

**ASSEMBLY BILL**

**No. 2292**

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**Introduced by Assembly Member Nielsen**

February 24, 2012

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An act to amend Sections 366.21, 366.22, 366.25, 727.2, and 727.3 of the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2292, as introduced, Nielsen. Juveniles: reunification orders.

Existing law provides that a minor may be removed from the physical custody of his or her parents if there is a substantial danger to the physical health of the child or the child is suffering severe emotional damage and there are no reasonable means to protect the child without removing him or her. Additionally, a minor who is in wardship proceedings may be removed from the physical custody of his or her parents if the court finds that remaining in the home would be contrary to the minor's welfare in addition to other specified findings, including that removal is necessary to protect the minor or another person or the person's property. When a minor is removed from the physical custody of his or her parents in dependency or wardship proceedings, existing law generally requires that reunification services be provided to a minor and his or her family. Existing law also provides for periodic status review hearings, at which the court must return a minor to the physical custody of his or her parents unless the court makes specified findings.

This bill would require the court to hear testimony and review the available evidence before issuing an order returning a minor to the physical custody of his or her parents in dependency or wardship proceedings.

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

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

1 SECTION 1. Section 366.21 of the Welfare and Institutions  
2 Code, as amended by Section 3 of Chapter 59 of the Statutes of  
3 2011, is amended to read:

4 366.21. (a) Every hearing conducted by the juvenile court  
5 reviewing the status of a dependent child shall be placed on the  
6 appearance calendar. The court shall advise all persons present at  
7 the hearing of the date of the future hearing and of their right to  
8 be present and represented by counsel.

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

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

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

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

35 (e) At the review hearing held six months after the initial  
36 dispositional hearing, but no later than 12 months after the date  
37 the child entered foster care as determined in Section 361.49,  
38 whichever occurs earlier, *after hearing testimony and reviewing*  
39 *the evidence*, the court shall order the return of the child to the  
40 physical custody of his or her parent or legal guardian unless the

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

27 Regardless of whether the child is returned to a parent or legal  
28 guardian, the court shall specify the factual basis for its conclusion  
29 that the return would be detrimental or would not be detrimental.  
30 The court also shall make appropriate findings pursuant to  
31 subdivision (a) of Section 366; and, where relevant, shall order  
32 any additional services reasonably believed to facilitate the return  
33 of the child to the custody of his or her parent or legal guardian.  
34 The court shall also inform the parent or legal guardian that if the  
35 child cannot be returned home by the 12-month permanency  
36 hearing, a proceeding pursuant to Section 366.26 may be instituted.  
37 This section does not apply in a case where, pursuant to Section  
38 361.5, the court has ordered that reunification services shall not  
39 be provided.

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

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

37 If the child was removed initially under subdivision (g) of  
38 Section 300 and the court finds by clear and convincing evidence  
39 that the whereabouts of the parent are still unknown, or the parent  
40 has failed to contact and visit the child, the court may schedule a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (2) Order that a hearing be held within 120 days, pursuant to  
5 Section 366.26, but only if the court does not continue the case to  
6 the permanency planning review hearing and there is clear and  
7 convincing evidence that reasonable services have been provided  
8 or offered to the parents or legal guardians. On and after January  
9 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered  
10 if the child is a nonminor dependent.

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 shall not preclude a different recommendation at  
28 a later date if the child's circumstances change. On and after  
29 January 1, 2012, the nonminor dependent's legal status as an adult  
30 is in and of itself a compelling reason not to hold a hearing pursuant  
31 to Section 366.26. The court may order that a nonminor dependent  
32 who otherwise is eligible pursuant to Section 11403 remain in a  
33 planned, permanent living arrangement.

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

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

7 (h) In any case in which the court orders that a hearing pursuant  
8 to Section 366.26 shall be held, it shall also order the termination  
9 of reunification services to the parent or legal guardian. The court  
10 shall continue to permit the parent or legal guardian to visit the  
11 child pending the hearing unless it finds that visitation would be  
12 detrimental to the child. The court shall make any other appropriate  
13 orders to enable the child to maintain relationships with individuals,  
14 other than the child's siblings, who are important to the child,  
15 consistent with the child's best interests. When the court orders a  
16 termination of reunification services to the parent or legal guardian,  
17 it shall also order that the child's caregiver receive the child's birth  
18 certificate in accordance with Sections 16010.4 and 16010.5.  
19 Additionally, when the court orders a termination of reunification  
20 services to the parent of legal guardian, it shall order, when  
21 appropriate, that a child who is 16 years of age or older receive  
22 his or her birth certificate.

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

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

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

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

3 (D) A preliminary assessment of the eligibility and commitment  
4 of any identified prospective adoptive parent or legal guardian,  
5 including the prospective tribal customary adoptive parent,  
6 particularly the caretaker, to include a social history including  
7 screening for criminal records and prior referrals for child abuse  
8 or neglect, the capability to meet the child’s needs, and the  
9 understanding of the legal and financial rights and responsibilities  
10 of adoption and guardianship. If a proposed guardian is a relative  
11 of the minor, the assessment shall also consider, but need not be  
12 limited to, all of the factors specified in subdivision (a) of Section  
13 361.3 and in Section 361.4.

14 (E) The relationship of the child to any identified prospective  
15 adoptive parent or legal guardian, the duration and character of  
16 the relationship, the degree of attachment of the child to the  
17 prospective relative guardian or adoptive parent, the relative’s or  
18 adoptive parent’s strong commitment to caring permanently for  
19 the child, the motivation for seeking adoption or guardianship, a  
20 statement from the child concerning placement and the adoption  
21 or guardianship, and whether the child, if over 12 years of age,  
22 has been consulted about the proposed relative guardianship  
23 arrangements, unless the child’s age or physical, emotional, or  
24 other condition precludes his or her meaningful response, and if  
25 so, a description of the condition.

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

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

32 (H) In the case of an Indian child, in addition to subparagraphs  
33 (A) to (G), 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 (j) If, at any hearing held pursuant to Section 366.26, a  
15 guardianship is established for the minor with an approved relative  
16 caregiver, and juvenile court dependency is subsequently  
17 dismissed, the minor shall be eligible for aid under the Kin-GAP  
18 Program, as provided for in Article 4.5 (commencing with Section  
19 11360) or Article 4.7 (commencing with Section 11385), as  
20 applicable, of Chapter 2 of Part 3 of Division 9.

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

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

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

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

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

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

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

4 SEC. 2. Section 366.21 of the Welfare and Institutions Code,  
5 as amended by Section 4 of Chapter 59 of the Statutes of 2011, is  
6 amended to read:

7 366.21. (a) Every hearing conducted by the juvenile court  
8 reviewing the status of a dependent child shall be placed on the  
9 appearance calendar. The court shall advise all persons present at  
10 the hearing of the date of the future hearing and of their right to  
11 be present and represented by counsel.

