

Assembly Bill No. 575

CHAPTER 997

An act to amend Sections 202, 366.23, 366.26, 628, 635, 636, 652, 653.5, 658, 660, and 706.5, of, and to add Sections 636.1, 706.6, 726.4, 727.2, 727.3, 727.31, and 727.4 to, the Welfare and Institutions Code, relating to child welfare services.

[Approved by Governor October 10, 1999. Filed
with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 575, Aroner. Child welfare services.

(1) Existing law provides that children may be adjudged wards of the juvenile court on the basis of criminal behavior, truancy, or other specified reasons. Existing law defines punishment for purposes of these provisions of the juvenile court law.

Existing law also establishes the jurisdiction of the juvenile court in the case of children who have been abused or neglected, who may be adjudged dependent children of the juvenile court. These provisions require that parents and guardians be notified regarding hearings concerning children in their care. These provisions also require that a case plan be prepared regarding dependent children and that specified services shall be provided to effect family reunification in designated circumstances.

Existing law provides that a child may be declared free from the custody and control of a parent, upon clear and convincing evidence, that the parent has abandoned, neglected, or cruelly treated the child, or that the parent is incapacitated, as specified, and is determined to be unable or unfit to care for or control the child.

This bill would require the filing of a specified social study prior to the filing of that petition. The bill would establish proceedings for reviewing the status of and, in certain cases, terminating parental rights with respect to, a minor who has been adjudged a ward of the juvenile court and who has been placed in foster care. The bill would also require that where a court orders a minor to be placed under the supervision of the probation officer, the court shall inquire as to the identity and address of all presumed or alleged fathers, as specified.

The bill would revise the definition of punishment to specifically exclude the placement of a child in defined foster care from that definition. The bill would require that foster parents, relative caregivers, legal guardian, and preadoptive parents, as defined, receive notice and other specified information when children in their care are taken into custody or are the subjects of various hearings which may result in, or are the result of, the children being adjudged

wards of the juvenile court. The bill would require the probation officer to prepare a case plan describing the strengths and needs of a minor and his or her family when a minor is detained. The bill would also require that a case plan be prepared describing the services provided to children who are at risk of entering foster care as specified. The bill would make other, related changes requiring, among other things, that child welfare services be provided to wards of the juvenile court who are in defined foster care and their parents and that a review of their status be conducted no less frequently than once every 6 months. It also would require specified permanency planning hearings. By imposing additional duties on local officials, the bill would impose a state-mandated local program.

(2) The bill would also require the Judicial Council to adopt rules of court, forms, and procedures to implement statutes pertaining to children in foster care placements.

(3) The bill would incorporate additional changes to Section 202 of the Welfare and Institutions Code made by this bill and AB 645 to take effect if both bills are enacted and this bill is enacted last.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

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

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

SECTION 1. Section 202 of the Welfare and Institutions Code is amended to read:

202. (a) The purpose of this chapter is to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court and to preserve and strengthen the minor's family ties whenever possible, removing the minor from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public. When removal of a minor is determined by the juvenile court to be necessary, reunification of the minor with his or her family shall be a primary objective. When the minor is removed from his or her own family, it is the purpose of this chapter to secure for the minor custody, care, and discipline as nearly as possible equivalent to that which should have been given by his or her parents. This chapter shall be liberally construed to carry out these purposes.



(b) Minors under the jurisdiction of the juvenile court who are in need of protective services shall receive care, treatment and guidance consistent with their best interest and the best interest of the public. Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances. This guidance may include punishment that is consistent with the rehabilitative objectives of this chapter. If a minor has been removed from the custody of his or her parents, family preservation and family reunification are appropriate goals for the juvenile court to consider when determining the disposition of a minor under the jurisdiction of the juvenile court as a consequence of delinquent conduct when those goals are consistent with his or her best interests and the best interests of the public. When the minor is no longer a ward of the juvenile court, the guidance he or she received should enable him or her to be a law-abiding and productive member of his or her family and the community.

(c) It is also the purpose of this chapter to reaffirm that the duty of a parent to support and maintain a minor child continues, subject to the financial ability of the parent to pay, during any period in which the minor may be declared a ward of the court and removed from the custody of the parent.

(d) Juvenile courts and other public agencies charged with enforcing, interpreting, and administering the juvenile court law shall consider the safety and protection of the public, the importance of redressing injuries to victims, and the best interests of the minor in all deliberations pursuant to this chapter. Participants in the juvenile justice system shall hold themselves accountable for its results. They shall act in conformity with a comprehensive set of objectives established to improve system performance in a vigorous and ongoing manner.

(e) As used in this chapter, “punishment” means the imposition of sanctions. It shall not include a court order to place a child in foster care as defined by Section 727.3. Permissible sanctions may include the following:

- (1) Payment of a fine by the minor.
- (2) Rendering of compulsory service without compensation performed for the benefit of the community by the minor.
- (3) Limitations on the minor’s liberty imposed as a condition of probation or parole.
- (4) Commitment of the minor to a local detention or treatment facility, such as a juvenile hall, camp, or ranch.
- (5) Commitment of the minor to the Department of the Youth Authority.



“Punishment,” for the purposes of this chapter, does not include retribution.

(f) In addition to the actions authorized by subdivision (e), the juvenile court may, as appropriate, direct the offender to complete a victim impact class, participate in victim offender conferencing subject to the victim’s consent, pay restitution to the victim or victims, and make a contribution to the victim restitution fund after all victim restitution orders and fines have been satisfied, in order to hold the offender accountable or restore the victim or community.

