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WELFARE AND INSTITUTIONS CODE - WIC

DIVISION 2. CHILDREN [100 - 1500] (*Division 2 enacted by Stats. 1937, Ch. 369.*)

PART 1. DELINQUENTS AND WARDS OF THE JUVENILE COURT [100 - 1459] (*Part 1 enacted by Stats. 1937, Ch. 369.*)

CHAPTER 2. Juvenile Court Law [200 - 987] (*Chapter 2 repealed and added by Stats. 1961, Ch. 1616.*)

ARTICLE 7. Dependent Children—Temporary Custody and Detention [305 - 324.5] (*Article 7 added by Stats. 1976, Ch. 1068.*)

305. Any peace officer may, without a warrant, take into temporary custody a minor:

(a) When the officer has reasonable cause for believing that the minor is a person described in Section 300, and, in addition, that the minor has an immediate need for medical care, or the minor is in immediate danger of physical or sexual abuse, or the physical environment or the fact that the child is left unattended poses an immediate threat to the child's health or safety. In cases in which the child is left unattended, the peace officer shall first attempt to contact the child's parent or guardian to determine if the parent or guardian is able to assume custody of the child. If the parent or guardian cannot be contacted, the peace officer shall notify a social worker in the county welfare department to assume custody of the child.

(b) Who is in a hospital and release of the minor to a parent poses an immediate danger to the child's health or safety.

(c) Who is a dependent child of the juvenile court, or concerning whom an order has been made under Section 319, when the officer has reasonable cause for believing that the minor has violated an order of the juvenile court or has left any placement ordered by the juvenile court.

(d) Who is found in any street or public place suffering from any sickness or injury which requires care, medical treatment, hospitalization, or other remedial care.

(*Amended by Stats. 1988, Ch. 1075, Sec. 1.*)

305.5. (a) In any Indian child custody proceeding as defined by Section 224.1, the court shall determine the child's residence and domicile as defined in Section 224.1 and in the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.).

(b) If at any stage of an Indian child custody proceeding as defined in Section 224.1 and in Section 1903 of the federal Indian Child Welfare Act of 1978, the court receives information from the child welfare agency or any other source that suggests an Indian child is already a ward of a tribal court or resides or is domiciled within a reservation of an Indian tribe that has exclusive jurisdiction over child custody proceedings, as recognized in Section 1911 of Title 25 of the United States Code, or reassumed exclusive jurisdiction over Indian child custody proceedings pursuant to Section 1918 of Title 25 of the United States Code, the state court shall expeditiously notify the tribe and the tribal court of the pending dismissal based on the tribe's exclusive jurisdiction. The notification shall advise the tribe that the state court will dismiss the child custody proceeding upon receiving confirmation from the tribe that the child is a ward of a tribal court or subject to the tribe's exclusive jurisdiction.

(c) Unless otherwise agreed upon by the state and the tribe pursuant to Section 1919 of Title 25 of the United States Code, upon receipt of confirmation that the child is already a ward of a tribal court or is subject to the exclusive jurisdiction of an Indian tribe as described in subdivision (b), the state court shall dismiss the child custody proceeding and ensure that the tribal court is sent all information regarding the proceeding, including, but not limited to, the pleadings and any state court record. If the local agency has not already transferred physical custody of the Indian child to the child's tribe, the state court shall order that the local agency do so forthwith and hold in abeyance any dismissal order pending confirmation that the Indian child is in the physical custody of the tribe. This subdivision does not preclude a state court from ordering an Indian child detained on an emergency basis pursuant to Section 319 if emergency removal is necessary to protect the child from imminent physical damage or harm and if more time is needed to facilitate the transfer of custody of the Indian child from the county welfare department to the tribe.

(d) In the case of an Indian child who is not a ward of a tribal court or subject to the exclusive jurisdiction of an Indian tribe, as described in subdivision (b), the state court shall transfer the proceeding to the jurisdiction of the child's tribe upon petition of either parent, the Indian custodian, or the child's tribe, unless the state court finds good cause not to transfer. The petition for transfer may

be made orally on the record or in writing at any stage of the proceedings. Upon receipt of a petition for transfer, the state court shall terminate jurisdiction only after receiving confirmation that the tribal court has accepted the transfer. At the time that the state court terminates jurisdiction, the state court shall also do both of the following:

(1) Expeditiously provide the tribal court with all records related to the proceeding, including, but not limited to, the pleadings and any state court record.

(2) Work with the tribal court to ensure that the transfer of the child and of the proceeding is accomplished smoothly and in a way that minimizes the disruption of services to the family.

(e) (1) If a petition to transfer proceedings as described in subdivision (d) is made orally on the record or in writing, the state court shall find good cause to deny the petition if either of the following circumstances are shown to exist:

(A) One or both of the child's parents object to the transfer.

(B) The tribal court of the child's tribe declines the transfer.

(2) In determining whether good cause exists to deny a transfer, the state court shall not consider any of the following:

(A) Socioeconomic conditions and the perceived adequacy of tribal social services or judicial systems.

(B) Whether the child custody proceeding is at an advanced stage if the Indian child's parent, Indian custodian, or tribe did not receive notice of the child custody proceeding until an advanced stage. It shall not, in and of itself, be considered an unreasonable delay for a party to wait until reunification efforts have failed and reunification services have been terminated before filing a petition to transfer.

(C) Whether there have been prior proceedings involving the child for which no transfer petition was filed.

(D) Whether the transfer could affect the placement of the child.

(E) Whether the Indian child has cultural connections with the tribe or its reservation.

(3) The burden of establishing good cause not to transfer shall be on the party opposing the transfer. If the state court believes, or any party asserts, that good cause not to transfer exists, the reasons for that belief or assertion shall be stated orally on the record or in writing and made available to all parties who are petitioning for the transfer, and the petitioner shall have the opportunity to provide information or evidence in rebuttal of the belief or assertion.

(4) This section and Sections 1911 and 1918 of Title 25 of the United States Code shall not be construed as requiring a tribe to petition the Secretary of the Interior to reassume exclusive jurisdiction pursuant to Section 1918 of Title 25 of the United States Code prior to exercising jurisdiction over a proceeding transferred under subdivision (d).

(f) If any petitioner in an Indian child custody proceeding has improperly removed the child from the custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the state court shall decline jurisdiction over the petition and shall immediately return the child to his or her parent or Indian custodian, unless retaining the child outside the custody of his or her parent or Indian custodian is necessary to prevent imminent physical damage or harm.

(g) This section shall not be construed to prevent the emergency removal of an Indian child who is a ward of a tribal court or resides or is domiciled within a reservation of an Indian tribe that has exclusive jurisdiction over child custody proceedings, but is temporarily located off the reservation, from a parent or Indian custodian or the emergency placement of the child in a foster home or institution in order to prevent imminent physical damage or harm to the child. The state or local authority shall ensure that the emergency removal or placement terminates immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate an Indian child custody proceeding, transfer the child to the jurisdiction of the Indian child's tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

(h) When an Indian child is transferred from a state court to an Indian tribe pursuant to subdivision (c), (d), or (g), the county shall, pursuant to Section 827.15, release the child case file to the tribe having jurisdiction.

(Amended by Stats. 2018, Ch. 833, Sec. 17. (AB 3176) Effective January 1, 2019.)

305.6. (a) Any peace officer may, without a warrant, take into temporary custody a child who is in a hospital if the release of the child to a prospective adoptive parent or a representative of a licensed adoption agency poses an immediate danger to the child's health or safety.

(b) Notwithstanding subdivision (a) and Section 305, a peace officer shall not, without a warrant, take into temporary custody a child who is in a hospital if all of the following conditions exist:

(1) The child is a newborn who tested positive for illegal drugs or whose birth mother tested positive for illegal drugs.

(2) The child is the subject of a proposed adoption and a Health Facility Minor Release Report, developed by the department, has been completed by the hospital, including the marking of the boxes applicable to an independent adoption or agency adoption planning, and signed by the placing birth parent or birth parents, as well as either the prospective adoptive parent or parents or an authorized representative of a licensed adoption agency, prior to the discharge of the birth parent or the child from the hospital. The Health Facility Minor Release Report shall include a notice written in at least 14-point pica type, containing substantially all of the following statements:

(A) That the Health Facility Minor Release Report does not constitute consent to adoption of the child by the prospective adoptive parent or parents, or any other person.

(B) That the Health Facility Minor Release Report does not constitute a relinquishment of parental rights for the purposes of adoption.

