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

ITEM
2.4
(ID # 4691)

MEETING DATE:
Tuesday, July 11, 2017

FROM : EXECUTIVE OFFICE:

SUBJECT: EXECUTIVE OFFICE: Legislative Letters Sent: July 11, All Districts. [$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Receive and File the report detailing the most recent legislative letters sent up to the July 11 Board Meeting.

ACTION: Consent

Brian Nestande 7/3/2017

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Ashley, seconded by Supervisor Tavaglione 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:	July 11, 2017
xc:	EO

Kecia Harper-Ihem
Clerk of the Board
By: _____
Deputy

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: AB 614 (Limón) – Area Agencies on Aging: Alzheimer 's Disease and Dementia: Training and Services
Position: SUPPORT – Per Board Action
Recipient: Senator Ed Hernandez
Summary: Current law requires the California Department of Aging to adopt policies and guidelines to carry out the purposes of the Alzheimer's Day Care-Resource Center program, whereby direct services contractors receive funding to provide services to meet the special care needs of, and address the behavioral problems of, individuals with Alzheimer's disease or a disease of a related type. This bill would require each area agency on aging to develop an evidence-based or evidence-informed core-training program relating to Alzheimer's disease and dementia, and any additional training based on local needs.

Legislation/Policy: AB 668 (Gonzalez-Fletcher) – Voting Modernization Bond Act of 2018
Position: SUPPORT – Per Board Action
Recipient: Senator Mike McGuire
Summary: Current law authorizes a county to apply to the Voting Modernization Board for money from the proceeds of the sale of bonds (1) to pay for or purchase new voting systems that are certified or conditionally approved by the Secretary of State, (2) to research and develop new voting systems, or (3) to manufacture the minimum number of voting system units reasonably necessary to test and seek certification or conditional approval of the voting system,

or test and demonstrate the capabilities of a voting system in a pilot program. This bill would enact the Voting Modernization Bond Act of 2018 which, if approved, would authorize the issuance and sale of bonds in the amount of $450,000,000, as specified, for similar purposes.

Legislation/Policy: AB 1200 (Cervantes): Aging and Disabilities Resource Connection Program
Position: **SUPPORT – Per Board Action – Amended Version**
Recipient: Senator Ed Hernandez O.D.
Summary: AB 1200 would establish the Aging and Disability Resource Connection (ADRC) program, to be administered by the California Department of Aging, to provide information to consumers and their families on available long-term services and supports (LTSS) programs and to assist older adults, caregivers, and persons with disabilities in accessing LTSS programs at the local level. The bill would require the department to establish the Aging and Disability Resource Connection Advisory Committee as the primary adviser in the ongoing development and implementation of the ADRC program.

Legislation/Policy: SB 249 (Allen): Off-Highway Motor Vehicle Recreation
Position: **OPPOSE - Per Board Action - Amended Version**
Recipient: Assembly Member Eduardo Garcia
Summary: Would revise and recast various provisions of the Off-Highway Motor Vehicle Recreation Act of 2003. The bill would expand the duties of the Division of Off-Highway Motor Vehicle Recreation. The bill would require the Director of Parks and Recreation to assemble a science advisory team to advise and assist the department and the division in meeting the natural and cultural resource conservation purposes of the act, as specified.

Legislation/Policy: SB 438 - Successor Guardians (Roth)
Position: SPONSOR – Per Legislative Platform
Recipient: Assembly Member Mark Stone
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.

Legislation/Policy: SB 438 - Successor Guardians (Roth)
Position: SPONSOR – Per Legislative Platform
Recipient: Assembly Member Lorena Gonzalez Fletcher
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.

Legislation/Policy: SB 649 (Hueso): Wireless Telecommunications Facilities
Position: **OPPOSE – Per Legislative Platform - Amended Version**
Recipient: Assembly Member Cecilia Aguiar-Curry
Summary: Under current law, a wireless telecommunications collocation facility, as specified, is subject to a city or county discretionary permit and is required to comply with specified criteria, but a collocation facility, which is the placement or installation of wireless facilities, including antennas and related equipment, on or immediately adjacent to that wireless telecommunications collocation facility, is a permitted use not subject to a city or county discretionary permit. This bill would provide that a small cell is a permitted use, subject only to a specified permitting process adopted by a city or county, if the small cell meets specified requirements.

Legislation/Policy: SCA 12 (Mendoza) - Counties: Governing Body: County Executive
Position: Oppose – Per Legislative Platform
Recipient: Senator Henry Stern
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: Cap and Trade
Position: Support for Cap-and-Trade Funding Equity – Per Legislative Platform
Recipient: Riverside County State Delegation
Summary: The County of Riverside continues to advocate for equity in cap-and-trade program funds. AB 32, the Global Warming Solutions Act of 2006, set forth the regulatory structure that would come to be referred to as cap-and-trade. In reviewing the distribution of funds throughout the state, we have concluded that the Southern California region, which is home to 48% of the state's population and 67% of its disadvantaged communities, is being significantly underfunded in relation to its significant challenges to reach GHG reduction goals.

In closer examination of this matter, this disparity becomes more clear when the Southern California region has only received 29.7% ($366 million) of the total 2016-2017 Greenhouse Gas Reduction Funds (GGRF) ($1.234 billion as of May 2017), these numbers include funding from the Affordable Housing & Sustainable Communities Grant Program, Low Carbon Transportation, and Transit & Intercity Rail, available for distribution. In comparison to the rest of California which received 42.1% ($520 million) and the High Speed Rail which received 28.2% ($348 million) of the total GGRF as of May.

Impact on Residents and Businesses

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

ATTACHMENT A. Letters Sent & Legislation June 20 – July 11
ATTACHMENT B. Letters Sent Fact Sheet

HURST+BROOKS+ESPINOSA

Riverside County Legislative Update – June 29, 2017

BILLS

AB 614 (Limón) – Area Agencies on Aging

This bill would require each Area Agencies on Aging (AAA) to maintain an Alzheimer's and dementia specialist to provide information, assistance, referrals, and options counseling to families. Specifically, AB 614 would require each AAA to:

1. Maintain an Alzheimer's and dementia specialist to provide information, assistance, referrals, and options counseling to families.
2. Develop an evidence-based or evidence-informed core training program relating to Alzheimer's disease and dementia and any additional training based on local needs. This effort is to be undertaken in consultation with the local chapter of the Alzheimer's Association or other community stakeholders with expertise in Alzheimer's research or care, including universities, caregiver organizations, and health care systems.

Further, if the AAA lacks the capacity to maintain an Alzheimer's specialist, AB 614 would permit the AAA to contract with a qualified local entity to provide the service.

As amended in order to clear the Assembly Appropriations Committee, AB 614 now conditions the implementation of the measure on an appropriation by the Legislature.

Support: California Association of Area Agencies on Aging (C4A); California Commission on Aging; National Association of Social Workers, California Chapter (NASW-CA); Sonoma County Area Agency on Aging; Agency on Aging/Area 4

Opposition: None

County Position: Support

Status: In Leg Update of 6/12/2017; Set for hearing in Senate Health Committee on 7/12/2017.

AB 668 (Gonzalez-Fletcher) Voting Modernization Bond Act of 2018

This measure would enact the Voting Modernization Bond Act of 2018, which would provide $450 million in general obligation bonds for counties to purchase specified voting equipment and related technology.

AB 668 provides an incentive for counties to purchase equipment to participate in SB 450 (California Voters Choice Act-CVCA) by matching county funds $3 to $1; if a county chooses not to participate in CVCA, the match is $2 to $1.

Support: Secretary of State Alex Padilla (sponsor), California State Association of Counties, Urban Counties of California, the County Association of Clerks and Elections Officials; and a number of individual counties and county elections officials, among others.

Opposition: Howard Jarvis Taxpayers Association

County Position: Support

Status: In Leg Update of 6/7/2017; Set for hearing in Senate Governance and Finance Committee on 6/28/2017.

AB 1200 (Cervantes) - Aging and Disabilities Resource Connection program

AB 1200, by Assembly Member Sabrina Cervantes, would provide a statutory definition of the Aging and Disabilities Resource Connection (ADRC) Program, outlines its purpose, establishes standards of operations, and requires the Department of Aging and the State Department of Health Care Services to explore reimbursement options.

The ADRC initiative focuses on delivering person-centered planning by improving access to long-term services and support (LTSS) so that an individual can receive the right services at the right time and in the right place. These programs provide objective information, advice, counseling and assistance, and ensure that individuals can make informed decisions about their services. ADRCs build on the strength of existing community agencies, such as Area Agencies on Aging (AAA) and Independent Living Centers (ILC), to provide a single coordinated system of information and access for all persons seeking long-term services and support.

In 2003, the federal Administration on Aging (AoA) and the Centers for Medicare & Medicaid Services (CMS) started promoting the ADRC initiative to streamline access to long-term services and supports (LTSS) to assist older adults, persons with disabilities, families, and caregivers. Although federal and state agencies encourage local networks to collaborate on developing ADRCs, there is no statutory authority, thereby limiting the program to only seven sites throughout California, of which Riverside County is one.

Support: California Association of Area Agencies on Aging (sponsor) and supported by a wide range of senior and disability advocacy groups, as well as Riverside and Ventura Counties.

Opposition: None.

County Position: Support

Status: AB 1200 will be heard in the Senate Health Committee on July 12.

