

AMENDED IN SENATE SEPTEMBER 2, 2009

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.

(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) 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 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 beginning with the
34 dispositional hearing and ending 12 months after the date the child
35 entered foster care as defined in Section 361.49, unless the child
36 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 for a period
40 of six months from the dispositional hearing as provided in

1 subdivision (e) of Section 366.21, but no longer than 12 months
2 from the date the child entered foster care as defined in Section
3 361.49 unless the child is returned to the home of the parent or
4 guardian.

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

15 (2) 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 subparagraph (A) of paragraph (1), or
18 prior to the hearing set pursuant to subdivision (e) of Section
19 366.21 for a child described by subparagraph (B) or (C) of
20 paragraph (1), shall be made pursuant to the requirements set forth
21 in subdivision (c) of Section 388. A motion to terminate
22 court-ordered reunification services shall not be required at the
23 hearing set pursuant to subdivision (e) of Section 366.21 if the
24 court finds by clear and convincing evidence one of the following:

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

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

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

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

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

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

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

1 parent or guardian of the factors used in subdivision (e) of Section
2 366.21 to determine whether to limit services to six months for
3 some or all members of a sibling group as described in
4 subparagraph (C) of paragraph (1).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (B) Transportation services, where appropriate.

31 (C) Visitation services, where appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 years of age, court-ordered services shall be provided for a period
2 of six months from the dispositional hearing as provided in
3 subdivision (e) of Section 366.21, but no longer than 12 months
4 from the date the child entered foster care as defined in Section
5 361.49 unless the child is returned to the home of the parent or
6 guardian.

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

17 (2) Any motion to terminate court-ordered reunification services
18 prior to the hearing set pursuant to subdivision (f) of Section 366.21
19 for a child described by subparagraph (A) of paragraph (1), or
20 prior to the hearing set pursuant to subdivision (e) of Section
21 366.21 for a child described by subparagraph (B) or (C) of
22 paragraph (1), shall be made pursuant to the requirements set forth
23 in subdivision (c) of Section 388. A motion to terminate
24 court-ordered reunification services shall not be required at the
25 hearing set pursuant to subdivision (e) of Section 366.21 if the
26 court finds by clear and convincing evidence one of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (B) Transportation services, where appropriate.

33 (C) Visitation services, where appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The court shall read into the record the basis for a finding of 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 become operative on January 1, 2014.

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

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

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

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

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

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

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

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

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

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

28 If the child was under three years of age on the date of the initial
29 removal, or is a member of a sibling group described in
30 subparagraph (C) of paragraph (1) of subdivision (a) of Section
31 361.5, and the court finds by clear and convincing evidence that
32 the parent failed to participate regularly and make substantive
33 progress in a court-ordered treatment plan, the court may schedule
34 a hearing pursuant to Section 366.26 within 120 days. If, however,
35 the court finds there is a substantial probability that the child, who
36 was under three years of age on the date of initial removal or is a
37 member of a sibling group described in subparagraph (C) of
38 paragraph (1) of subdivision (a) of Section 361.5, may be returned
39 to his or her parent or legal guardian within six months or that

1 reasonable services have not been provided, the court shall continue
2 the case to the 12-month permanency hearing.

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

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

36 If the child had been placed under court supervision with a
37 previously noncustodial parent pursuant to Section 361.2, the court
38 shall determine whether supervision is still necessary. The court
39 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 determined pursuant to Section 361.49. At the permanency hearing, the court shall determine the permanent plan for the child, which shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. 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 permanency hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal to the extent that the criminal record is substantially related to the welfare of the child or the parent 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 court shall also determine whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian. For each youth 16 years of age and older, the court shall

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

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

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

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

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

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

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

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

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

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

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

(3) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon 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

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

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

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

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

36 (i) (1) Whenever a court orders that a hearing pursuant to
37 Section 366.26, including, when, in consultation with the child's
38 tribe, tribal customary adoption is recommended, shall be held, it
39 shall direct the agency supervising the child and the licensed county
40 adoption agency, or the State Department of Social Services when

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) For purposes of this section, evidence of any of the following circumstances may not, in and of itself, 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.

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

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

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

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

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

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

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

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

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

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

(e) At the review hearing held six months after the initial dispositional hearing, but no later than 12 months after the date the child entered foster care as determined in Section 361.49, whichever occurs earlier, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. At the hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal to the extent that the criminal record is substantially related to the welfare of the child or the parent's or guardian's ability to exercise custody and control regarding his or her child, provided the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its 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; and 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 to services provided, taking into account the particular barriers to an incarcerated or institutionalized parent or legal guardian's access to those court-mandated services and ability to maintain contact with his or her child.

Regardless of whether the child is returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and, where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or legal guardian. The court shall also inform the parent or legal guardian that if the child cannot be returned home by the 12-month permanency

1 hearing, a proceeding pursuant to Section 366.26 may be instituted.
2 This section does not apply in a case where, pursuant to Section
3 361.5, the court has ordered that reunification services shall not
4 be provided.

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

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

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

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

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

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

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

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

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

1 shall make a determination whether the out-of-state placement
2 continues to be appropriate and in the best interests of the child.

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

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

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

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

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

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

39 The court shall inform the parent or legal guardian that if the
40 child cannot be returned home by the next permanency review

1 hearing, a proceeding pursuant to Section 366.26 may be instituted.
2 The court may not order that a hearing pursuant to Section 366.26
3 be held unless there is clear and convincing evidence that
4 reasonable services have been provided or offered to the parent or
5 legal guardian.

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

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

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

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

1 out-of-state placement continues to be appropriate and in the best
2 interests of the child.

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

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

18 (A) Current search efforts for an absent parent or parents or
19 legal guardians.

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

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

29 (D) A preliminary assessment of the eligibility and commitment
30 of any identified prospective adoptive parent or legal guardian,
31 particularly the caretaker, to include a social history including
32 screening for criminal records and prior referrals for child abuse
33 or neglect, the capability to meet the child's needs, and the
34 understanding of the legal and financial rights and responsibilities
35 of adoption and guardianship. If a proposed guardian is a relative
36 of the minor, and the relative was assessed for foster care placement
37 of the minor prior to January 1, 1998, the assessment shall also
38 consider, but need not be limited to, all of the factors specified in
39 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
4 guardianship, and a statement from the child concerning placement
5 and the adoption or guardianship, unless the child's age or physical,
6 emotional, or other condition precludes his or her meaningful
7 response, and if so, a description of the condition.

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

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

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

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

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

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

36 (l) For purposes of this section, evidence of any of the following
37 circumstances may not, in and of itself, be deemed a failure to
38 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 (m) The implementation and operation of the amendments to
7 subdivisions (c) and (g) enacted at the 2005–06 Regular Session
8 shall be subject to appropriation through the budget process and
9 by phase, as provided in Section 366.35.

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

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

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

1 herself of services provided, taking into account the particular
2 barriers of an incarcerated or institutionalized parent or legal
3 guardian's access to those court-mandated services and ability to
4 maintain contact with his or her child; and shall make appropriate
5 findings pursuant to subdivision (a) of Section 366.

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

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

1 the permanency review hearing. The court shall also order
2 termination of reunification services to the parent or legal guardian.
3 The court shall continue to permit the parent or legal guardian to
4 visit the child unless it finds that visitation would be detrimental
5 to the child. The court shall determine whether reasonable services
6 have been offered or provided to the parent or legal guardian. For
7 purposes of this subdivision, evidence of any of the following
8 circumstances shall not, in and of themselves, be deemed a failure
9 to provide or offer reasonable services:

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

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

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

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

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

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

4 (3) The parent or legal guardian has demonstrated the capacity
5 and ability both to complete the objectives of his or her substance
6 abuse treatment plan as evidenced by reports from a substance
7 abuse provider as applicable, or complete a treatment plan
8 postdischarge from incarceration or institutionalization, and to
9 provide for the child's safety, protection, physical and emotional
10 well-being, and special needs.

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (B) A relative caregiver shall be given information regarding
40 the permanency options of guardianship and adoption, including

1 the long-term benefits and consequences of each option, prior to
2 establishing legal guardianship or pursuing adoption.

