

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



ITEM
2.9
(ID # 4532)

MEETING DATE:

Tuesday, June 13, 2017

FROM : EXECUTIVE OFFICE:

SUBJECT: EXECUTIVE OFFICE: Legislative Letters Sent: June 13, All Districts. [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

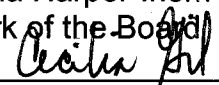
1. Receive and File the report detailing the legislative letters sent up to June 13 Board Meeting.

ACTION: Consent

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Tavaglione, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter is received and filed as recommended.

Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley
Nays: None
Absent: None
Date: June 13, 2017
xc: EO

Kecia Harper-Ihem
Clerk of the Board
By: 
Deputy

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: N/A			Budget Adjustment: N/A	
			For Fiscal Year: N/A	

C.E.O. RECOMMENDATION: APPROVE

BACKGROUND:

Summary

As per Board Policy A-27, the purpose of Riverside County's Legislative Program is to secure legislation that benefits the county and its residents, and to oppose/amend legislation that might adversely affect the county. Recognizing the need for consistency in conveying official positions on legislative matters, the county has instituted a coordinated process involving interaction between the Board of Supervisors, the County Executive Office, county agencies/departments, and the county's legislative advocates in Sacramento and Washington, D.C.

Letters of Support/Opposition

Since the last meeting of the Riverside County Board of Supervisors, the following letters were delivered to our legislative delegation and all pertinent parties in order to voice Riverside County's Support/Opposition.

Legislation/Policy: SCA 12 (Mendoza) - Counties: Governing Body: County Executive

Position: Oppose – Per Legislative Platform

Recipient: Senator Mike McGuire

Summary: SCA 12 by Senator Tony Mendoza is a measure that seeks voter approval to expand the number of supervisorial districts and to create a directly elected county executive officer in a county with a population of five million or more after the 2020 census.

Specifically, SCA 12 (Mendoza) would, commencing January 1, 2022, in a county that is found at a decennial United States census, beginning with the 2020 United States census, to have a population of more than 5,000,000, require, and deem any applicable law, including a county charter, to require, a governing body consisting of a sufficient number of members so as to ensure that each member represents a district containing a population equivalent to no more than 2 districts in the United States House of Representatives.

Legislation/Policy: AB 1401 (Maienschein): Juveniles: Protective Custody Warrant

Position: SUPPORT – Per Board Action

Recipient: Senator Scott Wiener

Summary: AB 1401 would authorize the court to issue a protective custody warrant, without filing a petition in the juvenile court alleging that the minor comes within the jurisdiction of the juvenile court as a dependent, if there is probable cause to believe the minor comes within the

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
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jurisdiction of the juvenile court as a dependent, there is a substantial danger to the safety or physical health of the child, and there are no reasonable means to protect the child's safety or physical health without removal.

Legislation/Policy: SB 438 - Successor Guardians (Roth)

Position: SPONSOR – Per Legislative Platform

Recipient: Assembly Member Blanca Rubio

Summary: Whenever a court orders a hearing to terminate parental rights to, or to establish legal guardianship of, a dependent child to be held, current law requires the court to direct the agency supervising the child and the county adoption agency, or the State Department of Social Services when it is acting as an adoption agency, to prepare an assessment and requires this assessment to include, among other things, a preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, as specified. This bill would authorize this preliminary assessment of a legal guardian to include the development of a plan for a successor guardian in the case of incapacity or death of the guardian.

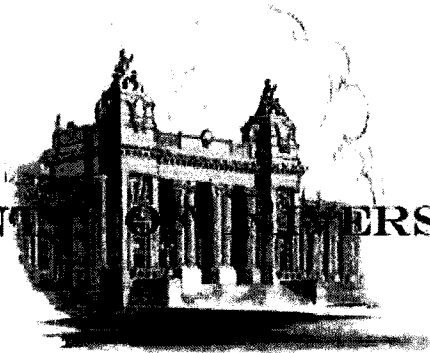
Impact on Residents and Businesses

The action presented should not affect residents or businesses within Riverside County.

ATTACHMENT A. Letters Sent & Legislation June 6 – June 13

ATTACHMENT B. Letters Sent Fact Sheet

COUNTY OF RIVERSIDE



Board of Supervisors

District 1	Kevin Jeffries 951-955-1010
District 2 Chairman	John F. Tavgliione 951-955-1020
District 3	Chuck Washington 951-955-1030
District 4	V. Manuel Perez 951-955-1040
District 5	Marion Ashley 951-955-1050

May 30, 2017

The Honorable Mike McGuire, Chair
Senate Governance and Finance Committee
State Capitol, Room 5061
Sacramento, CA 95814

**Re: SCA 12 (Mendoza) – Counties: Governing Body: County Executive
As Introduced April 27, 2017
Senate Governance and Finance Committee
County of Riverside: OPPOSE - Per Legislative Platform**

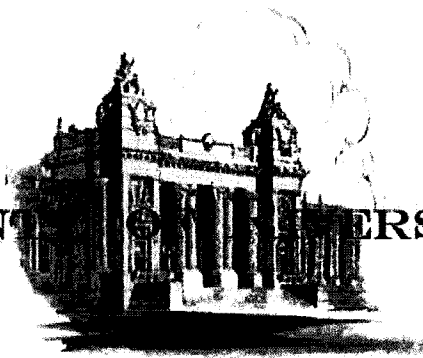
Dear Senator McGuire:

On behalf of the Riverside County Board of Supervisors, I write to respectfully express our strong opposition to SCA 12, a measure by Senator Tony Mendoza that seeks voter approval to expand the number of supervisorial districts and to create a directly elected county executive officer in a county with a population of five million or more after the 2020 census. Currently, these provisions would only apply to the County of Los Angeles. While SCA 12 does not have an immediate impact on the County of Riverside, we are concerned about the setting of precedent by which the Legislature authorizes a statewide vote on matters that are explicitly local in nature. Our view is that decisions about the structure of county government should reside squarely with its residents, not voters in unaffected jurisdictions.

The County of Los Angeles is governed under a county charter, the contents of which are voter-approved. We understand that the County has considered both expansion of the board of supervisors and directly electing a county executive on numerous occasions over many years. In all instances, these efforts have failed. Regardless of the reasons for those failures, the question was properly posed to the appropriate electorate. The process for a charter amendment remains available to supporters of SCA 12 and should be utilized before seeking legislative approval for such an unconventional approach.

We have additional concerns about the concept of an elected chief executive officer for California counties. County chief executives currently provide important administrative functions to implement policies set forth by the board of supervisors; they are trained managers who operate in a non-partisan manner to administer a wide variety of programs and services to Californians. Simply substituting an appointed chief executive with an elected one will result in a scenario where political dynamics will likely take priority over expertise and doing so may not, in fact, result in improved results or performance.

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For these reasons, we are gravely concerned about the near- and long-term implications of SCA 12. Should you have any questions about our position, please do not hesitate to contact Deputy County Executive Officer Brian Nestande at (951) 955-1110 or bnestande@rceo.org.

Sincerely,

John F. Tavaglione
Chairman, Riverside County Board of Supervisors

Cc: The Honorable Tony Mendoza, California State Senate
Members and Consultants, Senate Governance and Finance Committee
County of Riverside Delegation

**Introduced by Senator Mendoza
(Coauthors: Senators Allen, Bradford, Galgiani, Hertzberg, Hill,
Hueso, Wiener, and Wilk)**

April 27, 2017

Senate Constitutional Amendment No. 12—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 4 of, and adding Sections 4.5 and 4.6 to, Article XI thereof, relating to counties.

LEGISLATIVE COUNSEL'S DIGEST

SCA 12, as introduced, Mendoza. Counties: governing body: county executive.

(1) The California Constitution requires that a county charter provide for a governing body of 5 or more members, elected by district, at large, or at large with a requirement that they reside in a district, and provide for the compensation, terms, and removal of members of the governing body. Existing law also requires a general law county to have a board of supervisors consisting of 5 members, and requires, except as provided, each member of the board of supervisors to be elected by the district which the member represents.

This measure would, commencing January 1, 2022, in a county that is found at a decennial United States census, beginning with the 2020 United States census, to have a population of more than 5,000,000, require, and deem any applicable law, including a county charter, to require, a governing body consisting of a sufficient number of members so as to ensure that each member represents a district containing a population equivalent to no more than 2 districts in the United States House of Representatives. The measure would require that the members of the governing body serve for a term of 4 years and limit election to

the governing body to no more than 3 terms. The measure would also provide that, in such a county, the expenditures for the governing body and its staff may not exceed, for any subsequent fiscal year after the release of the census finding that the county has a population of more than 5,000,000, the amount that was allocated for the expenses of the governing body and its staff in the county's adopted budget for the fiscal year in which that same census was conducted, unless adjusted as provided.

(2) The California Constitution additionally requires that a county charter provide for an elected sheriff, an elected district attorney, an elected assessor, and other officers.