SEC. 1.1. Section 202 of the Welfare and Institutions Code is amended to read:

202. (a) The purpose of this chapter is to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court and to preserve and strengthen the minor’s family ties whenever possible, removing the minor from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public. When removal of a minor is determined by the juvenile court to be necessary, reunification of the minor with his or her family shall be a primary objective. When the minor is removed from his or her own family, it is the purpose of this chapter to secure for the minor custody, care, and discipline as nearly as possible equivalent to that which should have been given by his or her parents. This chapter shall be liberally construed to carry out these purposes.

(b) Minors under the jurisdiction of the juvenile court who are in need of protective services shall receive care, treatment, guidance, and education, including special education and related services if the child has exceptional needs as described in Part 30 (commencing with Section 56000) of Division 4 of Title 2 of the Education Code or the right to receive accommodations if the child has disabilities as described in Chapter 16 of Title 29 of the United States Code consistent with their best interest and the best interest of the public. Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances. This guidance may include punishment that is consistent with the rehabilitative objectives of this chapter. If a minor has been removed from the custody of his or her parents, family preservation and family reunification are appropriate goals for the juvenile court to consider when determining the disposition of a minor under the jurisdiction of the juvenile court as a consequence of delinquent conduct when those goals are consistent with his or her best interests and the best interests of the public. When the minor is no longer a ward of the juvenile court, the guidance he or she received should enable him or



her to be a law-abiding and productive member of his or her family and the community.

(c) It is also the purpose of this chapter to reaffirm that the duty of a parent to support and maintain a minor child continues, subject to the financial ability of the parent to pay, during any period in which the minor may be declared a ward of the court and removed from the custody of the parent.

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SEC. 2. Section 366.23 of the Welfare and Institutions Code is amended to read:

366.23. (a) Whenever a juvenile court schedules a hearing pursuant to Section 366.26 regarding a minor, it shall direct that the fathers, presumed and alleged, and mother of the minor, the minor, if 10 years of age or older, and any counsel of record, shall be notified of the time and place of the proceedings and advised that they may appear. The notice shall also advise them of the right to counsel, the nature of the proceedings, and of the requirement that at the



proceedings the court shall select and implement a plan of adoption, legal guardianship, or long-term foster care for the minor. In all cases where a parent has relinquished his or her child for the purpose of adoption, no notice need be given to that parent. Service of the notice shall be completed at least 45 days before the date of the hearing, except in those cases where notice by publication is ordered in which case the service of the notice shall be completed at least 30 days before the date of the hearing. If the petitioner is recommending termination of parental rights, notice of this recommendation shall be either included in the notice of a hearing scheduled pursuant to Section 366.26 and served within the time period specified in this subdivision or provided by separate notice to all persons entitled to receive notice by first-class mail at least 15 days before the scheduled hearing.

(b) Notice to the parent of the hearing may be given in any of the following manners:

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

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

(3) If the place of residence is outside the state, service may be made in the manner prescribed in paragraph (1) or (2), or by certified mail, return receipt requested.

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

(5) If the father or mother of the minor or any person alleged to be or claiming to be the father or mother cannot, with reasonable diligence, be served as provided for in paragraph (1), (2), (3), or (4) or if his or her place of residence is not known, the probation officer shall file an affidavit with the court at least 75 days before the date of the hearing, stating the name of the father or mother or alleged father or mother and his or her place of residence, if known, setting forth the efforts that have been made to locate and serve the parent.

(A) If the court determines that there has been due diligence in attempting to locate and serve the parent, and the petitioner limits the recommendation to legal guardianship or long-term foster care, the court shall order that notice be given to the grandparents of the minor, if there are any and if their residences and relationships to the minor are known, by first-class mail of the time and place of the proceedings and that they may appear. In any case where the residence of the parent or alleged parent becomes known, notice shall immediately be served upon the parent or alleged parent as set forth in paragraph (1), (2), (3), or (4).

(B) If the court determines that there has been due diligence in attempting to locate and serve the parent and the petitioner does not



limit the recommendation to legal guardianship or long-term foster care, the court shall order that service to the parent be by certified mail, return receipt requested, to the parent's counsel of record, if any. If the parent does not have counsel of record, the court shall order that the service be made by publication of a citation requiring the father or mother, or alleged father or mother, to appear at the time and place stated in the citation, and that the citation be published in a newspaper designated as most likely to give notice to the father or mother. Publication shall be made once a week for four successive weeks. In case of service to the parent by certified mail on the counsel of record or publication where the residence of a parent or alleged parent becomes known, notice shall immediately be served upon the parent or alleged parent as set forth in paragraph (1), (2), or (3). When service to the parent by certified mail on the counsel of record or publication is ordered, service of a copy of the notice in the manner provided for in paragraph (1), (2), or (3) is equivalent to service by certified mail on the counsel of record or publication. In any case where service to the parent by certified mail on the counsel of record or publication is ordered, the court shall also order that notice be given to the grandparents of the minor, if there are any and if their residences and relationships to the minor are known, by first-class mail of the time and place of the proceedings and that they may appear.

If the identity of one or both of the parents or alleged parents of the minor is unknown or if the name of either or both of his or her parents or alleged parents is uncertain, then that fact shall be set forth in the affidavit and the court, if ordering publication, shall order the published citation to be directed to either the father or the mother, or both, of the minor, and to all persons claiming to be the father or mother of the minor naming and otherwise describing the minor. Personal service of a copy of the notice or any other form of actual notice to counsel of record is the equivalent of service to counsel of record by certified mail, return receipt requested.