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

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

1 foster parents who have been approved for adoption 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, community care facility,  
5 or foster family agency having the physical custody of the child.  
6 The social worker shall include a copy of the Judicial Council  
7 Caregiver Information Form (JV-290) with the summary of  
8 recommendations to the child's foster parents, relative caregivers,  
9 or foster parents approved for adoption, in the caregiver's primary  
10 language when available, along with information on how to file  
11 the form with the court.

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

32 (e) At the review hearing held six months after the initial  
33 dispositional hearing, but no later than 12 months after the date  
34 the child entered foster care as determined in Section 361.49,  
35 whichever occurs earlier, *after hearing testimony and reviewing*  
36 *the evidence*, the court shall order the return of the child to the  
37 physical custody of his or her parent or legal guardian unless the  
38 court finds, by a preponderance of the evidence, that the return of  
39 the child to his or her parent or legal guardian would create a  
40 substantial risk of detriment to the safety, protection, or physical

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

24 Regardless of whether the child is returned to a parent or legal  
25 guardian, the court shall specify the factual basis for its conclusion  
26 that the return would be detrimental or would not be detrimental.  
27 The court also shall make appropriate findings pursuant to  
28 subdivision (a) of Section 366; and, where relevant, shall order  
29 any additional services reasonably believed to facilitate the return  
30 of the child to the custody of his or her parent or legal guardian.  
31 The court shall also inform the parent or legal guardian that if the  
32 child cannot be returned home by the 12-month permanency  
33 hearing, a proceeding pursuant to Section 366.26 may be instituted.  
34 This section does not apply in a case where, pursuant to Section  
35 361.5, the court has ordered that reunification services shall not  
36 be provided.

37 If the child was under three years of age on the date of the initial  
38 removal, or is a member of a sibling group described in  
39 subparagraph (C) of paragraph (1) of subdivision (a) of Section  
40 361.5, and the court finds by clear and convincing evidence that

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

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

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

1 convincing evidence that the parent has been convicted of a felony  
2 indicating parental unfitness, the court may schedule a hearing  
3 pursuant to Section 366.26 within 120 days.

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

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

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

22 (f) The permanency hearing shall be held no later than 12  
23 months after the date the child entered foster care, as that date is  
24 determined pursuant to Section 361.49. At the permanency hearing,  
25 the court shall determine the permanent plan for the child, which  
26 shall include a determination of whether the child will be returned  
27 to the child's home and, if so, when, within the time limits of  
28 subdivision (a) of Section 361.5. ~~The~~ *After hearing testimony and*  
29 *reviewing the evidence, the* court shall order the return of the child  
30 to the physical custody of his or her parent or legal guardian unless  
31 the court finds, by a preponderance of the evidence, that the return  
32 of the child to his or her parent or legal guardian would create a  
33 substantial risk of detriment to the safety, protection, or physical  
34 or emotional well-being of the child. The social worker shall have  
35 the burden of establishing that detriment. At the permanency  
36 hearing, the court shall consider the criminal history, obtained  
37 pursuant to paragraph (1) of subdivision (f) of Section 16504.5,  
38 of the parent or legal guardian subsequent to the child's removal  
39 to the extent that the criminal record is substantially related to the  
40 welfare of the child or the parent or legal guardian's ability to

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

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

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

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

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

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

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

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

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

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

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

1 the permanency planning review hearing and there is clear and  
2 convincing evidence that reasonable services have been provided  
3 or offered to the parents or legal guardians. On or after January 1,  
4 2012, a hearing pursuant to Section 366.26 shall not be ordered if  
5 the child is a nonminor dependent.

6 (3) Order that the child remain in long-term foster care, but only  
7 if the court finds by clear and convincing evidence, based upon  
8 the evidence already presented to it, including a recommendation  
9 by the State Department of Social Services when it is acting as an  
10 adoption agency in counties that are not served by a county  
11 adoption agency or by a licensed county adoption agency, that  
12 there is a compelling reason for determining that a hearing held  
13 pursuant to Section 366.26 is not in the best interest of the child  
14 because the child is not a proper subject for adoption and has no  
15 one willing to accept legal guardianship. For purposes of this  
16 section, a recommendation by the State Department of Social  
17 Services when it is acting as an adoption agency in counties that  
18 are not served by a county adoption agency or by a licensed county  
19 adoption agency that adoption is not in the best interest of the child  
20 shall constitute a compelling reason for the court's determination.  
21 That recommendation shall be based on the present circumstances  
22 of the child and shall not preclude a different recommendation at  
23 a later date if the child's circumstances change. On and after  
24 January 1, 2012, the nonminor dependent's legal status as an adult  
25 is in and of itself a compelling reason not to hold a hearing pursuant  
26 to Section 366.26. The court may order that a nonminor dependent  
27 who otherwise is eligible pursuant to Section 11403 remain in a  
28 planned, permanent living arrangement.

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. When the court orders a  
12 termination of reunification services to the parent or legal guardian,  
13 it shall also order that the child's caregiver receive the child's birth  
14 certificate in accordance with Sections 16010.4 and 16010.5.  
15 Additionally, when the court orders a termination of reunification  
16 services to the parent of legal guardian, it shall order, when  
17 appropriate, that a child who is 16 years of age or older receive  
18 his or her birth certificate.

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

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

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

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

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

1 understanding of the legal and financial rights and responsibilities  
2 of adoption and guardianship. If a proposed guardian is a relative  
3 of the minor, the assessment shall also consider, but need not be  
4 limited to, all of the factors specified in subdivision (a) of Section  
5 361.3 and in Section 361.4.

6 (E) The relationship of the child to any identified prospective  
7 adoptive parent or legal guardian, the duration and character of  
8 the relationship, the degree of attachment of the child to the  
9 prospective relative guardian or adoptive parent, the relative's or  
10 adoptive parent's strong commitment to caring permanently for  
11 the child, the motivation for seeking adoption or guardianship, a  
12 statement from the child concerning placement and the adoption  
13 or guardianship, and whether the child, if over 12 years of age,  
14 has been consulted about the proposed relative guardianship  
15 arrangements, unless the child's age or physical, emotional, or  
16 other condition precludes his or her meaningful response, and if  
17 so, a description of the condition.

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

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

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

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

34 (j) If, at any hearing held pursuant to Section 366.26, a  
35 guardianship is established for the minor with an approved relative  
36 caregiver, and juvenile court dependency is subsequently  
37 dismissed, the minor shall be eligible for aid under the Kin-GAP  
38 Program, as provided for in Article 4.5 (commencing with Section  
39 11360) or Article 4.7 (commencing with Section 11385), as  
40 applicable, of Chapter 2 of Part 3 of Division 9.