(C) That the birth parent or parents or any person authorized by the birth parent or parents may reclaim the child at any time from the prospective adoptive parent or parents or any other person to whom the child was released by the hospital, as provided in Section 8700, 8814.5, or 8815 of the Family Code.

(3) The release of the child to a prospective adoptive parent or parents or an authorized representative of a licensed adoption agency does not pose an immediate danger to the child.

(4) An attorney or an adoption agency has provided documentation stating that he or she, or the agency, is representing the prospective adoptive parent or parents for purposes of the adoption. In the case of an independent adoption, as defined in Section 8524 of the Family Code, the attorney or adoption agency shall provide documentation stating that the prospective adoptive parent or parents have been informed that the child may be eligible for benefits provided pursuant to the Adoption Assistance Program, as set forth in Chapter 2.1 (commencing with Section 16115) of Part 4 of Division 9, only if, at the time the adoption request is filed, the child has met the requirements to receive federal supplemental security income benefits pursuant to Subchapter XVI (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code, as determined and documented by the federal Social Security Administration.

(5) The prospective adoptive parent or parents or their representative, or an authorized representative of a licensed adoption agency, provides all of the following to the peace officer:

(A) A fully executed copy of the Health Facility Minor Release Report.

(B) A written form signed by either the prospective adoptive parent or parents or a representative of the licensed adoption agency, which shall include all of the following:

(i) A statement that the child is the subject of a proposed adoption.

(ii) A declaration that the signer or signers will immediately notify the county child welfare agency pursuant to Section 11165.9 of the Penal Code if the adoption plan is terminated for any reason, and will not release the child to the birth parent or parents or any designee of the birth parent or parents until the county child welfare agency or local law enforcement agency completes an investigation and determines that release of the child to the birth parent or parents or a designee of the birth parent or parents will not create an immediate risk to the health or safety of the child.

(iii) An agreement to provide a conformed copy of the adoption request or guardianship petition to the county child welfare agency within five business days after filing.

(iv) The names, identifying information, and contact information for the child, for each prospective adoptive parent, and for each birth parent, to the extent that information is known. In the case of an agency adoption where no prospective adoptive parent or parents are identified at the time of the child's release from the hospital, the licensed adoption agency may provide the information as it pertains to the licensed or certified foster home into which the agency intends to place the child.

(c) (1) In every independent adoption proceeding under this section, the prospective adoptive parent or parents shall file with the court either an adoption request within 10 working days after execution of an adoption placement agreement, or a guardianship petition within 30 calendar days after the child's discharge from the hospital, whichever is earlier.

(2) If the adoption plan for a child who was released from the hospital pursuant to subdivision (b) is terminated for any reason, the prospective adoptive parent or parents or licensed adoption agency shall immediately notify the county child welfare agency. The prospective adoptive parent or parents or licensed adoption agency may not release the child into the physical custody of the birth parent or parents, or any designee of the birth parent or parents, until the county child welfare agency or local law enforcement agency completes an investigation and determines that release of the child to the birth parent or parents or a designee of the birth parent or parents will not create an immediate risk to the health or safety of the child.

(d) Upon request by a birth parent or parents of the newborn child, the appropriate hospital personnel shall complete a Health Facility Minor Release Report and provide copies of the report to the birth parent or parents, and the person or persons who will receive physical custody of the child upon discharge pursuant to Section 1283 of the Health and Safety Code. Hospital personnel shall not refuse to complete a Health Facility Minor Release Report for any reason, even if the child is ineligible for release at that time. This section shall not be construed to require hospital personnel to release a child contrary to the directives of a child welfare agency.

(e) This section is not intended to create a duty that requires law enforcement to investigate the prospective adoptive parent or parents.

(f) This section does not suspend the requirements for voluntary adoptive placement under the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.).

(Amended by Stats. 2018, Ch. 833, Sec. 18. (AB 3176) Effective January 1, 2019.)

306. (a) Any social worker in a county welfare department, or in an Indian tribe that has entered into an agreement pursuant to Section 10553.1 while acting within the scope of their regular duties under the direction of the juvenile court and pursuant to subdivision (b) of Section 272, may do all of the following:

(1) Receive and maintain, pending investigation, temporary custody of a child who is described in Section 300, and who has been delivered by a peace officer.

(2) Take into and maintain temporary custody of, without a warrant, a child who has been declared a dependent child of the juvenile court under Section 300 or who the social worker has reasonable cause to believe is a person described in subdivision (b) or (g) of Section 300, and the social worker has reasonable cause to believe that the child has an immediate need for medical care or is in immediate danger of physical or sexual abuse or the physical environment poses an immediate threat to the child's health or safety.

(b) Upon receiving temporary custody of a child pursuant to subdivision (a), the county welfare department shall inquire pursuant to Section 224.2, whether the child is or may be an Indian child.

(c) If it is known or if there is reason to know the child is an Indian child, any county social worker in a county welfare department may take into custody, and maintain temporary custody of, without a warrant, the Indian child if removing the child from the physical custody of their parent, parents, or Indian custodian is necessary to prevent imminent physical damage or harm to the Indian child. The temporary custody shall be considered an emergency removal under subdivision (g) of Section 305.5 and Section 1922 of the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.).

(d) If a county social worker takes an Indian child into or maintains an Indian child in temporary custody under subdivision (a), and the social worker knows or has reason to believe the Indian child is already a ward of a tribal court, or resides or is domiciled within a reservation of an Indian tribe that has exclusive jurisdiction over child custody proceedings as recognized in Section 305.5 or reassumed exclusive jurisdiction over Indian child custody proceedings, the county welfare agency shall notify the tribe that the child was taken into temporary custody no later than the next working day and shall provide all relevant documentation to the tribe regarding the temporary custody and the child's identity. If the tribe determines that the child is an Indian child who is already a ward of a tribal court or who is subject to the tribe's exclusive jurisdiction, the county welfare agency shall transfer custody of the child to the tribe within 24 hours after learning of the tribe's determination.

(e) If the social worker is unable to confirm that an Indian child is a ward of a tribal court or subject to the exclusive jurisdiction of an Indian tribe as described in subdivision (d), or is unable to transfer custody of the Indian child to the child's tribe, prior to the expiration of the period permitted by subdivision (a) of Section 313 for filing a petition to declare the Indian child a dependent of the juvenile court, the county welfare agency shall file the petition. The county welfare agency shall inform the state court in its report for the hearing pursuant to Section 319, that the Indian child may be a ward of a tribal court or subject to the exclusive jurisdiction of the child's tribe. If the child welfare agency receives confirmation that an Indian child is a ward of a tribal court or subject to the exclusive jurisdiction of the Indian child's tribe between the time of filing a petition and the initial petition hearing, the agency shall inform the state court, provide a copy of the written confirmation, if any, and move to dismiss the petition. This subdivision does not prevent the court from authorizing a state or local agency to maintain temporary custody of the Indian child for a period not to exceed 30 days in order to arrange for the Indian child to be placed in the custody of the child's tribe.

(f) Before taking a child into custody, a social worker shall consider whether the child may remain safely in their residence. The consideration of whether the child may remain safely at home shall include, but not be limited to, the following factors:

(1) Whether there are any reasonable services available to the worker which, if provided to the child's parent, guardian, caretaker, or to the child would eliminate the need to remove the child from the custody of their parent, guardian, Indian custodian, or other caretaker.

(2) Whether a referral to public assistance pursuant to Chapter 2 (commencing with Section 11200) of Part 3, Chapter 7 (commencing with Section 14000) of Part 3, Chapter 1 (commencing with Section 17000) of Part 5, and Chapter 10 (commencing with Section 18900) of Part 6, of Division 9 would eliminate the need to take temporary custody of the child. If those services are available they shall be utilized.

(3) Whether a nonoffending caretaker can provide for and protect the child from abuse and neglect and whether the alleged perpetrator voluntarily agrees to withdraw from the residence, withdraws from the residence, and is likely to remain withdrawn from the residence.

(4) If it is known or there is reason to know the child is an Indian child, the county social worker shall make active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family prior to removal from the custody of a parent or parents or Indian custodian unless emergency removal is necessary to prevent imminent physical damage or harm to the Indian child.

(Amended by Stats. 2024, Ch. 656, Sec. 9. (AB 81) Effective September 27, 2024.)

306.5. In any case in which a social worker takes a minor into custody pursuant to Section 306, the social worker shall, to the extent that it is practical and appropriate, place the minor together with any siblings or half-siblings who are also detained or include in the report prepared pursuant to Section 319 a statement of his or her continuing efforts to place the siblings together or why those efforts are not appropriate.