(6) Notwithstanding paragraphs (1) to (5), inclusive, if the parent is present at the hearing at which the court schedules a hearing pursuant to Section 366.26 regarding the minor, the court shall advise the parent of the time and place of the proceedings, their right to counsel, the nature of the proceedings, and of the requirement that at the proceedings the court select and implement a plan of adoption, legal guardianship, or long-term foster care for the minor. The court shall order the parent to appear for the proceedings and then direct that the parent be noticed thereafter by first-class mail to the parent's usual place of residence or business only.

(7) Notwithstanding paragraphs (1) to (5), inclusive, whenever the whereabouts of a parent is not known at the time the court schedules a hearing pursuant to Section 366.26 regarding a minor, and the petitioner presents to the court an affidavit setting forth the



name of the parent and the efforts that have been made to locate the parent, the court shall order that the notice for the parent be as set forth in subparagraph (A) or (B) of paragraph (5).

(c) Notice to the minor, if 10 years of age or older of the hearing shall be by first-class mail.

(d) Service is deemed complete at the time the notice is personally delivered to the party named in the notice, or 10 days after the notice has been placed in the mail, or at the expiration of the time prescribed by the order for publication, whichever occurs first. Notwithstanding subdivision (a), if the counsel of record is present at the time that the court schedules a hearing pursuant to Section 366.26 no further notice to the counsel of record shall be required, except to notice counsel of a recommendation to terminate parental rights as set forth in subdivision (a) or as required by subparagraph (B) of paragraph (5) of subdivision (b).

(e) Notwithstanding subdivisions (a) and (b) of this section and Section 7666 of the Family Code, the juvenile court shall order that no notice of the hearing under Section 366.26 be provided to all of the following:

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

(2) An alleged father who has denied paternity and has executed Section 1 of Judicial Council form Paternity-Waiver of Rights (JV-505) waiving notice of further hearings.

(3) An alleged father who has relinquished the child to the department or to a licensed adoption agency for adoption, and the relinquishment has been accepted and filed with notice as required under Section 8700 of the Family Code.

(f) This section shall also apply to minors adjudged wards pursuant to Section 727.31.

SEC. 3. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal



guardianship of, the child while the child is a dependent child of the juvenile court.

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

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

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

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

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

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

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:



(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

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

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

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), or (D), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective



adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), or (D) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. When the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

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

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

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to



subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

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

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

(1) The court shall consider whether the interests of the child require the appointment of counsel. If the court finds that the interests of the child do require this protection, the court shall appoint counsel to represent the child. If the court finds that the interests of the child require the representation of counsel, counsel shall be appointed whether or not the child is able to afford counsel. The child shall not be present in court unless the child or the child's counsel so requests or the court so orders.

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

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



(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

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

The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The child is likely to be intimidated by a formal courtroom setting.

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

After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

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

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

(j) If the court, by order or judgment declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, no petition for adoption may be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

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



that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

SEC. 4. Section 628 of the Welfare and Institutions Code is amended to read:

628. (a) Upon delivery to the probation officer of a minor who has been taken into temporary custody under the provisions of this article, the probation officer shall immediately investigate the circumstances of the minor and the facts surrounding his or her being taken into custody and shall immediately release the minor to the custody of his or her parent, legal guardian, or responsible relative unless it can be demonstrated upon the evidence before the court that continuance in the home is contrary to the child's welfare and one or more of the following conditions exist:

(1) The minor is in need of proper and effective parental care or control and has no parent, legal guardian, or responsible relative; or has no parent, legal guardian, or responsible relative willing to exercise or capable of exercising that care or control; or has no parent, legal guardian, or responsible relative actually exercising that care or control.

(2) The minor is destitute or is not provided with the necessities of life or is not provided with a home or suitable place of abode.

(3) The minor is provided with a home which is an unfit place for him or her by reason of neglect, cruelty, depravity or physical abuse of either of his or her parents, or of his or her legal guardian or other person in whose custody or care he or she is.

(4) Continued detention of the minor is a matter of immediate and urgent necessity for the protection of the minor or reasonable necessity for the protection of the person or property of another.

(5) The minor is likely to flee the jurisdiction of the court.

(6) The minor has violated an order of the juvenile court.

(7) The minor is physically dangerous to the public because of a mental or physical deficiency, disorder or abnormality.

(b) In any case in which there is reasonable cause for believing that a minor who is under the care of a physician or surgeon or a hospital, clinic, or other medical facility and cannot be immediately moved is a person described in subdivision (d) of Section 300, the minor shall be deemed to have been taken into temporary custody and delivered to the probation officer for the purposes of this chapter while he or she is at the office of the physician or surgeon or that medical facility.

SEC. 5. Section 635 of the Welfare and Institutions Code is amended to read:

635. The court will examine the minor, his or her parent, legal guardian, or other person having relevant knowledge, hear relevant



evidence the minor, his or her parent, legal guardian, or counsel desires to present, and, unless it appears that the minor has violated an order of the juvenile court or has escaped from the commitment of the juvenile court or that it is a matter of immediate and urgent necessity for the protection of the minor or reasonably necessary for the protection of the person or property of another that he or she be detained or that the minor is likely to flee to avoid the jurisdiction of the court, the court shall make its order releasing the minor from custody.

The circumstances and gravity of the alleged offense may be considered, in conjunction with other factors, to determine whether it is a matter of immediate and urgent necessity for the protection of the minor or reasonably necessary for the protection of the person or property of another that the minor be detained.

The court shall order release of the minor from custody unless a prima facie showing has been made that the minor is a person described in Section 601 or 602.

If the probation officer has reason to believe that the minor is at-risk of entering foster care placement as defined by Section 11402, then the probation officer shall submit a written report to the court containing all of the following: the reasons why the minor has been removed from the parent's custody; any prior referrals for abuse or neglect of the minor or any prior filings regarding the minor pursuant to Section 300; the need, if any, for continued detention; the available services that could facilitate the return of the minor to the custody of the minor's parents or guardians; and whether there are any relatives who are able and willing to provide effective care and control over the minor.