This measure would require a county that is found at a decennial United States census, beginning with the 2020 United States census, to have a population of more than 5,000,000, to have an elected county executive. The measure would provide for the election of the county executive to a term of 6 years at a general election, and would limit election to that office to no more than 2 terms. The measure would require the county executive to appoint, supervise, and dismiss any appointed department head, and to appoint the members of county commissions, subject to confirmation by the governing body of the county. The measure would additionally require the county executive to develop and submit the county budget to the governing body, for approval or amendment by that body, and to approve, with or without line-item vetoes, the budget as transmitted back by the governing body.

(3) The California Constitution provides that charter counties are subject to statutes that relate to apportioning population of governing body districts.

This measure would recast this provision to provide that charter counties are subject to federal, state, and local laws that relate to apportioning population of governing body districts.

(4) This measure would also make other technical, nonsubstantive changes.

(5) This measure would declare that its provisions are severable.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

- 1 WHEREAS, California's counties are creations of the state and
- 2 their governance is mandated by the California Constitution, and
- 3 changes to certain aspects of their governance require amendment
- 4 of the California Constitution; and

1 WHEREAS, California's counties are governed by elected
2 members of a board of supervisors; and

3 WHEREAS, The number of members of the board of supervisors
4 in most counties has remained unchanged for more than a century
5 despite enormous increases in the county's population which, in
6 some cases, are greater than the population of individual states in
7 the Union; and

8 WHEREAS, It is a well-recognized principle that residents are
9 more efficiently able to access their representatives for assistance
10 for services and to hold them better accountable when the ratio of
11 residents to each elected representative on a governing body is
12 smaller rather than larger; and

13 WHEREAS, It is important to restrain the costs of governance
14 by restricting the fiscal impact of any changes in any county's
15 board of supervisors and the creation of an elected county executive
16 position; and

17 WHEREAS, It is therefore the intent of the people, in adopting
18 this measure, to make all of the following changes with regard to
19 the county board of supervisors in each county having a population
20 of more than 5,000,000 at each decennial United States census:

21 (a) Increase democratic representation by making an effort to
22 substantially reduce the population in each supervisorial district
23 to approximate the combined population of two congressional
24 districts;

25 (b) Establish smaller supervisorial districts, to provide greater
26 opportunities for public participation in local government that
27 provide safety, health, transportation, and other vital services;

28 (c) By creating a county executive position to separate the
29 legislative and executive functions of the County of Los Angeles,
30 consistent with the Los Angeles County Civil Grand Jury's July
31 2016 Report recommending changes for the governance of the
32 County of Los Angeles given the county's complexity of
33 populations, demographics, services, and financing sources, among
34 other matters;

35 (d) To control the costs and size of county government through
36 restriction of future costs for the board of supervisors and the
37 proposed elected county executive to current respective budgets;
38 now, therefore, be it

39 *Resolved by the Senate, the Assembly concurring,* That the
40 Legislature of the State of California at its 2017-18 Regular

1 Session commencing on the fifth day of December 2016, two-thirds
2 of the membership of each house concurring, hereby proposes to
3 the people of the State of California, that the Constitution of the
4 State be amended as follows:

5 First—That Section 4 of Article XI thereof is amended to read:

6 SEC. 4. County charters shall provide for:

7 (a) ~~A~~ Except as otherwise provided in Section 4.5, a governing
8 body of ~~5~~ five or more members, elected (1) by district or, (2) at
9 large, or (3) at large, with a requirement that ~~they~~ each member
10 reside in a district. Charter counties are subject to ~~statutes~~ federal,
11 state, and local laws that relate to apportioning population of
12 governing body districts.

13 (b) ~~The~~ Except as otherwise provided in Section 4.5, the
14 compensation, terms, and removal of members of the governing
15 body. If a county charter provides for the Legislature to prescribe
16 the salary of the governing body, ~~such~~ compensation shall be
17 prescribed by the governing body by ordinance.

18 (c) An elected sheriff, an elected district attorney, an elected
19 assessor, other officers, their election or appointment,
20 compensation, ~~terms~~ terms, and ~~removal~~ removal, except as
21 otherwise provided in Section 4.6.

22 (d) The performance of functions required by statute.

23 (e) The powers and duties of governing bodies and all other
24 county officers, and for consolidation and segregation of county
25 officers, and for the manner of filling all vacancies occurring
26 therein: in those offices.

27 (f) The fixing and regulation by governing bodies, by ordinance,
28 of the appointment and number of assistants, deputies, clerks,
29 attachés, and other persons to be employed, and for the prescribing
30 and regulating by such bodies of the powers, duties, qualifications,
31 and compensation of such persons, the times at which, and terms
32 for which they shall be appointed, and the manner of their
33 appointment and removal.

34 (g) Whenever any county has framed and adopted a charter, and
35 the same shall have been approved by the Legislature as herein
36 provided, the general laws adopted by the Legislature in pursuance
37 of ~~Section 1~~ (b) subdivision (b) of Section 1 of this article, shall,
38 as to such county, be superseded by said charter as to matters for
39 which, under this section it is competent to make provision in such

1 charter, and for which provision is made therein, except as herein
2 otherwise expressly provided.

3 (h) Charter counties shall have all the powers that are provided
4 by this Constitution or by statute for counties.

5 Second—That Section 4.5 is added to Article XI thereof, to
6 read:

7 SEC. 4.5. (a) Commencing January 1, 2022, in a county that
8 is found at a decennial United States census, beginning with the
9 2020 United States census, to have a population of more than
10 5,000,000, there is required, and any applicable law, including a
11 county charter, shall be deemed to require, the following:

12 (1) The governing body shall consist of a sufficient number of
13 members, elected by district, so as to ensure that each member of
14 the governing body represents, to the extent practicable, a district
15 containing a population approximately equivalent to no more than
16 two districts in the United States House of Representatives. Each
17 member of the governing body shall reside within the district that
18 he or she represents.

19 (2) (A) Except as provided in subparagraph (B), the
20 expenditures for the governing body and its staff shall not exceed,
21 for any subsequent fiscal year after the release of the census finding
22 a population of more than 5,000,000, the amount that was allocated
23 for the expenses of the governing body and its staff in the county's
24 adopted budget for the fiscal year in which that same census was
25 conducted.

26 (B) Notwithstanding subparagraph (A), the expenditures for the
27 governing body and its staff may be adjusted for either of the
28 following reasons:

29 (i) To account for inflation, as reflected in annual changes in
30 the California Consumer Price Index.

31 (ii) To address contingencies unaccounted for during the fiscal
32 year in which the census was conducted.

33 (3) Members of the governing body shall serve for terms of four
34 years. A member of the governing body shall not serve more than
35 three terms, whether or not those terms are consecutive.

36 (b) Any members of the governing body required by this section
37 in addition to those required by any other law, including an existing
38 charter, shall first be elected at a general election occurring on or
39 after January 1, 2022. Those additional members shall serve for
40 the same term and subject to the same provisions of the applicable

1 law or charter to the governing body, except that no more than
2 one-half of the additional members elected on or after January 1,
3 2022, may serve a shortened term so as to provide for staggered
4 terms.

5 Third—That Section 4.6 is added to Article XI thereof, to read:

6 SEC. 4.6. (a) (1) A county that is found at a decennial United
7 States census beginning with the 2020 United States census to
8 have a population of more than 5,000,000 shall have an elected
9 county executive who shall serve a term of six years. The county
10 executive shall not serve more than two terms, whether or not those
11 terms are consecutive. The election of the county executive shall
12 occur at a general election.

13 (2) (A) Except as provided in subparagraph (B), the budget for
14 the county executive for the first fiscal year in which that office
15 is in existence pursuant to this section shall be based upon the
16 budget of the chief executive officer or his or her equivalent, if
17 any, in the fiscal year in which this section was added.

18 (B) Notwithstanding subparagraph (A), the amount of
19 expenditures for the governing body may be adjusted for any fiscal
20 year for either of the following reasons:

21 (i) To account for inflation, as reflected in annual changes in
22 the California Consumer Price Index.

23 (ii) To address contingencies unaccounted for during the first
24 fiscal year in which this section was added.

25 (C) The salary of the county executive shall be the same as the
26 salary paid to the presiding judge of the superior court with
27 jurisdiction over the county and may be adjusted in the same
28 manner. This subparagraph shall not be construed as a limitation
29 on the authority of the Legislature to set the compensation for
30 judges of courts of record pursuant to Section 19 of Article VI.

31 (b) (1) (A) The county executive shall appoint, supervise, and
32 dismiss any person appointed to the position of department head,
33 or its equivalent.

34 (B) The governing body of the county may overrule any
35 appointment or dismissal made pursuant to this paragraph by a
36 two-thirds vote of its entire membership. The governing body shall
37 notify the county executive of its intent to overrule and shall take
38 action within 30 calendar days of the date of notification. During
39 the 30 calendar days, the county executive's appointment or
40 dismissal action shall be suspended.

1 (2) The county executive shall appoint the members of any
2 commission of the county, subject to confirmation by the governing
3 body of the county.

4 (c) (1) The county executive, within 45 days of the adoption
5 of the annual state budget pursuant to Section 12 of Article IV,
6 shall develop and submit to the governing body of the county an
7 annual budget for the county.

