

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR16-20

Title

Juvenile Law: Dependency Hearings

Action Requested

Review and submit comments by June 14, 2016

Proposed Rules, Forms, Standards, or Statutes

Amend Cal. Rules of Court, rules 5.534, 5.668, 5.670, 5.674, 5.682, 5.684, 5.690, 5.695, 5.706, 5.708, 5.710, 5.715, 5.720, 5.722, 5.725, 5.726, 5.727, 5.728, 5.735, 5.740; repeal rules 5.680, 5.686, and 5.688

Proposed Effective Date

January 1, 2017

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Proposed by

Family and Juvenile Law Advisory
Committee

Hon. Jerilyn L. Borack, Cochair

Hon. Mark A. Juhas, Cochair

Executive Summary and Origin

The rules in Title Five of the California Rules of Court that set forth the procedures to be followed during dependency court hearings from the initiation of the case through each of the status review hearings contain significant repetitions of statutory text that make the rules more cumbersome and require that they be frequently amended when the underlying statutes are amended. This proposal would delete many of these unnecessary sections in the rules or replace them with references to the relevant code sections to enhance the brevity and accuracy of the rules while also consolidating some shorter rules where appropriate.

Background

Many of the rules of court concerning juvenile dependency court hearings were adopted in the early 1990s at a time when access to statutory materials via electronic devices and online resources was far less available to judicial officers than at present. To ensure that juvenile courts had comprehensive information about the requirements in these cases, the original drafters of the rules paraphrased or directly included extensive sections of the relevant underlying statutes in the rules. Since that time, the statutes have become longer and more complicated, and the rules have been repeatedly amended to include the amended statutory provisions. The rule amendments frequently lag the underlying statutory amendments by a year due to the time needed for the

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Judicial Council rule-making process. At the same time, the growth of online legal resources such as the California Legislative Information website allows any judicial officer or member of the public to access up-to-date statutory materials easily at no cost. This major change in the information infrastructure for juvenile courts warrants a reexamination of the roles of the rules of court in these proceedings. This proposal was spurred by recent legislation¹ that would have required three different proposals amending multiple rules of court to include minor statutory expansions of existing provisions, under the council's past practices. Instead, the legislative changes will be addressed by rule amendments that include statutory references rather than a paraphrase of the full statutory text.

The Proposal

Rule amendments to delete unnecessary statutory text

This proposal would amend numerous juvenile dependency proceedings rules to delete unnecessary statutory text or, when necessary, replace that text with appropriate references to the underlying code sections. These changes would streamline the rules and reduce the frequency with which the rules need to be amended to reflect changes in the statutory text. The specific rule change proposals are as follows.

Rule 5.534. General provisions—all proceedings

Delete subdivisions (a), (b), (c), and (d), which restate provisions of section 350 on the general conduct of the proceedings, testimony of the child in chambers, and the burden of proof. Delete subdivision (o) on periodic reports, which restates Welfare and Institutions Code section² 365. Delete subdivision (p) on the presence of the child, which restates section 349. (Making this change obviates the need to amend this rule to incorporate the changes made by Assembly Bill 217 (Maienschein).)

Rule 5.668. Commencement of hearing—explanation of proceedings (§§ 316, 316.2)

Amend subdivision (b) to delete the specific parentage questions that are drawn from the text of section 316.2 and replace with a reference to that section.

Rule 5.670. Initial hearing; detention hearings; time limit on custody; setting jurisdiction hearing; visitation

Delete subdivisions (b), (c), (d), and (f), which restate provisions found in sections 311, 313, 309(b), 315, and 334 respectively and include a reference to section 309(b) in former subdivision (e).

¹ Assem. Bill 217 [Maienschein]; Stats. 2015, ch. 36; Sen. Bill 68 [Liu]; Stats. 2015, ch. 284; and Sen. Bill 794 [Human Services]; Stats. 2015, ch. 425.

² Hereafter, all code references are to the Welfare and Institutions Code unless otherwise noted.

Rule 5.674. Conduct of hearing; admission, no contest, submission

Delete subdivision (c), which restates section 319 and remove reference to this subdivision in subdivision (d), and replace with a reference to section 319.

Rule 5.682. Commencement of jurisdiction hearing—advisement of trial rights; admission, no contest, submission

Delete subdivision (a), which restates section 353. Delete reference to rule 5.686, which is proposed to be repealed.

Rule 5.684. Contested hearing on petition

Delete hearsay exceptions from subdivision (d) and replace with a reference to section 355(c). Amend to add provisions on the continuance pending a disposition hearing from rule 5.686 to subdivision (g), which currently directs the court to proceed to a disposition hearing and delete the reference to rule 5.686.

Rule 5.690. General conduct of disposition hearing

Delete most of the text of subdivision (c) concerning the case plan requirements (some of which are in the rule, but many of which are not) and instead specify that a case plan must be prepared and included with the court report as required in section 16501.1.