SEC. 6. Section 636 of the Welfare and Institutions Code is amended to read:

636. If it appears upon the hearing that the minor has violated an order of the juvenile court or has escaped from a commitment of the juvenile court or that it is a matter of immediate and urgent necessity for the protection of the minor or reasonably necessary for the protection of the person or property of another that he or she be detained or that the minor is likely to flee to avoid the jurisdiction of the court, and that continuance in the home is contrary to the child's welfare, the court may make its order that the minor be detained in the juvenile hall or other suitable place designated by the juvenile court for a period not to exceed 15 judicial days and shall enter said order together with its findings of fact in support thereof in the records of the court. The circumstances and gravity of the alleged offense may be considered, in conjunction with other factors, to determine whether it is a matter of immediate and urgent necessity for the protection of the minor or the person or property of another that the minor be detained.



If the court finds that the criteria of Section 628.1 are applicable, the court may, and after the operative date of that section the court shall, place the minor on home supervision for a period not to exceed 15 judicial days, and shall enter the order together with its findings of fact in support thereof in the records of the court. If the court releases the minor on home supervision, the court may continue, modify, or augment any conditions of release previously imposed by the probation officer, or may impose new conditions on a minor released for the first time. If there are new or modified conditions, the minor shall be required to sign a written promise to obey those conditions pursuant to Section 628.1.

The court shall make a determination on the record whether continuance in the home of the parent or legal guardian is contrary to the child's welfare, whether reasonable efforts were made to prevent or eliminate the need for removal of the child from his or her home, and whether there are available services that would prevent the need for further detention. If the child can be returned to the custody of his or her parent or legal guardian through the provision of those services, the court shall place the child with his or her parent or legal guardian and order that the services shall be provided. Where the first contact with the family has occurred in an emergency situation, in which the family could not exercise effective care and control over the child, even if reasonable services were provided, the court shall make a finding that the lack of preplacement preventive efforts was reasonable. Whenever a court orders a child detained, the court shall state the facts on which the detention is based, shall specify why the initial removal was necessary, and shall order services to be provided as soon as possible to reunify the child with his or her family if appropriate. Whenever the court orders a child detained, the child's placement and care shall be the responsibility of the probation department pending disposition or further order of the court.

SEC. 7. Section 636.1 is added to the Welfare and Institutions Code, to read:

636.1. When a minor is detained pursuant to Section 636 following a finding by the court that continuance in the home is contrary to the minor's welfare, the probation officer shall, within 30 calendar days of initial removal, or by the date of the disposition hearing, whichever occurs first, complete a case plan that identifies the strengths and needs of the minor and his or her family. The case plan shall identify services that will be provided to the minor and his or her family in order to reduce or eliminate the need for the minor to be placed in foster care and make it possible for the minor to safely return to his or her home.

SEC. 8. Section 652 of the Welfare and Institutions Code is amended to read:

652. Whenever the probation officer has cause to believe that there was or is within the county, or residing therein, a person within



the provisions of Section 601 or 602, the probation officer shall immediately make an investigation he or she deems necessary to determine whether proceedings in the juvenile court should be commenced, including whether reasonable efforts, as described in paragraph (5) of subdivision (d) of Section 727.4, have been made to prevent or eliminate the need for removal of the minor from his or her home. However, this section does not require an investigation by the probation officer with respect to a minor delivered or referred to an agency pursuant to subdivision (b) of Section 626.

SEC. 9. Section 653.5 of the Welfare and Institutions Code is amended to read:

653.5. (a) Whenever any person applies to the probation officer to commence proceedings in the juvenile court, the application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a minor within the provisions of Section 602, or that a minor committed an offense described in Section 602 within the county, and setting forth facts in support thereof. The probation officer shall immediately make any investigation he or she deems necessary to determine whether proceedings in the juvenile court shall be commenced. If the probation officer determines that it is appropriate to offer services to the family to prevent or eliminate the need for removal of the minor from his or her home, the probation officer shall make a referral to those services.

(b) Except as provided in subdivision (c), if the probation officer determines that proceedings pursuant to Section 650 should be commenced to declare a person to be a ward of the juvenile court on the basis that he or she is a person described in Section 602, the probation officer shall cause the affidavit to be taken to the prosecuting attorney.

(c) Notwithstanding subdivision (b), the probation officer shall cause the affidavit to be taken within 48 hours to the prosecuting attorney in all of the following cases:

(1) If it appears to the probation officer that the minor has been referred to the probation officer for any violation of an offense listed in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707.

(2) If it appears to the probation officer that the minor is under 14 years of age at the date of the offense and that the offense constitutes a second felony referral to the probation officer.

(3) If it appears to the probation officer that the minor was 14 years of age or older at the date of the offense and that the offense constitutes a felony referral to the probation officer.

(4) If it appears to the probation officer that the minor has been referred to the probation officer for the sale or possession for sale of a controlled substance as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.



(5) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 11350 or 11377 of the Health and Safety Code where the violation takes place at a public or private elementary, vocational, junior high school, or high school, or a violation of Section 245.5, 626.9, or 626.10 of the Penal Code.

(6) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 186.22 of the Penal Code.

(7) If it appears to the probation officer that the minor has previously been placed in a program of informal probation pursuant to Section 654.

(8) If it appears to the probation officer that the minor has committed an offense in which the restitution owed to the victim exceeds one thousand dollars (\$1,000). For purposes of this paragraph, the definition of "victim" in paragraph (1) of subdivision (a) of Section 730.6 and "restitution" in subdivision (h) of Section 730.6 shall apply.