8 (2) Within 90 days of receipt of the budget pursuant to paragraph
9 (1), the governing body of the county shall review and approve
10 the budget, with or without amendments, and transmit the budget
11 to the county executive for review and final approval.

12 (3) (A) Within 15 days of receipt of the budget pursuant to
13 paragraph (2), the county executive shall either:

14 (i) Approve the budget as transmitted by the board of supervisors
15 pursuant to paragraph (2).

16 (ii) Approve the budget with any line-item vetoes.

17 (B) Upon taking an action pursuant to clause (i) or (ii), the
18 county executive shall return the budget to the governing body of
19 the county along with the action taken.

20 (4) The governing body of the county may, within 15 days of
21 an approval of a budget with a line-item veto pursuant to clause
22 (ii) of subparagraph (A) of paragraph (3), override the veto by a
23 two-thirds vote of its entire membership.

24 (5) An approved budget may be amended as follows:

25 (A) By a proposal of the county executive. The county executive
26 shall present any proposed amendments to the governing body of
27 the county. The governing body shall review any proposed
28 amendment presented by the county executive, and may approve
29 any amendments by a two-thirds vote of its entire membership.

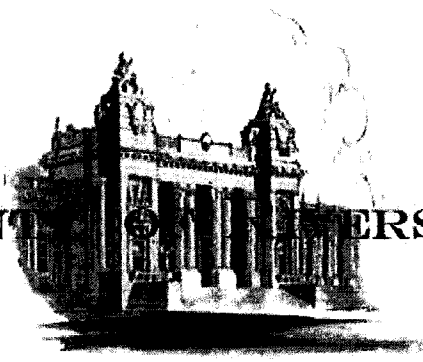
30 (B) By the governing body, which shall approve any amendment
31 to an approved budget by a two-thirds vote of its entire
32 membership.

33 (d) The governing body may override any action of the county
34 executive by a two-thirds vote of its entire membership.

35 Fourth—The provisions of this measure are severable. If any
36 provision of this measure or its application is held invalid, that
37 invalidity shall not affect other provisions or applications that can
38 be given effect without the invalid provision or application.

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COUNTY OF RIVERSIDE



Board of Supervisors

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June 6, 2017

The Honorable Blanca Rubio
Chair, Assembly Human Services Committee
State Capitol, Room 5175
Sacramento, CA 95814

**Re: SB 438 (Roth): Successor Guardians,
As Amended April 20, 2017 – SPONSOR
Set for Hearing, June 13, 2017 in Senate Human Services Committee
County of Riverside: SUPPORT – Per Legislative Platform**

Dear Assemblymember Rubio:

On behalf of the Riverside County Board of Supervisors, I write in support of SB 438 by Senator Roth. SB 438, which is sponsored by Riverside County, would allow the assessment of legal guardians to include the development of a plan for a successor guardian in the case of the incapacity or death of the guardian. The measure addresses successor guardianship for a subset of the dependents in the care and custody of state child welfare departments – children in legal guardianship placements.

Background

Existing law allows the juvenile court to appoint a legal guardian for children adjudged to be dependents. Concurrent planning for permanency is a federal and state requirement that necessitates on-going identification of a permanent plan for each dependent child if reunification does not become an option. The courts review permanency at hearings at 6, 12, and 18 months after the date the child was originally removed. As part of those hearings, the courts review assessments of legal guardians. The court makes findings on permanency for each dependent child at each court hearing. The permanency options available are Reunification, Adoption, Guardianship, and in limited circumstances, Another Planned Permanent Arrangement (APPLA).

With the passage of Public Law 113-183, the federal Preventing Sex Trafficking and Strengthening Families Act of 2014, states were encouraged to name a successor guardian for relatives seeking legal guardianship. While federal law encourages states to name a successor guardian for relatives with legal guardianship, it did not address non-relative legal guardians.

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SB 438

SB 438 would align California law with federal policy – to name a successor guardian for individuals seeking legal guardianship – and expand the policy to include non-relative legal guardians.

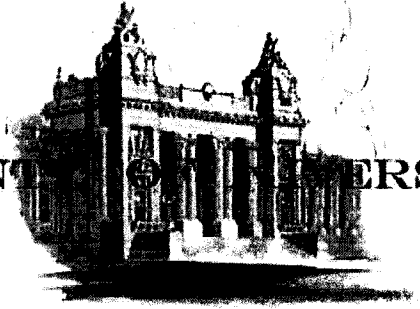
SB 438 would allow both relatives and nonrelative legal guardians to name a successor guardian. Recognizing that allowing a relative legal guardian to name a successor guardian is a step forward, more should be done to ensure the continuity of care for all children and youth with guardianships. A child or youth placed into any permanent home should have the peace of mind knowing that his or her care has been planned out prior to the termination of his or her dependency case. However, this provision should apply for all legal guardianships – relative and non-relative.

Here is an example from Riverside County of how being able to name a successor legal guardian would be a positive for our youth:

Dependents Doug and his sister did not have any relatives able to care for them. They were ultimately placed with a Non-Related Legal Guardian (NRLG). Unfortunately, within the first year, the father (guardian) died unexpectedly. The remaining NRLG felt she was not able to continue caring for Doug. He re-entered into a foster care placement while the worker furiously searched for relatives or friends that might take Doug and his sister. A distant relative wanted to take the sister but not both. While not an ideal situation, Doug was placed with a neighbor near this relative as the neighbor had agreed to become Doug's guardian.

After an extensive investigation, as to the appropriateness of the guardianship, the neighbor eventually became Doug's non-related legal guardian. The length of time between permanent placements 1) caused stress to Doug, 2) interrupted his education as he had to change schools with each change in placement, 3) disrupted his extra-curricular activities, and 4) interfered with his established friendships. The uncertainty of what would happen to Doug could have been mitigated by having an identified successor guardian.

COUNTY OF RIVERSIDE

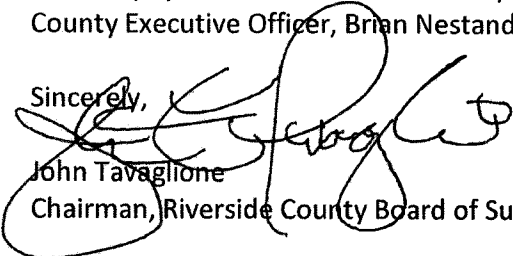


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SB 438 would provide important policy for ensuring continuity of care for children placed with legal guardians. It is for these reasons that Riverside County urges your support of SB 438. If you have any questions about the County's position, please do not hesitate to contact Deputy County Executive Officer, Brian Nestande at (951) 955-1110 or bnestande@rceo.org.

Sincerely,


John Tavaglione
Chairman, Riverside County Board of Supervisors

cc: The Honorable Richard Roth, Member, California State Senate
Members, Assembly Human Services Committee
Gail Gronert, Consultant, Assembly Speaker Anthony Rendon
Kelsy Castillo, Consultant, Assembly Human Services Committee
Mary Bellamy, Consultant, Assembly Republican Caucus

AMENDED IN SENATE APRIL 20, 2017

SENATE BILL

No. 438

Introduced by Senator Roth
(Principal coauthor: Assembly Member Waldron)
(Coauthor: Assembly Member Cervantes)

February 15, 2017

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, as specified.

This bill would authorize this preliminary assessment of a legal guardian to include the development of a plan for a successor guardian in the case of *the* incapacity or death of the guardian. *The bill would authorize the court, in the event of the incapacity or death of an appointed guardian, to appoint an individual identified in the assessment as a successor guardian pursuant to the existing procedures that govern the appointment of a legal guardian.*

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

This bill would authorize the court to consider, at this hearing, any plan for a successor guardian submitted to the court. *The bill would authorize the court, in the event of the incapacity or death of an appointed guardian, to appoint an individual identified in the assessment as a successor guardian pursuant to the existing procedures that govern the appointment of a legal guardian.*

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

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

- 1 SECTION 1. Section 360 of the Welfare and Institutions Code
- 2 is amended to read:
- 3 360. After receiving and considering the evidence on the proper
- 4 disposition of the case, the juvenile court may enter judgment as
- 5 follows:
- 6 (a) (1) Notwithstanding any other law, if the court finds that
- 7 the child is a person described by Section 300 and the parent has
- 8 advised the court that the parent is not interested in family
- 9 maintenance or family reunification services, it may, in addition

1 to or in lieu of adjudicating the child a dependent child of the court,
2 order a legal guardianship, appoint a legal guardian, and issue
3 letters of guardianship, if the court determines that a guardianship
4 is in the best interest of the child, provided the parent and the child
5 agree to the guardianship, unless the child's age or physical,
6 emotional, or mental condition prevents the child's meaningful
7 response. The court shall advise the parent and the child that no
8 reunification services will be provided as a result of the
9 establishment of a guardianship. The proceeding for the
10 appointment of a guardian shall be in the juvenile court.

