

Senate Bill No. 1956

CHAPTER 416

An act to amend Sections 311, 338, 360, 362.3, 366.21, and 387 of, to add Article 5.5 (commencing with Section 290.1) to Chapter 2 of Part 1 of Division 2 of, and to repeal Sections 312, 335, 336, 337, and 366.23 of, the Welfare and Institutions Code, relating to dependent children.

[Approved by Governor September 6, 2002. Filed with Secretary of State September 9, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1956, Polanco. Dependency proceedings: notice.

Existing law provides for the notification of various parties regarding juvenile court proceedings to determine, review, revise, or terminate the status of a child as a dependent child of the court.

This bill would revise and recast those notice provisions, as specified. By creating new duties for local court officers, probation officers, and social workers under an existing program, the bill would impose a state-mandated local program.

This bill would declare that it is the intent of the Legislature that this bill will reduce local court costs by clarifying and consolidating existing requirements so as to reduce the number of continuances that need to be granted.

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 the Legislature finds there is no mandate contained in the bill that will result in costs incurred by a local agency or school district for a new program or higher level of service which require reimbursement pursuant to these constitutional and statutory provisions.

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

SECTION 1. Article 5.5 (commencing with Section 290.1) is added to Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, to read:



Article 5.5. Notices in Dependent Child Proceedings

290.1. If the probation officer or social worker determines that the child shall be retained in custody, he or she shall immediately file a petition pursuant to Section 332 with the clerk of the juvenile court, who shall set the matter for hearing on the detention hearing calendar. The probation officer or social worker shall serve notice as prescribed in this section.

(a) Notice shall be given to the following persons whose whereabouts are known or become known prior to the initial petition hearing:

- (1) The mother.
- (2) The father or fathers, presumed and alleged.
- (3) The legal guardian or guardians.
- (4) The child, if the child is 10 years of age or older.
- (5) If there is no parent or guardian residing in California, or if the residence is unknown, then to any adult relative residing within the county or if none, the adult relative residing nearest the court.
- (6) The attorney for the parent or parents, or legal guardian or guardians.
- (7) The district attorney, if the district attorney has notified the clerk of the court that he or she wishes to receive the petition, containing the time, date, and place of the hearing.
- (8) The probate department of the superior court that appointed the guardian, if the child is a ward of a guardian appointed pursuant to the Probate Code.

(9) If the court knows or has reason to know that an Indian child is involved, then to the Indian custodian and the tribe of that child. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Bureau of Indian Affairs.

(b) No notice is required for a parent whose parental rights have been terminated.

(c) The notice shall be given as soon as possible after the filing of the petition. In the case of an Indian child, if notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

(d) The notice of the initial petition hearing shall include all of the following:

- (1) The date, time, and place of the hearing.
- (2) The name of the child.
- (3) A copy of the petition.

(e) Service of the notice shall be written or oral. If the person being served cannot read, notice shall be given orally. In the case of an Indian



child, notice to the Bureau of Indian Affairs, if necessary, shall be by registered mail, return receipt requested.

290.2. Upon the filing of a petition by a probation officer or social worker, the clerk of the juvenile court shall issue notice, to which shall be attached a copy of the petition, and he or she shall cause the same to be served as prescribed in this section.

(a) Notice shall be given to the following persons whose address is known or becomes known prior to the initial petition hearing:

- (1) The mother.
- (2) The father or fathers, presumed and alleged.
- (3) The legal guardian or guardians.
- (4) The child, if the child is 10 years of age or older.
- (5) If there is no parent or guardian residing in California, or if the residence is unknown, to any adult relative residing within the county or if none, the adult relative residing nearest the court.

(6) Upon reasonable notification by counsel representing the child, parent, or guardian, the clerk of the court shall give notice to that counsel as soon as possible.

(7) The district attorney, if the district attorney has notified the clerk of the court that he or she wishes to receive the petition, containing the time, date, and place of the hearing.

(8) The probate department of the superior court that appointed the guardian, if the child is a ward of a guardian appointed pursuant to the Probate Code.

(9) If the court knows or has reason to know that an Indian child is involved, then to the Indian custodian and the tribe of that child. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Bureau of Indian Affairs.