(Added by Stats. 2001, Ch. 747, Sec. 1. Effective January 1, 2002.)

306.6. (a) In a dependency proceeding involving a child who would otherwise be an Indian child, based on the definition contained in subdivision (b) of Section 224.1, but is not an Indian child based on the child's Indian tribe not having federal recognition, as described by paragraph (4) of subdivision (a) of Section 224.1, the court may permit the tribe from which the child is descended to participate in the proceeding upon request of the tribe.

(b) If the court permits a tribe to participate in a proceeding, the tribe may do all of the following, upon consent of the court:

- (1) Be present at the hearing or appear remotely as authorized by subdivision (l) of Section 224.2.
- (2) Address the court.
- (3) Request and receive notice of hearings.
- (4) Request to examine court documents relating to the proceeding.
- (5) Present information to the court that is relevant to the proceeding.
- (6) Submit written reports and recommendations to the court.
- (7) Perform other duties and responsibilities as requested or approved by the court.

(c) If more than one tribe requests to participate in a proceeding under subdivision (a), the court may limit participation to the tribe with which the child has the most significant contacts, as determined in accordance with the provisions for determining an Indian child's tribe contained in subdivision (e) of Section 224.1.

(d) This section is intended to assist the court in making decisions that are in the best interest of the child by permitting a tribe in the circumstances set out in subdivision (a) to inform the court and parties to the proceeding about placement options for the child within the child's extended family or the tribal community, services and programs available to the child and the child's parents as Indians, and other unique interests the child or the child's parents may have as Indians. This section shall not be construed to make the Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.), or any state law implementing the Indian Child Welfare Act of 1978, applicable to the proceedings, or to limit the court's discretion to permit other interested persons to participate in these or any other proceedings.

(e) The court shall, on a case-by-case basis, make a determination if this section is applicable and may request information from the tribe, or the entity claiming to be a tribe, from which the child is descended for the purposes of making this determination, if the child would otherwise be an Indian child pursuant to subdivision (a).

(Amended by Stats. 2024, Ch. 656, Sec. 10. (AB 81) Effective September 27, 2024.)

307. A peace officer or probation officer who takes a minor into temporary custody under the provisions of Section 305 shall thereafter proceed as follows:

(a) The officer may release the minor.

(b) The officer may prepare in duplicate a written notice for the parent or parents of the minor to appear with the minor before the probation officer of the county in which the minor was taken into custody at a time and place specified in the notice. The notice shall also contain a concise statement of the reasons the minor was taken into custody. The officer shall deliver one copy of the notice to the minor and a parent, guardian, or responsible relative of the minor and may require the minor and the parent, guardian, or relative to sign a written promise that he or she shall appear at the time and place designated in the notice. Upon the execution of the promise to appear, the officer shall immediately release the minor. The officer shall, as soon as practicable, file one copy of the notice with the probation officer.

(c) The officer may take the minor without unnecessary delay before the probation officer of the county in which the minor was taken into custody, or in which the minor resides, or in which the acts take place or the circumstances exist which are alleged to bring the minor within the provisions of Section 300, and deliver the minor into the custody of the probation officer.

In determining which disposition of the minor shall be made, the officer shall give preference to the alternative which least interferes with the parents' or guardians' custody of the minor if this alternative is compatible with the safety of the minor. The officer shall also consider the needs of the minor for the least restrictive environment and the protective needs of the community.

(Amended by Stats. 1982, Ch. 978, Sec. 5. Effective September 13, 1982.)

307.4. (a) Any peace officer, probation officer, or social worker who takes into temporary custody pursuant to Sections 305 to 307, inclusive, a minor who comes within the description of Section 300 shall immediately inform, through the most efficient means available, the parent, guardian, or responsible relative, that the minor has been taken into protective custody and that a written statement is available which explains the parent's or guardian's procedural rights and the preliminary stages of the dependency investigation and hearing. The Judicial Council shall, in consultation with the County Welfare Directors Association of California, adopt a form for the written statement, which shall be in simple language and shall be printed and distributed by the county. The written statement shall be made available for distribution through all public schools, probation offices, and appropriate welfare offices. It shall include, but is not limited to, the following information:

(1) The conditions under which the minor will be released, hearings which may be required, and the means whereby further specific information about the minor's case and conditions of confinement may be obtained.

(2) The rights to counsel, privileges against self-incrimination, and rights to appeal possessed by the minor, and his or her parents, guardians, or responsible relative.

(b) If a good faith attempt was made at notification, the failure on the part of the peace officer, probation officer, or social worker to notify the parent or guardian that the written information required by subdivision (a) is available shall be considered to be due to circumstances beyond the control of the peace officer, probation officer, or social worker, and shall not be construed to permit a new defense to any juvenile or judicial proceeding or to interfere with any rights, procedures, or investigations accorded under any other law.

(Added by Stats. 1986, Ch. 386, Sec. 1.)

307.5. Notwithstanding the provisions of Section 307, an officer who takes a minor suspected of being a person described in Section 300 into temporary custody pursuant to subdivision (a) of Section 305 may, in a case where he or she deems that it is in the best interest of the minor and the public, take the minor to a community service program for abused or neglected children. Organizations or programs receiving referrals pursuant to this section shall have a contract or an agreement with the county to provide shelter care or counseling. Employees of a program receiving referrals pursuant to this section are "child care custodians" for the purpose of the requirements of Section 11165.7 of the Penal Code. The receiving organization shall take immediate steps to notify the minor's parent, guardian, or a responsible relative of the place to which the minor was taken.

(Amended by Stats. 1989, Ch. 913, Sec. 5.)

308. (a) When a peace officer or social worker takes a minor into custody pursuant to this article, he or she shall take immediate steps to notify the minor's parent, guardian, or a responsible relative that the minor is in custody and that the child has been placed in a facility authorized by law to care for the child, and shall provide a telephone number at which the minor may be contacted. The confidentiality of the address of any licensed foster family home in which the child has been placed shall be maintained until the dispositional hearing, at which time the judge may authorize, upon a finding of good cause, the disclosure of the address. However, the court may order the release of the address of the licensed foster family home to the minor's parent, guardian, or responsible relative upon notification of the licensed foster family home in cases where a petition to challenge jurisdiction or other motion to delay the dispositional hearing beyond 60 days after the hearing at which the minor was ordered removed or detained, pursuant to subdivision (b) of Section 352, is granted. Moreover, a foster parent may authorize the release of the address of the foster family home at any time during the placement. The county welfare department shall make a diligent and reasonable effort to ensure regular telephone contact between the parent and a child of any age, prior to the detention hearing, unless that contact would be detrimental

to the child. The initial telephone contact shall take place as soon as practicable, but no later than five hours after the child is taken into custody.

(b) Immediately after being taken to a place of confinement pursuant to this article and, except where physically impossible, no later than one hour after he or she has been taken into custody, a minor 10 years of age or older shall be advised that he or she has the right to make at least two telephone calls from the place where he or she is being held, one call completed to his or her parent, guardian, or a responsible relative, and another call completed to an attorney. The calls shall be at public expense, if the calls are completed to telephone numbers within the local calling area, and in the presence of a public officer or employee. Any public officer or employee who willfully deprives a minor taken into custody of his or her right to make these telephone calls is guilty of a misdemeanor.

(Amended by Stats. 1996, Ch. 275, Sec. 1. Effective January 1, 1997.)

309. (a) Upon delivery to the social worker of a child who has been taken into temporary custody under this article, the social worker shall immediately investigate the circumstances of the child and the facts surrounding the child's being taken into custody and attempt to maintain the child with the child's family through the provision of services. The social worker shall immediately release the child to the custody of the child's parent, guardian, Indian custodian, or relative, regardless of the parent's, guardian's, Indian custodian's, or relative's immigration status, unless one or more of the following conditions exist:

(1) The child has no parent, guardian, Indian custodian, or relative willing to provide care for the child.

(2) Continued detention of the child is a matter of immediate and urgent necessity for the protection of the child and there are no reasonable means by which the child can be protected in their home or the home of a relative.

(3) If it is known or there is reason to know the child is an Indian child, the child has been physically removed from the custody of a parent or parents or an Indian custodian, continued detention of the child continues to be necessary to prevent imminent physical damage or harm to the child, and there are no reasonable means by which the child can be protected if maintained in the physical custody of their parent or parents or Indian custodian.