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

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

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

22 SEC. 3. Section 366.22 of the Welfare and Institutions Code,  
23 as amended by Section 18 of Chapter 559 of the Statutes of 2010,  
24 is amended 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~~ *After hearing testimony and*  
30 *reviewing the evidence*, court shall order the return of the child to  
31 the physical custody of his or her parent or legal guardian unless  
32 the court finds, by a preponderance of the evidence, that the return  
33 of the child to his or her parent or legal guardian would create a  
34 substantial risk of detriment to the safety, protection, or physical  
35 or emotional well-being of the child. The social worker shall have  
36 the burden of establishing that detriment. At the permanency review  
37 hearing, the court shall consider the criminal history, obtained  
38 pursuant to paragraph (1) of subdivision (f) of Section 16504.5,  
39 of the parent or legal guardian subsequent to the child’s removal,  
40 to the extent that the criminal record is substantially related to the

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

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

29 Unless the conditions in subdivision (b) are met and the child is  
30 not returned to a parent or legal guardian at the permanency review  
31 hearing, the court shall order that a hearing be held pursuant to  
32 Section 366.26 in order to determine whether adoption, or, in the  
33 case of an Indian child, in consultation with the child's tribe, tribal  
34 customary adoption, guardianship, or long-term foster care is the  
35 most appropriate plan for the child. On and after January 1, 2012,  
36 a hearing pursuant to Section 366.26 shall not be ordered if the  
37 child is a nonminor dependent. However, if the court finds by clear  
38 and convincing evidence, based on the evidence already presented  
39 to it, including a recommendation by the State Department of  
40 Social Services when it is acting as an adoption agency in counties

1 that are not served by a county adoption agency or by a licensed  
2 county adoption agency, that there is a compelling reason, as  
3 described in paragraph (3) of subdivision (g) of Section 366.21,  
4 for determining that a hearing held under Section 366.26 is not in  
5 the best interest of the child because the child is not a proper  
6 subject for adoption and has no one willing to accept legal  
7 guardianship, then the court may, only under these circumstances,  
8 order that the child remain in long-term foster care. On and after  
9 January 1, 2012, the nonminor dependent's legal status as an adult  
10 is in and of itself a compelling reason not to hold a hearing pursuant  
11 to Section 366.26. The court may order that a nonminor dependent  
12 who otherwise is eligible pursuant to Section 11403 remain in a  
13 planned, permanent living arrangement. If the court orders that a  
14 child who is 10 years of age or older remain in long-term foster  
15 care, the court shall determine whether the agency has made  
16 reasonable efforts to maintain the child's relationships with  
17 individuals other than the child's siblings who are important to the  
18 child, consistent with the child's best interests, and may make any  
19 appropriate order to ensure that those relationships are maintained.  
20 The hearing shall be held no later than 120 days from the date of  
21 the permanency review hearing. The court shall also order  
22 termination of reunification services to the parent or legal guardian.  
23 The court shall continue to permit the parent or legal guardian to  
24 visit the child unless it finds that visitation would be detrimental  
25 to the child. The court shall determine whether reasonable services  
26 have been offered or provided to the parent or legal guardian. For  
27 purposes of this subdivision, evidence of any of the following  
28 circumstances shall not, in and of themselves, be deemed a failure  
29 to provide or offer reasonable services:

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

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

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

37 (b) If the child is not returned to a parent or legal guardian at  
38 the permanency review hearing and the court determines by clear  
39 and convincing evidence that the best interests of the child would  
40 be met by the provision of additional reunification services to a

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

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

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

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

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

38 The court shall inform the parent or legal guardian that if the  
39 child cannot be returned home by the subsequent permanency  
40 review hearing, a proceeding pursuant to Section 366.26 may be

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

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

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

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

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

22 (D) A preliminary assessment of the eligibility and commitment  
23 of any identified prospective adoptive parent or legal guardian,  
24 particularly the caretaker, to include a social history including  
25 screening for criminal records and prior referrals for child abuse  
26 or neglect, the capability to meet the child’s needs, and the  
27 understanding of the legal and financial rights and responsibilities  
28 of adoption and guardianship. If a proposed legal guardian is a  
29 relative of the minor, the assessment shall also consider, but need  
30 not be limited to, all of the factors specified in subdivision (a) of  
31 Section 361.3 and Section 361.4.

32 (E) The relationship of the child to any identified prospective  
33 adoptive parent or legal guardian, the duration and character of  
34 the relationship, the degree of attachment of the child to the  
35 prospective relative guardian or adoptive parent, the relative’s or  
36 adoptive parent’s strong commitment to caring permanently for  
37 the child, the motivation for seeking adoption or legal guardianship,  
38 a statement from the child concerning placement and the adoption  
39 or legal guardianship, and whether the child, if over 12 years of  
40 age, has been consulted about the proposed relative guardianship

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

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

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

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

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

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

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

28 (d) This section shall become operative January 1, 1999. If at  
29 any hearing held pursuant to Section 366.26, a legal guardianship  
30 is established for the minor with an approved relative caregiver,  
31 and juvenile court dependency is subsequently dismissed, the minor  
32 shall be eligible for aid under the Kin-GAP Program, as provided  
33 for in Article 4.5 (commencing with Section 11360) or Article 4.7  
34 (commencing with Section 11385), as applicable, of Chapter 2 of  
35 Part 3 of Division 9.

36 (e) As used in this section, "relative" means an adult who is  
37 related to the child by blood, adoption, or affinity within the fifth  
38 degree of kinship, including stepparents, stepsiblings, and all  
39 relatives whose status is preceded by the words "great,"

1 “great-great,” or “grand,” or the spouse of any of those persons  
2 even if the marriage was terminated by death or dissolution.