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

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

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

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

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

25 366.22. (a) When a case has been continued pursuant to
26 paragraph (1) of subdivision (g) of Section 366.21, the permanency
27 review hearing shall occur within 18 months after the date the
28 child was originally removed from the physical custody of his or
29 her parent or legal guardian. The court shall order the return of the
30 child to the physical custody of his or her parent or legal guardian
31 unless the court finds, by a preponderance of the evidence, that
32 the return of the child to his or her parent or legal guardian would
33 create a substantial risk of detriment to the safety, protection, or
34 physical or emotional well-being of the child. The social worker
35 shall have the burden of establishing that detriment. At the
36 permanency review hearing, the court shall consider the criminal
37 history, obtained pursuant to paragraph (1) of subdivision (f) of
38 Section 16504.5, of the parent or legal guardian subsequent to the
39 child’s removal, to the extent that the criminal record is
40 substantially related to the welfare of the child or the parent’s or

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

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

28 Unless the conditions in subdivision (b) are met and the child is
29 not returned to a parent or legal guardian at the permanency review
30 hearing, the court shall order that a hearing be held pursuant to
31 Section 366.26 in order to determine whether adoption,
32 guardianship, or long-term foster care is the most appropriate plan
33 for the child. However, if the court finds by clear and convincing
34 evidence, based on the evidence already presented to it, including
35 a recommendation by the State Department of Social Services
36 when it is acting as an adoption agency in counties that are not
37 served by a county adoption agency or by a licensed county
38 adoption agency, that there is a compelling reason, as described
39 in paragraph (3) of subdivision (g) of Section 366.21, for
40 determining that a hearing held under Section 366.26 is not in the

1 best interest of the child because the child is not a proper subject
2 for adoption and has no one willing to accept legal guardianship,
3 then the court may, only under these circumstances, order that the
4 child remain in foster care. If the court orders that a child who is
5 10 years of age or older remain in long-term foster care, the court
6 shall determine whether the agency has made reasonable efforts
7 to maintain the child's relationships with individuals other than
8 the child's siblings who are important to the child, consistent with
9 the child's best interests, and may make any appropriate order to
10 ensure that those relationships are maintained. The hearing shall
11 be held no later than 120 days from the date of the permanency
12 review hearing. The court shall also order termination of
13 reunification services to the parent or legal guardian. The court
14 shall continue to permit the parent or legal guardian to visit the
15 child unless it finds that visitation would be detrimental to the
16 child. The court shall determine whether reasonable services have
17 been offered or provided to the parent or legal guardian. For
18 purposes of this subdivision, evidence of any of the following
19 circumstances shall not, in and of themselves, be deemed a failure
20 to provide or offer reasonable services:

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

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

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

28 (b) If the child is not returned to a parent or legal guardian at
29 the permanency review hearing and the court determines by clear
30 and convincing evidence that the best interests of the child would
31 be met by the provision of additional reunification services to a
32 parent or legal guardian who is making significant and consistent
33 progress in a substance abuse treatment program, or a parent
34 recently discharged from incarceration or institutionalization and
35 making significant and consistent progress in establishing a safe
36 home for the child's return, the court may continue the case for
37 up to six months for a subsequent permanency review hearing,
38 provided that the hearing shall occur within 24 months of the date
39 the child was originally taken from the physical custody of his or
40 her parent or legal guardian. The court shall continue the case only

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

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

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

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

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

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

35 (c) (1) Whenever a court orders that a hearing pursuant to
36 Section 366.26 shall be held, it shall direct the agency supervising
37 the child and the licensed county adoption agency, or the State
38 Department of Social Services when it is acting as an adoption
39 agency in counties that are not served by a county adoption agency,
40 to prepare an assessment that shall 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 purposes of this subparagraph
7 shall include, but not be limited to, the child’s siblings,
8 grandparents, 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 legal guardian,
13 particularly the caretaker, to include a social history including
14 screening for criminal records and prior referrals for child abuse
15 or neglect, the capability to meet the child’s needs, and the
16 understanding of the legal and financial rights and responsibilities
17 of adoption and guardianship. If a proposed legal guardian is a
18 relative of the minor, and the relative was assessed for foster care
19 placement of the minor prior to January 1, 1998, the assessment
20 shall also consider, but need not be limited to, all of the factors
21 specified in subdivision (a) of Section 361.3.

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

29 (F) 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.

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

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

(f) The implementation and operation of the amendments to 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.

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

SEC. 12. Section 366.24 is added to the Welfare and 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) 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 shall conduct a tribal customary adoptive home study prior to final approval of the tribal customary adoptive placement.

(A) Where a tribal designee is conducting the home study, the designee shall do so in consultation with the Indian child’s tribe. The designee may include a licensed county adoption agency, the State Department of Social Services when it is acting as an adoption agency in counties not served by a county adoption agency, or a California licensed adoption agency. Any tribal designee must be an entity authorized to request a search of the Child Abuse Central Index and, if necessary, a check of any other

1 state's child abuse and neglect registry and authorized to request
2 a search for state or federal level criminal offender records
3 information through the Department of Justice.

4 (B) The standard for the evaluation of the prospective adoptive
5 parents' home shall be the prevailing social and cultural standard
6 of the child's tribe. The home study shall include an evaluation of
7 the background, safety and health information of the adoptive
8 home, including the biological, psychological and social factors
9 of the prospective adoptive parent or parents and an assessment
10 of the commitment, capability and suitability of the prospective
11 adoptive parent or parents to meet the child's needs.

12 (2) In all cases, an in-state check of the Child Abuse Central
13 Index and, if necessary, a check of any other state's child abuse
14 and neglect registry shall be conducted. If the tribe chooses a
15 designee to conduct the home study, the designee shall perform a
16 check of the Child Abuse Central Index pursuant to Section 1522.1
17 of the Health and Safety Code as it applies to prospective adoptive
18 parents and persons over 18 years of age residing in their
19 household. If the tribe conducts its own home study, the agency
20 that has the placement and care responsibility of the child shall
21 perform the check.

22 (3) In all cases prior to final approval of the tribal customary
23 adoptive placement, a state and federal criminal background check
24 through the Department of Justice shall be conducted on the
25 prospective tribal customary adoptive parents and of persons over
26 18 years of age residing in their household. If the tribe chooses a
27 designee to conduct the home study, the designee shall perform
28 the state and federal criminal background checks. If the tribe
29 conducts its own home study, the agency that has the placement
30 and care responsibility of the child, shall perform the state and
31 federal criminal background check. An individual who is the
32 subject of the check may be provided, by the entity performing
33 the background check, a copy of his or her state or federal level
34 criminal offender record information search response as provided
35 to that entity by the Department of Justice if the entity has denied
36 a criminal background clearance based on this information and
37 the individual makes a written request to the entity for a copy
38 specifying an address to which it is to be sent. The state or federal
39 level criminal offender record information search response shall
40 not be modified or altered from its form or content as provided by

1 the Department of Justice and shall be provided to the address
2 specified by the individual in his or her written request. The entity
3 shall retain a copy of the individual's written request and the
4 response and date provided.

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

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

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

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

25 (6) If the tribe identifies tribal customary adoption as the
26 permanent placement plan for the Indian child, the court may
27 continue the selection and implementation hearing governed by
28 Section 366.26 for a period not to exceed 120 days to permit the
29 tribe to complete the process for tribal customary adoption and
30 file with the court a tribal customary adoption order evidencing
31 that a tribal customary adoption has been completed. The tribe
32 shall file with the court the tribal customary adoption order no less
33 than 20 days prior to the date set by the court for the continued
34 selection and implementation hearing. The department shall file
35 with the court the addendum selection and implementation hearing
36 court report no less than seven days prior to the date set by the
37 court for the continued selection and implementation hearing. The
38 court shall have discretion to grant an additional continuance to
39 the tribe for filing a tribal customary adoption order up to, but not
40 exceeding, 60 days. If the child's tribe does not file the tribal

1 customary adoption order within the designated time period, the
2 court shall make new findings and orders pursuant to subdivision
3 (b) of Section 366.26 and this subdivision to determine the best
4 permanent plan for the child.

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

9 (8) Upon the court affording full faith and credit to the tribal
10 customary adoption order and the tribe's approval of the home
11 study, the child shall be eligible for tribal customary adoptive
12 placement. The agency that has placement and care responsibility
13 of the child shall be authorized to make a tribal customary adoptive
14 placement and sign a tribal customary adoptive placement
15 agreement and, thereafter, shall sign the adoption assistance
16 agreement pursuant to subdivision (g) of Section 16120. The
17 prospective adoptive parent or parents desiring to adopt the child
18 may then file the petition for adoption. The agency shall supervise
19 the adoptive placement for a period of six months unless either of
20 the following circumstances exists:

21 (A) The child to be adopted is a foster child of the prospective
22 adoptive parents whose foster care placement has been supervised
23 by an agency before the signing of the adoptive placement
24 agreement in which case the supervisory period may be shortened
25 by one month for each full month that the child has been in foster
26 care with the family.

