

Introduced by Senator Roth

(Principal coauthor: Assembly Member Waldron)

(Coauthor: Assembly Member Cervantes)

February 15, 2017

An act to amend Sections 360, 361.5, 366.21, 366.22, and 366.25 of the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

SB 438, as introduced, Roth. Juveniles: legal guardianship: successor guardian.

Existing law establishes the jurisdiction of the juvenile court, which may adjudge children to be dependents of the court under certain circumstances, including when the child suffered or there is a substantial risk that the child will suffer serious physical harm, or a parent fails to provide the child with adequate food, clothing, shelter, or medical treatment. Existing law establishes the grounds for removal of a dependent child from the custody of his or her parents or guardian, and establishes procedures to determine temporary and permanent placement of a dependent child. Existing law prescribes various hearings, including specified review hearings, and other procedures for these purposes. Whenever a court orders a hearing to terminate parental rights to, or to establish legal guardianship of, a dependent child to be held, existing law requires the court to direct the agency supervising the child and the county adoption agency, or the State Department of Social Services when it is acting as an adoption agency, to prepare an assessment and requires this assessment to include, among other things, a preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, as specified.

This bill would authorize this preliminary assessment of a legal guardian to include the development of a plan for a successor guardian in the case of incapacity or death of the guardian.

If the court finds that a child comes within the jurisdiction of the juvenile court and the parent has advised the court that the parent is not interested in family maintenance or reunifications services, existing law authorizes the juvenile court to order a legal guardianship, appoint a legal guardian, and issue letters of guardianship, in addition to or in lieu of adjudicating the child a dependent child of the court, if the court determines that a guardianship is in the best interest of the child, provided that the parent and the child agree to the guardianship, as specified. Existing law prohibits the court from appointing a legal guardian until a specified assessment is read and considered by the court.

This bill would authorize the court to consider, at this hearing, any plan for a successor guardian submitted to the court.

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

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

1 SECTION 1. Section 360 of the Welfare and Institutions Code
2 is amended to read:
3 360. After receiving and considering the evidence on the proper
4 disposition of the case, the juvenile court may enter judgment as
5 follows:
6 (a) (1) Notwithstanding any other ~~provision~~ provision of law, if the court
7 finds that the child is a person described by Section 300 and the
8 parent has advised the court that the parent is not interested in
9 family maintenance or family reunification services, it may, in
10 addition to or in lieu of adjudicating the child a dependent child
11 of the court, order a legal guardianship, appoint a legal guardian,
12 and issue letters of guardianship, if the court determines that a
13 guardianship is in the best interest of the child, provided the parent
14 and the child agree to the guardianship, unless the child's age or
15 physical, emotional, or mental condition prevents the child's
16 meaningful response. The court shall advise the parent and the
17 child that no reunification services will be provided as a result of
18 the establishment of a guardianship. The proceeding for the
19 appointment of a guardian shall be in the juvenile court.

1 ~~Any~~

2 (2) *Any* application for termination of guardianship shall be
3 filed in juvenile court in a form as may be developed by the Judicial
4 Council pursuant to Section 68511 of the Government Code.
5 Sections 366.4 and 388 shall apply to this order of guardianship.

6 ~~No~~

7 (3) A person shall *not* be appointed a legal guardian under this
8 section until an assessment as specified in subdivision (g) of
9 Section 361.5 is read and considered by the court and reflected in
10 the minutes of the court. *The court may consider any plan for a*
11 *successor guardian submitted to the court.*

12 ~~On~~

13 (4) *On* and after the date that the director executes a declaration
14 pursuant to Section 11217, if the court appoints an approved
15 relative caregiver as the child's legal guardian, the child has been
16 in the care of that approved relative for a period of six consecutive
17 months under a voluntary placement agreement, and the child
18 otherwise meets the conditions for federal financial participation,
19 the child shall be eligible for aid under the Kin-GAP Program as
20 provided in Article 4.7 (commencing with Section 11385) of
21 Chapter 2. The nonfederally eligible child placed with an approved
22 relative caregiver who is appointed as the child's legal guardian
23 shall be eligible for aid under the state-funded Kin-GAP Program,
24 as provided for in Article 4.5 (commencing with Section 11360)
25 of Chapter 2.

26 ~~The~~

27 (5) *The* person responsible for preparing the assessment may
28 be called and examined by any party to the guardianship
29 proceeding.

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

36 (c) If the family subsequently is unable or unwilling to cooperate
37 with the services being provided, the social worker may file a
38 petition with the juvenile court pursuant to Section 332 alleging
39 that a previous petition has been sustained and that disposition
40 pursuant to subdivision (b) has been ineffective in ameliorating

1 the situation requiring the child welfare services. Upon hearing
2 the petition, the court shall order either that the petition shall be
3 dismissed or that a new disposition hearing shall be held pursuant
4 to subdivision (d).