Rule 5.695. Findings and orders of the court—disposition

Delete subdivision (b) concerning appointment of a legal guardian as a disposition, which repeats provisions of section 360 and add clerk requirements to subdivision (a). Delete specific required removal findings from subdivision (d) and replace with a reference to subdivision (c) of section 361, which sets forth these findings. Delete extensive text sections drawn from section 361.5 contained in subdivision (h) of the rule and replace with appropriate code references. Delete subdivision (j) as it is inconsistent with section 366.21(e) and restates timing for status reviews contained in various sections.

Rule 5.706. Family maintenance review hearings (§ 364)

Delete subdivisions (a), (c), and (e), which restate provisions of section 364 on family maintenance cases and retain those provisions of the rule that are not simply a statutory restatement.

Rule 5.708. General review hearing requirements

Delete subdivision (a) on the timing for review hearings, which restates section 366. Delete subdivision (d) on required detriment findings, which restates sections 366.21(e), 366.22(a), and 366.25(a). Delete subparagraph (2) of subdivision (e) concerning factors that are not sufficient to constitute a failure of reasonable services, which restates sections 366.21(l) and 366.25(a)(3). Delete subdivision (h) on out-of-state placement requirements, which restates provisions of section 366.21. Delete subdivision (i), which restates required findings contained in section 366. Delete subdivision (m) and paragraphs (1)–(4) of subdivision (n), which restate the findings

required before a section 366.26 hearing may be set as provided in sections 366.21, 366.22, and 366.25.

Rule 5.710. Six-month review hearing

Delete subdivision (a), which repeats the required statutory timeframe in sections 364, 366, and 366.21. Delete required finding language in paragraph (1) of subdivision (b). Redraft subdivision (c) and delete subdivision (d) on siblings to delete language that restates section 366.21(e) requirements. (Making this change obviates the need to amend the rule to incorporate revisions to this section for parenting nonminor dependents made by Senate Bill 68 (Liu).)

Rule 5.715. Twelve-month permanency hearing

Delete notice requirements from subdivision (a) that restate statutory requirements in section 293. Redraft subdivision (b) to delete provisions that restate section 366.21(f). (Making this change obviates the need to amend the rule to incorporate revisions to this section for parenting nonminor dependents made by SB 68 (Liu).)

Rule 5.720. Eighteen-month permanency hearing

Delete subdivision (a), which states the timing for this hearing as required in section 366.22 and the notice requirements of section 293. Redraft subdivision (b) on the findings and orders required to delete restatements of section 366.22. (Making this change obviates the need to amend the rule to incorporate revisions to this section for parenting nonminor dependents made by SB 68 (Liu).)

Rule 5.722. Twenty-four-month subsequent permanency review

Delete subdivision (a), which restates timing requirements for hearings contained in section 366.25 and an out-of-date notice provision. Redraft subdivision (b) to delete provisions that simply restate section 366.25.

Rule 5.725. Selection of permanent plan (§§ 366.26, 727.31)

Delete paragraph (1) from subdivision (a), which restates section 366.26(a). Amend paragraph (3) of subdivision (a) to add a missing reference to section 727.31. Redraft subdivisions (d) and (e) to delete language that is duplicative of section 366.26.

Rule 5.726. Prospective adoptive parent designation (§ 366.26(n))

Redraft subdivisions (b) and (c) to delete content that restates section 366.26(n), and redraft subdivision (e) to change a reference to this rule to a reference to section 366.26(n)(1).

Rule 5.727. Proposed removal (§ 366.26(n))

Replace a reference to rule 5.726 with a reference to section 366.26(n)(1) in paragraph (2) of subdivision (b).

Rule 5.728. Emergency removal (§ 366.26(n))

Replace a reference to rule 5.726 with a reference to section 366.26(n)(1) in paragraph (2) of subdivision (b).

Rule 5.735. Legal guardianship

Amend subdivision (b) to accurately reflect the standard for granting visitation in guardianship matters.

Rule 5.740. Hearings subsequent to a permanent plan (§§ 366.26, 366.3)

Delete paragraphs (8), (9), and (10) from subdivision (b) as they restate provisions of section 366.3.

Other changes to enhance brevity of rules

Rule 5.674. Conduct of hearing; admission, no contest, submission

Add two new subdivisions from provisions of rule 5.680 that specifically address the procedures to be followed for detention hearings.

Rule 5.680. Detention rehearings; prima facie hearings

Repeal this rule and move its key provisions into rule 5.674.

Rule 5.686. Continuance pending disposition hearing

Repeal this rule and add its substance to rule 5.684.

Rule 5.688. Failure to cooperate with services

Repeal this rule as it simply restates provisions of section 360(b).