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

29 (9) All licensed public adoption agencies shall cooperate with
30 and assist the department in devising a plan that will effectuate
31 the effective and discreet transmission to tribal customary adoptees
32 or prospective tribal customary adoptive parents of pertinent
33 medical information reported to the department or the licensed
34 public adoption agency, upon the request of the person reporting
35 the medical information.

36 (A) A licensed public adoption agency may not place a child
37 for tribal customary adoption unless a written report on the child's
38 medical background and, if available, the medical background on
39 the child's biological parents, so far as ascertainable, has been

1 submitted to the prospective tribal customary adoptive parents and
2 they have acknowledged in writing the receipt of the report.

3 (B) The report on the child's background shall contain all known
4 diagnostic information, including current medical reports on the
5 child, psychological evaluations, and scholastic information, as
6 well as all known information regarding the child's developmental
7 history.

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

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

23 (12) After the prospective adoptive parent or parents desiring
24 to adopt the child have filed the adoption petition, the agency that
25 has placement, care and responsibility for the child shall submit
26 to the court, a full and final report of the facts of the proposed
27 tribal customary adoption. The requisite elements of the final court
28 report shall be those specified for court reports in the department's
29 regulations governing agency adoptions.

30 (13) Notwithstanding any other provision of law, after the tribal
31 customary adoption order has been issued and afforded full faith
32 and credit by the state court, the tribal customary adoptive parents
33 shall have all of the rights and privileges afforded to, and are
34 subject to all the duties of, any other adoptive parent or parents
35 pursuant to the laws of this state.

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

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

4 (d) The following disclosure provisions shall apply to tribal
5 customary adoptions:

6 (1) The petition, agreement, order, report to the court from any
7 investigating agency, and any power of attorney filed in a tribal
8 customary adoption proceeding is not open to inspection by any
9 person other than the parties to the proceeding and their attorneys
10 and the department, except upon the written authority of the judge
11 of the juvenile court. A judge may not authorize anyone to inspect
12 the petition, agreement, order, report to the court from any
13 investigating agency, and any power of attorney except in
14 exceptional circumstances and for good cause approaching the
15 necessitous.

16 (2) Except as otherwise permitted or required by statute, neither
17 the department nor any licensed adoption agency shall release
18 information that would identify persons who receive, or have
19 received, tribal customary adoption services. However, employees
20 of the department and licensed adoption agencies shall release to
21 the State Department of Social Services any requested information,
22 including identifying information, for the purpose of recordkeeping
23 and monitoring, evaluation, and regulation of the provision of
24 tribal customary adoption services.

25 (3) The department and any licensed adoption agency may,
26 upon written authorization for the release of specified information
27 by the subject of that information, share information regarding a
28 prospective tribal customary adoptive parent or birth parent with
29 other social service agencies, including the department and other
30 licensed adoption agencies, or providers of health care as defined
31 in Section 56.05 of the Civil Code.

32 (4) Notwithstanding any other law, the department and any other
33 licensed adoption agency may furnish information relating to a
34 tribal customary adoption petition or to a child in the custody of
35 the department or any licensed public adoption agency to the
36 juvenile court, county welfare department, public welfare agency,
37 private welfare agency licensed by the department, provider of
38 foster care services, potential adoptive parents, or provider of
39 health care as defined in Section 56.05 of the Civil Code, if it is
40 believed the child's welfare will be promoted thereby.

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

~~(e) This section shall become operative on July 1, 2010, and~~

(e) This section shall remain operative only to the extent that compliance with its provisions does not conflict with 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.).

(f) 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. The report shall include, but not be limited to, the following:

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

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

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

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

(g) 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. 13. Section 366.25 of the Welfare and Institutions Code is amended 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

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

23 (2) Whether or not the child is returned to his or her parent or
24 legal guardian, the court shall specify the factual basis for its
25 decision. If the child is not returned to a parent or legal guardian,
26 the court shall specify the factual basis for its conclusion that return
27 would be detrimental. If the child is not returned to his or her
28 parents or legal guardian, the court shall consider and state for the
29 record, 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 best interests of the child.

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

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

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

(C) 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) (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.

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

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

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

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

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

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

38 (i) Whether tribal customary adoption would or would not be
39 detrimental to the Indian child and the reasons for reaching that
40 conclusion.

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

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

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

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

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

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

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

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

35 366.25. (a) (1) When a case has been continued pursuant to
36 subdivision (b) of Section 366.22, the subsequent permanency
37 review hearing shall occur within 24 months after the date the
38 child was originally removed from the physical custody of his or
39 her parent or legal guardian. The court shall order the return of the
40 child to the physical custody of his or her parent or legal guardian

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

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

35 (3) If the child is not returned to a parent or legal guardian at
36 the subsequent permanency review hearing, the court shall order
37 that a hearing be held pursuant to Section 366.26 in order to
38 determine whether adoption, guardianship, or long-term foster
39 care is the most appropriate plan for the child. However, if the
40 court finds by clear and convincing evidence, based on the evidence

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

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

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

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

34 (b) (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:

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

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

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

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

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

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

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

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

1 (c) 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 (d) 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 (e) The implementation and operation of subdivision (a) enacted
14 at the 2005–06 Regular Session shall be subject to appropriation
15 through the budget process and by phase, as provided in Section
16 366.35.

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

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

20 366.26. (a) This section applies to children who are adjudged
21 dependent children of the juvenile court pursuant to subdivision
22 (d) of Section 360. The procedures specified herein are the
23 exclusive procedures for conducting these hearings; Part 2
24 (commencing with Section 3020) of Division 8 of the Family Code
25 is not applicable to these proceedings. Section 8616.5 of the Family
26 Code is applicable and available to all dependent children meeting
27 the requirements of that section, if the postadoption contact
28 agreement has been entered into voluntarily. For children who are
29 adjudged dependent children of the juvenile court pursuant to
30 subdivision (d) of Section 360, this section and Sections 8604,
31 8605, 8606, and 8700 of the Family Code and Chapter 5
32 (commencing with Section 7660) of Part 3 of Division 12 of the
33 Family Code specify the exclusive procedures for permanently
34 terminating parental rights with regard to, or establishing legal
35 guardianship of, the child while the child is a dependent child of
36 the juvenile court.

37 (b) At the hearing, which shall be held in juvenile court for all
38 children who are dependents of the juvenile court, the court, in
39 order to provide stable, permanent homes for these children, shall
40 review the report as specified in Section 361.5, 366.21, 366.22, or

1 366.25, shall indicate that the court has read and considered it,
2 shall receive other evidence that the parties may present, and then
3 shall make findings and orders in the following order of preference:

4 (1) Terminate the rights of the parent or parents and order that
5 the child be placed for adoption and, upon the filing of a petition
6 for adoption in the juvenile court, order that a hearing be set. The
7 court shall proceed with the adoption after the appellate rights of
8 the natural parents have been exhausted.

9 (2) Order, without termination of parental rights, the plan of
10 tribal customary adoption, as described in Section 366.24, through
11 tribal custom, traditions, or law of the Indian child's tribe, and
12 upon the court affording the tribal customary adoption order full
13 faith and credit at the continued selection and implementation
14 hearing, order that a hearing be set pursuant to paragraph (2) of
15 subdivision (e).

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

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

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

26 (6) Order that the child be placed in long-term foster care,
27 subject to the periodic review of the juvenile court under Section
28 366.3.

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

31 (c) (1) If the court determines, based on the assessment provided
32 as ordered under subdivision (i) of Section 366.21, subdivision (b)
33 of Section 366.22, or subdivision (b) of Section 366.25, and any
34 other relevant evidence, by a clear and convincing standard, that
35 it is likely the child will be adopted, the court shall terminate
36 parental rights and order the child placed for adoption. The fact
37 that the child is not yet placed in a preadoptive home nor with a
38 relative or foster family who is prepared to adopt the child, shall
39 not constitute a basis for the court to conclude that it is not likely
40 the child will be adopted. A finding under subdivision (b) or

1 paragraph (1) of subdivision (e) of Section 361.5 that reunification
2 services shall not be offered, under subdivision (e) of Section
3 366.21 that the whereabouts of a parent have been unknown for
4 six months or that the parent has failed to visit or contact the child
5 for six months, or that the parent has been convicted of a felony
6 indicating parental unfitness, or, under Section 366.21 or 366.22,
7 that the court has continued to remove the child from the custody
8 of the parent or guardian and has terminated reunification services,
9 shall constitute a sufficient basis for termination of parental rights.
10 Under these circumstances, the court shall terminate parental rights
11 unless either of the following applies:

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

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

25 (i) The parents have maintained regular visitation and contact
26 with the child and the child would benefit from continuing the
27 relationship.