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

8 SEC. 2. Section 361.5 of the Welfare and Institutions Code is
9 amended to read:

10 361.5. (a) Except as provided in subdivision (b), or when the
11 parent has voluntarily relinquished the child and the relinquishment
12 has been filed with the State Department of Social Services, or
13 upon the establishment of an order of guardianship pursuant to
14 Section 360, or when a court adjudicates a petition under Section
15 329 to modify the court's jurisdiction from delinquency jurisdiction
16 to dependency jurisdiction pursuant to subparagraph (A) of
17 paragraph (2) of subdivision (b) of Section 607.2 and the parents
18 or guardian of the ward have had reunification services terminated
19 under the delinquency jurisdiction, whenever a child is removed
20 from a parent's or guardian's custody, the juvenile court shall order
21 the social worker to provide child welfare services to the child and
22 the child's mother and statutorily presumed father or guardians.
23 Upon a finding and declaration of paternity by the juvenile court
24 or proof of a prior declaration of paternity by any court of
25 competent jurisdiction, the juvenile court may order services for
26 the child and the biological father, if the court determines that the
27 services will benefit the child.

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

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

37 (B) For a child who, on the date of initial removal from the
38 physical custody of his or her parent or guardian, was under three
39 years of age, court-ordered services shall be provided for a period
40 of six months from the dispositional hearing as provided in

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

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

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

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

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

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

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

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

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

37 (C) In cases where the child was under three years of age on
38 the date of the initial removal from the physical custody of his or
39 her parent or guardian or is a member of a sibling group as
40 described in subparagraph (C) of paragraph (1), the court shall

1 inform the parent or guardian that the failure of the parent or
2 guardian to participate regularly in any court-ordered treatment
3 programs or to cooperate or avail himself or herself of services
4 provided as part of the child welfare services case plan may result
5 in a termination of efforts to reunify the family after six months.
6 The court shall inform the parent or guardian of the factors used
7 in subdivision (e) of Section 366.21 to determine whether to limit
8 services to six months for some or all members of a sibling group
9 as described in subparagraph (C) of paragraph (1).

10 (4) (A) Notwithstanding paragraph (3), court-ordered services
11 may be extended up to a maximum time period not to exceed 24
12 months after the date the child was originally removed from
13 physical custody of his or her parent or guardian if it is shown, at
14 the hearing held pursuant to subdivision (b) of Section 366.22,
15 that the permanent plan for the child is that he or she will be
16 returned and safely maintained in the home within the extended
17 time period. The court shall extend the time period only if it finds
18 that it is in the child's best interest to have the time period extended
19 and that there is a substantial probability that the child will be
20 returned to the physical custody of his or her parent or guardian
21 who is described in subdivision (b) of Section 366.22 within the
22 extended time period, or that reasonable services have not been
23 provided to the parent or guardian. If the court extends the time
24 period, the court shall specify the factual basis for its conclusion
25 that there is a substantial probability that the child will be returned
26 to the physical custody of his or her parent or guardian within the
27 extended time period. The court also shall make findings pursuant
28 to subdivision (a) of Section 366 and subdivision (e) of Section
29 358.1.

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

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

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

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

13 (2) That the parent or guardian is suffering from a mental
14 disability that is described in Chapter 2 (commencing with Section
15 7820) of Part 4 of Division 12 of the Family Code and that renders
16 him or her incapable of utilizing those services.

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

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

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

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

38 (B) A finding of severe sexual abuse, for the purposes of this
39 subdivision, may be based on, but is not limited to, sexual
40 intercourse, or stimulation involving genital-genital, oral-genital,

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

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

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

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

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

1 (10) That the court ordered termination of reunification services
2 for any siblings or half siblings of the child because the parent or
3 guardian failed to reunify with the sibling or half sibling after the
4 sibling or half sibling had been removed from that parent or
5 guardian pursuant to Section 361 and that parent or guardian is
6 the same parent or guardian described in subdivision (a) and that,
7 according to the findings of the court, this parent or guardian has
8 not subsequently made a reasonable effort to treat the problems
9 that led to removal of the sibling or half sibling of that child from
10 that parent or guardian.

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

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

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

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

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

1 parent or guardian has knowingly and intelligently waived the
2 right to services.

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

10 (16) That the parent or guardian has been required by the court
11 to be registered on a sex offender registry under the federal Adam
12 Walsh Child Protection and Safety Act of 2006 (42 U.S.C. Sec.
13 16913(a)), as required in Section 106(b)(2)(B)(xvi)(VI) of the
14 Child Abuse Prevention and Treatment Act of 2006 (42 U.S.C.
15 Sec. 5106a(2)(B)(xvi)(VI)).

16 (17) That the parent or guardian knowingly participated in, or
17 permitted, the sexual exploitation, as described in subdivision (c)
18 or (d) of Section 11165.1 of, or subdivision (c) of Section 236.1
19 of, the Penal Code, of the child. This shall not include instances
20 in which the parent or guardian demonstrated by a preponderance
21 of the evidence that he or she was coerced into permitting, or
22 participating in, the sexual exploitation of the child.