SB 249 (Allen) – Off Highway Motor Vehicle Recreation

SB 249, by Senator Ben Allen, makes several changes to the Off-Highway Vehicle Recreation Act of 2003, including extension of the sunset on the program. These changes are intended to align the Division of OffHighway Vehicle Recreation more closely with the California Department of Parks and Recreation's mission to protect resources are cultural sites by including a number of additional reporting and monitoring requirements regarding environmental review, mitigation, protection of natural and cultural resources for current and future OHV recreation facilities. The author has indicated on numerous occasions that SB 249 remains a work-in-progress.

Riverside County has a high concentration of OHV ownership; 124,346 total Off-Highway Vehicles are registered to residents of Riverside County. The County's population growth has increased demands for all types of outdoor recreation, while development has reduced the amount of land available for OHV activity. High demand combined with a limited number of legal OHV facilities has resulted in a high incidence of illegal or unsanctioned OHV riding in the County. The Riverside County Sheriff's Department received an average of 2,500 service call regarding illegal OHV use since 2007.

The disparity between recreational demand and available OHV venues in Riverside County has made the establishment of an OHV facility on public lands in the region a priority. To that end, the County supports continuing the Off-Highway Motor Vehicle Recreation Act of 2003 as it currently exists to ensure that grant funding and state assistance continue to be available for this currently unmet need in Riverside County.

Support: Dozens of conservation advocacy groups, including Sierra Club California and Defenders of Wildlife.

Opposition: Dozens of off-highway recreation groups and local governments, including Riverside County and the Rural County Representatives of California (RCRC).

County Position: The County has taken an oppose position on SB 249 due to unreasonable limits on the development of SVRAs and the potential for detrimental impacts to the OHV program.

Status: SB 249 is scheduled to be heard in the Assembly Water, Parks, and Wildlife Committee on July 11

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: In Leg Update of 6/7/2017; Set for hearing in Assembly Appropriations Committee on 6/28/2017

Note that the measure has thus far move on consent at each step of the legislative process.

SB 649 (Hueso) – Wireless ("small cell") telecommunications facilities

SB 649, by Senator Ben Hueso, seeks to prohibit the local consideration of certain impacts of "small cell" wireless communications facilities during the permitting process. The County is opposed to efforts to limit local control of siting of these wireless communication facilities.

SB 649 prohibits discretionary review of "small cell" wireless communications facilities, regardless of whether they are collocated on existing structures or located on new structures, including those within the public right of way. Essentially this would allow such facilities in all zones as a use by-right.

The bill would also, for the first time, prohibit cities and counties from precluding the leasing of their socalled "vertical infrastructure", including streetlights and stoplights, for the installation of wireless telecommunications facilities. The bill caps the rents that cities or counties could charge for the use of their publicly-owned non-utility pole vertical infrastructure.

SB 649 was passed out of the Senate on the promise of negotiated language between the author and the chair of the Senate Governance and Finance Committee (Senator McGuire). The amendments that were put into the bill once it got to the Assembly did not address the myriad concerns that local governments brought before the Governance and Finance Committee.

Support: The Wireless Association (CTIA), AT&T, Verizon, T-Mobile, the California State Sheriffs' Association, and numerous chambers of commerce, among others.

Opposition: California State Association of Counties (CSAC), the League of California Cities, Urban Counties of California, Rural County Representatives of California (RCRC), and numerous local agencies, among others.

County Position: Opposed

Status: SB 649 will be heard in a special order of business at 1:30 on June 28 in the Assembly Local Government Committee. It is doubled referred to the Assembly Committee on Communications and Conveyance.

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

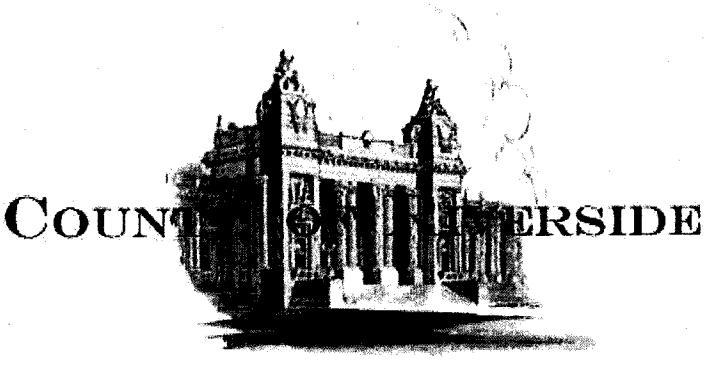
Opposition:

- American Federation of State, County and Municipal Employees
- County of Los Angeles
- California State Association of Counties
- Los Angeles County Probation Officers Union
- County of San Diego
- Valley Industry and Commerce Association (VICA)
- Los Angeles Area Chamber of Commerce
- County of Orange
- Los Angeles County Federation of Labor
- County of Riverside
- County Behavioral Health Directors Association
- Urban Counties of California
- County Administrative Officers Association of California
- Los Angeles Supervisor Sheila Kuehl
- NAACP—California
- Coalition of County Unions Los Angeles

County Position: Oppose

Status: Current Status: 6/27/17 Read second time and amended. Re-referred to Com. on E. & C.A.

Set for Hearing: 7/12/17 S-ELECTIONS AND CONSTITUTIONAL AMENDMENTS - 1:30 p.m. - Room 3191 STERN, Chair



June 20, 2017

The Honorable Ed Hernandez, Chair
Senate Health Committee
State Capitol, Room 2080
Sacramento, CA 95814

Re: AB 614 (Limón) – Area Agencies on Aging: Alzheimer's Disease and Dementia: Training and Services
As amended May 26, 2017
Awaiting hearing in Senate Health Committee
County of Riverside: SUPPORT – Per Board Action

Dear Senator Hernandez:

On behalf of the Riverside County Board of Supervisors, I write to express our support for AB 614 by Assembly Member Monique Limón, which would – pending an appropriation – require each Area Agencies on Aging (AAA) to maintain an Alzheimer's and dementia specialist to provide information, assistance, referrals, and options counseling to families.

Specifically, AB 614 would require each AAA to:

1. Maintain an Alzheimer's and dementia specialist to provide information, assistance, referrals, and options counseling to families.
2. Develop an evidence-based or evidence-informed core-training program relating to Alzheimer's disease and dementia and any additional training based on local needs. This effort is to be undertaken in consultation with the local chapter of the Alzheimer's Association or other community stakeholders with expertise in Alzheimer's research or care, including universities, caregiver organizations, and health care systems.

Further, if the AAA lacks the capacity to maintain an Alzheimer's specialist, AB 614 would permit the AAA to contract with a qualified local entity to provide the service.

Like many places in the state, Riverside County is home to a growing aging population. We concur that resources to assist families with managing Alzheimer's would provide much-needed guidance and support in our communities.

COUNTY OF RIVERSIDE

For these reasons, we strongly support AB 614. 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@rivco.org.

Sincerely,

John F. Tavaglione
Chairman, Riverside County Board of Supervisors

Cc: The Honorable Monique Limón, California State Assembly
Members and Consultants, Senate Health Committee
County of Riverside Delegation

AMENDED IN SENATE JUNE 20, 2017

AMENDED IN ASSEMBLY MAY 26, 2017

AMENDED IN ASSEMBLY MARCH 23, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL No. 614

Introduced by Assembly Member Limón

February 14, 2017

An act to add Section 9402.5 to the Welfare and Institutions Code, relating to public social services.

LEGISLATIVE COUNSEL'S DIGEST

AB 614, as amended, Limón. Area agency on aging: Alzheimer's disease and dementia: training and services.

Existing law establishes the California Department of Aging in the California Health and Human Services Agency. Existing law requires the department to designate various private nonprofit or public agencies as area agencies on aging to work for the interests of older Californians within a planning and service area and provide a broad array of social and nutritional services. Existing law requires the department to provide leadership to those agencies in developing systems of home- and community-based services that maintain individuals in their own homes or least restrictive homelike environments and requires those agencies to function as the community link at the local level for the development of those services. Existing law requires each area agency on aging to maintain a professional staff that is supplemented by volunteers, governed by a board of directors or elected officials, and whose activities are reviewed by an advisory council consisting primarily of older individuals from the community.

Existing law requires the department to adopt policies and guidelines to carry out the purposes of the Alzheimer's Day Care-Resource Center program, whereby direct services contractors receive funding to provide services to meet the special care needs of, and address the behavioral problems of, individuals with Alzheimer's disease or a disease of a related type.

This bill would require each area agency on aging to develop an evidence-based or evidence-informed core training program relating to Alzheimer's disease and dementia, and any additional training based on local needs. The bill would also require each agency to maintain an Alzheimer's and dementia specialist to provide information, assistance, referrals, and options counseling to families. If an agency lacks the capacity to maintain a specialist, the bill would authorize the agency to contract with a qualified local entity to provide these services, as specified. The bill would specify that it would be implemented only to the extent that funds are appropriated by the Legislature for its purposes.

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

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

SECTION 1. Section 9402.5 is added to the Welfare and Institutions Code, to read:

9402.5. (a) Each area agency on aging, in consultation with ~~the local chapter of the Alzheimer's Association~~ *a qualified local Alzheimer's organization* or other community stakeholders with expertise in Alzheimer's research or care, ~~including~~ *including, but not limited to, the local chapter of the Alzheimer's Association,* universities, *and* caregiver organizations, ~~and health care systems,~~ shall develop an evidence-based or evidence-informed core training program relating to Alzheimer's disease and dementia, and any additional training based on local needs.

(b) (1) Each area agency on aging shall maintain an Alzheimer's and dementia specialist to provide information, assistance, referrals, and options counseling to families.