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

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

35 (iv) The child is living with a foster parent or Indian custodian
36 who is unable or unwilling to adopt the child because of
37 exceptional circumstances, that do not include an unwillingness
38 to accept legal or financial responsibility for the child, but who is
39 willing and capable of providing the child with a stable and
40 permanent environment and the removal of the child from the

1 physical custody of his or her foster parent or Indian custodian
2 would be detrimental to the emotional well-being of the child. This
3 clause does not apply to any child who is either (I) under six years
4 of age or (II) a member of a sibling group where at least one child
5 is under six years of age and the siblings are, or should be,
6 permanently placed together.

7 (v) There would be substantial interference with a child's sibling
8 relationship, taking into consideration the nature and extent of the
9 relationship, including, but not limited to, whether the child was
10 raised with a sibling in the same home, whether the child shared
11 significant common experiences or has existing close and strong
12 bonds with a sibling, and whether ongoing contact is in the child's
13 best interest, including the child's long-term emotional interest,
14 as compared to the benefit of legal permanence through adoption.

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

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

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

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

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

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

30 (A) At each hearing at which the court was required to consider
31 reasonable efforts or services, the court has found that reasonable
32 efforts were not made or that reasonable services were not offered
33 or provided.

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

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

37 (ii) The court does not make a determination at the hearing
38 terminating parental rights, supported by evidence beyond a
39 reasonable doubt, including testimony of one or more "qualified
40 expert witnesses" as defined in Section 224.6, that the continued

1 custody of the child by the parent is likely to result in serious
2 emotional or physical damage to the child.

3 (iii) The court has ordered tribal customary adoption pursuant
4 to Section 366.24.

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

33 (4) (A) If the court finds that adoption of the child or
34 termination of parental rights is not in the best interest of the child,
35 because one of the conditions in clause (i), (ii), (iii), (iv), (v), or
36 (vi) of subparagraph (B) of paragraph (1) or in paragraph (2)
37 applies, the court shall either order that the present caretakers or
38 other appropriate persons shall become legal guardians of the child
39 order that the child remain in long-term foster care, or, in the case
40 of an Indian child, consider a tribal customary adoption pursuant

1 to Section 366.24. Legal guardianship shall be considered before
2 long-term foster care, if it is in the best interests of the child and
3 if a suitable guardian can be found. A child who is 10 years of age
4 or older, shall be asked to identify any individuals, other than the
5 child's siblings, who are important to the child, in order to identify
6 potential guardians or, in the case of an Indian child, prospective
7 tribal customary adoptive parents. The agency may ask any other
8 child to provide that information, as appropriate.

9 (B) If the child is living with a relative or a foster parent who
10 is willing and capable of providing a stable and permanent
11 environment, but not willing to become a legal guardian, the child
12 shall not be removed from the home if the court finds the removal
13 would be seriously detrimental to the emotional well-being of the
14 child because the child has substantial psychological ties to the
15 relative caretaker or foster parents.

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

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

30 The licensed foster family agency shall place the child in a
31 suitable licensed or exclusive-use home that has been certified by
32 the agency as meeting licensing standards. The licensed foster
33 family agency shall be responsible for supporting the child and
34 providing appropriate services to the child, including those services
35 ordered by the court. Responsibility for the support of the child
36 shall not, in and of itself, create liability on the part of the foster
37 family agency to third persons injured by the child. Those children
38 whose care, custody, and control are transferred to a foster family
39 agency shall not be eligible for foster care maintenance payments

1 or child welfare services, except for emergency response services
2 pursuant to Section 16504.

3 (d) The proceeding for the appointment of a guardian for a child
4 who is a dependent of the juvenile court shall be in the juvenile
5 court. If the court finds pursuant to this section that legal
6 guardianship is the appropriate permanent plan, it shall appoint
7 the legal guardian and issue letters of guardianship. The assessment
8 prepared pursuant to subdivision (g) of Section 361.5, subdivision
9 (i) of Section 366.21, subdivision (b) of Section 366.22, and
10 subdivision (b) of Section 366.25 shall be read and considered by
11 the court prior to the appointment, and this shall be reflected in
12 the minutes of the court. The person preparing the assessment may
13 be called and examined by any party to the proceeding.

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

32 (2) In the case of an Indian child, if the Indian child's tribe has
33 elected a permanent plan of tribal customary adoption, the court,
34 upon receiving the tribal customary adoption order will afford the
35 tribal customary adoption order full faith and credit to the same
36 extent that the court would afford full faith and credit to the public
37 acts, records, judicial proceedings, and judgments of any other
38 entity. Upon a determination that the tribal customary adoption
39 order may be afforded full faith and credit, consistent with Section
40 224.5, the court shall thereafter order a hearing to finalize the

1 adoption be set upon the filing of the adoption petition. The
2 prospective tribal customary adoptive parents and the child who
3 is the subject of the tribal customary adoption petition shall appear
4 before the court for the finalization hearing. The court shall
5 thereafter issue an order of adoption pursuant to Section 366.24.

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

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

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

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

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

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

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

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

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

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

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

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

36 (B) After testimony in chambers, the parent or parents of the
37 child may elect to have the court reporter read back the testimony
38 or have the testimony summarized by counsel for the parent or
39 parents.

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

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

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

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

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

17 (j) If the court, by order or judgment, declares the child free
18 from the custody and control of both parents, or one parent if the
19 other does not have custody and control, or declares the child
20 eligible for tribal customary adoption, 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, except in the case of a tribal customary
24 adoption where there is no termination of parental rights, a petition
25 for adoption may not be granted until the appellate rights of the
26 natural parents have been exhausted. The State Department of
27 Social Services or licensed adoption agency shall be responsible
28 for the custody and supervision of the child and shall be entitled
29 to the exclusive care and control of the child at all times until a
30 petition for adoption or tribal customary adoption is granted, except
31 as specified in subdivision (n). With the consent of the agency,
32 the court may appoint a guardian of the child, who shall serve until
33 the child is adopted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (A) Applying for an adoption home study.

29 (B) Cooperating with an adoption home study.

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

32 (D) Requesting de facto parent status.

33 (E) Signing an adoptive placement agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) In the case of an Indian child:

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

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

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

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

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

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

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

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

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

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

39 (2) In accordance with Section 349, the child shall be present
40 in court if the child or the child's counsel so requests or the court

1 so orders. If the child is 10 years of age or older and is not present
2 at a hearing held pursuant to this section, the court shall determine
3 whether the minor was properly notified of his or her right to attend
4 the hearing and inquire as to the reason why the child is not present.

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

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

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

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

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

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

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

30 (2) A child who has not been adopted after the passage of at
31 least three years from the date the court terminated parental rights
32 and for whom the court has determined that adoption is no longer
33 the permanent plan may petition the juvenile court to reinstate
34 parental rights pursuant to the procedure prescribed by Section
35 388. The child may file the petition prior to the expiration of this
36 three-year period if the State Department of Social Services or
37 licensed adoption agency that is responsible for custody and
38 supervision of the child as described in subdivision (j) and the
39 child stipulate that the child is no longer likely to be adopted. A
40 child over 12 years of age shall sign the petition in the absence of

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

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

38 (k) Notwithstanding any other provision of law, the application
39 of any person who, as a relative caretaker or foster parent, has
40 cared for a dependent child for whom the court has approved a

1 permanent plan for adoption, or who has been freed for adoption,
2 shall be given preference with respect to that child over all other
3 applications for adoptive placement if the agency making the
4 placement determines that the child has substantial emotional ties
5 to the relative caretaker or foster parent and removal from the
6 relative caretaker or foster parent would be seriously detrimental
7 to the child's emotional well-being.

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

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

15 (A) A petition for extraordinary writ review was filed in a timely
16 manner.

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

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

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

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

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

36 (B) The prompt transmittal of the records from the trial court
37 to the appellate court.

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

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

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

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

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

11 (5) This subdivision shall only apply to cases in which an order
12 to set a hearing pursuant to this section is issued on or after January
13 1, 1995.

