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SB-233 Foster children: records. (2017-2018)

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Senate Bill No. 233

CHAPTER 829

An act to amend Sections 49069.3 and 49076 of the Education Code, and to amend Sections 361, 361.5, 366.1, 366.21, 366.22, 16010, and 16010.4 of, and to add Sections 16501.16 and 16519.7 to, the Welfare and Institutions Code, relating to foster child records.

[Approved by Governor October 15, 2017. Filed with Secretary of State October 15, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 233, Beall. Foster children: records.

(1) Existing law provides that parents of currently enrolled or former pupils have an absolute right to access any and all pupil records related to their children that are maintained by school districts or private schools. Existing law prohibits a school district from permitting access to pupil records to a person without written parental consent or under judicial order except as authorized by specified state and federal law. Existing law authorizes foster family agencies with jurisdiction over currently enrolled or former pupils to access records of grades and transcripts, and any individualized education plans developed pursuant to specified law maintained by school districts or private schools of those pupils.

This bill would add to the information that may be accessed records of attendance, discipline, and online communication on platforms established by schools for pupils and parents, and any plan adopted pursuant to specified federal law, as provided, and would require that these records be the current or most recent records for the pupil. The bill would additionally authorize a short-term residential treatment program staff responsible for the education or case management of a pupil and a caregiver who has direct responsibility for the care of the pupil, including a certified or licensed foster parent, an approved relative or nonrelated extended family member, or a resource family, as defined, to access this information, and would provide that a caregiver may access this information regardless of whether the caregiver has been appointed as the pupil's educational rights holder pursuant to specified law. The bill would authorize a foster family agency, short-term residential treatment program, or caregiver to review and receive these pupil records for specified purposes. The bill would extend these provisions to include pupil records maintained by county offices of education, charter schools, and nonpublic schools, in addition to school districts and private schools. The bill would require a child's caregiver to be responsible for reviewing and receiving these pupil records for those same purposes. To the extent the bill would impose additional duties on school districts, county offices of education, and charter schools, it would impose a state-mandated local program.

The bill would require, if direct communication between a caregiver and an educational rights holder is appropriate, a caregiver who is not the pupil's educational rights holder to notify the pupil's educational rights holder, and, in specified instances, the pupil's social worker, of any educational needs of the pupil that require the educational rights holder's consent or participation. If direct communication between a caregiver and an educational rights holder is inappropriate, the bill would require the pupil's social worker to direct the caregiver to communicate that information with the pupil's social worker or attorney instead of the educational rights holder.

(2) Existing law establishes the jurisdiction of the juvenile court, which may adjudge children to be dependents of the court under certain circumstances, including when the child suffered or there is a substantial risk that the child will suffer serious physical harm, or a parent fails to provide the child with adequate food, clothing, shelter, or medical treatment. Existing law establishes the grounds for removal of a dependent child from the custody of his or her parents or guardian, and establishes procedures to determine temporary and permanent placement of a dependent child. Existing law prescribes various hearings, including specified review hearings, and other procedures for these purposes. Whenever a court orders a hearing to terminate parental rights to, or to establish legal guardianship of, a dependent child to be held, existing law requires the court to direct the agency supervising the child and the county adoption agency, or the State Department of Social Services when it is acting as an adoption agency, to prepare an assessment and requires this assessment to include, among other things, a preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, as specified, and including an evaluation of the child's medical, developmental, scholastic, mental, and emotional status. Existing law further requires the status of every dependent child in foster care to be reviewed periodically as determined by the court but no less frequently than once every 6 months.

This bill would require the above evaluation and review to include providing a copy of the complete health and education summary, as specified. The bill would make conforming changes. By increasing the duties on county staff, the bill would impose a state-mandated local program.

Existing law requires, when a child is placed in foster care, the case plan to include a summary of the health and education information or records, including mental health information, of the child.

This bill would authorize the case plan to also include the name and contact information of the person or persons currently holding the right to make educational decisions for the child, except as specified, and would make other conforming changes.

Existing law makes various findings and declarations with regard to foster parents and caregivers, including that caregivers should have certain basic information, including among other things, a plan outlining the child's needs and services, including information on family and sibling visitation.

This bill would provide that a caregiver should also have access to a copy of the health and education summary, as specified, and would provide that a caregiver should have knowledge of the importance of the caregiver's role in education, as specified.

Existing law requires the State Department of Social Services to implement the resource family approval process in all counties and with all foster family agencies. Existing law requires counties to be responsible for various implementing tasks, including, among other things, ensuring a resource family applicant completes a minimum of 12 hours of caregiver training, including training on permanence, well-being, and education needs of children.

This bill would require counties to ensure that the above training includes, among other things, training on the importance of the caregiver's role in education, as specified. By increasing duties on county staff, the bill would impose a state-mandated local program.

(3) This bill would incorporate additional changes to Section 361 of the Welfare and Institutions Code proposed by AB 1332 to be operative only if this bill and AB 1332 are enacted and this bill is enacted last.

This bill would incorporate additional changes to Section 366.21 of the Welfare and Institutions Code proposed by AB 976 to be operative only if this bill and AB 976 are enacted and this bill is enacted last.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature to declare that caregivers are a key component to the educational success and the well-being of pupils in foster care and the use of pupil records by caregivers will be used solely for the purpose of fulfilling their responsibilities to positively support the educational needs of foster children and to maintain an updated education summary for the child welfare agency pursuant to existing law. All education information received is intended to improve the coordination of education services between caregivers, educational rights holders, pupils, child welfare agencies, and schools. Caregivers have a

responsibility to communicate with the child's educational rights holder whenever the caregiver has information that could help the educational rights holder make a decision on behalf of the best interests of the child. Caregivers shall have no authority to use pupil records against a foster child to limit his or her access to educational support services, stigmatize the foster child, or cause any harm to the child.

SEC. 2. Section 49069.3 of the Education Code is amended to read:

49069.3. (a) A foster family agency with jurisdiction over a currently enrolled or former pupil, a short-term residential treatment program staff responsible for the education or case management of a pupil, and a caregiver who has direct responsibility for the care of the pupil, including a certified or licensed foster parent, an approved relative or nonrelated extended family member, or a resource family, as defined in Section 1517 of the Health and Safety Code and Section 16519.5 of the Welfare and Institutions Code, may access the current or most recent records of grades, transcripts, attendance, discipline, and online communication on platforms established by schools for pupils and parents, and any individualized education programs (IEP) that may have been developed pursuant to Chapter 4 (commencing with Section 56300) of Part 30 or any plan adopted pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794(a)) maintained by school districts, county offices of education, charter schools, nonpublic schools, as defined in Section 60010, or private schools of that pupil. A caregiver, pursuant to this section, may access the information specified in this section regardless of whether the caregiver has been appointed as the pupil's educational rights holder pursuant to Section 319, 361, or 726 of the Welfare and Institutions Code.

(b) A foster family agency, short-term residential treatment program, or caregiver may review and receive pupil records pursuant to subdivision (a) for purposes of monitoring the pupil's educational progress, updating and maintaining the pupil's education records as required by Section 16010 of the Welfare and Institutions Code, and ensuring the pupil has access to educational services, supports, and activities. These purposes include, but are not limited to, enrolling the pupil in school, assisting the pupil with homework, class assignments, and college and scholarship applications, and enrolling the pupil in extracurricular activities, tutoring, and other afterschool and summer enrichment programs.

(c) (1) If direct communication between a caregiver and an educational rights holder is appropriate, a caregiver who is not the pupil's educational rights holder shall notify the pupil's educational rights holder of any educational needs of the pupil that require the educational rights holder's consent or participation, including, but not limited to, school placement decisions, decisions on whether to invoke or waive school of origin rights, consent for special education assessments and individualized education programs, meetings or hearings regarding attendance or discipline, and decisions regarding graduation. In instances involving significant discipline or that potentially impact a pupil's continued enrollment and progress in school, the caregiver shall also provide the same information to the pupil's social worker as is provided to the educational rights holder.

(2) If direct communication between a caregiver and an educational rights holder is inappropriate, the pupil's social worker shall direct the caregiver to communicate the information specified in paragraph (1) with the pupil's social worker or attorney instead of the educational rights holder.

(3) Nothing in this subdivision affects the responsibilities of a placement agency with regard to the education of a pupil.

(4) This subdivision shall not be construed to alter or increase a social worker's or attorney's decisionmaking rights and responsibilities regarding a pupil.

