

AMENDED IN ASSEMBLY APRIL 5, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2872

Introduced by Assembly Member Patterson

February 19, 2016

An act to amend ~~Sections 7660.5, 7662, 7666, 7667, 8619, and Section 9001 of the Health and Safety Family Code, and to amend Sections 305.6, 366.21, 305.6 and 827 of the Welfare and Institutions Code, relating to children.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2872, as amended, Patterson. Children.

~~(1) Under existing law, a man is conclusively presumed to be the father of a child if he was married to and cohabiting with the child's mother, except as specified. Existing law authorizes a presumed father to waive the right to notice of any adoption proceedings by executing a form developed by the State Department of Social Services before an authorized representative of the department, among others.~~

~~This bill would, among other things, additionally authorize a presumed father to deny paternity by executing a form developed by the department and before an authorized representative of the department, among others.~~

~~(2) Existing law requires notice of adoption proceedings to be given to every person identified as the biological father or a possible biological father at least 10 days before the date of the proceeding, except notice is not required and the court shall issue an order dispensing with notice to a person under specified circumstances, including that the alleged father has been served with written notice of his alleged paternity and the proposed adoption and he has failed to bring an action.~~

~~This bill would instead not require notice if the alleged father has failed to file and personally serve notice of action, as specified, and would additionally not require notice if the child was conceived as a result of rape and the father was convicted of the rape.~~

~~(3)~~

~~(1) Existing law prohibits a peace officer from taking into temporary custody, without a warrant, a minor who is in a hospital if specified conditions exist, including that the minor is a newborn who tested positive for illegal drugs or whose birth mother tested positive for illegal drugs or the minor is the subject of a proposed adoption and a Health Facility Minor Release Report has been completed by the hospital, as specified.~~

~~This bill would instead prohibit a peace officer or child welfare agency worker from taking into temporary custody, without a warrant, a minor who is in a hospital, if among other conditions, the minor is a newborn who is or may come within the description of a dependent child of the juvenile court. The bill would require the appropriate hospital personnel to complete a Health Facility Minor Release Report and provide copies to specified parties upon request by a parent. The bill would require a child welfare agency worker who investigates the safety and well-being of a minor newborn, prior to filing a dependency petition for a minor newborn who has not yet been discharged from the hospital, to allow a parent who wishes to place the minor newborn for adoption a reasonable opportunity to do so before the minor newborn is discharged from the hospital. By creating additional duties for local officials, this bill would impose a state-mandated local program.~~

~~(4) Existing law requires a social worker to provide the parents or legal guardian, counsel for the child, and any court-appointed child advocate with a copy of the supplemental report filed with the court regarding the services provided or offered to the parent or legal guardian, as specified, at least 10 days prior to a hearing conducted by the juvenile court reviewing the status of a dependent child.~~

~~This bill would instead require the social worker to provide a copy of the report to all parties, counsel for all parties, and any court-appointed child advocate. By creating additional duties for local officials, this bill would impose a state-mandated local program.~~

~~(5) 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions:~~

~~(2) Existing law authorizes specified persons to inspect a juvenile case file, including a court-appointed investigator who is actively participating in a guardianship case involving a minor, as specified, and acting within the scope of his or her duties in that case.~~

~~This bill would additionally permit a statutorily authorized or court-appointed investigator who is conducting specified investigations relating to children, including stepparent adoptions, to inspect a juvenile case file.~~

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

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

1 ~~SECTION 1. Section 7660.5 of the Family Code is amended~~
2 ~~to read:~~
3 ~~7660.5. Notwithstanding any other law, a presumed father may~~
4 ~~deny paternity or waive the right to notice of any adoption~~
5 ~~proceeding by executing a form developed by the department~~
6 ~~before an authorized representative of the department, an authorized~~
7 ~~representative of a licensed public or private adoption agency, or~~
8 ~~a notary public or other person authorized to perform notarial acts.~~
9 ~~The denial of paternity or waiver of notice form may be validly~~
10 ~~executed before or after the birth of the child, and once signed, no~~
11 ~~notice of, relinquishment for, or consent to, adoption of the child~~
12 ~~shall be required from the father for the adoption to proceed. This~~
13 ~~shall be a voluntary and informed denial or waiver without undue~~
14 ~~influence. If the child is an Indian child as defined under the Indian~~
15 ~~Child Welfare Act (ICWA), any waiver of consent by an Indian~~
16 ~~presumed father shall be executed in accordance with the~~
17 ~~requirements for voluntary adoptions set forth in Section 1913 of~~
18 ~~Title 25 of the United States Code. The waiver shall not affect the~~
19 ~~rights of any known federally recognized Indian tribe or tribes~~
20 ~~from which the child or the presumed father may be descended to~~
21 ~~notification of, or participation in, adoption proceedings as~~
22 ~~provided by the ICWA. Notice that the waiver has been executed~~
23 ~~shall be given to any known federally recognized Indian tribe or~~

1 ~~tribes from which the child or the presumed father may be~~
2 ~~descended, as required by the ICWA.~~

3 ~~SEC. 2. Section 7662 of the Family Code is amended to read:~~

4 ~~7662. (a) If a mother relinquishes for or consents to, or~~
5 ~~proposes to relinquish for or consent to, the adoption of a child,~~
6 ~~or if a child otherwise becomes the subject of an adoption~~
7 ~~proceeding, the agency or person to whom the child has been or~~
8 ~~is to be relinquished, or the mother or the person having physical~~
9 ~~or legal custody of the child, or the prospective adoptive parent,~~
10 ~~shall file a petition to terminate the parental rights of the alleged~~
11 ~~father, unless notice to the alleged father of an action would not~~
12 ~~be required pursuant to subdivision (b) of Section 7666.~~