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

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

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

32 (A) Applying for an adoption home study.

33 (B) Cooperating with an adoption home study.

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

36 (D) Requesting de facto parent status.

37 (E) Signing an adoptive placement agreement.

38 (F) Engaging in discussions regarding a postadoption contact
39 agreement.

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

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

5 (3) Prior to a change in placement and as soon as possible after
6 a decision is made to remove a child from the home of a designated
7 prospective adoptive parent, the agency shall notify the court, the
8 designated prospective adoptive parent or the current caretaker, if
9 that caretaker 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 this notice, the child's attorney, and
12 the child, if the child is 10 years of age or older, of the proposal
13 in the manner described in Section 16010.6.

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

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

1 adoptive parent on the date of service of the notice of proposed
2 removal of the child, the petition objecting to the proposed removal
3 filed by the caretaker shall be dismissed. If the caretaker was
4 designated as a prospective adoptive parent prior to this hearing,
5 the court shall inquire into any progress made by the caretaker
6 towards the adoption of the child since the caretaker was designated
7 as a prospective adoptive parent.

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

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

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

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

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

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

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

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

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

16 366.3. (a) If a juvenile court orders a permanent plan of
17 adoption, tribal customary adoption, or legal guardianship pursuant
18 to Section 360 or 366.26, the court shall retain jurisdiction over
19 the child until the child is adopted or the legal guardianship is
20 established, except as provided for in Section 366.29. The status
21 of the child shall be reviewed every six months to ensure that the
22 adoption or legal guardianship is completed as expeditiously as
23 possible. When the adoption of the child has been granted, or in
24 the case of a tribal customary adoption, when the tribal customary
25 adoption order has been afforded full faith and credit and the
26 petition for adoption has been granted, the court shall terminate
27 its jurisdiction over the child. Following establishment of a legal
28 guardianship, the court may continue jurisdiction over the child
29 as a dependent child of the juvenile court or may terminate its
30 dependency jurisdiction and retain jurisdiction over the child as a
31 ward of the legal guardianship, as authorized by Section 366.4. If,
32 however, a relative of the child is appointed the legal guardian of
33 the child and the child has been placed with the relative for at least
34 12 months, the court shall, except if the relative guardian objects,
35 or upon a finding of exceptional circumstances, terminate its
36 dependency jurisdiction and retain jurisdiction over the child as a
37 ward of the guardianship, as authorized by Section 366.4.
38 Following a termination of parental rights, the parent or parents
39 shall not be a party to, or receive notice of, any subsequent
40 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 this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

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

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the legal guardianship

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

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

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

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

37 (2) Upon the request of the child.

38 (3) It has been 12 months since a hearing held pursuant to
39 Section 366.26 or an order that the child remain in long-term foster

1 care pursuant to Section 366.21, 366.22, 366.25, 366.26, or
2 subdivision (h).

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

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

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

13 (1) The continuing necessity for, and appropriateness of, the
14 placement.

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

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

35 (4) The extent of the agency's compliance with the child welfare
36 services case plan in making reasonable efforts either to return the
37 child to the safe home of the parent or to complete whatever steps
38 are necessary to finalize the permanent placement of the child. If
39 the reviewing body determines that a second period of reunification
40 services is in the child's best interests, and that there is a significant

1 likelihood of the child's return to a safe home due to changed
2 circumstances of the parent, pursuant to subdivision (f), the specific
3 reunification services required to effect the child's return to a safe
4 home shall be described.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (1) The child's present placement.

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

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

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

14 (5) Whether an adoptive placement agreement has been signed
15 and filed.

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

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

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

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

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

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

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

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

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

39 (h) At the review held pursuant to subdivision (d) for a child in
40 long-term foster care, the court shall consider all permanency

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

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

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

39 (k) The reviews conducted pursuant to subdivision (a) or (d)
40 may be conducted earlier than every six months if the court

1 determines that an earlier review is in the best interests of the child
2 or as court rules prescribe.

3 (I) 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. 18. Section 366.3 is added to the Welfare and Institutions
7 Code, to read:

8 366.3. (a) If a juvenile court orders a permanent plan of
9 adoption or legal guardianship pursuant to Section 360 or 366.26,
10 the court shall retain jurisdiction over the child until the child is
11 adopted or the legal guardianship is established, except as provided
12 for in Section 366.29. The status of the child shall be reviewed
13 every six months to ensure that the adoption or legal guardianship
14 is completed as expeditiously as possible. When the adoption of
15 the child has been granted, the court shall terminate its jurisdiction
16 over the child. Following establishment of a legal guardianship,
17 the court may continue jurisdiction over the child as a dependent
18 child of the juvenile court or may terminate its dependency
19 jurisdiction and retain jurisdiction over the child as a ward of the
20 legal guardianship, as authorized by Section 366.4. If, however, a
21 relative of the child is appointed the legal guardian of the child
22 and the child has been placed with the relative for at least 12
23 months, the court shall, except if the relative guardian objects, or
24 upon a finding of exceptional circumstances, terminate its
25 dependency jurisdiction and retain jurisdiction over the child as a
26 ward of the guardianship, as authorized by Section 366.4.
27 Following a termination of parental rights, the parent or parents
28 shall not be a party to, or receive notice of, any subsequent
29 proceedings regarding the child.

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

38 Notwithstanding Section 1601 of the Probate Code, the
39 proceedings to terminate a legal guardianship that has been granted
40 pursuant to Section 360 or 366.26 shall be held either in the

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

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

39 (c) If, following the establishment of a legal guardianship, the
40 county welfare department becomes aware of changed

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

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

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

25 (2) Upon the request of the child.

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

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

32 The court shall determine whether or not reasonable efforts to
33 make and finalize a permanent placement for the child have been
34 made.

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

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

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

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

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

33 (5) Whether there should be any limitation on the right of the
34 parent or guardian to make educational decisions for the child.
35 That limitation shall be specifically addressed in the court order
36 and may not exceed what is necessary to protect the child. If the
37 court specifically limits the right of the parent or guardian to make
38 educational decisions for the child, the court shall at the same time
39 appoint a responsible adult to make educational decisions for the
40 child pursuant to Section 361.

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

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

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

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

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

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

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

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

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

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

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

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

1 Each licensed foster family agency shall submit reports for each
2 child in its care, custody, and control to the court concerning the
3 continuing appropriateness and extent of compliance with the
4 child's permanent plan, the extent of compliance with the case
5 plan, and the type and adequacy of services provided to the child.

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

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

22 (1) The child's present placement.

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

25 (3) If the child has not been placed with a prospective adoptive
26 parent or guardian, identification of individuals, other than the
27 child's siblings, who are important to the child and actions
28 necessary to maintain the child's relationship with those
29 individuals, provided that those relationships are in the best interest
30 of the child. The agency shall ask every child who is 10 years of
31 age or older to identify any individuals who are important to him
32 or her, consistent with the child's best interest, and may ask any
33 child who is younger than 10 years of age to provide that
34 information as appropriate. The agency shall make efforts to
35 identify other individuals who are important to the child.

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

38 (5) Whether an adoptive placement agreement has been signed
39 and filed.

1 (6) If the child has not been placed with a prospective adoptive
2 parent or parents, the efforts made to identify an appropriate
3 prospective adoptive parent or legal guardian, including, but not
4 limited to, child-specific recruitment efforts and listing on an
5 adoption exchange.

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

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

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

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

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

15 (12) Recommendations for court orders that will assist in the
16 placement of the child for adoption or in the finalization of the
17 adoption.

18 The court shall determine whether or not reasonable efforts to
19 make and finalize a permanent placement for the child have been
20 made.

21 The court shall make appropriate orders to protect the stability
22 of the child and to facilitate and expedite the permanent placement
23 and adoption of the child.

24 (h) At the review held pursuant to subdivision (d) for a child in
25 long-term foster care, the court shall consider all permanency
26 planning options for the child including whether the child should
27 be returned to the home of the parent, placed for adoption, or
28 appointed a legal guardian, or, if compelling reasons exist for
29 finding that none of the foregoing options are in the best interest
30 of the child, whether the child should be placed in another planned
31 permanent living arrangement. The court shall order that a hearing
32 be held pursuant to Section 366.26, unless it determines by clear
33 and convincing evidence that there is a compelling reason for
34 determining that a hearing held pursuant to Section 366.26 is not
35 in the best interest of the child because the child is being returned
36 to the home of the parent, the child is not a proper subject for
37 adoption, or no one is willing to accept legal guardianship. If the
38 licensed county adoption agency, or the department when it is
39 acting as an adoption agency in counties that are not served by a
40 county adoption agency, has determined it is unlikely that the child

1 will be adopted or one of the conditions described in paragraph
2 (1) of subdivision (c) of Section 366.26 applies, that fact shall
3 constitute a compelling reason for purposes of this subdivision.
4 Only upon that determination may the court order that the child
5 remain in foster care, without holding a hearing pursuant to Section
6 366.26.