(d) Nothing in this section affects the duties of a local educational agency related to informing and involving educational rights holders in educational decisions affecting the child.

SEC. 3. Section 49076 of the Education Code is amended to read:

49076. (a) A school district shall not permit access to pupil records to a person without written parental consent or under judicial order except as set forth in this section and as permitted by Part 99 (commencing with Section 99.1) of Title 34 of the Code of Federal Regulations.

(1) Access to those particular records relevant to the legitimate educational interests of the requester shall be permitted to the following:

(A) School officials and employees of the school district, members of a school attendance review board appointed pursuant to Section 48321 who are authorized representatives of the school district, and any volunteer aide, 18 years of age or older, who has been investigated, selected, and trained by a school attendance review board for the purpose of providing followup services to pupils referred to the school attendance review board, provided that the person has a legitimate educational interest to inspect a record.

(B) Officials and employees of other public schools or school systems, including local, county, or state correctional facilities where educational programs leading to high school graduation are provided or where the pupil intends to or is directed to

enroll, subject to the rights of parents as provided in Section 49068.

(C) Authorized representatives of the Comptroller General of the United States, the United States Secretary of Education, and state and local educational authorities, or the United States Department of Education's Office for Civil Rights, if the information is necessary to audit or evaluate a state or federally supported educational program, or in connection with the enforcement of, or compliance with, the federal legal requirements that relate to such a program. Records released pursuant to this subparagraph shall comply with the requirements of Section 99.35 of Title 34 of the Code of Federal Regulations.

(D) Other state and local officials to the extent that information is specifically required to be reported pursuant to state law adopted before November 19, 1974.

(E) Parents of a pupil 18 years of age or older who is a dependent as defined in Section 152 of Title 26 of the United States Code.

(F) A pupil 16 years of age or older or having completed the 10th grade.

(G) A district attorney who is participating in or conducting a truancy mediation program pursuant to Section 48263.5 of this code or Section 601.3 of the Welfare and Institutions Code, or participating in the presentation of evidence in a truancy petition pursuant to Section 681 of the Welfare and Institutions Code.

(H) A district attorney's office for consideration against a parent or guardian for failure to comply with the Compulsory Education Law (Chapter 2 (commencing with Section 48200)) or with Compulsory Continuation Education (Chapter 3 (commencing with Section 48400)).

(I) (i) A probation officer, district attorney, or counsel of record for a minor for purposes of conducting a criminal investigation or an investigation in regards to declaring a person a ward of the court or involving a violation of a condition of probation.

(ii) For purposes of this subparagraph, a probation officer, district attorney, and counsel of record for a minor shall be deemed to be local officials for purposes of Section 99.31(a)(5)(i) of Title 34 of the Code of Federal Regulations.

(iii) Pupil records obtained pursuant to this subparagraph shall be subject to the evidentiary rules described in Section 701 of the Welfare and Institutions Code.

(J) A judge or probation officer for the purpose of conducting a truancy mediation program for a pupil, or for purposes of presenting evidence in a truancy petition pursuant to Section 681 of the Welfare and Institutions Code. The judge or probation officer shall certify in writing to the school district that the information will be used only for truancy purposes. A school district releasing pupil information to a judge or probation officer pursuant to this subparagraph shall inform, or provide written notification to, the parent or guardian of the pupil within 24 hours of the release of the information.

(K) A county placing agency when acting as an authorized representative of a state or local educational agency pursuant to subparagraph (C). School districts, county offices of education, and county placing agencies may develop cooperative agreements to facilitate confidential access to and exchange of the pupil information by email, facsimile, electronic format, or other secure means, if the agreement complies with the requirements set forth in Section 99.35 of Title 34 of the Code of Federal Regulations.

(L) A pupil 14 years of age or older who meets both of the following criteria:

(i) The pupil is a homeless child or youth, as defined in paragraph (2) of Section 725 of the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11434a(2)).

(ii) The pupil is an unaccompanied youth, as defined in paragraph (6) of Section 725 of the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11434a(6)).

(M) An individual who completes items 1 to 4, inclusive, of the Caregiver's Authorization Affidavit, as provided in Section 6552 of the Family Code, and signs the affidavit for the purpose of enrolling a minor in school.

(N) (i) An agency caseworker or other representative of a state or local child welfare agency, or tribal organization, as defined in Section 450b of Title 25 of the United States Code, that has legal responsibility, in accordance with state or tribal law, for the care and protection of the pupil.

(ii) The agency or organization specified in clause (i) may disclose pupil records, or the personally identifiable information contained in those records, to an individual or entity engaged in addressing the pupil's educational needs, if the individual or entity is authorized by the agency or organization to receive the disclosure and the information requested is directly related to the assistance provided by that individual or entity. The records, or the personally

identifiable information contained in those records, shall not otherwise be disclosed by that agency or organization, except as provided under the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g), state law, including paragraph (3), and tribal law.

(O) A foster family agency with jurisdiction over a currently enrolled or former pupil, a short-term residential treatment program staff responsible for the education or case management of a pupil, and a caregiver who has direct responsibility for the care of the pupil, including a certified or licensed foster parent, an approved relative or nonrelated extended family member, or a resource family, as defined in Section 1517 of the Health and Safety Code and Section 16519.5 of the Welfare and Institutions Code, pursuant to Section 49069.3 of this code.

(2) School districts may release information from pupil records to the following:

(A) Appropriate persons in connection with an emergency if the knowledge of the information is necessary to protect the health or safety of a pupil or other persons. Schools or school districts releasing information pursuant to this subparagraph shall comply with the requirements set forth in Section 99.32(a)(5) of Title 34 of the Code of Federal Regulations.

(B) Agencies or organizations in connection with the application of a pupil for, or receipt of, financial aid. However, information permitting the personal identification of a pupil or his or her parents may be disclosed only as may be necessary for purposes as to determine the eligibility of the pupil for financial aid, to determine the amount of the financial aid, to determine the conditions that will be imposed regarding the financial aid, or to enforce the terms or conditions of the financial aid.

(C) Pursuant to Section 99.37 of Title 34 of the Code of Federal Regulations, a county elections official, for the purpose of identifying pupils eligible to register to vote, or for conducting programs to offer pupils an opportunity to register to vote. The information shall not be used for any other purpose or given or transferred to any other person or agency.

(D) Accrediting associations in order to carry out their accrediting functions.

(E) Organizations conducting studies for, or on behalf of, educational agencies or institutions for purposes of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if the studies are conducted in a manner that will not permit the personal identification of pupils or their parents by persons other than representatives of the organizations, the information will be destroyed when no longer needed for the purpose for which it is obtained, and the organization enters into a written agreement with the educational agency or institution that complies with Section 99.31(a)(6) of Title 34 of the Code of Federal Regulations.

(F) Officials and employees of private schools or school systems where the pupil is enrolled or intends to enroll, subject to the rights of parents as provided in Section 49068 and in compliance with the requirements in Section 99.34 of Title 34 of the Code of Federal Regulations. This information shall be in addition to the pupil's permanent record transferred pursuant to Section 49068.

(G) (i) A contractor or consultant with a legitimate educational interest who has a formal written agreement or contract with the school district regarding the provision of outsourced institutional services or functions by the contractor or consultant.

(ii) Notwithstanding the authorization in Section 99.31(a)(1)(i)(B) of Title 34 of the Code of Federal Regulations, a disclosure pursuant to this subparagraph shall not be permitted to a volunteer or other party.

(3) A person, persons, agency, or organization permitted access to pupil records pursuant to this section shall not permit access to any information obtained from those records by another person, persons, agency, or organization, except for allowable exceptions contained within the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) and state law, including this section, and implementing regulations, without the written consent of the pupil's parent. This paragraph shall not require prior parental consent when information obtained pursuant to this section is shared with other persons within the educational institution, agency, or organization obtaining access, so long as those persons have a legitimate educational interest in the information pursuant to Section 99.31(a)(1) of Title 34 of the Code of Federal Regulations.

(4) Notwithstanding any other law, a school district, including a county office of education or county superintendent of schools, may participate in an interagency data information system that permits access to a computerized database system within and between governmental agencies or school districts as to information or records that are nonprivileged, and where release is authorized as to the requesting agency under state or federal law or regulation, if each of the following requirements is met:

(A) Each agency and school district shall develop security procedures or devices by which unauthorized personnel cannot access data contained in the system.

(B) Each agency and school district shall develop procedures or devices to secure privileged or confidential data from unauthorized disclosure.