23 (c) (1) In deciding whether to order reunification in any case
24 in which this section applies, the court shall hold a dispositional
25 hearing. The social worker shall prepare a report that discusses
26 whether reunification services shall be provided. When it is alleged,
27 pursuant to paragraph (2) of subdivision (b), that the parent is
28 incapable of utilizing services due to mental disability, the court
29 shall order reunification services unless competent evidence from
30 mental health professionals establishes that, even with the provision
31 of services, the parent is unlikely to be capable of adequately caring
32 for the child within the time limits specified in subdivision (a).

33 (2) The court shall not order reunification for a parent or
34 guardian described in paragraph (3), (4), (6), (7), (8), (9), (10),
35 (11), (12), (13), (14), (15), (16), or (17) of subdivision (b) unless
36 the court finds, by clear and convincing evidence, that reunification
37 is in the best interest of the child.

38 (3) In addition, the court shall not order reunification in any
39 situation described in paragraph (5) of subdivision (b) unless it
40 finds that, based on competent testimony, those services are likely

1 to prevent reabuse or continued neglect of the child or that failure
2 to try reunification will be detrimental to the child because the
3 child is closely and positively attached to that parent. The social
4 worker shall investigate the circumstances leading to the removal
5 of the child and advise the court whether there are circumstances
6 that indicate that reunification is likely to be successful or
7 unsuccessful and whether failure to order reunification is likely to
8 be detrimental to the child.

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

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

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

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

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

9 (B) Transportation services, when appropriate.

10 (C) Visitation services, when appropriate.

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

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

22 (E) Reasonable efforts to assist parents who have been deported
23 to contact child welfare authorities in their country of origin, to
24 identify any available services that would substantially comply
25 with case plan requirements, to document the parents’ participation
26 in those services, and to accept reports from local child welfare
27 authorities as to the parents’ living situation, progress, and
28 participation in services.

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

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

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

27 (g) (1) Whenever a court orders that a hearing shall be held
28 pursuant to Section 366.26, including, when, in consultation with
29 the child's tribe, tribal customary adoption is recommended, it
30 shall direct the agency supervising the child and the county
31 adoption agency, or the State Department of Social Services when
32 it is acting as an adoption agency, to prepare an assessment that
33 shall include:

34 (A) Current search efforts for an absent parent or parents and
35 notification of a noncustodial parent in the manner provided for
36 in Section 291.

37 (B) A review of the amount of and nature of any contact between
38 the child and his or her parents and other members of his or her
39 extended family since the time of placement. Although the
40 extended family of each child shall be reviewed on a case-by-case

1 basis, “extended family” for the purpose of this subparagraph shall
2 include, but not be limited to, the child’s siblings, grandparents,
3 aunts, and uncles.

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

6 (D) A preliminary assessment of the eligibility and commitment
7 of any identified prospective adoptive parent or guardian, including
8 a prospective tribal customary adoptive parent, particularly the
9 caretaker, to include a social history, including screening for
10 criminal records and prior referrals for child abuse or neglect, the
11 capability to meet the child’s needs, and the understanding of the
12 legal and financial rights and responsibilities of adoption and
13 guardianship. If a proposed guardian is a relative of the minor, the
14 assessment shall also consider, but need not be limited to, all of
15 the factors specified in subdivision (a) of Section 361.3 and in
16 Section 361.4. *The assessment of a legal guardian may also include*
17 *the development of a plan for a successor guardian in the case of*
18 *the incapacity or death of the guardian.* As used in this
19 subparagraph, “relative” means an adult who is related to the minor
20 by blood, adoption, or affinity within the fifth degree of kinship,
21 including stepparents, stepsiblings, and all relatives whose status
22 is preceded by the words “great,” “great-great,” or “grand,” or the
23 spouse of any of those persons even if the marriage was terminated
24 by death or dissolution. If the proposed permanent plan is
25 guardianship with an approved relative caregiver for a minor
26 eligible for aid under the Kin-GAP Program, as provided for in
27 Article 4.7 (commencing with Section 11385) of Chapter 2 of Part
28 3 of Division 9, “relative” as used in this section has the same
29 meaning as “relative” as defined in subdivision (c) of Section
30 11391.

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

1 child's age or physical, emotional, or other condition precludes
2 his or her meaningful response, and if so, a description of the
3 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 tribal customary 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) Regardless of his or her immigration status, a relative
25 caregiver shall be given information regarding the permanency
26 options of guardianship and adoption, including the long-term
27 benefits and consequences of each option, prior to establishing
28 legal guardianship or pursuing adoption. If the proposed permanent
29 plan is guardianship with an approved relative caregiver for a
30 minor eligible for aid under the Kin-GAP Program, as provided
31 for in Article 4.7 (commencing with Section 11385) of Chapter 2
32 of Part 3 of Division 9, the relative caregiver shall be informed
33 about the terms and conditions of the negotiated agreement
34 pursuant to Section 11387 and shall agree to its execution prior to
35 the hearing held pursuant to Section 366.26. A copy of the executed
36 negotiated agreement shall be attached to the assessment.

37 (h) If, at any hearing held pursuant to Section 366.26, a
38 guardianship is established for the minor with an approved relative
39 caregiver and juvenile court dependency is subsequently dismissed,
40 the minor shall be eligible for aid under the Kin-GAP Program as

1 provided for in Article 4.5 (commencing with Section 11360) or
2 Article 4.7 (commencing with Section 11385), as applicable, of
3 Chapter 2 of Part 3 of Division 9.