Except for offenses listed in paragraph (5), the provisions of subdivision (c) shall not apply to a narcotics and drug offense set forth in Section 1000 of the Penal Code.

The prosecuting attorney shall within his or her discretionary power institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 and Section 26500 of the Government Code. However, if it appears to the prosecuting attorney that the affidavit was not properly referred, that the offense for which the minor was referred should be charged as a misdemeanor, or that the minor may benefit from a program of informal supervision, he or she shall refer the matter to the probation officer for whatever action the probation officer may deem appropriate.

(d) In all matters where the minor is not in custody and is already a ward of the court or a probationer under Section 602, the prosecuting attorney, within five judicial days of receipt of the affidavit from the probation officer, shall institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 of this code and Section 26500 of the Government Code, unless it appears to the prosecuting attorney that the affidavit was not properly referred or that the offense for which the minor was referred requires additional substantiating information, in which case he or she shall immediately notify the probation officer of what further action he or she is taking.

(e) This section shall become operative on January 1, 1997.

SEC. 10. Section 658 of the Welfare and Institutions Code is amended to read:

658. (a) Except as provided in subdivision (b), upon the filing of the petition, the clerk of the juvenile court shall issue a notice, to



which shall be attached a copy of the petition, and he or she shall cause the same to be served upon the minor, if the minor is eight or more years of age, and upon each of the persons described in subdivision (e) of Section 656 whose residence addresses are set forth in the petition and thereafter before the hearing upon all persons whose residence addresses become known to the clerk. If the court has ordered the care, custody, and control of the minor to be under the supervision of the probation officer for foster care placement pursuant to subdivision (a) of Section 727, the clerk shall also issue a copy of that notice to any foster parents, preadoptive parents, legal guardian, and any relatives providing care to the minor whose residence addresses become known to the clerk. The clerk shall issue a copy of the petition, to the minor's attorney and to the district attorney, if the district attorney has notified the clerk of the court that he or she wishes to receive the petition, containing the time, date, and place of the hearing.

(b) Upon the filing of a supplemental petition where the minor has been declared a ward of the court or a probationer under Section 602 in the original matter, the clerk of the juvenile court shall issue a notice, to which shall be attached a copy of the petition, and he or she shall cause the notice to be served upon the minor, if the minor is eight or more years of age, and upon each of the persons described in subdivision (e) of Section 656 whose residence addresses are set forth in the supplemental petition and thereafter known to the clerk. The clerk shall issue a copy of the supplemental petition to the minor's attorney, and to the district attorney if the probation officer is the petitioner, or, to the probation officer if the district attorney is the petitioner, containing the time, date, and place of the hearing.

SEC. 11. Section 660 of the Welfare and Institutions Code is amended to read:

660. (a) Except as provided in subdivision (b), if the minor is detained, the clerk of the juvenile court shall cause the notice and copy of the petition to be served on all persons required to receive that notice and copy of the petition pursuant to subdivision (e) of Section 656 and Section 658, either personally or by certified mail with request for return receipt, as soon as possible after filing of the petition and at least five days prior to the time set for hearing, unless the hearing is set less than five days from the filing of the petition, in which case, the notice and copy of the petition shall be served at least 24 hours prior to the time set for hearing.

(b) If the minor is detained, and all persons entitled to notice pursuant to subdivision (e) of Section 656 and Section 658 were present at the detention hearing, the clerk of the juvenile court shall cause the notice and copy of the petition to be served on all persons required to receive the notice and copy of the petition, either personally or by first-class mail, as soon as possible after the filing of the petition and at least five days prior to the time set for hearing,



unless the hearing is set less than five days from the filing of the petition, in which case the notice and copy of the petition shall be served at least 24 hours prior to the time set for the hearing.

(c) If the minor is not detained, the clerk of the juvenile court shall cause the notice and copy of the petition to be served on all persons required to receive the notice and copy of the petition, either personally or by first-class mail, at least 10 days prior to the time set for hearing. If that person is known to reside outside of the county, the clerk of the juvenile court shall mail the notice and copy of the petition, by first-class mail, to that person, as soon as possible after the filing of the petition and at least 10 days before the time set for hearing. Failure to respond to the notice shall in no way result in arrest or detention. In the instance of failure to appear after notice by first-class mail, the court shall direct that the notice and copy of the petition is to be personally served on all persons required to receive the notice and a copy of the petition. However, if the whereabouts of the minor are unknown, upon a showing that all reasonable efforts to locate the minor have failed or that the minor has willfully evaded service of process, personal service of the notice and a copy of the petition is not required and a warrant for the arrest of the minor may be issued pursuant to Section 663. Personal service of the notice and copy of the petition outside of the county at least 10 days before the time set for hearing is equivalent to service by first-class mail. Service may be waived by any person by a voluntary appearance entered in the minutes of the court or by a written waiver of service filed with the clerk of the court at or prior to the hearing.

(d) For purposes of this section, service on the minor's attorney shall constitute service on the minor's parent or legal guardian.

SEC. 12. Section 706.5 of the Welfare and Institutions Code is amended to read:

706.5. Each social study made by a probation officer that is received into evidence pursuant to Section 706 shall include, but is not limited to, the factual material described in subdivision (b) of Section 727.4. When placement within foster care is considered, the social study made by a probation officer that is received into evidence pursuant to Section 706 shall also include the factual material described in subdivisions (a) and (b) of Section 727.4. The probation officer shall solicit comment from the appropriate local education agency prior to completion of the study.

SEC. 13. Section 706.6 is added to the Welfare and Institutions Code, to read:

706.6. Where a case plan is required pursuant to Section 706.5, the case plan shall include, but not be limited to, the following information:



(a) A description of the circumstances that resulted in the child being placed under the supervision of the probation department and in foster care.