Relative placement

Legislation enacted last year³ amended Family Code section 7950, to require the court to make a finding that the county child welfare agency has made diligent efforts to locate an appropriate relative, and that each relative whose name has been submitted to the agency or entity as a possible caregiver has been evaluated as an appropriate placement resources:

- at any permanency hearing in which the court terminates reunification services, or
- at any postpermanency hearing for a child not placed for adoption.

Before this amendment, the court was required to make this finding only before a child was placed in long-term foster care. Because this is such an important change in the law to help ensure both relative placement and permanency for children, and because it is in a code not often reviewed by juvenile court judges and attorneys, the committee proposes adding these new requirements to the rules governing permanency and postpermanency hearings.⁴

³ Sen. Bill 794 [Human Services]; Stats. 2015, ch. 425

⁴ Cal. Rules of Court, rules 5.715, 5.720, 5.722, and 5.740.

Dispositional Attachment: Removal From Custodial Parent—Placement With Nonparent (form JV-421)

Form JV-421 misstates the law. Item 33a provides the option for the court to record that it has informed all parties that, for a child under the age of three, failure to participate and make substantive progress in court-ordered treatment programs may result in the termination of reunification services at the hearing scheduled within six months from the date the child entered foster care under section 366.21(e). This language, however, does not track the requirement in section 366.21(e) that the hearing should be scheduled on a date within six months of the date of the dispositional hearing, but no later than twelve months from the date the child entered foster care, as defined by section 361.49, whichever occurs earlier. The form is therefore legally inaccurate and the committee proposes amending it to accurately reflect the law.

The committee also proposes amending form JV-421 at item 32 to conform to changes in section 16501.1 made by Senate Bill 794 that lower the age of children for whom the case plan must include a description of the services that will help the child transition to successful adulthood from 16 years of age to 14 years of age or older.

The committee further proposes amending form JV-421 to reflect new Judicial Council form names at item 27(b) and updating a rule reference consistent with this proposal at item 35(d).

Alternatives Considered

Initially the committee considered simply amending the existing rules of court to reflect the new statutory language, but determined that it would be preferable in the long run to abbreviate the rules by replacing unneeded text with code references in order to obviate the need for further amendments in the future when these statutes are again amended.

Implementation Requirements, Costs, and Operational Impacts

Because this proposal chiefly amends rules of court to make them more concise without changing the underlying statutory requirements, it should have no costs to the courts and the main operational impact will be limited to ensuring that stakeholders understand that the amendments do not change the underlying requirements for these proceedings but simply delete provisions duplicative of statute.

In implementing the changes to form JV-421, courts that use this optional form will incur standard reproductive costs.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Are there statutory provisions that were deleted that should be restored?
- Are there additional statutory provisions that should be deleted?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Proposed Cal. Rules of Court, rules 5.534, 5.668, 5.670, 5.674, 5.680, 5.682, 5.684, 5.686, 5.688, 5.690, 5.695, 5.706, 5.708, 5.710, 5.715, 5.720, 5.722, 5.725, 5.726, 5.727, 5.728, 5.735, and 5.740 attached at pages 8–85.⁵
2. Form JV-421 is attached at pages 86–92.
3. Assembly Bill 217
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB217
4. Senate Bill 68
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB68
5. Senate Bill 794
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB794

⁵ The Judicial Council took action on April 15 to amend rules 5.534 and 5.708 effective July 1, 2016 to implement changes required by Assembly Bill 879 (Stats. 2015, ch. 219). Because those changes are not yet effective, the versions here do not reflect those changes, but they will be incorporated after July 1 if the proposal moves forward.

Rules 5.534, 5.668, 5.670, 5.674, 5.682, 5.684, 5.690, 5.695, 5.706, 5.708, 5.710, 5.715, 5.720, 5.722, 5.725, 5.726, 5.727, 5.728, 5.735, and 5.740 of the California Rules of Court would be amended, and rules 5.680, 5.686, and 5.688 would be repealed, effective January 1, 2017, to read:

1 **Rule 5.534. General provisions—all proceedings**

2
3 **(a) — Control of proceedings (§§ 350, 680)**

4
5 The court must control all proceedings with a view to quickly and effectively
6 ascertaining the jurisdictional facts and all information relevant to the present
7 condition and welfare of the child.

8
9
10 **(b) — Conduct of proceedings (§§ 350, 680)**

11
12 Unless there is a contested issue of fact or law, the proceedings must be conducted
13 in a nonadversarial atmosphere.

14
15
16 **(c) — Testimony of child in chambers (§ 350)**

17
18 In a hearing under section 300 et seq., a child may testify in chambers and outside
19 the presence of the child's parent or guardian if the parent or guardian is
20 represented by counsel who is present, subject to the right of the parent or guardian
21 to have the court reporter read back the child's testimony, and if the court
22 determines, based on the petitioner's report or other offers of proof or other
23 evidence, that any of the following circumstances exist:

24
25 (1) — Testimony in chambers is necessary to ensure truthful testimony;

26
27 (2) — The child is likely to be intimidated by a formal courtroom setting; or

28
29 (3) — The child is afraid to testify in front of the parent or guardian.