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

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

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

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

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

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

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

22 (j) When the court determines that reunification services will
23 not be ordered, it shall order that the child's caregiver receive the
24 child's birth certificate in accordance with Sections 16010.4 and
25 16010.5. Additionally, when the court determines that reunification
26 services will not be ordered, it shall order, when appropriate, that
27 a child who is 16 years of age or older receive his or her birth
28 certificate.

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

35 SEC. 3. Section 366.21 of the Welfare and Institutions Code
36 is amended to read:

37 366.21. (a) Every hearing conducted by the juvenile court
38 reviewing the status of a dependent child shall be placed on the
39 appearance calendar. The court shall advise all persons present at

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

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

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

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

3 (d) Prior to any hearing involving a child in the physical custody
4 of a community care facility or a foster family agency that may
5 result in the return of the child to the physical custody of his or
6 her parent or legal guardian, or in adoption or the creation of a
7 legal guardianship, or in the case of an Indian child, in consultation
8 with the child's tribe, tribal customary adoption, the facility or
9 agency shall file with the court a report, or a Judicial Council
10 Caregiver Information Form (JV-290), containing its
11 recommendation for disposition. Prior to the hearing involving a
12 child in the physical custody of a foster parent, a relative caregiver,
13 or a certified foster parent who has been approved for adoption by
14 the State Department of Social Services when it is acting as an
15 adoption agency or by a county adoption agency, the foster parent,
16 relative caregiver, or the certified foster parent who has been
17 approved for adoption by the State Department of Social Services
18 when it is acting as an adoption agency or by a county adoption
19 agency, may file with the court a report containing his or her
20 recommendation for disposition. The court shall consider the report
21 and recommendation filed pursuant to this subdivision prior to
22 determining any disposition.

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

1 information as part of the case plan. The court shall also consider
2 whether the child can be returned to the custody of his or her parent
3 who is enrolled in a certified substance abuse treatment facility
4 that allows a dependent child to reside with his or her parent. The
5 fact that the parent is enrolled in a certified substance abuse
6 treatment facility shall not be, for that reason alone, prima facie
7 evidence of detriment. The failure of the parent or legal guardian
8 to participate regularly and make substantive progress in
9 court-ordered treatment programs shall be prima facie evidence
10 that return would be detrimental. In making its determination, the
11 court shall review and consider the social worker's report and
12 recommendations and the report and recommendations of any child
13 advocate appointed pursuant to Section 356.5; and shall consider
14 the efforts or progress, or both, demonstrated by the parent or legal
15 guardian and the extent to which he or she availed himself or
16 herself of services provided, taking into account the particular
17 barriers to a minor parent or a nonminor dependent parent, or an
18 incarcerated, institutionalized, detained, or deported parent's or
19 legal guardian's access to those court-mandated services and ability
20 to maintain contact with his or her child.

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

34 (3) If the child was under three years of age on the date of the
35 initial removal, or is a member of a sibling group described in
36 subparagraph (C) of paragraph (1) of subdivision (a) of Section
37 361.5, and the court finds by clear and convincing evidence that
38 the parent failed to participate regularly and make substantive
39 progress in a court-ordered treatment plan, the court may schedule
40 a hearing pursuant to Section 366.26 within 120 days. If, however,

1 the court finds there is a substantial probability that the child, who
2 was under three years of age on the date of initial removal or is a
3 member of a sibling group described in subparagraph (C) of
4 paragraph (1) of subdivision (a) of Section 361.5, may be returned
5 to his or her parent or legal guardian within six months or that
6 reasonable services have not been provided, the court shall continue
7 the case to the 12-month permanency hearing.

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

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

1 convicted of a felony indicating parental unfitness, the court may
2 schedule a hearing pursuant to Section 366.26 within 120 days.

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

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

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

21 (f) (1) The permanency hearing shall be held no later than 12
22 months after the date the child entered foster care, as that date is
23 determined pursuant to Section 361.49. At the permanency hearing,
24 the court shall determine the permanent plan for the child, which
25 shall include a determination of whether the child will be returned
26 to the child's home and, if so, when, within the time limits of
27 subdivision (a) of Section 361.5. After considering the relevant
28 and admissible evidence, the court shall order the return of the
29 child to the physical custody of his or her parent or legal guardian
30 unless the court finds, by a preponderance of the evidence, that
31 the return of the child to his or her parent or legal guardian would
32 create a substantial risk of detriment to the safety, protection, or
33 physical or emotional well-being of the child. The social worker
34 shall have the burden of establishing that detriment.

35 (A) At the permanency hearing, the court shall consider the
36 criminal history, obtained pursuant to paragraph (1) of subdivision
37 (f) of Section 16504.5, of the parent or legal guardian subsequent
38 to the child's removal to the extent that the criminal record is
39 substantially related to the welfare of the child or the parent's or
40 legal guardian's ability to exercise custody and control regarding

1 his or her child, provided that the parent or legal guardian agreed
2 to submit fingerprint images to obtain criminal history information
3 as part of the case plan. The court shall also determine whether
4 reasonable services that were designed to aid the parent or legal
5 guardian to overcome the problems that led to the initial removal
6 and continued custody of the child have been provided or offered
7 to the parent or legal guardian.