(b) An assessment of the child's needs and the type of placement best equipped to meet them.

(c) A description of the type of home or institution in which the child is to be placed, including a discussion of the safety and appropriateness of the placement.

(d) Specific time-limited goals and related activities designed to enable the safe return of the minor to his or her home, or in the event that return to his or her home is not possible, activities designed to result in permanent placement or emancipation. Specific responsibility for carrying out the planned activities shall be assigned to one or more of the following:

(1) The probation department.

(2) The minor's parent or parents or legal guardian or guardians, as applicable.

(3) The minor.

(4) The foster parents or licensed agency providing foster care.

(e) The projected date of completion of the case plan objectives and the date services will be terminated.

(f) Scheduled visits between the child and his or her family and an explanation if no visits are made.

(g) (1) When placement is made in a foster family home, group home, or other child care institution that is either a substantial distance from the home of the child's parent or legal guardian or out-of-state, the case plan shall specify the reasons why the placement is the most appropriate and is in the best interest of the child.

(2) When an out-of-state group home placement is recommended or made, the case plan shall comply with Section 727.1 and Section 7911.1 of the Family Code. In addition, documentation of the recommendation of the multidisciplinary team and the rationale for this particular placement shall be included. The case plan shall also address what in-state services or facilities were used or considered and why they were not recommended.

(h) If applicable, efforts to make it possible to place siblings together, unless it has been determined that placement together is not in the best interest of one or more siblings.

(i) A schedule of visits between the child and the probation officer, including a monthly visitation schedule for those children placed in group homes.

(j) Health and education information about the child, school records, immunizations, known medical problems, and any known medications the child may be taking, names and addresses of the child's health and educational providers; the child's grade level performance; assurances that the child's placement in foster care takes into account proximity to the school in which the child was



enrolled at the time of placement; and other relevant health and educational information.

(k) When out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail.

(l) When out-of-home services are used and the child's case plan does not provide for adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. For purposes of this subdivision, the phrase "compelling reasons" shall have the same meaning as in subdivision (i) of Section 727.3.

(m) Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(n) Parents, legal guardians, and the child shall have an opportunity to participate in the development of the case plan, to review the case plan, to sign it whenever possible, and to receive a copy of the plan.

(o) For a child in out-of-home care who is 16 years of age or older, a written description of the programs and services, which will help the child prepare for the transition from foster care to independent living.

SEC. 14. Section 726.4 is added to the Welfare and Institutions Code, to read:

726.4. (a) At the disposition hearing, in any case where the court orders the care, custody, and control of the minor to be under the supervision of the probation officer for foster care placement pursuant to subdivision (a) of Section 727, the court shall inquire of the mother and any other appropriate person as to the identity and address of all presumed or alleged fathers. The presence at the hearing of a man claiming to be the father shall not relieve the court of its duty of inquiry. The inquiry may include all of the following:

- (1) Whether a judgment of paternity already exists.
- (2) Whether the mother was married or believed she was married at the time of conception of the child or at any time thereafter.
- (3) Whether the mother was cohabiting with a man at the time of conception or birth of the child.
- (4) Whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy.
- (5) Whether any man has formally or informally acknowledged or declared his possible paternity of the child.
- (6) Whether paternity tests have been administered and the results, if any.

(b) If, after the court inquiry, one or more men are identified as an alleged father, each alleged father shall be provided notice at his



last and usual place of abode by certified mail return receipt requested alleging that he is or could be the father of the child. The notice shall state that the child is the subject of proceedings under Section 602 and that the proceedings could result in the termination of parental rights and adoption of the child. Nothing in this section shall preclude a court from terminating a father's parental rights even if he appears at the hearing and files an action under Section 7630 or 7631 of the Family Code.

(c) The court may determine that the failure of an alleged father to return the certified mail receipt is not good cause to continue a hearing pursuant to Section 682.

(d) If a man appears in the delinquency action and files an action under Section 7630 or 7631 of the Family Code, the court shall determine if he is the father.

(e) After a petition has been filed to declare a minor a ward of the court, and until the time that the petition is dismissed, wardship is terminated, or parental rights are terminated pursuant to Section 727.31, the juvenile court which has jurisdiction of the wardship action shall have exclusive jurisdiction to hear an action filed under Section 7630 or 7631 of the Family Code.

SEC. 15. Section 727.2 is added to the Welfare and Institutions Code, to read:

727.2. When the court orders the care, custody and control of the minor to be under the supervision of the probation officer for foster care placement pursuant to subdivision (a) of Section 727, the decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive or most family like, and the most appropriate setting that is available and in close proximity to the parent's home, consistent with the selection of the environment best suited to meet the child's special needs and best interests. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

SEC. 16. Section 727.3 is added to the Welfare and Institutions Code, to read:

727.3. The purpose of this section is to provide a means to monitor the care of every child in foster care who has been declared a ward of the juvenile court pursuant to Section 601 or 602 to ensure that everything reasonably possible is done to facilitate the safe early return of the child to his or her own home or to establish a permanent plan for the child.

(a) Whenever the court orders the care, custody, and control of the minor to be under the supervision of the probation officer for placement pursuant to subdivision (a) of Section 727, the juvenile court shall order the probation department to ensure the provision of services to facilitate the safe return of the child to a safe home or



the permanent placement of the child, and to address the needs of the child while in foster care.

(b) A child shall be deemed to have entered foster care, for purposes of this section, on the date that is 60 days after the date on which the minor was removed from his or her home.