13 ~~(b) The alleged father may validly execute a waiver or denial~~
14 ~~of paternity before or after the birth of the child, and, once signed,~~
15 ~~no notice of, relinquishment for, or consent to, adoption of the~~
16 ~~child shall be required from the alleged father for the adoption to~~
17 ~~proceed.~~

18 ~~(c) Except as provided in this subdivision and subdivision (d),~~
19 ~~all proceedings affecting a child, including proceedings under~~
20 ~~Divisions 8 (commencing with Section 3000) to 11 (commencing~~
21 ~~with Section 6500), inclusive, Part 1 (commencing with Section~~
22 ~~7500) to Part 3 (commencing with Section 7600), inclusive, of this~~
23 ~~division, and Part 1 (commencing with Section 1400), Part 2~~
24 ~~(commencing with Section 1500), and Part 4 (commencing with~~
25 ~~Section 2100) of Division 4 of the Probate Code, and any motion~~
26 ~~or petition for custody or visitation filed in a proceeding under this~~
27 ~~part, shall be stayed. The petition to terminate parental rights under~~
28 ~~this section is the only matter that may be heard during the stay~~
29 ~~until the court issues a final ruling on the petition.~~

30 ~~(d) This section does not limit the jurisdiction of the court~~
31 ~~pursuant to Part 3 (commencing with Section 6240) and Part 4~~
32 ~~(commencing with Section 6300) of Division 10 with respect to~~
33 ~~domestic violence orders, or pursuant to Article 6 (commencing~~
34 ~~with Section 300) of Chapter 2 of Part 1 of Division 2 of the~~
35 ~~Welfare and Institutions Code with respect to dependency~~
36 ~~proceedings.~~

37 ~~SEC. 3. Section 7666 of the Family Code is amended to read:~~

38 ~~7666. (a) Except as provided in subdivision (b), notice of the~~
39 ~~proceeding shall be given to every person identified as the~~
40 ~~biological father or a possible biological father in accordance with~~

1 the Code of Civil Procedure for the service of process in a civil
2 action in this state at least 10 days before the date of the
3 proceeding, except that publication or posting of the notice of the
4 proceeding is not required, and service on the parent or guardian
5 of a biological father or possible biological father who is a minor
6 is not required unless the minor has previously provided written
7 authorization to serve his or her parent or guardian. Proof of giving
8 the notice shall be filed with the court before the petition is heard.

9 (b) Notice to a man identified as or alleged to be the biological
10 father shall not be required, and the court shall issue an order
11 dispensing with notice to him, under any of the following
12 circumstances:

13 (1) The relationship to the child has been previously terminated
14 or determined not to exist by a court.

15 (2) The alleged father has executed a written form to waive
16 notice, deny his paternity, relinquish the child for adoption, or
17 consent to the adoption of the child.

18 (3) The whereabouts or identity of the alleged father are
19 unknown or cannot be ascertained.

20 (4) The alleged father has been served with written notice of
21 his alleged paternity and the proposed adoption, and he has failed
22 to file and personally serve notice of action pursuant to Section
23 7630 within 30 days of service of the notice or the birth of the
24 child, whichever is later.

25 (5) The child was conceived as a result of an act in violation of
26 Section 261 of the Penal Code, and the father was convicted of
27 that violation.

28 SEC. 4. Section 7667 of the Family Code is amended to read:

29 7667. (a) Notwithstanding any other law, an action to terminate
30 the parental rights of an alleged father of a child as specified in
31 this part shall be set for hearing not more than 45 days after filing
32 of the petition, except as provided in subdivision (c).

33 (b) The matter that is set shall have precedence over all other
34 civil matters on the date set for trial, except an action to terminate
35 parental rights pursuant to Part 4 (commencing with Section 7800).

36 (c) (1) The court may dispense with a hearing and issue an ex
37 parte order terminating parental rights if the identity or whereabouts
38 of the alleged father are unknown.

39 (2) The court shall dispense with a hearing and issue an ex parte
40 order terminating parental rights in any of the following cases:

1 (A) The court has dispensed with notice to all possible fathers
2 under subdivision (b) of Section 7666.

3 (B) The alleged father has validly executed a waiver of the right
4 to notice or a denial of paternity.

5 (C) The alleged father has failed to file and personally serve
6 notice of action pursuant to Section 7630 within 30 days of being
7 served with written notice of his alleged paternity and the proposed
8 adoption, or within 30 days of the birth of the child, whichever is
9 later.

10 SEC. 5. Section 8619 of the Family Code is amended to read:

11 8619. (a) The department shall adopt rules and regulations it
12 determines are reasonably necessary to ensure that the birth parent
13 or parents of Indian ancestry, seeking to relinquish a child for
14 adoption, provide sufficient information to the department, county
15 adoption agency, or licensed adoption agency so that a certificate
16 of degree of Indian blood can be obtained from the Bureau of
17 Indian Affairs. The department shall immediately request a
18 certificate of degree of Indian blood from the Bureau of Indian
19 Affairs upon obtaining the information. A copy of all documents
20 pertaining to the degree of Indian blood and tribal enrollment,
21 including a copy of the certificate of degree of Indian blood, shall
22 become a permanent record in the adoption files and shall be
23 housed in a central location and made available to authorized
24 personnel from the Bureau of Indian Affairs when required to
25 determine the adopted person's eligibility to receive services or
26 benefits because of the adopted person's status as an Indian. This
27 information shall be made available to the adopted person upon
28 reaching the age of majority.