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

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

10 SEC. 4. Section 366.22 of the Welfare and Institutions Code,  
11 as amended by Section 19 of Chapter 559 of the Statutes of 2010,  
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~~ *After hearing testimony and*  
18 *reviewing the evidence, the court shall order the return of the child*  
19 *to the physical custody of his or her parent or legal guardian unless*  
20 *the court finds, by a preponderance of the evidence, that the return*  
21 *of the child to his or her parent or legal guardian would create a*  
22 *substantial risk of detriment to the safety, protection, or physical*  
23 *or emotional well-being of the child. The social worker shall have*  
24 *the burden of establishing that detriment. At the permanency review*  
25 *hearing, the court shall consider the criminal history, obtained*  
26 *pursuant to paragraph (1) of subdivision (f) of Section 16504.5,*  
27 *of the parent or legal guardian subsequent to the child’s removal,*  
28 *to the extent that the criminal record is substantially related to the*  
29 *welfare of the child or the parent’s or legal guardian’s ability to*  
30 *exercise custody and control regarding his or her child, provided*  
31 *that the parent or legal guardian agreed to submit fingerprint images*  
32 *to obtain criminal history information as part of the case plan. The*  
33 *failure of the parent or legal guardian to participate regularly and*  
34 *make substantive progress in court-ordered treatment programs*  
35 *shall be prima facie evidence that return would be detrimental. In*  
36 *making its determination, the court shall review and consider the*  
37 *social worker’s report and recommendations and the report and*  
38 *recommendations of any child advocate appointed pursuant to*  
39 *Section 356.5; shall consider the efforts or progress, or both,*  
40 *demonstrated by the parent or legal guardian and the extent to*

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

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

17 Unless the conditions in subdivision (b) are met and the child is  
18 not returned to a parent or legal guardian at the permanency review  
19 hearing, the court shall order that a hearing be held pursuant to  
20 Section 366.26 in order to determine whether adoption,  
21 guardianship, or long-term foster care is the most appropriate plan  
22 for the child. On and after January 1, 2012, a hearing pursuant to  
23 Section 366.26 shall not be ordered if the child is a nonminor  
24 dependent. However, if the court finds by clear and convincing  
25 evidence, based on the evidence already presented to it, including  
26 a recommendation by the State Department of Social Services  
27 when it is acting as an adoption agency in counties that are not  
28 served by a county adoption agency or by a licensed county  
29 adoption agency, that there is a compelling reason, as described  
30 in paragraph (3) of subdivision (g) of Section 366.21, for  
31 determining that a hearing held under Section 366.26 is not in the  
32 best interest of the child because the child is not a proper subject  
33 for adoption and has no one willing to accept legal guardianship,  
34 then the court may, only under these circumstances, order that the  
35 child remain in long-term foster care. On and after January 1, 2012,  
36 the nonminor dependent's legal status as an adult is in and of itself  
37 a compelling reason not to hold a hearing pursuant to Section  
38 366.26. The court may order that a nonminor dependent who  
39 otherwise is eligible pursuant to Section 11403 remain in a planned,  
40 permanent living arrangement. If the court orders that a child who

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (B) A review of the amount of and nature of any contact between  
40 the child and his or her parents and other members of his or her

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

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

8 (D) A preliminary assessment of the eligibility and commitment  
9 of any identified prospective adoptive parent or legal guardian,  
10 particularly the caretaker, to include a social history including  
11 screening for criminal records and prior referrals for child abuse  
12 or neglect, the capability to meet the child’s needs, and the  
13 understanding of the legal and financial rights and responsibilities  
14 of adoption and guardianship. If a proposed legal guardian is a  
15 relative of the minor, the assessment shall also consider, but need  
16 not be limited to, all of the factors specified in subdivision (a) of  
17 Section 361.3 and Section 361.4.

18 (E) The relationship of the child to any identified prospective  
19 adoptive parent or legal guardian, the duration and character of  
20 the relationship, the degree of attachment of the child to the  
21 prospective relative guardian or adoptive parent, the relative’s or  
22 adoptive parent’s strong commitment to caring permanently for  
23 the child, the motivation for seeking adoption or legal guardianship,  
24 a statement from the child concerning placement and the adoption  
25 or legal guardianship, and whether the child, if over 12 years of  
26 age, has been consulted about the proposed relative guardianship  
27 arrangements, unless the child’s age or physical, emotional, or  
28 other condition precludes his or her meaningful response, and if  
29 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 (2) (A) A relative caregiver’s preference for legal guardianship  
33 over adoption, if it is due to circumstances that do not include an  
34 unwillingness to accept legal or financial responsibility for the  
35 child, shall not constitute the sole basis for recommending removal  
36 of the child from the relative caregiver for purposes of adoptive  
37 placement.

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

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

3 (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 an approved relative caregiver,  
6 and juvenile court dependency is subsequently dismissed, the minor  
7 shall be eligible for aid under the Kin-GAP Program, as provided  
8 for in Article 4.5 (commencing with Section 11360) or Article 4.7  
9 (commencing with Section 11385), as applicable, of Chapter 2 of  
10 Part 3 of Division 9.

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

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

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

22 SEC. 5. Section 366.25 of the Welfare and Institutions Code,  
23 as amended by Section 20 of Chapter 559 of the Statutes of 2010,  
24 is amended to read:

25 366.25. (a) (1) When a case has been continued pursuant to  
26 subdivision (b) of Section 366.22, the subsequent permanency  
27 review hearing shall occur within 24 months after the date the  
28 child was originally removed from the physical custody of his or  
29 her parent or legal guardian. ~~The~~ *After hearing testimony and*  
30 *reviewing the evidence, the court shall order the return of the child*  
31 *to the physical custody of his or her parent or legal guardian unless*  
32 *the court finds, by a preponderance of the evidence, that the return*  
33 *of the child to his or her parent or legal guardian would create a*  
34 *substantial risk of detriment to the safety, protection, or physical*  
35 *or emotional well-being of the child. The social worker shall have*  
36 *the burden of establishing that detriment. At the subsequent*  
37 *permanency review hearing, the court shall consider the criminal*  
38 *history, obtained pursuant to paragraph (1) of subdivision (f) of*  
39 *Section 16504.5, of the parent or legal guardian subsequent to the*  
40 *child’s removal to the extent that the criminal record is substantially*

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

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

26 (3) If the child is not returned to a parent or legal guardian at  
27 the subsequent permanency review hearing, the court shall order  
28 that a hearing be held pursuant to Section 366.26 in order to  
29 determine whether adoption, or, in the case of an Indian child,  
30 tribal customary adoption, guardianship, or long-term foster care  
31 is the most appropriate plan for the child. On and after January 1,  
32 2012, a hearing pursuant to Section 366.26 shall not be ordered if  
33 the child is a nonminor dependent. However, if the court finds by  
34 clear and convincing evidence, based on the evidence already  
35 presented to it, including a recommendation by the State  
36 Department of Social Services when it is acting as an adoption  
37 agency in counties that are not served by a county adoption agency  
38 or by a licensed county adoption agency, that there is a compelling  
39 reason, as described in paragraph (3) of subdivision (g) of Section  
40 366.21, for determining that a hearing held under Section 366.26

1 is not in the best interest of the child because the child is not a  
2 proper subject for adoption or, in the case of an Indian child, tribal  
3 customary adoption, and has no one willing to accept legal  
4 guardianship, then the court may, only under these circumstances,  
5 order that the child remain in long-term foster care. On and after  
6 January 1, 2012, the nonminor dependent's legal status as an adult  
7 is in and of itself a compelling reason not to hold a hearing pursuant  
8 to Section 366.26. The court may order that a nonminor dependent  
9 who otherwise is eligible pursuant to Section 11403 remain in a  
10 planned, permanent living arrangement. 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 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, the assessment shall also consider, but need  
19 not be limited to, all of the factors specified in subdivision (a) of  
20 Section 361.3 and in Section 361.4.