8 (B) The court shall also consider whether the child can be
9 returned to the custody of his or her parent who is enrolled in a
10 certified substance abuse treatment facility that allows a dependent
11 child to reside with his or her parent. The fact that the parent is
12 enrolled in a certified substance abuse treatment facility shall not
13 be, for that reason alone, prima facie evidence of detriment. The
14 failure of the parent or legal guardian to participate regularly and
15 make substantive progress in court-ordered treatment programs
16 shall be prima facie evidence that return would be detrimental.

17 (C) In making its determination, the court shall review and
18 consider the social worker's report and recommendations and the
19 report and recommendations of any child advocate appointed
20 pursuant to Section 356.5, shall consider the efforts or progress,
21 or both, demonstrated by the parent or legal guardian and the extent
22 to which he or she availed himself or herself of services provided,
23 taking into account the particular barriers to a minor parent or a
24 nonminor dependent parent, or an incarcerated, institutionalized,
25 detained, or deported parent's 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 (D) For each youth 16 years of age and older, the court shall
30 also determine whether services have been made available to assist
31 him or her in making the transition from foster care to successful
32 adulthood.

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

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

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

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

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

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

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

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

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

8 (2) 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, if the parent has
12 been arrested and issued an immigration hold, detained by the
13 United States Department of Homeland Security, or deported to
14 his or her country of origin, and the court determines either that
15 there is a substantial probability that the child will be returned to
16 the physical custody of his or her parent or legal guardian and
17 safely maintained in the home within the extended period of time
18 or that reasonable services have not been provided to the parent
19 or legal guardian.

20 (3) For purposes of paragraph (2), in order to find a substantial
21 probability that the child will be returned to the physical custody
22 of his or her parent or legal guardian and safely maintained in the
23 home within the extended period of time, the court shall find all
24 of the following:

25 (A) The parent or legal guardian has consistently and regularly
26 contacted and visited with the child, taking into account any
27 particular barriers to a parent's ability to maintain contact with his
28 or her child due to the parent's arrest and receipt of an immigration
29 hold, detention by the United States Department of Homeland
30 Security, or deportation.

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

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

38 (4) Order that a hearing be held within 120 days, pursuant to
39 Section 366.26, but only if the court does not continue the case to
40 the permanency planning review hearing and there is clear and

1 convincing evidence that reasonable services have been provided
2 or offered to the parents or legal guardians. On and after January
3 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered
4 if the child is a nonminor dependent, unless the nonminor
5 dependent is an Indian child and tribal customary adoption is
6 recommended as the permanent plan.

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

28 (A) The court shall make factual findings identifying any
29 barriers to achieving the permanent plan as of the hearing date.
30 When the child is under 16 years of age, the court shall order a
31 permanent plan of return home, adoption, tribal customary adoption
32 in the case of an Indian child, legal guardianship, or placement
33 with a fit and willing relative, as appropriate. When the child is
34 16 years of age or older, or is a nonminor dependent, and no other
35 permanent plan is appropriate at the time of the hearing, the court
36 may order another planned permanent living arrangement, as
37 described in paragraph (2) of subdivision (i) of Section 16501.

38 (B) If the court orders that a child who is 10 years of age or
39 older remain in foster care, the court shall determine whether the
40 agency has made reasonable efforts to maintain the child's

1 relationships with individuals other than the child’s siblings who
2 are important to the child, consistent with the child’s best interests,
3 and may make any appropriate order to ensure that those
4 relationships are maintained.

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

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

27 (i) (1) Whenever a court orders that a hearing pursuant to
28 Section 366.26, including, when, in consultation with the child’s
29 tribe, tribal customary adoption is recommended, shall be held, it
30 shall direct the agency supervising the child and the county
31 adoption agency, or the State Department of Social Services when
32 it is acting as an adoption agency, to prepare an assessment that
33 shall include:

34 (A) Current search efforts for an absent parent or parents or
35 legal guardians.

36 (B) A review of the amount of and nature of any contact between
37 the child and his or her parents or legal guardians and other
38 members of his or her extended family since the time of placement.
39 Although the extended family of each child shall be reviewed on
40 a case-by-case basis, “extended family” for the purpose of this

1 subparagraph shall include, but not be limited to, the child's
2 siblings, grandparents, aunts, and uncles.

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

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

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 guardianship, a
24 statement from the child concerning placement and the adoption
25 or guardianship, and whether the child, if over 12 years of age,
26 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) A description of efforts to be made to identify a prospective
31 adoptive parent or legal guardian, including, but not limited to,
32 child-specific recruitment and listing on an adoption exchange
33 within the state or out of the state.