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

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

20 (B) *In the event of the incapacity or death of an appointed*
21 *guardian, the court may appoint an individual identified in the*
22 *assessment submitted to the court under this paragraph as a*
23 *successor guardian pursuant to the procedures for the appointment*
24 *of a legal guardian in Section 366.26.*

25 (4) On and after the date that the director executes a declaration
26 pursuant to Section 11217, if the court appoints an approved
27 relative caregiver as the child's legal guardian, the child has been
28 in the care of that approved relative for a period of six consecutive
29 months under a voluntary placement agreement, and the child
30 otherwise meets the conditions for federal financial participation,
31 the child shall be eligible for aid under the Kin-GAP Program as
32 provided in Article 4.7 (commencing with Section 11385) of
33 Chapter 2. The nonfederally eligible child placed with an approved
34 relative caregiver who is appointed as the child's legal guardian
35 shall be eligible for aid under the state-funded Kin-GAP Program,
36 as provided for in Article 4.5 (commencing with Section 11360)
37 of Chapter 2.

38 (5) The person responsible for preparing the assessment may
39 be called and examined by any party to the guardianship
40 proceeding.

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

7 (c) If the family subsequently is unable or unwilling to cooperate
8 with the services being provided, the social worker may file a
9 petition with the juvenile court pursuant to Section 332 alleging
10 that a previous petition has been sustained and that disposition
11 pursuant to subdivision (b) has been ineffective in ameliorating
12 the situation requiring the child welfare services. Upon hearing
13 the petition, the court shall order either that the petition shall be
14 dismissed or that a new disposition hearing shall be held pursuant
15 to subdivision (d).

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

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

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

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

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

8 (B) For a child who, on the date of initial removal from the
9 physical custody of his or her parent or guardian, was under three
10 years of age, court-ordered services shall be provided for a period
11 of six months from the dispositional hearing as provided in
12 subdivision (e) of Section 366.21, but no longer than 12 months
13 from the date the child entered foster care, as provided in Section
14 361.49, unless the child is returned to the home of the parent or
15 guardian.

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

26 (2) Any motion to terminate court-ordered reunification services
27 prior to the hearing set pursuant to subdivision (f) of Section 366.21
28 for a child described by subparagraph (A) of paragraph (1), or
29 prior to the hearing set pursuant to subdivision (e) of Section
30 366.21 for a child described by subparagraph (B) or (C) of
31 paragraph (1), shall be made pursuant to the requirements set forth
32 in subdivision (c) of Section 388. A motion to terminate
33 court-ordered reunification services shall not be required at the
34 hearing set pursuant to subdivision (e) of Section 366.21 if the
35 court finds by clear and convincing evidence one of the following:

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

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

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

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

30 (B) When counseling or other treatment services are ordered,
31 the parent or guardian shall be ordered to participate in those
32 services, unless the parent's or guardian's participation is deemed
33 by the court to be inappropriate or potentially detrimental to the
34 child, or unless a parent or guardian is incarcerated or detained by
35 the United States Department of Homeland Security and the
36 corrections facility in which he or she is incarcerated does not
37 provide access to the treatment services ordered by the court, or
38 has been deported to his or her country of origin and services
39 ordered by the court are not accessible in that country. Physical
40 custody of the child by the parents or guardians during the

1 applicable time period under subparagraph (A), (B), or (C) of
2 paragraph (1) shall not serve to interrupt the running of the time
3 period. If at the end of the applicable time period, a child cannot
4 be safely returned to the care and custody of a parent or guardian
5 without court supervision, but the child clearly desires contact with
6 the parent or guardian, the court shall take the child's desire into
7 account in devising a permanency plan.

8 (C) In cases where the child was under three years of age on
9 the date of the initial removal from the physical custody of his or
10 her parent or guardian or is a member of a sibling group as
11 described in subparagraph (C) of paragraph (1), the court shall
12 inform the parent or guardian that the failure of the parent or
13 guardian to participate regularly in any court-ordered treatment
14 programs or to cooperate or avail himself or herself of services
15 provided as part of the child welfare services case plan may result
16 in a termination of efforts to reunify the family after six months.
17 The court shall inform the parent or guardian of the factors used
18 in subdivision (e) of Section 366.21 to determine whether to limit
19 services to six months for some or all members of a sibling group
20 as described in subparagraph (C) of paragraph (1).

21 (4) (A) Notwithstanding paragraph (3), court-ordered services
22 may be extended up to a maximum time period not to exceed 24
23 months after the date the child was originally removed from
24 physical custody of his or her parent or guardian if it is shown, at
25 the hearing held pursuant to subdivision (b) of Section 366.22,
26 that the permanent plan for the child is that he or she will be
27 returned and safely maintained in the home within the extended
28 time period. The court shall extend the time period only if it finds
29 that it is in the child's best interest to have the time period extended
30 and that there is a substantial probability that the child will be
31 returned to the physical custody of his or her parent or guardian
32 who is described in subdivision (b) of Section 366.22 within the
33 extended time period, or that reasonable services have not been
34 provided to the parent or guardian. If the court extends the time
35 period, the court shall specify the factual basis for its conclusion
36 that there is a substantial probability that the child will be returned
37 to the physical custody of his or her parent or guardian within the
38 extended time period. The court also shall make findings pursuant
39 to subdivision (a) of Section 366 and subdivision (e) of Section
40 358.1.

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

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

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

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

24 (2) That the parent or guardian is suffering from a mental
25 disability that is described in Chapter 2 (commencing with Section
26 7820) of Part 4 of Division 12 of the Family Code and that renders
27 him or her incapable of utilizing those services.

28 (3) That the child or a sibling of the child has been previously
29 adjudicated a dependent pursuant to any subdivision of Section
30 300 as a result of physical or sexual abuse, that following that
31 adjudication the child had been removed from the custody of his
32 or her parent or guardian pursuant to Section 361, that the child
33 has been returned to the custody of the parent or guardian from
34 whom the child had been taken originally, and that the child is
35 being removed pursuant to Section 361, due to additional physical
36 or sexual abuse.

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

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

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

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

23 (C) A finding of the infliction of severe physical harm, for the
24 purposes of this subdivision, may be based on, but is not limited
25 to, deliberate and serious injury inflicted to or on a child's body
26 or the body of a sibling or half sibling of the child by an act or
27 omission of the parent or guardian, or of another individual or
28 animal with the consent of the parent or guardian; deliberate and
29 torturous confinement of the child, sibling, or half sibling in a
30 closed space; or any other torturous act or omission that would be
31 reasonably understood to cause serious emotional damage.

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

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

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

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

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

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

33 (13) That the parent or guardian of the child has a history of
34 extensive, abusive, and chronic use of drugs or alcohol and has
35 resisted prior court-ordered treatment for this problem during a
36 three-year period immediately prior to the filing of the petition
37 that brought that child to the court’s attention, or has failed or
38 refused to comply with a program of drug or alcohol treatment
39 described in the case plan required by Section 358.1 on at least

1 two prior occasions, even though the programs identified were
2 available and accessible.

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

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

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

24 (16) That the parent or guardian has been required by the court
25 to be registered on a sex offender registry under the federal Adam
26 Walsh Child Protection and Safety Act of 2006 (42 U.S.C. Sec.
27 16913(a)), as required in Section 106(b)(2)(B)(xvi)(VI) of the
28 Child Abuse Prevention and Treatment Act of 2006 (42 U.S.C.
29 Sec. 5106a(2)(B)(xvi)(VI)).

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

37 (c) (1) In deciding whether to order reunification in any case
38 in which this section applies, the court shall hold a dispositional
39 hearing. The social worker shall prepare a report that discusses
40 whether reunification services shall be provided. When it is alleged,

1 pursuant to paragraph (2) of subdivision (b), that the parent is
2 incapable of utilizing services due to mental disability, the court
3 shall order reunification services unless competent evidence from
4 mental health professionals establishes that, even with the provision
5 of services, the parent is unlikely to be capable of adequately caring
6 for the child within the time limits specified in subdivision (a).

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

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

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

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

39 (e) (1) If the parent or guardian is incarcerated, institutionalized,
40 or detained by the United States Department of Homeland Security,

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

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

23 (B) Transportation services, when appropriate.

24 (C) Visitation services, when appropriate.

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

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

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

1 authorities as to the parents' living situation, progress, and
2 participation in services.

3 (2) The presiding judge of the juvenile court of each county
4 may convene representatives of the county welfare department,
5 the sheriff's department, and other appropriate entities for the
6 purpose of developing and entering into protocols for ensuring the
7 notification, transportation, and presence of an incarcerated or
8 institutionalized parent at all court hearings involving proceedings
9 affecting the child pursuant to Section 2625 of the Penal Code.
10 The county welfare department shall utilize the prisoner locator
11 system developed by the Department of Corrections and
12 Rehabilitation to facilitate timely and effective notice of hearings
13 for incarcerated parents.

14 (3) Notwithstanding any other law, if the incarcerated parent is
15 a woman seeking to participate in the community treatment
16 program operated by the Department of Corrections and
17 Rehabilitation pursuant to Chapter 4.8 (commencing with Section
18 1174) of Title 7 of Part 2 of, Chapter 4 (commencing with Section
19 3410) of Title 2 of Part 3 of, the Penal Code, the court shall
20 determine whether the parent's participation in a program is in the
21 child's best interest and whether it is suitable to meet the needs of
22 the parent and child.