21 (E) The relationship of the child to any identified prospective  
22 adoptive parent or legal guardian, including a prospective tribal  
23 customary adoptive parent, the duration and character of the  
24 relationship, the degree of attachment of the child to the prospective  
25 relative guardian or adoptive parent, the relative’s or adoptive  
26 parent’s strong commitment to caring permanently for the child,  
27 the motivation for seeking adoption or legal guardianship, a  
28 statement from the child concerning placement and the adoption  
29 or legal guardianship, and whether the child, if over 12 years of  
30 age, has been consulted about the proposed relative guardianship  
31 arrangements, unless the child’s age or physical, emotional, or  
32 other condition precludes his or her meaningful response, and if  
33 so, a description of the condition.

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

36 (G) In the case of an Indian child, in addition to subparagraphs  
37 (A) to (F), inclusive, an assessment of the likelihood that the child  
38 will be adopted, when, in consultation with the child’s tribe, a  
39 customary tribal adoption, as defined in Section 366.24, is

1 recommended. If tribal customary adoption is recommended, the  
2 assessment shall include an analysis of both of the following:

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

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

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

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

19 (c) If, at any hearing held pursuant to Section 366.26, a  
20 guardianship is established for the minor with an approved relative  
21 caregiver, and juvenile court dependency is subsequently  
22 dismissed, the minor shall be eligible for aid under the Kin-GAP  
23 Program, as provided for in Article 4.5 (commencing with Section  
24 11360) or Article 4.7 (commencing with Section 11385), as  
25 applicable, of Chapter 2 of Part 3 of Division 9.

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

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

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

1 SEC. 6. Section 366.25 of the Welfare and Institutions Code,  
2 as amended by Section 21 of Chapter 559 of the Statutes of 2010,  
3 is amended to read:

4 366.25. (a) (1) When a case has been continued pursuant to  
5 subdivision (b) of Section 366.22, the subsequent permanency  
6 review hearing shall occur within 24 months after the date the  
7 child was originally removed from the physical custody of his or  
8 her parent or legal guardian. ~~The~~ *After hearing testimony and*  
9 *reviewing the evidence, the court shall order the return of the child*  
10 *to the physical custody of his or her parent or legal guardian unless*  
11 *the court finds, by a preponderance of the evidence, that the return*  
12 *of the child to his or her parent or legal guardian would create a*  
13 *substantial risk of detriment to the safety, protection, or physical*  
14 *or emotional well-being of the child. The social worker shall have*  
15 *the burden of establishing that detriment. At the subsequent*  
16 *permanency review hearing, the court shall consider the criminal*  
17 *history, obtained pursuant to paragraph (1) of subdivision (f) of*  
18 *Section 16504.5, of the parent or legal guardian subsequent to the*  
19 *child's removal to the extent that the criminal record is substantially*  
20 *related to the welfare of the child or parent or legal guardian's*  
21 *ability to exercise custody and control regarding his or her child*  
22 *provided that the parent or legal guardian agreed to submit*  
23 *fingerprint images to obtain criminal history information as part*  
24 *of the case plan. The failure of the parent or legal guardian to*  
25 *participate regularly and make substantive progress in court-ordered*  
26 *treatment programs shall be prima facie evidence that return would*  
27 *be detrimental. In making its determination, the court shall review*  
28 *and consider the social worker's report and recommendations and*  
29 *the report and recommendations of any child advocate appointed*  
30 *pursuant to Section 356.5; shall consider the efforts or progress,*  
31 *or both, demonstrated by the parent or legal guardian and the extent*  
32 *to which he or she availed himself or herself of services provided;*  
33 *and shall make appropriate findings pursuant to subdivision (a) of*  
34 *Section 366.*

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

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

5 (3) If the child is not returned to a parent or legal guardian at  
6 the subsequent permanency review hearing, the court shall order  
7 that a hearing be held pursuant to Section 366.26 in order to  
8 determine whether adoption, guardianship, or long-term foster  
9 care is the most appropriate plan for the child. On and after January  
10 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered  
11 if the child is a nonminor dependent. However, if the court finds  
12 by clear and convincing evidence, based on the evidence already  
13 presented to it, including a recommendation by the State  
14 Department of Social Services when it is acting as an adoption  
15 agency in counties that are not served by a county adoption agency  
16 or by a licensed county adoption agency, that there is a compelling  
17 reason, as described in paragraph (3) of subdivision (g) of Section  
18 366.21, for determining that a hearing held under Section 366.26  
19 is not in the best interest of the child because the child is not a  
20 proper subject for adoption and has no one willing to accept legal  
21 guardianship, then the court may, only under these circumstances,  
22 order that the child remain in long-term foster care. On and after  
23 January 1, 2012, the nonminor dependent's legal status as an adult  
24 is in and of itself a compelling reason not to hold a hearing pursuant  
25 to Section 366.26. The court may order that a nonminor dependent  
26 who otherwise is eligible pursuant to Section 11403 remain in a  
27 planned, permanent living arrangement. If the court orders that a  
28 child who is 10 years of age or older remain in long-term foster  
29 care, the court shall determine whether the agency has made  
30 reasonable efforts to maintain the child's relationships with  
31 individuals other than the child's siblings who are important to the  
32 child, consistent with the child's best interests, and may make any  
33 appropriate order to ensure that those relationships are maintained.  
34 The hearing shall be held no later than 120 days from the date of  
35 the subsequent permanency review hearing. The court shall also  
36 order termination of reunification services to the parent or legal  
37 guardian. The court shall continue to permit the parent or legal  
38 guardian to visit the child unless it finds that visitation would be  
39 detrimental to the child. The court shall determine whether  
40 reasonable services have been offered or provided to the parent or

1 legal guardian. For purposes of this subdivision, evidence of any  
2 of the following circumstances shall not, in and of themselves, be  
3 deemed a failure to provide or offer reasonable services:

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

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

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

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

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

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

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

27 (D) A preliminary assessment of the eligibility and commitment  
28 of any identified prospective adoptive parent or legal guardian,  
29 particularly the caretaker, to include a social history including  
30 screening for criminal records and prior referrals for child abuse  
31 or neglect, the capability to meet the child’s needs, and the  
32 understanding of the legal and financial rights and responsibilities  
33 of adoption and guardianship. If a proposed legal guardian is a  
34 relative of the minor, the assessment shall also consider, but need  
35 not be limited to, all of the factors specified in subdivision (a) of  
36 Section 361.3 and in Section 361.4.