(2) If an area agency on aging lacks the capacity to maintain an Alzheimer's and dementia specialist, it may contract with a qualified local entity to provide the services described in paragraph (1). The area agency on aging shall coordinate with the qualified

local entity in implementing the agency's regular services and the specialist services.

(c) This section shall be implemented only to the extent that funds are appropriated by the Legislature for that purpose.

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COUNTY OF RIVERSIDE

June 20, 2017

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

Re: AB 668 (Gonzalez-Fletcher) – Voting Modernization Bond Act of 2018
As introduced May 2, 2017
Awaiting hearing in Senate Governance and Finance Committee
County of Riverside: SUPPORT – Per Board Action

Dear Senator McGuire:

On behalf of the Riverside County Board of Supervisors, I write in support of Assembly Bill 668 by Assembly Member Lorena Gonzalez-Fletcher, which would, if approved by voters, authorize the issuance and sale of $450 million in general obligation bond funds for the purchase of specified voting equipment and related technology in California counties. The County of Riverside recognizes the significant need for investment in upgraded technology to conduct fair, accessible, and secure elections that meet the expectations and needs of California's voters.

California counties are responsible for administering federal, state, and local elections. While counties can bill other local governments for their proportional share of administering elections, the state and federal government typically do not pay for their proportional share of elections. The state has provided one-time funding in certain circumstances for elections costs; however, the state does not provide regular funding to counties for elections purposes. In fact, the Legislative Analyst's Office (LAO), in a recent report discussing the roles and responsibilities of the state and counties in the administration of the elections system, suggested that the Legislature consider one-time support to help replace voting systems.

Additionally, the California Voters Choice Act (CVCA) – enacted in SB 450 (Ch. 832, Statues 2016) – challenges counties to improve voter participation and outreach by (1) authorizing counties to conduct elections in which all voters are mailed ballots and (2) providing voters with the opportunity to vote on those ballots or to vote in person at a vote center for a period of 10 days leading up to election day. Fourteen specified counties are permitted to conduct elections under this system in 2018, while the remaining counties (including Riverside County) may use this system beginning in 2020. Participation in SB 450 will necessitate an upgraded voter system and modern technology to successfully advance the goals of CVCA; AB 668 would offer needed resources to achieve CVCA objectives.

COUNTY OF RIVERSIDE

For these reasons, we support AB 668. 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@rivco.org.

Sincerely,

John F. Tavaglione
Chairman, Riverside County Board of Supervisors

Cc: The Honorable Lorena Gonzalez-Fletcher, California State Assembly Members and Consultants, Senate Governance and Finance Committee County of Riverside Delegation

AMENDED IN ASSEMBLY MAY 2, 2017

AMENDED IN ASSEMBLY APRIL 6, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL No. 668

Introduced by Assembly Member Gonzalez Fletcher

February 14, 2017

An act to amend Sections 19253 and 19256 of, and to add Chapter 5 (commencing with Section 19400) to Division 19 of, the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 668, as amended, Gonzalez Fletcher. Voting Modernization Bond Act of 2018.

Existing law, the Voting Modernization Bond Act of 2002, authorizes the Voting Modernization Finance Committee to issue and sell bonds in the amount of $200,000,000, as specified. Existing law authorizes a county to apply to the Voting Modernization Board for money from the proceeds of the sale of bonds (1) to pay for or purchase new voting systems that are certified or conditionally approved by the Secretary of State, (2) to research and develop new voting systems, or (3) to manufacture the minimum number of voting system units reasonably necessary to test and seek certification or conditional approval of the voting system, or test and demonstrate the capabilities of a voting system in a pilot program.

This bill would enact the Voting Modernization Bond Act of 2018 which, if approved, would authorize the issuance and sale of bonds in the amount of $450,000,000, as specified, for ~~purposes of assisting counties in the purchase of specified voting equipment and technology.~~

similar purposes. This bill would authorize the Voting Modernization Finance Committee and the Voting Modernization Board to administer the Voting Modernization Bond Act of 2018.

This bill would provide for submission of the act to the voters at the June 5, 2018, statewide direct primary election.

Vote: ⅔. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 19253 of the Elections Code is amended to read:

19253. (a) The Voting Modernization Finance Committee is hereby established for the purpose of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds authorized by this article and Chapter 5.

(b) The committee consists of the Controller, the Director of Finance, and the Treasurer, or their designated representatives, all of whom shall serve without compensation, and a majority of whom shall constitute a quorum. The Treasurer shall serve as chairperson of the committee. A majority of the committee may act for the committee.

(c) For purposes of this article, the Voting Modernization Finance Committee is "the committee" as that term is used in the State General Obligation Bond Law.

SEC. 2. Section 19256 of the Elections Code is amended to read:

19256. The Voting Modernization Board is hereby established and designated the "board" for purposes of the State General Obligation Bond Law, and for purposes of administering the Voting Modernization Fund and the Voting Modernization Fund of 2018. The board consists of five members, three selected by the Governor and two selected by the Secretary of State. The board shall have the authority to reject any application for fund money it deems inappropriate, excessive, or that does not comply with the intent of this article or Chapter 5. A county whose application is rejected shall be allowed to submit an amended application.

SEC. 3. Chapter 5 (commencing with Section 19400) is added to Division 19 of the Elections Code, to read:

CHAPTER 5. VOTING MODERNIZATION BOND ACT OF 2018

19400. This chapter shall be known and may be cited as the Voting Modernization Bond Act of 2018.

19401. The State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), except as otherwise provided herein, is adopted for the purpose of the issuance, sale, and repayment of, and otherwise providing with respect to, the bonds authorized to be issued by this chapter, and the provisions of that law are included in this chapter as though set out in full.

19402. For purposes of this chapter, the following definitions apply:

(a) "Ballot on demand system" means a ballot manufacturing system, as defined in Section 303.4, that is subject to Sections 13004 and 13004.5.

(b) "Board" means the Voting Modernization Board, established pursuant to Section 19256.

(c) "Bond" means a state general obligation bond issued pursuant to this chapter adopting the provisions of the State General Obligation Bond Law.

(d) "Bond act" means this chapter authorizing the issuance of state general obligation bonds and adopting the State General Obligation Bond Law by reference.

(e) "Committee" means the Voting Modernization Finance Committee, established pursuant to Section 19253.

(f) "Electronic poll book" means an electronic list of registered voters that may be transported to the polling location or vote center pursuant to Section 2550.

(g) "Fund" means the Voting Modernization Fund of 2018, established pursuant to Section 19403.

(h) "Remote accessible vote by mail system" means a system, as defined in Section 303.3, that is certified pursuant to Chapter 3.5 (commencing with Section 19280) of Division 19.

(i) "Vote by mail ballot drop box" means a secure receptacle established by a county or city and county elections official whereby a voted vote by mail ballot may be returned to the elections official from whom it was obtained pursuant to Section 3025.

(j) "Voting system" means any voting machine, voting device, or vote tabulating device that does not use prescored punch card ballots.

19403. (a) The committee may create a debt or debts, liability or liabilities, of the State of California, in the aggregate amount of not more than four hundred fifty million dollars ($450,000,000), exclusive of refunding bonds, in the manner provided herein for the purpose of creating a fund to assist counties in ~~the purchase of items~~ *paying for an expense* listed in subdivision (d).

(b) The proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the Voting Modernization Fund of 2018, which is hereby established.

(c) A county is eligible to apply to the board for fund money if it meets both of the following requirements:

(1) After January 1, 2017, the county has ~~purchased an item~~ *agreed to pay for an expense* listed in subdivision (d) for which it continues to make payments on the date that this chapter becomes effective.

(2) The county matches fund moneys at one of the following ratios:

(A) If the county conducts an election pursuant to Section 4005 or 4007, one dollar ($1) of county moneys for every three dollars ($3) of fund moneys.

(B) If the county does not conduct an election pursuant to Section 4005 or 4007, one dollar ($1) of county moneys for every two dollars ($2) of fund moneys.

(d) ~~Fund moneys shall only be used~~ *(1) A county may use fund moneys* to purchase *or lease* the following:

~~(1)~~

(A) Voting systems certified *or conditionally approved* by the Secretary of State that do not use prescored punch card ballots.

~~(2)~~

(B) Electronic poll ~~books.~~ *books certified by the Secretary of State.*

~~(3)~~

(C) Ballot on demand ~~systems.~~ *systems certified by the Secretary of State.*

~~(4)~~

(D) Vote by mail *ballot* drop ~~boxes.~~ *boxes that comply with any relevant regulations promulgated by the Secretary of State pursuant to subdivision (b) of Section 3025.*

~~(5)~~

(E) Remote accessible vote by mail ~~systems.~~ *systems certified or conditionally approved by the Secretary of State.*

~~(6)~~

(F) Technology to facilitate electronic connection between polling places, vote centers, and the office of the county elections official or the Secretary of State's office.

(G) Vote by mail ballot sorting and processing equipment.

(2) A county may use fund moneys to contract and pay for the following:

(A) Research and development of a new voting system that has not been certified or conditionally approved by the Secretary of State. A voting system developed pursuant to this subparagraph shall use only nonproprietary software and firmware with disclosed source code, except that it may use unmodified commercial off-the-shelf software and firmware, as defined in paragraph (1) of subdivision (a) of Section 19209.

(B) Manufacture of the minimum number of voting system units reasonably necessary for either of the following purposes:

(i) Testing and seeking certification or conditional approval for the voting system pursuant to Sections 19210 to 19214, inclusive.

(ii) Testing and demonstrating the capabilities of the voting system in a pilot program pursuant to paragraph (2) of subdivision (b) and subdivision (c) of Section 19209.