(4) There is substantial evidence that a parent, guardian, or Indian custodian of the child is likely to flee the jurisdiction of the court, and, in the case of an Indian child, fleeing the jurisdiction will place the child at risk of imminent physical damage or harm.

(5) The child has left a placement in which the child was placed by the juvenile court.

(6) The parent or other person having lawful custody of the child voluntarily surrendered physical custody of the child pursuant to Section 1255.7 of the Health and Safety Code and did not reclaim the child within the 14-day period specified in subdivision (g) of that section.

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

(c) If the child is not released to their parent or guardian, the child shall be deemed detained for purposes of this chapter.

(d) (1) If a relative, as defined in Section 319, an extended family member of an Indian child, as defined in Section 224.1 and Section 1903 of the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.), or a nonrelative extended family member, as defined in Section 362.7, is available and requests emergency placement of the child pending the detention hearing, or after the detention hearing and pending the dispositional hearing conducted pursuant to Section 358, the county welfare department shall initiate an assessment of the relative's or nonrelative extended family member's suitability for emergency placement pursuant to Section 361.4.

(2) Upon completion of the assessment pursuant to Section 361.4, the child may be placed in the home on an emergency basis. Following the emergency placement of the child, the county welfare department shall evaluate and approve or deny the home pursuant to Section 16519.5. If the home in which the Indian child is placed is licensed or approved by the child's tribe, the provisions of Section 16519.5 do not apply for further approval. The county shall require the relative or nonrelative extended family member to submit an application for approval as a resource family and initiate the home environment assessment no later than five business days after the placement.

(3) If the sole issue preventing an emergency placement of a child with a relative or nonrelative extended family member is a lack of resources, including, but not limited to, physical items such as cribs and car seats, the agency shall use reasonable efforts to assist the relative or nonrelative extended family member in obtaining the necessary items within existing available resources. The department shall work with counties and stakeholders to issue guidance regarding reasonable efforts requirements.

(e) (1) If the child is removed, the social worker shall conduct, within 30 days, an investigation in order to identify and locate all grandparents, parents of a sibling of the child, if the parent has legal custody of the sibling, adult siblings, other adult relatives of the child, as defined in paragraph (2) of subdivision (h) of Section 319, including any other adult relatives suggested by the parents, and, if it is known or there is reason to know the child is an Indian child, any extended family members, as defined in Section 224.1 and Section 1903 of the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.). As used in this section, "sibling" means a person related to the identified child by blood, adoption, or affinity through a common legal or biological parent. The social worker shall provide to all adult relatives who are located, except when that relative's history of family or domestic violence makes notification inappropriate, within 30 days of removal of the child, written notification and shall also, whenever appropriate, provide oral notification, in person or by telephone, of all the following information:

(A) The child has been removed from the custody of their parent or parents, guardian or guardians, or Indian custodian.

(B) An explanation of the various options to participate in the care and placement of the child and support for the child's family, including any options that may be lost by failing to respond. The notice shall provide information about providing care for the child while the family receives reunification services with the goal of returning the child to the parent or guardian, how to become a resource family, and additional services and support that are available in out-of-home placements, and, if it is known or there is reason to know the child is an Indian child, the option of obtaining approval for placement through the tribe's license or approval procedure. The notice shall also include information regarding the Kin-GAP Program (Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9), the CalWORKs program for approved relative caregivers (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9), adoption, and adoption assistance (Chapter 2.1 (commencing with Section 16115) of Part 4 of Division 9), as well as other options for contact with the child, including, but not limited to, visitation. The State Department of Social Services, in consultation with the County Welfare Directors Association of California and other interested stakeholders, shall develop the written notice.

(2) The social worker shall also provide the adult relatives notified pursuant to paragraph (1) with a relative information form to provide information to the social worker and the court regarding the needs of the child. The form shall include a provision whereby the relative may request the permission of the court to address the court, if the relative so chooses. The Judicial Council, in consultation with the State Department of Social Services and the County Welfare Directors Association of California, shall develop the form.

(3) (A) The social worker shall use due diligence in investigating the names and locations of the relatives, as well as any parent and alleged parent, pursuant to paragraph (1), including, but not limited to, asking the child in an age-appropriate manner about any parent, alleged parent, and relatives important to the child, consistent with the child's best interest, and obtaining information regarding the location of the child's parents, alleged parents, and adult relatives. Each county welfare department shall do both of the following:

(i) Create and make public a procedure by which a parent and relatives of a child who has been removed from their parents or guardians may identify themselves to the county welfare department and the county welfare department shall provide parents and relatives with the notices required by paragraphs (1) and (2).

(ii) Notify the State Department of Social Services, on or before January 1, 2024, in an email or other correspondence, whether it has adopted one of the suggested practices for family finding described in All-County Letter 18-42 and, generally, whether the practice has been implemented through training, memoranda, manuals, or comparable documents. If a county welfare department has not adopted one of the suggested practices for family finding described in All-County Letter 18-42, the county welfare department shall provide a copy to the State Department of Social Services of its existing family finding policies and practices, as reflected in memoranda, handbooks, manuals, training manuals, or any other document, that are in existence prior to January 1, 2022.

(B) The due diligence required under subparagraph (A) shall include family finding. For purposes of this section, "family finding" means conducting an investigation, including, but not limited to, through a computer-based search engine, to identify relatives and kin and to connect a child or youth, who may be disconnected from their parents, with those relatives and kin in an effort to provide family support and possible placement. If it is known or there is reason to know that the child is an Indian child, as defined by Section 224.1, "family finding" also includes contacting the Indian child's tribe to identify relatives and kin.

(Amended by Stats. 2022, Ch. 811, Sec. 1. (SB 384) Effective January 1, 2023.)

310. As a condition for the release of such minor, the probation officer may require such minor or his parent, guardian, or relative, or both, to sign a written promise that either or both of them will appear before the probation officer at a suitable place designated by the probation officer at a specified time.

(Added by Stats. 1978, Ch. 1168.)

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

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

(Amended by Stats. 2002, Ch. 416, Sec. 2. Effective January 1, 2003.)

313. (a) Whenever a minor is taken into custody by a peace officer or probation officer, except when such minor willfully misrepresents himself as 18 or more years of age, such minor shall be released within 48 hours after having been taken into custody, excluding nonjudicial days, unless within said period of time a petition to declare him a dependent child has been filed pursuant to the provisions of this chapter.

(b) Whenever a minor who has been held in custody for more than six hours by the probation officer is subsequently released and no petition is filed, the probation officer shall prepare a written explanation of why the minor was held in custody for more than six hours. The written explanation shall be prepared within 72 hours after the minor is released from custody and filed in the record of the case. A copy of the written explanation shall be sent to the parents, guardian, or other person having care or custody of the minor.

(Added by Stats. 1976, Ch. 1068.)

314. When a minor willfully misrepresents himself to be 18 or more years of age when taken into custody by a peace officer or probation officer, and this misrepresentation effects a material delay in investigation which prevents the filing of a petition pursuant to the provisions of this chapter, such petition or complaint shall be filed within 48 hours from the time his true age is determined, excluding nonjudicial days. If, in such cases, the petition is not filed within the time prescribed by this section, the minor shall be immediately released from custody.

(Added by Stats. 1976, Ch. 1068.)

315. If a child has been taken into custody under this article and not released to a parent or guardian, the juvenile court shall hold a hearing (which shall be referred to as a "detention hearing") to determine whether the child shall be further detained. This hearing shall be held as soon as possible, but not later than the expiration of the next judicial day after a petition to declare the child a dependent child has been filed. If the hearing is not held within the period prescribed by this section, the child shall be released from custody. In the case of an Indian child, the hearing pursuant to Section 319 shall be considered an emergency removal under subdivision (g) of Section 305.5 of this code and Section 1922 of the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.).

(Amended by Stats. 2024, Ch. 656, Sec. 11. (AB 81) Effective September 27, 2024.)

316. Upon his or her appearance before the court at the detention hearing, each parent or guardian and the minor, if present, shall first be informed of the reasons why the minor was taken into custody, the nature of the juvenile court proceedings, and the right of each parent or guardian and any minor to be represented at every stage of the proceedings by counsel.

(Repealed and added by Stats. 1987, Ch. 1485, Sec. 19.)

316.1. (a) Upon his or her appearance before the court, each parent or guardian shall designate for the court his or her permanent mailing address. The court shall advise each parent or guardian that the designated mailing address will be used by the court and the social services agency for notice purposes unless and until the parent or guardian notifies the court or the social services agency of a new mailing address in writing.