29 (b) A parent desiring to relinquish a child to an adoption agency
30 pending determination of whether the child is an Indian child shall
31 do either of the following:

32 (1) Complete the relinquishment procedure for an Indian child
33 as set forth in Section 8606.5 after the agency has provided all
34 notices required by Section 8620.

35 (2) Complete the relinquishment procedure set forth in Section
36 8700 for a non-Indian child, and place a hold on the relinquishment
37 until the agency accepting the relinquishment has confirmed that
38 the child is not an Indian child, at which time the agency shall file
39 the relinquishment with the department. However, if the child is
40 confirmed to be an Indian child, the agency shall void the

1 ~~relinquishment, provide notice to the parent, and inform the parent~~
2 ~~that if he or she still wishes to relinquish the child, the parties shall~~
3 ~~comply with all requirements for relinquishment of an Indian child.~~

4 ~~SEC. 6.~~

5 *SECTION 1.* Section 9001 of the Family Code is amended to
6 read:

7 9001. (a) Except as provided in Section 9000.5, before granting
8 or denying a stepparent adoption request, the court shall review
9 and consider a written investigative report. ~~The report shall include~~
10 ~~the results of fingerprint clearance or CLETS report for the~~
11 ~~petitioner.~~ The report in a stepparent adoption case shall not require
12 a home study unless so ordered by the court upon request of an
13 investigator or interested person, or on the court's own motion.
14 "Home study" as used in this section means a physical investigation
15 of the premises where the child is residing.

16 (b) At the time of filing the adoption request, the petitioner shall
17 inform the court in writing if the petitioner is electing to have the
18 investigation and written report completed by a licensed clinical
19 social worker, a licensed marriage and family therapist, or a private
20 licensed adoption agency, in which cases the petitioner shall not
21 be required to pay any investigation fee pursuant to Section 9002
22 at the time of filing, but shall pay these fees directly to the
23 investigator. Absent that notification, the court may, at the time
24 of filing, collect an investigation fee pursuant to Section 9002, and
25 may assign one of the following to complete the investigation: a
26 probation officer, a qualified court investigator, or the county
27 welfare department, if so authorized by the board of supervisors
28 of the county where the action is pending.

29 (c) If a private licensed adoption agency conducts the
30 investigation, it shall assign the investigation to a licensed clinical
31 social worker or licensed marriage and family therapist associated
32 with the agency. Any grievance regarding the investigation shall
33 be directed to the licensing authority of the clinical social worker
34 or marriage and family therapist, as applicable.

35 (d) Nothing in this section shall be construed to require the State
36 Department of Social Services to issue regulations for stepparent
37 adoptions.

38 ~~SEC. 7.~~

39 *SEC. 2.* Section 305.6 of the Welfare and Institutions Code is
40 amended to read:

1 305.6. (a) Any peace officer ~~or child welfare agency worker~~
 2 may, without a warrant, take into temporary custody a minor who
 3 is in a hospital if the release of the minor to a prospective adoptive
 4 parent or a representative of a licensed adoption agency poses an
 5 immediate danger to the minor's health or safety.

6 (b) ~~(1)~~ Notwithstanding subdivision (a) and Section 305, a
 7 peace officer ~~or a child welfare agency worker~~ shall not, without
 8 a warrant, take into temporary custody a minor who is in a hospital
 9 if all of the following conditions ~~exist at any time before the~~
 10 ~~minor's discharge from the hospital or prior to the filing of a~~
 11 ~~petition pursuant to Section 300, whichever is later:~~ *exist:*

12 ~~(A)~~

13 ~~(1)~~ The minor is a newborn who ~~is or may be described by~~
 14 ~~Section 300: tested positive for illegal drugs or whose birth mother~~
 15 ~~tested positive for illegal drugs.~~

16 ~~(B)~~

17 (2) (A) The minor is the subject of a proposed adoption and a
 18 Health Facility Minor Release Report, developed by the
 19 department, has been completed by the hospital, including the
 20 marking of the boxes applicable to an independent adoption or
 21 agency adoption planning, and signed by the placing birth parent
 22 or birth parents, as well as either the prospective adoptive parent
 23 or parents or an authorized representative of a licensed adoption
 24 agency, prior to the discharge of the birth parent or the minor from
 25 the hospital. *Prior to signing the Health Facility Minor Release*
 26 *Report, the birth parent or parents shall be given a notice written*
 27 *in at least 14-point pica type, containing substantially all of the*
 28 *following statements:*

29 *(i) That the Health Facility Minor Release Report does not*
 30 *constitute consent to adoption of the minor by the prospective*
 31 *adoptive parent or parents, or any other person.*

32 *(ii) That the Health Facility Minor Release Report does not*
 33 *constitute a relinquishment of parental rights for the purposes of*
 34 *adoption.*

35 *(iii) That the birth parent or parents or any person authorized*
 36 *by the birth parent or parents may reclaim the minor at any time*
 37 *from the prospective adoptive parent or parents or any other*
 38 *person to whom the minor was released by the hospital, as provided*
 39 *in Section 8700, 8814.5, or 8815 of the Family Code.*

1 (B) The notice shall be signed by the birth parent or parents
2 and attached to the Health Facility Minor Release Report, a copy
3 of which shall be provided to the birth parent or parents by hospital
4 personnel at the time the form is completed.