37 (E) The relationship of the child to any identified prospective  
38 adoptive parent or legal guardian, the duration and character of  
39 the relationship, the degree of attachment of the child to the  
40 prospective relative guardian or adoptive parent, the relative’s or

1 adoptive parent’s strong commitment to caring permanently for  
2 the child, the motivation for seeking adoption or legal guardianship,  
3 a statement from the child concerning placement and the adoption  
4 or legal guardianship, and whether the child, if over 12 years of  
5 age, has been consulted about the proposed relative guardianship  
6 arrangements, unless the child’s age or physical, emotional, or  
7 other condition precludes his or her meaningful response, and if  
8 so, a description of the condition.

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

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

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

21 (c) If, at any hearing held pursuant to Section 366.26, a  
22 guardianship is established for the minor with an approved relative  
23 caregiver, and juvenile court dependency is subsequently  
24 dismissed, the minor shall be eligible for aid under the Kin-GAP  
25 Program, as provided for in Article 4.5 (commencing with Section  
26 11360) or Article 4.7 (commencing with Section 11385), as  
27 applicable, of Chapter 2 of Part 3 of Division 9.

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

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

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

39 SEC. 7. Section 727.2 of the Welfare and Institutions Code is  
40 amended to read:

1 727.2. The purpose of this section is to provide a means to  
2 monitor the safety and well-being of every minor in foster care  
3 who has been declared a ward of the juvenile court pursuant to  
4 Section 601 or 602 and to ensure that everything reasonably  
5 possible is done to facilitate the safe and early return of the minor  
6 to his or her home or to establish an alternative permanent plan  
7 for the minor.

8 (a) If the court orders the care, custody, and control of the minor  
9 to be under the supervision of the probation officer for placement  
10 pursuant to subdivision (a) of Section 727, the juvenile court shall  
11 order the probation department to ensure the provision of  
12 reunification services to facilitate the safe return of the minor to  
13 his or her home or the permanent placement of the minor, and to  
14 address the needs of the minor while in foster care, except as  
15 provided in subdivision (b).

16 (b) Reunification services need not be provided to a parent or  
17 legal guardian if the court finds by clear and convincing evidence  
18 that one or more of the following is true:

19 (1) Reunification services were previously terminated for that  
20 parent or guardian, pursuant to Section 366.21, 366.22, or 366.25,  
21 or not offered, pursuant to subdivision (b) of Section 361.5, in  
22 reference to the same minor.

23 (2) The parent has been convicted of any of the following:

24 (A) Murder of another child of the parent.

25 (B) Voluntary manslaughter of another child of the parent.

26 (C) Aiding or abetting, attempting, conspiring, or soliciting to  
27 commit that murder or manslaughter described in subparagraph  
28 (A) or (B).

29 (D) A felony assault that results in serious bodily injury to the  
30 minor or another child of the parent.

31 (3) The parental rights of the parent with respect to a sibling  
32 have been terminated involuntarily, and it is not in the best interest  
33 of the minor to reunify with his or her parent or legal guardian.

34 If no reunification services are offered to the parent or guardian,  
35 the permanency planning hearing, as described in Section 727.3,  
36 shall occur within 30 days of the date of the hearing at which the  
37 decision is made not to offer services.

38 (c) The status of every minor declared a ward and ordered to  
39 be placed in foster care shall be reviewed by the court no less  
40 frequently than once every six months. The six-month time periods

1 shall be calculated from the date the minor entered foster care, as  
2 defined in paragraph (4) of subdivision (d) of Section 727.4. If the  
3 court so elects, the court may declare the hearing at which the court  
4 orders the care, custody, and control of the minor to be under the  
5 supervision of the probation officer for foster care placement  
6 pursuant to subdivision (a) of Section 727 at the first status review  
7 hearing. It shall be the duty of the probation officer to prepare a  
8 written social study report including an updated case plan, pursuant  
9 to subdivision (b) of Section 706.5, and submit the report to the  
10 court prior to each status review hearing, pursuant to subdivision  
11 (b) of Section 727.4. The social study report shall include all  
12 reports the probation officer relied upon in making his or her  
13 recommendations.

14 (d) Prior to any status review hearing involving a minor in the  
15 physical custody of a community care facility or foster family  
16 agency, the facility or agency may provide the probation officer  
17 with a report containing its recommendations. Prior to any status  
18 review hearing involving the physical custody of a foster parent,  
19 relative caregiver, preadoptive parent, or legal guardian, that person  
20 may present to the court a report containing his or her  
21 recommendations. The court shall consider all reports and  
22 recommendations filed pursuant to subdivision (c) and pursuant  
23 to this subdivision.

24 (e) At any status review hearing prior to the first permanency  
25 planning hearing, the court shall consider the safety of the minor  
26 and make findings and orders which determine the following:

27 (1) The continuing necessity for and appropriateness of the  
28 placement.

29 (2) The extent of the probation department's compliance with  
30 the case plan in making reasonable efforts to safely return the  
31 minor to the minor's home or to complete whatever steps are  
32 necessary to finalize the permanent placement of the minor.

33 (3) Whether there should be any limitation on the right of the  
34 parent or guardian to make educational decisions for the minor.  
35 That limitation shall be specifically addressed in the court order  
36 and may not exceed what is necessary to protect the minor. If the  
37 court specifically limits the right of the parent or guardian to make  
38 educational decisions for the minor, the court shall at the same  
39 time appoint a responsible adult to make educational decisions for  
40 the minor pursuant to Section 726.

1 (4) The extent of progress that has been made by the minor and  
2 parent or guardian toward alleviating or mitigating the causes  
3 necessitating placement in foster care.

4 (5) The likely date by which the minor may be returned to and  
5 safely maintained in the home or placed for adoption, appointed  
6 a legal guardian, permanently placed with a fit and willing relative  
7 or referred to another planned permanent living arrangement.

8 (6) In the case of a minor who has reached 16 years of age, the  
9 court shall, in addition, determine the services needed to assist the  
10 minor to make the transition from foster care to independent living.

11 The court shall make these determinations on a case-by-case  
12 basis and reference in its written findings the probation officer's  
13 report and any other evidence relied upon in reaching its decision.

14 (f) At any status review hearing prior to the first permanency  
15 hearing, *after hearing testimony and reviewing the evidence*, the  
16 court shall order return of the minor to the physical custody of his  
17 or her parent or legal guardian unless the court finds, by a  
18 preponderance of evidence, that the return of the minor to his or  
19 her parent or legal guardian would create a substantial risk of  
20 detriment to the safety, protection, or physical or emotional  
21 well-being of the minor. The probation department shall have the  
22 burden of establishing that detriment. In making its determination,  
23 the court shall review and consider the social study report,  
24 recommendations, and the case plan pursuant to subdivision (b)  
25 of Section 706.5, the report and recommendations of any child  
26 advocate appointed for the minor in the case, and any other reports  
27 submitted to the court pursuant to subdivision (d), and shall  
28 consider the efforts or progress, or both, demonstrated by the minor  
29 and family and the extent to which the minor availed himself or  
30 herself of the services provided.