(C) Each school district shall comply with the access log requirements of Section 49064.

(D) The right of access granted shall not include the right to add, delete, or alter data without the written permission of the agency holding the data.

(E) An agency or school district shall not make public or otherwise release information on an individual contained in the database if the information is protected from disclosure or release as to the requesting agency by state or federal law or regulation.

(b) The officials and authorities to whom pupil records are disclosed pursuant to subdivision (e) of Section 48902 and subparagraph (I) of paragraph (1) of subdivision (a) shall certify in writing to the disclosing school district that the information shall not be disclosed to another party, except as provided under the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) and state law, without the prior written consent of the parent of the pupil or the person identified as the holder of the pupil's educational rights.

(c) (1) A person or party who is not permitted access to pupil records pursuant to subdivision (a) or (b) may request access to pupil records as provided for in paragraph (2).

(2) A local educational agency or other person or party who has received pupil records, or information from pupil records, may release the records or information to a person or party identified in paragraph (1) without the consent of the pupil's parent or guardian pursuant to Section 99.31(b) of Title 34 of the Code of Federal Regulations, if the records or information are deidentified, which requires the removal of all personally identifiable information, if the disclosing local educational agency or other person or party has made a reasonable determination that a pupil's identity is not personally identifiable, whether through single or multiple releases, and has taken into account other pertinent reasonably available information.

SEC. 4. Section 361 of the Welfare and Institutions Code is amended to read:

361. (a) (1) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations. Any 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. The limitations may not exceed those necessary to protect the child. If the court specifically limits the right of the parent or guardian to make educational or developmental services decisions for the child, or, for the nonminor dependent, if the court finds the appointment of a developmental services decisionmaker to be in the best interests of the nonminor dependent, the court shall at the same time appoint a responsible adult to make educational or developmental services decisions for the child or nonminor dependent until one of the following occurs:

(A) The minor reaches 18 years of age, unless the child or nonminor dependent chooses not to make educational or developmental services decisions for himself or herself, or is deemed by the court to be incompetent.

(B) Another responsible adult is appointed to make educational or developmental services decisions for the minor pursuant to this section.

(C) The right of the parent or guardian to make educational or developmental services decisions for the minor is fully restored.

(D) A successor guardian or conservator is appointed.

(E) The child is placed into a planned permanent living arrangement pursuant to paragraph (5) of subdivision (g) of Section 366.21, Section 366.22, Section 366.26, or subdivision (i) of Section 366.3, at which time, for educational decisionmaking, the foster parent, relative caretaker, or nonrelative extended family member as defined in Section 362.7, has the right to represent the child in educational matters pursuant to Section 56055 of the Education Code, and for decisions relating to developmental services, unless the court specifies otherwise, the foster parent, relative caregiver, or nonrelative extended family member of the planned permanent living arrangement has the right to represent the child or nonminor dependent in matters related to developmental services.

(2) An individual who would have a conflict of interest in representing the child or nonminor dependent shall not be appointed to make educational or developmental services decisions. For purposes of this section, "an individual who would have a conflict of interest" means a person having any interests that might restrict or bias his or her ability to make educational or developmental services decisions, including, but not limited to, those conflicts of interest prohibited by Section 1126 of the Government Code, and the receipt of compensation or attorney's fees for the provision of services pursuant to this section. A foster parent shall not be deemed to have a conflict of interest solely because he or she receives compensation for the provision of services pursuant to this section.

(3) Regardless of the person or persons currently holding the right to make educational decisions for the child, a foster parent, relative caregiver, nonrelated extended family member, or resource family shall retain rights and obligations regarding accessing and maintaining health and education information pursuant to Sections 49069.3 and 49076 of the Education Code and Section 16010 of this code.

(4) (A) If the court limits the parent's educational rights pursuant to 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 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.

(B) If the court cannot identify a responsible adult who is known to the child and available to make educational decisions for the child, subparagraphs (A) to (E), inclusive, of paragraph (1) do not apply, and the child has either been referred to the local educational agency for special education and related services, or has a valid individualized education program, the court shall refer the child to the local educational agency for appointment of a surrogate parent pursuant to Section 7579.5 of the Government Code.

(C) If the court cannot identify a responsible adult to make educational decisions for the child, the appointment of a surrogate parent as defined in subdivision (a) of Section 56050 of the Education Code is not warranted, and there is no foster parent to exercise the authority granted by Section 56055 of the Education Code, the court may, with the input of any interested person, make educational decisions for the child.

(5) (A) If the court appoints a developmental services decisionmaker pursuant to this section, he or she shall have the authority to access the child's or nonminor dependent's information and records pursuant to subdivision (u) of Section 4514 and subdivision (y) of Section 5328, and to act on the child's or nonminor dependent'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.

(B) If the court cannot identify a responsible adult to make developmental services decisions for the child or nonminor dependent, the court may, with the input of any interested person, make developmental services decisions for the child or nonminor dependent. If the child is receiving services from a regional center, the provision of any developmental services related to the court's decision must be consistent with the child's or nonminor dependent's individual program plan and pursuant to the provisions of the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)).

(6) All educational and school placement decisions shall seek to ensure that the child is in the least restrictive educational programs and has access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils. In all instances, educational and school placement decisions shall be based on the best interests of the child. If an educational representative or surrogate is appointed for the child, the representative or surrogate shall meet with the child, shall investigate the child's educational needs and whether those needs are being met, and shall, prior to each review hearing held under this article, provide information and recommendations concerning the child's educational needs to the child's social worker, make written recommendations to the court, or attend the hearing and participate in those portions of the hearing that concern the child's education.

(7) Nothing in this section in any way removes 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.

(b) (1) Subdivision (a) does not limit the ability of a parent to voluntarily relinquish his or her child to the State Department of Social Services, to a county adoption agency, or to a licensed private adoption agency at any time while the child is the subject of a petition to declare him or her, or is, a dependent child of the juvenile court, if the department, county adoption agency, or licensed private adoption agency is willing to accept the relinquishment.

(2) When accepting the relinquishment of a child described in paragraph (1), the department or a county adoption agency shall comply with Section 8700 of the Family Code and, within five court days of accepting the relinquishment, shall file written notice of that fact with the court and all parties to the case and their counsel.

(3) When accepting the relinquishment of a child described in paragraph (1), a licensed private adoption agency shall comply with Section 8700 of the Family Code and, within 10 court days of accepting the relinquishment, shall file or allow another party or that party's counsel to file with the court one original and five copies of a request to approve the relinquishment. The clerk of the court shall file the request under seal, subject to examination only by the parties and their counsel or by others upon court approval. If the request is accompanied by the written agreement of all parties, the court may issue an ex parte order approving

the relinquishment. Unless approved pursuant to that agreement, the court shall set the matter for hearing no later than 10 court days after filing, and shall provide notice of the hearing to all parties and their counsel, and to the licensed private adoption agency and its counsel. The licensed private adoption agency and any prospective adoptive parent or parents named in the relinquishment shall be permitted to attend the hearing and participate as parties regarding the strictly limited issue of whether the court should approve the relinquishment. The court shall issue an order approving or denying the relinquishment within 10 court days after the hearing.

(c) A dependent child shall not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following circumstances listed in paragraphs (1) to (5), inclusive, and, in an Indian child custody proceeding, paragraph (6):

(1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody. The fact that a minor has been adjudicated a dependent child of the court pursuant to subdivision (e) of Section 300 shall constitute prima facie evidence that the minor cannot be safely left in the physical custody of the parent or guardian with whom the minor resided at the time of injury. The court shall consider, as a reasonable means to protect the minor, each of the following:

(A) The option of removing an offending parent or guardian from the home.

(B) Allowing a nonoffending parent or guardian to retain physical custody as long as that parent or guardian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm.

(2) The parent or guardian of the minor is unwilling to have physical custody of the minor, and the parent or guardian has been notified that if the minor remains out of their physical custody for the period specified in Section 366.26, the minor may be declared permanently free from their custody and control.

(3) The minor is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward himself or herself or others, and there are no reasonable means by which the minor's emotional health may be protected without removing the minor from the physical custody of his or her parent or guardian.

(4) The minor or a sibling of the minor has been sexually abused, or is deemed to be at substantial risk of being sexually abused, by a parent, guardian, or member of his or her household, or other person known to his or her parent, and there are no reasonable means by which the minor can be protected from further sexual abuse or a substantial risk of sexual abuse without removing the minor from his or her parent or guardian, or the minor does not wish to return to his or her parent or guardian.

