or guardian's ability to exercise custody and control~~
37 ~~regarding his or her child, provided the parent or legal guardian~~
38 ~~agreed to submit fingerprint images to obtain criminal history~~
39 ~~information as part of the case plan. The failure of the parent or~~
40 ~~legal guardian to participate regularly and make substantive~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 361.5. (a) Except as provided in subdivision (b), or when the
37 parent has voluntarily relinquished the child and the relinquishment
38 has been filed with the State Department of Social Services, or
39 upon the establishment of an order of guardianship pursuant to
40 Section 360, whenever a child is removed from a parent’s or

1 guardian's custody, the juvenile court shall order the social worker
2 to provide child welfare services to the child and the child's mother
3 and statutorily presumed father or guardians. Upon a finding and
4 declaration of paternity by the juvenile court or proof of a prior
5 declaration of paternity by any court of competent jurisdiction, the
6 juvenile court may order services for the child and the biological
7 father, if the court determines that the services will benefit the
8 child.

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

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

18 (B) For a child who, on the date of initial removal from the
19 physical custody of his or her parent or guardian, was under three
20 years of age, court-ordered services shall be provided for a period
21 of six months from the dispositional hearing as provided in
22 subdivision (e) of Section 366.21, but no longer than 12 months
23 from the date the child entered foster care as defined in Section
24 361.49 unless the child is returned to the home of the parent or
25 guardian.

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

36 (2) Any motion to terminate court-ordered reunification services
37 prior to the hearing set pursuant to subdivision (f) of Section 366.21
38 for a child described by subparagraph (A) of paragraph (1), or
39 prior to the hearing set pursuant to subdivision (e) of Section
40 366.21 for a child described by subparagraph (B) or (C) of

1 paragraph (1), shall be made pursuant to the requirements set forth
2 in subdivision (c) of Section 388. A motion to terminate
3 court-ordered reunification services shall not be required at the
4 hearing set pursuant to subdivision (e) of Section 366.21 if the
5 court finds by clear and convincing evidence one of the following:

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

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

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

11 (3) Notwithstanding subparagraphs (A), (B), and (C) of
12 paragraph (1), court-ordered services may be extended up to a
13 maximum time period not to exceed 18 months after the date the
14 child was originally removed from physical custody of his or her
15 parent or guardian if it can be shown, at the hearing held pursuant
16 to subdivision (f) of Section 366.21, that the permanent plan for
17 the child is that he or she will be returned and safely maintained
18 in the home within the extended time period. The court shall extend
19 the time period only if it finds that there is a substantial probability
20 that the child will be returned to the physical custody of his or her
21 parent or guardian within the extended time period or that
22 reasonable services have not been provided to the parent or
23 guardian. In determining whether court-ordered services may be
24 extended, the court shall consider the special circumstances of an
25 incarcerated or institutionalized parent or parents, or parent or
26 parents court-ordered to a residential substance abuse treatment
27 program, including, but not limited to, barriers to the parent's or
28 guardian's access to services and ability to maintain contact with
29 his or her child. The court shall also consider, among other factors,
30 good faith efforts that the parent or guardian has made to maintain
31 contact with the child. If the court extends the time period, the
32 court shall specify the factual basis for its conclusion that there is
33 a substantial probability that the child will be returned to the
34 physical custody of his or her parent or guardian within the
35 extended time period. The court also shall make findings pursuant
36 to subdivision (a) of Section 366 and subdivision (e) of Section
37 358.1.

38 When counseling or other treatment services are ordered, the
39 parent or guardian shall be ordered to participate in those services,
40 unless the parent's or guardian's participation is deemed by the

1 court to be inappropriate or potentially detrimental to the child, or
 2 unless a parent or guardian is incarcerated and the corrections
 3 facility in which he or she is incarcerated does not provide access
 4 to the treatment services ordered by the court. Physical custody of
 5 the child by the parents or guardians during the applicable time
 6 period under subparagraph (A), (B), or (C) of paragraph (1) shall
 7 not serve to interrupt the running of the period. If at the end of the
 8 applicable time period, a child cannot be safely returned to the
 9 care and custody of a parent or guardian without court supervision,
 10 but the child clearly desires contact with the parent or guardian,
 11 the court shall take the child's desire into account in devising a
 12 permanency plan.

13 In cases where the child was under three years of age on the date
 14 of the initial removal from the physical custody of his or her parent
 15 or guardian or is a member of a sibling group as described in
 16 subparagraph (C) of paragraph (1), the court shall inform the parent
 17 or guardian that the failure of the parent or guardian to participate
 18 regularly in any court-ordered treatment programs or to cooperate
 19 or avail himself or herself of services provided as part of the child
 20 welfare services case plan may result in a termination of efforts
 21 to reunify the family after six months. The court shall inform the
 22 parent or guardian of the factors used in subdivision (e) of Section
 23 366.21 to determine whether to limit services to six months for
 24 some or all members of a sibling group as described in
 25 subparagraph (C) of paragraph (1).

26 (4) Notwithstanding paragraph (3), court-ordered services may
 27 be extended up to a maximum time period not to exceed 24 months
 28 after the date the child was originally removed from physical
 29 custody of his or her parent or guardian if it is shown, at the hearing
 30 held pursuant to subdivision (b) of Section 366.22, that the
 31 permanent plan for the child is that he or she will be returned and
 32 safely maintained in the home within the extended time period.
 33 The court shall extend the time period only if it finds that it is in
 34 the child's best interest to have the time period extended and that
 35 there is a substantial probability that the child will be returned to
 36 the physical custody of his or her parent or guardian who is
 37 described in subdivision (b) of Section 366.22 within the extended
 38 time period, or that reasonable services have not been provided to
 39 the parent or guardian. 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 in order for substantial probability to be found. Physical custody
9 of the child by the parents or guardians during the applicable time
10 period under subparagraph (A), (B), or (C) of paragraph (1) shall
11 not serve to interrupt the running of the period. If at the end of the
12 applicable time period, the child cannot be safely returned to the
13 care and custody of a parent or guardian without court supervision,
14 but the child clearly desires contact with the parent or guardian,
15 the court shall take the child's desire into account in devising a
16 permanency plan.

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

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

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

29 (2) That the parent or guardian is suffering from a mental
30 disability that is described in Chapter 2 (commencing with Section
31 7820) of Part 4 of Division 12 of the Family Code and that renders
32 him or her incapable of utilizing those services.

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

1 being removed pursuant to Section 361, due to additional physical
2 or sexual abuse.

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

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

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

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

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

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

39 (8) That the child was conceived by means of the commission
40 of an offense listed in Section 288 or 288.5 of the Penal Code, or

1 by an act committed outside of this state that, if committed in this
2 state, would constitute one of those offenses. This paragraph only
3 applies to the parent who committed the offense or act.

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

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

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

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

36 (13) That the parent or guardian of the child has a history of
37 extensive, abusive, and chronic use of drugs or alcohol and has
38 resisted prior court-ordered treatment for this problem during a
39 three-year period immediately prior to the filing of the petition
40 that brought that child to the court’s attention, or has failed or

1 refused to comply with a program of drug or alcohol treatment
2 described in the case plan required by Section 358.1 on at least
3 two prior occasions, even though the programs identified were
4 available and accessible.

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

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

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

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

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

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

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

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

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

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

8 (A) Maintaining contact between the parent and child through
9 collect telephone calls.

10 (B) Transportation services, where appropriate.

11 (C) Visitation services, where appropriate.

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

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

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

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

1 in a program is in the child's best interest and whether it is suitable
2 to meet the needs of the parent and child.

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

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

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

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

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

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

1 criminal records and prior referrals for child abuse or neglect, the
2 capability to meet the child's needs, and the understanding of the
3 legal and financial rights and responsibilities of adoption and
4 guardianship. If a proposed guardian is a relative of the minor, and
5 the relative was assessed for foster care placement of the minor
6 prior to January 1, 1998, the assessment shall also consider, but
7 need not be limited to, all of the factors specified in subdivision
8 (a) of Section 361.3. As used in this subparagraph, "relative" means
9 an adult who is related to the minor by blood, adoption, or affinity
10 within the fifth degree of kinship, including stepparents,
11 stepsiblings, and all relatives whose status is preceded by the words
12 "great," "great-great," or "grand," or the spouse of any of those
13 persons even if the marriage was terminated by death or
14 dissolution.

15 (E) The relationship of the child to any identified prospective
16 adoptive parent or guardian, *including a prospective tribal*
17 *customary parent*, the duration and character of the relationship,
18 the motivation for seeking adoption or guardianship, and a
19 statement from the child concerning placement and the adoption
20 or guardianship, unless the child's age or physical, emotional, or
21 other condition precludes his or her meaningful response, and if
22 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 (G) *In the case of an Indian child, in addition to subparagraphs*
26 *(A) to (F), inclusive, an assessment of the likelihood that the child*
27 *will be adopted, when, in consultation with the child's tribe, a*
28 *customary tribal adoption, as defined in Section 366.24, is*
29 *recommended. If tribal customary adoption is recommended, the*
30 *assessment shall include an analysis of both of the following:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 SEC. 7. Section 361.5 is added to the Welfare and Institutions
35 Code, to read:

36 361.5. (a) *Except as provided in subdivision (b), or when the*
37 *parent has voluntarily relinquished the child and the*
38 *relinquishment has been filed with the State Department of Social*
39 *Services, or upon the establishment of an order of guardianship*
40 *pursuant to Section 360, whenever a child is removed from a*

1 *parent's or guardian's custody, the juvenile court shall order the*
2 *social worker to provide child welfare services to the child and*
3 *the child's mother and statutorily presumed father or guardians.*
4 *Upon a finding and declaration of paternity by the juvenile court*
5 *or proof of a prior declaration of paternity by any court of*
6 *competent jurisdiction, the juvenile court may order services for*
7 *the child and the biological father, if the court determines that the*
8 *services will benefit the child.*

9 *(1) Family reunification services, when provided, shall be*
10 *provided as follows:*

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

18 *(B) For a child who, on the date of initial removal from the*
19 *physical custody of his or her parent or guardian, was under three*
20 *years of age, court-ordered services shall be provided for a period*
21 *of six months from the dispositional hearing as provided in*
22 *subdivision (e) of Section 366.21, but no longer than 12 months*
23 *from the date the child entered foster care as defined in Section*
24 *361.49 unless the child is returned to the home of the parent or*
25 *guardian.*

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

36 *(2) Any motion to terminate court-ordered reunification services*
37 *prior to the hearing set pursuant to subdivision (f) of Section*
38 *366.21 for a child described by subparagraph (A) of paragraph*
39 *(1), or prior to the hearing set pursuant to subdivision (e) of*
40 *Section 366.21 for a child described by subparagraph (B) or (C)*

1 of paragraph (1), shall be made pursuant to the requirements set
2 forth in subdivision (c) of Section 388. A motion to terminate
3 court-ordered reunification services shall not be required at the
4 hearing set pursuant to subdivision (e) of Section 366.21 if the
5 court finds by clear and convincing evidence one of the following:

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

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

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

11 (3) Notwithstanding subparagraphs (A), (B), and (C) of
12 paragraph (1), court-ordered services may be extended up to a
13 maximum time period not to exceed 18 months after the date the
14 child was originally removed from physical custody of his or her
15 parent or guardian if it can be shown, at the hearing held pursuant
16 to subdivision (f) of Section 366.21, that the permanent plan for
17 the child is that he or she will be returned and safely maintained
18 in the home within the extended time period. The court shall extend
19 the time period only if it finds that there is a substantial probability
20 that the child will be returned to the physical custody of his or her
21 parent or guardian within the extended time period or that
22 reasonable services have not been provided to the parent or
23 guardian. In determining whether court-ordered services may be
24 extended, the court shall consider the special circumstances of an
25 incarcerated or institutionalized parent or parents, or parent or
26 parents court-ordered to a residential substance abuse treatment
27 program, including, but not limited to, barriers to the parent's or
28 guardian's access to services and ability to maintain contact with
29 his or her child. The court shall also consider, among other factors,
30 good faith efforts that the parent or guardian has made to maintain
31 contact with the child. If the court extends the time period, the
32 court shall specify the factual basis for its conclusion that there
33 is a substantial probability that the child will be returned to the
34 physical custody of his or her parent or guardian within the
35 extended time period. The court also shall make findings pursuant
36 to subdivision (a) of Section 366 and subdivision (e) of Section
37 358.1.

38 When counseling or other treatment services are ordered, the
39 parent or guardian shall be ordered to participate in those services,
40 unless the parent's or guardian's participation is deemed by the

1 court to be inappropriate or potentially detrimental to the child,
 2 or unless a parent or guardian is incarcerated and the corrections
 3 facility in which he or she is incarcerated does not provide access
 4 to the treatment services ordered by the court. Physical custody
 5 of the child by the parents or guardians during the applicable time
 6 period under subparagraph (A), (B), or (C) of paragraph (1) shall
 7 not serve to interrupt the running of the period. If at the end of the
 8 applicable time period, a child cannot be safely returned to the
 9 care and custody of a parent or guardian without court supervision,
 10 but the child clearly desires contact with the parent or guardian,
 11 the court shall take the child's desire into account in devising a
 12 permanency plan.

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

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

1 *is 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 *in order for substantial probability to be found. Physical custody*
9 *of the child by the parents or guardians during the applicable time*
10 *period under subparagraph (A), (B), or (C) of paragraph (1) shall*
11 *not serve to interrupt the running of the period. If at the end of the*
12 *applicable time period, the child cannot be safely returned to the*
13 *care and custody of a parent or guardian without court supervision,*
14 *but the child clearly desires contact with the parent or guardian,*
15 *the court shall take the child's desire into account in devising a*
16 *permanency plan.*

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

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

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

29 *(2) That the parent or guardian is suffering from a mental*
30 *disability that is described in Chapter 2 (commencing with Section*
31 *7820) of Part 4 of Division 12 of the Family Code and that renders*
32 *him or her incapable of utilizing those services.*

33 *(3) That the child or a sibling of the child has been previously*
34 *adjudicated a dependent pursuant to any subdivision of Section*
35 *300 as a result of physical or sexual abuse, that following that*
36 *adjudication the child had been removed from the custody of his*
37 *or her parent or guardian pursuant to Section 361, that the child*
38 *has been returned to the custody of the parent or guardian from*
39 *whom the child had been taken originally, and that the child is*

1 *being removed pursuant to Section 361, due to additional physical*
2 *or sexual abuse.*

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

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

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

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

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

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

39 *(8) That the child was conceived by means of the commission*
40 *of an offense listed in Section 288 or 288.5 of the Penal Code, or*

1 by an act committed outside of this state that, if committed in this
2 state, would constitute one of those offenses. This paragraph only
3 applies to the parent who committed the offense or act.

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

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

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

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

37 (13) That the parent or guardian of the child has a history of
38 extensive, abusive, and chronic use of drugs or alcohol and has
39 resisted prior court-ordered treatment for this problem during a
40 three-year period immediately prior to the filing of the petition

1 that brought that child to the court's attention, or has failed or
2 refused to comply with a program of drug or alcohol treatment
3 described in the case plan required by Section 358.1 on at least
4 two prior occasions, even though the programs identified were
5 available and accessible.