30
31
32 **(d) — Burden of proof (§§ 350, 701.1)**

33
34 Meeting the burden of proof:

35
36 (1) — In any hearing under section 300 in which the county welfare agency has the
37 burden of proof, the court may consider whether the burden of proof has been
38 met only after completion of the agency's case and the presentation of any
39 material evidence offered by the child. The court may then, on motion of any
40 party or on the court's own motion, order whatever action the law requires if

1 the court, based on all the evidence then before it, finds that the burden of
2 proof has not been met.

3
4 ~~(2) In any hearing under section 601 or 602, after the completion of the~~
5 ~~petitioner's case, the court may, on the motion of any party or on the court's~~
6 ~~own motion, order whatever action the law requires if the court, based on all~~
7 ~~the evidence then before it, finds that the burden of proof has not been met.~~
8

9 **(e)(a) De facto parents**

10
11 On a sufficient showing, the court may recognize the child's present or previous
12 custodian as a de facto parent and grant him or her standing to participate as a party
13 in the dispositional hearing and any hearing thereafter at which the status of the
14 dependent child is at issue. The de facto parent may:

- 15
16 (1) Be present at the hearing;
17
18 (2) Be represented by retained counsel or, at the discretion of the court, by
19 appointed counsel; and
20
21 (3) Present evidence.
22

23 **(f)(b) Relatives**

- 24
25 (1) On a sufficient showing, the court may permit a relative of the child or youth
26 to:
27
28 (A) Be present at the hearing; and
29
30 (B) Address the court.
31
32 (2) A relative of the child has the right to submit information about the child to
33 the court at any time. Written information about the child may be submitted
34 to the court using *Relative Information* (form JV-285) or in a letter to the
35 court.
36
37 (3) When a relative is located through the investigation required by rule 5.637,
38 the social worker or probation officer must give that relative:
39
40 (A) The written notice required by section 309 or 628 and the "Important
41 Information for Relatives" document as distributed in California
42 Department of Social Services All County Letter No. 09-86;
43

1 (B) A copy of *Relative Information* (form JV-285), with the county and
2 address of the court, the child's name and date of birth, and the case
3 number already entered in the appropriate caption boxes by the social
4 worker; and

5
6 (C) A copy of *Confidential Information* (form JV-287).

7
8 (4) When form JV-285 or a relative's letter is received by the court, the clerk
9 must provide the social worker or probation officer, all self-represented
10 parties, and all attorneys with a copy of the completed form or letter.

11
12 (5) When form JV-287 is received by the court, the clerk must place it in a
13 confidential portion of the case file.

14
15 **(g)(c) Right to counsel (§§ 317, 633, 634, 700)**

16
17 At each hearing, the court must advise any self-represented child, parent, or
18 guardian of the right to be represented by counsel and, if applicable, of the right to
19 have counsel appointed, subject to a claim by the court or the county for
20 reimbursement as provided by law.

21
22 **(h)(d) Appointment of counsel (§§ 317, 353, 633, 634, 700)**

23
24 (1) In cases petitioned under section 300:

25
26 (A) The court must appoint counsel for the child unless the court finds that
27 the child would not benefit from the appointment and makes the
28 findings required by rule 5.660(b); and

29
30 (B) The court must appoint counsel for any parent or guardian unable to
31 afford counsel if the child is placed in out-of-home care or the
32 recommendation of the petitioner is for out-of-home care, unless the
33 court finds the parent or guardian has knowingly and intelligently
34 waived the right to counsel.

35
36 (2) In cases petitioned under section 601 or 602:

37
38 (A) The court must appoint counsel for any child who appears without
39 counsel, unless the child knowingly and intelligently waives the right to
40 counsel. If the court determines that the parent or guardian can afford
41 counsel but has not retained counsel for the child, the court must
42 appoint counsel for the child and order the parent or guardian to
43 reimburse the county;

- 1 (B) The court may appoint counsel for a parent or guardian who desires but
2 cannot afford counsel; and
3
4 (C) If the parent has retained counsel for the child and a conflict arises, the
5 court must take steps to ensure that the child’s interests are protected.
6

7 **(j)(e) Tribal representatives (25 U.S.C. §§ 1911, 1931–1934)**
8

9 The tribe of an Indian child is entitled to intervene as a party at any stage of a
10 dependency proceeding concerning the Indian child.
11

12 (1) The tribe may appear by counsel or by a representative of the tribe designated
13 by the tribe to intervene on its behalf. When the tribe appears as a party by a
14 representative of the tribe, the name of the representative and a statement of
15 authorization for that individual or agency to appear as the tribe must be
16 submitted to the court in the form of a tribal resolution or other document
17 evidencing an official act of the tribe.
18