(b) Upon his or her appearance before the court, each party who consents to electronic service pursuant to Section 212.5 shall designate for the court his or her electronic service address. The court shall advise each party that the electronic service address will be used by the court and the social services agency for purposes of providing notice pursuant to Sections 291, 292, 293, 294, 295, 297, and 342, unless and until the party notifies the court or the social services agency of a new electronic service address in writing or unless the party withdraws consent to electronic service.

(c) A party's decision not to consent to electronic service and designate an electronic service address, as authorized in subdivision (b), does not preclude the use of electronic means to send information regarding the date, time, and place of a juvenile court hearing, provided that the confidentiality requirement of paragraph (7) of subdivision (a) of Section 212.5 is met. The party does not need to designate an electronic service address in order for the information to be provided electronically. However, information shared, as described in this subdivision, shall only be in addition to, and not in lieu of, any required service or notification made in accordance with any other law governing how that service or notification is provided.

(Amended by Stats. 2018, Ch. 910, Sec. 22. (AB 1930) Effective January 1, 2019.)

316.2. (a) At the detention hearing, or as soon thereafter as practicable, the court shall inquire of the mother and any other appropriate person as to the identity and address of all presumed or alleged fathers. The presence at the hearing of a man claiming to be the father shall not relieve the court of its duty of inquiry. The inquiry shall include at least all of the following, as the court deems appropriate:

(1) Whether a judgment of paternity already exists.

(2) Whether the mother was married or believed she was married at the time of conception of the child or at any time thereafter.

(3) Whether the mother was cohabiting with a man at the time of conception or birth of the child.

(4) Whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy.

(5) Whether any man has formally or informally acknowledged or declared his possible paternity of the child, including by signing a voluntary declaration of paternity.

(6) Whether paternity tests have been administered and the results, if any.

(7) Whether any man otherwise qualifies as a presumed father pursuant to Section 7611, or any other provision, of the Family Code.

(b) If, after the court inquiry, one or more men are identified as an alleged father, each alleged father shall be provided notice at his last and usual place of abode by certified mail return receipt requested alleging that he is or could be the father of the child. The notice shall state that the child is the subject of proceedings under Section 300 and that the proceedings could result in the termination of parental rights and adoption of the child. Judicial Council form Paternity-Waiver of Rights (JV-505) shall be included with the notice. Nothing in this section shall preclude a court from terminating a father's parental rights even if an action has been filed under Section 7630 or 7631 of the Family Code.

(c) The court may determine that the failure of an alleged father to return the certified mail receipt is not good cause to continue a hearing pursuant to Section 355, 358, 360, 366.21, or 366.22.

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

(e) After a petition has been filed to declare a child a dependent of the court, and until the time that the petition is dismissed, dependency is terminated, or parental rights are terminated pursuant to Section 366.26 or proceedings are commenced under Part 4 (commencing with Section 7800) of Division 12 of the Family Code, the juvenile court which has jurisdiction of the dependency action shall have exclusive jurisdiction to hear an action filed under Section 7630 or 7631 of the Family Code.

(f) After any inquiry, proceeding, or determination made pursuant to this section, the juvenile court shall note its findings in the minutes of the court.

(Amended by Stats. 2000, Ch. 56, Sec. 1. Effective January 1, 2001.)

317. (a) (1) When it appears to the court that a parent or guardian of the child desires counsel but is presently financially unable to afford and cannot for that reason employ counsel, the court may appoint counsel as provided in this section.

(2) When it appears to the court that a parent or Indian custodian in an Indian child custody proceeding desires counsel but is presently unable to afford and cannot for that reason employ counsel, the court shall appoint counsel for the parent or Indian custodian.

(b) When it appears to the court that a parent or guardian of the child is presently financially unable to afford and cannot for that reason employ counsel, and the child has been placed in out-of-home care, or the petitioning agency is recommending that the child be placed in out-of-home care, the court shall appoint counsel for the parent or guardian, unless the court finds that the parent or guardian has made a knowing and intelligent waiver of counsel as provided in this section.

(c) (1) If a child or nonminor dependent is not represented by counsel, the court shall appoint counsel for the child or nonminor dependent, unless the court finds that the child or nonminor dependent would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) A primary responsibility of counsel appointed to represent a child or nonminor dependent pursuant to this section shall be to advocate for the protection, safety, and physical and emotional well-being of the child or nonminor dependent.

(3) Counsel may be a district attorney, public defender, or other member of the bar, provided that they do not represent another party or county agency whose interests conflict with the child's or nonminor dependent's interests. The fact that the district attorney represents the child or nonminor dependent in a proceeding pursuant to Section 300 as well as conducts a criminal investigation or files a criminal complaint or information arising from the same or reasonably related set of facts as the proceeding pursuant to Section 300 is not in and of itself a conflict of interest.

(4) The court may fix the compensation for the services of appointed counsel.

(5) (A) The appointed counsel shall have a caseload and training that ensures adequate representation of the child or nonminor dependent. The Judicial Council shall promulgate rules of court that establish caseload standards, training requirements, and guidelines for appointed counsel for children and shall adopt rules as required by Section 326.5 no later than July 1, 2001.

(B) The training requirements imposed pursuant to subparagraph (A) shall include instruction on both of the following:

(i) Cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home care.

(ii) The information described in subdivision (d) of Section 16501.4.

(d) Counsel shall represent the parent, guardian, child, or nonminor dependent at the detention hearing and at all subsequent proceedings before the juvenile court. Counsel shall continue to represent the parent, guardian, child, or nonminor dependent unless relieved by the court upon the substitution of other counsel or for cause. The representation shall include representing the parent, guardian, or the child in termination proceedings and in those proceedings relating to the institution or setting aside of a legal guardianship. On and after January 1, 2012, in the case of a nonminor dependent, as described in subdivision (v) of Section 11400, no representation by counsel shall be provided for a parent, unless the parent is receiving court-ordered family reunification services.

(e) (1) Counsel shall be charged in general with the representation of the child's interests. To that end, counsel shall make or cause to have made any further investigations that they deem in good faith to be reasonably necessary to ascertain the facts, including the interviewing of witnesses, and shall examine and cross-examine witnesses in both the adjudicatory and dispositional hearings. Counsel may also introduce and examine their own witnesses, make recommendations to the court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the child. When counsel is appointed to represent a nonminor dependent, counsel is charged with representing the wishes of the nonminor dependent except when advocating for those wishes conflicts with the protection or safety of the nonminor dependent. If the court finds that a nonminor dependent is not competent to direct counsel, the court shall appoint a guardian ad litem for the nonminor dependent.

(2) If the child is four years of age or older, counsel shall interview the child to determine the child's wishes and assess the child's well-being, and shall advise the court of the child's wishes. Counsel shall not advocate for the return of the child if, to the best of their knowledge, return of the child conflicts with the protection and safety of the child.

(3) Counsel shall investigate the interests of the child beyond the scope of the juvenile proceeding, and report to the court other interests of the child that may need to be protected by the institution of other administrative or judicial proceedings. Counsel representing a child in a dependency proceeding is not required to assume the responsibilities of a social worker, and is not expected to provide nonlegal services to the child.

(4) (A) At least once every year, if the list of educational liaisons is available on the internet website for the State Department of Education, both of the following shall apply:

(i) Counsel shall provide their contact information to the educational liaison, as described in subdivision (c) of Section 48853.5 of the Education Code, of each local educational agency serving counsel's foster child clients in the county of jurisdiction.

(ii) If counsel is part of a firm or organization representing foster children, the firm or organization may provide its contact information in lieu of contact information for the individual counsel. The firm or organization may designate a person or persons within the firm or organization to receive communications from educational liaisons.

(B) The child's caregiver or other person holding the right to make educational decisions for the child may provide the contact information of the child's attorney to the child's local educational agency.

(C) Counsel for the child and counsel's agent may, but are not required to, disclose to an individual who is being assessed for the possibility of placement pursuant to Section 361.3 the fact that the child is in custody, the alleged reasons that the child is in custody, and the projected likely date for the child's return home, placement for adoption, or legal guardianship. Nothing in this paragraph shall be construed to prohibit counsel from making other disclosures pursuant to this subdivision, as appropriate.

(5) Nothing in this subdivision shall be construed to permit counsel to violate a child's attorney-client privilege.

(6) The changes made to this subdivision during the 2011–12 Regular Session of the Legislature by the act adding subparagraph (C) of paragraph (4) and paragraph (5) are declaratory of existing law.