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

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

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

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

38 The court shall not order reunification for a parent or guardian
39 described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12),
40 (13), (14), or (15) of subdivision (b) unless the court finds, by clear

1 *and convincing evidence, that reunification is in the best interest*
2 *of the child.*

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

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

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

30 *(e) (1) If the parent or guardian is incarcerated or*
31 *institutionalized, the court shall order reasonable services unless*
32 *the court determines, by clear and convincing evidence, those*
33 *services would be detrimental to the child. In determining*
34 *detriment, the court shall consider the age of the child, the degree*
35 *of parent-child bonding, the length of the sentence, the length and*
36 *nature of the treatment, the nature of the crime or illness, the*
37 *degree of detriment to the child if services are not offered and, for*
38 *children 10 years of age or older, the child's attitude toward the*
39 *implementation of family reunification services, the likelihood of*
40 *the parent's discharge from incarceration or institutionalization*

1 within the reunification time limitations described in subdivision
2 (a), and any other appropriate factors. In determining the content
3 of reasonable services, the court shall consider the particular
4 barriers to an incarcerated or otherwise institutionalized parent's
5 access to those court-mandated services and ability to maintain
6 contact with his or her child, and shall document this information
7 in the child's case plan. Reunification services are subject to the
8 applicable time limitations imposed in subdivision (a). Services
9 may include, but shall not be limited to, all of the following:

10 (A) Maintaining contact between the parent and child through
11 collect telephone calls.

12 (B) Transportation services, where appropriate.

13 (C) Visitation services, where appropriate.

14 (D) Reasonable services to extended family members or foster
15 parents providing care for the child if the services are not
16 detrimental to the child.

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

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

35 (3) Notwithstanding any other provision of law, if the
36 incarcerated parent is a woman seeking to participate in the
37 community treatment program operated by the Department of
38 Corrections and Rehabilitation pursuant to Chapter 4.8
39 (commencing with Section 1174) of Title 7 of Part 2 of, Chapter
40 4 (commencing with Section 3410) of Title 2 of Part 3 of, the Penal

1 Code, the court shall determine whether the parent's participation
2 in a program is in the child's best interest and whether it is suitable
3 to meet the needs of the parent and child.

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

19 (g) (1) Whenever a court orders that a hearing shall be held
20 pursuant to Section 366.26, 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 between
27 the child and his or her parents and other members of his or her
28 extended family since the time of placement. Although the extended
29 family of each child shall be reviewed on a case-by-case basis,
30 "extended family" for the purpose of this subparagraph 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 guardian,
37 particularly the caretaker, to include a social history including
38 screening for criminal records and prior referrals for child abuse
39 or neglect, the capability to meet the child's needs, and the
40 understanding of the legal and financial rights and responsibilities

1 of adoption and guardianship. If a proposed guardian is a relative
2 of the minor, and the relative was assessed for foster care
3 placement of the minor prior to January 1, 1998, the assessment
4 shall also consider, but need not be limited to, all of the factors
5 specified in subdivision (a) of Section 361.3. As used in this
6 subparagraph, "relative" means an adult who is related to the
7 minor by blood, adoption, or affinity within the fifth degree of
8 kinship, including stepparents, stepsiblings, and all relatives whose
9 status is preceded by the words "great," "great-great," or
10 "grand," or the spouse of any of those persons even if the marriage
11 was terminated by death or dissolution.

12 (E) The relationship of the child to any identified prospective
13 adoptive parent or guardian, the duration and character of the
14 relationship, the motivation for seeking adoption or guardianship,
15 and a statement from the child concerning placement and the
16 adoption or guardianship, unless the child's age or physical,
17 emotional, or other condition precludes his or her meaningful
18 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 (2) (A) A relative caregiver's preference for legal guardianship
22 over adoption, if it is due to circumstances that do not include an
23 unwillingness to accept legal or financial responsibility for the
24 child, shall not constitute the sole basis for recommending removal
25 of the child from the relative caregiver for purposes of adoptive
26 placement.

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

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

35 (1) The specific act or omission comprising the severe sexual
36 abuse or the severe physical harm inflicted on the child or the
37 child's sibling or half sibling.

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

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

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

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

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

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

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

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

19 366.21. (a) Every hearing conducted by the juvenile court
20 reviewing the status of a dependent child shall be placed on the
21 appearance calendar. The court shall advise all persons present at
22 the hearing of the date of the future hearing and of their right to
23 be present and represented by counsel.

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

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

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

24 (d) Prior to any hearing involving a child in the physical custody
25 of a community care facility or a foster family agency that may
26 result in the return of the child to the physical custody of his or
27 her parent or legal guardian, or in adoption or the creation of a
28 legal guardianship, *or in the case of an Indian child, in consultation*
29 *with the child's tribe, tribal customary adoption*, the facility or
30 agency shall file with the court a report, or a Judicial Council
31 Caregiver Information Form (JV-290), containing its
32 recommendation for disposition. Prior to the hearing involving a
33 child in the physical custody of a foster parent, a relative caregiver,
34 or a certified foster parent who has been approved for adoption by
35 the State Department of Social Services when it is acting as an
36 adoption agency or by a licensed adoption agency, the foster parent,
37 relative caregiver, or the certified foster parent who has been
38 approved for adoption by the State Department of Social Services
39 when it is acting as an adoption agency in counties that are not
40 served by a county adoption agency or by a licensed county

1 adoption agency, may file with the court a report containing his
2 or her recommendation for disposition. The court shall consider
3 the report and recommendation filed pursuant to this subdivision
4 prior to determining any disposition.

5 (e) At the review hearing held six months after the initial
6 dispositional hearing, but no later than 12 months after the date
7 the child entered foster care as determined in Section 361.49,
8 whichever occurs earlier, 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 hearing,
15 the court shall consider the criminal history, obtained pursuant to
16 paragraph (1) of subdivision (f) of Section 16504.5, of the parent
17 or legal guardian subsequent to the child's removal to the extent
18 that the criminal record is substantially related to the welfare of
19 the child or the parent's or guardian's ability to exercise custody
20 and control regarding his or her child, provided the parent or legal
21 guardian agreed to submit fingerprint images to obtain criminal
22 history information as part of the case plan. The failure of the
23 parent or legal guardian to participate regularly and make
24 substantive progress in court-ordered treatment programs shall be
25 prima facie evidence that return would be detrimental. In making
26 its determination, the court shall review and consider the social
27 worker's report and recommendations and the report and
28 recommendations of any child advocate appointed pursuant to
29 Section 356.5; and shall consider the efforts or progress, or both,
30 demonstrated by the parent or legal guardian and the extent to
31 which he or she availed himself or herself to services provided,
32 taking into account the particular barriers to an incarcerated or
33 institutionalized parent or legal guardian's access to those
34 court-mandated services and ability to maintain contact with his
35 or her child.

36 Regardless of whether the child is returned to a parent or legal
37 guardian, the court shall specify the factual basis for its conclusion
38 that the return would be detrimental or would not be detrimental.
39 The court also shall make appropriate findings pursuant to
40 subdivision (a) of Section 366; and, where relevant, shall order

1 any additional services reasonably believed to facilitate the return
2 of the child to the custody of his or her parent or legal guardian.
3 The court shall also inform the parent or legal guardian that if the
4 child cannot be returned home by the 12-month permanency
5 hearing, a proceeding pursuant to Section 366.26 may be instituted.
6 This section does not apply in a case where, pursuant to Section
7 361.5, the court has ordered that reunification services shall not
8 be provided.

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

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

1 The court shall specify the factual basis for its finding that it is in
2 the best interest of each child to schedule a hearing pursuant to
3 Section 366.26 in 120 days for some or all of the members of the
4 sibling group.

5 If the child was removed initially under subdivision (g) of
6 Section 300 and the court finds by clear and convincing evidence
7 that the whereabouts of the parent are still unknown, or the parent
8 has failed to contact and visit the child, the court may schedule a
9 hearing pursuant to Section 366.26 within 120 days. The court
10 shall take into account any particular barriers to a parent's ability
11 to maintain contact with his or her child due to the parent's
12 incarceration or institutionalization. If the court finds by clear and
13 convincing evidence that the parent has been convicted of a felony
14 indicating parental unfitness, the court may schedule a hearing
15 pursuant to Section 366.26 within 120 days.

16 If the child had been placed under court supervision with a
17 previously noncustodial parent pursuant to Section 361.2, the court
18 shall determine whether supervision is still necessary. The court
19 may terminate supervision and transfer permanent custody to that
20 parent, as provided for by paragraph (1) of subdivision (b) of
21 Section 361.2.

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

27 If the child is not returned to his or her parent or legal guardian,
28 the court shall determine whether reasonable services that were
29 designed to aid the parent or legal guardian in overcoming the
30 problems that led to the initial removal and the continued custody
31 of the child have been provided or offered to the parent or legal
32 guardian. The court shall order that those services be initiated,
33 continued, or terminated.

34 (f) The permanency hearing shall be held no later than 12
35 months after the date the child entered foster care, as that date is
36 determined pursuant to Section 361.49. At the permanency hearing,
37 the court shall determine the permanent plan for the child, which
38 shall include a determination of whether the child will be returned
39 to the child's home and, if so, when, within the time limits of
40 subdivision (a) of Section 361.5. The court shall order the return

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

36 Regardless of whether the child is returned to his or her parent
37 or legal guardian, the court shall specify the factual basis for its
38 decision. If the child is not returned to a parent or legal guardian,
39 the court shall specify the factual basis for its conclusion that the
40 return would be detrimental. The court also shall make a finding

1 pursuant to subdivision (a) of Section 366. If the child is not
2 returned to his or her parent or legal guardian, the court shall
3 consider, and state for the record, in-state and out-of-state
4 placement options. If the child is placed out of the state, the court
5 shall make a determination whether the out-of-state placement
6 continues to be appropriate and in the best interests of the child.

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

14 (1) Continue the case for up to six months for a permanency
15 review hearing, provided that the hearing shall occur within 18
16 months of the date the child was originally taken from the physical
17 custody of his or her parent or legal guardian. The court shall
18 continue the case only if it finds that there is a substantial
19 probability that the child will be returned to the physical custody
20 of his or her parent or legal guardian and safely maintained in the
21 home within the extended period of time or that reasonable services
22 have not been provided to the parent or legal guardian. For the
23 purposes of this section, in order to find a substantial probability
24 that the child will be returned to the physical custody of his or her
25 parent or legal guardian and safely maintained in the home within
26 the extended period of time, the court shall be required to find all
27 of the following:

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

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

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

37 For purposes of this subdivision, the court's decision to continue
38 the case based on a finding or substantial probability that the child
39 will be returned to the physical custody of his or her parent or legal
40 guardian is a compelling reason for determining that a hearing

1 held pursuant to Section 366.26 is not in the best interests of the
2 child.

3 The court shall inform the parent or legal guardian that if the
4 child cannot be returned home by the next permanency review
5 hearing, a proceeding pursuant to Section 366.26 may be instituted.
6 The court may not order that a hearing pursuant to Section 366.26
7 be held unless there is clear and convincing evidence that
8 reasonable services have been provided or offered to the parent or
9 legal guardian.

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

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

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

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

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

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

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

26 (B) A review of the amount of and nature of any contact between
27 the child and his or her parents or legal guardians and other
28 members of his or her extended family since the time of placement.
29 Although the extended family of each child shall be reviewed on
30 a case-by-case basis, "extended family" for the purpose of this
31 subparagraph shall include, but not be limited to, the child's
32 siblings, grandparents, 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 the 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 guardian is a relative
3 of the minor, and the relative was assessed for foster care placement
4 of the minor prior to January 1, 1998, the assessment shall also
5 consider, but need not be limited to, all of the factors specified in
6 subdivision (a) of Section 361.3.

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

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

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

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

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

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

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

38 (B) A relative caregiver shall be given information regarding
39 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 (j) If, at any hearing held pursuant to Section 366.26, a
4 guardianship is established for the minor with a relative, and
5 juvenile court dependency is subsequently dismissed, the relative
6 shall be eligible for aid under the Kin-GAP Program, as provided
7 for in Article 4.5 (commencing with Section 11360) of Chapter 2
8 of Part 3 of Division 9.

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

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

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

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

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

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

29 (n) *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. 9. Section 366.21 is added to the Welfare and Institutions
33 Code, to read:

34 366.21. (a) Every hearing conducted by the juvenile court
35 reviewing the status of a dependent child shall be placed on the
36 appearance calendar. The court shall advise all persons present
37 at the hearing of the date of the future hearing and of their right
38 to be present and represented by counsel.

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

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

39 (d) Prior to any hearing involving a child in the physical custody
40 of a community care facility or a foster family agency that may

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

19 (e) At the review hearing held six months after the initial
20 dispositional hearing, but no later than 12 months after the date
21 the child entered foster care as determined in Section 361.49,
22 whichever occurs earlier, 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 hearing,
29 the court shall consider the criminal history, obtained pursuant
30 to paragraph (1) of subdivision (f) of Section 16504.5, of the parent
31 or legal guardian subsequent to the child's removal to the extent
32 that the criminal record is substantially related to the welfare of
33 the child or the parent's or guardian's ability to exercise custody
34 and control regarding his or her child, provided the parent or
35 legal guardian agreed to submit fingerprint images to obtain
36 criminal history information as part of the case plan. The failure
37 of the parent or legal guardian to participate regularly and make
38 substantive progress in court-ordered treatment programs shall
39 be prima facie evidence that return would be detrimental. In
40 making its determination, the court shall review and consider the

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

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

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

37 For the purpose of placing and maintaining a sibling group
38 together in a permanent home, the court, in making its
39 determination to schedule a hearing pursuant to Section 366.26
40 for some or all members of a sibling group, as described in

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

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

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

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

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

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

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

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

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

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

1 the home within the extended period of time, the court shall be
2 required to find all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

36 (A) Current search efforts for an absent parent or parents or
37 legal guardians.

38 (B) A review of the amount of and nature of any contact between
39 the child and his or her parents or legal guardians and other
40 members of his or her extended family since the time of placement.

1 *Although the extended family of each child shall be reviewed on*
2 *a case-by-case basis, “extended family” for the purpose of this*
3 *subparagraph shall include, but not be limited to, the child’s*
4 *siblings, grandparents, aunts, and uncles.*

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

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

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

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

29 *(G) An analysis of the likelihood that the child will be adopted*
30 *if parental rights are terminated.*

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

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

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

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

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

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

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

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

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

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

28 SEC. 10. Section 366.22 of the Welfare and Institutions Code
29 is amended to read:

30 366.22. (a) When a case has been continued pursuant to
31 paragraph (1) of subdivision (g) of Section 366.21, the permanency
32 review hearing shall occur within 18 months after the date the
33 child was originally removed from the physical custody of his or
34 her parent or legal guardian. The court shall order the return of the
35 child to the physical custody of his or her parent or legal guardian
36 unless the court finds, by a preponderance of the evidence, that
37 the return of the child to his or her parent or legal guardian would
38 create a substantial risk of detriment to the safety, protection, or
39 physical or emotional well-being of the child. The social worker
40 shall have the burden of establishing that detriment. At the

1 permanency review hearing, the court shall consider the criminal
2 history, obtained pursuant to paragraph (1) of subdivision (f) of
3 Section 16504.5, of the parent or legal guardian subsequent to the
4 child's removal, to the extent that the criminal record is
5 substantially related to the welfare of the child or the parent's or
6 legal guardian's ability to exercise custody and control regarding
7 his or her child, provided that the parent or legal guardian agreed
8 to submit fingerprint images to obtain criminal history information
9 as part of the case plan. The failure of the parent or legal guardian
10 to participate regularly and make substantive progress in
11 court-ordered treatment programs shall be prima facie evidence
12 that return would be detrimental. In making its determination, the
13 court shall review and consider the social worker's report and
14 recommendations and the report and recommendations of any child
15 advocate appointed pursuant to Section 356.5; shall consider the
16 efforts or progress, or both, demonstrated by the parent or legal
17 guardian and the extent to which he or she availed himself or
18 herself of services provided, taking into account the particular
19 barriers of an incarcerated or institutionalized parent or legal
20 guardian's access to those court-mandated services and ability to
21 maintain contact with his or her child; and shall make appropriate
22 findings pursuant to subdivision (a) of Section 366.