19 (2) If the tribe of the Indian child does not intervene as a party, the court may
20 permit an individual affiliated with the tribe or, if requested by the tribe, a
21 representative of a program operated by another tribe or Indian organization
22 to:
23

- 24 (A) Be present at the hearing;
25
26 (B) Address the court;
27
28 (C) Receive notice of hearings;
29
30 (D) Examine all court documents relating to the dependency case;
31
32 (E) Submit written reports and recommendations to the court; and
33
34 (F) Perform other duties and responsibilities as requested or approved by
35 the court.
36

37 **(j)(f) Appointment of educational rights holder (§§ 319, 361, 366, 366.27, 726, 727.2;
38 Gov. Code, §§ 7579.5–7579.6)**
39

40 (1) If the court limits, even temporarily, the rights of a parent or guardian to
41 make educational or developmental-services decisions for a child under rule
42 5.649, the court must immediately proceed under rule 5.650 to appoint a
43 responsible adult as educational rights holder for the child.

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(2) If a nonminor or nonminor dependent youth chooses not to make educational or developmental-services decisions for him- or herself or is deemed by the court to be incompetent, and the court also finds that the appointment of an educational rights holder would be in the best interests of the youth, then the court must immediately proceed under rule 5.650 to appoint or continue the appointment of a responsible adult as educational rights holder for the youth.

~~(k)~~(g) Advisement of hearing rights (§§ 301, 311, 341, 630, 702.5, 827)

(1) The court must advise the child, parent, and guardian in section 300 cases, and the child in section 601 or section 602 cases, of the following rights:

- (A) Any right to assert the privilege against self-incrimination;
- (B) The right to confront and cross-examine the persons who prepared reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing;
- (C) The right to use the process of the court to bring in witnesses; and
- (D) The right to present evidence to the court.

(2) The child, parent, guardian, and their attorneys have:

- (A) The right to receive probation officer or social worker reports; and
- (B) The right to inspect the documents used by the preparer of the report.

(3) Unless prohibited by court order, the child, parent, guardian, and their attorneys also have the right to receive all documents filed with the court.

~~(l)~~(h) Notice

At each hearing under section 300 et seq., the court must determine whether notice has been given as required by law and must make an appropriate finding noted in the minutes.

~~(m)~~(i) Address of parent or guardian—notice (§ 316.1)

At the first appearance by a parent or guardian in proceedings under section 300 et seq., the court must order each parent or guardian to provide a mailing address.

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- (1) The court must advise that the mailing address provided will be used by the court, the clerk, and the social services agency for the purposes of notice of hearings and the mailing of all documents related to the proceedings.
- (2) The court must advise that until and unless the parent or guardian, or the attorney of record for the parent or guardian, submits written notification of a change of mailing address, the address provided will be used, and notice requirements will be satisfied by appropriate service at that address.
- (3) *Notification of Mailing Address* (form JV-140) is the preferred method of informing the court and the social services agency of the mailing address of the parent or guardian and change of mailing address.
 - (A) The form must be delivered to the parent or guardian, or both, with the petition.
 - (B) The form must be available in the courtroom, in the office of the clerk, and in the offices of the social services agency.
 - (C) The form must be printed and made available in both English and Spanish.

~~(n)~~(j) Caregiver notice and right to be heard (§§ 290.1–297, 366.21)

For cases filed under section 300 et seq.:

- (1) For any child who has been removed from the home, the court must ensure that notice of statutory review hearings, permanency hearings, and section 366.26 hearings has been provided to the current caregiver of the child, including foster parents, preadoptive parents, relative caregivers, and nonrelative extended family members. Notice of dispositional hearings also must be provided to these individuals when the dispositional hearing is serving as a permanency hearing under section 361.5(f).
- (2) The current caregiver has the right to be heard in each proceeding listed in paragraph (1), including the right to submit information about the child to the court before the hearing. Written information about the child may be submitted to the court using the *Caregiver Information Form* (form JV-290) or in the form of a letter to the court.

- 1 (3) At least 10 calendar days before each hearing listed in paragraph (1), the
- 2 social worker must provide to the current caregiver:
- 3
- 4 (A) A summary of his or her recommendations for disposition, and any
- 5 recommendations for change in custody or status;
- 6
- 7 (B) *Caregiver Information Form* (form JV-290); and
- 8
- 9 (C) *Instruction Sheet for Caregiver Information Form* (form JV-290-
- 10 INFO).
- 11
- 12 (4) If the caregiver chooses to provide written information to the court using
- 13 form JV-290 or by letter, the caregiver must follow the procedures set forth
- 14 below. The court may waive any element of this process for good cause.
- 15
- 16 (A) If filing in person, the caregiver must bring the original document and 8
- 17 copies to the court clerk’s office for filing no later than five calendar
- 18 days before the hearing.
- 19
- 20 (B) If filing by mail, the caregiver must mail the original document and 8
- 21 copies to the court clerk’s office for filing no later than seven calendar
- 22 days before the hearing.
- 23
- 24 (5) When form JV-290 or a caregiver letter is received by mail the court clerk
- 25 must immediately file it.
- 26
- 27 (6) When form JV-290 or a caregiver letter is filed, the court clerk must provide
- 28 the social worker, all unrepresented parties and all attorneys with a copy of
- 29 the completed form or letter immediately upon receipt. The clerk also must
- 30 complete, file, and distribute *Proof of Service—Juvenile* (form JV-510). The
- 31 clerk may use any technology designed to speed the distribution process,
- 32 including drop boxes in the courthouse, e-mail or fax to distribute the JV-290
- 33 form or letter and proof of service form.
- 34
- 35