(7) The court shall take whatever appropriate action is necessary to fully protect the interests of the child.

(f) Either the child or counsel for the child, with the informed consent of the child if the child is found by the court to be of sufficient age and maturity to consent, which shall be presumed, subject to rebuttal by clear and convincing evidence, if the child is over 12 years of age, may invoke the psychotherapist-client privilege, physician-patient privilege, and clergyman-penitent privilege. If the child invokes the privilege, counsel may not waive it, but if counsel invokes the privilege, the child may waive it. Counsel shall be the holder of these privileges if the child is found by the court not to be of sufficient age and maturity to consent. For the sole purpose of fulfilling their obligation to provide legal representation of the child, counsel shall have access to all records with regard to the child maintained by a health care facility, as defined in Section 1545 of the Penal Code, health care providers, as defined in Section 6146 of the Business and Professions Code, a physician and surgeon or other health practitioner, as defined in former Section 11165.8 of the Penal Code, as that section read on January 1, 2000, or a childcare custodian, as defined in former Section 11165.7 of the Penal Code, as that section read on January 1, 2000. Notwithstanding any other law, counsel shall be given access to all records relevant to the case that are maintained by state or local public agencies. All information requested from a child protective agency regarding a child who is in protective custody, or from a child's guardian ad litem, shall be provided to the child's counsel within 30 days of the request.

(g) In a county of the third class, if counsel is to be provided to a child at the county's expense other than by counsel for the agency, the court shall first use the services of the public defender before appointing private counsel. Nothing in this subdivision shall be construed to require the appointment of the public defender in any case in which the public defender has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the public defender after making a finding of good cause and stating the reasons therefor on the record.

(h) In a county of the third class, if counsel is to be appointed to provide legal counsel for a parent or guardian at the county's expense, the court shall first use the services of the alternate public defender before appointing private counsel. Nothing in this subdivision shall be construed to require the appointment of the alternate public defender in any case in which the public defender has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the alternate public defender after making a finding of good cause and stating the reasons therefor on the record.

(Amended by Stats. 2024, Ch. 656, Sec. 12. (AB 81) Effective September 27, 2024.)

317.5. (a) All parties who are represented by counsel at dependency proceedings shall be entitled to competent counsel.

(b) Each minor who is the subject of a dependency proceeding is a party to that proceeding.

(Added by Stats. 1994, Ch. 1073, Sec. 1. Effective January 1, 1995.)

317.6. (a) On or before January 1, 1996, the Judicial Council shall, after consulting with representatives from the State Bar of California, county counsels, district attorneys, public defenders, county welfare directors, and children's advocacy groups, adopt rules of court regarding the appointment of competent counsel in dependency proceedings, including, but not limited to, the following:

(1) The screening and appointment of competent counsel.

(2) Establishing minimum standards of experience and education necessary to qualify as competent counsel to represent a party in dependency proceedings.

(3) Procedures for handling client complaints regarding attorney performance, including measures to inform clients of the complaint process.

(4) Procedures for informing the court of any interests of the minor that may need to be protected in other proceedings.

(b) On or before July 1, 1996, each superior court shall, after consulting with representatives from the State Bar of California and the local offices of the county counsel, district attorney, public defender, county welfare department, and children's advocacy groups, adopt local rules of court regarding the conduct of dependency proceedings that address items such as procedures and timeframes for the presentation of contested issues and witness lists to eliminate unnecessary delays in dependency hearings.

(Amended by Stats. 1995, Ch. 91, Sec. 183. Effective January 1, 1996.)

318. If a district attorney has represented a minor in a dependency proceeding, that district attorney shall not appear, on behalf of the people of the State of California, in any juvenile court hearing which is based upon a petition that alleges that the same minor is a person within the description of Section 602.

Records kept by the district attorney in the course of representation of a minor described in Section 300 are confidential and shall be held separately, and shall not be inspected by members of the district attorney's office not directly involved in the representation of that minor. A district attorney who represents or who has represented a minor in a proceeding brought pursuant to Section 300 shall not discuss the substance of that case with a district attorney representing the people pursuant to Section 681 in a proceeding brought pursuant to Section 602 in which that same minor is the subject of the petition.

(Added by Stats. 1992, Ch. 1327, Sec. 1. Effective January 1, 1993.)

318.5. In a juvenile court hearing, where the parent or guardian is represented by counsel, the county counsel or district attorney shall, at the request of the juvenile court judge, appear and participate in the hearing to represent the petitioner.

(Added by renumbering Section 318 (as added by Stats. 1986, Ch. 1122) by Stats. 1987, Ch. 56, Sec. 181.)

319. (a) At the initial petition hearing, the court shall review the report described in subdivision (b) and examine the child's parents, guardians, Indian custodian, or other persons having relevant knowledge and hear the relevant evidence as the child, the child's parents or guardians, the child's Indian custodian, the petitioner, the Indian child's tribe, or their counsel desires to present. The court may examine the child, as provided in Section 350.

(b) The social worker shall report to the court on the reasons why the child has been removed from the parent's, guardian's, or Indian custodian's physical custody, the need, if any, for continued detention, the available services and the referral methods to those services that could facilitate the return of the child to the custody of the child's parents, guardians, or Indian custodian, and whether there are any relatives who are able and willing to take temporary physical custody of the child. The report shall also include information regarding any short-term or long-term harms, or both short-term and long-term harms, to the child that may result from their removal from the custody of their parent, guardian, or Indian custodian, including, but not limited to, the information specified in subparagraph (A) of paragraph (2) of subdivision (c), the placement options, including an assessment of the least disruptive alternatives to returning the child to the custody of their parent, guardian, or Indian custodian, including compliance with the placement preferences set forth in Section 361.31 in the case of an Indian child, and measures that may be available to alleviate disruption and minimize the harms of removal. If it is known or there is reason to know the child is an Indian child, the report shall also include all of the following:

- (1) A statement of the risk of imminent physical damage or harm to the Indian child and any evidence that the emergency removal or placement continues to be necessary to prevent the imminent physical damage or harm to the child.
- (2) The steps taken to provide notice to the child's parents, custodians, and tribe about the hearing pursuant to this section.
- (3) If the child's parents and Indian custodians are unknown, a detailed explanation of what efforts have been made to locate and contact them, including contact with the appropriate Bureau of Indian Affairs regional director.
- (4) The residence and the domicile of the Indian child.
- (5) If either the residence or the domicile of the Indian child is believed to be on a reservation or in an Alaska Native village, the name of the tribe affiliated with that reservation or village.
- (6) The tribal affiliation of the child and of the parents or Indian custodians.
- (7) A specific and detailed account of the circumstances that caused the Indian child to be taken into temporary custody.
- (8) If the child is believed to reside or be domiciled on a reservation in which the tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made and that are being made to contact the tribe and transfer the child to the tribe's jurisdiction.
- (9) A statement of the efforts that have been taken to assist the parents or Indian custodians so the Indian child may safely be returned to their custody.
- (10) The steps taken to consult and collaborate with the tribe and the outcome of that consultation and collaboration.

(c) (1) The court shall order the release of the child from custody unless a prima facie showing has been made that the child comes within Section 300, the court finds that continuance in the parent's or guardian's home is contrary to the child's welfare, and any of the following circumstances exist:

- (A) There is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means by which the child's physical or emotional health may be protected without removing the child from

the parent's or guardian's physical custody.

(B) There is substantial evidence that a parent, guardian, or custodian of the child is likely to flee the jurisdiction of the court, and, in the case of an Indian child, fleeing the jurisdiction will place the child at risk of imminent physical damage or harm.

(C) The child has left a placement in which the child was placed by the juvenile court.

(D) The child indicates an unwillingness to return home, if the child has been physically or sexually abused by a person residing in the home.

(2) (A) The court shall determine whether less disruptive alternatives to removal were considered by the agency, such as factors related to the impact of removal on the child, including, but not limited to, the following:

(i) A description of the relationship between the child and their parents, guardians, or Indian custodians, based on the child's perspective, and the child's response to removal and, where developmentally appropriate, their perspective on removal.

(ii) The relationship between the child and any siblings.

(iii) The relationship between the child and other members of the household.

(iv) Any disruption to the child's schooling, social relationships, and physical or emotional health that may result from placement out of the home, and in the case of an Indian child, any impact on the child's connection to their tribe, extended family members, and tribal community.

(B) If the court finds that removal is necessary under paragraph (1), the court shall, in a written order or on the record, set forth all of the following:

(i) The basis for its findings and the evidence relied on.