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

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

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

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

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

20 (D) A preliminary assessment of the eligibility and commitment
21 of any identified prospective adoptive parent or guardian, including
22 a prospective tribal customary adoptive parent, particularly the
23 caretaker, to include a social history, including screening for
24 criminal records and prior referrals for child abuse or neglect, the
25 capability to meet the child's needs, and the understanding of the
26 legal and financial rights and responsibilities of adoption and
27 guardianship. If a proposed guardian is a relative of the minor, the
28 assessment shall also consider, but need not be limited to, all of
29 the factors specified in subdivision (a) of Section 361.3 and in
30 Section 361.4. The assessment of a legal guardian may also include
31 the development of a plan for a successor guardian in the case of
32 the incapacity or death of the guardian. *In the event of the*
33 *incapacity or death of an appointed guardian, the court may*
34 *appoint an individual identified in the assessment submitted to the*
35 *court as a successor guardian pursuant to the procedures for the*
36 *appointment of a legal guardian in Section 366.26. As used in this*
37 *subparagraph, "relative" means an adult who is related to the minor*
38 *by blood, adoption, or affinity within the fifth degree of kinship,*
39 *including stepparents, stepsiblings, and all relatives whose status*
40 *is preceded by the words "great," "great-great," or "grand," or the*

1 spouse of any of those persons even if the marriage was terminated
2 by death or dissolution. If the proposed permanent plan is
3 guardianship with an approved relative caregiver for a minor
4 eligible for aid under the Kin-GAP Program, as provided for in
5 Article 4.7 (commencing with Section 11385) of Chapter 2 of Part
6 3 of Division 9, “relative” as used in this section has the same
7 meaning as “relative” as defined in subdivision (c) of Section
8 11391.

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

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

24 (G) In the case of an Indian child, in addition to subparagraphs
25 (A) to (F), 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 (h) 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 dismissed,
19 the minor shall be eligible for aid under the Kin-GAP Program as
20 provided for in Article 4.5 (commencing with Section 11360) or
21 Article 4.7 (commencing with Section 11385), as applicable, of
22 Chapter 2 of Part 3 of Division 9.

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

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

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

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

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

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

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

1 (j) When the court determines that reunification services will
2 not be ordered, it shall order that the child's caregiver receive the
3 child's birth certificate in accordance with Sections 16010.4 and
4 16010.5. Additionally, when the court determines that reunification
5 services will not be ordered, it shall order, when appropriate, that
6 a child who is 16 years of age or older receive his or her birth
7 certificate.

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

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

16 366.21. (a) Every hearing conducted by the juvenile court
17 reviewing the status of a dependent child shall be placed on the
18 appearance calendar. The court shall advise all persons present at
19 the hearing of the date of the future hearing and of their right to
20 be present and represented by counsel.

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

23 (c) At least 10 calendar days prior to the hearing, the social
24 worker shall file a supplemental report with the court regarding
25 the services provided or offered to the parent or legal guardian to
26 enable him or her to assume custody and the efforts made to
27 achieve legal permanence for the child if efforts to reunify fail,
28 including, but not limited to, efforts to maintain relationships
29 between a child who is 10 years of age or older and has been in
30 out-of-home placement for six months or longer and individuals
31 who are important to the child, consistent with the child's best
32 interests; the progress made; and, where relevant, the prognosis
33 for return of the child to the physical custody of his or her parent
34 or legal guardian; and shall make his or her recommendation for
35 disposition. If the child is a member of a sibling group described
36 in subparagraph (C) of paragraph (1) of subdivision (a) of Section
37 361.5, the report and recommendation may also take into account
38 those factors described in subdivision (e) relating to the child's
39 sibling group. If the recommendation is not to return the child to
40 a parent or legal guardian, the report shall specify why the return

1 of the child would be detrimental to the child. The social worker
2 shall provide the parent or legal guardian, counsel for the child,
3 and any court-appointed child advocate with a copy of the report,
4 including his or her recommendation for disposition, at least 10
5 calendar days prior to the hearing. In the case of a child removed
6 from the physical custody of his or her parent or legal guardian,
7 the social worker shall, at least 10 calendar days prior to the
8 hearing, provide a summary of his or her recommendation for
9 disposition to any foster parents, relative caregivers, and certified
10 foster parents who have been approved for adoption by the State
11 Department of Social Services when it is acting as an adoption
12 agency or by a county adoption agency, community care facility,
13 or foster family agency having the physical custody of the child.
14 The social worker shall include a copy of the Judicial Council
15 Caregiver Information Form (JV-290) with the summary of
16 recommendations to the child's foster parents, relative caregivers,
17 or foster parents approved for adoption, in the caregiver's primary
18 language when available, along with information on how to file
19 the form with the court.

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

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

39 (2) Regardless of whether the child is returned to a parent or
40 legal guardian, the court shall specify the factual basis for its

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

12 (3) If the child was under three years of age on the date of the
13 initial removal, or is a member of a sibling group described in
14 subparagraph (C) of paragraph (1) of subdivision (a) of Section
15 361.5, and the court finds by clear and convincing evidence that
16 the parent failed to participate regularly and make substantive
17 progress in a court-ordered treatment plan, the court may schedule
18 a hearing pursuant to Section 366.26 within 120 days. If, however,
19 the court finds there is a substantial probability that the child, who
20 was under three years of age on the date of initial removal or is a
21 member of a sibling group described in subparagraph (C) of
22 paragraph (1) of subdivision (a) of Section 361.5, may be returned
23 to his or her parent or legal guardian within six months or that
24 reasonable services have not been provided, the court shall continue
25 the case to the 12-month permanency hearing.

26 (4) For the purpose of placing and maintaining a sibling group
27 together in a permanent home, the court, in making its
28 determination to schedule a hearing pursuant to Section 366.26
29 for some or all members of a sibling group, as described in
30 subparagraph (C) of paragraph (1) of subdivision (a) of Section
31 361.5, shall review and consider the social worker's report and
32 recommendations. Factors the report shall address, and the court
33 shall consider, may include, but need not be limited to, whether
34 the sibling group was removed from parental care as a group, the
35 closeness and strength of the sibling bond, the ages of the siblings,
36 the appropriateness of maintaining the sibling group together, the
37 detriment to the child if sibling ties are not maintained, the
38 likelihood of finding a permanent home for the sibling group,
39 whether the sibling group is currently placed together in a
40 preadoptive home or has a concurrent plan goal of legal

1 permanency in the same home, the wishes of each child whose
2 age and physical and emotional condition permits a meaningful
3 response, and the best interests of each child in the sibling group.
4 The court shall specify the factual basis for its finding that it is in
5 the best interests of each child to schedule a hearing pursuant to
6 Section 366.26 within 120 days for some or all of the members of
7 the sibling group.

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

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

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

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

38 (f) (1) The permanency hearing shall be held no later than 12
39 months after the date the child entered foster care, as that date is
40 determined pursuant to Section 361.49. At the permanency hearing,

1 the court shall determine the permanent plan for the child, which
2 shall include a determination of whether the child will be returned
3 to the child's home and, if so, when, within the time limits of
4 subdivision (a) of Section 361.5. After considering the relevant
5 and admissible evidence, the court shall order the return of the
6 child to the physical custody of his or her parent or legal guardian
7 unless the court finds, by a preponderance of the evidence, that
8 the return of the child to his or her parent or legal guardian would
9 create a substantial risk of detriment to the safety, protection, or
10 physical or emotional well-being of the child. The social worker
11 shall have the burden of establishing that detriment.

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

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

34 (C) In making its determination, the court shall review and
35 consider the social worker's report and recommendations and the
36 report and recommendations of any child advocate appointed
37 pursuant to Section 356.5, shall consider the efforts or progress,
38 or both, demonstrated by the parent or legal guardian and the extent
39 to which he or she availed himself or herself of services provided,
40 taking into account the particular barriers to a minor parent or a

1 nonminor dependent parent, or an incarcerated, institutionalized,
2 detained, or deported parent's or legal guardian's access to those
3 court-mandated services and ability to maintain contact with his
4 or her child, and shall make appropriate findings pursuant to
5 subdivision (a) of Section 366.

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

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

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

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

1 the extended period of time, the court shall be required to find all
2 of the following:

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

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

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

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

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

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

37 (3) For purposes of paragraph (2), in order to find a substantial
38 probability that the child will be returned to the physical custody
39 of his or her parent or legal guardian and safely maintained in the

1 home within the extended period of time, the court shall find all
2 of the following:

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

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

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

16 (4) Order that a hearing be held within 120 days, pursuant to
17 Section 366.26, but only if the court does not continue the case to
18 the permanency planning review hearing and there is clear and
19 convincing evidence that reasonable services have been provided
20 or offered to the parents or legal guardians. On and after January
21 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered
22 if the child is a nonminor dependent, unless the nonminor
23 dependent is an Indian child and tribal customary adoption is
24 recommended as the permanent plan.