(5) The minor has been left without any provision for his or her support, or a parent who has been incarcerated or institutionalized cannot arrange for the care of the minor, or a relative or other adult custodian with whom the child has been left by the parent is unwilling or unable to provide care or support for the child and the whereabouts of the parent is unknown and reasonable efforts to locate him or her have been unsuccessful.

(6) In an Indian child custody proceeding, continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, and that finding is supported by testimony of a "qualified expert witness" as described in Section 224.6.

(A) Stipulation by the parent, Indian custodian, or the Indian child's tribe, or failure to object, may waive the requirement of producing evidence of the likelihood of serious damage only if the court is satisfied that the party has been fully advised of the requirements of the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), and has knowingly, intelligently, and voluntarily waived them.

(B) Failure to meet non-Indian family and child-rearing community standards, or the existence of other behavior or conditions that meet the removal standards of this section, will not support an order for placement in the absence of the finding in this paragraph.

(d) The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home or, if the minor is removed for one of the reasons stated in paragraph (5) of subdivision (c), whether it was reasonable under the circumstances not to make any of those efforts, or, in the case of an Indian child custody proceeding, whether active efforts as required in Section 361.7 were made and that these efforts have proved unsuccessful. The court shall state the facts on which the decision to remove the minor is based.

(e) The court shall make all of the findings required by subdivision (a) of Section 366 in either of the following circumstances:

(1) The minor has been taken from the custody of his or her parent or guardian and has been living in an out-of-home placement pursuant to Section 319.

(2) The minor has been living in a voluntary out-of-home placement pursuant to Section 16507.4.

SEC. 4.5. Section 361 of the Welfare and Institutions Code is amended to read:

361. (a) (1) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations. Any 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. The limitations may not exceed those necessary to protect the child. If the court specifically limits the right of the parent or guardian to make educational or developmental services decisions for the child, or, for the nonminor dependent, if the court finds the appointment of a developmental services decisionmaker to be in the best interests of the nonminor dependent, the court shall at the same time appoint a responsible adult to make educational or developmental services decisions for the child or nonminor dependent until one of the following occurs:

(A) The minor reaches 18 years of age, unless the child or nonminor dependent chooses not to make educational or developmental services decisions for himself or herself, or is deemed by the court to be incompetent.

(B) Another responsible adult is appointed to make educational or developmental services decisions for the minor pursuant to this section.

(C) The right of the parent or guardian to make educational or developmental services decisions for the minor is fully restored.

(D) A successor guardian or conservator is appointed.

(E) The child is placed into a planned permanent living arrangement pursuant to paragraph (5) of subdivision (g) of Section 366.21, Section 366.22, Section 366.26, or subdivision (i) of Section 366.3, at which time, for educational decisionmaking, the foster parent, relative caretaker, or nonrelative extended family member as defined in Section 362.7, has the right to represent the child in educational matters pursuant to Section 56055 of the Education Code, and for decisions relating to developmental services, unless the court specifies otherwise, the foster parent, relative caregiver, or nonrelative extended family member of the planned permanent living arrangement has the right to represent the child or nonminor dependent in matters related to developmental services.

(2) An individual who would have a conflict of interest in representing the child or nonminor dependent shall not be appointed to make educational or developmental services decisions. For purposes of this section, "an individual who would have a conflict of interest" means a person having any interests that might restrict or bias his or her ability to make educational or developmental services decisions, including, but not limited to, those conflicts of interest prohibited by Section 1126 of the Government Code, and the receipt of compensation or attorney's fees for the provision of services pursuant to this section. A foster parent shall not be deemed to have a conflict of interest solely because he or she receives compensation for the provision of services pursuant to this section.

(3) Regardless of the person or persons currently holding the right to make educational decisions for the child, a foster parent, relative caregiver, nonrelated extended family member, or resource family shall retain rights and obligations regarding accessing and maintaining health and education information pursuant to Sections 49069.3 and 49076 of the Education Code and Section 16010 of this code.

(4) (A) If the court limits the parent's educational rights pursuant to 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 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.

(B) If the court cannot identify a responsible adult who is known to the child and available to make educational decisions for the child, subparagraphs (A) to (E), inclusive, of paragraph (1) do not apply, and the child has either been referred to the local educational agency for special education and related services, or has a valid individualized education program, the court shall refer the child to the local educational agency for appointment of a surrogate parent pursuant to Section 7579.5 of the Government Code.

(C) If the court cannot identify a responsible adult to make educational decisions for the child, the appointment of a surrogate parent as defined in subdivision (a) of Section 56050 of the Education Code is not warranted, and there is no foster parent to exercise the authority granted by Section 56055 of the Education Code, the court may, with the input of any interested person, make educational decisions for the child.

(5) (A) If the court appoints a developmental services decisionmaker pursuant to this section, he or she shall have the authority to access the child's or nonminor dependent's information and records pursuant to subdivision (u) of Section 4514 and

subdivision (y) of Section 5328, and to act on the child's or nonminor dependent'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.

(B) If the court cannot identify a responsible adult to make developmental services decisions for the child or nonminor dependent, the court may, with the input of any interested person, make developmental services decisions for the child or nonminor dependent. If the child is receiving services from a regional center, the provision of any developmental services related to the court's decision must be consistent with the child's or nonminor dependent's individual program plan and pursuant to the provisions of the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)).

(6) All educational and school placement decisions shall seek to ensure that the child is in the least restrictive educational programs and has access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils. In all instances, educational and school placement decisions shall be based on the best interests of the child. If an educational representative or surrogate is appointed for the child, the representative or surrogate shall meet with the child, shall investigate the child's educational needs and whether those needs are being met, and shall, prior to each review hearing held under this article, provide information and recommendations concerning the child's educational needs to the child's social worker, make written recommendations to the court, or attend the hearing and participate in those portions of the hearing that concern the child's education.

(7) Nothing in this section in any way removes 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.

(b) (1) Subdivision (a) does not limit the ability of a parent to voluntarily relinquish his or her child to the State Department of Social Services, to a county adoption agency, or to a licensed private adoption agency at any time while the child is the subject of a petition to declare him or her, or is, a dependent child of the juvenile court, if the department, county adoption agency, or licensed private adoption agency is willing to accept the relinquishment.

(2) When accepting the relinquishment of a child described in paragraph (1), the department or a county adoption agency shall comply with Section 8700 of the Family Code and, within five court days of accepting the relinquishment, shall file written notice of that fact with the court and all parties to the case and their counsel.

(3) When accepting the relinquishment of a child described in paragraph (1), a licensed private adoption agency shall comply with Section 8700 of the Family Code and, within 10 court days of accepting the relinquishment, shall file or allow another party or that party's counsel to file with the court one original and five copies of a request to approve the relinquishment. The clerk of the court shall file the request under seal, subject to examination only by the parties and their counsel or by others upon court approval. If the request is accompanied by the written agreement of all parties, the court may issue an ex parte order approving the relinquishment. Unless approved pursuant to that agreement, the court shall set the matter for hearing no later than 10 court days after filing, and shall provide notice of the hearing to all parties and their counsel, and to the licensed private adoption agency and its counsel. The licensed private adoption agency and any prospective adoptive parent or parents named in the relinquishment shall be permitted to attend the hearing and participate as parties regarding the strictly limited issue of whether the court should approve the relinquishment. The court shall issue an order approving or denying the relinquishment within 10 court days after the hearing.

(c) A dependent child shall not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following circumstances listed in paragraphs (1) to (5), inclusive, and, in an Indian child custody proceeding, paragraph (6):

(1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody. The fact that a minor has been adjudicated a dependent child of the court pursuant to subdivision (e) of Section 300 shall constitute prima facie evidence that the minor cannot be safely left in the physical custody of the parent or guardian with whom the minor resided at the time of injury. The court shall consider, as a reasonable means to protect the minor, each of the following:

(A) The option of removing an offending parent or guardian from the home.

(B) Allowing a nonoffending parent or guardian to retain physical custody as long as that parent or guardian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm.

(2) The parent or guardian of the minor is unwilling to have physical custody of the minor, and the parent or guardian has been notified that if the minor remains out of their physical custody for the period specified in Section 366.26, the minor may be declared permanently free from their custody and control.

(3) The minor is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward himself or herself or others, and there are no reasonable means by which the minor's emotional health may be protected without removing the minor from the physical custody of his or her parent or guardian.