23 Whether or not the child is returned to his or her parent or legal
24 guardian, the court shall specify the factual basis for its decision.
25 If the child is not returned to a parent or legal guardian, the court
26 shall specify the factual basis for its conclusion that return would
27 be detrimental. If the child is not returned to his or her parent or
28 legal guardian, the court shall consider, and state for the record,
29 in-state and out-of-state options for the child's permanent
30 placement. If the child is placed out of the state, the court shall
31 make a determination whether the out-of-state placement continues
32 to be appropriate and in the best interests of the child.

33 Unless the conditions in subdivision (b) are met and the child is
34 not returned to a parent or legal guardian at the permanency review
35 hearing, the court shall order that a hearing be held pursuant to
36 Section 366.26 in order to determine whether adoption, or, in the
37 case of an Indian child, in consultation with the child's tribe, tribal
38 customary adoption, guardianship, or long-term foster care is the
39 most appropriate plan for the child. However, if the court finds by
40 clear and convincing evidence, based on the evidence already

presented to it, including a recommendation 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, that there is a compelling reason, as described in paragraph (3) of subdivision (g) of Section 366.21, for determining that a hearing held under Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship, then the court may, only under these circumstances, order that the child remain in foster care. If the court orders that a child who is 10 years of age or older remain in long-term foster care, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained. The hearing shall be held no later than 120 days from the date of the permanency review hearing. The court shall also order termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have been offered or provided to the parent or legal guardian. For purposes of this subdivision, evidence of any of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

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

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

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

(b) If the child is not returned to a parent or legal guardian at the permanency review hearing and the court determines by clear and convincing evidence that the best interests of the child would be met by the provision of additional reunification services to a parent or legal guardian who is making significant and consistent progress in a substance abuse treatment program, or a parent recently discharged from incarceration or institutionalization and

1 making significant and consistent progress in establishing a safe
2 home for the child's return, the court may continue the case for
3 up to six months for a subsequent permanency review hearing,
4 provided that the hearing shall occur within 24 months of the date
5 the child was originally taken from the physical custody of his or
6 her parent or legal guardian. The court shall continue the case only
7 if it finds that there is a substantial probability that the child will
8 be returned to the physical custody of his or her parent or legal
9 guardian and safely maintained in the home within the extended
10 period of time or that reasonable services have not been provided
11 to the parent or legal guardian. For the purposes of this section, in
12 order to find a substantial probability that the child will be returned
13 to the physical custody of his or her parent or legal guardian and
14 safely maintained in the home within the extended period of time,
15 the court shall be required to find all of the following:

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

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

21 (3) The parent or legal guardian has demonstrated the capacity
22 and ability both to complete the objectives of his or her substance
23 abuse treatment plan as evidenced by reports from a substance
24 abuse provider as applicable, or complete a treatment plan
25 postdischarge from incarceration or institutionalization, and to
26 provide for the child's safety, protection, physical and emotional
27 well-being, and special needs.

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

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

(c) (1) Whenever a court orders that a hearing pursuant to Section 366.26, including when a tribal customary adoption is recommended, shall be held, 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 purposes of this subparagraph shall include, but not be limited to, the child’s siblings, grandparents, aunts, and uncles.

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

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

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

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

(G) In the case of an Indian child, in addition to subparagraphs (A) to (F), inclusive, an assessment of the likelihood that the child will be adopted, when, in consultation with the child’s tribe, a

1 customary tribal adoption, as defined in Section 366.24, is
2 recommended. If tribal customary adoption is recommended, the
3 assessment shall include an analysis of both of the following:

4 (i) Whether tribal customary adoption would or would not be
5 detrimental to the Indian child and the reasons for reaching that
6 conclusion.

7 (ii) Whether the Indian child cannot or should not be returned
8 to the home of the Indian parent or Indian custodian and the reasons
9 for reaching that conclusion.

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

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

20 (d) This section shall become operative January 1, 1999. If at
21 any hearing held pursuant to Section 366.26, a legal guardianship
22 is established for the minor with a relative, and juvenile court
23 dependency is subsequently dismissed, the relative shall be eligible
24 for aid under the Kin-GAP Program, as provided for in Article 4.5
25 (commencing with Section 11360) of Chapter 2 of Part 3 of
26 Division 9.

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

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

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

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

3 366.22. (a) When a case has been continued pursuant to
4 paragraph (1) of subdivision (g) of Section 366.21, the permanency
5 review hearing shall occur within 18 months after the date the
6 child was originally removed from the physical custody of his or
7 her parent or legal guardian. The court shall order the return of the
8 child to the physical custody of his or her parent or legal guardian
9 unless the court finds, by a preponderance of the evidence, that
10 the return of the child to his or her parent or legal guardian would
11 create a substantial risk of detriment to the safety, protection, or
12 physical or emotional well-being of the child. The social worker
13 shall have the burden of establishing that detriment. At the
14 permanency review hearing, the court shall consider the criminal
15 history, obtained pursuant to paragraph (1) of subdivision (f) of
16 Section 16504.5, of the parent or legal guardian subsequent to the
17 child's removal, to the extent that the criminal record is
18 substantially related to the welfare of the child or the parent's or
19 legal guardian's ability to exercise custody and control regarding
20 his or her child, provided that the parent or legal guardian agreed
21 to submit fingerprint images to obtain criminal history information
22 as part of the case plan. The failure of the parent or legal guardian
23 to participate regularly and make substantive progress in
24 court-ordered treatment programs shall be prima facie evidence
25 that return would be detrimental. In making its determination, the
26 court shall review and consider the social worker's report and
27 recommendations and the report and recommendations of any child
28 advocate appointed pursuant to Section 356.5; shall consider the
29 efforts or progress, or both, demonstrated by the parent or legal
30 guardian and the extent to which he or she availed himself or
31 herself of services provided, taking into account the particular
32 barriers of an incarcerated or institutionalized parent or legal
33 guardian's access to those court-mandated services and ability to
34 maintain contact with his or her child; and shall make appropriate
35 findings pursuant to subdivision (a) of Section 366.

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

1 legal guardian, the court shall consider, and state for the record,
2 in-state and out-of-state options for the child's permanent
3 placement. If the child is placed out of the state, the court shall
4 make a determination whether the out-of-state placement continues
5 to be appropriate and in the best interests of the child.

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

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

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

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

33 (3) The parent or legal guardian has demonstrated the capacity
34 and ability both to complete the objectives of his or her substance
35 abuse treatment plan as evidenced by reports from a substance
36 abuse provider as applicable, or complete a treatment plan
37 postdischarge from incarceration or institutionalization, and to
38 provide for the child's safety, protection, physical and emotional
39 well-being, and special needs.

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

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

(c) (1) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, 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 purposes of this subparagraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

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

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

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

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

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

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

20 (d) This section shall become operative January 1, 1999. If at
21 any hearing held pursuant to Section 366.26, a legal guardianship
22 is established for the minor with a relative, and juvenile court
23 dependency is subsequently dismissed, the relative shall be eligible
24 for aid under the Kin-GAP Program, as provided for in Article 4.5
25 (commencing with Section 11360) of Chapter 2 of Part 3 of
26 Division 9.

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

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

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

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

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

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

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

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

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

~~(2) If the tribe chooses a designee to conduct the home study, the designee shall perform a check of the Child Abuse Central Index pursuant to Section 1522.1 of the Health and Safety Code as it applies to prospective adoptive parents and persons over 18 years of age residing in their household. If the tribe conducts its own home study, the tribe, through the child welfare agency responsible for the dependency action, shall check the Child Abuse Central Index pursuant to Section 1522.1 of the Health and Safety Code as it applies to prospective adoptive parents and persons over 18 years of age residing in the household.~~

~~(3) If the tribe chooses a designee to conduct the home study, the designee shall perform a state and federal criminal background check through the Department of Justice prior to final approval of the adoptive placement using prospective adoptive parents in the State of California. If the tribe conducts its own home study, the tribe, through the child welfare agency responsible for the dependency action case, shall perform a state and federal check~~

1 through the Department of Justice prior to the final approval of
2 the prospective adoptive parents and persons over 18 years of age
3 residing in the household.

4 (4) If federal and state law provides that tribes may conduct all
5 required background checks for prospective adoptive parents, the
6 tribally administered background checks shall satisfy the
7 requirements of this section, so long as the standards for the
8 background checks are the same as those applied to all other
9 prospective adoptive parents in the State of California.

10 (5) Under no circumstances shall final approval be granted for
11 an adoptive placement in any home if the prospective adoptive
12 parent or any adult living in the prospective adoptive home has
13 any of the following:

14 (A) A felony conviction for child abuse or neglect, spousal
15 abuse, crimes against a child, including child pornography, or a
16 crime involving violence, including rape, sexual assault, or
17 homicide, but not including other physical assault and battery. For
18 purposes of this subdivision, crimes involving violence means
19 those violent crimes contained in clause (i) of subparagraph (A)
20 and subparagraph (B), or paragraph (1) of, subdivision (g) of
21 Section 1522 of the Health and Safety Code.

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

24 (6) If the tribe identifies customary adoption as the permanent
25 placement plan for the Indian child, the court may continue the
26 selection and implementation hearing governed by Section 366.26
27 for a period not to exceed 120 days to permit the tribe to complete
28 the process for tribal customary adoption and file with the court a
29 tribal customary adoption order evidencing that a tribal customary
30 adoption has been completed. The court shall have discretion to
31 grant an additional continuance to the tribe for filing a tribal
32 customary adoption order up to, but not exceeding, 60 days. If the
33 child's tribe does not file the tribal customary adoption order within
34 the designated time period, the court shall make new findings and
35 orders pursuant to subdivision (b) of Section 366.26 and this
36 subdivision to determine the best permanent plan for the child.

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

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

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

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

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

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

~~(e) 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. The Judicial Council shall study California's tribal customary adoption provisions and their affects on children, birth parents, adoptive parents, Indian custodians, tribes, and the court, and shall report all of its findings to the Legislature on or before January 1, 2013.~~

~~(f) 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.~~

~~(c) For purposes of Section 366.26, in the case of tribal customary adoptions, all of the following apply:~~

1 (1) *The child's tribe or the tribe's designee shall conduct a*
2 *tribal customary adoptive home study prior to final approval of*
3 *the tribal customary adoptive placement.*

4 (A) *Where a tribal designee is conducting the home study, the*
5 *designee shall do so in consultation with the Indian child's tribe.*
6 *The designee may include a licensed county adoption agency, the*
7 *State Department of Social Services when it is acting as an*
8 *adoption agency in counties not served by a county adoption*
9 *agency, or a California licensed adoption agency. Any tribal*
10 *designee must be an entity authorized to request a search of the*
11 *Child Abuse Central Index and, if necessary, a check of any other*
12 *state's child abuse and neglect registry and authorized to request*
13 *a search for state or federal level criminal offender records*
14 *information through the Department of Justice.*

15 (B) *The standard for the evaluation of the prospective adoptive*
16 *parents' home shall be the prevailing social and cultural standard*
17 *of the child's tribe. The home study shall include an evaluation of*
18 *the background, safety and health information of the adoptive*
19 *home, including the biological, psychological and social factors*
20 *of the prospective adoptive parent or parents and an assessment*
21 *of the commitment, capability and suitability of the prospective*
22 *adoptive parent or parents to meet the child's needs.*

23 (2) *In all cases, an in-state check of the Child Abuse Central*
24 *Index and, if necessary, a check of any other state's child abuse*
25 *and neglect registry shall be conducted. If the tribe chooses a*
26 *designee to conduct the home study, the designee shall perform a*
27 *check of the Child Abuse Central Index pursuant to Section 1522.1*
28 *of the Health and Safety Code as it applies to prospective adoptive*
29 *parents and persons over 18 years of age residing in their*
30 *household. If the tribe conducts its own home study, the agency*
31 *that has the placement and care responsibility of the child shall*
32 *perform the check.*

33 (3) *In all cases prior to final approval of the tribal customary*
34 *adoptive placement, a state and federal criminal background check*
35 *through the Department of Justice shall be conducted on the*
36 *prospective tribal customary adoptive parents and of persons over*
37 *18 years of age residing in their household. If the tribe chooses a*
38 *designee to conduct the home study, the designee shall perform*
39 *the state and federal criminal background checks. If the tribe*
40 *conducts its own home study, the agency that has the placement*

1 and care responsibility of the child, shall perform the state and
2 federal criminal background check. An individual who is the
3 subject of the check may be provided, by the entity performing the
4 background check, a copy of his or her state or federal level
5 criminal offender record information search response as provided
6 to that entity by the Department of Justice if the entity has denied
7 a criminal background clearance based on this information and
8 the individual makes a written request to the entity for a copy
9 specifying an address to which it is to be sent. The state or federal
10 level criminal offender record information search response shall
11 not be modified or altered from its form or content as provided by
12 the Department of Justice and shall be provided to the address
13 specified by the individual in his or her written request. The entity
14 shall retain a copy of the individual's written request and the
15 response and date provided.

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

22 (5) Under no circumstances shall final approval be granted for
23 an adoptive placement in any home if the prospective adoptive
24 parent or any adult living in the prospective tribal customary
25 adoptive home has any of the following:

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

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

36 (6) If the tribe identifies tribal customary adoption as the
37 permanent placement plan for the Indian child, the court may
38 continue the selection and implementation hearing governed by
39 Section 366.26 for a period not to exceed 120 days to permit the
40 tribe to complete the process for tribal customary adoption and

1 file with the court a tribal customary adoption order evidencing
2 that a tribal customary adoption has been completed. The tribe
3 shall file with the court the tribal customary adoption order no
4 less than 20 days prior to the date set by the court for the continued
5 selection and implementation hearing. The department shall file
6 with the court the addendum selection and implementation hearing
7 court report no less than seven days prior to the date set by the
8 court for the continued selection and implementation hearing. The
9 court shall have discretion to grant an additional continuance to
10 the tribe for filing a tribal customary adoption order up to, but
11 not exceeding, 60 days. If the child's tribe does not file the tribal
12 customary adoption order within the designated time period, the
13 court shall make new findings and orders pursuant to subdivision
14 (b) of Section 366.26 and this subdivision to determine the best
15 permanent plan for the child.