36 ~~(o) — Periodic reports (§ 365)~~

37
 38 ~~The court may require the petitioner or any other agency to submit reports~~
 39 ~~concerning a child or youth subject to the jurisdiction of the court.~~

40
 41
 42 ~~(p) — Presence of child (§ 349)~~

1 ~~(1) A child who is the subject of a juvenile court hearing is entitled to be present~~
2 ~~at the hearing. If the child is present at the hearing, the court must allow the~~
3 ~~child, if the child so desires, to address the court and participate in the~~
4 ~~hearing.~~

5
6 ~~(2) If the child is 10 years of age or older and he or she is not present at the~~
7 ~~hearing, the court must determine whether the child was properly notified of~~
8 ~~his or her right to attend the hearing and ask why the child is not present at~~
9 ~~the hearing and whether the child was given an opportunity to attend. If the~~
10 ~~court finds that the child was not properly notified or that the child wished to~~
11 ~~be present and was not given an opportunity to be present, the court must~~
12 ~~continue the hearing to allow the child to attend unless the court finds that it~~
13 ~~is in the best interest of the child not to continue the hearing. Any such~~
14 ~~continuance must be only for that period of time necessary to provide notice~~
15 ~~and secure the presence of the child. The court may issue any and all orders~~
16 ~~reasonably necessary to ensure that the child has an opportunity to attend.~~

17 18 **Advisory Committee Comment**

19
20 Because the intent of subdivision ~~(h)~~ (j) is to expand access to the courts for caregivers of
21 children in out-of-home care, the rule should be liberally construed. To promote caregiver
22 participation and input, judicial officers are encouraged to permit caregivers to orally address the
23 court when caregivers would like to share information about the child. In addition, court clerks
24 should allow filings by caregivers even if the caregiver has not strictly adhered to the
25 requirements in the rule regarding number of copies and filing deadlines.

26 27 **Rule 5.667 * * ***

28 29 **Rule 5.668. Commencement of hearing—explanation of proceedings (§§ 316, 316.2)**

30 31 **(a) Commencement of hearing**

32
33 At the beginning of the initial hearing on the petition, whether the child is detained
34 or not detained, the court must give advisement as required by rule 5.534 and must
35 inform each parent and guardian present, and the child, if present:

- 36
37 (1) Of the contents of the petition;
38
39 (2) Of the nature of, and possible consequences of, juvenile court proceedings;
40
41 (3) If the child has been taken into custody, of the reasons for the initial detention
42 and the purpose and scope of the detention hearing; and
43

1 (4) If the petition is sustained and the child is declared a dependent of the court
2 and removed from the custody of the parent or guardian, the court-ordered
3 reunification services must be considered to have been offered or provided on
4 the date the petition is sustained or 60 days after the child's initial removal,
5 whichever is earlier. The time for services must not exceed 12 months for a
6 child aged three or over at the time of the initial removal and must not exceed
7 6 months for a child who was under the age of three at the time of the initial
8 removal if the parent or guardian fails to participate regularly and make
9 substantive progress in any court-ordered treatment program.

10
11 **(b) Parentage inquiry**

12
13 The court must also inquire of the child's mother and of any other appropriate
14 person present as to the identity and address of any and all presumed or alleged
15 parents of the child as set forth in section 316.2. Questions, at the discretion of the
16 court, may include:

17
18 ~~(1) Has there been a judgment of parentage?~~

19
20 ~~(2) Was the mother married, or did she believe she was married, at or any time~~
21 ~~after the time of conception?~~

22
23 ~~(3) Was the mother cohabiting at the time of conception?~~

24
25 ~~(4) Has the mother received support payments or promises of support for the~~
26 ~~child or for the mother during her pregnancy?~~

27
28 ~~(5) Has anyone formally or informally acknowledged parentage, including~~
29 ~~through the execution of a voluntary declaration under Family Code section~~
30 ~~7571?~~

31
32 ~~(6) Have tests to determine biological parentage been administered and, if so,~~
33 ~~what were the results?~~

34
35 **(c) Health and education information (§ 16010)**

36
37 The court must order each parent and guardian present either to complete *Your*
38 *Child's Health and Education* (form JV-225) or to provide the information
39 necessary for the social worker or probation officer, court staff, or representative of
40 the local child welfare agency to complete the form. The social worker or probation
41 officer assigned to the dependency matter must provide the child's attorney with a
42 copy of the completed form. Before each periodic status review hearing, the social

1 worker or probation officer must obtain and include in the reports prepared for the
2 hearing all information necessary to maintain the accuracy of form JV-225.