5 (C)

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

9 (D)

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

25 (E)

26 (5) The prospective adoptive parent or parents or their
27 representative, or an authorized representative of a licensed
28 adoption agency, provides all of the following ~~within a reasonable~~
29 ~~timeframe~~ to the peace officer ~~or child welfare agency worker~~ who
30 seeks to take the minor into temporary custody:

31 (i)

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

34 (ii)

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

38 (i)

39 (i) A statement that the minor is the subject of a proposed
40 adoption.

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

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

15 ~~(IV)~~
 16 (iv) The names, identifying information, and contact information
 17 for the minor, for each prospective adoptive parent, and for each
 18 birth parent, to the extent that information is known. In the case
 19 of an agency adoption where no prospective adoptive parent or
 20 parents are identified at the time of the minor’s release from the
 21 hospital, the licensed adoption agency may provide the information
 22 as it pertains to the licensed or certified foster home into which
 23 the agency intends to place the minor.

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

30 (2) If the adoption plan for a minor who was released from the
 31 hospital pursuant to subdivision (b) is terminated for any reason,
 32 the prospective adoptive parent or parents or licensed adoption
 33 agency shall immediately notify the county child welfare agency.
 34 The prospective adoptive parent or parents or licensed adoption
 35 agency may not release the minor into the physical custody of the
 36 birth parent or parents, or any designee of the birth parent or
 37 parents, until the county child welfare agency or local law
 38 enforcement agency completes an investigation and determines
 39 that release of the minor to the birth parent or parents or a designee

1 of the birth parent or parents will not create an immediate risk to
2 the health or safety of the minor.

3 (d) Upon request by a parent of the minor newborn, the
4 appropriate hospital personnel shall complete a Health Facility
5 Minor Release Report and provide copies of the report to all parties
6 listed in subparagraph (B) of paragraph (1) of subdivision (b).
7 Hospital personnel shall not refuse to complete a Health Facility
8 Minor Release Report for any reason, even if the minor is ineligible
9 for release at that time.

10 ~~(e) Prior to filing a petition under Section 300 regarding a minor
11 newborn who has not yet been discharged from the hospital, a
12 child welfare agency worker who investigates the safety and
13 well-being of the minor newborn shall allow a parent who wishes
14 to place the minor newborn for adoption a reasonable opportunity
15 to do so, at any time before the minor newborn is discharged from
16 the hospital. However, nothing in this section shall be construed
17 to prevent a child welfare agency worker from implementing
18 measures necessary to ensure the safety and well-being of the
19 minor newborn pending adoptive placement, including, but not
20 limited to, instructing the hospital not to discharge the minor
21 newborn from the hospital without approval from child welfare
22 agency personnel upon satisfaction of the requirements of this
23 section.~~

24 ~~(f)~~
25 (e) Nothing in this section is intended to create a duty that
26 requires law enforcement to investigate the prospective adoptive
27 parent or parents.

28 ~~SEC. 8. Section 366.21 of the Welfare and Institutions Code
29 is amended to read:~~

30 ~~366.21. (a) Every hearing conducted by the juvenile court
31 reviewing the status of a dependent child shall be placed on the
32 appearance calendar. The court shall advise all persons present at
33 the hearing of the date of the future hearing and of their right to
34 be present and represented by counsel.~~

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

37 ~~(c) At least 10 calendar days prior to the hearing, the social
38 worker shall file a supplemental report with the court regarding
39 the services provided or offered to the parent or legal guardian to
40 enable him or her to assume custody and the efforts made to~~

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

34 (d) Prior to any hearing involving a child in the physical custody
35 of a community care facility or a foster family agency that may
36 result in the return of the child to the physical custody of his or
37 her parent or legal guardian, or in adoption or the creation of a
38 legal guardianship, or in the case of an Indian child, in consultation
39 with the child's tribe, tribal customary adoption, the facility or
40 agency shall file with the court a report, or a Judicial Council

1 Caregiver Information Form (JV-290), containing its
2 recommendation for disposition. Prior to the hearing involving a
3 child in the physical custody of a foster parent, a relative caregiver,
4 or a certified foster parent who has been approved for adoption by
5 the State Department of Social Services when it is acting as an
6 adoption agency or by a county adoption agency, the foster parent,
7 relative caregiver, or the certified foster parent who has been
8 approved for adoption by the State Department of Social Services
9 when it is acting as an adoption agency or by a county adoption
10 agency, may file with the court a report containing his or her
11 recommendation for disposition. The court shall consider the report
12 and recommendation filed pursuant to this subdivision prior to
13 determining any disposition.