7 (i) If, as authorized by subdivision (h), the court orders a hearing
8 pursuant to Section 366.26, the court shall direct the agency
9 supervising the child and the licensed county adoption agency, or
10 the State Department of Social Services when it is acting as an
11 adoption agency in counties that are not served by a county
12 adoption agency, to prepare an assessment as provided for in
13 subdivision (i) of Section 366.21 or subdivision (b) of Section
14 366.22. A hearing held pursuant to Section 366.26 shall be held
15 no later than 120 days from the date of the 12-month review at
16 which it is ordered, and at that hearing the court shall determine
17 whether adoption, legal guardianship, or long-term foster care is
18 the most appropriate plan for the child.

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

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

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

28 SEC. 19. Section 16120 of the Welfare and Institutions Code
29 is amended to read:

30 16120. A child shall be eligible for Adoption Assistance
31 Program benefits if all of the conditions specified in subdivisions
32 (a) to (l), inclusive, are met or if the conditions specified in
33 subdivision (m) are met.

34 (a) It has been determined that the child cannot or should not
35 be returned to the home of his or her parents as evidenced by a
36 petition for termination of parental rights, a court order terminating
37 parental rights, or a signed relinquishment, *or, in the case of a*
38 *tribal customary adoption, if the court has given full faith and*
39 *credit to a tribal customary adoption order as provided for*
40 *pursuant to paragraph (2) of subdivision (e) of Section 366.26.*

1 (b) The child has at least one of the following characteristics
2 that are barriers to his or her adoption:

3 (1) Adoptive placement without financial assistance is unlikely
4 because of membership in a sibling group that should remain intact
5 or by virtue of race, ethnicity, color, language, three years of age
6 or older, or parental background of a medical or behavioral nature
7 that can be determined to adversely affect the development of the
8 child.

9 (2) Adoptive placement without financial assistance is unlikely
10 because the child has a mental, physical, emotional, or medical
11 disability that has been certified by a licensed professional
12 competent to make an assessment and operating within the scope
13 of his or her profession. This paragraph shall also apply to children
14 with a developmental disability, as defined in subdivision (a) of
15 Section 4512, including those determined to require out-of-home
16 nonmedical care, as described in Section 11464.

17 (c) The need for adoption subsidy is evidenced by an
18 unsuccessful search for an adoptive home to take the child without
19 financial assistance, as documented in the case file of the
20 prospective adoptive child. The requirement for this search shall
21 be waived when it would be against the best interest of the child
22 because of the existence of significant emotional ties with
23 prospective adoptive parents while in the care of these persons as
24 a foster child.

25 (d) The child is under 18 years of age, or under 21 years of age
26 and has a mental or physical handicap that warrants the
27 continuation of assistance.

28 (e) The adoptive family is responsible for the child pursuant to
29 the terms of an adoptive placement agreement or a final decree of
30 adoption and has signed an adoption assistance agreement.

31 (f) The adoptive family is legally responsible for the support of
32 the child and the child is receiving support from the adoptive
33 parent.

34 (g) The department or the county responsible for determining
35 the child's Adoption Assistance Program eligibility status and for
36 providing financial aid, and the prospective adoptive parent, prior
37 to or at the time the adoption decree is issued by the court, have
38 signed an adoption assistance agreement that stipulates the need
39 for, and the amount of, Adoption Assistance Program benefits. ~~In~~
40 ~~the case of an Indian child who is the subject of an order of~~

1 ~~adoption based on tribal customary adoption, the department or~~
2 ~~the county responsible for determining the child's Adoption~~
3 ~~Assistance Program eligibility status and for providing financial~~
4 ~~aid, and the prospective adoptive parent, after the tribal customary~~
5 ~~adoption order has been granted full faith and credit pursuant to~~
6 ~~paragraph (2) of subdivision (e) of Section 366.26 by the court but~~
7 ~~prior to the adoption finalization hearing pursuant to paragraph~~
8 ~~(8) of subdivision (e) of Section 366.24, have signed an adoption~~
9 ~~assistance agreement that stipulates the need for, and the amount~~
10 ~~of, Adoption Assistance Program benefits.~~

11 (h) The prospective adoptive parent or any adult living in the
12 prospective adoptive home has completed the criminal background
13 check requirements pursuant to Section 671(a)(20)(A) and (C) of
14 Title 42 of the United States Code.

15 (i) To be eligible for state funding, the child is the subject of an
16 agency adoption, as defined in Section 8506 of the Family Code
17 and was any of the following:

18 (1) Under the supervision of a county welfare department as
19 the subject of a legal guardianship or juvenile court dependency.

20 (2) Relinquished for adoption to a licensed California private
21 or public adoption agency, or another public agency operating a
22 Title IV-E program on behalf of the state, and would have
23 otherwise been at risk of dependency as certified by the responsible
24 public child welfare agency.

25 (3) Committed to the care of the department pursuant to Section
26 8805 or 8918 of the Family Code.

27 (4) The child is an Indian child and the subject of an order of
28 adoption based on tribal customary adoption of an Indian child,
29 as described in Section 366.24. Notwithstanding Section 8600.5
30 of the Family Code, for purposes of this subdivision a tribal
31 customary adoption *is shall be considered* an agency adoption.

32 (j) To be eligible for federal funding, in the case of a child who
33 is not an applicable child for the federal fiscal year as defined in
34 subdivision (n), the child meets any of the following criteria:

35 (1) Prior to the finalization of an agency adoption, as defined
36 in Section 8506 of the Family Code, or an independent adoption,
37 as defined in Section 8524 of the Family Code, is filed, the child
38 has met the requirements to receive federal supplemental security
39 income benefits pursuant to Subchapter 16 (commencing with
40 Section 1381) of Chapter 7 of Title 42 of the United States Code,

1 as determined and documented by the federal Social Security
2 Administration.

3 (2) The child was removed from the home of a specified relative
4 and the child would have been AFDC-eligible in the home of
5 removal according to Section 606(a) or 607 of Title 42 of the
6 United States Code, as those sections were in effect on July 16,
7 1996, in the month of the voluntary placement agreement or in the
8 month court proceedings are initiated to remove the child, resulting
9 in a judicial determination that continuation in the home would be
10 contrary to the child's welfare. The child must have been living
11 with the specified relative from whom he or she was removed
12 within six months of the month the voluntary placement agreement
13 was signed or the petition to remove was filed.

14 (3) The child was voluntarily relinquished to a licensed public
15 or private adoption agency, or another public agency operating a
16 Title IV-E program on behalf of the state, and there is a petition
17 to the court to remove the child from the home within six months
18 of the time the child lived with a specified relative and a subsequent
19 judicial determination that remaining in the home would be
20 contrary to the child's welfare.

21 (4) Title IV-E foster care maintenance was paid on behalf of
22 the child's minor parent and covered the cost of the minor parent's
23 child while the child was in the foster family home or child care
24 institution with the minor parent.

25 (5) *The child is an Indian child and the subject of an order of*
26 *adoption based on tribal customary adoption of an Indian child,*
27 *as described in Section 366.24.*

28 (k) To be eligible for federal funding, in the case of a child who
29 is an applicable child for the federal fiscal year, as defined in
30 subdivision (n), the child meets any of the following criteria:

31 (1) At the time of initiation of adoptive proceedings was in the
32 care of a public or licensed private child placement agency or
33 Indian tribal organization pursuant to either of the following:

34 (A) An involuntary removal of the child from the home in
35 accordance with a judicial determination to the effect that
36 continuation in the home would be contrary to the welfare of the
37 child.

38 (B) A voluntary placement agreement or a voluntary
39 relinquishment.

1 (2) He or she meets all medical or disability requirements of
2 Title XVI with respect to eligibility for supplemental security
3 income benefits.

4 (3) He or she was residing in a foster family home or a child
5 care institution with the child's minor parent, and the child's minor
6 parent was in the foster family home or child care institution
7 pursuant to either of the following:

8 (A) An involuntary removal of the child from the home in
9 accordance with a judicial determination to the effect that
10 continuation in the home would be contrary to the welfare of the
11 child.

