

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

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

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

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

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

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

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

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

(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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AMENDED IN ASSEMBLY JULY 3, 2017
AMENDED IN ASSEMBLY JUNE 20, 2017
AMENDED IN SENATE MAY 2, 2017
AMENDED IN SENATE MARCH 28, 2017

SENATE BILL

No. 649

Introduced by Senator Hueso
(Principal coauthor: Assembly Member Quirk)
(Coauthor: Senator Dodd)
(Coauthor: Assembly Member Dababneh)

February 17, 2017

An act to ~~amend Section 65964 of, and to add Sections 65964.2 and 65964.5 to,~~ to the Government Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

SB 649, as amended, Hueso. Wireless telecommunications facilities.

Under existing 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. By imposing new duties on local agencies, this bill would impose a state-mandated local program. The bill would authorize a city or county to require an encroachment permit or a building permit, and any additional ministerial permits, for

a small cell, as specified. The bill would authorize a city or county to charge 3 types of fees: an annual ~~administrative permit fee, charge for each small cell attached to city or county vertical infrastructure,~~ an annual attachment rate, or a ~~on-time one-time~~ reimbursement fee. The bill would require the city or county to comply with notice and hearing requirements before imposing the annual attachment rate. The bill would require an action or proceeding to challenge a fee imposed under the provisions of this bill to be commenced within 120 days of the effective date of the ordinance or resolution. The bill would define the term “small cell” for these purposes.

This bill would prohibit a city or county from adopting or enforcing any regulation on the placement or operation of a communications facility in the rights-of-way by a provider that is authorized by state law to operate in the rights-of-way or from regulating that service or imposing any tax, fee, or charge, except as provided in specified provisions of law or as specifically required by law.

~~Under existing law, a city or county, as a condition of approval of an application for a permit for construction or reconstruction of a development project for a wireless telecommunications facility, may not require an escrow deposit for removal of a wireless telecommunications facility or any component thereof, unreasonably limit the duration of any permit for a wireless telecommunications facility, or require that all wireless telecommunications facilities be limited to sites owned by particular parties within the jurisdiction of the city or county, as specified.~~

~~This bill would require permits for these facilities to be renewed for equivalent durations, as specified.~~

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

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. The Legislature finds and declares that, to ensure
- 2 that communities across the state have access to the most advanced
- 3 communications technologies and the transformative solutions

1 that robust wireless and wireline connectivity enables, such as
2 Smart Communities and the Internet of Things, California should
3 work in coordination with federal, state, and local officials to create
4 a statewide framework for the deployment of advanced wireless
5 communications infrastructure in California that does all of the
6 following:

7 (a) Reaffirms local governments' historic role and authority
8 with respect to communications infrastructure siting and
9 construction generally.

10 (b) Reaffirms that deployment of telecommunications facilities
11 in the rights-of-way is a matter of statewide concern, subject to a
12 statewide franchise, and that expeditious deployment of
13 telecommunications networks generally is a matter of both
14 statewide and national concern.

15 (c) Recognizes that the impact on local interests from individual
16 small wireless facilities will be sufficiently minor and that such
17 deployments should be a permitted use statewide and should not
18 be subject to discretionary zoning review.

19 (d) Requires expiring permits for these facilities to be renewed
20 so long as the site maintains compliance with use conditions
21 adopted at the time the site was originally approved.

22 (e) Requires providers to obtain all applicable building or
23 encroachment permits and comply with all related health, safety,
24 and objective aesthetic requirements for small wireless facility
25 deployments on a ministerial basis.

26 (f) Grants providers fair, reasonable, nondiscriminatory, and
27 nonexclusive access to locally owned utility poles, streetlights,
28 and other suitable host infrastructure located within the public
29 rights-of-way and in other local public places such as stadiums,
30 parks, campuses, hospitals, transit stations, and public buildings
31 consistent with all applicable health and safety requirements,
32 including Public Utilities Commission General Order 95.

33 (g) Provides for full recovery by local governments of the costs
34 of attaching small wireless facilities to utility poles, streetlights,
35 and other suitable host infrastructure in a manner that is consistent
36 with existing federal and state laws governing utility pole
37 attachments generally.

38 (h) Permits local governments to charge wireless permit fees
39 that are fair, reasonable, nondiscriminatory, and cost based.

1 (i) Advances technological and competitive neutrality while not
2 adding new requirements on competing providers that do not exist
3 today.