(e) Any voting system purchased *or leased* using bond funds that does not require a voter to directly mark on the ballot must produce, at the time the voter votes his or her ballot or at the time the polls are closed, a paper version or representation of the voted ballot or of all the ballots cast on a unit of the voting system. The paper version shall not be provided to the voter but shall be retained by elections officials for use during the 1 percent manual ~~recount or other~~ *tally described in Section 15360, or any* recount, audit, or contest.

19404. The Legislature may amend subdivisions (c) and (d) of Section 19403 and Section 19256 by a statute, passed in each house of the Legislature by rollcall vote entered in the respective journals, by not less than two-thirds of the membership in each

house concurring, if the statute is consistent with, and furthers the purposes of, this chapter.

19405. (a) All bonds authorized by this chapter, when duly sold and delivered as provided herein, constitute valid and legally binding general obligations of the State of California, and the full faith and credit of the state is hereby pledged for the punctual payment of both principal and interest thereof. The bonds issued pursuant to this chapter shall be repaid within 10 years from the date they are issued.

(b) There shall be collected annually, in the same manner and at the same time as other state revenue is collected, a sum of money, in addition to the ordinary revenues of the state, sufficient to pay the principal of, and interest on, the bonds as provided herein. All officers required by law to perform any duty in regard to the collection of state revenues shall collect this additional sum.

(c) On the dates on which funds are remitted pursuant to Section 16676 of the Government Code for the payment of the then maturing principal of, and interest on, the bonds in each fiscal year, there shall be returned to the General Fund all of the money in the fund, not in excess of the principal of, and interest on, any bonds then due and payable. If the money so returned on the remittance dates is less than the principal and interest then due and payable, the balance remaining unpaid shall be returned to the General Fund out of the fund as soon as it shall become available, together with interest thereon from the dates of maturity until returned, at the same rate of interest as borne by the bonds, compounded semiannually. This subdivision does not grant any lien on the fund or the moneys therein to holders of any bonds issued under this chapter. However, this subdivision does not apply in the case of any debt service that is payable from the proceeds of any refunding bonds. For purposes of this subdivision, "debt service" means the principal, whether due at maturity, by redemption, or acceleration, premium, if any, or interest payable on any date to any series of bonds.

19406. Notwithstanding Section 13340 of the Government Code, there is hereby continuously appropriated from the General Fund, for purposes of this chapter, a sum of money that will equal the sum annually necessary to pay the principal of, and the interest on, the bonds issued and sold as provided in this chapter, as that principal and interest become due and payable.

19407. Upon request of the board, supported by a statement of its plans and projects approved by the Governor, the committee shall determine whether to issue any bonds authorized under this chapter in order to carry out the board's plans and projects and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out these plans and projects progressively, and it is not necessary that all of the bonds be issued or sold at any one time.

19408. (a) The committee may authorize the Treasurer to sell all or any part of the bonds authorized by this chapter at the time or times established by the Treasurer.

(b) Whenever the committee deems it necessary for an effective sale of the bonds, the committee may authorize the Treasurer to sell any issue of bonds at less than their par value, notwithstanding Section 16754 of the Government Code. However, the discount on the bonds shall not exceed 3 percent of the par value thereof.

19409. Out of the first money realized from the sale of bonds as provided by this chapter, there shall be redeposited in the General Obligation Bond Expense Revolving Fund, established by Section 16724.5 of the Government Code, the amount of all expenditures made for purposes specified in that section, and this money may be used for the same purpose and repaid in the same manner whenever additional bond sales are made.

19410. Any bonds issued and sold pursuant to this chapter may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code. The approval of the voters for the issuance of bonds under this chapter includes approval for the issuance of bonds issued to refund bonds originally issued or any previously issued refunding bonds.

19411. Notwithstanding any provision of the bond act, if the Treasurer sells bonds under this chapter for which bond counsel has issued an opinion to the effect that the interest on the bonds is excludable from gross income for purposes of federal income tax, subject to any conditions that may be designated, the Treasurer may establish separate accounts for the investment of bond proceeds and for the earnings on those proceeds, and may use those proceeds or earnings to pay any rebate, penalty, or other payment required by federal law or take any other action with respect to the investment and use of bond proceeds required or permitted under

federal law necessary to maintain the tax-exempt status of the bonds or to obtain any other advantage under federal law on behalf of the funds of this state.

19412. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by Article XIII B.

SEC. 4. Section 3 of this act shall take effect upon the approval by the people of the Voting Modernization Bond Act of 2018, submitted to the voters pursuant to Section 5 of this act.

SEC. 5. Notwithstanding Section 9040 of the Elections Code, a ballot measure that sets forth the Voting Modernization Bond Act of 2018, as set forth in Section 3 of this act, shall be submitted to the voters at the June 5, 2018, statewide direct primary election.

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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 28, 2017

The Honorable Ed Hernandez O.D., Chair
Senate Health Committee
State Capitol, Room 2080
Sacramento, CA 95814

Re: AB 1200 (Cervantes): Aging and Disabilities Resource Connection Program
As amended May 8, 2017
Set for hearing July 12, 2017 – Senate Health Committee
County of Riverside: SUPPORT – Per Board Action

Dear Senator Hernandez:

On behalf of the Riverside County Board of Supervisors, I write to express our support for AB 1200, by Assembly Member Sabrina Cervantes, which defines the Aging and Disabilities Resource Connection (ARDC) Program, outlines its purpose, establishes standards of operations, and requires the Department of Aging and the State Department of Health Care Services to explore reimbursement options.

The ADRC initiative focuses on delivering person-centered planning by improving access to long-term services and support (LTSS) so that an individual can receive the right services at the right time and in the right place. These programs provide objective information, advice, counseling and assistance, and ensure that individuals can make informed decisions about their services. ADRCs build on the strength of existing community agencies, such as Area Agencies on Aging (AAA) and Independent Living Centers (ILC), to provide a single coordinated system of information and access for all persons seeking long-term services and support.

In 2003, the federal Administration on Aging (AoA) and the Centers for Medicare & Medicaid Services (CMS) started promoting the ADRC initiative to streamline access to long-term services and support (LTSS) to assist older adults, persons with disabilities, families, and caregivers. Although federal and state agencies encourage local networks to collaborate on developing ADRCs, there is no statutory authority, thereby limiting the program to only seven sites throughout California, of which Riverside County is one.

The ADRC program needs and deserves the support of the Legislature to ensure that the program becomes an integral component of the long-term support and services delivery system.

COUNTY OF RIVERSIDE

For these reasons, we strongly support AB 1200. 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@rivco.org.

Sincerely,

John F. Tavaglione
Chairman, Riverside County Board of Supervisors

Cc: Members and Consultants, Senate Health Committee
The Honorable Sabrina Cervantes, California State Assembly
County of Riverside Delegation

AMENDED IN ASSEMBLY MAY 8, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL No. 1200

Introduced by Assembly Member Cervantes

February 17, 2017

An act to add Article 4 (commencing with Section 9120) to Chapter 2 of Division 8.5 of the Welfare and Institutions Code, relating to aging.

LEGISLATIVE COUNSEL'S DIGEST

AB 1200, as amended, Cervantes. Aging and Disabilities Resource Connection program.

Existing law, the Mello-Granlund Older Californians Act, establishes the California Department of Aging, and states that the mission of the department is to provide leadership to the area agencies on aging in developing systems of home- and community-based services that maintain individuals in their own homes or least restrictive homelike environments.

Existing law vests in the Department of Rehabilitation the responsibility and authority for the encouragement of the planning, development, and funding of independent living centers, which are private, nonprofit organizations that provide specified services to individuals with disabilities, in order to assist those individuals in their attempts to live fuller and freer lives outside institutions.

Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions. Existing law provides that Medi-Cal long-term services and supports, including In-Home Supportive Services (IHSS),

Community-Based Adult Services (CBAS), Multipurpose Senior Services Program (MSSP) services, and certain skilled nursing facility and subacute care services, shall be covered services by a specified date under managed care health plan contracts for beneficiaries residing in counties participating in the Coordinated Care Initiative.

This bill would establish the Aging and Disability Resource Connection (ADRC) program, to be administered by the California Department of Aging, to provide information to consumers and their families on available long-term services and supports (LTSS) programs and to assist older adults, caregivers, and persons with disabilities in accessing LTSS programs at the local level. The bill would require the department to establish the Aging and Disability Resource Connection Advisory Committee as the primary ~~advise r~~ *adviser* in the ongoing development and implementation of the ADRC program. The bill would require the department, in consultation with the advisory committee, to formulate criteria for designation and approval of local ADRC program sites, and would specify the services offered by, and responsibilities of, a program site. The bill would require the department and the State Department of Health Care Services to enter into a memorandum of understanding ~~with the federal Centers for Medicare and Medicaid Services to authorize local government agencies to claim federal Medicaid~~ *to explore* reimbursement for qualified administrative activities performed pursuant to these provisions.

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

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

SECTION 1. The Legislature finds and declares all of the following:

(a) California's long-term services and supports (LTSS) system is plagued by fragmentation of programs at the state, regional, and local levels. In many communities, multiple agencies administer LTSS and have complex, fragmented, and often duplicative intake, assessment, and eligibility functions. This fragmentation results in a lack of access to coordinated services. As a result, consumers and their families struggle to identify and access necessary home- and community-based services, resulting in increased likelihood of hospitalization and institutional placements.