(b) No notice is required for a parent whose parental rights have been terminated.

(c) Notice shall be served as follows:

(1) If the child is retained in custody, the notice shall be given to the persons required to be noticed as soon as possible, and at least five days before the hearing, unless the hearing is set to be heard in less than five days in which case notice shall be given at least 24 hours prior to the hearing.

(2) If the child is not retained in custody, the notice shall be given to those persons required to be noticed at least 10 days prior to the date of the hearing. If any such person is known to reside outside of the county, the clerk of the juvenile court shall mail the notice and copy of the petition by first-class mail, to that person as soon as possible after the filing of the petition and at least 10 days before the time set for hearing. Failure to respond to the notice is not cause for an arrest or detention. In



the instance of a failure to appear after notice by first-class mail, the court shall direct that the notice and copy of the petition be personally served on all persons required to receive the notice and copy of the petition. For these purposes, personal service of the notice and copy of the petition outside of the county at least 10 days before the time set for hearing is equivalent to service by first-class mail. Service may be waived by any person by a voluntary appearance entered in the minutes of the court or by a written waiver of service filed with the clerk of the court at, or prior to, the hearing.

(3) In the case of an Indian child, if notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

(d) The notice of the initial petition hearing shall include all of the following:

- (1) The date, time, and place of the hearing.
- (2) The name of the child.
- (3) A copy of the petition.

(e) In the case of an Indian child, notice to the Bureau of Indian Affairs, if necessary, shall be by registered mail, return receipt requested.

291. After the initial petition hearing, the clerk of the court shall cause the notice to be served in the following manner:

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

- (1) The mother.
- (2) The father or fathers, presumed and alleged.
- (3) The legal guardian or guardians.
- (4) The child, if the child is 10 years of age or older.

(5) Each attorney of record unless counsel of record is present in court when the hearing is scheduled, then no further notice need be given.

(6) If there is no parent or guardian residing in California, or if the residence is unknown, then to any adult relative residing within the county or if none, the adult relative residing nearest the court.

(7) If the court knows or has reason to know that an Indian child is involved, then to the Indian custodian and the tribe of that child. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Bureau of Indian Affairs.

(b) No notice is required for a parent whose parental rights have been terminated.

(c) Notice shall be served as follows:

(1) If the child is detained, the notice shall be given to the persons required to be noticed as soon as possible, and at least five days before the hearing, unless the hearing is set less than five days and then at least 24 hours prior to the hearing.



(2) If the child is not detained, the notice shall be given to those persons required to be noticed at least 10 days prior to the date of the hearing.

(3) In the case of an Indian child, notice is to be given no less than 10 days before the hearing. If notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

(d) The notice shall include all of the following:

(1) The name and address of the person notified.

(2) The nature of the hearing.

(3) Each section and subdivision under which the proceeding has been initiated.

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

(5) The name of the child upon whose behalf the petition has been brought.

(6) A statement that:

(A) If they fail to appear, the court may proceed without them.

(B) The child, parent, guardian, Indian custodian, or adult relative to whom notice is required to be given is entitled to have an attorney present at the hearing.

(C) If the parent, guardian, Indian custodian, or adult relative is indigent and cannot afford an attorney, and desires to be represented by an attorney, the parent, guardian, Indian custodian, or adult relative shall promptly notify the clerk of the juvenile court.

(D) If an attorney is appointed to represent the parent, guardian, Indian custodian, or adult relative, the represented person shall be liable for all or a portion of the costs to the extent of his or her ability to pay.

(E) The parent, guardian, Indian custodian, or adult relative may be liable for the costs of support of the child in any out-of-home placement.

(7) A copy of the petition.

(8) In the case of an Indian child, the notice shall contain a statement that the parent or Indian custodian and the tribe have a right to intervene at any point in the proceedings. The notice shall also include a statement that the parent or Indian custodian and the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceedings.

(e) Service of the notice of the hearing shall be given in the following manner:

(1) If the child is detained and the persons required to be noticed are not present at the initial petition hearing, they shall be noticed by personal service or by certified mail, return receipt requested.

(2) If the child is detained and the persons required to be noticed are present at the initial petition hearing, they shall be noticed by personal service or by first-class mail.