4 ~~SEC. 2. Section 65964 of the Government Code is amended~~
5 ~~to read:~~

6 ~~65964. As a condition of approval of an application for a permit~~
7 ~~for construction or reconstruction for a development project for a~~
8 ~~wireless telecommunications facility, as defined in Section 65850.6,~~
9 ~~a city or county shall not do any of the following:~~

10 ~~(a) Require an escrow deposit for removal of a wireless~~
11 ~~telecommunications facility or any component thereof. However,~~
12 ~~a performance bond or other surety or another form of security~~
13 ~~may be required, so long as the amount of the bond security is~~
14 ~~rationally related to the cost of removal. In establishing the amount~~
15 ~~of the security, the city or county shall take into consideration~~
16 ~~information provided by the permit applicant regarding the cost~~
17 ~~of removal.~~

18 ~~(b) Unreasonably limit the duration of any permit for a wireless~~
19 ~~telecommunications facility. Limits of less than 10 years are~~
20 ~~presumed to be unreasonable absent public safety reasons or~~
21 ~~substantial land use reasons. However, cities and counties may~~
22 ~~establish a build-out period for a site. A permit shall be renewed~~
23 ~~for equivalent durations unless the city or county makes a finding~~
24 ~~that the wireless telecommunications facility does not comply with~~
25 ~~the codes and permit conditions applicable at the time the permit~~
26 ~~was initially approved.~~

27 ~~(c) Require that all wireless telecommunications facilities be~~
28 ~~limited to sites owned by particular parties within the jurisdiction~~
29 ~~of the city or county.~~

30 ~~SEC. 3.~~

31 ~~SEC. 2. Section 65964.2 is added to the Government Code, to~~
32 ~~read:~~

33 ~~65964.2. (a) A small cell shall be a permitted use subject only~~
34 ~~to a permitting process adopted by a city or county pursuant to~~
35 ~~subdivision (b) if it satisfies the following requirements:~~

36 ~~(1) The small cell is located in the public rights-of-way in any~~
37 ~~zone or in any zone that includes a commercial or industrial use.~~

38 ~~(2) The small cell complies with all applicable federal, state,~~
39 ~~and local health and safety regulations, including the federal~~

1 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101
2 et seq.).

3 (3) The small cell is not located on a fire department facility.

4 (b) (1) A city or county may require that the small cell be
5 approved pursuant to a building permit or its functional equivalent
6 in connection with placement outside of the public rights-of-way
7 or an encroachment permit or its functional equivalent issued
8 consistent with Sections 7901 and 7901.1 of the Public Utilities
9 Code for the placement in public rights-of-way, and any additional
10 ministerial permits, provided that all permits are issued within the
11 timeframes required by state and federal law.

12 (2) Permits issued pursuant to this subdivision may be subject
13 to the following:

14 (A) The same permit requirements as for similar construction
15 projects and applied in a nondiscriminatory manner.

16 (B) A requirement to submit additional information showing
17 that the small cell complies with the Federal Communications
18 Commission's regulations concerning radio frequency emissions
19 referenced in Section 332(c)(7)(B)(iv) of Title 47 of the United
20 States Code.

21 (C) A condition that the applicable permit may be rescinded if
22 construction is not substantially commenced within one year.
23 Absent a showing of good cause, an applicant under this section
24 may not renew the permit or resubmit an application to develop a
25 small cell at the same location within six months of rescission.

26 (D) A condition that small cells no longer used to provide
27 service shall be removed at no cost to the city or county.

28 (E) Compliance with building codes, including building code
29 structural requirements.

30 (F) A condition that the applicant pay all electricity costs
31 associated with the operation of the small cell.

32 (G) A condition to comply with feasible design and collocation
33 standards on a small cell to be installed on property not in the
34 rights-of-way.

35 (3) Permits issued pursuant to this subdivision shall not be
36 subject to:

37 (A) Requirements to provide additional services, directly or
38 indirectly, including, but not limited to, in-kind contributions from
39 the applicant such as reserving fiber, conduit, or pole space.

1 (B) The submission of any additional information other than
2 that required of similar construction projects, except as specifically
3 provided in this section.

4 (C) Limitations on routine maintenance or the replacement of
5 small cells with small cells that are substantially similar, the same
6 size or smaller.

7 (D) The regulation of any micro wireless facilities mounted on
8 a span of wire.