(b) In 2003, the federal Administration for Community Living and the federal Centers for Medicare and Medicaid Services established a joint funding opportunity through the Aging and Disability Resource Center (ADRC) initiative, which was designed to provide visible and trusted sources of information, one-on-one counseling, and streamlined access to LTSS.

(c) ADRCs build on the strength of existing community agencies, including area agencies on aging and independent living centers, to provide a more coordinated system of information and access for all persons seeking LTSS to minimize confusion, enhance individual choice, and support informed decisionmaking.

(d) In California, ADRC partnerships exist in eight areas of the state that facilitate access to LTSS based on individuals' needs, preferences, and goals.

(e) California's ADRC Advisory Committee engages stakeholders in identifying and implementing strategies to strengthen, sustain, and expand ADRC services throughout the state.

SEC. 2. Article 4 (commencing with Section 9120) is added to Chapter 2 of Division 8.5 of the Welfare and Institutions Code, to read:

Article 4. Aging and Disability Resource Connection Program

9120. (a) There is hereby established an Aging and Disability Resource Connection (ADRC) program to provide information to consumers and their families on available long-term services and supports (LTSS) programs and to assist older adults, caregivers, and persons with disabilities in accessing LTSS programs at the local level.

(b) This article shall be administered by the California Department of Aging. The department shall enter into interagency agreements with the Department of Rehabilitation and the State Department of Health Care Services for purposes of implementing this article.

9121. (a) The department shall establish the Aging and Disability Resource Connection Advisory Committee as the primary adviser to the department, the Department of Rehabilitation, and the State Department of Health Care Services

in the ongoing development and implementation of the ADRC program.

(b) The advisory committee shall do all of the following:

(1) Consider high-level aspects of the ADRC program operations and related systemwide issues.

(2) Provide input and recommendations to the departments in developing ADRC program policies and procedures.

(3) Serve as the forum for ADRC stakeholders to discuss evolving federal guidance, funding opportunities, and best practices.

9122. (a) The department, in consultation with the advisory committee, shall formulate criteria for designation and approval of local ADRC program sites.

(b) Area agencies on aging and independent living centers shall be the core local partners in developing ADRC program sites, but the department may work with other local partners in developing ADRC program sites.

(c) An ADRC program site shall provide all of the following:

(1) Enhanced information and referral services and other assistance at hours that are convenient for the public.

(2) Options counseling concerning available LTSS programs and public and private benefits programs.

(3) Short-term service coordination.

(4) Transition services from hospitals to home and from skilled nursing facilities to the community.

(d) An ADRC program site shall do all of the following:

(1) Provide services within the geographic area served.

(2) Provide information to the public about the services provided by the site.

(3) Submit to the department all reports and data required or requested by the department.

~~(e) The department, in consultation with the advisory committee, shall consider establishing ADRC program sites to cover all geographic regions of the state in order to provide services to the maximum number of consumers and families in the state.~~

(e) The department shall consult with the advisory committee when exploring steps to establish ADRC program sites statewide.

9123. The department and the State Department of Health Care Services shall enter into a memorandum of understanding ~~with the federal Centers for Medicare and Medicaid Services to authorize~~

~~local government agencies to claim federal Medicaid reimbursement~~ *to explore reimbursement* for qualified administrative activities performed pursuant to this article, consistent with Section 14132.47.

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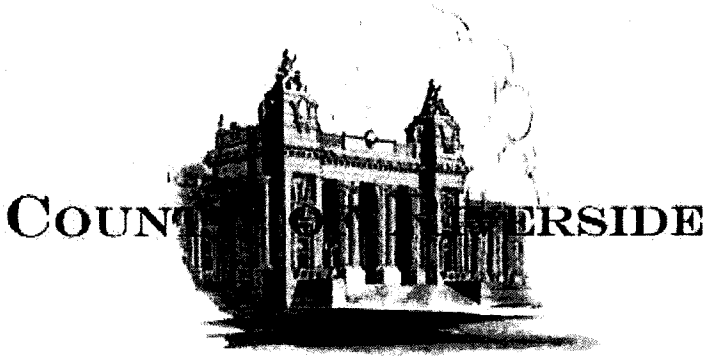

June 28, 2017

The Honorable Eduardo Garcia, Chair
Assembly Water, Parks, and Wildlife Committee
State Capitol, Room 4140
Sacramento, CA 95814

Re: SB 249 (Allen): Off-Highway Motor Vehicle Recreation
As amended June 26, 2017
Set for hearing July 11, 2017 – Assembly Water, Parks, and Wildlife Committee
County of Riverside: OPPOSE – Per Board Action

Dear Assembly Member Garcia:

On behalf of the Riverside County Board of Supervisors, I write to express our opposition to SB 249, Senator Ben Allen's measure which makes several changes to the Off-Highway Vehicle Recreation Act of 2003. The County is concerned that these changes would undermine our efforts to develop and maintain responsible and legal off-highway vehicle (OHV) recreation in our communities.

The current California Off-Highway Vehicle Recreation program stands as a national model that provides a statewide system of managed OHV recreation opportunities, together with a grants program, and a series of state vehicular recreation areas (SVRAs). Riverside County has a high concentration of OHV ownership; 124,346 total Off-Highway Vehicles are registered to residents of Riverside County. Our population growth has increased demands for all types of outdoor recreation, while development has reduced the amount of land available for OHV activity. High demand combined with a limited number of legal OHV facilities has resulted in a high incidence of illegal or unsanctioned OHV riding in the County. The Riverside County Sheriff's Department received an average of 2,500 service calls regarding illegal OHV use since 2007.

The disparity between recreational demand and available OHV venues in Riverside County has made the establishment of an OHV facility on public lands in the region a priority. To that end, the County supports continuing the Off-Highway Motor Vehicle Recreation Act of 2003 as it currently exists to ensure that grant funding and state assistance continue to be available for this currently unmet need in Riverside County.

COUNTY OF RIVERSIDE

We remain concerned that SB 249 unreasonably limits development of SVRAs and has the potential to be detrimental to the future of the OHV program.

For these reasons, we are opposed to SB 249. 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@rivco.org.

Sincerely,

John F. Tavaglione
Chairman, Riverside County Board of Supervisors

Cc: Members and Consultants, Assembly Water, Parks, and Wildlife Committee
The Honorable Ben Allen, California State Senate
County of Riverside Delegation

AMENDED IN ASSEMBLY JUNE 26, 2017

AMENDED IN SENATE MAY 26, 2017

SENATE BILL No. 249

Introduced by Senator Allen

February 7, 2017

An act to amend Sections 5090.10, 5090.11, 5090.15, 5090.24, 5090.30, 5090.31, 5090.32, 5090.34, 5090.35, 5090.43, ~~5090.60,~~ 5090.61, and 5090.70 of, and to add Sections 5090.13, 5090.14, and 5090.39 to, the Public Resources Code, ~~and to amend Section 8352.6 of the Revenue and Taxation Code,~~ relating to state parks.

LEGISLATIVE COUNSEL'S DIGEST

SB 249, as amended, Allen. Off-highway motor vehicle recreation.

~~(1) The~~

The Off-Highway Motor Vehicle Recreation Act of 2003 creates the Division of Off-Highway Motor Vehicle Recreation within the Department of Parks and Recreation. The act gives the division certain duties and responsibilities, including the planning, acquisition, development, conservation, and restoration of lands in state vehicular recreation areas. Existing law requires the division to develop and implement a grant and cooperative agreement program with other agencies funded from no more than ½ of the revenues in the Off-Highway Vehicle Trust Fund, with specified percentages of these revenues to be available, upon appropriation, for various purposes related to off-highway vehicles. Existing law requires the remaining revenues in the Off-Highway Vehicle Trust Fund to be available for the support of the division and for the planning, acquisition, development, construction, maintenance, administration, operation,

restoration, and conservation of lands in state vehicular recreation areas and certain other areas. The act is repealed on January 1, 2018.

This bill would revise and recast various provisions of the act. The bill would expand the duties of the division by requiring it to, among other things, (1) prepare and submit program and strategic planning reports to the department and the Natural Resources Agency regarding units of the state park system, as specified, (2) post on the department's Internet Web site all plans, reports, and studies *related to off-highway vehicle recreation or otherwise* developed pursuant to the act's provisions, as specified, (3) in consultation with specified bodies and departments, update the 2008 Soil Conservation Standard and Guidelines to establish a generic and measurable soil conservation standard by December 31, 2020, and review and, as appropriate, update that standard every 5 years thereafter, (4) implement a monitoring program, as defined, to evaluate the condition of soils, wildlife, and vegetation habitats in each state vehicular recreation area each year, as specified, and (5) identify and protect natural, cultural, and archaeological resources within state vehicular recreation areas. The bill would require the division to take other specified measures to protect natural and cultural preserves within state vehicular recreation areas, including measures to mitigate harmful impacts to these areas and to protect them from off-highway vehicle recreation use, as specified. The bill would require the division, through a public process, to develop protocols and practices, no later than July 1, 2019, to ensure certain requirements relating to the ~~management of state vehicular recreation areas and other areas of the system~~ *Off-Highway Motor Vehicle Recreation Program* are met. The bill would establish specified procedures for the review of the protocols and practices by the department and would, by July 1, 2020, require the ~~department~~ *director* to determine whether they meet the requirements of the act and to modify any aspects that are inadequate. The bill would change the repeal date for the act to January 1, 2023, thereby extending the act's provisions until that date.