14 (e) (1) At the review hearing held six months after the initial
15 dispositional hearing, but no later than 12 months after the date
16 the child entered foster care as determined in Section 361.49,
17 whichever occurs earlier, after considering the admissible and
18 relevant evidence, the court shall order the return of the child to
19 the physical custody of his or her parent or legal guardian unless
20 the court finds, by a preponderance of the evidence, that the return
21 of the child to his or her parent or legal guardian would create a
22 substantial risk of detriment to the safety, protection, or physical
23 or emotional well-being of the child. The social worker shall have
24 the burden of establishing that detriment. At the hearing, the court
25 shall consider the criminal history, obtained pursuant to paragraph
26 (1) of subdivision (f) of Section 16504.5, of the parent or legal
27 guardian subsequent to the child's removal to the extent that the
28 criminal record is substantially related to the welfare of the child
29 or the parent's or guardian's ability to exercise custody and control
30 regarding his or her child, provided the parent or legal guardian
31 agreed to submit fingerprint images to obtain criminal history
32 information as part of the case plan. The court shall also consider
33 whether the child can be returned to the custody of his or her parent
34 who is enrolled in a certified substance abuse treatment facility
35 that allows a dependent child to reside with his or her parent. The
36 fact that the parent is enrolled in a certified substance abuse
37 treatment facility shall not be, for that reason alone, prima facie
38 evidence of detriment. The failure of the parent or legal guardian
39 to participate regularly and make substantive progress in
40 court-ordered treatment programs shall be prima facie evidence

1 that return would be detrimental. In making its determination, the
2 court shall review and consider the social worker's report and
3 recommendations and the report and recommendations of any child
4 advocate appointed pursuant to Section 356.5; and shall consider
5 the efforts or progress, or both, demonstrated by the parent or legal
6 guardian and the extent to which he or she availed himself or
7 herself of services provided, taking into account the particular
8 barriers to a minor parent or a nonminor dependent parent, or an
9 incarcerated, institutionalized, detained, or deported parent's or
10 legal guardian's access to those court-mandated services and ability
11 to maintain contact with his or her child.

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

25 (3) ~~If the child was under three years of age on the date of the~~
26 ~~initial removal, or is a member of a sibling group described in~~
27 ~~subparagraph (C) of paragraph (1) of subdivision (a) of Section~~
28 ~~361.5, and the court finds by clear and convincing evidence that~~
29 ~~the parent failed to participate regularly and make substantive~~
30 ~~progress in a court-ordered treatment plan, the court may schedule~~
31 ~~a hearing pursuant to Section 366.26 within 120 days. If, however,~~
32 ~~the court finds there is a substantial probability that the child, who~~
33 ~~was under three years of age on the date of initial removal or is a~~
34 ~~member of a sibling group described in subparagraph (C) of~~
35 ~~paragraph (1) of subdivision (a) of Section 361.5, may be returned~~
36 ~~to his or her parent or legal guardian within six months or that~~
37 ~~reasonable services have not been provided, the court shall continue~~
38 ~~the case to the 12-month permanency hearing.~~

39 (4) ~~For the purpose of placing and maintaining a sibling group~~
40 ~~together in a permanent home, the court, in making its~~

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

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

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

39 ~~(7) In all other cases, the court shall direct that any reunification~~
40 ~~services previously ordered shall continue to be offered to the~~

1 parent or legal guardian pursuant to the time periods set forth in
2 subdivision (a) of Section 361.5, provided that the court may
3 modify the terms and conditions of those services.

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

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

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

38 (B) The court shall also consider whether the child can be
39 returned to the custody of his or her parent who is enrolled in a
40 certified substance abuse treatment facility that allows a dependent

1 child to reside with his or her parent. The fact that the parent is
2 enrolled in a certified substance abuse treatment facility shall not
3 be, for that reason alone, prima facie evidence of detriment. The
4 failure of the parent or legal guardian to participate regularly and
5 make substantive progress in court-ordered treatment programs
6 shall be prima facie evidence that return would be detrimental.

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

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

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

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

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

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

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

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

24 ~~For~~

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

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

38 ~~(2) Continue the case for up to six months for a permanency~~
39 ~~review hearing, provided that the hearing shall occur within 18~~
40 ~~months of the date the child was originally taken from the physical~~

1 custody of his or her parent or legal guardian, if the parent has
2 been arrested and issued an immigration hold, detained by the
3 United States Department of Homeland Security, or deported to
4 his or her country of origin, and the court determines either that
5 there is a substantial probability that the child will be returned to
6 the physical custody of his or her parent or legal guardian and
7 safely maintained in the home within the extended period of time
8 or that reasonable services have not been provided to the parent
9 or legal guardian.

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

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

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

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

28 (4) Order that a hearing be held within 120 days, pursuant to
29 Section 366.26, but only if the court does not continue the case to
30 the permanency planning review hearing and there is clear and
31 convincing evidence that reasonable services have been provided
32 or offered to the parents or legal guardians. On and after January
33 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered
34 if the child is a nonminor dependent, unless the nonminor
35 dependent is an Indian child and tribal customary adoption is
36 recommended as the permanent plan.

37 (5) Order that the child remain in foster care, but only if the
38 court finds by clear and convincing evidence, based upon the
39 evidence already presented to it, including a recommendation by
40 the State Department of Social Services when it is acting as an

1 adoption agency or by a county adoption agency, that there is a
2 compelling reason for determining that a hearing held pursuant to
3 Section 366.26 is not in the best interests of the child because the
4 child is not a proper subject for adoption and has no one willing
5 to accept legal guardianship as of the hearing date. For purposes
6 of this section, a recommendation by the State Department of
7 Social Services when it is acting as an adoption agency or by a
8 county adoption agency that adoption is not in the best interests
9 of the child shall constitute a compelling reason for the court's
10 determination. That recommendation shall be based on the present
11 circumstances of the child and shall not preclude a different
12 recommendation at a later date if the child's circumstances change.
13 On and after January 1, 2012, the nonminor dependent's legal
14 status as an adult is in and of itself a compelling reason not to hold
15 a hearing pursuant to Section 366.26. The court may order that a
16 nonminor dependent who otherwise is eligible pursuant to Section
17 11403 remain in a planned, permanent living arrangement.