31 (g) At all status review hearings subsequent to the first  
32 permanency planning hearing, the court shall consider the safety  
33 of the minor and make the findings and orders as described in  
34 paragraphs (1) to (4), inclusive, and (6) of subdivision (e). The  
35 court shall either make a finding that the previously ordered  
36 permanent plan continues to be appropriate or shall order that a  
37 new permanent plan be adopted pursuant to subdivision (b) of  
38 Section 727.3. However, the court shall not order a permanent plan  
39 of "return to the physical custody of the parent or legal guardian

1 after further reunification services are offered,” as described in  
2 paragraph (2) of subdivision (b) of Section 727.3.

3 (h) The status review hearings required by subdivision (c) may  
4 be heard by an administrative review panel, provided that the  
5 administrative panel meets all of the requirements listed in  
6 subparagraph (B) of paragraph (7) of subdivision (d) of Section  
7 727.4.

8 (i) (1) On and after January 1, 2012, at any status review hearing  
9 at which a recommendation to terminate delinquency jurisdiction  
10 is being considered, or at the status review hearing held closest to  
11 the ward attaining 18 years of age, but no fewer than 90 days before  
12 the ward’s 18th birthday, the court shall consider whether to modify  
13 its jurisdiction pursuant to Section 601 or 602 and assume transition  
14 jurisdiction over the minor pursuant to Section 450. The probation  
15 department shall address this issue in its report to the court and  
16 make a recommendation as to whether transition jurisdiction is  
17 appropriate for the minor.

18 (2) The court shall order the probation department or the minor’s  
19 attorney to submit an application to the child welfare services  
20 department pursuant to Section 329 to declare the minor a  
21 dependent of the court and modify its jurisdiction from delinquency  
22 to dependency jurisdiction if it finds both of the following:

23 (A) The ward does not come within the description set forth in  
24 Section 450, but jurisdiction as a ward may no longer be required.

25 (B) The ward appears to come within the description of Section  
26 300 and cannot be returned home safely.

27 (3) The court shall set a hearing within 20 judicial days of the  
28 date of its order issued pursuant to paragraph (2) to review the  
29 decision of the child welfare services department and may either  
30 affirm the decision not to file a petition pursuant to Section 300  
31 or order the child welfare services department to file a petition  
32 pursuant to Section 300.

33 (j) On and after January 1, 2012, if a review hearing pursuant  
34 to this section is the last review hearing to be held before the minor  
35 attains 18 years of age, the court shall ensure that the minor’s  
36 transitional independent living case plan includes a plan for the  
37 minor to meet one or more of the criteria in paragraphs (1) to (5),  
38 inclusive, of subdivision (b) of Section 11403, so that the minor  
39 can become a nonminor dependent, and that the minor has been  
40 informed of his or her right to decline to become a nonminor

1 dependent and to seek termination of the court’s jurisdiction  
2 pursuant to Section 607.2.

3 SEC. 8. Section 727.3 of the Welfare and Institutions Code is  
4 amended to read:

5 727.3. The purpose of this section is to provide a means to  
6 monitor the safety and well-being of every minor in foster care  
7 who has been declared a ward of the juvenile court pursuant to  
8 Section 601 or 602 and to ensure that everything reasonably  
9 possible is done to facilitate the safe and early return of the minor  
10 to his or her own home or to establish an alternative permanent  
11 plan for the minor.

12 (a) (1) For every minor declared a ward and ordered to be  
13 placed in foster care, a permanency planning hearing shall be  
14 conducted within 12 months of the date the minor entered foster  
15 care, as defined in paragraph (4) of subdivision (d) of Section  
16 727.4. Subsequent permanency planning hearings shall be  
17 conducted periodically, but no less frequently than once every 12  
18 months thereafter during the period of placement. It shall be the  
19 duty of the probation officer to prepare a written social study report  
20 including an updated case plan and a recommendation for a  
21 permanent plan, pursuant to subdivision (c) of Section 706.5, and  
22 submit the report to the court prior to each permanency planning  
23 hearing, pursuant to subdivision (b) of Section 727.4.

24 (2) Prior to any permanency planning hearing involving a minor  
25 in the physical custody of a community care facility or foster family  
26 agency, the facility or agency may file with the court a report  
27 containing its recommendations, in addition to the probation  
28 officer’s social study. Prior to any permanency planning hearing  
29 involving the physical custody of a foster parent, relative caregiver,  
30 preadoptive parent, or legal guardian, that person may present to  
31 the court a report containing his or her recommendations. The  
32 court shall consider all reports and recommendations filed pursuant  
33 to this subdivision.

34 (3) If the minor has a continuing involvement with his or her  
35 parents or legal guardians, the parents or legal guardians shall be  
36 involved in the planning for a permanent placement. The court  
37 order placing the minor in a permanent placement shall include a  
38 specification of the nature and frequency of visiting arrangements  
39 with the parents or legal guardians.

1 (4) At each permanency planning hearing, the court shall order  
2 a permanent plan for the minor, as described in subdivision (b).  
3 The court shall also make findings, as described in subdivision (e)  
4 of Section 727.2. In the case of a minor who has reached 16 years  
5 of age or older, the court shall, in addition, determine the services  
6 needed to assist the minor to make the transition from foster care  
7 to independent living. The court shall make all of these  
8 determinations on a case-by-case basis and make reference to the  
9 probation officer's report, the case plan, or other evidence relied  
10 upon in making its decisions.

11 (b) At all permanency planning hearings, the court shall  
12 determine the permanent plan for the minor. The court shall order  
13 one of the following permanent plans, which are, in order of  
14 priority:

15 (1) Return of the minor to physical custody of the parent or legal  
16 guardian. ~~The~~ *After hearing testimony and reviewing the evidence,*  
17 *the* court shall order the return of the minor to the physical custody  
18 of his or her parent or legal guardian unless:

19 (A) Reunification services were not offered, pursuant to  
20 subdivision (b) of Section 727.2.

21 (B) The court finds, by a preponderance of the evidence, that  
22 the return of the minor to his or her parent or legal guardian would  
23 create a substantial risk of detriment to the safety, protection, or  
24 physical or emotional well-being of the minor. The probation  
25 department shall have the burden of establishing that detriment.  
26 In making its determination, the court shall review and consider  
27 the social study report and recommendations pursuant to Section  
28 706.5, the report and recommendations of any child advocate  
29 appointed for the minor in the case, and any other reports submitted  
30 pursuant to paragraph (2) of subdivision (a), and shall consider  
31 the efforts or progress, or both, demonstrated by the minor and  
32 family and the extent to which the minor availed himself or herself  
33 of the services provided.