3
4 **Rule 5.670. Initial hearing; detention hearings; time limit on custody; setting**
5 **jurisdiction hearing; visitation**

6
7 **(a) Child not detained; filing petition, setting hearing**
8

9 If the social worker does not take the child into custody but determines that a
10 petition concerning the child should be filed, the social worker must file a petition
11 with the clerk of the juvenile court as soon as possible. The clerk must set an initial
12 hearing on the petition within 15 court days.

13
14 ~~**(b) Time limit on custody, filing petition, setting hearing (§§ 311, 313)**~~

15
16 ~~If the social worker takes the child into custody, the social worker must~~
17 ~~immediately file a petition with the clerk of the juvenile court, and the clerk must~~
18 ~~immediately set the matter for hearing on the detention hearing calendar. A child~~
19 ~~who is detained must be released within 48 hours, excluding noncourt days, unless~~
20 ~~a petition has been filed.~~

21
22 ~~**(c) Detention—child in medical facility (§ 309(b))**~~

23
24 ~~For purposes of these rules, a child is deemed taken into custody and delivered to~~
25 ~~the social worker if the child is under medical care and cannot immediately be~~
26 ~~moved and there is reasonable cause to believe the child is described by section~~
27 ~~300.~~

28
29 ~~**(d) Detention hearing—time of (§ 315)**~~

30
31 ~~Unless the child has been released sooner, the matter concerning a child who is~~
32 ~~taken into custody must be brought before the juvenile court for a detention hearing~~
33 ~~as soon as possible, but in any event before the end of the next court day after a~~
34 ~~petition has been filed. At the detention hearing, the court must determine whether~~
35 ~~the child is to continue to be detained in custody. If the detention hearing is not~~
36 ~~commenced within that time, the child must be immediately released from custody.~~

37
38 ~~**(e)(b) Detention hearing—warrant cases, transfers in, changes in placement**~~

39
40 ~~Notwithstanding (e) section 309(b), and unless the child has been released sooner, a~~
41 ~~detention hearing must be held as soon as possible, but no later than 48 hours,~~
42 ~~excluding noncourt days, after the child arrives at a facility within the county if:~~
43

- 1 (1) The child was taken into custody in another county and transported in
2 custody to the requesting county under a protective custody warrant issued by
3 the juvenile court;
4
5 (2) The child was taken into custody in the county in which a protective custody
6 warrant was issued by the juvenile court; or
7
8 (3) The matter was transferred from the juvenile court of another county under
9 rule 5.610 and the child was ordered transported in custody.
10

11 At the hearing the court must determine whether the child is to continue to be
12 detained in custody. If the hearing is not commenced within that time, the child
13 must be immediately released from custody.
14

15 ~~(f)~~ **Setting jurisdiction hearing (§ 334)**
16

17 ~~If the child is not detained, the court must set a jurisdiction hearing to be held~~
18 ~~within 30 days of the date the petition is filed. If the court orders the child to be~~
19 ~~detained, the court must set a jurisdiction hearing within 15 court days of the order~~
20 ~~of detention.~~
21

22 ~~(g)~~**(c) Visitation**
23

- 24 (1) The court must consider the issue of visitation between the child and other
25 persons, determine if contact pending the jurisdiction hearing would be
26 beneficial or detrimental to the child, and make appropriate orders.
27
28 (2) The court must consider the issue of visitation between the child and any
29 sibling who was not placed with the child, and who was taken into custody
30 with the child or is otherwise under the court's jurisdiction, and enter an
31 order for sibling visitation pending the jurisdiction hearing, unless the court
32 finds by clear and convincing evidence that sibling interaction between the
33 child and the sibling is contrary to the safety or well-being of either child.
34
35

36 **Rule 5.674. Conduct of hearing; admission, no contest, submission**
37

38 **(a) Admission, no contest, submission**
39

- 40 (1) At the initial hearing, whether or not the child is detained, the parent or
41 guardian may admit the allegations of the petition, plead no contest, or
42 submit the jurisdictional determination to the court based on the information
43 provided to the court and waive further jurisdictional hearing.

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(2) If the court accepts an admission, a plea of no contest, or a submission from each parent and guardian with standing to participate as a party, the court must then proceed according to rules 5.682 and 5.686.

(b) Detention hearing; general conduct (§ 319; 42 U.S.C., § 600 et seq.)