(4) The minor or a sibling of the minor has been sexually abused, or is deemed to be at substantial risk of being sexually abused, by a parent, guardian, or member of his or her household, or other person known to his or her parent, and there are no reasonable means by which the minor can be protected from further sexual abuse or a substantial risk of sexual abuse without removing the minor from his or her parent or guardian, or the minor does not wish to return to his or her parent or guardian.

(5) The minor has been left without any provision for his or her support, or a parent who has been incarcerated or institutionalized cannot arrange for the care of the minor, or a relative or other adult custodian with whom the child has been left by the parent is unwilling or unable to provide care or support for the child and the whereabouts of the parent is unknown and reasonable efforts to locate him or her have been unsuccessful.

(6) In an Indian child custody proceeding, continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, and that finding is supported by testimony of a "qualified expert witness" as described in Section 224.6.

(A) For purposes of this paragraph, stipulation by the parent, Indian custodian, or the Indian child's tribe, or failure to object, may waive the requirement of producing evidence of the likelihood of serious damage only if the court is satisfied that the party has been fully advised of the requirements of the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), and has knowingly, intelligently, and voluntarily waived them.

(B) For purposes of this paragraph, failure to meet non-Indian family and child-rearing community standards, or the existence of other behavior or conditions that meet the removal standards of this section, will not support an order for placement in the absence of the finding in this paragraph.

(d) A dependent child shall not be taken from the physical custody of his or her parents with whom the child did not reside at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence that there would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child for the parent to live with the child or otherwise exercise the parent's right to physical custody, and there are no reasonable means by which the child's physical and emotional health can be protected without removing the child from the child's parent's physical custody.

(e) The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home or, if the minor is removed for one of the reasons stated in paragraph (5) of subdivision (c), whether it was reasonable under the circumstances not to make any of those efforts, or, in the case of an Indian child custody proceeding, whether active efforts as required in Section 361.7 were made and that these efforts have proved unsuccessful. The court shall state the facts on which the decision to remove the minor is based.

(f) The court shall make all of the findings required by subdivision (a) of Section 366 in either of the following circumstances:

(1) The minor has been taken from the custody of his or her parent or guardian and has been living in an out-of-home placement pursuant to Section 319.

(2) The minor has been living in a voluntary out-of-home placement pursuant to Section 16507.4.

SEC. 5. Section 361.5 of the Welfare and Institutions Code is amended to read:

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

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

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

(B) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under three years of age, court-ordered services shall be provided for a period of 6 months from the dispositional hearing as provided in subdivision (e) of Section 366.21, but no longer than 12 months from the date the child entered foster care, as provided in Section 361.49, unless the child is returned to the home of the parent or guardian.

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

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

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

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

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

(3) (A) Notwithstanding subparagraphs (A), (B), and (C) of paragraph (1), court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period or that reasonable services have not been provided to the parent or guardian. In determining whether court-ordered services may be extended, the court shall consider the special circumstances of an incarcerated or institutionalized parent or parents, parent or parents court-ordered to a residential substance abuse treatment program, or a parent who has been arrested and issued an immigration hold, detained by the United States Department of Homeland Security, or deported to his or her country of origin, including, but not limited to, barriers to the parent's or guardian's access to services and ability to maintain contact with his or her child. The court shall also consider, among other factors, good faith efforts that the parent or guardian has made to maintain contact with the child. If the court extends the time period, the court shall specify the factual basis for its conclusion that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period. The court also shall make findings pursuant to subdivision (a) of Section 366 and subdivision (e) of Section 358.1.

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

(C) In cases where the child was under three years of age on the date of the initial removal from the physical custody of his or her parent or guardian or is a member of a sibling group as described in subparagraph (C) of paragraph (1), the court shall inform the parent or guardian that the failure of the parent or guardian to participate regularly in any court-ordered treatment programs or to cooperate or avail himself or herself of services provided as part of the child welfare services case

plan may result in a termination of efforts to reunify the family after six months. The court shall inform the parent or guardian of the factors used in subdivision (e) of Section 366.21 to determine whether to limit services to six months for some or all members of a sibling group as described in subparagraph (C) of paragraph (1).

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

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

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

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

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

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

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

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

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

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

(B) A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the child or a sibling or half sibling of the child, or between the child or a sibling or half sibling of the child and another person or animal with the actual or implied consent of the parent or guardian; or the penetration or manipulation of the child's, sibling's, or half sibling's genital organs or rectum by any animate or inanimate object for the sexual gratification of the parent or guardian, or for the sexual gratification of another person with the actual or implied consent of the parent or guardian.

(C) A finding of the infliction of severe physical harm, for the purposes of this subdivision, may be based on, but is not limited to, deliberate and serious injury inflicted to or on a child's body or the body of a sibling or half sibling of the child by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian;

deliberate and torturous confinement of the child, sibling, or half sibling in a closed space; or any other torturous act or omission that would be reasonably understood to cause serious emotional damage.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) In addition, the court shall not order reunification in any situation described in paragraph (5) of subdivision (b) unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

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

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

(e) (1) If the parent or guardian is incarcerated, institutionalized, or detained by the United States Department of Homeland Security, or has been deported to his or her country of origin, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the length and nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, the likelihood of the parent's discharge from incarceration, institutionalization, or detention within the reunification time limitations described in subdivision (a), and any other appropriate factors. In determining the content of reasonable services, the court shall consider the particular barriers to an incarcerated, institutionalized, detained, or deported parent's access to those court-mandated services and ability to maintain contact with his or her child, and shall document this information in the child's case plan. Reunification services are subject to the applicable time limitations imposed in subdivision (a). Services may include, but shall not be limited to, all of the following:

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

(B) Transportation services, when appropriate.

(C) Visitation services, when appropriate.

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

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

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

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the

notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the child pursuant to Section 2625 of the Penal Code. The county welfare department shall utilize the prisoner locator system developed by the Department of Corrections and Rehabilitation to facilitate timely and effective notice of hearings for incarcerated parents.

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

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

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

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

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

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

(ii) The evaluation pursuant to clause (i) shall include, but is not limited to, providing a copy of the complete health and education summary as required under Section 16010, including the name and contact information of the person or persons currently holding the right to make educational decisions for the child.

(iii) In instances where it is determined that disclosure pursuant to clause (ii) of the contact information of the person or persons currently holding the right to make educational decisions for the child poses a threat to the health and safety of that individual or those individuals, that contact information shall be redacted or withheld from the evaluation.

(D) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, including a prospective tribal customary adoptive parent, particularly the caretaker, to include a social history, including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3 and in Section 361.4. As used in this subparagraph, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, as provided for in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, "relative" as used in this section has the same meaning as "relative" as defined in subdivision (c) of Section 11391.

(E) The relationship of the child to any identified prospective adoptive parent or guardian, including a prospective tribal customary parent, the duration and character of the relationship, the degree of attachment of the child to the prospective relative guardian or adoptive parent, the relative's or adoptive parent's strong commitment to caring permanently for the child, the motivation for seeking adoption or guardianship, a statement from the child concerning placement and the adoption or guardianship, and whether the child over 12 years of age has been consulted about the proposed relative

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 6. Section 366.1 of the Welfare and Institutions Code is amended to read:

366.1. Each supplemental report required to be filed pursuant to Section 366 shall include, but not be limited to, a factual discussion of each of the following subjects:

(a) Whether the county welfare department social worker has considered either of the following:

(1) Child protective services, as defined in Chapter 5 (commencing with Section 16500) of Part 4 of Division 9, as a possible solution to the problems at hand, and has offered those services to qualified parents, if appropriate under the circumstances.

(2) Whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent.

(b) What plan, if any, for the return and maintenance of the child in a safe home is recommended to the court by the county welfare department social worker.

(c) Whether the subject child appears to be a person who is eligible to be considered for further court action to free the child from parental custody and control.

(d) What actions, if any, have been taken by the parent to correct the problems that caused the child to be made a dependent child of the court.

(e) If the parent or guardian is unwilling or unable to participate in making an educational decision for his or her child, or if other circumstances exist that compromise the ability of the parent or guardian to make educational decisions for the child, the county welfare department or social worker shall consider whether the right of the parent or guardian to make educational decisions for the child should be limited. If the supplemental report makes that recommendation, the report shall identify whether there is a responsible adult available to make educational decisions for the child pursuant to Section 361.