(3) If the child is not detained, the persons required to be noticed shall be noticed by personal service or by first-class mail, unless the person to be served is known to reside outside the county, in which case service shall be by first-class mail.

(4) In the case of an Indian child, notice shall be by registered mail, return receipt requested.

(f) Any of the notices required to be given under this section or Sections 290.1 and 290.2 may be waived by a party in person or through his or her attorney, or by a signed written waiver filed on or before the date scheduled for the hearing.

292. The social worker or probation officer shall give notice of the review hearing held pursuant to Section 364 in the following manner:

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

(1) The mother.

(2) The presumed father or any father receiving services.

(3) The legal guardian or guardians.

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

(5) Each attorney of record, if that attorney was not present at the time that the hearing was set by the court.

(6) If the court knows or has reason to know that an Indian child is involved, then to the Indian custodian and the tribe of that child. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Bureau of Indian Affairs.

(b) No notice is required for a parent whose parental rights have been terminated.

(c) The notice of the hearing shall be served not earlier than 30 days, nor later than 15 days, before the hearing. In the case of an Indian child, if notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

(d) (1) The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the child being recommended by the supervising agency. The notice shall also include a statement that the child and the parent or parents or legal guardian or guardians have a right to be present at the hearing, to be represented by counsel at the hearing and the procedure for obtaining appointed counsel, and to present evidence regarding the proper disposition of the case. The notice shall also state that if the parent or parents or legal guardian or guardians fail to appear, the court may proceed without them.

(2) In the case of an Indian child, the notice shall contain a statement that the parent or Indian custodian and the tribe have a right to intervene at any point in the proceedings. The notice shall also include a statement



that the parent or Indian custodian and the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceedings.

(e) (1) Service of the notice shall be by personal service, by first-class mail, or by certified mail, return receipt requested, addressed to the last known address of the person to be noticed.

(2) In the case of an Indian child, notice shall be by registered mail, return receipt requested.

293. The social worker or probation officer shall give notice of the review hearings held pursuant to Section 366.21 or 366.22 in the following manner:

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

(1) The mother.

(2) The presumed father or any father receiving services.

(3) The legal guardian or guardians.

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

(5) In the case of a child removed from the physical custody of his or her parent or legal guardian, the foster parents, relative caregivers, community care facility, or foster family agency having physical custody of the child.

(6) Each attorney of record if that attorney was not present at the time that the hearing was set by the court.

(7) If the court knows or has reason to know that an Indian child is involved, then to the Indian custodian and the tribe of that child. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Bureau of Indian Affairs.

(b) No notice is required for a parent whose parental rights have been terminated.

(c) The notice of hearing shall be served not earlier than 30 days, nor later than 15 days, before the hearing. In the case of an Indian child, if notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

(d) (1) The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the child being recommended by the supervising agency. If the notice is to the child, parent or parents, or legal guardian or guardians, the notice shall also advise them of the right to be present, the right to be represented by counsel, the right to request counsel, and the right to present evidence. The notice shall also state that if the parent or parents or legal guardian or guardians fail to appear, the court may proceed without them.

(2) In the case of an Indian child, the notice shall contain a statement that the parent or Indian custodian and the tribe have a right to intervene at any point in the proceedings. The notice shall also include a statement



that the parent or Indian custodian and the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceedings.

(e) (1) Service of the notice shall be by first-class mail addressed to the last known address of the person to be noticed or by personal service on the person. Service of a copy of the notice shall be by personal service or by certified mail, return receipt requested, or any other form of notice that is equivalent to service by first-class mail.

(2) In the case of an Indian child, notice shall be by registered mail, return receipt requested.

(f) Notice to a foster parent, a relative caregiver, a certified foster parent who has been approved for adoption, 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 or by a licensed county adoption agency, shall indicate that the person notified may attend all hearings or may submit any information he or she deems relevant to the court in writing.

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

(5) All counsel of record.

(6) If the court knows or has reason to know that an Indian child is involved, then to the Indian custodian and the tribe of that child. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Bureau of Indian Affairs.