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

36 (H) In the case of an Indian child, in addition to subparagraphs
37 (A) to (G), inclusive, an assessment of the likelihood that the child
38 will be adopted, when, in consultation with the child's tribe, a
39 tribal customary 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) Regardless of his or her immigration status, a relative
16 caregiver shall be given information regarding the permanency
17 options of guardianship and adoption, including the long-term
18 benefits and consequences of each option, prior to establishing
19 legal guardianship or pursuing adoption. If the proposed permanent
20 plan is guardianship with an approved relative caregiver for a
21 minor eligible for aid under the Kin-GAP Program, as provided
22 for in Article 4.7 (commencing with Section 11385) of Chapter 2
23 of Part 3 of Division 9, the relative caregiver shall be informed
24 about the terms and conditions of the negotiated agreement
25 pursuant to Section 11387 and shall agree to its execution prior to
26 the hearing held pursuant to Section 366.26. A copy of the executed
27 negotiated agreement shall be attached to the assessment.

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

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

1 proposed permanent plan is guardianship with an approved relative
2 caregiver for a minor eligible for aid under the Kin-GAP Program,
3 as provided for in Article 4.7 (commencing with Section 11385)
4 of Chapter 2 of Part 3 of Division 9, “relative” as used in this
5 section has the same meaning as “relative” as defined in
6 subdivision (c) of Section 11391.

7 (l) For purposes of this section, evidence of any of the following
8 circumstances shall 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 SEC. 4. Section 366.22 of the Welfare and Institutions Code
18 is amended to read:

19 366.22. (a) (1) When a case has been continued pursuant to
20 paragraph (1) or (2) of subdivision (g) of Section 366.21, the
21 permanency review hearing shall occur within 18 months after the
22 date the child was originally removed from the physical custody
23 of his or her parent or legal guardian. After considering the
24 admissible and relevant evidence, the court shall order the return
25 of the child to the physical custody of his or her parent or legal
26 guardian unless the court finds, by a preponderance of the evidence,
27 that the return of the child to his or her parent or legal guardian
28 would create a substantial risk of detriment to the safety, protection,
29 or physical or emotional well-being of the child. The social worker
30 shall have the burden of establishing that detriment. At the
31 permanency review hearing, the court shall consider the criminal
32 history, obtained pursuant to paragraph (1) of subdivision (f) of
33 Section 16504.5, of the parent or legal guardian subsequent to the
34 child’s removal, to the extent that the criminal record is
35 substantially related to the welfare of the child or the parent’s or
36 legal guardian’s ability to exercise custody and control regarding
37 his or her child, provided that the parent or legal guardian agreed
38 to submit fingerprint images to obtain criminal history information
39 as part of the case plan. The court shall also consider whether the
40 child can be returned to the custody of his or her parent who is

1 enrolled in a certified substance abuse treatment facility that allows
2 a dependent child to reside with his or her parent. The fact that the
3 parent is enrolled in a certified substance abuse treatment facility
4 shall not be, for that reason alone, prima facie evidence of
5 detriment. The failure of the parent or legal guardian to participate
6 regularly and make substantive progress in court-ordered treatment
7 programs shall be prima facie evidence that return would be
8 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 taking into account the particular barriers of a minor parent or a
15 nonminor dependent parent, or an incarcerated or institutionalized
16 parent's or legal guardian's access to those court-mandated services
17 and ability to maintain contact with his or her child; and shall make
18 appropriate findings pursuant to subdivision (a) of Section 366.

19 (2) Whether or not the child is returned to his or her parent or
20 legal guardian, the court shall specify the factual basis for its
21 decision. If the child is not returned to a parent or legal guardian,
22 the court shall specify the factual basis for its conclusion that return
23 would be detrimental. If the child is not returned to his or her parent
24 or 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 (3) Unless the conditions in subdivision (b) are met and the
30 child is not returned to a parent or legal guardian at the permanency
31 review hearing, the court shall order that a hearing be held pursuant
32 to Section 366.26 in order to determine whether adoption, or, in
33 the case of an Indian child, in consultation with the child's tribe,
34 tribal customary adoption, guardianship, or continued placement
35 in foster care is the most appropriate plan for the child. On and
36 after January 1, 2012, a hearing pursuant to Section 366.26 shall
37 not be ordered if the child is a nonminor dependent, unless the
38 nonminor dependent is an Indian child, and tribal customary
39 adoption is recommended as the permanent plan. However, if the
40 court finds by clear and convincing evidence, based on the evidence