(f) (1) The health and education of the minor, including a copy of the complete health and education summary as required under Section 16010, including the name and contact information of the person or persons currently holding the right to make educational decisions for the child.

(2) In instances where it is determined that disclosure pursuant to paragraph (1) of the contact information of the person or persons currently holding the right to make educational decisions for the child poses a threat to the health and safety of that individual or those individuals, that contact information shall be redacted or withheld from the health and education summary within the supplemental report described in this section.

(g) (1) Whether the child has any siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

(A) The nature of the relationship between the child and his or her siblings.

(B) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

(C) If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate.

(D) If the siblings are not placed together, all of the following:

(i) The frequency and nature of the visits between the siblings.

(ii) If there are visits between the siblings, whether the visits are supervised or unsupervised. If the visits are supervised, a discussion of the reasons why the visits are supervised, and what needs to be accomplished in order for the visits to be unsupervised.

(iii) If there are visits between the siblings, a description of the location and length of the visits.

(iv) Any plan to increase visitation between the siblings.

(E) The impact of the sibling relationships on the child's placement and planning for legal permanence.

(2) The factual discussion shall include a discussion of indicators of the nature of the child's sibling relationships, including, but not limited to, whether the siblings were raised together in the same home, whether the siblings have shared significant common experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interests.

(h) Whether a child who is 10 years of age or older and who has been in an out-of-home placement for six months or longer has relationships with individuals other than the child's siblings that are important to the child, consistent with the child's best interests, and actions taken to maintain those relationships. The social worker shall ask every child who is 10 years of age or older and who has been in an out-of-home placement for six months or longer to identify any individuals other than the child's siblings who are important to the child, consistent with the child's best interest. The social worker may ask any other child to provide that information, as appropriate.

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

SEC. 7. Section 366.21 of the Welfare and Institutions Code is amended to read:

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

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

(c) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, including, but not limited to, efforts to maintain relationships between a child who is 10 years of age or older and has been in out-of-home placement for six months or longer and individuals who are important to the child, consistent with the child's best interests; the progress made; and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or legal guardian; and shall make his or her recommendation for disposition. If the child is a member of a sibling group described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, the report and recommendation may also take into account those factors described in subdivision (e) relating to the child's sibling group. If the recommendation is not to return the child to a parent or legal guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or legal guardian, counsel for the child, and any court-appointed child advocate with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or legal guardian, the social worker shall, at least 10 calendar days prior to the hearing, provide a summary of his or her recommendation for disposition to any foster parents, relative caregivers, and certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, community care facility, or foster family agency having the physical custody of the child. The social worker shall include a copy of the Judicial Council Caregiver Information Form (JV-290) with the summary of recommendations to the child's foster parents, relative caregivers, or foster parents approved for adoption, in the caregiver's primary language when available, along with information on how to file the form with the court.

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

(e) (1) At the review hearing held 6 months after the initial dispositional hearing, but no later than 12 months after the date the child entered foster care as determined in Section 361.49, whichever occurs earlier, after considering the admissible and relevant evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. At the hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal to the extent that the criminal record is substantially related to the welfare of the child or the parent's or guardian's ability to exercise custody and control regarding his or her child, provided the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The court shall also consider whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent. The fact that the parent is enrolled in a certified substance abuse treatment facility shall not be, for that reason alone, prima facie evidence of detriment. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, taking into account the particular barriers to a minor parent or a nonminor dependent parent, or an incarcerated, institutionalized,

detained, or deported parent's or legal guardian's access to those court-mandated services and ability to maintain contact with his or her child.

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

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

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

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

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

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

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

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

(A) At the permanency hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal to the extent that the criminal record is substantially related to the welfare of the child or the parent's or legal guardian's ability to exercise custody and control regarding his or her child, provided that the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The court shall also determine whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian.

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

(C) In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5, shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, taking into account the particular barriers to a minor parent or a nonminor dependent parent, or an incarcerated, institutionalized, detained, or deported parent's or legal guardian's access to those court-mandated services and ability to maintain contact with his or her child, and shall make appropriate findings pursuant to subdivision (a) of Section 366.

(D) For each youth 16 years of age and older, the court shall also determine whether services have been made available to assist him or her in making the transition from foster care to successful adulthood.

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

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

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

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

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

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

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

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

(2) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian, if the parent has been arrested and issued an immigration hold, detained by the United States Department of Homeland Security, or deported to his or her country of origin, and the court determines either that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian.

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

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

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

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

(4) Order that a hearing be held within 120 days, pursuant to Section 366.26, but only if the court does not continue the case to the permanency planning review hearing and there is clear and convincing evidence that reasonable services have been provided or offered to the parents or legal guardians. On and after January 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered if the child is a nonminor dependent, unless the nonminor dependent is an Indian child and tribal customary adoption is recommended as the permanent plan.

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

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

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

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

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child pending the hearing unless it finds that visitation would be detrimental to the child. The court shall make any other appropriate orders to enable the child to maintain relationships with individuals, other than the child's siblings, who are important to the child, consistent with the child's best interests. When the court orders a termination of reunification services to the parent or legal guardian, it shall also order that the child's caregiver receive the child's birth certificate in accordance with Sections 16010.4

and 16010.5. Additionally, when the court orders a termination of reunification services to the parent or legal guardian, it shall order, when appropriate, that a child who is 16 years of age or older receive his or her birth certificate.

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

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

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

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

(ii) The evaluation pursuant to clause (i) shall include, but is not limited to, providing a copy of the complete health and education summary as required under Section 16010, including the name and contact information of the person or persons currently holding the right to make educational decisions for the child.

(iii) In instances where it is determined that disclosure pursuant to clause (ii) of the contact information of the person or persons currently holding the right to make educational decisions for the child poses a threat to the health and safety of that individual or those individuals, that contact information shall be redacted or withheld from the evaluation.

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

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

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

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

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

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

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

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

(B) Regardless of his or her immigration status, a relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, as provided for in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, the relative caregiver shall be informed about the terms and conditions

of the negotiated agreement pursuant to Section 11387 and shall agree to its execution prior to the hearing held pursuant to Section 366.26. A copy of the executed negotiated agreement shall be attached to the assessment.

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

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

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

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

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

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

SEC. 7.5. Section 366.21 of the Welfare and Institutions Code is amended to read:

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

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

(c) At least 10 calendar days before the hearing, the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, including, but not limited to, efforts to maintain relationships between a child who is 10 years of age or older and has been in out-of-home placement for six months or longer and individuals who are important to the child, consistent with the child's best interests; the progress made; and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or legal guardian; and shall make his or her recommendation for disposition. If the child is a member of a sibling group described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, the report and recommendation may also take into account those factors described in subdivision (e) relating to the child's sibling group. If the recommendation is not to return the child to a parent or legal guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or legal guardian, counsel for the child, and any court-appointed child advocate with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days before the hearing. The report may be served pursuant to Section 212.5. In the case of a child removed from the physical custody of his or her parent or legal guardian, the social worker shall, at least 10 calendar days before the hearing, provide a summary of his or her recommendation for disposition to any foster parents, relative caregivers, and certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, community care facility, or foster family agency having the physical custody of the child. The social worker shall include a copy of the Judicial Council Caregiver Information Form (JV-290) with the summary of his or her recommendation to the child's foster parents, relative caregivers, or foster parents approved for adoption, in the caregiver's primary language when available, along with information on how to file the form with the court. The form and summary of the recommendation may be served electronically pursuant to Section 212.5.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or a foster family agency that may result in the return of the child to the physical custody of his or her parent or legal guardian, or in adoption or the creation of a legal guardianship, or in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption, the facility or agency shall file with the court a report, or a Judicial Council Caregiver Information Form (JV-290), containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, the foster parent, relative caregiver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency,

may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) (1) At the review hearing held 6 months after the initial dispositional hearing, but no later than 12 months after the date the child entered foster care as determined in Section 361.49, whichever occurs earlier, after considering the admissible and relevant evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. At the hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal to the extent that the criminal record is substantially related to the welfare of the child or the parent's or guardian's ability to exercise custody and control regarding his or her child, provided the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The court shall also consider whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent. The fact that the parent is enrolled in a certified substance abuse treatment facility shall not be, for that reason alone, prima facie evidence of detriment. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, taking into account the particular barriers to a minor parent or a nonminor dependent parent, or an incarcerated, institutionalized, detained, or deported parent's or legal guardian's access to those court-mandated services and ability to maintain contact with his or her child.