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

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

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

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

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



(2) In the case of an Indian child, notice to the Indian custodian and the tribe shall be completed at least 10 days before the hearing.

(3) In the case of an Indian child, if notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

(d) Regardless of the type of notice required, or the manner in which it is served, once the court has made the initial finding that notice has properly been given to the parent, or to any person entitled to receive notice pursuant to this section, subsequent notice for any continuation of a Section 366.26 hearing may be by first-class mail to any last known address. However, if the recommendation changes from the recommendation contained in the notice previously found to be proper, notice shall be provided to the parent, and to any person entitled to receive notice pursuant to this section, regarding that subsequent hearing.

(e) The notice shall contain the following information:

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

(2) The right to appear.

(3) The parents' right to counsel.

(4) The nature of the proceedings.

(5) The recommendation of the supervising agency.

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

(7) In the case of an Indian child, the notice shall contain a statement that the parent or Indian custodian and the tribe have a right to intervene at any point in the proceedings. The notice shall also include a statement that the parent or Indian custodian and the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceedings.

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

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

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



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

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

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

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

(7) If the parent's whereabouts are unknown and the parent cannot, with reasonable diligence, be served in any manner specified in paragraphs (1) to (6), inclusive, the petitioner shall file an affidavit with the court at least 75 days before the hearing date, stating the name of the parent and describing the efforts made to locate and serve the parent.

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

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

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

(8) If the identity of one or both of the parents, or alleged parents, of the child is unknown, or if the name of one or both parents is uncertain, then that fact shall be set forth in the affidavit and the court, if ordering publication, shall order the published citation to be directed to either the father or mother, or both, of the child, and to all persons claiming to be the father or mother of the child, naming and otherwise describing the child.



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

(h) In the case of an Indian child, notice to the tribe shall be by registered mail, return receipt requested.

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

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

295. The social worker or probation officer shall give notice of review hearings held pursuant to Section 366.3 in the following manner:

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

(1) The mother.

(2) The presumed father.

(3) The legal guardian or guardians.

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

(5) The foster parents, Indian custodian, relative caregivers, community care facility, or foster family agency having physical custody of the child in the case of a child removed from the physical custody of the parents or legal guardian.

(6) The attorney of record if that attorney of record was not present at the time that the hearing was set by the court.

(7) The alleged father or fathers, but only if the recommendation is to set a new hearing pursuant to Section 366.26.

(8) If the court knows or has reason to know that an Indian child is involved, then to the Indian custodian and the tribe of that child. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Bureau of Indian Affairs.

(b) No notice is required for a parent whose parental rights have been terminated.

(c) The notice of the review hearing shall be served no earlier than 30 days, nor later than 15 days, before the hearing. In the case of an Indian child, if notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

(d) (1) The notice of the review hearing shall contain a statement regarding the nature of the hearing to be held, any recommended change in the custody or status of the child, and any recommendation that the court set a new hearing pursuant to Section 366.26 in order to select a more permanent plan.

(2) In the case of an Indian child, the notice shall contain a statement that the parent or Indian custodian and the tribe have a right to intervene



at any point in the proceedings. The notice shall also include a statement that the parent or Indian custodian and the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceedings.

(e) Service of notice shall be by first-class mail addressed to the last known address of the person to be provided notice. In the case of an Indian child, notice shall be by registered mail, return receipt requested.

(f) If the child is ordered into a permanent plan of legal guardianship, and subsequently a petition to terminate or modify the guardianship is filed, the probation officer or social worker shall serve notice of the petition not less than 15 court days prior to the hearing on all persons listed in subdivision (a) and on the court that established legal guardianship if it is in another county.

296. Upon any hearing or rehearing under this article, the court may order the child or any parent or guardian, or Indian custodian of the child who is present in court, to again appear before the court, before the social worker or probation officer, or before the county financial officer at a time and place specified in the order.

297. (a) Notice required for an initial petition filed pursuant to Section 300 is applicable to a subsequent petition filed pursuant to Section 342.

(b) Upon the filing of a supplemental petition pursuant to Section 387, the clerk of the juvenile court shall immediately set the matter for hearing within 30 days of the date of the filing, and the social worker or probation officer shall cause notice thereof to be served upon the persons required by, and in the manner prescribed by, Sections 290.1, 290.2, and 291.