25 (5) Order that the child remain in foster care, but only if the
26 court finds by clear and convincing evidence, based upon the
27 evidence already presented to it, including a recommendation by
28 the State Department of Social Services when it is acting as an
29 adoption agency or by a county adoption agency, that there is a
30 compelling reason for determining that a hearing held pursuant to
31 Section 366.26 is not in the best interests of the child because the
32 child is not a proper subject for adoption and has no one willing
33 to accept legal guardianship as of the hearing date. For purposes
34 of this section, a recommendation by the State Department of
35 Social Services when it is acting as an adoption agency or by a
36 county adoption agency that adoption is not in the best interests
37 of the child shall constitute a compelling reason for the court's
38 determination. That recommendation shall be based on the present
39 circumstances of the child and shall not preclude a different
40 recommendation at a later date if the child's circumstances change.

1 On and after January 1, 2012, the nonminor dependent's legal
2 status as an adult is in and of itself a compelling reason not to hold
3 a hearing pursuant to Section 366.26. The court may order that a
4 nonminor dependent who otherwise is eligible pursuant to Section
5 11403 remain in a planned, permanent living arrangement.

6 (A) The court shall make factual findings identifying any
7 barriers to achieving the permanent plan as of the hearing date.
8 When the child is under 16 years of age, the court shall order a
9 permanent plan of return home, adoption, tribal customary adoption
10 in the case of an Indian child, legal guardianship, or placement
11 with a fit and willing relative, as appropriate. When the child is
12 16 years of age or older, or is a nonminor dependent, and no other
13 permanent plan is appropriate at the time of the hearing, the court
14 may order another planned permanent living arrangement, as
15 described in paragraph (2) of subdivision (i) of Section 16501.

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

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

29 (h) In any case in which the court orders that a hearing pursuant
30 to Section 366.26 shall be held, it shall also order the termination
31 of reunification services to the parent or legal guardian. The court
32 shall continue to permit the parent or legal guardian to visit the
33 child pending the hearing unless it finds that visitation would be
34 detrimental to the child. The court shall make any other appropriate
35 orders to enable the child to maintain relationships with individuals,
36 other than the child's siblings, who are important to the child,
37 consistent with the child's best interests. When the court orders a
38 termination of reunification services to the parent or legal guardian,
39 it shall also order that the child's caregiver receive the child's birth
40 certificate in accordance with Sections 16010.4 and 16010.5.

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

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

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

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

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

23 (D) A preliminary assessment of the eligibility and commitment
24 of any identified prospective adoptive parent or legal guardian,
25 including the prospective tribal customary adoptive parent,
26 particularly the caretaker, to include a social history including
27 screening for criminal records and prior referrals for child abuse
28 or neglect, the capability to meet the child's needs, and the
29 understanding of the legal and financial rights and responsibilities
30 of adoption and guardianship. If a proposed guardian is a relative
31 of the minor, the assessment shall also consider, but need not be
32 limited to, all of the factors specified in subdivision (a) of Section
33 361.3 and in Section 361.4. The assessment of a legal guardian
34 may also include the development of a plan for a successor
35 guardian in the case of the incapacity or death of the guardian. *In*
36 *the event of the incapacity or death of an appointed guardian, the*
37 *court may appoint an individual identified in the assessment*
38 *submitted to the court as a successor guardian pursuant to the*
39 *procedures for the appointment of a legal guardian in Section*
40 *366.26.*

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

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

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

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

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

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

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

37 (B) Regardless of his or her immigration status, a relative
38 caregiver shall be given information regarding the permanency
39 options of guardianship and adoption, including the long-term
40 benefits and consequences of each option, prior to establishing

1 legal guardianship or pursuing adoption. If the proposed permanent
2 plan is guardianship with an approved relative caregiver for a
3 minor eligible for aid under the Kin-GAP Program, as provided
4 for in Article 4.7 (commencing with Section 11385) of Chapter 2
5 of Part 3 of Division 9, the relative caregiver shall be informed
6 about the terms and conditions of the negotiated agreement
7 pursuant to Section 11387 and shall agree to its execution prior to
8 the hearing held pursuant to Section 366.26. A copy of the executed
9 negotiated agreement shall be attached to the assessment.

10 (j) If, at any hearing held pursuant to Section 366.26, a
11 guardianship is established for the minor with an approved relative
12 caregiver, and juvenile court dependency is subsequently
13 dismissed, the minor shall be eligible for aid under the Kin-GAP
14 Program, as provided for in Article 4.5 (commencing with Section
15 11360) or Article 4.7 (commencing with Section 11385), as
16 applicable, of Chapter 2 of Part 3 of Division 9.

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

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

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

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

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

39 SEC. 4. Section 366.22 of the Welfare and Institutions Code
40 is amended to read:

1 366.22. (a) (1) When a case has been continued pursuant to
2 paragraph (1) or (2) of subdivision (g) of Section 366.21, the
3 permanency review hearing shall occur within 18 months after the
4 date the child was originally removed from the physical custody
5 of his or her parent or legal guardian. After considering the
6 admissible and relevant evidence, the court shall order the return
7 of the child to the physical custody of his or her parent or legal
8 guardian unless the court finds, by a preponderance of the evidence,
9 that the return of the child to his or her parent or legal guardian
10 would create a substantial risk of detriment to the safety, protection,
11 or physical or emotional well-being of the child. The social worker
12 shall have the burden of establishing that detriment. At the
13 permanency review hearing, the court shall consider the criminal
14 history, obtained pursuant to paragraph (1) of subdivision (f) of
15 Section 16504.5, of the parent or legal guardian subsequent to the
16 child's removal, to the extent that the criminal record is
17 substantially related to the welfare of the child or the parent's or
18 legal guardian's ability to exercise custody and control regarding
19 his or her child, provided that the parent or legal guardian agreed
20 to submit fingerprint images to obtain criminal history information
21 as part of the case plan. The court shall also consider whether the
22 child can be returned to the custody of his or her parent who is
23 enrolled in a certified substance abuse treatment facility that allows
24 a dependent child to reside with his or her parent. The fact that the
25 parent is enrolled in a certified substance abuse treatment facility
26 shall not be, for that reason alone, prima facie evidence of
27 detriment. The failure of the parent or legal guardian to participate
28 regularly and make substantive progress in court-ordered treatment
29 programs shall be prima facie evidence that return would be
30 detrimental. In making its determination, the court shall review
31 and consider the social worker's report and recommendations and
32 the report and recommendations of any child advocate appointed
33 pursuant to Section 356.5; shall consider the efforts or progress,
34 or both, demonstrated by the parent or legal guardian and the extent
35 to which he or she availed himself or herself of services provided,
36 taking into account the particular barriers of a minor parent or a
37 nonminor dependent parent, or an incarcerated or institutionalized
38 parent's or legal guardian's access to those court-mandated services
39 and ability to maintain contact with his or her child; and shall make
40 appropriate findings pursuant to subdivision (a) of Section 366.

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

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

1 January 1, 2012, the nonminor dependent's legal status as an adult
2 is in and of itself a compelling reason not to hold a hearing pursuant
3 to Section 366.26. The court may order that a nonminor dependent
4 who otherwise is eligible pursuant to Section 11403 remain in a
5 planned, permanent living arrangement. If the court orders that a
6 child who is 10 years of age or older remain in foster care, the
7 court shall determine whether the agency has made reasonable
8 efforts to maintain the child's relationships with individuals other
9 than the child's siblings who are important to the child, consistent
10 with the child's best interests, and may make any appropriate order
11 to ensure that those relationships are maintained. The hearing shall
12 be held no later than 120 days from the date of the permanency
13 review hearing. The court shall also order termination of
14 reunification services to the parent or legal guardian. The court
15 shall continue to permit the parent or legal guardian to visit the
16 child unless it finds that visitation would be detrimental to the
17 child. The court shall determine whether reasonable services have
18 been offered or provided to the parent or legal guardian. For
19 purposes of this subdivision, evidence of any of the following
20 circumstances shall not, in and of themselves, be deemed a failure
21 to provide or offer reasonable services:

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

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

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

29 (b) If the child is not returned to a parent or legal guardian at
30 the permanency review hearing and the court determines by clear
31 and convincing evidence that the best interests of the child would
32 be met by the provision of additional reunification services to a
33 parent or legal guardian who is making significant and consistent
34 progress in a court-ordered residential substance abuse treatment
35 program, a parent who was either a minor parent or a nonminor
36 dependent parent at the time of the initial hearing making
37 significant and consistent progress in establishing a safe home for
38 the child's return, or a parent recently discharged from
39 incarceration, institutionalization, or the custody of the United
40 States Department of Homeland Security and making significant

1 and consistent progress in establishing a safe home for the child's
2 return, the court may continue the case for up to six months for a
3 subsequent permanency review hearing, provided that the hearing
4 shall occur within 24 months of the date the child was originally
5 taken from the physical custody of his or her parent or legal
6 guardian. The court shall continue the case only if it finds that
7 there is a substantial probability that the child will be returned to
8 the physical custody of his or her parent or legal guardian and
9 safely maintained in the home within the extended period of time
10 or that reasonable services have not been provided to the parent
11 or legal guardian. For the purposes of this section, in order to find
12 a substantial probability that the child will be returned to the
13 physical custody of his or her parent or legal guardian and safely
14 maintained in the home within the extended period of time, the
15 court shall be required to find all of the following:

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

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

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

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

35 The court shall inform the parent or legal guardian that if the
36 child cannot be returned home by the subsequent permanency
37 review hearing, a proceeding pursuant to Section 366.26 may be
38 instituted. The court shall not order that a hearing pursuant to
39 Section 366.26 be held unless there is clear and convincing

1 evidence that reasonable services have been provided or offered
2 to the parent or legal guardian.