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

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

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

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

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

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

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

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

(A) At the permanency hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal to the extent that the criminal record is substantially related to the welfare of the child or the parent's or legal guardian's ability to exercise custody and control regarding his or her child, provided that the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The court shall also determine whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian.

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

(C) In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5, shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, taking into account the particular barriers to a minor parent or a nonminor dependent parent, or an incarcerated, institutionalized, detained, or deported parent's or legal guardian's access to those court-mandated services and ability to maintain contact with his or her child, and shall make appropriate findings pursuant to subdivision (a) of Section 366.

(D) For each youth 16 years of age and older, the court shall also determine whether services have been made available to assist him or her in making the transition from foster care to successful adulthood.

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

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

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable

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

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

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

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

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

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

(2) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian, if the parent has been arrested and issued an immigration hold, detained by the United States Department of Homeland Security, or deported to his or her country of origin, and the court determines either that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian.

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

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

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

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

(4) Order that a hearing be held within 120 days, pursuant to Section 366.26, but only if the court does not continue the case to the permanency planning review hearing and there is clear and convincing evidence that reasonable services have been provided or offered to the parents or legal guardians. On and after January 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered if the child is a nonminor dependent, unless the nonminor dependent is an Indian child and tribal customary adoption is recommended as the permanent plan.

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

(A) The court shall make factual findings identifying any barriers to achieving the permanent plan as of the hearing date. When the child is under 16 years of age, the court shall order a permanent plan of return home, adoption, tribal customary adoption in the case of an Indian child, legal guardianship, or placement with a fit and willing relative, as appropriate. When

the child is 16 years of age or older, or is a nonminor dependent, and no other permanent plan is appropriate at the time of the hearing, the court may order another planned permanent living arrangement, as described in paragraph (2) of subdivision (i) of Section 16501.

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

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

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

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

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

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

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

(ii) The evaluation pursuant to clause (i) shall include, but is not limited to, providing a copy of the complete health and education summary as required under Section 16010, including the name and contact information of the person or persons currently holding the right to make educational decisions for the child.

(iii) In instances where it is determined that disclosure pursuant to clause (ii) of the contact information of the person or persons currently holding the right to make educational decisions for the child poses a threat to the health and safety of that individual or those individuals, that contact information shall be redacted or withheld from the evaluation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 8. Section 366.22 of the Welfare and Institutions Code is amended to read:

366.22. (a) (1) When a case has been continued pursuant to paragraph (1) or (2) of subdivision (g) of Section 366.21, the permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian. After considering the admissible and relevant evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. At the permanency review hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal, to the extent that the criminal record is substantially related to the welfare of the child or the parent's or legal guardian's ability to exercise custody and control regarding his or her child, provided that the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The court shall also consider whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent. The fact that the parent is enrolled in a certified substance abuse treatment facility shall not be, for that reason alone, prima facie evidence of detriment. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and

recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, taking into account the particular barriers of a minor parent or a nonminor dependent parent, or an incarcerated or institutionalized parent's or legal guardian's access to those court-mandated services and ability to maintain contact with his or her child; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

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

(3) Unless the conditions in subdivision (b) are met and the child is not returned to a parent or legal guardian at the permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, or, in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption, guardianship, or continued placement in foster care is the most appropriate plan for the child. On and after January 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered if the child is a nonminor dependent, unless the nonminor dependent is an Indian child, and tribal customary adoption is recommended as the permanent plan. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, that there is a compelling reason, as described in paragraph (5) of subdivision (g) of Section 366.21, for determining that a hearing held under Section 366.26 is not in the best interests of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship as of the hearing date, the court may, only under these circumstances, order that the child remain in foster care with a permanent plan of return home, adoption, tribal customary adoption in the case of an Indian child, legal guardianship, or placement with a fit and willing relative, as appropriate. If the child is 16 years of age or older or is a nonminor dependent, and no other permanent plan is appropriate at the time of the hearing, the court may order another planned permanent living arrangement, as described in paragraph (2) of subdivision (i) of Section 16501. The court shall make factual findings identifying any barriers to achieving the permanent plan as of the hearing date. On and after January 1, 2012, the nonminor dependent's legal status as an adult is in and of itself a compelling reason not to hold a hearing pursuant to Section 366.26. The court may order that a nonminor dependent who otherwise is eligible pursuant to Section 11403 remain in a planned, permanent living arrangement. If the court orders that a child who is 10 years of age or older remain in foster care, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained. The hearing shall be held no later than 120 days from the date of the permanency review hearing. The court shall also order termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have been offered or provided to the parent or legal guardian. For purposes of this subdivision, evidence of any of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

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

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

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

(b) If the child is not returned to a parent or legal guardian at the permanency review hearing and the court determines by clear and convincing evidence that the best interests of the child would be met by the provision of additional reunification services to a parent or legal guardian who is making significant and consistent progress in a court-ordered residential substance abuse treatment program, a parent who was either a minor parent or a nonminor dependent parent at the time of the initial hearing making significant and consistent progress in establishing a safe home for the child's return, or a parent recently discharged from incarceration, institutionalization, or the custody of the United States Department of Homeland Security and making significant and consistent progress in establishing a safe home for the child's return, the court may continue the case for up to six months for a subsequent permanency review hearing, provided that the hearing shall occur within 24 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to

the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

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

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

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

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

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

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

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

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

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

(ii) The evaluation pursuant to clause (i) shall include, but is not limited to, providing a copy of the complete health and education summary as required under Section 16010, including the name and contact information of the person or persons currently holding the right to make educational decisions for the child.

(iii) In instances where it is determined that disclosure pursuant to clause (ii) of the contact information of the person or persons currently holding the right to make educational decisions for the child poses a threat to the health and safety of that individual or those individuals, that contact information shall be redacted or withheld from the evaluation.

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

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

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

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

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

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

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

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

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

(e) 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 those persons even if the marriage was terminated by death or dissolution. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, as provided for in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, "relative" as used in this section has the same meaning as "relative" as defined in subdivision (c) of Section 11391.

SEC. 9. Section 16010 of the Welfare and Institutions Code is amended to read:

16010. (a) (1) When a child is placed in foster care, the case plan for each child recommended pursuant to Section 358.1 shall include a summary of the health and education information or records, including mental health information or records, of the child. The summary may be maintained in the form of a health and education passport, or a comparable format designed by the child protective agency. The health and education summary shall include, but not be limited to, the names and addresses of the child's health, dental, and education providers; the child's grade level performance; the child's school record; assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement; the number of school transfers the child has already experienced; the child's educational progress, as demonstrated by factors, including, but not limited to, academic proficiency scores; credits earned toward graduation; a record of the child's immunizations and allergies; the child's known medical problems; the child's current medications, past health problems, and hospitalizations; a record of the child's relevant mental health history; the child's known mental health condition and medications; and any other relevant mental health, dental, health, and education information concerning the child determined to be appropriate by the Director of Social Services. The health and education summary may also include the name and contact information of the person or persons currently holding the right to make educational decisions for the child; the name and contact information for the educational liaison, as described in subdivision (c) of Section 48853.5 of the Education Code, of the child's local educational agency; and the contact information for the nearest foster youth services coordinating program. If any other law imposes more stringent information requirements, then that section shall prevail.

(2) In instances where it is determined that disclosure pursuant to paragraph (1) of the contact information of the person or persons currently holding the right to make educational decisions for the child poses a threat to the health and safety of that individual or those individuals, that contact information shall be redacted or withheld from the evaluation.

(b) Additionally, a court report or assessment required pursuant to subdivision (g) of Section 361.5, Section 366.1, subdivision (d) of Section 366.21, or subdivision (c) of Section 366.22 shall include a copy of the current health and education summary described in subdivision (a), including the name and contact information of the person or persons currently holding the right to make educational decisions for the child. With respect to a nonminor dependent, as described in subdivision (v) of Section 11400, a copy of the current health and education summary shall be included in the court report only if and when the nonminor dependent consents in writing to its inclusion.

(c) As soon as possible, but not later than 30 days after initial placement of a child into foster care, the child protective agency shall provide the caregiver with the child's current health and education summary as described in subdivision (a). For each subsequent placement of a child or nonminor dependent, the child protective agency shall provide the caregiver with a current

summary as described in subdivision (a) within 48 hours of the placement. With respect to a nonminor dependent, as described in subdivision (v) of Section 11400, the social worker or probation officer shall advise the young adult of the social worker's or probation officer's obligation to provide the health and education summary to the new caregiver and the court, and shall discuss with the youth the benefits and liabilities of sharing that information.