12 (B) A voluntary placement agreement or voluntary
13 relinquishment.

14 (4) *The child is an Indian child and the subject of an order of*
15 *adoption based on tribal customary adoption of an Indian child,*
16 *as described in Section 366.24.*

17 (l) The child is a citizen of the United States or a qualified alien
18 as defined in Section 1641 of Title 8 of the United States Code. If
19 the child is a qualified alien who entered the United States on or
20 after August 22, 1996, and is placed with an unqualified alien, the
21 child must meet the five-year residency requirement pursuant to
22 Section 673(a)(2)(B) of Title 42 of the United States Code, unless
23 the child is a member of one of the excepted groups pursuant to
24 Section 1612(b) of Title 8 of the United States Code.

25 (m) A child shall be eligible for Adoption Assistance Program
26 benefits if the following conditions are met:

27 (1) The child received Adoption Assistance Program benefits
28 with respect to a prior adoption and the child is again available for
29 adoption because the prior adoption was dissolved and the parental
30 rights of the adoptive parents were terminated or because the
31 child's adoptive parents died and the child meets the special needs
32 criteria described in subdivisions (a) to (c), inclusive.

33 (2) To receive federal funding, the citizenship requirements in
34 subdivision (l).

35 (n) (1) Except as provided in this subdivision, "applicable child"
36 means a child for whom an adoption assistance agreement is
37 entered into under this section during any federal fiscal year
38 described in this subdivision if the child attained the applicable
39 age for that federal fiscal year before the end of that federal fiscal
40 year.

- 1 (A) For federal fiscal year 2010, the applicable age is 16 years.
- 2 (B) For federal fiscal year 2011, the applicable age is 14 years.
- 3 (C) For federal fiscal year 2012, the applicable age is 12 years.
- 4 (D) For federal fiscal year 2013, the applicable age is 10 years.
- 5 (E) For federal fiscal year 2014, the applicable age is 8 years.
- 6 (F) For federal fiscal year 2015, the applicable age is 6 years.
- 7 (G) For federal fiscal year 2016, the applicable age is 4 years.
- 8 (H) For federal fiscal year 2017, the applicable age is 2 years.
- 9 (I) For federal fiscal year 2018 and thereafter, any age.

10 (2) Beginning with the 2010 federal fiscal year, the term
11 “applicable child” shall include a child of any age on the date on
12 which an adoption assistance agreement is entered into on behalf
13 of the child under this section if the child meets both of the
14 following criteria:

15 (A) He or she has been in foster care under the responsibility
16 of the state for at least 60 consecutive months.

17 (B) He or she meets the requirements of subdivision (k).

18 (3) Beginning with the 2010 federal fiscal year, an applicable
19 child shall include a child of any age on the date that an adoption
20 assistance agreement is entered into on behalf of the child under
21 this section, without regard to whether the child is described in
22 paragraph (2), if the child meets all of the following criteria:

23 (A) He or she is a sibling of a child who is an applicable child
24 for the federal fiscal year, under subdivision (n) or paragraph (2).

25 (B) He or she is to be placed in the same adoption placement
26 as an “applicable child” for the federal fiscal year who is their
27 sibling.

28 (C) He or she meets the requirements of subdivision (k).

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

32 SEC. 20. Section 16120 is added to the Welfare and Institutions
33 Code, to read:

34 16120. A child shall be eligible for Adoption Assistance
35 Program benefits if all of the conditions specified in subdivisions
36 (a) to (l), inclusive, are met or if the conditions specified in
37 subdivision (m) are met.

38 (a) It has been determined that the child cannot or should not
39 be returned to the home of his or her parents as evidenced by a

1 petition for termination of parental rights, a court order terminating
2 parental rights, or a signed relinquishment.

3 (b) The child has at least one of the following characteristics
4 that are barriers to his or her adoption:

5 (1) Adoptive placement without financial assistance is unlikely
6 because of membership in a sibling group that should remain intact
7 or by virtue of race, ethnicity, color, language, three years of age
8 or older, or parental background of a medical or behavioral nature
9 that can be determined to adversely affect the development of the
10 child.

11 (2) Adoptive placement without financial assistance is unlikely
12 because the child has a mental, physical, emotional, or medical
13 disability that has been certified by a licensed professional
14 competent to make an assessment and operating within the scope
15 of his or her profession. This paragraph shall also apply to children
16 with a developmental disability, as defined in subdivision (a) of
17 Section 4512, including those determined to require out-of-home
18 nonmedical care, as described in Section 11464.

19 (c) The need for adoption subsidy is evidenced by an
20 unsuccessful search for an adoptive home to take the child without
21 financial assistance, as documented in the case file of the
22 prospective adoptive child. The requirement for this search shall
23 be waived when it would be against the best interest of the child
24 because of the existence of significant emotional ties with
25 prospective adoptive parents while in the care of these persons as
26 a foster child.

27 (d) The child is under 18 years of age, or under 21 years of age
28 and has a mental or physical handicap that warrants the
29 continuation of assistance.

30 (e) The adoptive family is responsible for the child pursuant to
31 the terms of an adoptive placement agreement or a final decree of
32 adoption and has signed an adoption assistance agreement.

33 (f) The adoptive family is legally responsible for the support of
34 the child and the child is receiving support from the adoptive
35 parent.

36 (g) The department or the county responsible for determining
37 the child's Adoption Assistance Program eligibility status and for
38 providing financial aid, and the prospective adoptive parent, prior
39 to or at the time the adoption decree is issued by the court, have

1 signed an adoption assistance agreement that stipulates the need
2 for, and the amount of, Adoption Assistance Program benefits.

3 (h) The prospective adoptive parent or any adult living in the
4 prospective adoptive home has completed the criminal background
5 check requirements pursuant to Section 671(a)(20)(A) and (C) of
6 Title 42 of the United States Code.

7 (i) To be eligible for state funding, the child is the subject of an
8 agency adoption, as defined in Section 8506 of the Family Code
9 and was any of the following:

10 (1) Under the supervision of a county welfare department as
11 the subject of a legal guardianship or juvenile court dependency.

12 (2) Relinquished for adoption to a licensed California private
13 or public adoption agency, or another public agency operating a
14 Title IV-E program on behalf of the state, and would have
15 otherwise been at risk of dependency as certified by the responsible
16 public child welfare agency.

17 (3) Committed to the care of the department pursuant to Section
18 8805 or 8918 of the Family Code.

19 (j) To be eligible for federal funding, in the case of a child who
20 is not an applicable child for the federal fiscal year as defined in
21 subdivision (n), the child meets any of the following criteria:

22 (1) Prior to the finalization of an agency adoption, as defined
23 in Section 8506 of the Family Code, or an independent adoption,
24 as defined in Section 8524 of the Family Code, is filed, the child
25 has met the requirements to receive federal supplemental security
26 income benefits pursuant to Subchapter 16 (commencing with
27 Section 1381) of Chapter 7 of Title 42 of the United States Code,
28 as determined and documented by the federal Social Security
29 Administration.

30 (2) The child was removed from the home of a specified relative
31 and the child would have been AFDC-eligible in the home of
32 removal according to Section 606(a) or 607 of Title 42 of the
33 United States Code, as those sections were in effect on July 16,
34 1996, in the month of the voluntary placement agreement or in the
35 month court proceedings are initiated to remove the child, resulting
36 in a judicial determination that continuation in the home would be
37 contrary to the child's welfare. The child must have been living
38 with the specified relative from whom he or she was removed
39 within six months of the month the voluntary placement agreement
40 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 his or her
7 sibling.

8 (C) He or she meets the requirements of subdivision (k).

9 (o) This section shall become operative on January 1, 2014.

10 SEC. 21. Section 16508 of the Welfare and Institutions Code
11 is amended to read:

12 16508. Permanent placement services shall be provided or
13 arranged for by county welfare department staff for children who
14 cannot safely live with their parents and are not likely to return to
15 their own homes. Permanent placement services shall be available
16 without regard to income to the following children:

17 (a) Children judged dependent under Section 300 where a review
18 has determined that reunification, adoption, tribal customary
19 adoption, or guardianship is inappropriate.

20 (b) Recipients of public assistance under nonfederally funded
21 Aid to Families with Dependent Children programs who are wards
22 of a legal guardian where a review has determined that reunification
23 or adoption is inappropriate.