(ii) Its determination regarding the child's placement, including whether it complies with the placement preferences set forth in Section 361.31 and less disruptive alternatives.

(iii) Include any orders necessary to alleviate any disruption or harm to the child resulting from removal.

(C) Nothing in this paragraph permits a child to be released to a parent, legal guardian, or Indian custodian, or to be placed in an unsafe placement, due solely to the court determining the child was not offered less disruptive alternatives.

(d) If the court knows or there is reason to know the child is an Indian child, the court may only detain the Indian child if it also finds that detention is necessary to prevent imminent physical damage or harm. The court shall state on the record the facts supporting this finding.

(e) (1) If the hearing pursuant to this section is continued pursuant to Section 322 or for any other reason, the court shall find that the continuance of the child in the parent's or guardian's home is contrary to the child's welfare at the initial petition hearing or order the release of the child from custody.

(2) If the court knows or has reason to know the child is an Indian child, the hearing pursuant to this section may not be continued beyond 30 days unless the court finds all of the following:

(A) Restoring the child to the parent, parents, or Indian custodian would subject the child to imminent physical damage or harm.

(B) The court is unable to transfer the proceeding to the jurisdiction of the appropriate Indian tribe.

(C) It is not possible to initiate an Indian child custody proceeding as defined in Section 224.1.

(f) (1) The court shall also make a determination on the record, referencing the social worker's report or other evidence relied upon, as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from their home, pursuant to subdivision (b) of Section 306, and whether there are available services that would prevent the need for further detention. Services to be considered for purposes of making this determination are case management, counseling, emergency shelter care, emergency in-home caretakers, out-of-home respite care, teaching and demonstrating homemakers, parenting training, transportation, and any other child welfare services authorized by the State Department of Social Services pursuant to Chapter 5 (commencing with Section 16500) of Part 4 of Division 9. The court shall also review whether the social worker has considered whether a referral to public assistance services pursuant to Chapter 2 (commencing with Section 11200) and Chapter 7 (commencing with Section 14000) of Part 3 of, Chapter 1 (commencing with Section 17000) of Part 5 of, and Chapter 10 (commencing with Section 18900) of Part 6 of,

Division 9 would have eliminated the need to take temporary custody of the child or would prevent the need for further detention. This determination shall apply to each child individually, and the considerations shall be tailored to the individual child.

(2) If the court knows or has reason to know the child is an Indian child, the court shall also determine whether the county welfare department made active efforts to provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian family. The court shall order the county welfare department to initiate or continue services or programs pending disposition pursuant to Section 358.

(3) If the child can be returned to the custody of their parent, guardian, or Indian custodian through the provision of those services, the court shall place the child with their parent, guardian, or Indian custodian and order that the services shall be provided. If the child cannot be returned to the physical custody of their parent or guardian, the court shall determine if there is a relative who is able and willing to care for the child, and has been assessed pursuant to Section 361.4.

(4) In order to preserve the bond between the child and the parent and to facilitate family reunification, the court shall consider whether the child can be returned to the custody of their parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with their parent. The fact that the parent is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with their parent shall not be, for that reason alone, prima facie evidence of substantial danger. The court shall specify the factual basis for its conclusion that the return of the child to the custody of their parent would pose a substantial danger or would not pose a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child.

(g) If a court orders a child detained, the court shall state the facts on which the decision is based, specify why the initial removal was necessary, reference the social worker's report or other evidence relied upon to make its determination whether continuance in the home of the parent or legal guardian is contrary to the child's welfare, order temporary placement and care of the child to be vested with the county child welfare department pending the hearing held pursuant to Section 355 or further order of the court, and order services to be provided as soon as possible to reunify the child and their family, if appropriate.

(h) (1) (A) If the child is not released from custody, the court may order the temporary placement of the child in any of the following for a period not to exceed 15 judicial days:

(i) The home of a relative, or a nonrelative extended family member, as defined in Section 362.7, or, in the case of an Indian child, an extended family member, as defined in paragraph (1) of subdivision (c) of Section 224.1, that has been assessed pursuant to Section 361.4.

(ii) The approved home of a resource family, as described in Section 16519.5, or a home licensed or approved by the Indian child's tribe.

(iii) An emergency shelter or other suitable licensed place.

(iv) A place exempt from licensure designated by the juvenile court.

(B) A youth homelessness prevention center licensed by the State Department of Social Services pursuant to Section 1502.35 of the Health and Safety Code shall not be a placement option pursuant to this section.

(C) If the court knows or has reason to know that the child is an Indian child, the Indian child shall be detained in a home that complies with the placement preferences set forth in Section 361.31 and in the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.), unless the court finds good cause exists pursuant to Section 361.31 not to follow the placement preferences. If the court finds good cause not to follow the placement preferences for detention, this finding does not affect the requirement that a diligent search be made for a subsequent placement within the placement preferences.

(2) Relatives shall be given preferential consideration for placement of the child. As used in this section, "relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of these persons, even if the marriage was terminated by death or dissolution.

(3) When placing in the home of a relative, nonrelative extended family member, or, in the case of an Indian child, an extended family member, as defined in paragraph (1) of subdivision (c) of Section 224.1, the court shall consider the recommendations of the social worker based on the assessment pursuant to Section 361.4 of the home of the relative, extended family member, or nonrelative extended family member, including the results of a criminal records check and prior child abuse allegations, if any, before ordering that the child be placed with a relative or nonrelative extended family member. The court may authorize the placement of a child on a temporary basis in the home of a relative, regardless of the status of any criminal record exemption or resource family approval, if the court finds that the placement does not pose a risk to the health and safety of the child. The court shall order the parent to disclose to the social worker the names, residences, and any known identifying information of any

maternal or paternal relatives of the child. The social worker shall initiate the assessment pursuant to Section 361.3 of any relative to be considered for continuing placement.

(i) In the case of an Indian child, any order detaining the child pursuant to this section shall be considered an emergency removal under subdivision (g) of Section 305.5. The emergency proceeding shall terminate if the child is returned to the custody of the parent, parents, or Indian custodian, the child has been transferred to the custody and jurisdiction of the child's tribe, or the agency or another party to the proceeding recommends that the child be removed from the physical custody of their parent or parents or Indian custodian pursuant to Section 361 or 361.2.

(j) (1) At the initial hearing upon the petition filed in accordance with subdivision (c) of Rule 5.520 of the California Rules of Court or anytime thereafter up until the time that the minor is adjudged a dependent child of the court or a finding is made dismissing the petition, the court may temporarily limit the right of the parent or guardian to make educational or developmental services decisions for the child and temporarily appoint a responsible adult to make educational or developmental services decisions for the child if all of the following conditions are found:

(A) The parent or guardian is unavailable, unable, or unwilling to exercise educational or developmental services rights for the child.

(B) The county placing agency has made diligent efforts to locate and secure the participation of the parent or guardian in educational or developmental services decisionmaking.

(C) The child's educational and developmental services needs cannot be met without the temporary appointment of a responsible adult.

(2) If the court limits the parent's educational rights under this subdivision, the court shall determine whether there is a responsible adult who is a relative, nonrelative extended family member, or other adult known to the child and who is available and willing to serve as the child's educational representative before appointing an educational representative or surrogate who is not known to the child.

(3) If the court cannot identify a responsible adult to make educational decisions for the child and the appointment of a surrogate parent, as defined in subdivision (a) of Section 56050 of the Education Code, is not warranted, the court may, with the input of any interested person, make educational decisions for the child. If the child is receiving services from a regional center, the provision of any developmental services related to the court's decision shall be consistent with the child's individual program plan and pursuant to the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)). If the court cannot identify a responsible adult to make developmental services decisions for the child, the court may, with the input of any interested person, make developmental services decisions for the child. If the court makes educational or developmental services decisions for the child, the court shall also issue appropriate orders to ensure that every effort is made to identify a responsible adult to make future educational or developmental services decisions for the child.

(4) A temporary appointment of a responsible adult and temporary limitation on the right of the parent or guardian to make educational or developmental services decisions for the child shall be specifically addressed in the court order. An order made under this section shall expire at the conclusion of the hearing held pursuant to Section 361 or upon dismissal of the petition. Upon the entering of disposition orders, additional needed limitation on the parent's or guardian's educational or developmental services rights shall be addressed pursuant to Section 361.