1 already presented to it, including a recommendation by the State
2 Department of Social Services when it is acting as an adoption
3 agency or by a county adoption agency, that there is a compelling
4 reason, as described in paragraph (5) of subdivision (g) of Section
5 366.21, for determining that a hearing held under Section 366.26
6 is not in the best interests of the child because the child is not a
7 proper subject for adoption and has no one willing to accept legal
8 guardianship as of the hearing date, the court may, only under
9 these circumstances, order that the child remain in foster care with
10 a permanent plan of return home, adoption, tribal customary
11 adoption in the case of an Indian child, legal guardianship, or
12 placement with a fit and willing relative, as appropriate. If the
13 child is 16 years of age or older or is a nonminor dependent, and
14 no other permanent plan is appropriate at the time of the hearing,
15 the court may order another planned permanent living arrangement,
16 as described in paragraph (2) of subdivision (i) of Section 16501.
17 The court shall make factual findings identifying any barriers to
18 achieving the permanent plan as of the hearing date. On and after
19 January 1, 2012, the nonminor dependent's legal status as an adult
20 is in and of itself a compelling reason not to hold a hearing pursuant
21 to Section 366.26. The court may order that a nonminor dependent
22 who otherwise is eligible pursuant to Section 11403 remain in a
23 planned, permanent living arrangement. If the court orders that a
24 child who is 10 years of age or older remain in foster care, the
25 court shall determine whether the agency has made reasonable
26 efforts to maintain the child's relationships with individuals other
27 than the child's siblings who are important to the child, consistent
28 with the child's best interests, and may make any appropriate order
29 to ensure that those relationships are maintained. The hearing shall
30 be held no later than 120 days from the date of the permanency
31 review hearing. The court shall also order termination of
32 reunification services to the parent or legal guardian. The court
33 shall continue to permit the parent or legal guardian to visit the
34 child unless it finds that visitation would be detrimental to the
35 child. The court shall determine whether reasonable services have
36 been offered or provided to the parent or legal guardian. For
37 purposes of this subdivision, evidence of any of the following
38 circumstances shall not, in and of themselves, be deemed a failure
39 to provide or offer reasonable services:

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

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

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

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

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

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

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

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

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

22 (c) (1) Whenever a court orders that a hearing pursuant to
23 Section 366.26, including when a tribal customary adoption is
24 recommended, shall be held, it shall direct the agency supervising
25 the child and the county adoption agency, or the State Department
26 of Social Services when it is acting as an adoption agency, to
27 prepare an assessment that shall include:

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

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

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

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

1 screening for criminal records and prior referrals for child abuse
2 or neglect, the capability to meet the child’s needs, and the
3 understanding of the legal and financial rights and responsibilities
4 of adoption and guardianship. If a proposed legal guardian is a
5 relative of the minor, the assessment shall also consider, but need
6 not be limited to, all of the factors specified in subdivision (a) of
7 Section 361.3 and Section 361.4. *The assessment of a legal*
8 *guardian may also include the development of a plan for a*
9 *successor guardian in the case of the incapacity or death of the*
10 *guardian.*

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

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

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

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

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

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

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

3 (B) Regardless of his or her immigration status, a relative
4 caregiver shall be given information regarding the permanency
5 options of guardianship and adoption, including the long-term
6 benefits and consequences of each option, prior to establishing
7 legal guardianship or pursuing adoption. If the proposed permanent
8 plan is guardianship with an approved relative caregiver for a
9 minor eligible for aid under the Kin-GAP Program, as provided
10 for in Article 4.7 (commencing with Section 11385) of Chapter 2
11 of Part 3 of Division 9, the relative caregiver shall be informed
12 about the terms and conditions of the negotiated agreement
13 pursuant to Section 11387 and shall agree to its execution prior to
14 the hearing held pursuant to Section 366.26. A copy of the executed
15 negotiated agreement shall be attached to the assessment.

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

24 (e) As used in this section, “relative” means an adult who is
25 related to the child by blood, adoption, or affinity within the fifth
26 degree of kinship, including stepparents, stepsiblings, and all
27 relatives whose status is preceded by the words “great,”
28 “great-great,” or “grand,” or the spouse of any of those persons
29 even if the marriage was terminated by death or dissolution. If the
30 proposed permanent plan is guardianship with an approved relative
31 caregiver for a minor eligible for aid under the Kin-GAP Program,
32 as provided for in Article 4.7 (commencing with Section 11385)
33 of Chapter 2 of Part 3 of Division 9, “relative” as used in this
34 section has the same meaning as “relative” as defined in
35 subdivision (c) of Section 11391.

36 SEC. 5. Section 366.25 of the Welfare and Institutions Code
37 is amended to read:

38 366.25. (a) (1) When a case has been continued pursuant to
39 subdivision (b) of Section 366.22, the subsequent permanency
40 review hearing shall occur within 24 months after the date the

1 child was originally removed from the physical custody of his or
2 her parent or legal guardian. After considering the relevant and
3 admissible evidence, the court shall order the return of the child
4 to the physical custody of his or her parent or legal guardian unless
5 the court finds, by a preponderance of the evidence, that the return
6 of the child to his or her parent or legal guardian would create a
7 substantial risk of detriment to the safety, protection, or physical
8 or emotional well-being of the child. The social worker shall have
9 the burden of establishing that detriment. At the subsequent
10 permanency review hearing, the court shall consider the criminal
11 history, obtained pursuant to paragraph (1) of subdivision (f) of
12 Section 16504.5, of the parent or legal guardian subsequent to the
13 child's removal to the extent that the criminal record is substantially
14 related to the welfare of the child or parent's or legal guardian's
15 ability to exercise custody and control regarding his or her child
16 provided that the parent or legal guardian agreed to submit
17 fingerprint images to obtain criminal history information as part
18 of the case plan. The court shall also consider whether the child
19 can be returned to the custody of a parent who is enrolled in a
20 certified substance abuse treatment facility that allows a dependent
21 child to reside with his or her parent. The fact that the parent is
22 enrolled in a certified substance abuse treatment facility shall not
23 be, for that reason alone, prima facie evidence of detriment. The
24 failure of the parent or legal guardian to participate regularly and
25 make substantive progress in court-ordered treatment programs
26 shall be prima facie evidence that return would be detrimental. In
27 making its determination, the court shall review and consider the
28 social worker's report and recommendations and the report and
29 recommendations of any child advocate appointed pursuant to
30 Section 356.5; shall consider the efforts or progress, or both,
31 demonstrated by the parent or legal guardian and the extent to
32 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 parent
40 or legal guardian, the court shall consider and state for the record,