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

27 SEC. 22. Section 16508 is added to the Welfare and Institutions
28 Code, to read:

29 16508. Permanent placement services shall be provided or
30 arranged for by county welfare department staff for children who
31 cannot safely live with their parents and are not likely to return to
32 their own homes. Permanent placement services shall be available
33 without regard to income to the following children:

34 (a) Children judged dependent under Section 300 where a review
35 has determined that reunification, adoption, or guardianship is
36 inappropriate.

37 (b) Recipients of public assistance under nonfederally funded
38 Aid to Families with Dependent Children programs who are wards
39 of a legal guardian where a review has determined that reunification
40 or adoption is inappropriate.

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

2 SEC. 23. Section 16508.1 of the Welfare and Institutions Code
3 is amended to read:

4 16508.1. (a) For every child who is in foster care, or who
5 enters foster care, on or after January 1, 1999, and has been in
6 foster care for 15 of the most recent 22 months, the social worker
7 shall submit to the court a recommendation that the court set a
8 hearing pursuant to Section 366.26 for the purpose of terminating
9 parental rights. The social worker shall concurrently initiate and
10 describe a plan to identify, recruit, process and approve a qualified
11 family for adoption of the child.

12 (b) The social worker is not required to submit the
13 recommendation as described in subdivision (a) if any of the
14 following applies:

15 (1) The case plan for the child has documented a compelling
16 reason or reasons why it is unlikely that the child will be adopted,
17 as determined by the department when it is acting as an adoption
18 agency or by the licensed adoption agency, and therefore
19 termination of parental rights would not be in the best interest of
20 the child or that one of the conditions set forth in paragraph (1) of
21 subdivision (c) of Section 366.26 applies.

22 (2) A hearing under Section 366.26 is already set.

23 (3) The court has found at the previous hearing under Section
24 366.21 that there is a substantial probability that the child will be
25 returned to the child's home within the extended period of time
26 permitted.

27 (4) The court has found at the previous hearing under Section
28 366.21 that reasonable reunification services have not been offered
29 or provided.

30 (5) The court has found at each and every hearing at which the
31 court was required to consider reasonable efforts or services that
32 reasonable efforts were not made or that reasonable services were
33 not offered or provided.

34 (6) The incarceration or institutionalization of the parent or
35 parents, or the court-ordered participation of the parent or parents
36 in a residential substance abuse treatment program, constitutes a
37 significant factor in the child's placement in foster care for a period
38 of 15 of the most recent 22 months, and termination of parental
39 rights is not in the child's best interests, considering factors such
40 as the age of the child, the degree of parent and child bonding, the

1 length of the sentence, and the nature of the treatment and the
2 nature of the crime or illness.

3 (7) Tribal customary adoption is recommended.

4 (c) A recommendation to the court pursuant to subdivision (a)
5 shall not be made if the social worker documents in the case record
6 a compelling reason why a hearing pursuant to Section 366.26 is
7 not in the best interest of the child, or that reasonable efforts to
8 safely return the child home are continuing consistent with the
9 time period provided for in paragraph (1) of subdivision (g) of
10 Section 366.21.

11 (d) Beginning January 1, 1999, the county welfare department
12 shall implement a procedure for reviewing the application of this
13 section to the case plans of all children who have been in foster
14 care for 15 out of the most recent 22 months. The review shall
15 proceed within the following timeframes:

16 (1) By July 1, 1999, one-third of the children shall have been
17 reviewed, giving priority to children who have been in foster care
18 the greatest length of time.

19 (2) By January 1, 2000, at least two-thirds of the children shall
20 have been reviewed.

21 (3) By July 1, 2000, all children shall have been reviewed.

22 (e) For purposes of this section, a child shall be considered to
23 have entered foster care on the earlier of the date of the
24 jurisdictional hearing held pursuant to Section 356 or the date that
25 is 60 days after the date on which the child was initially removed
26 from the home of his or her parent or guardian.

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

30 SEC. 24. Section 16508.1 is added to the Welfare and
31 Institutions Code, to read:

32 16508.1. (a) For every child who is in foster care, or who
33 enters foster care, on or after January 1, 1999, and has been in
34 foster care for 15 of the most recent 22 months, the social worker
35 shall submit to the court a recommendation that the court set a
36 hearing pursuant to Section 366.26 for the purpose of terminating
37 parental rights. The social worker shall concurrently initiate and
38 describe a plan to identify, recruit, process and approve a qualified
39 family for adoption of the child.

1 (b) The social worker is not required to submit the
2 recommendation as described in subdivision (a) if any of the
3 following applies:

4 (1) The case plan for the child has documented a compelling
5 reason or reasons why it is unlikely that the child will be adopted,
6 as determined by the department when it is acting as an adoption
7 agency or by the licensed adoption agency, and therefore
8 termination of parental rights would not be in the best interest of
9 the child or that one of the conditions set forth in paragraph (1) of
10 subdivision (c) of Section 366.26 applies.

11 (2) A hearing under Section 366.26 is already set.

12 (3) The court has found at the previous hearing under Section
13 366.21 that there is a substantial probability that the child will be
14 returned to the child's home within the extended period of time
15 permitted.

16 (4) The court has found at the previous hearing under Section
17 366.21 that reasonable reunification services have not been offered
18 or provided.

19 (5) The court has found at each and every hearing at which the
20 court was required to consider reasonable efforts or services that
21 reasonable efforts were not made or that reasonable services were
22 not offered or provided.

23 (6) The incarceration or institutionalization of the parent or
24 parents, or the court-ordered participation of the parent or parents
25 in a residential substance abuse treatment program, constitutes a
26 significant factor in the child's placement in foster care for a period
27 of 15 of the most recent 22 months, and termination of parental
28 rights is not in the child's best interests, considering factors such
29 as the age of the child, the degree of parent and child bonding, the
30 length of the sentence, and the nature of the treatment and the
31 nature of the crime or illness.

32 (c) A recommendation to the court pursuant to subdivision (a)
33 shall not be made if the social worker documents in the case record
34 a compelling reason why a hearing pursuant to Section 366.26 is
35 not in the best interest of the child, or that reasonable efforts to
36 safely return the child home are continuing consistent with the
37 time period provided for in paragraph (1) of subdivision (g) of
38 Section 366.21.

39 (d) Beginning January 1, 1999, the county welfare department
40 shall implement a procedure for reviewing the application of this

1 section to the case plans of all children who have been in foster
2 care for 15 out of the most recent 22 months. The review shall
3 proceed within the following timeframes:

4 (1) By July 1, 1999, one-third of the children shall have been
5 reviewed, giving priority to children who have been in foster care
6 the greatest length of time.

7 (2) By January 1, 2000, at least two-thirds of the children shall
8 have been reviewed.

9 (3) By July 1, 2000, all children shall have been reviewed.

10 (e) For purposes of this section, a child shall be considered 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 home of his or her parent or guardian.

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

16 SEC. 25. (a) Sections 1, 2, 4, 6, 8, 10, 12, 13, 15, 17, 19, 21,
17 and 23 of this act shall become operative on July 1, 2010.

18 (b) The Judicial Council shall adopt rules of court and necessary
19 forms required to implement tribal customary adoption as a
20 permanent plan for dependent Indian children before July 1, 2010.

21 SEC. 26. Notwithstanding the rulemaking provisions of the
22 Administrative Procedure Act (Chapter 3.5 (commencing with
23 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
24 Code), the Department of Social Services may implement and
25 administer the applicable provisions of this act through all-county
26 letters or similar instruction from the director until such time as
27 regulations are adopted. The director may adopt emergency
28 regulations implementing this act. The department may readopt
29 any emergency regulation authorized by this section that is the
30 same or substantially equivalent to an emergency regulation
31 previously adopted by this section. The adoption of emergency
32 regulations implementing this section shall be deemed necessary
33 for the immediate preservation of the public peace, health, safety,
34 or general welfare. The emergency regulations and any readoption
35 of emergency regulations authorized by this section shall be exempt
36 from review by the Office of Administrative Law. The emergency
37 regulations and any readoption of emergency regulations authorized
38 by this section shall be submitted to the Office of Administrative
39 Law for filing with the Secretary of State and each shall remain

1 in effect for no more than 180 days by which time final regulations
2 shall be adopted.

3 SEC. 27. If the Commission on State Mandates determines
4 that this act contains costs mandated by the state, reimbursement
5 to local agencies and school districts for those costs shall be made
6 pursuant to Part 7 (commencing with Section 17500) of Division
7 4 of Title 2 of the Government Code.

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