9 (4) Notwithstanding any other provision of this section, a city
10 or county shall not impose permitting requirements or fees on the
11 installation, placement, maintenance, or replacement of micro
12 wireless facilities that are suspended, whether embedded or
13 attached, on cables or lines that are strung between existing utility
14 poles in compliance with state safety codes.

15 (c) A city or county shall not preclude the leasing or licensing
16 of its vertical infrastructure located in public rights-of-way or
17 public utility easements under the terms set forth in this
18 subdivision. Vertical infrastructure shall be made available for the
19 placement of small cells under fair and reasonable fees, subject to
20 the requirements in subdivision (d), terms, and conditions, which
21 may include feasible design and collocation standards. A city or
22 county may reserve capacity on vertical infrastructure if the city
23 or county adopts a resolution finding, based on substantial evidence
24 in the record, that the capacity is needed for projected city or county
25 uses.

26 (d) (1) A city or county may charge the following fees:

27 (A) An annual ~~administrative permit fee~~ *charge* not to exceed
28 two hundred fifty dollars (\$250) for each small cell attached to
29 city or county vertical infrastructure.

30 (B) An annual attachment rate that does not exceed an amount
31 resulting from the following requirements:

32 (i) The city or county shall calculate the rate by multiplying the
33 percentage of the total usable space that would be occupied by the
34 attachment by the annual costs of ownership of the vertical
35 infrastructure and its anchor, if any.

36 (ii) The city or county shall not levy a rate that exceeds the
37 estimated amount required to provide use of the vertical
38 infrastructure for which the annual recurring rate is levied. If the
39 rate creates revenues in excess of actual costs, the city or county
40 shall use those revenues to reduce the rate.

1 (iii) For purposes of this subparagraph:

2 (I) "Annual costs of ownership" means the annual capital costs
3 and annual operating costs of the vertical infrastructure, which
4 shall be the average costs of all similar vertical infrastructure
5 owned or controlled by the city or county. The basis for the
6 computation of annual capital costs shall be historical capital costs
7 less depreciation. The accounting upon which the historical capital
8 costs are determined shall include a credit for all reimbursed capital
9 costs. Depreciation shall be based upon the average service life of
10 the vertical infrastructure. Annual cost of ownership does not
11 include costs for any property not necessary for use by the small
12 cell.

13 (II) "Usable space" means the space above the minimum grade
14 that can be used for the attachment of antennas and associated
15 ancillary equipment.

16 (C) A one-time reimbursement fee for actual costs incurred by
17 the city or county for rearrangements performed at the request of
18 the small cell provider.

19 (2) A city or county shall comply with the following before
20 adopting or increasing the rate described in subparagraph (B) of
21 paragraph (1):

22 (A) At least 14 days before the hearing described in
23 subparagraph (C), the city or county shall provide notice of the
24 time and place of the meeting, including a general explanation of
25 the matter to be considered.

26 (B) At least 10 days before the hearing described in
27 subparagraph (C), the city or county shall make available to the
28 public data indicating the cost, or estimated cost, to make vertical
29 structures available for use under this section if the city or county
30 adopts or increases the proposed rate.

31 (C) The city or county shall, as a part of a regularly scheduled
32 public meeting, hold at least one open and public hearing at which
33 time the city or county shall permit the public to make oral or
34 written presentations relating to the rate. The city or county shall
35 include a description of the rate in the notice and agenda of the
36 public meeting in accordance with the Ralph M. Brown Act
37 (Chapter 9 (commencing with Section 54950.5) of Part 1 of
38 Division 2 of Title 5).

39 (D) The city or county may approve the ordinance or resolution
40 to adopt or increase the rate at a regularly scheduled open meeting

1 that occurs at least 30 days after the initial public meeting described
2 in subparagraph (C).

3 (3) A judicial action or proceeding to attack, review, set aside,
4 void, or annul an ordinance or resolution adopting, or increasing,
5 a fee described in this subdivision, shall be commenced within
6 120 days of the effective date of the ordinance or resolution
7 adopting or increasing the fee. A city or county or interested person
8 shall bring an action described in this paragraph pursuant to
9 Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of
10 the Code of Civil Procedure in a court of competent jurisdiction.

11 (4) This subdivision does not prohibit a wireless service provider
12 and a city or county from mutually agreeing to an annual
13 ~~administrative permit fee charge~~ or attachment rate that is ~~less~~
14 ~~than different from~~ the fees or rates established above.