18 (A) The court shall make factual findings identifying any
19 barriers to achieving the permanent plan as of the hearing date.
20 When the child is under 16 years of age, the court shall order a
21 permanent plan of return home, adoption, tribal customary adoption
22 in the case of an Indian child, legal guardianship, or placement
23 with a fit and willing relative, as appropriate. When the child is
24 16 years of age or older, or is a nonminor dependent, and no other
25 permanent plan is appropriate at the time of the hearing, the court
26 may order another planned permanent living arrangement, as
27 described in paragraph (2) of subdivision (i) of Section 16501.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 ~~SEC. 9.~~

7 SEC. 3. Section 827 of the Welfare and Institutions Code is
8 amended to read:

9 827. (a) (1) Except as provided in Section 828, a case file
10 may be inspected only by the following:

- 11 (A) Court personnel.
- 12 (B) The district attorney, a city attorney, or city prosecutor
- 13 authorized to prosecute criminal or juvenile cases under state law.
- 14 (C) The minor who is the subject of the proceeding.
- 15 (D) The minor’s parents or guardian.
- 16 (E) The attorneys for the parties, judges, referees, other hearing
- 17 officers, probation officers, and law enforcement officers who are
- 18 actively participating in criminal or juvenile proceedings involving
- 19 the minor.
- 20 (F) The county counsel, city attorney, or any other attorney
- 21 representing the petitioning agency in a dependency action.
- 22 (G) The superintendent or designee of the school district where
- 23 the minor is enrolled or attending school.
- 24 (H) Members of the child protective agencies as defined in
- 25 Section 11165.9 of the Penal Code.
- 26 (I) The State Department of Social Services, to carry out its
- 27 duties pursuant to Division 9 (commencing with Section 10000),
- 28 and Part 5 (commencing with Section 7900) of Division 12, of the
- 29 Family Code to oversee and monitor county child welfare agencies,
- 30 children in foster care or receiving foster care assistance, and
- 31 out-of-state placements, Section 10850.4, and paragraph (2).
- 32 (J) Authorized legal staff or special investigators who are peace
- 33 officers who are employed by, or who are authorized
- 34 representatives of, the State Department of Social Services, as
- 35 necessary to the performance of their duties to inspect, license,
- 36 and investigate community care facilities, and to ensure that the
- 37 standards of care and services provided in those facilities are
- 38 adequate and appropriate and to ascertain compliance with the
- 39 rules and regulations to which the facilities are subject. The
- 40 confidential information shall remain confidential except for

1 purposes of inspection, licensing, or investigation pursuant to
2 Chapter 3 (commencing with Section 1500) and Chapter 3.4
3 (commencing with Section 1596.70) of Division 2 of the Health
4 and Safety Code, or a criminal, civil, or administrative proceeding
5 in relation thereto. The confidential information may be used by
6 the State Department of Social Services in a criminal, civil, or
7 administrative proceeding. The confidential information shall be
8 available only to the judge or hearing officer and to the parties to
9 the case. Names that are confidential shall be listed in attachments
10 separate to the general pleadings. The confidential information
11 shall be sealed after the conclusion of the criminal, civil, or
12 administrative hearings, and may not subsequently be released
13 except in accordance with this subdivision. If the confidential
14 information does not result in a criminal, civil, or administrative
15 proceeding, it shall be sealed after the State Department of Social
16 Services decides that no further action will be taken in the matter
17 of suspected licensing violations. Except as otherwise provided in
18 this subdivision, confidential information in the possession of the
19 State Department of Social Services may not contain the name of
20 the minor.

21 (K) Members of children’s multidisciplinary teams, persons, or
22 agencies providing treatment or supervision of the minor.

23 (L) A judge, commissioner, or other hearing officer assigned
24 to a family law case with issues concerning custody or visitation,
25 or both, involving the minor, and the following persons, if actively
26 participating in the family law case: a family court mediator
27 assigned to a case involving the minor pursuant to Article 1
28 (commencing with Section 3160) of Chapter 11 of Part 2 of
29 Division 8 of the Family Code, a court-appointed evaluator or a
30 person conducting a court-connected child custody evaluation,
31 investigation, or assessment pursuant to Section 3111 or 3118 of
32 the Family Code, and counsel appointed for the minor in the family
33 law case pursuant to Section 3150 of the Family Code. Prior to
34 allowing counsel appointed for the minor in the family law case
35 to inspect the file, the court clerk may require counsel to provide
36 a certified copy of the court order appointing him or her as the
37 minor’s counsel.

38 (M) When acting within the scope of investigative duties of an
39 active case, a statutorily authorized or court-appointed investigator
40 who is conducting an investigation pursuant to Section 7663, 7851,

1 or 9001 of the Family Code, or who is actively participating in a
2 guardianship case involving a minor pursuant to Part 2
3 (commencing with Section 1500) of Division 4 of the Probate
4 Code and acting within the scope of his or her duties in that case.

5 (N) A local child support agency for the purpose of establishing
6 paternity and establishing and enforcing child support orders.