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

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

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

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

19 (D) A preliminary assessment of the eligibility and commitment
20 of any identified prospective adoptive parent or legal guardian,
21 particularly the caretaker, to include a social history including
22 screening for criminal records and prior referrals for child abuse
23 or neglect, the capability to meet the child's needs, and the
24 understanding of the legal and financial rights and responsibilities
25 of adoption and guardianship. If a proposed legal guardian is a
26 relative of the minor, the assessment shall also consider, but need
27 not be limited to, all of the factors specified in subdivision (a) of
28 Section 361.3 and Section 361.4. The assessment of a legal
29 guardian may also include the development of a plan for a
30 successor guardian in the case of the incapacity or death of the
31 guardian. *In the event of the incapacity or death of an appointed*
32 *guardian, the court may appoint an individual identified in the*
33 *assessment submitted to the court as a successor guardian pursuant*
34 *to the procedures for the appointment of a legal guardian in*
35 *Section 366.26.*

36 (E) The relationship of the child to any identified prospective
37 adoptive parent or legal guardian, the duration and character of
38 the relationship, the degree of attachment of the child to the
39 prospective relative guardian or adoptive parent, the relative's or
40 adoptive parent's strong commitment to caring permanently for

1 the child, the motivation for seeking adoption or legal guardianship,
2 a statement from the child concerning placement and the adoption
3 or legal guardianship, and whether the child, if over 12 years of
4 age, has been consulted about the proposed relative guardianship
5 arrangements, unless the child's age or physical, emotional, or
6 other condition precludes his or her meaningful response, and if
7 so, a description of the condition.

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

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

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

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

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

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

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

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

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

23 366.25. (a) (1) When a case has been continued pursuant to
24 subdivision (b) of Section 366.22, the subsequent permanency
25 review hearing shall occur within 24 months after the date the
26 child was originally removed from the physical custody of his or
27 her parent or legal guardian. After considering the relevant and
28 admissible evidence, the court shall order the return of the child
29 to the physical custody of his or her parent or legal guardian unless
30 the court finds, by a preponderance of the evidence, that the return
31 of the child to his or her parent or legal guardian would create a
32 substantial risk of detriment to the safety, protection, or physical
33 or emotional well-being of the child. The social worker shall have
34 the burden of establishing that detriment. At the subsequent
35 permanency review hearing, the court shall consider the criminal
36 history, obtained pursuant to paragraph (1) of subdivision (f) of
37 Section 16504.5, of the parent or legal guardian subsequent to the
38 child's removal to the extent that the criminal record is substantially
39 related to the welfare of the child or parent's or legal guardian's
40 ability to exercise custody and control regarding his or her child

1 provided that the parent or legal guardian agreed to submit
2 fingerprint images to obtain criminal history information as part
3 of the case plan. The court shall also consider whether the child
4 can be returned to the custody of a parent who is enrolled in a
5 certified substance abuse treatment facility that allows a dependent
6 child to reside with his or her parent. The fact that the parent is
7 enrolled in a certified substance abuse treatment facility shall not
8 be, for that reason alone, prima facie evidence of detriment. The
9 failure of the parent or legal guardian to participate regularly and
10 make substantive progress in court-ordered treatment programs
11 shall be prima facie evidence that return would be detrimental. In
12 making its determination, the court shall review and consider the
13 social worker's report and recommendations and the report and
14 recommendations of any child advocate appointed pursuant to
15 Section 356.5; shall consider the efforts or progress, or both,
16 demonstrated by the parent or legal guardian and the extent to
17 which he or she availed himself or herself of services provided;
18 and shall make appropriate findings pursuant to subdivision (a) of
19 Section 366.

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

30 (3) If the child is not returned to a parent or legal guardian at
31 the subsequent permanency review hearing, the court shall order
32 that a hearing be held pursuant to Section 366.26 in order to
33 determine whether adoption, or, in the case of an Indian child,
34 tribal customary adoption, guardianship, or, in the case of a child
35 16 years of age or older when no other permanent plan is
36 appropriate, another planned permanent living arrangement is the
37 most appropriate plan for the child. On and after January 1, 2012,
38 a hearing pursuant to Section 366.26 shall not be ordered if the
39 child is a nonminor dependent, unless the nonminor dependent is
40 an Indian child and tribal customary adoption is recommended as

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

1 circumstances shall not, in and of themselves, be deemed a failure
2 to provide or offer reasonable services:

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

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

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

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

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

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

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

25 (D) A preliminary assessment of the eligibility and commitment
26 of any identified prospective adoptive parent or legal guardian,
27 including a prospective tribal customary adoptive parent,
28 particularly the caretaker, to include a social history including
29 screening for criminal records and prior referrals for child abuse
30 or neglect, the capability to meet the child's needs, and the
31 understanding of the legal and financial rights and responsibilities
32 of adoption and guardianship. If a proposed legal guardian is a
33 relative of the minor, the assessment shall also consider, but need
34 not be limited to, all of the factors specified in subdivision (a) of
35 Section 361.3 and in Section 361.4. The assessment of a legal
36 guardian may also include the development of a plan for a
37 successor guardian in the case of the incapacity or death of the
38 guardian. *In the event of the incapacity or death of an appointed*
39 *guardian, the court may appoint an individual identified in the*
40 *assessment submitted to the court as a successor guardian pursuant*

1 *to the procedures for the appointment of a legal guardian in*
2 *Section 366.26.*

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

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

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

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

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

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

36 (B) Regardless of his or her immigration status, a relative
37 caregiver shall be given information regarding the permanency
38 options of guardianship and adoption, including the long-term
39 benefits and consequences of each option, prior to establishing
40 legal guardianship or pursuing adoption. If the proposed permanent

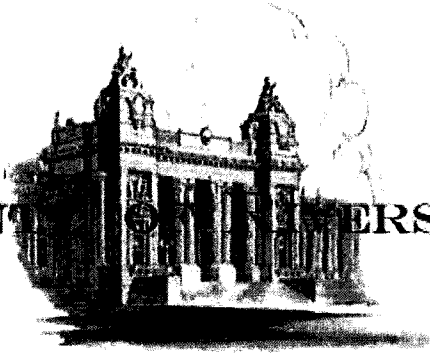
1 plan is guardianship with an approved relative caregiver for a
2 minor eligible for aid under the Kin-GAP Program, as provided
3 for in Article 4.7 (commencing with Section 11385) of Chapter 2
4 of Part 3 of Division 9, the relative caregiver shall be informed
5 about the terms and conditions of the negotiated agreement
6 pursuant to Section 11387 and shall agree to its execution prior to
7 the hearing held pursuant to Section 366.26. A copy of the executed
8 negotiated agreement shall be attached to the assessment.

9 (c) If, at any hearing held pursuant to Section 366.26, a
10 guardianship is established for the minor with an approved relative
11 caregiver, and juvenile court dependency is subsequently
12 dismissed, the minor shall be eligible for aid under the Kin-GAP
13 Program, as provided for in Article 4.5 (commencing with Section
14 11360) or Article 4.7 (commencing with Section 11385), as
15 applicable, of Chapter 2 of Part 3 of Division 9.

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

O

COUNTY OF RIVERSIDE



Board of Supervisors

District 1	Kevin Jeffries 951-955-1010
District 2 Chairman	John F. Tavaglione 951-955-1020
District 3	Chuck Washington 951-955-1030
District 4	V. Manuel Perez 951-955-1040
District 5	Marion Ashley 951-955-1050

June 6, 2017

The Honorable Scott Wiener
Chair, Senate Human Services Committee
State Capitol, Room 4066
Sacramento, CA 95814

**RE: AB 1401 (Maienschein): Juveniles: Protective Custody Warrant
As Amended April 19, 2017
Set for Hearing June 13, 2017 in Senate Human Services Committee
County of Riverside: SUPPORT – Per Board Action**

Dear Senator Wiener:

On behalf of the Riverside County Board of Supervisors, I write to express our support for AB 1401 by Assembly Member Maienschein. The measure would clarify that a court may issue a protective custody warrant for the protection of a child under specified circumstances when the child is not already the subject of a dependency petition.