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

20 (8) Upon the court affording full faith and credit to the tribal
21 customary adoption order and the tribe's approval of the home
22 study, the child shall be eligible for tribal customary adoptive
23 placement. The agency that has placement and care responsibility
24 of the child shall be authorized to make a tribal customary adoptive
25 placement and sign a tribal customary adoptive placement
26 agreement and, thereafter, shall sign the adoption assistance
27 agreement pursuant to subdivision (g) of Section 16120. The
28 prospective adoptive parent or parents desiring to adopt the child
29 may then file the petition for adoption. The agency shall supervise
30 the adoptive placement for a period of six months unless either of
31 the following circumstances exists:

32 (A) The child to be adopted is a foster child of the prospective
33 adoptive parents whose foster care placement has been supervised
34 by an agency before the signing of the adoptive placement
35 agreement in which case the supervisory period may be shortened
36 by one month for each full month that the child has been in foster
37 care with the family.

38 (B) The child to be adopted is placed with a relative with whom
39 they have an established relationship.

1 (9) All licensed public adoption agencies shall cooperate with
2 and assist the department in devising a plan that will effectuate
3 the effective and discreet transmission to tribal customary adoptees
4 or prospective tribal customary adoptive parents of pertinent
5 medical information reported to the department or the licensed
6 public adoption agency, upon the request of the person reporting
7 the medical information.

8 (A) A licensed public adoption agency may not place a child
9 for tribal customary adoption unless a written report on the child's
10 medical background and, if available, the medical background on
11 the child's biological parents, so far as ascertainable, has been
12 submitted to the prospective tribal customary adoptive parents
13 and they have acknowledged in writing the receipt of the report.

14 (B) The report on the child's background shall contain all known
15 diagnostic information, including current medical reports on the
16 child, psychological evaluations, and scholastic information, as
17 well as all known information regarding the child's developmental
18 history.

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

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

34 (12) After the prospective adoptive parent or parents desiring
35 to adopt the child have filed the adoption petition, the agency that
36 has placement, care and responsibility for the child shall submit
37 to the court, a full and final report of the facts of the proposed
38 tribal customary adoption. The requisite elements of the final court
39 report shall be those specified for court reports in the department's
40 regulations governing agency adoptions.

1 (13) Notwithstanding any other provision of law, after the tribal
2 customary adoption order has been issued and afforded full faith
3 and credit by the state court, the tribal customary adoptive parents
4 shall have all of the rights and privileges afforded to, and are
5 subject to all the duties of, any other adoptive parent or parents
6 pursuant to the laws of this state.

7 (14) Consistent with Section 366.3, after the tribal customary
8 adoption has been afforded full faith and credit and a final
9 adoption decree has been issued, the court shall terminate its
10 jurisdiction over the Indian child.

11 (15) Nothing in this section is intended to prevent the transfer
12 of those proceedings to a tribal court where transfer is otherwise
13 permitted under applicable law.

14 (d) The following disclosure provisions shall apply to tribal
15 customary adoptions:

16 (1) The petition, agreement, order, report to the court from any
17 investigating agency, and any power of attorney filed in a tribal
18 customary adoption proceeding is not open to inspection by any
19 person other than the parties to the proceeding and their attorneys
20 and the department, except upon the written authority of the judge
21 of the juvenile court. A judge may not authorize anyone to inspect
22 the petition, agreement, order, report to the court from any
23 investigating agency, and any power of attorney except in
24 exceptional circumstances and for good cause approaching the
25 necessitous.

26 (2) Except as otherwise permitted or required by statute, neither
27 the department nor any licensed adoption agency shall release
28 information that would identify persons who receive, or have
29 received, tribal customary adoption services. However, employees
30 of the department and licensed adoption agencies shall release to
31 the State Department of Social Services any requested information,
32 including identifying information, for the purpose of recordkeeping
33 and monitoring, evaluation, and regulation of the provision of
34 tribal customary adoption services.

35 (3) The department and any licensed adoption agency may,
36 upon written authorization for the release of specified information
37 by the subject of that information, share information regarding a
38 prospective tribal customary adoptive parent or birth parent with
39 other social service agencies, including the department and other

1 *licensed adoption agencies, or providers of health care as defined*
2 *in Section 56.05 of the Civil Code.*

3 *(4) Notwithstanding any other law, the department and any*
4 *other licensed adoption agency may furnish information relating*
5 *to a tribal customary adoption petition or to a child in the custody*
6 *of the department or any licensed public adoption agency to the*
7 *juvenile court, county welfare department, public welfare agency,*
8 *private welfare agency licensed by the department, provider of*
9 *foster care services, potential adoptive parents, or provider of*
10 *health care as defined in Section 56.05 of the Civil Code, if it is*
11 *believed the child's welfare will be promoted thereby.*

12 *(5) The department and any licensed adoption agency may make*
13 *tribal customary adoption case records, including identifying*
14 *information, available for research purposes, provided that the*
15 *research will not result in the disclosure of the identity of the child*
16 *or the parties to the tribal customary adoption to anyone other*
17 *than the entity conducting the research.*

18 *(e) This section shall become operative on July 1, 2010, and*
19 *shall remain operative only to the extent that compliance with its*
20 *provisions does not conflict with federal law as a condition of*
21 *receiving funding under Title IV-E or the federal Social Security*
22 *Act (42 U.S.C. Sec. 670 et seq.).*

23 *(f) The Judicial Council shall adopt rules of court and necessary*
24 *forms required to implement tribal customary adoption as a*
25 *permanent plan for dependent Indian children. The Judicial*
26 *Council shall study California's tribal customary adoption*
27 *provisions and their affects on children, birth parents, adoptive*
28 *parents, Indian custodians, tribes, and the court, and shall report*
29 *all of its findings to the Legislature on or before January 1, 2013.*
30 *The report shall include, but not be limited to, the following:*

31 *(1) The number of families served and the number of completed*
32 *tribal customary adoptions.*

33 *(2) The length of time it takes to complete a tribal customary*
34 *adoption.*

35 *(3) The challenges faced by social workers, court, and tribes*
36 *in completing tribal customary adoptions.*

37 *(4) The benefits or detriments to Indian children from a tribal*
38 *customary adoption.*

1 (g) *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. 13. Section 366.25 of the Welfare and Institutions Code
5 is amended to read:

6 366.25. (a) (1) When a case has been continued pursuant to
7 subdivision (b) of Section 366.22, the subsequent permanency
8 review hearing shall occur within 24 months after the date the
9 child was originally removed from the physical custody of his or
10 her parent or legal guardian. The court shall order the return of the
11 child to the physical custody of his or her parent or legal guardian
12 unless the court finds, by a preponderance of the evidence, that
13 the return of the child to his or her parent or legal guardian would
14 create a substantial risk of detriment to the safety, protection, or
15 physical or emotional well-being of the child. The social worker
16 shall have the burden of establishing that detriment. At the
17 subsequent permanency review hearing, the court shall consider
18 the criminal history, obtained pursuant to paragraph (1) of
19 subdivision (f) of Section 16504.5, of the parent or legal guardian
20 subsequent to the child's removal to the extent that the criminal
21 record is substantially related to the welfare of the child or parent
22 or legal guardian's ability to exercise custody and control regarding
23 his or her child provided that the parent or legal guardian agreed
24 to submit fingerprint images to obtain criminal history information
25 as part of the case plan. The failure of the parent or legal guardian
26 to participate regularly and make substantive progress in
27 court-ordered treatment programs shall be prima facie evidence
28 that return would be detrimental. In making its determination, the
29 court shall review and consider the social worker's report and
30 recommendations and the report and recommendations of any child
31 advocate appointed pursuant to Section 356.5; shall consider the
32 efforts or progress, or both, demonstrated by the parent or legal
33 guardian and the extent to which he or she availed himself or
34 herself of services provided; and shall make appropriate findings
35 pursuant to subdivision (a) of Section 366.

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

1 parents or legal guardian, the court shall consider and state for the
2 record, in-state and out-of-state options for the child's permanent
3 placement. If the child is placed out of the state, the court shall
4 make a determination whether the out-of-state placement continues
5 to be appropriate and in best interests of the child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

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

(f) 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. 14. Section 366.25 is added to the Welfare and Institutions Code, to read:

366.25. (a) (1) When a case has been continued pursuant to subdivision (b) of Section 366.22, the subsequent permanency review hearing shall occur within 24 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian. 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 subsequent permanency review 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 parent or legal guardian's ability to exercise custody and control regarding his or her child provided that 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 determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

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

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

1 of the following circumstances shall not, in and of themselves, be
2 deemed a failure to provide or offer reasonable services:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (e) The implementation and operation of subdivision (a) enacted
29 at the 2005–06 Regular Session shall be subject to appropriation
30 through the budget process and by phase, as provided in Section
31 366.35.

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

33 SEC. 15. Section 366.26 of the Welfare and Institutions Code
34 is amended to read:

35 366.26. (a) This section applies to children who are adjudged
36 dependent children of the juvenile court pursuant to subdivision
37 (d) of Section 360. The procedures specified herein are the
38 exclusive procedures for conducting these hearings; Part 2
39 (commencing with Section 3020) of Division 8 of the Family Code
40 is not applicable to these proceedings. Section 8616.5 of the Family

1 Code is applicable and available to all dependent children meeting
2 the requirements of that section, if the postadoption contact
3 agreement has been entered into voluntarily. For children who are
4 adjudged dependent children of the juvenile court pursuant to
5 subdivision (d) of Section 360, this section and Sections 8604,
6 8605, 8606, and 8700 of the Family Code and Chapter 5
7 (commencing with Section 7660) of Part 3 of Division 12 of the
8 Family Code specify the exclusive procedures for permanently
9 terminating parental rights with regard to, or establishing legal
10 guardianship of, the child while the child is a dependent child of
11 the juvenile court.

12 (b) At the hearing, which shall be held in juvenile court for all
13 children who are dependents of the juvenile court, the court, in
14 order to provide stable, permanent homes for these children, shall
15 review the report as specified in Section 361.5, 366.21, 366.22, or
16 366.25, shall indicate that the court has read and considered it,
17 shall receive other evidence that the parties may present, and then
18 shall make findings and orders in the following order of preference:

19 (1) Terminate the rights of the parent or parents and order that
20 the child be placed for adoption and, upon the filing of a petition
21 for adoption in the juvenile court, order that a hearing be set. The
22 court shall proceed with the adoption after the appellate rights of
23 the natural parents have been exhausted.

24 (2) Order, without termination of parental rights, the plan of
25 tribal customary adoption, as described in Section 366.24, through
26 ~~the Indian child's tribe's custom, traditions, or tribal law, and upon~~
27 ~~the filing of the tribal customary adoption order, order that tribal~~
28 *custom, traditions, or law of the Indian child's tribe, and upon the*
29 *court affording the tribal customary adoption order full faith and*
30 *credit at the continued selection and implementation hearing,*
31 *order that a hearing be set pursuant to paragraph (2) of subdivision*

32 (e)

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

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

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

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

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

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

29 (A) The child is living with a relative who is unable or unwilling
30 to adopt the child because of circumstances that do not include an
31 unwillingness to accept legal or financial responsibility for the
32 child, but who is willing and capable of providing the child with
33 a stable and permanent environment through legal guardianship,
34 and the removal of the child from the custody of his or her relative
35 would be detrimental to the emotional well-being of the child. For
36 purposes of an Indian child, "relative" shall include an "extended
37 family member," as defined in the federal Indian Child Welfare
38 Act (25 U.S.C. Sec. 1903(2)).

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

4 (i) The parents have maintained regular visitation and contact
5 with the child and the child would benefit from continuing the
6 relationship.

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

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

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

26 (v) There would be substantial interference with a child's sibling
27 relationship, taking into consideration the nature and extent of the
28 relationship, including, but not limited to, whether the child was
29 raised with a sibling in the same home, whether the child shared
30 significant common experiences or has existing close and strong
31 bonds with a sibling, and whether ongoing contact is in the child's
32 best interest, including the child's long-term emotional interest,
33 as compared to the benefit of legal permanence through adoption.

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

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

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

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

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

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

10 (A) At each hearing at which the court was required to consider
11 reasonable efforts or services, the court has found that reasonable
12 efforts were not made or that reasonable services were not offered
13 or provided.

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

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

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

23 (iii) The court has ordered tribal customary adoption pursuant
24 to Section 366.24.

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

1 agencies regarding the availability of the child for adoption. During
2 the 180-day period, the public agency shall conduct the search for
3 adoptive parents in the same manner as prescribed for children in
4 Sections 8708 and 8709 of the Family Code. At the expiration of
5 this period, another hearing shall be held and the court shall
6 proceed pursuant to paragraph (1), (2), (3), (5), or (6) of subdivision
7 (b). For purposes of this section, a child may only be found to be
8 difficult to place for adoption if there is no identified or available
9 prospective adoptive parent for the child because of the child's
10 membership in a sibling group, or the presence of a diagnosed
11 medical, physical, or mental handicap, or the child is seven years
12 of age or more.

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

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

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

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

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

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

34 (e) (1) The proceeding for the adoption of a child who is a
35 dependent of the juvenile court shall be in the juvenile court if the
36 court finds pursuant to this section that adoption is the appropriate
37 permanent plan and the petition for adoption is filed in the juvenile
38 court. Upon the filing of a petition for adoption, the juvenile court
39 shall order that an adoption hearing be set. The court shall proceed
40 with the adoption after the appellate rights of the natural parents

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

12 ~~(2) In the case of an Indian child, if the Indian child's tribe has~~
13 ~~elected a permanent plan of tribal customary adoption, the court~~
14 ~~shall order that an adoption hearing be set, at which time the tribal~~
15 ~~customary adoption order shall be filed in the court. The court,~~
16 ~~upon receiving the tribal customary adoption order, will afford the~~
17 ~~tribal customary adoption order full faith and credit to the same~~
18 ~~extent that the court would afford full faith and credit to the public~~
19 ~~acts, records, judicial proceedings, and judgments of any other~~
20 ~~entity, and upon a determination that the tribal customary adoption~~
21 ~~order may be afforded full faith and credit, consistent with Section~~
22 ~~224.5, the court shall thereafter issue an order of adoption~~
23 ~~consistent with Section 366.24.~~

24 *(2) In the case of an Indian child, if the Indian child's tribe has*
25 *elected a permanent plan of tribal customary adoption, the court,*
26 *upon receiving the tribal customary adoption order will afford the*
27 *tribal customary adoption order full faith and credit to the same*
28 *extent that the court would afford full faith and credit to the public*
29 *acts, records, judicial proceedings, and judgments of any other*
30 *entity. Upon a determination that the tribal customary adoption*
31 *order may be afforded full faith and credit, consistent with Section*
32 *224.5, the court shall thereafter order a hearing to finalize the*
33 *adoption be set upon the filing of the adoption petition. The*
34 *prospective tribal customary adoptive parents and the child who*
35 *is the subject of the tribal customary adoption petition shall appear*
36 *before the court for the finalization hearing. The court shall*
37 *thereafter issue an order of adoption pursuant to Section 366.24.*

38 *(3) If a child who is the subject of a finalized tribal customary*
39 *adoption shows evidence of a developmental disability or mental*
40 *illness as a result of conditions existing before the tribal customary*

1 *adoption to the extent that the child cannot be relinquished to a*
2 *licensed adoption agency on the grounds that the child is*
3 *considered unadoptable, and of which condition the tribal*
4 *customary adoptive parent or parents had no knowledge or notice*
5 *before the entry of the tribal customary adoption order, a petition*
6 *setting forth those facts may be filed by the tribal customary*
7 *adoptive parent or parents with the juvenile court that granted the*
8 *tribal customary adoption petition. If these facts are proved to the*
9 *satisfaction of the juvenile court, it may make an order setting*
10 *aside the tribal customary adoption order. The set aside petition*
11 *shall be filed within five years of the issuance of the tribal*
12 *customary adoption order. The court clerk shall immediately notify*
13 *the child's tribe and the department in Sacramento of the petition*
14 *within 60 days after the notice of filing of the petition. The*
15 *department shall file a full report with the court and shall appear*
16 *before the court for the purpose of representing the child.*
17 *Whenever a final decree of tribal customary adoption has been*
18 *vacated or set aside, the child shall be returned to the custody of*
19 *the county in which the proceeding for tribal customary adoption*
20 *was finalized. The biological parent or parents of the child may*
21 *petition for return of custody. The disposition of the child after the*
22 *court has entered an order to set aside a tribal customary adoption*
23 *shall include consultation with the child's tribe.*

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

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

32 (2) If a parent appears without counsel and is unable to afford
33 counsel, the court shall appoint counsel for the parent, unless this
34 representation is knowingly and intelligently waived. The same
35 counsel shall not be appointed to represent both the child and his
36 or her parent. The public defender or private counsel may be
37 appointed as counsel for the parent.