~~(2) Existing law imposes an excise tax on gasoline. Existing law requires a portion of the moneys attributable to the excise tax on gasoline related to specified off-highway motor vehicles and off-highway vehicle activities to be transferred monthly from the Motor Vehicle Fuel Account to the Off-Highway Vehicle Trust Fund and, commencing November 1, 2017, requires the portion of those moneys from a $0.12 per gallon increase, and future inflation adjustments from that increase, to be transferred to the State Parks and Recreation Fund, to be used for~~

~~state parks, off-highway vehicle programs, or boating programs. Existing law requires the amount of money transferred to be based upon the percentage of total fuel tax revenues transferred for this purpose in the 2006–07 fiscal year, but authorizes the Department of Transportation, in cooperation with the Department of Parks and Recreation and the Department of Motor Vehicles, to adjust the amount transferred every 5 years, beginning in the 2013–14 fiscal year. Existing law specifies the factors to be considered in making an adjustment from the 2006–07 fiscal year baseline, including the number of off-highway vehicles paying identification fees, the number of registered street-legal vehicles anticipated to be used off highway, attendance at state vehicular recreation areas, and off-highway recreation use on federal lands.~~

~~This bill would revise the method of calculating the gasoline excise taxes attributable to off-highway vehicle use. The bill would require an estimate to be made every 5 years of gasoline excise tax revenue paid by motor vehicles when actually used off highway for motorized recreation and by motor vehicles when actually used off highway to access nonmotorized recreation. The bill would delete the use of factors based on vehicle populations and attendance at state vehicular recreation areas. The bill would delete the reference to the 2006–07 fiscal year baseline.~~

~~This bill would initially require all of these fuel taxes to be transferred to the State Parks and Recreation Fund. The bill, upon enactment of the Budget Act, would require the portion of fuel tax revenues allocated by the Budget Act for purposes of the Off-Highway Motor Vehicle Recreation Program to be transferred to the Off-Highway Vehicle Trust Fund. The bill would make statements of legislative intent in this regard.~~

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

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

SECTION 1. Section 5090.10 of the Public Resources Code is amended to read:

5090.10. "Conservation" and "conserve" mean activities, practices, and programs that protect and sustain soils, plants, wildlife, habitats, and cultural resources in accordance with the standards adopted pursuant to Section 5090.35.

SEC. 2. Section 5090.11 of the Public Resources Code is amended to read:

5090.11. "Restoration" and "restore" mean, upon closure of the unit or any portion thereof, the restoration of land to the contours, the plant communities, and the plant covers comparable to those on surrounding lands or at least those that existed prior to off-highway motor vehicle use.

SEC. 3. Section 5090.13 is added to the Public Resources Code, to read:

5090.13. "Monitoring program" means a program adopted by the department that provides periodic evaluations of monitoring results to assess the adequacy of conservation and restoration actions to inform adaptive management strategies. A monitoring program includes, but is not limited to, all of the following at each individual system unit:

(a) Surveys to determine the status of natural and cultural resources.

(b) Periodic assessments of the effectiveness of protection and restoration measures currently in place.

(c) Progress reports on the implementation of conservation and restoration measures, the designation and management of *sensitive areas with* cultural and natural ~~preserves,~~ *resources,* and alternative management strategies.

(d) A schedule for conducting monitoring activities.

SEC. 4. Section 5090.14 is added to the Public Resources Code, to read:

5090.14. "Adaptive management" means to use the results of information gathered through a monitoring program or scientific research and regulatory standards to adjust management strategies and practices ~~at individual system units~~ to ensure conservation and protection of natural and cultural resources.

SEC. 5. Section 5090.15 of the Public Resources Code is amended to read:

5090.15. (a) There is in the department the Off-Highway Motor Vehicle Recreation Commission, consisting of nine members, five of whom shall be appointed by the Governor and subject to Senate confirmation, two of whom shall be appointed by the Senate Committee on Rules, and two of whom shall be appointed by the Speaker of the Assembly.

(b) Persons appointed to the commission shall have expertise, or work or volunteer experience, or both, in one or more of the following areas:

(1) Off-highway vehicle recreation.
(2) Biological or soil sciences.
(3) ~~The legal and practical aspects of~~ *Practical experience with* rural landownership and management.
(4) Law enforcement.
(5) Environmental and cultural resource protection or management.
(6) Nonmotorized outdoor recreation.

(c) It is the intent of the Legislature that appointees to the commission represent all of the primary qualifications delineated in paragraphs (1) to (6) of subdivision (b), inclusive, to the extent possible, at all times. It is further the intent of the Legislature that the commissioners reflect the geographic diversity of California as well as the diversity of all Californians, including, but not limited to, the special needs of Californians who participate in off-highway vehicular recreation pursuant to this chapter.

SEC. 6. Section 5090.24 of the Public Resources Code is amended to read:

5090.24. The commission has the following duties and responsibilities:

(a) Be fully informed regarding all governmental activities affecting the program.

(b) Meet at least four times per year at various locations throughout the state to receive comments on the implementation of the program. Establish an annual calendar of proposed meetings at the beginning of each calendar year. The meetings shall include a public meeting, before the beginning of each grant program cycle, to collect public input concerning the program, recommendations for program improvements, and specific project needs for the system.

(c) Hold a public hearing to receive public comment regarding any proposed substantial acquisition or development project at a location in close geographic proximity to the project, unless a hearing consistent with federal law or regulation has already been held regarding the project.

(d) Consider, upon the request of any owner or tenant, whose property is in the vicinity of any land in the system, any *alleged* adverse impacts occurring on that person's property from the operation of off-highway motor vehicles and recommend to the division suitable measures for the prevention of any adverse impact

determined by the commission to be occurring, and suitable measures for the restoration of adversely impacted property.

(e) Review and comment annually to the director on the proposed budget of expenditures from the fund.

(f) Review and comment on all plans for new and expanded local and regional vehicle recreation areas that have applied for grant funds.

(g) Review and comment on strategic plans periodically developed by the division.

(h) Prepare and submit a program report to the ~~Governor, the Assembly Committee on Water, Parks, and Wildlife, the Senate Committee on Natural Resources and Water, and the Committee on Appropriations~~ *Governor and the appropriate policy and fiscal committees* of each house of the Legislature on or before January 1, 2022. The report shall be adopted by the commission after discussing the contents during two or more public meetings. One of the public meetings shall be held in northern California and one shall be held in southern California. The report shall address the status of the program and off-highway motor vehicle recreation, including all of the following:

(1) A summary of the process and protocols developed pursuant to subdivision (a) of Section 5090.39.

(2) The condition of natural and cultural resources of areas and trails receiving state off-highway motor vehicle funds and the resolution of conflicts of use in those areas and trails.

(3) The status and accomplishments of funds appropriated for restoration pursuant to paragraph (2) of subdivision (b) of Section 5090.50.

(4) A summary of resource monitoring data compiled and restoration work completed.

(5) Actions taken by the division and department since the last program report to discourage and decrease trespass of off-highway motor vehicles on private property.

(6) Other relevant program-related environmental issues that have arisen since the last program ~~report.~~ *report, including, but not limited to, conflicts with federal and state Endangered Species Acts, local air quality laws and regulations, federal Clean Water Act and regional water board regulations or permits, and other environmental protection requirements.*

(i) Make other recommendations to the deputy director regarding the off-highway motor vehicle recreation program.

SEC. 7. Section 5090.30 of the Public Resources Code is amended to read:

5090.30. There is in the department the Division of Off-Highway Motor Vehicle Recreation. Whenever any reference is made to the Office of Off-Highway Motor Vehicle Recreation, it shall be deemed to be a reference to, and to mean, the division.

SEC. 8. Section 5090.31 of the Public Resources Code is amended to read:

5090.31. The division shall be under the direction of a deputy director appointed by the director. The deputy director shall be part of the department's management team.

SEC. 9. Section 5090.32 of the Public Resources Code is amended to read:

5090.32. Under the general direction of the director, the division has the following duties and responsibilities:

(a) Planning, acquisition, development, conservation, and restoration of lands in the state vehicular recreation areas.

(b) Direct management, maintenance, administration, and operation of lands in the state vehicular recreation areas.

(c) Provide for law enforcement and appropriate public safety activities.

(d) Implementation of all aspects of the program.

(e) Ensure program compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000)) in state vehicular recreation areas.

(f) Provide staff assistance to the commission.

(g) Prepare, implement, and periodically update plans for lands in, or proposed to be included in, state vehicular recreation areas, including new state vehicular recreation areas. However, a plan need not be prepared or updated in any instance specified in subdivision (c) of Section 5002.2. For purposes of subdivision (c) of Section 5002.2 and this subdivision, unauthorized or otherwise unintended off-highway trails that were not created for the purpose of emergency repair or restoration work authorized by the division, or expansion areas shall not be considered an existing facility or use.

(h) Conduct, or cause to be conducted, surveys, and prepare, or cause to be prepared, studies that are necessary or desirable for implementing the program.

(i) Recruit and utilize volunteers to further the objectives of the program.

(j) Prepare and coordinate safety and education programs.

(k) Provide for the enforcement of Division 16.5 (commencing with Section 38000) of the Vehicle Code and other laws regulating the use or equipment of off-highway motor vehicles in all areas acquired, maintained, or operated by funds from the fund; however, the Department of the California Highway Patrol shall have responsibility for enforcement on highways.

(*l*) Ensure protection of natural and cultural resources, including by setting unit capacity limits pursuant to Sections 5001.96 and 5019.5.

(m) Prepare and submit program and strategic planning reports to the department and the Natural Resources Agency, including annually reporting the number and type of injuries and accidents and the number and type of citations and other enforcement actions taken at system units, disaggregated by individual unit.