(c) If a petition for modification has been filed pursuant to Section 388, and it appears that the best interest of the child may be promoted by the proposed change of the order, the recognition of a sibling relationship, or the termination of jurisdiction, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the social worker or probation officer and to the child's attorney of record, or if there is no attorney of record for the child, to the child, and his or her parent or parents or legal guardian or guardians or Indian custodian and the tribe in the manner prescribed by Section 291 unless a different manner is prescribed by the court.

SEC. 2. Section 311 of the Welfare and Institutions Code is amended to read:

311. (a) If the probation officer determines that the minor shall be retained in custody, he or she shall immediately file a petition pursuant to Section 332 with the clerk of the juvenile court who shall set the matter for hearing on the detention hearing calendar.



(b) In the hearing, the child, parents, or guardians have a privilege against self-incrimination and have a right to confrontation by, and cross-examination of, any person examined by the court as provided in Section 319.

SEC. 3. Section 312 of the Welfare and Institutions Code is repealed.

SEC. 4. Section 335 of the Welfare and Institutions Code is repealed.

SEC. 5. Section 336 of the Welfare and Institutions Code is repealed.

SEC. 6. Section 337 of the Welfare and Institutions Code is repealed.

SEC. 7. Section 338 of the Welfare and Institutions Code is amended to read:

338. In addition to the notice provided in Sections 290.1 and 290.2 the juvenile court may issue its citation directing any parent or guardian of the person concerning whom a petition has been filed to appear at the time and place set for any hearing or financial evaluation under the provisions of this chapter, including a hearing under the provisions of Section 257, and directing any person having custody or control of the minor concerning whom the petition has been filed to bring such minor with him or her. The notice shall in addition state that a parent or guardian may be required to participate in a counseling program with the minor concerning whom the petition has been filed. Personal service of such citation shall be made at least 24 hours before the time stated therein for that appearance.

SEC. 8. Section 360 of the Welfare and Institutions Code is amended to read:

360. After receiving and considering the evidence on the proper disposition of the case, the juvenile court may enter judgment as follows:

(a) Notwithstanding any other provision of law, if the court finds that the child is a person described by Section 300 and the parent has advised the court that the parent is not interested in family maintenance or family reunification services, it may, in addition to or in lieu of adjudicating the child a dependent child of the court, order a legal guardianship, appoint a legal guardian, and issue letters of guardianship, if the court determines that a guardianship is in the best interest of the child, provided the parent and the child agree to the guardianship, unless the child's age or physical, emotional, or mental condition prevents the child's meaningful response. The court shall advise the parent and the child that no reunification services will be provided as a result of the establishment of a guardianship. The proceeding for the appointment of a guardian shall be in the juvenile court.



Any application for termination of guardianship shall be filed in juvenile court in a form as may be developed by the Judicial Council pursuant to Section 68511 of the Government Code. Section 388 shall apply to this order of guardianship.

No person shall be appointed a legal guardian under this section until an assessment as specified in subdivision (g) of Section 361.5 is read and considered by the court and reflected in the minutes of the court. The assessment shall include the following:

(1) Current search efforts for, and notification of, a noncustodial parent in the manner provided in Section 291.

(2) A review of the amount of and nature of any contact between the child and his or her parents since the filing of the petition.

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

(4) A preliminary assessment of the eligibility and commitment of any identified prospective guardian, particularly the caretaker, to include a social history including a screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of guardianship.

(5) The relationship of the child to any identified prospective guardian, the duration and nature of the relationship, the motivation for seeking guardianship, and a statement from the child concerning the guardianship, unless the child's age or physical, emotional, or other condition precludes the child's meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the child would be adopted if parental rights were terminated.

The person responsible for preparing the assessment may be called and examined by any party to the guardianship proceeding.

(b) If the court finds that the child is a person described by Section 300, it may, without adjudicating the child a dependent child of the court, order that services be provided to keep the family together and place the child and the child's parent or guardian under the supervision of the social worker for a time period consistent with Section 301.