38 (3) Private counsel appointed under this section shall receive a
39 reasonable sum for compensation and expenses, the amount of
40 which shall be determined by the court. The amount shall be paid

1 by the real parties in interest, other than the child, in any
2 proportions the court deems just. However, if the court finds that
3 any of the real parties in interest are unable to afford counsel, the
4 amount shall be paid out of the general fund of the county.

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

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

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

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

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

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

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

27 (B) After testimony in chambers, the parent or parents of the
28 child may elect to have the court reporter read back the testimony
29 or have the testimony summarized by counsel for the parent or
30 parents.

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

34 (i) (1) Any order of the court permanently terminating parental
35 rights under this section shall be conclusive and binding upon the
36 child, upon the parent or parents and upon all other persons who
37 have been served with citation by publication or otherwise as
38 provided in this chapter. After making the order, the juvenile court
39 shall have no power to set aside, change, or modify it, except as

1 provided in paragraph (2), but nothing in this section shall be
2 construed to limit the right to appeal the order.

3 (2) A tribal customary adoption order evidencing that the Indian
4 child has been the subject of a tribal customary adoption shall be
5 afforded full faith and credit and shall have the same force and
6 effect as an order of adoption authorized by this section. The rights
7 and obligations of the parties as to the matters determined by the
8 Indian child's tribe shall be binding on all parties. A court shall
9 not order compliance with the order absent a finding that the party
10 seeking the enforcement participated, or attempted to participate,
11 in good faith, in family mediation services of the court or dispute
12 resolution through the tribe regarding the conflict, prior to the
13 filing of the enforcement action.

14 (3) A child who has not been adopted after the passage of at
15 least three years from the date the court terminated parental rights
16 and for whom the court has determined that adoption is no longer
17 the permanent plan may petition the juvenile court to reinstate
18 parental rights pursuant to the procedure prescribed by Section
19 388. The child may file the petition prior to the expiration of this
20 three-year period if the State Department of Social Services or
21 licensed adoption agency that is responsible for custody and
22 supervision of the child as described in subdivision (j) and the
23 child stipulate that the child is no longer likely to be adopted. A
24 child over 12 years of age shall sign the petition in the absence of
25 a showing of good cause as to why the child could not do so. If it
26 appears that the best interests of the child may be promoted by
27 reinstatement of parental rights, the court shall order that a hearing
28 be held and shall give prior notice, or cause prior notice to be
29 given, to the social worker or probation officer and to the child's
30 attorney of record, or, if there is no attorney of record for the child,
31 to the child, and the child's tribe, if applicable, by means prescribed
32 by subdivision (c) of Section 297. The court shall order the child
33 or the social worker or probation officer to give prior notice of the
34 hearing to the child's former parent or parents whose parental
35 rights were terminated in the manner prescribed by subdivision
36 (f) of Section 294 where the recommendation is adoption. The
37 juvenile court shall grant the petition if it finds by clear and
38 convincing evidence that the child is no longer likely to be adopted
39 and that reinstatement of parental rights is in the child's best
40 interest. If the court reinstates parental rights over a child who is

1 under 12 years of age and for whom the new permanent plan will
2 not be reunification with a parent or legal guardian, the court shall
3 specify the factual basis for its findings that it is in the best interest
4 of the child to reinstate parental rights. This subdivision is intended
5 to be retroactive and applies to any child who is under the
6 jurisdiction of the juvenile court at the time of the hearing
7 regardless of the date parental rights were terminated.

8 (j) If the court, by order or judgment, declares the child free
9 from the custody and control of both parents, or one parent if the
10 other does not have custody and control, *or declares the child*
11 *eligible for tribal customary adoption*, the court shall at the same
12 time order the child referred to the State Department of Social
13 Services or a licensed adoption agency for adoptive placement by
14 the agency. However, *except in the case of a tribal customary*
15 *adoption where there is no termination of parental rights*, a petition
16 for adoption may not be granted until the appellate rights of the
17 natural parents have been exhausted. The State Department of
18 Social Services or licensed adoption agency shall be responsible
19 for the custody and supervision of the child and shall be entitled
20 to the exclusive care and control of the child at all times until a
21 petition for adoption *or tribal customary adoption* is granted,
22 except as specified in subdivision (n). With the consent of the
23 agency, the court may appoint a guardian of the child, who shall
24 serve until the child is adopted.

25 (k) Notwithstanding any other provision of law, the application
26 of any person who, as a relative caretaker or foster parent, has
27 cared for a dependent child for whom the court has approved a
28 permanent plan for adoption, or who has been freed for adoption,
29 shall be given preference with respect to that child over all other
30 applications for adoptive placement if the agency making the
31 placement determines that the child has substantial emotional ties
32 to the relative caretaker or foster parent and removal from the
33 relative caretaker or foster parent would be seriously detrimental
34 to the child's emotional well-being.

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

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

4 (A) A petition for extraordinary writ review was filed in a timely
5 manner.

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

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

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

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

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

25 (B) The prompt transmittal of the records from the trial court
26 to the appellate court.

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

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

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

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

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

1 (5) This subdivision shall only apply to cases in which an order
2 to set a hearing pursuant to this section is issued on or after January
3 1, 1995.

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

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

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

22 (A) Applying for an adoption home study.

23 (B) Cooperating with an adoption home study.

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

26 (D) Requesting de facto parent status.

27 (E) Signing an adoptive placement agreement.

28 (F) Engaging in discussions regarding a postadoption contact
29 agreement.

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

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

34 (3) Prior to a change in placement and as soon as possible after
35 a decision is made to remove a child from the home of a designated
36 prospective adoptive parent, the agency shall notify the court, the
37 designated prospective adoptive parent or the current caretaker, if
38 that caretaker would have met the threshold criteria to be
39 designated as a prospective adoptive parent pursuant to paragraph
40 (1) on the date of service of this notice, the child's attorney, and

1 the child, if the child is 10 years of age or older, of the proposal
2 in the manner described in Section 16010.6.

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

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

37 (C) A determination by the court that the caretaker is a
38 designated prospective adoptive parent pursuant to paragraph (1)
39 or subparagraph (B) does not make the caretaker a party to the
40 dependency proceeding nor does it confer on the caretaker any

standing to object to any other action of the department or licensed adoption agency, unless the caretaker has been declared a de facto parent by the court prior to the notice of removal served pursuant to paragraph (3).

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

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

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

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

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

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

1 (p) 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. 16. Section 366.26 is added to the Welfare and
5 Institutions Code, to read:

6 366.26. (a) This section applies to children who are adjudged
7 dependent children of the juvenile court pursuant to subdivision
8 (d) of Section 360. The procedures specified herein are the
9 exclusive procedures for conducting these hearings; Part 2
10 (commencing with Section 3020) of Division 8 of the Family Code
11 is not applicable to these proceedings. Section 8616.5 of the Family
12 Code is applicable and available to all dependent children meeting
13 the requirements of that section, if the postadoption contact
14 agreement has been entered into voluntarily. For children who are
15 adjudged dependent children of the juvenile court pursuant to
16 subdivision (d) of Section 360, this section and Sections 8604,
17 8605, 8606, and 8700 of the Family Code and Chapter 5
18 (commencing with Section 7660) of Part 3 of Division 12 of the
19 Family Code specify the exclusive procedures for permanently
20 terminating parental rights with regard to, or establishing legal
21 guardianship of, the child while the child is a dependent child of
22 the juvenile court.

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

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

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

38 (3) On making a finding under paragraph (3) of subdivision (c),
39 identify adoption as the permanent placement goal and order that

1 efforts be made to locate an appropriate adoptive family for the
2 child within a period not to exceed 180 days.

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

5 (5) Order that the child be placed in long-term foster care,
6 subject to the periodic review of the juvenile court under Section
7 366.3.

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

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

31 (A) The child is living with a relative who is unable or unwilling
32 to adopt the child because of circumstances that do not include an
33 unwillingness to accept legal or financial responsibility for the
34 child, but who is willing and capable of providing the child with
35 a stable and permanent environment through legal guardianship,
36 and the removal of the child from the custody of his or her relative
37 would be detrimental to the emotional well-being of the child. For
38 purposes of an Indian child, "relative" shall include an "extended
39 family member," as defined in the federal Indian Child Welfare
40 Act (25 U.S.C. Sec. 1903(2)).

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

4 (i) The parents have maintained regular visitation and contact
5 with the child and the child would benefit from continuing the
6 relationship.

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

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

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

26 (v) There would be substantial interference with a child's sibling
27 relationship, taking into consideration the nature and extent of the
28 relationship, including, but not limited to, whether the child was
29 raised with a sibling in the same home, whether the child shared
30 significant common experiences or has existing close and strong
31 bonds with a sibling, and whether ongoing contact is in the child's
32 best interest, including the child's long-term emotional interest,
33 as compared to the benefit of legal permanence through adoption.

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

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

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

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

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

8 (A) At each hearing at which the court was required to consider
9 reasonable efforts or services, the court has found that reasonable
10 efforts were not made or that reasonable services were not offered
11 or provided.

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

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

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

21 (3) If the court finds that termination of parental rights would
22 not be detrimental to the child pursuant to paragraph (1) and that
23 the child has a probability for adoption but is difficult to place for
24 adoption and there is no identified or available prospective adoptive
25 parent, the court may identify adoption as the permanent placement
26 goal and without terminating parental rights, order that efforts be
27 made to locate an appropriate adoptive family for the child, within
28 the state or out of the state, within a period not to exceed 180 days.
29 During this 180-day period, the public agency responsible for
30 seeking adoptive parents for each child shall, to the extent possible,
31 ask each child who is 10 years of age or older, to identify any
32 individuals, other than the child's siblings, who are important to
33 the child, in order to identify potential adoptive parents. The public
34 agency may ask any other child to provide that information, as
35 appropriate. During the 180-day period, the public agency shall,
36 to the extent possible, contact other private and public adoption
37 agencies regarding the availability of the child for adoption. During
38 the 180-day period, the public agency shall conduct the search for
39 adoptive parents in the same manner as prescribed for children in
40 Sections 8708 and 8709 of the Family Code. At the expiration of

1 this period, another hearing shall be held and the court shall
2 proceed pursuant to paragraph (1) or (4) of subdivision (b). For
3 purposes of this section, a child may only be found to be difficult
4 to place for adoption if there is no identified or available
5 prospective adoptive parent for the child because of the child's
6 membership in a sibling group, or the presence of a diagnosed
7 medical, physical, or mental handicap, or the child is seven years
8 of age or more.

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

23 (B) If the child is living with a relative or a foster parent who
24 is willing and capable of providing a stable and permanent
25 environment, but not willing to become a legal guardian, the child
26 shall not be removed from the home if the court finds the removal
27 would be seriously detrimental to the emotional well-being of the
28 child because the child has substantial psychological ties to the
29 relative caretaker or foster parents.

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

34 (5) If the court finds that the child should not be placed for
35 adoption, that legal guardianship shall not be established, and that
36 there are no suitable foster parents except exclusive-use homes
37 available to provide the child with a stable and permanent
38 environment, the court may order the care, custody, and control
39 of the child transferred from the county welfare department to a
40 licensed foster family agency. The court shall consider the written

1 recommendation of the county welfare director regarding the
2 suitability of the transfer. The transfer shall be subject to further
3 court orders.

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

16 (d) The proceeding for the appointment of a guardian for a child
17 who is a dependent of the juvenile court shall be in the juvenile
18 court. If the court finds pursuant to this section that legal
19 guardianship is the appropriate permanent plan, it shall appoint
20 the legal guardian and issue letters of guardianship. The assessment
21 prepared pursuant to subdivision (g) of Section 361.5, subdivision
22 (i) of Section 366.21, subdivision (b) of Section 366.22, and
23 subdivision (b) of Section 366.25 shall be read and considered by
24 the court prior to the appointment, and this shall be reflected in
25 the minutes of the court. The person preparing the assessment may
26 be called and examined by any party to the proceeding.

27 (e) The proceeding for the adoption of a child who is a
28 dependent of the juvenile court shall be in the juvenile court if the
29 court finds pursuant to this section that adoption is the appropriate
30 permanent plan and the petition for adoption is filed in the juvenile
31 court. Upon the filing of a petition for adoption, the juvenile court
32 shall order that an adoption hearing be set. The court shall proceed
33 with the adoption after the appellate rights of the natural parents
34 have been exhausted. The full report required by Section 8715 of
35 the Family Code shall be read and considered by the court prior
36 to the adoption and this shall be reflected in the minutes of the
37 court. The person preparing the report may be called and examined
38 by any party to the proceeding. It is the intent of the Legislature,
39 pursuant to this subdivision, to give potential adoptive parents the
40 option of filing in the juvenile court the petition for the adoption

1 of a child who is a dependent of the juvenile court. Nothing in this
2 section is intended to prevent the filing of a petition for adoption
3 in any other court as permitted by law, instead of in the juvenile
4 court.

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

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

13 (2) If a parent appears without counsel and is unable to afford
14 counsel, the court shall appoint counsel for the parent, unless this
15 representation is knowingly and intelligently waived. The same
16 counsel shall not be appointed to represent both the child and his
17 or her parent. The public defender or private counsel may be
18 appointed as counsel for the parent.

19 (3) Private counsel appointed under this section shall receive a
20 reasonable sum for compensation and expenses, the amount of
21 which shall be determined by the court. The amount shall be paid
22 by the real parties in interest, other than the child, in any
23 proportions the court deems just. However, if the court finds that
24 any of the real parties in interest are unable to afford counsel, the
25 amount shall be paid out of the general fund of the county.

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

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

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

38 (3) (A) The testimony of the child may be taken in chambers
39 and outside the presence of the child's parent or parents, if the

1 child's parent or parents are represented by counsel, the counsel
2 is present, and any of the following circumstances exists:

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

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

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

9 (B) After testimony in chambers, the parent or parents of the
10 child may elect to have the court reporter read back the testimony
11 or have the testimony summarized by counsel for the parent or
12 parents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (A) Make every reasonable attempt to achieve a substantive and
40 meritorious review by the appellate court within the time specified

1 in Sections 366.21, 366.22, and 366.25 for holding a hearing
2 pursuant to this section.

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

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

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

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

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

26 (A) Applying for an adoption home study.

27 (B) Cooperating with an adoption home study.

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

30 (D) Requesting de facto parent status.