34 (2) Order that the permanent plan for the minor will be to return  
35 the minor to the physical custody of the parent or legal guardian,  
36 order further reunification services to be provided to the minor  
37 and his or her parent or legal guardian for a period not to exceed  
38 six months and continue the case for up to six months for a  
39 subsequent permanency planning hearing, provided that the  
40 subsequent hearing shall occur within 18 months of the date the

1 minor was originally taken from physical custody of his or her  
2 parent or legal guardian. The court shall continue the case only if  
3 it finds that there is a substantial probability that the minor will be  
4 returned to the physical custody of his or her parent or legal  
5 guardian and safely maintained in the home within the extended  
6 period of time or that reasonable services have not been provided  
7 to the parent or guardian. For purposes of this section, in order to  
8 find that there is a substantial probability that the minor will be  
9 returned to the physical custody of his or her parent or legal  
10 guardian, the court shall be required to find that the minor and his  
11 or her parent or legal guardian have demonstrated the capacity and  
12 ability to complete the objectives of the case plan.

13 The court shall inform the parent or legal guardian that if the  
14 minor cannot be returned home by the next permanency planning  
15 hearing, a proceeding pursuant to Section 727.31 may be initiated.

16 The court shall not continue the case for further reunification  
17 services if it has been 18 months or more since the date the minor  
18 was originally taken from the physical custody of his or her parent  
19 or legal guardian.

20 (3) Identify adoption as the permanent plan and order that a  
21 hearing be held within 120 days, pursuant to the procedures  
22 described in Section 727.31. The court shall only set a hearing  
23 pursuant to Section 727.31 if there is clear and convincing evidence  
24 that reasonable services have been provided or offered to the  
25 parents. When the court sets a hearing pursuant to Section 727.31,  
26 it shall order that an adoption assessment report be prepared,  
27 pursuant to subdivision (b) of Section 727.31.

28 (4) Order a legal guardianship, pursuant to procedures described  
29 in subdivisions (c) to (f), inclusive, of Section 728.

30 (5) Place the minor with a fit and willing relative. “Placement  
31 with a fit and willing relative” means placing the minor with an  
32 appropriate relative on a permanent basis. When a minor is placed  
33 with a fit and willing relative, the court may authorize the relative  
34 to provide the same legal consent for the minor’s medical, surgical,  
35 and dental care, and education as the custodial parent of the minor.

36 (6) Place the minor in a planned permanent living arrangement.  
37 A “planned permanent living arrangement” means any permanent  
38 living arrangement described in Section 11402 and not listed in  
39 paragraphs (1) to (5), inclusive, such as placement in a specific,  
40 identified foster family home, program, or facility on a permanent

1 basis, or placement in a transitional housing placement facility.  
2 When the court places a minor in a planned permanent living  
3 arrangement, the court shall specify the goal of the placement,  
4 which may include, but shall not be limited to, return home,  
5 emancipation, guardianship, or permanent placement with a  
6 relative.

7 The court shall only order that the minor remain in a planned  
8 permanent living arrangement if the court finds by clear and  
9 convincing evidence, based upon the evidence already presented  
10 to it that there is a compelling reason, as defined in subdivision  
11 (c), for determining that a plan of termination of parental rights  
12 and adoption is not in the best interest of the minor.

13 (c) A compelling reason for determining that a plan of  
14 termination of parental rights and adoption is not in the best interest  
15 of the minor is any of the following:

16 (1) Documentation by the probation department that adoption  
17 is not in the best interest of the minor and is not an appropriate  
18 permanency goal. That documentation may include, but is not  
19 limited to, documentation that:

20 (A) The minor is 12 years of age or older and objects to  
21 termination of parental rights.

22 (B) The minor is 17 years of age or older and specifically  
23 requests that transition to independent living with the identification  
24 of a caring adult to serve as a lifelong connection be established  
25 as his or her permanent plan. On and after January 1, 2012, this  
26 includes a minor who requests that his or her transitional  
27 independent living case plan include modification of his or her  
28 jurisdiction to that of dependency jurisdiction pursuant to  
29 subdivision (b) of Section 607.2 or subdivision (i) of Section 727.2,  
30 or to that of transition jurisdiction pursuant to Section 450, in order  
31 to be eligible as a nonminor dependent for the extended benefits  
32 pursuant to Section 11403.

33 (C) The parent or guardian and the minor have a significant  
34 bond, but the parent or guardian is unable to care for the minor  
35 because of an emotional or physical disability, and the minor's  
36 caregiver has committed to raising the minor to the age of majority  
37 and facilitating visitation with the disabled parent or guardian.

38 (D) The minor agrees to continued placement in a residential  
39 treatment facility that provides services specifically designed to

1 address the minor’s treatment needs, and the minor’s needs could  
2 not be served by a less restrictive placement.

3 The probation department’s recommendation that adoption is  
4 not in the best interest of the minor shall be based on the present  
5 family circumstances of the minor and shall not preclude a different  
6 recommendation at a later date if the minor’s family circumstances  
7 change.

8 (2) Documentation by the probation department that no grounds  
9 exist to file for termination of parental rights.

10 (3) Documentation by the probation department that the minor  
11 is an unaccompanied refugee minor, or there are international legal  
12 obligations or foreign policy reasons that would preclude  
13 terminating parental rights.

14 (4) A finding by the court that the probation department was  
15 required to make reasonable efforts to reunify the minor with the  
16 family pursuant to subdivision (a) of Section 727.2, and did not  
17 make those efforts.

18 (5) Documentation by the probation department that the minor  
19 is living with a relative who is unable or unwilling to adopt the  
20 minor because of exceptional circumstances that do not include  
21 an unwillingness to accept legal or financial responsibility for the  
22 minor, but who is willing and capable of providing the minor with  
23 a stable and permanent home environment, and the removal of the  
24 minor from the physical custody of his or her relative would be  
25 detrimental to the minor’s emotional well-being.

26 (d) Nothing in this section shall be construed to limit the ability  
27 of a parent to voluntarily relinquish his or her child to 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 or to a licensed county adoption agency at any time while the minor  
31 is a ward of the juvenile court if the department or agency is willing  
32 to accept the relinquishment.

33 (e) Any change in the permanent plan of a minor placed with a  
34 fit and willing relative or in a planned permanent living  
35 arrangement shall be made only by order of the court pursuant to  
36 a Section 778 petition or at a regularly scheduled and noticed status  
37 review hearing or permanency planning hearing. Any change in  
38 the permanent plan of a minor placed in a guardianship shall be

- 1 made only by order of the court pursuant to a motion filed in
- 2 accordance with Section 728.

O