(c) The status of every child declared a ward and placed in foster care shall be reviewed at the time of the initial placement order and then as determined by the court but no less frequently than once every six months, as calculated from the date the minor entered foster care. If the court so elects, the court may declare the hearing at which the court orders the care, custody, and control of the minor to be under the supervision of the probation officer for foster care placement pursuant to subdivision (a) of Section 727 as the first status review hearing. At each status review hearing, the court shall consider the safety of the child and make findings and orders which determine the following:

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

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

(3) The extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care.

(4) The likely date by which the child may be returned to and safely maintained in the home or placed for legal guardianship or adoption.

(d) The status review hearings required by subdivision (c) may be heard by an administrative review panel, provided:

(1) The administrative review shall be open to participation by the child and parents or legal guardians and all those persons entitled to notice under Section 727.4.

(2) The child and his or her parents or legal guardians receive proper notice as required in Section 727.4.

(3) The administrative review panel is composed of persons appointed by the presiding judge of the juvenile court, the membership of which shall include at least one person who is not responsible for the case management of, or delivery of services to, the child or the parents who are the subject of the review.

(4) The findings of the administrative review panel shall be submitted to the juvenile court for the court's approval and shall become part of the official court record.

(e) At the status review hearing the court shall order return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or



emotional well-being of the child. The probation department shall have the burden of establishing that detriment. The failure of the child to participate in court-ordered treatment programs shall be prima facie evidence that the return of the child would be detrimental. In making its determination, the court shall review and consider the social study report and recommendations pursuant to Section 706.5 and the report and recommendations of any child advocate appointed for the child in the case, and shall consider the efforts or progress, or both, demonstrated by the child and family and the extent to which the child availed himself or herself of the services provided.

(f) There shall be a permanency planning hearing within 12 months of the date the child entered foster care and periodically thereafter, but no less frequently than every 12 months during the period of placement. It shall be the duty of the probation officer to prepare a written social study report pursuant to Section 706.5 containing a statement of the responsibilities of the parents or legal guardians, the probation department, the caseworker of the probation department, the foster parents, and the child. The written social study shall also describe the goals for the child's placement and care with the department, including the services provided to achieve the goal that the child shall exhibit lawful and productive behavior, and the appropriate plan for permanence for the child. The report shall be submitted to the court at the permanency planning hearing.

(1) At all permanency planning hearings, the court shall determine the permanent plan for the child that includes a determination of whether the child will be returned to the physical custody of the parent or legal guardian. Upon findings that there is substantial probability that additional services will aid the safe return of the child to the physical custody of his or her parents or legal guardian within six months, the court may order further reunification services to be provided to the child and parent or legal guardian for a period not to exceed six months. For purposes of this section, in order to find a substantial probability, the court shall be required to find the child and his or her parents or guardians to have demonstrated the capacity and ability to complete the objectives of his or her case plan. If the child is not returned to a parent or legal guardian at the permanency hearing, the court shall determine whether or not the child should be referred for adoption proceedings, referred for legal guardianship pursuant to subdivision (c) of Section 728, or referred to an alternative planned permanent living arrangement, including whether, because of the child's special needs or circumstances, the child should be continued in foster care on a permanent basis. The court shall also determine the extent of progress in achieving the treatment goals of the plan. In the case of a child who has reached 16 years of age, the hearing shall, in addition,



determine the services needed to assist the child to make the transition from foster care to independent living.

(2) An “alternative planned permanent living arrangement” means a permanent foster care placement with a specific identified foster family on a permanent basis, a facility described in Section 11402, or an independent living arrangement, such as emancipation by marriage, court order, or reaching the age of majority.

(3) When a minor is placed in long-term foster care with a relative, the court may authorize the relative to provide the same legal consent for the minor’s medical, surgical, and dental care, and education as the custodial parent of the minor.

(4) If the child has a continuing involvement with his or her parents or legal guardians, the parents or legal guardians shall be involved in the planning for a permanent placement. The court order placing the child in a permanent placement shall include a specification of the nature and frequency of visiting arrangements with the parents or legal guardians.

(5) Any change in the placement of a child in permanent foster care or the responsibilities of the foster parents for that child shall be made only by order of the court that ordered the placement pursuant to a petition filed pursuant to Section 778.

(g) Prior to any status or permanency hearing involving a child in the physical custody of a community care facility or foster family agency, the facility or agency shall file with the court a report containing its recommendations. Prior to any status or permanency hearing involving the physical custody of a foster parent, relative caregiver, preadoptive parent, or legal guardian, that person may present to the court a report containing his or her recommendations. The court shall consider all reports and recommendations, filed pursuant to this subdivision.

(h) If the minor is not returned to the custody of a parent or legal guardian at the permanency hearing, the court shall do one of the following:

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

The court shall inform the parent or legal guardian that if the minor cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 727.31 may be instituted. The court shall not order that a hearing pursuant to Section 727.31 be held unless there is clear and convincing evidence that reasonable



services have been provided or offered to the parent or legal guardian.

(2) Order that the minor remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 727.31 is not in the best interest of the minor because the minor is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency that adoption is not in the best interest of the minor shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the minor and shall not preclude a different recommendation at a later date if the minor's circumstances change.

(3) Order that the hearing be held within 120 days, pursuant to Section 727.31, if there is clear and convincing evidence that reasonable services have been provided or offered to the parents.

(i) Notwithstanding subdivision (h), the court shall not order a hearing pursuant to Section 727.31 if the probation department has documented a compelling reason for determining that the termination of parental rights would not be in the minor's best interests. A compelling reason is either of the following:

(1) A determination made by the probation officer that any of the following applies:

(A) The parent or legal guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship.

(B) The permanent plan is for the minor to return to his or her own home.