31 (E) Signing an adoptive placement agreement.

32 (F) Engaging in discussions regarding a postadoption contact
33 agreement.

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

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

38 (3) Prior to a change in placement and as soon as possible after
39 a decision is made to remove a child from the home of a designated
40 prospective adoptive parent, the agency shall notify the court, the

1 designated prospective adoptive parent or the current caretaker, if
2 that caretaker would have met the threshold criteria to be
3 designated as a prospective adoptive parent pursuant to paragraph
4 (1) on the date of service of this notice, the child's attorney, and
5 the child, if the child is 10 years of age or older, of the proposal
6 in the manner described in Section 16010.6.

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

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

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

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

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

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

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

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

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

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

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

366.3. (a) If a juvenile court orders a permanent plan of adoption, tribal customary adoption, or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established, except as provided for in Section 366.29. The status of the child shall be reviewed every six months to ensure that the adoption or legal guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, ~~or the tribal customary adoption order has been filed with the court pursuant to Section 366.26 or in the case of a tribal customary adoption, when the tribal customary adoption order has been afforded full faith and credit and the petition for adoption has been granted,~~ the court shall terminate its jurisdiction over the child. Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the legal guardianship, as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except if the relative guardian objects, or upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights, the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of

1 this fact. The court may vacate its previous order dismissing
2 dependency jurisdiction over the child.

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

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

1 alternative for the child. The court may, if it is in the best interests
2 of the child, order that reunification services again be provided to
3 the parent or parents.

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

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

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

31 (2) Upon the request of the child.

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

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

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

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

6 (1) The continuing necessity for, and appropriateness of, the
7 placement.

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

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

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

38 (5) Whether there should be any limitation on the right of the
39 parent or guardian to make educational decisions for the child.
40 That limitation shall be specifically addressed in the court order

1 and may not exceed what is necessary to protect the child. If the
2 court specifically limits the right of the parent or guardian to make
3 educational decisions for the child, the court shall at the same time
4 appoint a responsible adult to make educational decisions for the
5 child pursuant to Section 361.

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

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

15 (8) The likely date by which the child may be returned to, and
16 safely maintained in, the home, placed for adoption, legal
17 guardianship, in another planned permanent living arrangement,
18 or, for an Indian child, in consultation with the child's tribe, placed
19 for tribal customary adoption.

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

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

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

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

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

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

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

1 applicable, and whether ongoing contact is in the child's best
2 emotional interests.

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

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

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

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

25 (g) At the review conducted by the court and held at least every
26 six months, regarding a child for whom the court has ordered
27 parental rights terminated and who has been ordered placed for
28 adoption, or, for an Indian child for whom parental rights are not
29 being terminated and a tribal customary adoption is being
30 considered, the county welfare department shall prepare and present
31 to the court a report describing the following:

32 (1) The child's present placement.

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

35 (3) If the child has not been placed with a prospective adoptive
36 parent or guardian, identification of individuals, other than the
37 child's siblings, who are important to the child and actions
38 necessary to maintain the child's relationship with those
39 individuals, provided that those relationships are in the best interest
40 of the child. The agency shall ask every child who is 10 years of

1 age or older to identify any individuals who are important to him
2 or her, consistent with the child's best interest, and may ask any
3 child who is younger than 10 years of age to provide that
4 information as appropriate. The agency shall make efforts to
5 identify other individuals who are important to the child.

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

8 (5) Whether an adoptive placement agreement has been signed
9 and filed.

10 (6) If the child has not been placed with a prospective adoptive
11 parent or parents, the efforts made to identify an appropriate
12 prospective adoptive parent or legal guardian, including, but not
13 limited to, child-specific recruitment efforts and listing on an
14 adoption exchange.

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

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

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

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

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

24 (12) Recommendations for court orders that will assist in the
25 placement of the child for adoption or in the finalization of the
26 adoption.

27 The court shall determine whether or not reasonable efforts to
28 make and finalize a permanent placement for the child have been
29 made.

30 The court shall make appropriate orders to protect the stability
31 of the child and to facilitate and expedite the permanent placement
32 and adoption of the child.

33 (h) At the review held pursuant to subdivision (d) for a child in
34 long-term foster care, the court shall consider all permanency
35 planning options for the child including whether the child should
36 be returned to the home of the parent, placed for adoption, or, for
37 an Indian child, in consultation with the child's tribe, placed for
38 tribal customary adoption, or appointed a legal guardian, or, if
39 compelling reasons exist for finding that none of the foregoing
40 options are in the best interest of the child, whether the child should

1 be placed in another planned permanent living arrangement. The
2 court shall order that a hearing be held pursuant to Section 366.26,
3 unless it determines by clear and convincing evidence that there
4 is a compelling reason for determining that a hearing held pursuant
5 to Section 366.26 is not in the best interest of the child because
6 the child is being returned to the home of the parent, the child is
7 not a proper subject for adoption, or no one is willing to accept
8 legal guardianship. If the licensed county adoption agency, or the
9 department when it is acting as an adoption agency in counties
10 that are not served by a county adoption agency, has determined
11 it is unlikely that the child will be adopted or one of the conditions
12 described in paragraph (1) of subdivision (c) of Section 366.26
13 applies, that fact shall constitute a compelling reason for purposes
14 of this subdivision. Only upon that determination may the court
15 order that the child remain in foster care, without holding a hearing
16 pursuant to Section 366.26.

17 (i) If, as authorized by subdivision (h), the court orders a hearing
18 pursuant to Section 366.26, the court shall direct the agency
19 supervising the child and the licensed county adoption agency, or
20 the State Department of Social Services when it is acting as an
21 adoption agency in counties that are not served by a county
22 adoption agency, to prepare an assessment as provided for in
23 subdivision (i) of Section 366.21 or subdivision (b) of Section
24 366.22. A hearing held pursuant to Section 366.26 shall be held
25 no later than 120 days from the date of the 12-month review at
26 which it is ordered, and at that hearing the court shall determine
27 whether adoption, tribal customary adoption, legal guardianship,
28 or long-term foster care is the most appropriate plan for the child.

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

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

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

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

3 366.3. (a) If a juvenile court orders a permanent plan of
4 adoption or legal guardianship pursuant to Section 360 or 366.26,
5 the court shall retain jurisdiction over the child until the child is
6 adopted or the legal guardianship is established, except as provided
7 for in Section 366.29. The status of the child shall be reviewed
8 every six months to ensure that the adoption or legal guardianship
9 is completed as expeditiously as possible. When the adoption of
10 the child has been granted, the court shall terminate its jurisdiction
11 over the child. Following establishment of a legal guardianship,
12 the court may continue jurisdiction over the child as a dependent
13 child of the juvenile court or may terminate its dependency
14 jurisdiction and retain jurisdiction over the child as a ward of the
15 legal guardianship, as authorized by Section 366.4. If, however, a
16 relative of the child is appointed the legal guardian of the child
17 and the child has been placed with the relative for at least 12
18 months, the court shall, except if the relative guardian objects, or
19 upon a finding of exceptional circumstances, terminate its
20 dependency jurisdiction and retain jurisdiction over the child as a
21 ward of the guardianship, as authorized by Section 366.4.
22 Following a termination of parental rights, the parent or parents
23 shall not be a party to, or receive notice of, any subsequent
24 proceedings regarding the child.

25 (b) If the court has dismissed dependency jurisdiction following
26 the establishment of a legal guardianship, or no dependency
27 jurisdiction attached because of the granting of a legal guardianship
28 pursuant to Section 360, and the legal guardianship is subsequently
29 revoked or otherwise terminated, the county department of social
30 services or welfare department shall notify the juvenile court of
31 this fact. The court may vacate its previous order dismissing
32 dependency jurisdiction over the child.

33 Notwithstanding Section 1601 of the Probate Code, the
34 proceedings to terminate a legal guardianship that has been granted
35 pursuant to Section 360 or 366.26 shall be held either in the
36 juvenile court that retains jurisdiction over the guardianship as
37 authorized by Section 366.4 or the juvenile court in the county
38 where the guardian and child currently reside, based on the best
39 interests of the child, unless the termination is due to the
40 emancipation or adoption of the child. The juvenile court having

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

23 Unless the parental rights of the child's parent or parents have
24 been terminated, they shall be notified that the legal guardianship
25 has been revoked or terminated and shall be entitled to participate
26 in the new permanency planning hearing. The court shall try to
27 place the child in another permanent placement. At the hearing,
28 the parents may be considered as custodians but the child shall not
29 be returned to the parent or parents unless they prove, by a
30 preponderance of the evidence, that reunification is the best
31 alternative for the child. The court may, if it is in the best interests
32 of the child, order that reunification services again be provided to
33 the parent or parents.

34 (c) If, following the establishment of a legal guardianship, the
35 county welfare department becomes aware of changed
36 circumstances that indicate adoption may be an appropriate plan
37 for the child, the department shall so notify the court. The court
38 may vacate its previous order dismissing dependency jurisdiction
39 over the child and order that a hearing be held pursuant to Section
40 366.26 to determine whether adoption or continued legal

guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. If the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services if it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

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

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

(2) Upon the request of the child.

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

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

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

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

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

(2) Identification of individuals other than the child's siblings who are important to a child who is 10 years of age or older and has been in out-of-home placement for six months or longer, and actions necessary to maintain the child's relationship with those

1 individuals, provided that those relationships are in the best interest
2 of the child. The social worker shall ask every child who is 10
3 years of age or older and who has been in out-of-home placement
4 for six months or longer to identify individuals other than the
5 child's siblings who are important to the child, and may ask any
6 other child to provide that information, as appropriate. The social
7 worker shall make efforts to identify other individuals who are
8 important to the child, consistent with the child's best interests.

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

17 (4) The extent of the agency's compliance with the child welfare
18 services case plan in making reasonable efforts either to return the
19 child to the safe home of the parent or to complete whatever steps
20 are necessary to finalize the permanent placement of the child. If
21 the reviewing body determines that a second period of reunification
22 services is in the child's best interests, and that there is a significant
23 likelihood of the child's return to a safe home due to changed
24 circumstances of the parent, pursuant to subdivision (f), the specific
25 reunification services required to effect the child's return to a safe
26 home shall be described.

27 (5) Whether there should be any limitation on the right of the
28 parent or guardian to make educational decisions for the child.
29 That limitation shall be specifically addressed in the court order
30 and may not exceed what is necessary to protect the child. If the
31 court specifically limits the right of the parent or guardian to make
32 educational decisions for the child, the court shall at the same time
33 appoint a responsible adult to make educational decisions for the
34 child pursuant to Section 361.

35 (6) The adequacy of services provided to the child. The court
36 shall consider the progress in providing the information and
37 documents to the child, as described in Section 391. The court
38 shall also consider the need for, and progress in providing, the
39 assistance and services described in paragraphs (3) and (4) of
40 subdivision (b) of Section 391.

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

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

7 (9) Whether the child has any 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 The factors the court may consider as indicators of the nature of
22 the child's sibling relationships include, but are not limited to,
23 whether the siblings were raised together in the same home,
24 whether the siblings have shared significant common experiences
25 or have existing close and strong bonds, whether either sibling
26 expresses a desire to visit or live with his or her sibling, as
27 applicable, and whether ongoing contact is in the child's best
28 emotional interests.

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

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

35 Each licensed foster family agency shall submit reports for each
36 child in its care, custody, and control to the court concerning the
37 continuing appropriateness and extent of compliance with the
38 child's permanent plan, the extent of compliance with the case
39 plan, and the type and adequacy of services provided to the child.

1 (f) Unless their parental rights have been permanently
2 terminated, the parent or parents of the child are entitled to receive
3 notice of, and participate in, those hearings. It shall be presumed
4 that continued care is in the best interests of the child, unless the
5 parent or parents prove, by a preponderance of the evidence, that
6 further efforts at reunification are the best alternative for the child.
7 In those cases, the court may order that further reunification
8 services to return the child to a safe home environment be provided
9 to the parent or parents up to a period of six months, and family
10 maintenance services, as needed for an additional six months in
11 order to return the child to a safe home environment.

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

17 (1) The child's present placement.

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

20 (3) If the child has not been placed with a prospective adoptive
21 parent or guardian, identification of individuals, other than the
22 child's siblings, who are important to the child and actions
23 necessary to maintain the child's relationship with those
24 individuals, provided that those relationships are in the best interest
25 of the child. The agency shall ask every child who is 10 years of
26 age or older to identify any individuals who are important to him
27 or her, consistent with the child's best interest, and may ask any
28 child who is younger than 10 years of age to provide that
29 information as appropriate. The agency shall make efforts to
30 identify other individuals who are important to the child.

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

33 (5) Whether an adoptive placement agreement has been signed
34 and filed.

35 (6) If the child has not been placed with a prospective adoptive
36 parent or parents, the efforts made to identify an appropriate
37 prospective adoptive parent or legal guardian, including, but not
38 limited to, child-specific recruitment efforts and listing on an
39 adoption exchange.

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

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

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

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

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

10 (12) Recommendations for court orders that will assist in the
11 placement of the child for adoption or in the finalization of the
12 adoption.

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

16 The court shall make appropriate orders to protect the stability
17 of the child and to facilitate and expedite the permanent placement
18 and adoption of the child.

19 (h) At the review held pursuant to subdivision (d) for a child in
20 long-term foster care, the court shall consider all permanency
21 planning options for the child including whether the child should
22 be returned to the home of the parent, placed for adoption, or
23 appointed a legal guardian, or, if compelling reasons exist for
24 finding that none of the foregoing options are in the best interest
25 of the child, whether the child should be placed in another planned
26 permanent living arrangement. The court shall order that a hearing
27 be held pursuant to Section 366.26, unless it determines by clear
28 and convincing evidence that there is a compelling reason for
29 determining that a hearing held pursuant to Section 366.26 is not
30 in the best interest of the child because the child is being returned
31 to the home of the parent, the child is not a proper subject for
32 adoption, or no one is willing to accept legal guardianship. If the
33 licensed county adoption agency, or the department when it is
34 acting as an adoption agency in counties that are not served by a
35 county adoption agency, has determined it is unlikely that the child
36 will be adopted or one of the conditions described in paragraph
37 (1) of subdivision (c) of Section 366.26 applies, that fact shall
38 constitute a compelling reason for purposes of this subdivision.
39 Only upon that determination may the court order that the child

1 remain in foster care, without holding a hearing pursuant to Section
2 366.26.

3 (i) If, as authorized by subdivision (h), the court orders a hearing
4 pursuant to Section 366.26, the court shall direct the agency
5 supervising the child and the licensed county adoption agency, or
6 the State Department of Social Services when it is acting as an
7 adoption agency in counties that are not served by a county
8 adoption agency, to prepare an assessment as provided for in
9 subdivision (i) of Section 366.21 or subdivision (b) of Section
10 366.22. A hearing held pursuant to Section 366.26 shall be held
11 no later than 120 days from the date of the 12-month review at
12 which it is ordered, and at that hearing the court shall determine
13 whether adoption, legal guardianship, or long-term foster care is
14 the most appropriate plan for the child.

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

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

23 (l) This section shall become operative on January 1, 2014.