(n) Post on the department's Internet Web site all plans, reports, and studies *related to off-highway vehicle recreation or otherwise* developed pursuant to this chapter, including those regarding conservation, restoration, monitoring, and adaptive management of system units, disaggregated by individual unit.

(o) Report on any closure implemented pursuant to Section 5090.35 at the next commission meeting following the closure.

(p) Complete other duties as determined by the director.

SEC. 10. Section 5090.34 of the Public Resources Code is amended to read:

5090.34. (a) In cooperation with the commission, the division shall make available on the division's Internet Web site information regarding off-highway motor vehicle recreation opportunities, pertinent laws and regulations, and responsible use of the system. At a minimum, the Internet Web site shall include the following:

(1) The text of laws and regulations relating to the program and operation of off-highway vehicles.

(2) A statewide map and regional maps of federal, state, and local off-highway vehicle recreation areas and facilities in the

state, including links to maps of federal off-highway vehicle routes resulting from the route designation process.

(3) Information concerning safety, education, and trail etiquette.

(4) Information to prevent trespass, damage to public and private property, and damage to natural resources, including penalties and liability associated with trespass and damage caused.

(b) The division shall create, and update when appropriate, a guidebook of federal, state, and local off-highway vehicle recreation opportunities that includes information where current specific maps and information for each facility can be located. Contact information shall be provided and shall include available Internet Web site addresses, telephone numbers, and addresses of offices where maps can be accessed. The guidebook shall also include the address of the Internet Web site where the information in subdivision (a) may be found. The division may publish the guidebook when funds are provided in the annual budget process.

SEC. 11. Section 5090.35 of the Public Resources Code is amended to read:

5090.35. (a) The protection of public safety, the appropriate utilization of lands, and the conservation of natural and cultural resources are of the highest priority in the management of the state vehicular recreation areas and other areas in the system, as defined in Section 5090.09. Accordingly, the division shall promptly repair and continuously maintain areas and trails, anticipate and prevent erosion and other impacts, and restore lands damaged by erosion and other impacts. The division shall take steps necessary to prevent damage to natural and cultural resources in these areas. When damage occurs in any portion of a state vehicular recreation area that is inconsistent with natural and cultural resources protection plans or this section, the division shall undertake protective and restoration measures which may include closure. Any area or portion of an area that is closed shall remain closed until it is repaired and effective adaptive management measures are implemented to prevent repeated or continuous damage.

(b) (1) The division, in consultation with the United States Natural Resource Conservation Service, the United States Geological Survey, the United States Forest Service, the United States Bureau of Land Management, the United States Fish and Wildlife Service, the California Department of Fish and Wildlife, and the California Department of Conservation shall update the

2008 Soil Conservation Standard and Guidelines to establish a generic and measurable soil conservation standard by December 31, 2020, and shall review and, as appropriate, update the standard at least every five years thereafter.

(2) If the division determines that the soil conservation standards and habitat protection plans are not being met in any portion of any state vehicular recreation area, the division shall temporarily close ~~and restore~~ the noncompliant portion to repair and prevent erosion, until the soil conservation standards are met pursuant to subdivision (a).

(3) If the division determines that the soil conservation standards cannot be met in any portion of any state vehicular recreation area, the division shall close and restore the noncompliant portion pursuant to Section 5090.11.

(c) (1) ~~By~~ *In consultation with the Department of Fish and Wildlife, by* December 31, 2020, the division shall compile, and update at least every five years thereafter, an inventory of wildlife and native plant populations, including wildlife habitats and vegetation communities in each state vehicular recreation area and shall prepare a wildlife habitat protection plan to conserve a viable species composition specific to each state vehicular recreation area.

(2) If the division determines that the wildlife habitat protection plan is not being met in any portion of any state vehicular recreation area, the division shall close the noncompliant portion temporarily until the wildlife habitat protection plan is met pursuant to subdivision (a).

(3) If the division determines that the wildlife habitat protection plan cannot be met in any portion of any state vehicular recreation area, the division shall close and restore the noncompliant portion pursuant to Section 5090.11.

(d) The division shall implement a monitoring program to evaluate the condition of soils, wildlife, and vegetation habitats in each state vehicular recreation area each year in order to determine whether the soil conservation standards and wildlife habitat protection plans are being met.

(e) The division shall not fund trail construction unless the trail is capable of complying with the conservation specifications prescribed in this section. The division shall not fund trail construction where conservation is not feasible.

(f) The division shall identify and protect natural, cultural, and archaeological resources within the state vehicular recreation areas.

SEC. 12. Section 5090.39 is added to the Public Resources Code, to read:

5090.39. (a) The division shall ensure that ~~its management of state vehicular recreation areas and the management of other areas in the system as defined in Section 5090.09 meet~~ *the program meets* the requirements of this chapter. No later than July 1, 2019, the division shall, through a public process, develop protocols and practices to ensure all of the following:

(1) Soil conservation standards and measures are adequate to minimize erosion damage.

(2) Wildlife and habitat assessment and inventory methodologies incorporate the best available science.

(3) Soil conservation and habitat protection standards are capable of protecting, conserving, and restoring natural and cultural resources, including sensitive species.

(4) Monitoring and evaluation efforts comply with this chapter, and adaptive management practices address reasonable foreseen and unanticipated circumstances that may occur at units of the system.

(5) Management plans and soil conservation and wildlife habitat protection plans are consistent with other relevant resource protection plans, including, but not limited to, the state wildlife action plan, natural community conservation plans, regional conservation investment strategies, *and* wildlife corridor ~~plans, and other regional land use and resource conservation plans prepared by a local agency.~~ *plans. Management plans and soil conservation and wildlife habitat protection plans shall appropriately consider regional land use and resource conservation plans prepared by a local agency pursuant to state law.*

(6) The acquisition of land intended for off-highway motor vehicle use, to the maximum extent feasible, avoids lands on which motorized recreation would be inconsistent with this chapter.

(b) As part of the public process referenced in subdivision (a), the division shall conduct at least two public workshops, one in northern California and one in southern California. Thirty days prior to the workshop dates, the workshops shall be noticed on both the department's and the commission's Internet Web sites.

(c) Not later than January 1, 2020, the department shall complete a review of the practices and protocols developed pursuant to subdivision (a). The director shall solicit and consider comments and recommendations from the public, scientists with expertise in related fields of investigation, and others. By July 1, 2020, the director shall either determine in writing that the protocols and practices are adequate to meet the requirements of this chapter or the director shall modify any aspects of the protocols and practices that are inadequate.

(d) The director shall ensure that Section 5090.35 is implemented consistent with the practices and protocols.

SEC. 13. Section 5090.43 of the Public Resources Code is amended to read:

5090.43. (a) State vehicular recreation areas may be established on lands where there are quality opportunities for off-highway motor vehicle recreation and shall be managed in accordance with the requirements of this chapter. Areas may be developed, managed, and operated for the purpose of providing appropriate public use of the outdoor recreational opportunities present while protecting natural and cultural resources.

(b) Lands for state vehicular recreation areas shall be selected for acquisition so as to minimize the need for establishing sensitive areas to protect natural and cultural resources.

(c) All unavoidable impacts to natural or cultural resources in new, expanded, and existing state vehicular recreation areas shall be fully mitigated by implementing appropriate mitigation measures, including permanently protecting lands that provide comparable natural and cultural resources and values. State vehicular recreation areas shall incorporate all mitigation and permit recommendations or requirements of the Department of Fish and Wildlife, the United States Fish and Wildlife Service, and all other responsible or trustee agencies.

(d) The department shall manage, or collaborate with another public entity or nonprofit organization to manage lands acquired for state vehicular recreation areas that are determined to not be appropriate for off-highway vehicle recreation. These lands shall be managed for park purposes, open space purposes, or conservation purposes. The department may dispose of, consistent with applicable provisions of law, lands acquired for state vehicular recreation areas that are determined to not be appropriate for

off-highway vehicle recreation. If lands are sold, any revenue that results from the sale shall be reverted back to the fund originally used to purchase the lands.

(e) After January 1, 1988, no new cultural or natural preserves or state wildernesses shall be established within state vehicular recreation areas. To ensure consistent protection of natural and cultural resources across all state parks, including state vehicular recreation areas, sensitive areas shall be established within state vehicular recreation areas where determined by the division to be necessary to protect natural and cultural resources. These sensitive areas shall be managed by the division in accordance with Sections 5019.65, 5019.71, and 5019.74, which define the purpose and management of natural and cultural preserves. The division shall not create designations, other than sensitive areas, for lands containing natural or cultural values that the division determines need protection.

(f) If off-highway motor vehicle use results in damage to any natural or cultural values or damage within sensitive areas, appropriate measures shall be promptly taken to protect these lands from any further damage. These measures shall include restoration of damaged lands and resources and measures to prevent future damage, which may include the erection of physical barriers.

~~SEC. 14. Section 5090.60 of the Public Resources Code is amended to read:~~

~~5090.60. The fund consists of deposits from the following sources:~~

~~(a) Revenues from fuel taxes transferred from the State Parks and Recreation Fund, pursuant to subdivision (b) of Section 8352.6 of the Revenue and Taxation Code.~~

~~(b) Fees paid pursuant to subdivision (b) of Section 38225 of the Vehicle Code.~~

~~(c) Unexpended service fees.~~

~~(d) Fees and other proceeds collected at state vehicular recreation areas, as provided in subdivision (c) of Section 5010.~~

~~(e) Reimbursements.~~

~~(f) Revenues and income from any other source required by law to be deposited in the fund.~~

~~SEC. 15.~~

SEC. 14. Section 5090.61 of the Public Resources Code is amended to read:

5090.61. Moneys in the fund shall be available, upon appropriation by the Legislature, as follows:

(a) An amount, not to exceed 50 percent of the annual revenues to the fund, shall be available for grants and cooperative agreements pursuant to Article 5 (commencing with Section 5090.50).