Under existing law, the juvenile court is allowed to order removal of a child from his or her home when a petition is filed simultaneously or if social workers investigating child abuse and neglect find that there is imminent danger or bodily harm. There is some ambiguity in existing law regarding the issue of obtaining warrants without the filing of a petition. Some courts will issue warrants without a petition, because they believe that authority is inherent in their judicial powers to protect the interests of a minor. However, in some counties, judges will not do so without a warrant.

AB 1401 would clarify this ambiguity by allowing social workers, under certain circumstances, to seek a court order to remove a child without filing a petition while still retaining the judge's discretion as to whether a warrant is appropriate or needed as a precondition. This bill would provide an additional tool for social workers and help to protect vulnerable children.

For this reason, the County of Riverside supports AB 1401. If you have any questions about the County's position, please do not hesitate to contact our Deputy County Executive Officer, Brian Nestande at (951) 955-1110, bnestande@rceo.org.

Sincerely,

John Tavaglione
Chairman, Riverside County Board of Supervisors

cc: The Honorable Brian Maienschein, Member, California State Assembly
County of Riverside Delegation
Members, Senate Human Services Committee
Mareva Brown, Consultant, senate Human Services Committee
Joe Parra, Consultant, Senate Republican Caucus

AMENDED IN ASSEMBLY APRIL 19, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 1401

Introduced by Assembly Member Maienschein

February 17, 2017

An act to amend Section 340 of the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1401, as amended, Maienschein. Juveniles: protective custody warrant.

Existing law establishes the jurisdiction of the juvenile court, which is permitted to adjudge certain children to be dependents of the court under certain circumstances, including when the child is abused, a parent or guardian fails to adequately supervise or protect the child, as specified, or a parent or guardian fails to provide the child with adequate food, clothing, shelter, or medical treatment. Existing law requires a proceeding in the juvenile court to declare a child to be a dependent child of the court to be commenced by the filing with the court, by the social worker, of a petition in conformity with specified requirements. Existing law authorizes the court to issue a protective custody warrant for a minor under certain circumstances, including when a petition has been filed in the juvenile court alleging that the minor comes within the jurisdiction of the juvenile court as a dependent or when a dependent minor has run away from his or her court-ordered placement.

This bill would authorize the court to issue a protective custody warrant, without filing a petition in the juvenile court alleging that the minor comes within the jurisdiction of the juvenile court as a dependent, if there is probable cause to believe the minor comes within the

jurisdiction of the juvenile court as a dependent, there is a substantial danger to the ~~physical or emotional health, or both,~~ *safety or physical health* of the child, and there are no reasonable means to protect the ~~child~~ *child's safety or physical health* without removal. *The bill would require any child taken into protective custody under these provisions to immediately be delivered to the social worker who shall investigate the facts and circumstances of the child and the facts surrounding the child being taken into custody and attempt to maintain the child with the child's family through the provision of services. By imposing additional duties on county social workers, this bill would impose a state-mandated local program.*

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 no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. Section 340 of the Welfare and Institutions Code
- 2 is amended to read:
- 3 340. (a) Whenever a petition has been filed in the juvenile
- 4 court alleging that a minor comes within Section 300 and praying
- 5 for a hearing on that petition, or whenever any subsequent petition
- 6 has been filed praying for a hearing in the matter of the minor and
- 7 it appears to the court that the circumstances of his or her home
- 8 environment may endanger the health, person, or welfare of the
- 9 minor, or whenever a dependent minor has run away from his or
- 10 her court-ordered placement, a protective custody warrant may be
- 11 issued immediately for the minor.
- 12 (b) A protective custody warrant may be issued without filing
- 13 a petition under Section 300 if the court finds probable cause to
- 14 support all of the following:
- 15 (1) The child is a person described in Section 300.
- 16 (2) There is a substantial danger to the ~~physical or emotional~~
- 17 ~~health, or both,~~ *safety or physical health* of the child.

1 (3) There are no reasonable means to protect the ~~child~~ child's
2 safety or physical health without removal.

3 (c) Any child taken into protective custody pursuant to this
4 section shall immediately be delivered to the social worker who
5 shall investigate, pursuant to Section 309, the facts and
6 circumstances of the child and the facts surrounding the child
7 being taken into custody and attempt to maintain the child with
8 the child's family through the provision of services.

9 (d) Nothing in this section is intended to limit any other
10 circumstance permitting a magistrate to issue a warrant for a
11 person.

12 SEC. 2. To the extent that this act has an overall effect of
13 increasing the costs already borne by a local agency for programs
14 or levels of service mandated by the 2011 Realignment Legislation
15 within the meaning of Section 36 of Article XIII of the California
16 Constitution, it shall apply to local agencies only to the extent that
17 the state provides annual funding for the cost increase. Any new
18 program or higher level of service provided by a local agency
19 pursuant to this act above the level for which funding has been
20 provided shall not require a subvention of funds by the state or
21 otherwise be subject to Section 6 of Article XIII B of the California
22 Constitution.



HURST+BROOKS+ESPINOSA

Riverside County Legislative/Budget Update – June 7, 2017

BILLS

SCA 12 (Mendoza) - Counties: Governing Body: County Executive

This constitutional amendment would seek voter approval to expand the number of supervisorial districts and to create a directly elected county executive officer in a county with a population of five million or more after the 2020 census. Currently, these provisions would apply only to the County of Los Angeles, but counties of all sizes are concerned about the setting of precedent by which the Legislature authorizes a statewide vote on matters that are explicitly local in nature. Decisions about the structure of county government should reside squarely with its residents, not voters in unaffected jurisdictions.

Additional significant concerns exist regarding the concept of an elected chief executive officer for California counties. County chief executives currently provide important administrative functions to implement policies set forth by the board of supervisors; they are trained managers who operate in a non-partisan manner to administer a wide variety of programs and services to Californians. Simply substituting an appointed chief executive with an elected one will result in a scenario where political dynamics will likely take priority over expertise and doing so may not, in fact, result in improved results or performance.

Note that there was a joint informational hearing – convened by the Senate Elections and the Senate Governance and Finance Committees – in October 2016 to explore a variety of county governance issues. Both concepts regarding an expanded local legislative body and a locally elected county executive officer were discussed during this hearing. More information on that hearing can be found [here](#).

Support: Author-sponsored bill

Opposition: Los Angeles County; California State Association of Counties; Urban Counties of California

County Position: Oppose

Status: SCA 12 has been referred to the Senate Governance and Finance Committee and the Senate Elections and Constitutional Amendments Committee. No hearing dates have yet been set. (A constitutional amendment is not subject to the same legislative deadlines as a regular bill.)

SB 438 (Roth) – Successor Guardians

This County-sponsored measure would address a sub-set of the dependents in the care and custody of state child welfare departments – children in legal guardianship placements. It would allow the assessment of legal guardians to include the development of a plan for a successor guardian in the case of the incapacity or death of the guardian.

With the passage of Public Law 113-183, the federal Preventing Sex Trafficking and Strengthening Families Act of 2014, states were encouraged to name a successor guardian for relatives seeking legal guardianship. This bill would align California law with federal policy – to name a successor guardian for individuals seeking legal guardianship – and expand the policy to include non-relative legal guardians. The naming of a successor guardian by non-relative legal guardians was not specified in federal law.

SB 438 would allow both relatives and non-relative legal guardians to name a successor guardian. Recognizing that allowing a relative legal guardian to name a successor guardian is a step forward, more should be done to ensure the continuity of care for all children and youth with guardianships. A child or youth placed into any permanent home should have the peace of mind knowing that his or her care has been planned out prior to the termination of his or her dependency case. However, this provision should apply for all legal guardianships – relative and non-relative.

When a child or youth is placed into a permanent home, relative or non-relative, interactions naturally occur between the child and the legal guardian’s extended family and friends. These extended family members, such as the legal guardian’s brothers or sisters, become the child’s extended family. This extended family becomes a resource from which a successor guardian can be identified. Failure to clarify the ability of family courts to legally recognize successor guardians identified by relative and non-relative legal guardians unnecessarily puts the child or youth back into the foster care system.

The safety of the youth or child is always a primary concern. A process is in place to ensure successor guardians are vetted through extensive, expedited backgrounds checks. This process allows the child to stay with the family he knows.

County Position: Sponsor

Support: County of Riverside (sponsor); California State Association of Counties; County Welfare Directors Association; National Association of Social Workers, California Chapter; Santa Clara County Board of Supervisors

Opposition: None

Status: Passed Senate on 5/15/2017; referred to Assembly Human Services and Judiciary Committees. No hearing dates have been set. Note that the measure has thus far move on consent at each step of the legislative process.

AB 1401 (Maienschein): Juveniles: Protective Custody Warrant

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AB 1401 would clarify this ambiguity by allowing social workers, under certain circumstances, to seek a court order to remove a child without filing a petition while still retaining the judge's discretion as to whether a warrant is appropriate or needed as a precondition. This bill would provide an additional tool for social workers and help to protect vulnerable children.

Support: County of San Diego (sponsor); California State Association of Counties; Urban Counties of California

Opposition: None.

County Position: Support

Status: Passed Assembly 5/18/2017; awaiting hearing in Senate Judiciary Committee.