7 (O) Juvenile justice commissions as established under Section
8 225. The confidentiality provisions of Section 10850 shall apply
9 to a juvenile justice commission and its members.

10 ~~(P) A person who has been adjudicated as a de factor parent of~~
11 ~~the minor.~~

12 ~~(Q)~~

13 (P) Any other person who may be designated by court order of
14 the judge of the juvenile court upon filing a petition.

15 (2) (A) Notwithstanding any other law and subject to
16 subparagraph (A) of paragraph (3), juvenile case files, except those
17 relating to matters within the jurisdiction of the court pursuant to
18 Section 601 or 602, that pertain to a deceased child who was within
19 the jurisdiction of the juvenile court pursuant to Section 300, shall
20 be released to the public pursuant to an order by the juvenile court
21 after a petition has been filed and interested parties have been
22 afforded an opportunity to file an objection. Any information
23 relating to another child or which could identify another child,
24 except for information about the deceased, shall be redacted from
25 the juvenile case file prior to release, unless a specific order is
26 made by the juvenile court to the contrary. Except as provided in
27 this paragraph, the presiding judge of the juvenile court may issue
28 an order prohibiting or limiting access to the juvenile case file, or
29 any portion thereof, of a deceased child only upon a showing by
30 a preponderance of evidence that release of the juvenile case file
31 or any portion thereof is detrimental to the safety, protection, or
32 physical or emotional well-being of another child who is directly
33 or indirectly connected to the juvenile case that is the subject of
34 the petition.

35 (B) This paragraph represents a presumption in favor of the
36 release of documents when a child is deceased unless the statutory
37 reasons for confidentiality are shown to exist.

38 (C) If a child whose records are sought has died, and documents
39 are sought pursuant to this paragraph, no weighing or balancing
40 of the interests of those other than a child is permitted.

1 (D) A petition filed under this paragraph shall be served on
2 interested parties by the petitioner, if the petitioner is in possession
3 of their identity and address, and on the custodian of records. Upon
4 receiving a petition, the custodian of records shall serve a copy of
5 the request upon all interested parties that have not been served
6 by the petitioner or on the interested parties served by the petitioner
7 if the custodian of records possesses information, such as a more
8 recent address, indicating that the service by the petitioner may
9 have been ineffective.

10 (E) The custodian of records shall serve the petition within 10
11 calendar days of receipt. If any interested party, including the
12 custodian of records, objects to the petition, the party shall file and
13 serve the objection on the petitioning party no later than 15
14 calendar days of service of the petition.

15 (F) The petitioning party shall have 10 calendar days to file any
16 reply. The juvenile court shall set the matter for hearing no more
17 than 60 calendar days from the date the petition is served on the
18 custodian of records. The court shall render its decision within 30
19 days of the hearing. The matter shall be decided solely upon the
20 basis of the petition and supporting exhibits and declarations, if
21 any, the objection and any supporting exhibits or declarations, if
22 any, and the reply and any supporting declarations or exhibits
23 thereto, and argument at hearing. The court may solely upon its
24 own motion order the appearance of witnesses. If no objection is
25 filed to the petition, the court shall review the petition and issue
26 its decision within 10 calendar days of the final day for filing the
27 objection. Any order of the court shall be immediately reviewable
28 by petition to the appellate court for the issuance of an
29 extraordinary writ.

30 (3) Access to juvenile case files pertaining to matters within the
31 jurisdiction of the juvenile court pursuant to Section 300 shall be
32 limited as follows:

33 (A) If a juvenile case file, or any portion thereof, is privileged
34 or confidential pursuant to any other state law or federal law or
35 regulation, the requirements of that state law or federal law or
36 regulation prohibiting or limiting release of the juvenile case file
37 or any portions thereof shall prevail. Unless a person is listed in
38 subparagraphs (A) to (O), inclusive, of paragraph (1) and is entitled
39 to access under the other state law or federal law or regulation
40 without a court order, all those seeking access, pursuant to other

1 authorization, to portions of, or information relating to the contents
2 of, juvenile case files protected under another state law or federal
3 law or regulation, shall petition the juvenile court. The juvenile
4 court may only release the portion of, or information relating to
5 the contents of, juvenile case files protected by another state law
6 or federal law or regulation if disclosure is not detrimental to the
7 safety, protection, or physical or emotional well-being of a child
8 who is directly or indirectly connected to the juvenile case that is
9 the subject of the petition. This paragraph shall not be construed
10 to limit the ability of the juvenile court to carry out its duties in
11 conducting juvenile court proceedings.

12 (B) Prior to the release of the juvenile case file or any portion
13 thereof, the court shall afford due process, including a notice of
14 and an opportunity to file an objection to the release of the record
15 or report to all interested parties.

16 (4) A juvenile case file, any portion thereof, and information
17 relating to the content of the juvenile case file, may not be
18 disseminated by the receiving agencies to any persons or agencies,
19 other than those persons or agencies authorized to receive
20 documents pursuant to this section. Further, a juvenile case file,
21 any portion thereof, and information relating to the content of the
22 juvenile case file, may not be made as an attachment to any other
23 documents without the prior approval of the presiding judge of the
24 juvenile court, unless it is used in connection with and in the course
25 of a criminal investigation or a proceeding brought to declare a
26 person a dependent child or ward of the juvenile court.