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

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

(2) A determination by the licensed county adoption agency or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency that the minor is unlikely to be adopted and the child is living with a relative who is unable or unwilling to adopt the child because exceptional circumstances that do not include an unwillingness to



accept legal or financial responsibility for the minor but who is willing and capable of providing the minor with a stable and permanent home environment, and the removal of the minor from the physical custody of his or her relative or foster parent would be detrimental to the minor's emotional well-being.

(j) Whenever the court orders that a hearing pursuant to Section 727.31 shall be held, it shall direct the agency supervising the minor and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include all of the following:

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

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

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

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

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

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

(7) Whenever a court orders a hearing pursuant to Section 727.31, it shall order that the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or the licensed county adoption agency has exclusive responsibility for determining the adoptive placement and making all adoption-related decisions.



(k) Nothing in this section shall be construed to limit the ability of a parent to voluntarily relinquish his or her child to the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or to a licensed county adoption agency at any time while the minor is a ward of the juvenile court if the department agency is willing to accept the relinquishment.

SEC. 17. Section 727.31 is added to the Welfare and Institutions Code, to read:

727.31. (a) This section applies to all minors placed in out-of-home care pursuant to Section 727.3 and for whom the juvenile court orders a hearing to consider permanently terminating parental rights to free the minor for adoption.

Except for subdivision (i) of Section 366.26, the procedures for permanently terminating parental rights for minors described by this section shall proceed exclusively pursuant to Section 366.26.

At the beginning of any proceeding pursuant to this section, if the minor is not being represented by previously retained or appointed counsel, the court shall appoint counsel to represent the minor, and the minor shall be present in court unless the minor or the minor's counsel so requests and the court so orders. If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the minor and the parent. Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses as specified in subdivision (f) of paragraph (3) in Section 366.26.

(b) If the court, by order of judgment declares the minor free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the minor referred to the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or a licensed county adoption agency for adoptive placement by the agency. The order shall state that responsibility for custody of the minor shall be held jointly by the probation department and the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or the licensed county adoption agency. The order shall also state that the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or the licensed county adoption agency has exclusive responsibility for determining the adoptive placement and for making all adoption-related decisions. However, no petition for adoption may be granted until the appellate rights of the natural parents have been exhausted.



(c) The notice procedures for terminating parental rights for minors described by this section shall proceed exclusively pursuant to Section 366.23.

SEC. 18. Section 727.4 is added to the Welfare and Institutions Code, to read:

727.4. (a) Notice of any hearing pursuant to Section 727 shall be mailed by the probation officer to the child, the child's parent or guardian, any adult provider of care to the child including, but not limited to, foster parents, relative caregivers, preadoptive parents, community care facility, or foster family agency and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date of the hearing. The notice shall contain a statement regarding the nature of the status review or permanency planning hearing and any change in the custody or status of the child being recommended by the probation department. The notice shall also include a statement informing the foster parents, relative caregivers, or preadoptive parents that he or she may attend all hearings or may submit any information he or she deems relevant to the court in writing. The foster parents, relative caregiver, and preadoptive parents are entitled to notice and opportunity to be heard but need not be made parties to the proceedings.

(b) At least 10 calendar days prior to each status review and permanency planning hearing, after the hearing during which the court orders that the care, custody and control of the minor to be under the supervision of the probation officer for placement pursuant to subdivision (a) of Section 727, the probation officer shall file a social study report with the court. The social study report shall include, but not be limited to, the following information:

(1) Progress toward goals established in the case plan previously submitted to the court.

(2) The extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care.

(3) The safety of the child and the continuing necessity for and appropriateness of the placement.

(4) A likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship.

(5) An updated case plan as specified in Section 706.6.

(6) Whether the child has been or will be referred to educational services and what services the child is receiving, including special education and related services if the child has exceptional needs as described in Part 30 (commencing with Section 56000) of Division 4 of Title 2 of the Education Code or accommodations if the child has disabilities as described in Chapter 16 of Title 29 of the United States Code Annotated. The social worker or child advocate shall solicit



comments from the appropriate local education agency prior to completion of the social study.

(7) Whether the right of the parent or guardian to make educational decisions for the child should be limited by the court pursuant to Section 7579.5 of the Government Code.

(c) The probation department shall inform the child, the child's parent or guardian, and all counsel of record that a copy of the social study prepared for the hearing will be available 10 days prior to the hearing and may be obtained from the probation officer.

(d) As used in this section:

(1) "Foster care" means residential care provided in any of the settings described in Section 11402.

(2) "At risk of entering foster care" means that conditions within a child's family may necessitate his or her entry into foster care unless those conditions are resolved.

(3) "Preadoptive parent" means a licensed foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency.

(4) "Date of entry into foster care" means the date that is 60 days after the date on which the minor was removed from his or her home.

(5) "Reasonable efforts" are those efforts made to prevent or eliminate the need for removing the minor from the minor's home, and efforts to make it possible for the minor to return home, including, but not limited to, case management, counseling, parenting training, mentoring programs, vocational training, educational services, substance abuse treatment, transportation, and therapeutic day services.

(6) "Relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," "grand," or the spouse of any of these persons even if the marriage was terminated by death or dissolution.

SEC. 19. Section 1.1 of this bill incorporates amendments to Section 202 of the Welfare and Institutions Code proposed by both this bill and AB 645. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 202 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 645, in which case Section 1 of this bill shall not become operative.

SEC. 20. By July 1, 2000, the Judicial Council shall adopt rules of court, forms, and procedures to implement statutes pertaining to children in foster care placements as described in Section 11402 of the Welfare and Institutions Code.

SEC. 21. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act



contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