(d) (1) Notwithstanding Section 827 or any other law, the child protective agency may disclose any information described in this section to a prospective caregiver or caregivers prior to placement of a child if all of the following requirements are met:

(A) The child protective agency intends to place the child with the prospective caregiver or caregivers.

(B) The prospective caregiver or caregivers are willing to become the adoptive parent or parents of the child.

(C) The prospective caregiver or caregivers have an approved adoption assessment or home study, a foster family home license, certification by a licensed foster family agency, or approval pursuant to the requirements in Sections 361.3 and 361.4.

(2) In addition to the information required to be provided under this section, the child protective agency may disclose to the prospective caregiver specified in paragraph (1), placement history or underlying source documents that are provided to adoptive parents pursuant to subdivisions (a) and (b) of Section 8706 of the Family Code.

(e) The child's caregiver shall be responsible for reviewing and receiving pupil records pursuant to subdivision (a) of Section 49069.3 of the Education Code for the purposes specified in subdivision (b) of Section 49069.3 of the Education Code. The child's caregiver shall be responsible for obtaining and maintaining accurate and thorough information from physicians and educators for the child's summary as described in subdivision (a) during the time that the child is in the care of the caregiver. On each required visit, the child protective agency or its designee foster family agency shall inquire of the caregiver whether there is any new information that should be added to the child's summary as described in subdivision (a). The child protective agency shall update the summary with the information as appropriate, but not later than the next court date or within 48 hours of a change in placement. The child protective agency or its designee foster family agency shall take all necessary steps to assist the caregiver in obtaining relevant health and education information for the child's health and education summary as described in subdivision (a). These steps shall include, but are not limited to, obtaining educational information to share with caregivers, providing appropriate notation on documentation caregivers receive that confirms their status as approved caregivers and their right to access information, and explaining caregiver rights and responsibilities with regard to accessing educational information under Sections 49069.3 and 56055 of the Education Code. The caregiver of a nonminor dependent, as described in subdivision (v) of Section 11400, is not responsible for obtaining and maintaining the nonminor dependent's health and educational information, but may assist the nonminor dependent with any recordkeeping that the nonminor requests of the caregiver.

(f) At the initial hearing, the court shall direct each parent to provide to the child protective agency complete medical, dental, mental health, and educational information, and medical background, of the child and of the child's mother and the child's biological father if known. The Judicial Council shall create a form for the purpose of obtaining health and education information from the child's parents or guardians at the initial hearing. The court shall determine at the hearing held pursuant to Section 358 whether the medical, dental, mental health, and educational information has been provided to the child protective agency.

SEC. 10. Section 16010.4 of the Welfare and Institutions Code is amended to read:

16010.4. The Legislature finds and declares all of the following:

(a) Foster parents are one of the most important sources of information about the children in their care. Courts, lawyers, and social workers should have the benefit of caregivers' perceptions. Both federal and state law recognize the importance of foster parents' participation in juvenile court proceedings. Federal law requires that foster parents and other caregivers receive expanded opportunities for notice, the right to participate in dependency court review and permanency hearings, and the right to communicate concerns to the courts. State law similarly provides that caregivers may submit their concerns to courts in writing.

(b) It is in the children's best interests that their caregivers are privy to important information about them. This information is necessary to obtain social and health services for children, enroll children in school and extracurricular activities, and update social workers and court personnel about important developments affecting foster children.

(c) Most school districts and extracurricular organizations require proof of age before enrolling a child in their programs. Moreover, caregivers are required to obtain a medical appointment for their foster children within the first month of receiving the children into their homes. It would therefore be in both the children's and the caregivers' best interests to be provided with any available medical information, medications and instructions for use, and identifying information about the children upon receiving the children into their homes.

(d) Caregivers should have certain basic information in order to provide for the needs of children placed in their care, including all of the following:

(1) The name, mailing address, telephone number, facsimile number, and email address of the child's social worker and the social worker's supervisor.

(2) The name, mailing address, telephone number, facsimile number, and email address of the child's attorney and court-appointed special advocate (CASA), if any.

(3) The name, address, and department number of the juvenile court in which the child's juvenile court case is pending.

(4) The case number assigned to the child's juvenile court case.

(5) A copy of the child's birth certificate, passport, or other identifying documentation of age as may be required for enrollment in school and extracurricular activities.

(6) The child's State Department of Social Services identification number.

(7) The child's Medi-Cal identification number or group health insurance plan number.

(8) Medications or treatments in effect for the child at the time of placement, and instructions for their use.

(9) A plan outlining the child's needs and services, including information on family and sibling visitation.

(10) A copy of the health and education summary as required under Section 16010, with the name and current contact information of the person or persons currently holding the right to make educational decisions for the child.

(e) Caregivers should have knowledge of all of the following:

(1) Their right to receive notice of all review and permanency hearings concerning the child during the placement.

(2) Their right to attend those hearings or submit information they deem relevant to the court in writing.

(3) The "Caregiver Information Form" (Judicial Council Form JV-290), which allows the caregiver to provide information directly to the court.

(4) Information about and referrals to any existing services, including transportation, translation, training, forms, and other available services.

(5) The caregiver's obligation to cooperate with any reunification, concurrent, or permanent planning for the child.

(6) Any known siblings or half-siblings of the child, whether the child has, expects, or desires to have contact or visitation with any or all siblings, and how and when caregivers facilitate the contact or visitation.

(7) The importance of the caregiver's role in education, educational protections specific to foster youth under state and federal law, and the rights and obligations of caregivers to access and maintain educational and health information, including the requirements under Sections 49069.3, 49076, and 56055 of the Education Code and Section 16010 of this code.

(f) Courts should know, at the earliest possible date, the interest of the caretaker in providing legal permanency for the child.

SEC. 11. Section 16501.16 is added to the Welfare and Institutions Code, immediately following Section 16501.15, to read:

16501.16. In addition to the assurances required to be included in a case plan pursuant to paragraph (8) of subdivision (g) of Section 16501.1, a case plan shall include all of the following:

(a) (1) The health and education summary as required under Section 16010, including the name and contact information of the person or persons currently holding the right to make educational decisions for the child.

(2) In instances where it is determined that disclosure pursuant to paragraph (1) of the contact information of the person or persons currently holding the right to make educational decisions for the child poses a threat to the health and safety of that individual or those individuals, that contact information shall be redacted or withheld from the evaluation.

(b) The same factual discussion regarding educational decisions required in the study under subdivision (e) of Section 358.1.

(c) An assurance that the placement agency provided the health and education summary to the current caregiver, explained to the caregiver his or her rights and responsibilities under Sections 49069.3 and 56055 of the Education Code and Section 16010 of this code, and assisted any caregiver in obtaining the information needed for the health and education summary to comply with Section 16010.

SEC. 12. Section 16519.7 is added to the Welfare and Institutions Code, to read:

16519.7. The training requirements of subparagraph (l) of paragraph (13) of subdivision (g) of Section 16519.5 shall include training on the importance of the caregiver's role in education, educational protections specific to foster youth under state and federal law, and the rights and obligations of caregivers to access and maintain educational and health information, including the requirements under Sections 49069.3, 49076, and 56055 of the Education Code and Section 16010 of this code.

SEC. 13. (a) Section 4.5 of this bill incorporates amendments to Section 361 of the Welfare and Institutions Code proposed by both this bill and Assembly Bill 1332. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2018, (2) each bill amends Section 361 of the Welfare and Institutions Code, and (3) this bill is enacted after Assembly Bill 1332, in which case Section 4 of this bill shall not become operative.

(b) Section 7.5 of this bill incorporates amendments to Section 366.21 of the Welfare and Institutions Code proposed by both this bill and Assembly Bill 976. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2018, (2) each bill amends Section 366.21 of the Welfare and Institutions Code, and (3) this bill is enacted after Assembly Bill 976, in which case Section 7 of this bill shall not become operative.

SEC. 14. To the extent that this act has an overall effect of increasing certain costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation within the meaning of Section 36 of Article XIII of the California Constitution, it shall apply to local agencies only to the extent that the state provides annual funding for the cost increase. Any new program or higher level of service provided by a local agency pursuant to this act above the level for which funding has been provided shall not require a subvention of funds by the state or otherwise be subject to Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.