1 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 the 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, or, in the case of an Indian child,
9 tribal customary adoption, guardianship, or, in the case of a child
10 16 years of age or older when no other permanent plan is
11 appropriate, another planned permanent living arrangement is the
12 most appropriate plan for the child. On and after January 1, 2012,
13 a hearing pursuant to Section 366.26 shall not be ordered if the
14 child is a nonminor dependent, unless the nonminor dependent is
15 an Indian child and tribal customary adoption is recommended as
16 the permanent plan. However, if the court finds by clear and
17 convincing evidence, based on the evidence already presented to
18 it, including a recommendation by the State Department of Social
19 Services when it is acting as an adoption agency or by a county
20 adoption agency, that there is a compelling reason, as described
21 in paragraph (5) of subdivision (g) of Section 366.21, for
22 determining that a hearing held under Section 366.26 is not in the
23 best interest of the child because the child is not a proper subject
24 for adoption or, in the case of an Indian child, tribal customary
25 adoption, and has no one willing to accept legal guardianship as
26 of the hearing date, then the court may, only under these
27 circumstances, order that the child remain in foster care with a
28 permanent plan of return home, adoption, tribal customary adoption
29 in the case of an Indian child, legal guardianship, or placement
30 with a fit and willing relative, as appropriate. If the child is 16
31 years of age or older or is a nonminor dependent, and no other
32 permanent plan is appropriate at the time of the hearing, the court
33 may order another planned permanent living arrangement, as
34 described in paragraph (2) of subdivision (i) of Section 16501.
35 The court shall make factual findings identifying any barriers to
36 achieving the permanent plan as of the hearing date. On and after
37 January 1, 2012, the nonminor dependent's legal status as an adult
38 is in and of itself a compelling reason not to hold a hearing pursuant
39 to Section 366.26. The court may order that a nonminor dependent
40 who otherwise is eligible pursuant to Section 11403 remain in a

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

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

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

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

25 (b) (1) Whenever a court orders that a hearing pursuant to
26 Section 366.26 shall be held, it shall direct the agency supervising
27 the child and the county adoption agency, or the State Department
28 of Social Services when it is acting as an adoption agency, to
29 prepare an assessment that shall include:

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

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

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

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

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

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

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

36 (i) Whether tribal customary adoption would or would not be
37 detrimental to the Indian child and the reasons for reaching that
38 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) Regardless of his or her immigration status, a relative
11 caregiver shall be given information regarding the permanency
12 options of guardianship and adoption, including the long-term
13 benefits and consequences of each option, prior to establishing
14 legal guardianship or pursuing adoption. If the proposed permanent
15 plan is guardianship with an approved relative caregiver for a
16 minor eligible for aid under the Kin-GAP Program, as provided
17 for in Article 4.7 (commencing with Section 11385) of Chapter 2
18 of Part 3 of Division 9, the relative caregiver shall be informed
19 about the terms and conditions of the negotiated agreement
20 pursuant to Section 11387 and shall agree to its execution prior to
21 the hearing held pursuant to Section 366.26. A copy of the executed
22 negotiated agreement shall be attached to the assessment.

23 (c) If, at any hearing held pursuant to Section 366.26, a
24 guardianship is established for the minor with an approved relative
25 caregiver, and juvenile court dependency is subsequently
26 dismissed, the minor shall be eligible for aid under the Kin-GAP
27 Program, as provided for in Article 4.5 (commencing with Section
28 11360) or Article 4.7 (commencing with Section 11385), as
29 applicable, of Chapter 2 of Part 3 of Division 9.

30 (d) As used in this section, “relative” means an adult who is
31 related to the minor by blood, adoption, or affinity within the fifth
32 degree of kinship, including stepparents, stepsiblings, and all
33 relatives whose status is preceded by the words “great,”
34 “great-great,” or “grand,” or the spouse of any of those persons
35 even if the marriage was terminated by death or dissolution. If the
36 proposed permanent plan is guardianship with an approved relative
37 caregiver for a minor eligible for aid under the Kin-GAP Program,
38 as provided in Article 4.7 (commencing with Section 11385) of
39 Chapter 2 of Part 3 of Division 9, “relative” as used in this section

- 1 has the same meaning as “relative” as defined in subdivision (c)
- 2 of Section 11391.

O