(5) This section does not remove the obligation to appoint surrogate parents for students with disabilities who are without parental representation in special education procedures, as required by state and federal law, including Section 1415(b)(2) of Title 20 of the United States Code, Section 56050 of the Education Code, Section 7579.5 of the Government Code, and Rule 5.650 of the California Rules of Court.

(6) If the court appoints a developmental services decisionmaker pursuant to this section, the developmental services decisionmaker shall have the authority to access the child's information and records pursuant to subdivision (u) of Section 4514 and paragraph (23) of subdivision (a) of Section 5328, and to act on the child's behalf for the purposes of the individual program plan process pursuant to Sections 4646, 4646.5, and 4648 and the fair hearing process pursuant to Chapter 7 (commencing with Section 4700) of Division 4.5, and as set forth in the court order.

(k) For a placement made on or after October 1, 2021, each temporary placement of the child pursuant to subdivision (h) in a short-term residential therapeutic program shall comply with the requirements of Section 4096 and be reviewed by the court pursuant to Section 361.22.

(l) For a placement made on or after July 1, 2022, each temporary placement of the child pursuant to subdivision (h) in a community treatment facility shall comply with the requirements of Section 4096 and be reviewed by the court pursuant to Section 361.22.

(Amended by Stats. 2024, Ch. 656, Sec. 13. (AB 81) Effective September 27, 2024.)

319.1. When the court finds a minor to be a person described by Section 300, and believes that the minor may need specialized mental health treatment while the minor is unable to reside in his or her natural home, the court shall notify the director of the county mental health department in the county where the minor resides. The county mental health department shall perform the duties required under Section 5694.7 for all those minors.

Nothing in this section shall restrict the provisions of emergency psychiatric services to those minors who are involved in dependency cases and have not yet reached the point of adjudication or disposition, nor shall it operate to restrict evaluations at an earlier stage of the proceedings or to restrict orders removing the minor from a detention facility for psychiatric treatment.

(Amended by Stats. 2001, Ch. 854, Sec. 70. Effective January 1, 2002.)

319.2. Notwithstanding Section 319, when a child under the age of six years is not released from the custody of the court, the child may be placed in a community care facility licensed as a group home for children or in a temporary shelter care facility, as defined in Section 1530.8 of the Health and Safety Code, only when the court finds that placement is necessary to secure a complete and adequate evaluation, including placement planning and transition time. The placement period shall not exceed 60 days unless a case plan has been developed and the need for additional time is documented in the case plan and has been approved by the deputy director or director of the county child welfare department or an assistant chief probation officer or chief probation officer of the county probation department.

(Amended by Stats. 2013, Ch. 21, Sec. 7. (AB 74) Effective June 27, 2013.)

319.3. (a) Notwithstanding Section 319, a child who is the subject of a petition under Section 300 and who is 6 to 12 years of age, inclusive, may be placed in a community care facility licensed as a group home for children, a short-term residential therapeutic program, a community treatment facility, or a temporary shelter care facility, as defined in Section 1530.8 of the Health and Safety Code, only when the court finds that placement is necessary to secure a complete and adequate evaluation, including placement planning and transition time. The placement period in a group home for children, a short-term residential therapeutic program, or a community treatment facility shall not exceed 60 days unless a case plan has been developed and the need for additional time is documented in the case plan and has been approved by a deputy director or director of the county child welfare department or an assistant chief probation officer or chief probation officer of the county probation department. The placement period in a temporary shelter care facility shall not exceed 10 days.

(b) For a placement made on or after October 1, 2021, each placement of a child in a short-term residential therapeutic program pursuant to this section shall comply with the requirements of Section 4096 and be reviewed by the court pursuant to Section 361.22.

(c) For a placement made on or after July 1, 2022, each placement of a child in a community treatment facility pursuant to this section shall comply with the requirements of Section 4096 and be reviewed by the court pursuant to Section 361.22.

(Amended by Stats. 2022, Ch. 50, Sec. 15. (SB 187) Effective June 30, 2022.)

319.4. If it is known or if there is reason to know the child is an Indian child, and the child has been ordered detained pursuant to Section 319, any party may request an ex parte hearing prior to disposition to present evidence to the court that the emergency placement is no longer necessary to prevent imminent physical damage or harm to the child. If the court determines placement is no longer necessary, it shall order the child returned to the physical custody of the parent or parents or Indian custodian. The Judicial Council shall develop a rule of court and forms for implementation of this section.

(Added by Stats. 2018, Ch. 833, Sec. 23. (AB 3176) Effective January 1, 2019.)

321. When a hearing is held under the provisions of this article and no parent or guardian of the minor is present and no parent or guardian has had actual notice of the hearing, a parent or guardian of the minor may file an affidavit setting forth the facts with the clerk of the juvenile court and the clerk shall immediately set the matter for rehearing at a time within 24 hours, excluding Sundays and nonjudicial days from the filing of the affidavit. Upon the rehearing, the court shall proceed in the same manner as upon the original hearing.

If the minor, a parent or guardian or the minor's attorney or guardian ad litem, if either one or the other has been appointed by the court, requests evidence of the prima facie case, a rehearing shall be held within three judicial days to consider evidence of the prima facie case. If the prima facie case is not established, the minor shall be released from detention.

In lieu of a requested rehearing, the court may set the matter for trial within 10 days.

When the court ascertains that the rehearing cannot be held within three judicial days because of the unavailability of a witness, a reasonable continuance may be granted for a period not to exceed five judicial days.

(Amended by Stats. 1984, Ch. 144, Sec. 216.)

322. Upon motion of the minor or a parent or guardian of such minor, the court shall continue any hearing or rehearing held under the provisions of this article for one day, excluding Sundays and nonjudicial days.

(Added by Stats. 1976, Ch. 1068.)

323. Upon any hearing or rehearing under the provisions of this article, the court may order such minor or any parent or guardian of such minor who is present in court to again appear before the court, the probation officer or the county financial evaluation officer at a time and place specified in said order.

(Amended by Stats. 1985, Ch. 1485, Sec. 7.)

324. Whenever any minor is taken into temporary custody under the provisions of this article in any county other than the county in which the minor is alleged to be within or to come within the jurisdiction of the juvenile court, which county is referred to herein as the requesting county, the officer who has taken the minor into temporary custody may notify the law enforcement agency in the requesting county of the fact that the minor is in custody. When a law enforcement officer, of such requesting county files a petition pursuant to Section 332 with the clerk of the juvenile court of his respective county and secures a warrant therefrom, he shall forward said warrant, or a telegraphic copy thereof to the officer who has the minor in temporary custody as soon as possible within 48 hours, excluding Sundays and nonjudicial days, from the time said juvenile was taken into temporary custody. Thereafter an officer from said requesting county shall take custody of the minor within five days, in the county in which the minor is in temporary custody, and shall take the minor before the juvenile court judge who issued the warrant, or before some other juvenile court of the same county without unnecessary delay. If the minor is not brought before a judge of the juvenile court within the period prescribed by this section, he must be released from custody.

(Added by Stats. 1976, Ch. 1068.)

324.5. (a) Whenever allegations of physical or sexual abuse of a child come to the attention of a local law enforcement agency or the local child welfare department and the child is taken into protective custody, the local law enforcement agency, or child welfare department may, as soon as practically possible, consult with a medical practitioner, who has specialized training in detecting and treating child abuse injuries and neglect, to determine whether a physical examination of the child is appropriate. If deemed appropriate, the local law enforcement agency, or the child welfare department, shall cause the child to undergo a physical examination performed by a medical practitioner who has specialized training in detecting and treating child abuse injuries and neglect, and, whenever possible, shall ensure that this examination take place within 72 hours of the time the child was taken into protective custody. In the event the allegations are made while the child is in custody, the physical examination shall be performed within 72 hours of the time the allegations were made.

In the case of a petition filed pursuant to Section 319, the department shall provide the results of the physical examination to the court and to any counsel for the minor, and counsel for the parent or guardian of the minor. Failure to obtain this physical examination shall not be grounds to deny a petition under this section.

(b) The local child welfare agency shall, whenever possible, request that additional medical examinations to determine child abuse injuries or neglect, be performed by the same medical practitioner who performed the examinations described in subdivision (a). If it is not possible to obtain additional medical examinations, the local child welfare agency shall ensure that future medical practitioners to whom the child has been referred for ongoing diagnosis and treatment have specialized training in detecting and treating child abuse injuries and neglect and have access to the child's medical records covering the current and previous incidents of child abuse.

(Added by Stats. 1998, Ch. 949, Sec. 2. Effective January 1, 1999.)