(c) If the family subsequently is unable or unwilling to cooperate with the services being provided, the social worker may file a petition with the juvenile court pursuant to Section 332 alleging that a previous petition has been sustained and that disposition pursuant to subdivision (b) has been ineffective in ameliorating the situation requiring the child welfare services. Upon hearing the petition, the court shall order either that the petition shall be dismissed or that a new disposition hearing shall be held pursuant to subdivision (d).



(d) If the court finds that the child is a person described by Section 300, it may order and adjudge the child to be a dependent child of the court.

SEC. 9. Section 362.3 of the Welfare and Institutions Code is amended to read:

362.3. In addition to the notice provided in Sections 297 and 332, the juvenile court may issue its citation directing any parent, guardian, or foster parent of the person concerning whom a petition has been filed to appear at the time and place set for any hearing under the provisions of this chapter, and directing any person having custody or control of the child concerning whom the petition has been filed to bring the child with him or her. The citation shall, in addition, state that a parent, guardian, or foster parent may be required to participate in a counseling or education program with the child concerning whom the petition has been filed. Personal service of the citation shall be made at least 24 hours before the time stated therein for the appearance.

SEC. 10. 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 the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, the progress made, and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or legal guardian, and make his or her recommendation for disposition. If the child is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, the report and recommendation may also take into account those factors described in subdivision (d) relating to the child's sibling group. If the recommendation is not to return the child to a parent or legal guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or legal guardian and counsel for the child with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or legal guardian, the social worker shall provide a summary of his or her recommendation for disposition to any court-appointed child advocate, foster parents, relative caregivers,



certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, community care facility, or foster family agency having the physical custody of the child at least 10 calendar days before the hearing.

(c) Prior to any hearing involving a child in the physical custody of a community care facility or foster family agency that may result in the return of the child to the physical custody of his or her parent or legal guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, the foster parent, relative caregiver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

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

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

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

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

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to



contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

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

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

If the child is not returned to his or her parent or legal guardian, the court shall determine whether reasonable services have been provided or offered to the parent or legal guardian 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. The court shall order that those services be initiated, continued, or terminated.

(e) 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 subdivision (a) of Section 361.5. At the permanency hearing, the court shall determine the permanent plan for the child, that 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. The court shall also determine whether reasonable services have been provided or offered to the parent or legal guardian 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. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the



efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(f) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1), (2), or (3) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or legal guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

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

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

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

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

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



The court shall inform the parent or legal guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.26 may be instituted. The court shall 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 adoption agency or by a licensed county adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, 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 adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and shall not preclude a different recommendation at a later date if the child's circumstances change.

(g) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the 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 pending the hearing unless it finds that visitation would be detrimental to the child.

(h) 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:

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



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

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

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

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

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

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

(j) 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.

(k) For purposes of this section, evidence of any of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

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



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

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

SEC. 11. Section 366.23 of the Welfare and Institutions Code is repealed.

SEC. 12. Section 387 of the Welfare and Institutions Code is amended to read:

387. An order changing or modifying a previous order by removing a child from the physical custody of a parent, guardian, relative, or friend and directing placement in a foster home, or commitment to a private or county institution, shall be made only after noticed hearing upon a supplemental petition.

(a) The supplemental petition shall be filed by the social worker in the original matter and shall contain a concise statement of facts sufficient to support the conclusion that the previous disposition has not been effective in the rehabilitation or protection of the child or, in the case of a placement with a relative, sufficient to show that the placement is not appropriate in view of the criteria in Section 361.3.

(b) Upon the filing of the supplemental petition, the clerk of the juvenile court shall immediately set the same for hearing within 30 days, and the social worker shall cause notice thereof to be served upon the persons and in the manner prescribed by Sections 290 and 291.

(c) An order for the detention of the child pending adjudication of the petition may be made only after a hearing is conducted pursuant to Article 7 (commencing with Section 305).

SEC. 13. It is the intent of the Legislature that this act reduce local court costs by clarifying and consolidating existing requirements so as to reduce the number of continuances that need to be granted.

SEC. 14. Pursuant to Section 17579 of the Government Code, the Legislature finds that there is no mandate contained in this act that will result in costs incurred by a local agency or school district for a new program or higher level of service which require reimbursement pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