27 (5) Individuals listed in subparagraphs (A), (B), (C), (D), (E),
28 (F), (H), and (I) of paragraph (1) may also receive copies of the
29 case file. In these circumstances, the requirements of paragraph
30 (4) shall continue to apply to the information received.

31 (b) (1) While the Legislature reaffirms its belief that juvenile
32 court records, in general, should be confidential, it is the intent of
33 the Legislature in enacting this subdivision to provide for a limited
34 exception to juvenile court record confidentiality to promote more
35 effective communication among juvenile courts, family courts,
36 law enforcement agencies, and schools to ensure the rehabilitation
37 of juvenile criminal offenders as well as to lessen the potential for
38 drug use, violence, other forms of delinquency, and child abuse.

39 (2) (A) Notwithstanding subdivision (a), written notice that a
40 minor enrolled in a public school, kindergarten to grade 12,

1 inclusive, has been found by a court of competent jurisdiction to
2 have committed any felony or any misdemeanor involving curfew,
3 gambling, alcohol, drugs, tobacco products, carrying of weapons,
4 a sex offense listed in Section 290 of the Penal Code, assault or
5 battery, larceny, vandalism, or graffiti shall be provided by the
6 court, within seven days, to the superintendent of the school district
7 of attendance. Written notice shall include only the offense found
8 to have been committed by the minor and the disposition of the
9 minor's case. This notice shall be expeditiously transmitted by the
10 district superintendent to the principal at the school of attendance.
11 The principal shall expeditiously disseminate the information to
12 those counselors directly supervising or reporting on the behavior
13 or progress of the minor. In addition, the principal shall disseminate
14 the information to any teacher or administrator directly supervising
15 or reporting on the behavior or progress of the minor whom the
16 principal believes needs the information to work with the pupil in
17 an appropriate fashion, to avoid being needlessly vulnerable or to
18 protect other persons from needless vulnerability.

19 (B) Any information received by a teacher, counselor, or
20 administrator under this subdivision shall be received in confidence
21 for the limited purpose of rehabilitating the minor and protecting
22 students and staff, and shall not be further disseminated by the
23 teacher, counselor, or administrator, except insofar as
24 communication with the juvenile, his or her parents or guardians,
25 law enforcement personnel, and the juvenile's probation officer
26 is necessary to effectuate the juvenile's rehabilitation or to protect
27 students and staff.

28 (C) An intentional violation of the confidentiality provisions of
29 this paragraph is a misdemeanor punishable by a fine not to exceed
30 five hundred dollars (\$500).

31 (3) If a minor is removed from public school as a result of the
32 court's finding described in subdivision (b), the superintendent
33 shall maintain the information in a confidential file and shall defer
34 transmittal of the information received from the court until the
35 minor is returned to public school. If the minor is returned to a
36 school district other than the one from which the minor came, the
37 parole or probation officer having jurisdiction over the minor shall
38 so notify the superintendent of the last district of attendance, who
39 shall transmit the notice received from the court to the
40 superintendent of the new district of attendance.

1 (c) Each probation report filed with the court concerning a minor
2 whose record is subject to dissemination pursuant to subdivision
3 (b) shall include on the face sheet the school at which the minor
4 is currently enrolled. The county superintendent shall provide the
5 court with a listing of all of the schools within each school district,
6 within the county, along with the name and mailing address of
7 each district superintendent.

8 (d) (1) Each notice sent by the court pursuant to subdivision
9 (b) shall be stamped with the instruction: “Unlawful Dissemination
10 Of This Information Is A Misdemeanor.” Any information received
11 from the court shall be kept in a separate confidential file at the
12 school of attendance and shall be transferred to the minor’s
13 subsequent schools of attendance and maintained until the minor
14 graduates from high school, is released from juvenile court
15 jurisdiction, or reaches the age of 18 years, whichever occurs first.
16 After that time the confidential record shall be destroyed. At any
17 time after the date by which a record required to be destroyed by
18 this section should have been destroyed, the minor or his or her
19 parent or guardian shall have the right to make a written request
20 to the principal of the school that the minor’s school records be
21 reviewed to ensure that the record has been destroyed. Upon
22 completion of any requested review and no later than 30 days after
23 the request for the review was received, the principal or his or her
24 designee shall respond in writing to the written request and either
25 shall confirm that the record has been destroyed or, if the record
26 has not been destroyed, shall explain why destruction has not yet
27 occurred.

28 (2) Except as provided in paragraph (2) of subdivision (b), no
29 liability shall attach to any person who transmits or fails to transmit
30 any notice or information required under subdivision (b).

31 (e) For purposes of this section, a “juvenile case file” means a
32 petition filed in any juvenile court proceeding, reports of the
33 probation officer, and all other documents filed in that case or
34 made available to the probation officer in making his or her report,
35 or to the judge, referee, or other hearing officer, and thereafter
36 retained by the probation officer, judge, referee, or other hearing
37 officer.

38 (f) The persons described in subparagraphs (A), (E), (F), (H),
39 (K), (L), (M), and (N) of paragraph (1) of subdivision (a) include
40 persons serving in a similar capacity for an Indian tribe, reservation,

1 or tribal court when the case file involves a child who is a member
2 of, or who is eligible for membership in, that tribe.

3 ~~SEC. 10. If the Commission on State Mandates determines~~
4 ~~that this act contains costs mandated by the state, reimbursement~~
5 ~~to local agencies and school districts for those costs shall be made~~
6 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
7 ~~4 of Title 2 of the Government Code.~~

O