15 (e) A city or county shall not discriminate against the
16 deployment of a small cell on property owned by the city or county
17 and shall make space available on property not located in the public
18 rights-of-way under terms and conditions that are no less favorable
19 than the terms and conditions under which the space is made
20 available for comparable commercial projects or uses. These
21 installations shall be subject to reasonable and nondiscriminatory
22 rates, terms, and conditions, which may include feasible design
23 and collocation standards.

24 (f) This section does not alter, modify, or amend any franchise
25 or franchise requirements under state or federal law, including
26 Section 65964.5.

27 (g) For purposes of this section, the following terms have the
28 following meanings:

29 (1) "Micro wireless facility" means a small cell that is no larger
30 than 24 inches long, 15 inches in width, 12 inches in height, and
31 that has an exterior antenna, if any, no longer than 11 inches.

32 (2) (A) "Small cell" means a wireless telecommunications
33 facility, as defined in paragraph (2) of subdivision (d) of Section
34 65850.6, or a wireless facility that uses licensed or unlicensed
35 spectrum and that meets the following qualifications:

36 (i) The small cell antennas on the structure, excluding the
37 associated equipment, total no more than six cubic feet in volume,
38 whether an array or separate.

39 (ii) Any individual piece of associated equipment on pole
40 structures does not exceed nine cubic feet.

- 1 (iii) The cumulative total of associated equipment on pole
- 2 structures does not exceed 21 cubic feet.
- 3 (iv) The cumulative total of any ground-mounted equipment
- 4 along with the associated equipment on any pole or nonpole
- 5 structure does not exceed 35 cubic feet.
- 6 (v) The following types of associated ancillary equipment are
- 7 not included in the calculation of equipment volume:
- 8 (I) Electric meters and any required pedestal.
- 9 (II) Concealment elements.
- 10 (III) Any telecommunications demarcation box.
- 11 (IV) Grounding equipment.
- 12 (V) Power transfer switch.
- 13 (VI) Cutoff switch.
- 14 (VII) Vertical cable runs for the connection of power and other
- 15 services.
- 16 (VIII) Equipment concealed within an existing building or
- 17 structure.
- 18 (B) "Small cell" includes a micro wireless facility.
- 19 (C) "Small cell" does not include the following:
- 20 (i) Wireline backhaul facility, which is defined to mean a facility
- 21 used for the transport of communications data by wire from
- 22 wireless facilities to a network.
- 23 (ii) Coaxial or fiber optic cables that are not immediately
- 24 adjacent to or directly associated with a particular antenna or
- 25 collocation.
- 26 (iii) Wireless facilities placed in any historic district listed in
- 27 the National Park Service Certified State or Local Historic Districts
- 28 or in any historical district listed on the California Register of
- 29 Historical Resources or placed in coastal zones subject to the
- 30 jurisdiction of the California Coastal Commission.
- 31 (iv) The underlying vertical infrastructure.
- 32 (3) (A) "Vertical infrastructure" means all poles or similar
- 33 facilities owned or controlled by a city or county that are in the
- 34 public rights-of-way or public utility easements and meant for, or
- 35 used in whole or in part for, communications service, electric
- 36 service, lighting, traffic control, or similar functions.
- 37 (B) For purposes of this paragraph, the term "controlled" means
- 38 having the right to allow subleases or sublicensing. A city or county
- 39 may impose feasible design or collocation standards for small cells

1 placed on vertical infrastructure, including the placement of
2 associated equipment on the vertical infrastructure or the ground.

3 ~~(h) Existing agreements between a wireless service provider,~~
4 ~~or its agents and assigns, and a city, a county, or a city or county's~~
5 ~~agents and assigns, regarding the leasing or licensing of vertical~~
6 ~~infrastructure entered into before the operative date of this section~~
7 ~~remain in effect, subject to applicable termination or other~~
8 ~~provisions in the existing agreement, or unless otherwise modified~~
9 ~~by mutual agreement of the parties. A wireless service provider~~
10 ~~may require the rates of this section for new small cells sites that~~
11 ~~are deployed after the operative date of this section in accordance~~
12 ~~with applicable change of law provisions in the existing~~
13 ~~agreements. provisions. The operator of a small cell may accept~~
14 ~~the rates of this section for small cells that are the subject of an~~
15 ~~application submitted after the agreement is terminated pursuant~~
16 ~~to the terms of the agreement.~~

17 (i) Nothing in this section shall be construed to authorize or
18 impose an obligation to charge a use fee different than that
19 authorized by Part 2 (commencing with Section 9510) of Division
20 4.8 of the Public Utilities Code on a local publicly owned electric
21 utility.