(b) (1) The remainder of the annual revenues to the fund shall be available for the support of the division in implementing the off-highway motor vehicle recreation program and for the planning, acquisition, development, mitigation, construction, maintenance, administration, operation, restoration, and conservation of lands in the system.

(2) As used in this subdivision, "support of the division" includes functions performed outside of the division by others on behalf of the division, including a prorated share of the department's common overhead and other costs incurred on behalf of the division for personnel management and training, accounting, and fiscal analysis, records, purchasing, public information activities, consultation of professional scientists and reclamation experts for the purposes of Section 5090.35, and legal services.

~~SEC. 16.~~

SEC. 15. Section 5090.70 of the Public Resources Code is amended to read:

5090.70. This chapter shall remain in effect only until January 1, 2023, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2023, deletes or extends that date.

~~SEC. 17. Section 8352.6 of the Revenue and Taxation Code is amended to read:~~

~~8352.6. (a) (1) Subject to Section 8352.1, and except as otherwise provided in paragraphs (2) and (3), on the first day of every month, there shall be transferred from moneys deposited to the credit of the Motor Vehicle Fuel Account to the State Parks and Recreation Fund created by Section 5010 of the Public Resources Code an amount attributable to taxes imposed upon distributions of motor vehicle fuel used in the operation of motor vehicles off highway and for which a refund has not been claimed. Transfers made pursuant to this section shall be made prior to transfers pursuant to Section 8352.2.~~

~~(2) (A) The revenues attributable to the taxes imposed pursuant to subdivision (b) of Section 7360 and otherwise to be deposited~~

~~in the State Parks and Recreation Fund pursuant to paragraph (1) shall instead be transferred to the General Fund.~~

~~(B) Commencing November 1, 2017, the revenues attributable to the taxes imposed pursuant to subdivision (c) of Section 7360, any adjustment pursuant to subdivision (d) of Section 7360, and Section 7361.2, and deposited in the State Parks and Recreation Fund pursuant to subdivision (a), shall be used for state parks, off-highway vehicle programs, or boating programs.~~

~~(3) The Controller shall withhold eight hundred thirty-three thousand dollars ($833,000) from the monthly transfer to the State Parks and Recreation Fund pursuant to paragraph (1), and transfer that amount to the General Fund.~~

~~(b) Upon enactment of the Budget Act, moneys to be allocated pursuant to the budget for the purposes of the Off-Highway Motor Vehicle Recreation Program established pursuant to Chapter 1.25 (commencing with Section 5090.01) of Division 5 of the Public Resources Code shall be transferred to the Off-Highway Vehicle Trust Fund created by Section 38225 of the Vehicle Code. Fuel taxes transferred to the Off-Highway Vehicle Trust Fund shall be at least equal to the amount of fuel taxes transferred to the Off-Highway Vehicle Trust Fund pursuant to this section during the 2016–17 fiscal year, unless the amount transferred to the State Parks and Recreation Fund is less than that amount.~~

~~(c) The amount transferred pursuant to subdivision (a) shall be equal to the motor vehicle fuel tax revenue paid by motor vehicles when actually used off highway for motorized recreation at units of the system, as defined in Section 5090.09 of the Public Resources Code, and by motor vehicles when actually used off highway to access nonmotorized recreation, whether or not that recreation is in a unit of the state park system. To calculate the amount of the transfer, an estimate shall be made every five years by the Department of Transportation, in cooperation with the Department of Parks and Recreation and the Department of Motor Vehicles, of the fuel tax revenues attributable to the following vehicles solely while in off-highway use:~~

~~(1) Vehicles identified with the Department of Motor Vehicles registered as off-highway motor vehicles as required by Division 16.5 (commencing with Section 38000) of the Vehicle Code.~~

~~(2) Registered street-legal vehicles used off highway for motorized recreation at units of the system, as defined in Section~~

~~5090.09 of the Public Resources Code, and registered street-legal vehicles used off highway to access nonmotorized recreation, including four-wheel drive vehicles, all-wheel drive vehicles, and dual-sport motorcycles.~~

~~(3) Vehicles used off highway for motorized recreation or used off highway to access nonmotorized recreation on federal lands as indicated by the United States Forest Service's National Visitor Use Monitoring Program and the United States Bureau of Land Management's Recreation Management Information System, to the extent not otherwise accounted for in paragraph (1) or (2).~~

~~(d) It is the intent of the Legislature that transfers from the Motor Vehicle Fuel Account pursuant to subdivision (a) should reflect the full range of motorized vehicle use off highway for both motorized recreation on any part of the system, as defined in Section 5090.09 of the Public Resources Code, and motorized off-highway access to nonmotorized recreation.~~

~~(e) It is the intent of the Legislature that the motor vehicle fuel tax revenues transferred pursuant to paragraph (1) of subdivision (a) that are associated with off-highway access to nonmotorized recreation should be used to augment funding available to the state park system for road improvements pursuant to Section 2107.7 of the Streets and Highways Code, compliance with the Americans with Disability Act of 1990 (Public Law 101-336), and to support community access to the state park system and other appropriate public recreation areas, including areas operated by local, regional or federal agencies, for underserved populations by, among other things, implementing a grant program for nonmotorized recreation trails and education opportunities.~~

~~(f) In the 2014–15 fiscal year, the Department of Transportation, in consultation with the Department of Parks and Recreation and the Department of Motor Vehicles, shall undertake a study to determine the appropriate adjustment to the amount transferred pursuant to subdivision (c) and to update the estimate of the amount attributable to taxes imposed upon distributions of motor vehicle fuel used in the operation of motor vehicles off highway and for which a refund has not been claimed. The department shall provide a copy of this study to the Legislature no later than January 1, 2016.~~

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COUNTY OF RIVERSIDE

June 16, 2017

The Honorable Mark Stone
Chair, Assembly Judiciary Committee
State Capitol, Room 5175
Sacramento, CA 95814

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

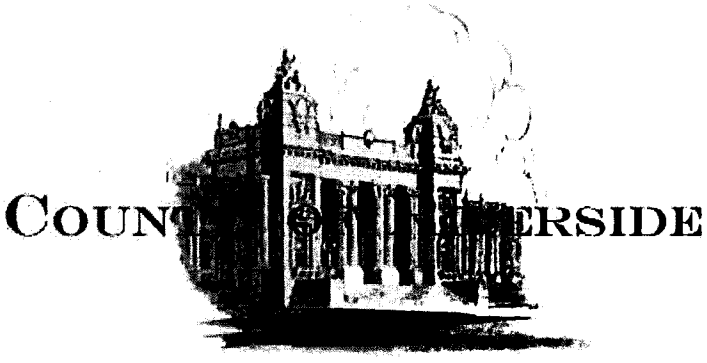
Dear Assemblymember Stone:

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 sub-set 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.



SB 438

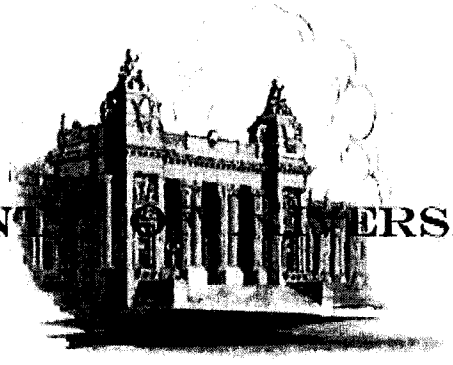
SB 438 would align California law with federal policy – to name a successor guardian for individuals seeking legal guardianship – and expand the policy to include non-relative legal guardians.

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



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 Judiciary Committee
Gail Gronert, Consultant, Assembly Speaker Anthony Rendon
Leora Gershenzon, Deputy Chief Counsel, Assembly Judiciary Committee
Paul Dress, Consultant, Assembly Republican Caucus

COUNTY OF RIVERSIDE

June 20, 2017

The Honorable Lorena Gonzalez Fletcher
Chair, Assembly Appropriations Committee
State Capitol, Room 2114
Sacramento, CA 95814

Re: SB 438 (Roth): Successor Guardians
As Amended April 20, 2017 – SPONSOR
Awaiting Hearing in Assembly Appropriations Committee
County of Riverside: SUPPORT – Per Legislative Platform

Dear Assemblymember Gonzalez Fletcher:

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 sub-set 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.

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

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.
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> 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.

Because the provisions of SB 438 are optional and conform with existing juvenile court permanency hearings, we do not believe the measure will result in additional costs. Additionally, having SB 438 in place may avoid costs associated with finding permanent guardians and with foster care placements.

COUNTY OF RIVERSIDE

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 Appropriations Committee
Gail Gronert, Consultant, Assembly Speaker Anthony Rendon
Jennifer Swenson, Consultant, Assembly Appropriations 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:

SECTION 1. Section 360 of the Welfare and Institutions Code is amended to read:

360. After receiving and considering the evidence on the proper disposition of the case, the juvenile court may enter judgment as follows:

(a) (1) Notwithstanding any other law, if the court finds that the child is a person described by Section 300 and the parent has advised the court that the parent is not interested in family maintenance or family reunification services, it may, in addition

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Transportation services, when appropriate.

(C) Visitation services, when appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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