24 ~~SEC. 19. Section 16120 of the Welfare and Institutions Code~~
25 ~~is amended to read:~~

26 ~~16120. A child shall be eligible for Adoption Assistance~~
27 ~~Program benefits if all of the conditions specified in subdivisions~~
28 ~~(a) through (g), inclusive, are met or if the conditions specified in~~
29 ~~subdivision (h) are met.~~

30 ~~(a) The child has at least one of the following characteristics~~
31 ~~that are barriers to his or her adoption:~~

32 ~~(1) Adoptive placement without financial assistance is unlikely~~
33 ~~because of membership in a sibling group that should remain intact~~
34 ~~or by virtue of race, ethnicity, color, language, age of three years~~
35 ~~or older, or parental background of a medical or behavioral nature~~
36 ~~that can be determined to adversely affect the development of the~~
37 ~~child.~~

38 ~~(2) Adoptive placement without financial assistance is unlikely~~
39 ~~because the child has a mental, physical, emotional, or medical~~
40 ~~disability that has been certified by a licensed professional~~

1 competent to make an assessment and operating within the scope
2 of his or her profession. This paragraph shall also apply to children
3 with a developmental disability as defined in subdivision (a) of
4 Section 4512, including those determined to require out-of-home
5 nonmedical care as described in Section 11464.

6 ~~(b) The need for adoption subsidy is evidenced by an~~
7 ~~unsuccessful search for an adoptive home to take the child without~~
8 ~~financial assistance, as documented in the case file of the~~
9 ~~prospective adoptive child. The requirement for this search shall~~
10 ~~be waived when it would be against the best interest of the child~~
11 ~~because of the existence of significant emotional ties with~~
12 ~~prospective adoptive parents while in the care of these persons as~~
13 ~~a foster child.~~

14 ~~(c) The child meets either of the following criteria:~~

15 ~~(1) At the time a petition for an agency adoption, as defined in~~
16 ~~Section 8506 of the Family Code, or an independent adoption, as~~
17 ~~defined in Section 8524 of the Family Code, is filed, the child has~~
18 ~~met the requirements to receive federal supplemental security~~
19 ~~income benefits pursuant to Subchapter 16 (commencing with~~
20 ~~Section 1381) of Chapter 7 of Title 42 of the United States Code,~~
21 ~~as determined and documented by the federal Social Security~~
22 ~~Administration.~~

23 ~~(2) The child is the subject of an agency adoption as defined in~~
24 ~~Section 8506 of the Family Code and was any of the following:~~

25 ~~(A) Under the supervision of a county welfare department as~~
26 ~~the subject of a legal guardianship or juvenile court dependency.~~

27 ~~(B) Relinquished for adoption to a licensed California private~~
28 ~~or public adoption agency, or the department, and would have~~
29 ~~otherwise been at risk of dependency as certified by the responsible~~
30 ~~public child welfare agency.~~

31 ~~(C) Committed to the care of the department pursuant to Section~~
32 ~~8805 or 8918 of the Family Code.~~

33 ~~(3) The child is an Indian child and the subject of an order of~~
34 ~~adoption based on tribal customary adoption of an Indian child,~~
35 ~~as described in Section 366.24.~~

36 ~~(d) The child is under 18 years of age, or under 21 years of age~~
37 ~~and has a mental or physical handicap that warrants the~~
38 ~~continuation of assistance.~~

1 ~~(e) The adoptive family is responsible for the child pursuant to~~
2 ~~the terms of an adoptive placement agreement or a final decree of~~
3 ~~adoption and has signed an adoption assistance agreement.~~

4 ~~(f) The adoptive family is legally responsible for the support of~~
5 ~~the child and the child is receiving support from the adoptive~~
6 ~~parent.~~

7 ~~(g) The department or the county responsible for determining~~
8 ~~the child's Adoption Assistance Program eligibility status and for~~
9 ~~providing financial aid, and the prospective adoptive parent, prior~~
10 ~~to or at the time the adoption decree is issued by the court, have~~
11 ~~signed an adoption assistance agreement that stipulates the need~~
12 ~~for, and the amount of, Adoption Assistance Program benefits.~~

13 ~~(h) A child shall be eligible for Adoption Assistance Program~~
14 ~~benefits if the child received Adoption Assistance Program benefits~~
15 ~~with respect to a prior adoption and the child is again available for~~
16 ~~adoption because the prior adoption was dissolved and the parental~~
17 ~~rights of the adoptive parents were terminated or because the~~
18 ~~child's adoptive parents died.~~

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

22 ~~SEC. 20. Section 16120 is added to the Welfare and Institutions~~
23 ~~Code, to read:~~

24 ~~16120. A child shall be eligible for Adoption Assistance~~
25 ~~Program benefits if all of the conditions specified in subdivisions~~
26 ~~(a) through (g), inclusive, are met or if the conditions specified in~~
27 ~~subdivision (h) are met.~~

28 ~~(a) The child has at least one of the following characteristics~~
29 ~~that are barriers to his or her adoption:~~

30 ~~(1) Adoptive placement without financial assistance is unlikely~~
31 ~~because of membership in a sibling group that should remain intact~~
32 ~~or by virtue of race, ethnicity, color, language, age of three years~~
33 ~~or older, or parental background of a medical or behavioral nature~~
34 ~~that can be determined to adversely affect the development of the~~
35 ~~child.~~

36 ~~(2) Adoptive placement without financial assistance is unlikely~~
37 ~~because the child has a mental, physical, emotional, or medical~~
38 ~~disability that has been certified by a licensed professional~~
39 ~~competent to make an assessment and operating within the scope~~
40 ~~of his or her profession. This paragraph shall also apply to children~~

1 with a developmental disability as defined in subdivision (a) of
2 Section 4512, including those determined to require out-of-home
3 nonmedical care as described in Section 11464.

4 (b) The need for adoption subsidy is evidenced by an
5 unsuccessful search for an adoptive home to take the child without
6 financial assistance, as documented in the case file of the
7 prospective adoptive child. The requirement for this search shall
8 be waived when it would be against the best interest of the child
9 because of the existence of significant emotional ties with
10 prospective adoptive parents while in the care of these persons as
11 a foster child.

12 (c) The child meets either of the following criteria:

13 (1) At the time a petition for an agency adoption, as defined in
14 Section 8506 of the Family Code, or an independent adoption, as
15 defined in Section 8524 of the Family Code, is filed, the child has
16 met the requirements to receive federal supplemental security
17 income benefits pursuant to Subchapter 16 (commencing with
18 Section 1381) of Chapter 7 of Title 42 of the United States Code,
19 as determined and documented by the federal Social Security
20 Administration.

21 (2) The child is the subject of an agency adoption as defined in
22 Section 8506 of the Family Code and was any of the following:

23 (A) Under the supervision of a county welfare department as
24 the subject of a legal guardianship or juvenile court dependency.

25 (B) Relinquished for adoption to a licensed California private
26 or public adoption agency, or the department, and would have
27 otherwise been at risk of dependency as certified by the responsible
28 public child welfare agency.

29 (C) Committed to the care of the department pursuant to Section
30 8805 or 8918 of the Family Code.

31 (d) The child is under 18 years of age, or under 21 years of age
32 and has a mental or physical handicap that warrants the
33 continuation of assistance.

34 (e) The adoptive family is responsible for the child pursuant to
35 the terms of an adoptive placement agreement or a final decree of
36 adoption and has signed an adoption assistance agreement.

37 (f) The adoptive family is legally responsible for the support of
38 the child and the child is receiving support from the adoptive
39 parent.

1 ~~(g) The department or the county responsible for determining~~
2 ~~the child's Adoption Assistance Program eligibility status and for~~
3 ~~providing financial aid, and the prospective adoptive parent, prior~~
4 ~~to or at the time the adoption decree is issued by the court, have~~
5 ~~signed an adoption assistance agreement that stipulates the need~~
6 ~~for, and the amount of, Adoption Assistance Program benefits.~~

7 ~~(h) A child shall be eligible for Adoption Assistance Program~~
8 ~~benefits if the child received Adoption Assistance Program benefits~~
9 ~~with respect to a prior adoption and the child is again available for~~
10 ~~adoption because the prior adoption was dissolved and the parental~~
11 ~~rights of the adoptive parents were terminated or because the~~
12 ~~child's adoptive parents died.~~

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

14 *SEC. 19. Section 16120 of the Welfare and Institutions Code*
15 *is amended to read:*

16 16120. A child shall be eligible for Adoption Assistance
17 Program benefits if all of the conditions specified in subdivisions
18 (a) to (l), inclusive, are met or if the conditions specified in
19 subdivision (m) are met.

20 (a) It has been determined that the child cannot or should not
21 be returned to the home of his or her parents as evidenced by a
22 petition for termination of parental rights, a court order terminating
23 parental rights, or a signed relinquishment.

24 (b) The child has at least one of the following characteristics
25 that are barriers to his or her adoption:

26 (1) Adoptive placement without financial assistance is unlikely
27 because of membership in a sibling group that should remain intact
28 or by virtue of race, ethnicity, color, language, three years of age
29 or older, or parental background of a medical or behavioral nature
30 that can be determined to adversely affect the development of the
31 child.

32 (2) Adoptive placement without financial assistance is unlikely
33 because the child has a mental, physical, emotional, or medical
34 disability that has been certified by a licensed professional
35 competent to make an assessment and operating within the scope
36 of his or her profession. This paragraph shall also apply to children
37 with a developmental disability, as defined in subdivision (a) of
38 Section 4512, including those determined to require out-of-home
39 nonmedical care, as described in Section 11464.

(c) The need for adoption subsidy is evidenced by an unsuccessful search for an adoptive home to take the child without financial assistance, as documented in the case file of the prospective adoptive child. The requirement for this search shall be waived when it would be against the best interest of the child because of the existence of significant emotional ties with prospective adoptive parents while in the care of these persons as a foster child.

(d) The child is under 18 years of age, or under 21 years of age and has a mental or physical handicap that warrants the continuation of assistance.

(e) The adoptive family is responsible for the child pursuant to the terms of an adoptive placement agreement or a final decree of adoption and has signed an adoption assistance agreement.

(f) The adoptive family is legally responsible for the support of the child and the child is receiving support from the adoptive parent.

(g) The department or the county responsible for determining the child's Adoption Assistance Program eligibility status and for providing financial aid, and the prospective adoptive parent, prior to or at the time the adoption decree is issued by the court, have signed an adoption assistance agreement that stipulates the need for, and the amount of, Adoption Assistance Program benefits. *In the case of an Indian child who is the subject of an order of adoption based on tribal customary adoption, the department or the county responsible for determining the child's Adoption Assistance Program eligibility status and for providing financial aid, and the prospective adoptive parent, after the tribal customary adoption order has been granted full faith and credit pursuant to paragraph (2) of subdivision (e) of Section 366.26 by the court but prior to the adoption finalization hearing pursuant to paragraph (8) of subdivision (c) of Section 366.24, have signed an adoption assistance agreement that stipulates the need for, and the amount of, Adoption Assistance Program benefits.*

(h) The prospective adoptive parent or any adult living in the prospective adoptive home has completed the criminal background check requirements pursuant to Section 671(a)(20)(A) and (C) of Title 42 of the United States Code.

1 (i) To be eligible for state funding, the child is the subject of an
2 agency adoption, as defined in Section 8506 of the Family Code
3 and was any of the following:

4 (1) Under the supervision of a county welfare department as
5 the subject of a legal guardianship or juvenile court dependency.

6 (2) Relinquished for adoption to a licensed California private
7 or public adoption agency, or another public agency operating a
8 Title IV-E program on behalf of the state, and would have
9 otherwise been at risk of dependency as certified by the responsible
10 public child welfare agency.

11 (3) Committed to the care of the department pursuant to Section
12 8805 or 8918 of the Family Code.

13 (4) *The child is an Indian child and the subject of an order of*
14 *adoption based on tribal customary adoption of an Indian child,*
15 *as described in Section 366.24. Notwithstanding Section 8600.5*
16 *of the Family Code, for purposes of this subdivision a tribal*
17 *customary adoption is an agency adoption.*

18 (j) To be eligible for federal funding, in the case of a child who
19 is not an applicable child for the federal fiscal year as defined in
20 subdivision (n), the child meets any of the following criteria:

21 (1) Prior to the finalization of an agency adoption, as defined
22 in Section 8506 of the Family Code, or an independent adoption,
23 as defined in Section 8524 of the Family Code, is filed, the child
24 has met the requirements to receive federal supplemental security
25 income benefits pursuant to Subchapter 16 (commencing with
26 Section 1381) of Chapter 7 of Title 42 of the United States Code,
27 as determined and documented by the federal Social Security
28 Administration.

29 (2) The child was removed from the home of a specified relative
30 and the child would have been AFDC-eligible in the home of
31 removal according to Section 606(a) or 607 of Title 42 of the
32 United States Code, as those sections were in effect on July 16,
33 1996, in the month of the voluntary placement agreement or in the
34 month court proceedings are initiated to remove the child, resulting
35 in a judicial determination that continuation in the home would be
36 contrary to the child's welfare. The child must have been living
37 with the specified relative from whom he or she was removed
38 within six months of the month the voluntary placement agreement
39 was signed or the petition to remove was filed.

(3) The child was voluntarily relinquished to a licensed public or private adoption agency, or another public agency operating a Title IV-E program on behalf of the state, and there is a petition to the court to remove the child from the home within six months of the time the child lived with a specified relative and a subsequent judicial determination that remaining in the home would be contrary to the child's welfare.

(4) Title IV-E foster care maintenance was paid on behalf of the child's minor parent and covered the cost of the minor parent's child while the child was in the foster family home or child care institution with the minor parent.

(k) To be eligible for federal funding, in the case of a child who is an applicable child for the federal fiscal year, as defined in subdivision (n), the child meets any of the following criteria:

(1) At the time of initiation of adoptive proceedings was in the care of a public or licensed private child placement agency or Indian tribal organization pursuant to either of the following:

(A) An involuntary removal of the child from the home in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child.

(B) A voluntary placement agreement or a voluntary relinquishment.

(2) He or she meets all medical or disability requirements of Title XVI with respect to eligibility for supplemental security income benefits.

(3) He or she was residing in a foster family home or a child care institution with the child's minor parent, and the child's minor parent was in the foster family home or child care institution pursuant to either of the following:

(A) An involuntary removal of the child from the home in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child.

(B) A voluntary placement agreement or voluntary relinquishment.

(l) The child is a citizen of the United States or a qualified alien as defined in Section 1641 of Title 8 of the United States Code. If the child is a qualified alien who entered the United States on or after August 22, 1996, and is placed with an unqualified alien, the

1 child must meet the five-year residency requirement pursuant to
2 Section 673(a)(2)(B) of Title 42 of the United States Code, unless
3 the child is a member of one of the excepted groups pursuant to
4 Section 1612(b) of Title 8 of the United States Code.

5 (m) A child shall be eligible for Adoption Assistance Program
6 benefits if the following conditions are met:

7 (1) The child received Adoption Assistance Program benefits
8 with respect to a prior adoption and the child is again available for
9 adoption because the prior adoption was dissolved and the parental
10 rights of the adoptive parents were terminated or because the
11 child's adoptive parents died and the child meets the special needs
12 criteria described in subdivisions (a) to (c), inclusive.

13 (2) To receive federal funding, the citizenship requirements in
14 subdivision (l).

15 (n) (1) Except as provided in this subdivision, "applicable child"
16 means a child for whom an adoption assistance agreement is
17 entered into under this section during any federal fiscal year
18 described in this subdivision if the child attained the applicable
19 age for that federal fiscal year before the end of that federal fiscal
20 year.