22 (j) This section does not change or remove any obligation by
23 the owner or operator of a small cell to comply with a local publicly
24 owned electric utility's reasonable and feasible safety, reliability,
25 and engineering policies.

26 (k) A city or county shall consult with the utility director of a
27 local publicly owned electric utility when adopting an ordinance
28 or establishing permitting processes consistent with this section
29 that impact the local publicly owned electric utility.

30 ~~(l) Except as provided in subdivisions (a) and (b), nothing~~
31 ~~Nothing~~ in this section shall be construed to modify the rules and
32 compensation structure that have been adopted for an attachment
33 to a utility pole owned by an electrical corporation or telephone
34 corporation, as those terms are defined in Section 216 of the Public
35 Utilities Code pursuant to state and federal law, including, but not
36 limited to, decisions of the Public ~~Utility~~ Utilities Commission
37 adopting rules and a compensation structure for an attachment to
38 a utility pole owned by an electrical corporation or telephone
39 corporation, as those terms are defined in Section 216 of the Public
40 Utilities Code.

1 (m) Nothing in this section shall be construed to modify any
2 applicable rules adopted by the Public Utilities Commission,
3 including General Order 95 requirements, regarding the attachment
4 of wireless facilities to a utility pole owned by an electrical
5 corporation or telephone corporation, as those terms are defined
6 in Section 216 of the Public Utilities Code

7 (n) The Legislature finds and declares that small cells, as defined
8 in this section, have a significant economic impact in California
9 and are not a municipal affair as that term is used in Section 5 of
10 Article XI of the California Constitution, but are a matter of
11 statewide concern.

12 ~~SEC. 4.~~

13 *SEC. 3.* Section 65964.5 is added to the Government Code, to
14 read:

15 65964.5. Except as provided in Sections 65964, 65964.2, and
16 65850.6, or as specifically required by state law, a city or county
17 may not adopt or enforce any regulation on the placement or
18 operation of communications facilities in the rights-of-way by a
19 provider authorized by state law to operate in the rights-of-way,
20 and may not regulate any communications services or impose or
21 collect any tax, fee, or charge not specifically authorized under
22 state law.

23 ~~SEC. 5.~~

24 *SEC. 4.* No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 a local agency or school district has the authority to levy service
27 charges, fees, or assessments sufficient to pay for the program or
28 level of service mandated by this act, within the meaning of Section
29 17556 of the Government Code.

AMENDED IN SENATE JUNE 27, 2017

Senate Constitutional Amendment

No. 12

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

April 27, 2017

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

This measure would, commencing January 1, 2022, in a county that is found at a decennial United States census, beginning with the 2020 United States census, to have a population of more than 5,000,000, require, and deem any applicable law, including a county charter, to require, a governing body consisting of *the greater of either 5 members or a sufficient number of members so as to ensure that each member*

represents a district containing a population equivalent to no more than 2 districts in the United States House of Representatives. The measure would require that the members of the governing body serve for a term of 4 years and limit election to the governing body to no more than 3 terms. The measure would also provide that, in such a county, the expenditures for the governing body and its staff may not exceed, for any subsequent fiscal year after the release of the census finding that the county has a population of more than 5,000,000, the amount that was allocated for the expenses of the governing body and its staff in the county's adopted budget for the fiscal year in which that same census was conducted, unless adjusted as provided.

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

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

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

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

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

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

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

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

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

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

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

17 WHEREAS, It is important to restrain the costs of governance
18 by restricting the fiscal impact of any changes in any county's
19 board of supervisors and the creation of an elected county executive
20 position; and

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

25 (a) Increase democratic representation by making an effort to
26 substantially reduce the population in each supervisorial district
27 to approximate the combined population of two congressional
28 districts;

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

32 (c) By creating a county executive position to separate the
33 legislative and executive functions of the County of Los Angeles,
34 consistent with the Los Angeles County Civil Grand Jury's July
35 2016 Report recommending changes for the governance of the
36 County of Los Angeles given the county's complexity of
37 populations, demographics, services, and financing sources, among
38 other matters;

39 (d) To control the costs and size of county government through
40 restriction of future costs for the board of supervisors and the

1 proposed elected county executive to current respective budgets;
2 now, therefore, be it

3 *Resolved by the Senate, the Assembly concurring,* That the
4 Legislature of the State of California at its 2017–18 Regular
5 Session commencing on the fifth day of December 2016, two-thirds
6 of the membership of each house concurring, hereby proposes to
7 the people of the State of California, that the Constitution of the
8 State be amended as follows:

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

10 SEC. 4. County charters shall provide for:

11 (a) Except as otherwise provided in Section 4.5, a governing
12 body of five or more members, elected (1) by district or, (2) at
13 large, or (3) at large, with a requirement that each member reside
14 in a district. Charter counties are subject to federal, state, and local
15 laws that relate to apportioning population of governing body
16 districts.

17 (b) Except as otherwise provided in Section 4.5, the
18 compensation, terms, and removal of members of the governing
19 body. If a county charter provides for the Legislature to prescribe
20 the salary of the governing body, compensation shall be prescribed
21 by the governing body by ordinance.

22 (c) An elected sheriff, an elected district attorney, an elected
23 assessor, other officers, their election or appointment,
24 compensation, terms, and removal, except as otherwise provided
25 in Section 4.6.

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

27 (e) The powers and duties of governing bodies and all other
28 county officers, and for consolidation and segregation of county
29 officers, and for the manner of filling all vacancies occurring in
30 those offices.

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

38 (g) Whenever any county has framed and adopted a charter, and
39 the same shall have been approved by the Legislature as herein
40 provided, the general laws adopted by the Legislature in pursuance

1 of subdivision (b) of Section 1 of this article, shall, as to such
2 county, be superseded by said charter as to matters for which,
3 under this section it is competent to make provision in such charter,
4 and for which provision is made therein, except as herein otherwise
5 expressly provided.

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

8 Second—That Section 4.5 is added to Article XI thereof, to
9 read:

10 SEC. 4.5. (a) Commencing January 1, 2022, in a county that
11 is found at a decennial United States census, beginning with the
12 2020 United States census, to have a population of more than
13 5,000,000, there is required, and any applicable law, including a
14 county charter, shall be deemed to require, the following:

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

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

30 (B) Notwithstanding subparagraph (A), the expenditures for the
31 governing body and its staff may be adjusted for either of the
32 following reasons:

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

35 (ii) To address contingencies *that were* unaccounted for ~~during~~
36 *or that could not have been anticipated in* the fiscal year in which
37 the census was conducted.

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

1 (b) Any members of the governing body required by this section
2 in addition to those required by any other law, including an existing
3 charter, shall first be elected at a general election occurring on or
4 after January 1, 2022. Those additional members shall serve for
5 the same term and subject to the same provisions of the applicable
6 law or charter to the governing body, except that no more than
7 one-half of the additional members elected on or after January 1,
8 2022, may serve a shortened term so as to provide for staggered
9 terms.

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

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

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

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

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

28 (ii) To address contingencies *that were* unaccounted for ~~during~~
29 *or that could not have been anticipated in the* ~~first~~ fiscal year in
30 which this section was added.

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

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

1 (B) The governing body of the county may overrule any
2 appointment or dismissal made pursuant to this paragraph by a
3 two-thirds vote of its entire membership. The governing body shall
4 notify the county executive of its intent to overrule and shall take
5 action within 30 calendar days of the date of notification. During
6 the 30 calendar days, the county executive's appointment or
7 dismissal action shall be suspended.

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

11 (c) (1) ~~The county executive, within 45 days of the adoption~~
12 ~~of the annual state budget pursuant to Section 12 of Article IV,~~
13 *On or before June 30 of each year, the county executive shall*
14 *develop and submit to the governing body of the county an annual*
15 *budget for the county.*

16 (2) ~~Within 90~~ 60 days of receipt of the budget pursuant to
17 paragraph (1), the governing body of the county shall review and
18 approve the budget, with or without amendments, and transmit the
19 budget to the county executive for review and final approval.

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

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

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

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

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

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

33 (A) By a proposal of the county executive. The county executive
34 shall present any proposed amendments to the governing body of
35 the county. The governing body shall review any proposed
36 amendment presented by the county executive, and may approve
37 any amendments by a two-thirds vote of its entire membership.

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

- 1 (d) The governing body may override any action of the county
- 2 executive by a two-thirds vote of its entire membership.
- 3 Fourth—The provisions of this measure are severable. If any
- 4 provision of this measure or its application is held invalid, that
- 5 invalidity shall not affect other provisions or applications that can
- 6 be given effect without the invalid provision or application.