21 (A) For federal fiscal year 2010, the applicable age is 16 years.

22 (B) For federal fiscal year 2011, the applicable age is 14 years.

23 (C) For federal fiscal year 2012, the applicable age is 12 years.

24 (D) For federal fiscal year 2013, the applicable age is 10 years.

25 (E) For federal fiscal year 2014, the applicable age is 8 years.

26 (F) For federal fiscal year 2015, the applicable age is 6 years.

27 (G) For federal fiscal year 2016, the applicable age is 4 years.

28 (H) For federal fiscal year 2017, the applicable age is 2 years.

29 (I) For federal fiscal year 2018 and thereafter, any age.

30 (2) Beginning with the 2010 federal fiscal year, the term
31 "applicable child" shall include a child of any age on the date on
32 which an adoption assistance agreement is entered into on behalf
33 of the child under this section if the child meets both of the
34 following criteria:

35 (A) He or she has been in foster care under the responsibility
36 of the state for at least 60 consecutive months.

37 (B) He or she meets the requirements of subdivision (k).

38 (3) Beginning with the 2010 federal fiscal year, an applicable
39 child shall include a child of any age on the date that an adoption
40 assistance agreement is entered into on behalf of the child under

1 this section, without regard to whether the child is described in
2 paragraph (2), if the child meets all of the following criteria:

3 (A) He or she is a sibling of a child who is an applicable child
4 for the federal fiscal year, under subdivision (n) or paragraph (2).

5 (B) He or she is to be placed in the same adoption placement
6 as an “applicable child” for the federal fiscal year who is their
7 sibling.

8 (C) He or she meets the requirements of subdivision (k).

9 (o) *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. 20. Section 16120 is added to the Welfare and Institutions
13 Code, to read:

14 16120. A child shall be eligible for Adoption Assistance
15 Program benefits if all of the conditions specified in subdivisions
16 (a) to (l), inclusive, are met or if the conditions specified in
17 subdivision (m) are met.

18 (a) *It has been determined that the child cannot or should not*
19 *be returned to the home of his or her parents as evidenced by a*
20 *petition for termination of parental rights, a court order*
21 *terminating parental rights, or a signed relinquishment.*

22 (b) *The child has at least one of the following characteristics*
23 *that are barriers to his or her adoption:*

24 (1) *Adoptive placement without financial assistance is unlikely*
25 *because of membership in a sibling group that should remain intact*
26 *or by virtue of race, ethnicity, color, language, three years of age*
27 *or older, or parental background of a medical or behavioral nature*
28 *that can be determined to adversely affect the development of the*
29 *child.*

30 (2) *Adoptive placement without financial assistance is unlikely*
31 *because the child has a mental, physical, emotional, or medical*
32 *disability that has been certified by a licensed professional*
33 *competent to make an assessment and operating within the scope*
34 *of his or her profession. This paragraph shall also apply to children*
35 *with a developmental disability, as defined in subdivision (a) of*
36 *Section 4512, including those determined to require out-of-home*
37 *nonmedical care, as described in Section 11464.*

38 (c) *The need for adoption subsidy is evidenced by an*
39 *unsuccessful search for an adoptive home to take the child without*
40 *financial assistance, as documented in the case file of the*

1 *prospective adoptive child. The requirement for this search shall*
2 *be waived when it would be against the best interest of the child*
3 *because of the existence of significant emotional ties with*
4 *prospective adoptive parents while in the care of these persons as*
5 *a foster child.*

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*
11 *of 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) The prospective adoptive parent or any adult living in the*
22 *prospective adoptive home has completed the criminal background*
23 *check requirements pursuant to Section 671(a)(20)(A) and (C) of*
24 *Title 42 of the United States Code.*

25 *(i) To be eligible for state funding, the child is the subject of an*
26 *agency adoption, as defined in Section 8506 of the Family Code*
27 *and was any of the following:*

28 *(1) Under the supervision of a county welfare department as*
29 *the subject of a legal guardianship or juvenile court dependency.*

30 *(2) Relinquished for adoption to a licensed California private*
31 *or public adoption agency, or another public agency operating a*
32 *Title IV-E program on behalf of the state, and would have*
33 *otherwise been at risk of dependency as certified by the responsible*
34 *public child welfare agency.*

35 *(3) Committed to the care of the department pursuant to Section*
36 *8805 or 8918 of the Family Code.*

37 *(j) To be eligible for federal funding, in the case of a child who*
38 *is not an applicable child for the federal fiscal year as defined in*
39 *subdivision (n), the child meets any of the following criteria:*

1 (1) Prior to the finalization of an agency adoption, as defined
2 in Section 8506 of the Family Code, or an independent adoption,
3 as defined in Section 8524 of the Family Code, is filed, the child
4 has met the requirements to receive federal supplemental security
5 income benefits pursuant to Subchapter 16 (commencing with
6 Section 1381) of Chapter 7 of Title 42 of the United States Code,
7 as determined and documented by the federal Social Security
8 Administration.

9 (2) The child was removed from the home of a specified relative
10 and the child would have been AFDC-eligible in the home of
11 removal according to Section 606(a) or 607 of Title 42 of the
12 United States Code, as those sections were in effect on July 16,
13 1996, in the month of the voluntary placement agreement or in the
14 month court proceedings are initiated to remove the child, resulting
15 in a judicial determination that continuation in the home would
16 be contrary to the child's welfare. The child must have been living
17 with the specified relative from whom he or she was removed within
18 six months of the month the voluntary placement agreement was
19 signed or the petition to remove was filed.

20 (3) The child was voluntarily relinquished to a licensed public
21 or private adoption agency, or another public agency operating
22 a Title IV-E program on behalf of the state, and there is a petition
23 to the court to remove the child from the home within six months
24 of the time the child lived with a specified relative and a subsequent
25 judicial determination that remaining in the home would be
26 contrary to the child's welfare.

27 (4) Title IV-E foster care maintenance was paid on behalf of
28 the child's minor parent and covered the cost of the minor parent's
29 child while the child was in the foster family home or child care
30 institution with the minor parent.

31 (k) To be eligible for federal funding, in the case of a child who
32 is an applicable child for the federal fiscal year, as defined in
33 subdivision (n), the child meets any of the following criteria:

34 (1) At the time of initiation of adoptive proceedings was in the
35 care of a public or licensed private child placement agency or
36 Indian tribal organization pursuant to either of the following:

37 (A) An involuntary removal of the child from the home in
38 accordance with a judicial determination to the effect that
39 continuation in the home would be contrary to the welfare of the
40 child.

1 (B) A voluntary placement agreement or a voluntary
2 relinquishment.

3 (2) He or she meets all medical or disability requirements of
4 Title XVI with respect to eligibility for supplemental security
5 income benefits.

6 (3) He or she was residing in a foster family home or a child
7 care institution with the child's minor parent, and the child's minor
8 parent was in the foster family home or child care institution
9 pursuant to either of the following:

10 (A) An involuntary removal of the child from the home in
11 accordance with a judicial determination to the effect that
12 continuation in the home would be contrary to the welfare of the
13 child.

14 (B) A voluntary placement agreement or voluntary
15 relinquishment.

16 (l) The child is a citizen of the United States or a qualified alien
17 as defined in Section 1641 of Title 8 of the United States Code. If
18 the child is a qualified alien who entered the United States on or
19 after August 22, 1996, and is placed with an unqualified alien, the
20 child must meet the five-year residency requirement pursuant to
21 Section 673(a)(2)(B) of Title 42 of the United States Code, unless
22 the child is a member of one of the excepted groups pursuant to
23 Section 1612(b) of Title 8 of the United States Code.

24 (m) A child shall be eligible for Adoption Assistance Program
25 benefits if the following conditions are met:

26 (1) The child received Adoption Assistance Program benefits
27 with respect to a prior adoption and the child is again available
28 for adoption because the prior adoption was dissolved and the
29 parental rights of the adoptive parents were terminated or because
30 the child's adoptive parents died and the child meets the special
31 needs criteria described in subdivisions (a) to (c), inclusive.

32 (2) To receive federal funding, the citizenship requirements in
33 subdivision (l).

34 (n) (1) Except as provided in this subdivision, "applicable
35 child" means a child for whom an adoption assistance agreement
36 is entered into under this section during any federal fiscal year
37 described in this subdivision if the child attained the applicable
38 age for that federal fiscal year before the end of that federal fiscal
39 year.

40 (A) For federal fiscal year 2010, the applicable age is 16 years.

- 1 (B) For federal fiscal year 2011, the applicable age is 14 years.
2 (C) For federal fiscal year 2012, the applicable age is 12 years.
3 (D) For federal fiscal year 2013, the applicable age is 10 years.
4 (E) For federal fiscal year 2014, the applicable age is 8 years.
5 (F) For federal fiscal year 2015, the applicable age is 6 years.
6 (G) For federal fiscal year 2016, the applicable age is 4 years.
7 (H) For federal fiscal year 2017, the applicable age is 2 years.
8 (I) For federal fiscal year 2018 and thereafter, any age.

9 (2) Beginning with the 2010 federal fiscal year, the term
10 “applicable child” shall include a child of any age on the date on
11 which an adoption assistance agreement is entered into on behalf
12 of the child under this section if the child meets both of the
13 following criteria:

14 (A) He or she has been in foster care under the responsibility
15 of the state for at least 60 consecutive months.

16 (B) He or she meets the requirements of subdivision (k).

17 (3) Beginning with the 2010 federal fiscal year, an applicable
18 child shall include a child of any age on the date that an adoption
19 assistance agreement is entered into on behalf of the child under
20 this section, without regard to whether the child is described in
21 paragraph (2), if the child meets all of the following criteria:

22 (A) He or she is a sibling of a child who is an applicable child
23 for the federal fiscal year, under subdivision (n) or paragraph (2).

24 (B) He or she is to be placed in the same adoption placement
25 as an applicable child for the federal fiscal year who is his or her
26 sibling.

27 (C) He or she meets the requirements of subdivision (k).

28 (o) This section shall become operative on January 1, 2014.

29 SEC. 21. Section 16508 of the Welfare and Institutions Code
30 is amended to read:

31 16508. Permanent placement services shall be provided or
32 arranged for by county welfare department staff for children who
33 cannot safely live with their parents and are not likely to return to
34 their own homes. Permanent placement services shall be available
35 without regard to income to the following children:

36 (a) Children judged dependent under Section 300 where a review
37 has determined that reunification, adoption, tribal customary
38 adoption, or guardianship is inappropriate.

39 (b) Recipients of public assistance under nonfederally funded
40 Aid to Families with Dependent Children programs who are wards

1 of a legal guardian where a review has determined that reunification
2 or adoption is inappropriate.

3 (c) 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. 22. Section 16508 is added to the Welfare and Institutions
7 Code, to read:

8 16508. Permanent placement services shall be provided or
9 arranged for by county welfare department staff for children who
10 cannot safely live with their parents and are not likely to return to
11 their own homes. Permanent placement services shall be available
12 without regard to income to the following children:

13 (a) Children judged dependent under Section 300 where a review
14 has determined that reunification, adoption, or guardianship is
15 inappropriate.

16 (b) Recipients of public assistance under nonfederally funded
17 Aid to Families with Dependent Children programs who are wards
18 of a legal guardian where a review has determined that reunification
19 or adoption is inappropriate.

20 (c) This section shall become operative on January 1, 2014.

21 SEC. 23. Section 16508.1 of the Welfare and Institutions Code
22 is amended to read:

23 16508.1. (a) For every child who is in foster care, or who
24 enters foster care, on or after January 1, 1999, and has been in
25 foster care for 15 of the most recent 22 months, the social worker
26 shall submit to the court a recommendation that the court set a
27 hearing pursuant to Section 366.26 for the purpose of terminating
28 parental rights. The social worker shall concurrently initiate and
29 describe a plan to identify, recruit, process and approve a qualified
30 family for adoption of the child.

31 (b) The social worker is not required to submit the
32 recommendation as described in subdivision (a) if any of the
33 following applies:

34 (1) The case plan for the child has documented a compelling
35 reason or reasons why it is unlikely that the child will be adopted,
36 as determined by the department when it is acting as an adoption
37 agency or by the licensed adoption agency, and therefore
38 termination of parental rights would not be in the best interest of
39 the child or that one of the conditions set forth in paragraph (1) of
40 subdivision (c) of Section 366.26 applies.

1 (2) A hearing under Section 366.26 is already set.

2 (3) The court has found at the previous hearing under Section
3 366.21 that there is a substantial probability that the child will be
4 returned to the child's home within the extended period of time
5 permitted.

6 (4) The court has found at the previous hearing under Section
7 366.21 that reasonable reunification services have not been offered
8 or provided.

9 (5) The court has found at each and every hearing at which the
10 court was required to consider reasonable efforts or services that
11 reasonable efforts were not made or that reasonable services were
12 not offered or provided.

13 (6) The incarceration or institutionalization of the parent or
14 parents, or the court-ordered participation of the parent or parents
15 in a residential substance abuse treatment program, constitutes a
16 significant factor in the child's placement in foster care for a period
17 of 15 of the most recent 22 months, and termination of parental
18 rights is not in the child's best interests, considering factors such
19 as the age of the child, the degree of parent and child bonding, the
20 length of the sentence, and the nature of the treatment and the
21 nature of the crime or illness.

22 (7) Tribal customary adoption is recommended.

23 (c) A recommendation to the court pursuant to subdivision (a)
24 shall not be made if the social worker documents in the case record
25 a compelling reason why a hearing pursuant to Section 366.26 is
26 not in the best interest of the child, or that reasonable efforts to
27 safely return the child home are continuing consistent with the
28 time period provided for in paragraph (1) of subdivision (g) of
29 Section 366.21.

30 (d) Beginning January 1, 1999, the county welfare department
31 shall implement a procedure for reviewing the application of this
32 section to the case plans of all children who have been in foster
33 care for 15 out of the most recent 22 months. The review shall
34 proceed within the following timeframes:

35 (1) By July 1, 1999, one-third of the children shall have been
36 reviewed, giving priority to children who have been in foster care
37 the greatest length of time.

38 (2) By January 1, 2000, at least two-thirds of the children shall
39 have been reviewed.

40 (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) of
28 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. *Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with*

1 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
2 Code), the Department of Social Services may implement and
3 administer the applicable provisions of this act through all-county
4 letters or similar instruction from the director until such time as
5 regulations are adopted. The director may adopt emergency
6 regulations implementing this act. The department may readopt
7 any emergency regulation authorized by this section that is the
8 same or substantially equivalent to an emergency regulation
9 previously adopted by this section. The adoption of emergency
10 regulations implementing this section shall be deemed necessary
11 for the immediate preservation of the public peace, health, safety,
12 or general welfare. The emergency regulations and any readoption
13 of emergency regulations authorized by this section shall be exempt
14 from review by the Office of Administrative Law. The emergency
15 regulations and any readoption of emergency regulations
16 authorized by this section shall be submitted to the Office of
17 Administrative Law for filing with the Secretary of State and each
18 shall remain in effect for no more than 180 days by which time
19 final regulations shall be adopted.

20 ~~SEC. 26:~~

21 SEC. 27. If the Commission on State Mandates determines that
22 this act contains costs mandated by the state, reimbursement to
23 local agencies and school districts for those costs shall be made
24 pursuant to Part 7 (commencing with Section 17500) of Division
25 4 of Title 2 of the Government Code.