(1) The court must read, consider, and reference any reports submitted by the social worker and any relevant evidence submitted by any party or counsel. All detention findings and orders must appear in the written orders of the court.

(2) The findings and orders that must be made on the record are:

- (A) Continuance in the home is contrary to the child's welfare;
- (B) Temporary placement and care are vested with the social services agency;
- (C) Reasonable efforts have been made to prevent removal; and
- (D) The findings and orders required to be made on the record under section 319.

~~(e)~~ **Detention hearing; examination by court (§ 319)**

~~Subject to (d), the court must examine the child's parent, guardian, or other person having knowledge relevant to the issue of detention and must receive any relevant evidence that the petitioner, the child, a parent, a guardian, or counsel for a party wishes to present.~~

~~(d)~~**(c) Detention hearing; rights of child, parent, or guardian (§§ 311, 319)**

At the detention hearing, the child, the parent, and the guardian have the right to assert the privilege against self-incrimination and the right to confront and cross-examine:

- (1) The preparer of a police report, probation or social worker report, or other document submitted to the court; and
- (2) Any person examined by the court under ~~(e)~~ section 319. If the child, parent, or guardian asserts the right to cross-examine preparers of documents submitted for court consideration, the court may not consider any such report or document unless the preparer is made available for cross-examination.

1 **(d) No parent or guardian present and not noticed (§ 321)**

2
3 If the court orders the child detained at the detention hearing and no parent or
4 guardian is present and no parent or guardian has received actual notice of the
5 detention hearing, a parent or guardian may file an affidavit alleging the failure of
6 notice and requesting a detention rehearing. The clerk must set the rehearing for a
7 time within 24 hours of the filing of the affidavit, excluding noncourt days. At the
8 rehearing the court must proceed under rules 5.670–5.678. [This was in 5.680
9 which I am proposing to eliminate].

10
11 **(e) Hearing for further evidence; prima facie case (§ 321)**

12
13 If the court orders the child detained, and the child, a parent, a guardian, or counsel
14 requests that evidence of the prima facie case be presented, the court must set a
15 prima facie hearing for a time within 3 court days to consider evidence of the prima
16 facie case or set the matter for jurisdiction hearing within 10 court days. If at the
17 hearing the petitioner fails to establish the prima facie case, the child must be
18 released from custody. [This was in 5.680 which I am proposing to eliminate].

19
20 **Rule 5.676 * * ***

21
22 **Rule 5.678 * * ***

23
24 **~~Rule 5.680. Detention rehearings; prima facie hearings~~**

25
26 **~~(a) — No parent or guardian present and not noticed (§ 321)~~**

27
28 ~~If the court orders the child detained at the detention hearing and no parent or~~
29 ~~guardian is present and no parent or guardian has received actual notice of the~~
30 ~~detention hearing, a parent or guardian may file an affidavit alleging the failure of~~
31 ~~notice and requesting a detention rehearing. The clerk must set the rehearing for a~~
32 ~~time within 24 hours of the filing of the affidavit, excluding noncourt days. At the~~
33 ~~rehearing the court must proceed under rules 5.670–5.678.~~

34
35 **~~(b) — Parent or guardian noticed, not present (§ 321)~~**

36
37 ~~If the court determines that the parent or guardian received adequate notice of the~~
38 ~~detention hearing, and the parent or guardian fails to appear at the hearing, the~~
39 ~~request of the parent or guardian for a detention rehearing must be denied absent a~~
40 ~~finding that the failure to appear at the hearing was due to good cause.~~

41
42 **~~(c) — Parent or guardian present; preparers available (§ 321)~~**

1 If a parent or guardian has received notice of the detention hearing, is present at the
2 hearing, and the preparers of any reports or other documents relied on by the court
3 in its order detaining the child are present in court or otherwise available for cross-
4 examination, the request for a detention rehearing must be denied.

5
6 ~~(d) — Hearing for further evidence; prima facie case (§ 321)~~

7
8 If the court orders the child detained, and the child, a parent, a guardian, or counsel
9 requests that evidence of the prima facie case be presented, the court must set a
10 prima facie hearing for a time within 3 court days to consider evidence of the prima
11 facie case or set the matter for jurisdiction hearing within 10 court days. If at the
12 hearing petitioner fails to establish the prima facie case, the child must be released
13 from custody.

14
15 **Rule 5.682. Commencement of jurisdiction hearing—advisement of trial rights;**
16 **admission, no contest, submission**

17
18 ~~(a) — Petition read and explained (§ 353)~~

19
20 At the beginning of the jurisdiction hearing, the petition must be read to those
21 present. On request of the child or the parent, guardian, or adult relative, the court
22 must explain the meaning and contents of the petition and the nature of the hearing,
23 its procedures, and the possible consequences.

24
25 ~~(b)~~(a) **Rights explained (§§ 341, 353, 361.1)**

26
27 After giving the advisement required by rule 5.534, the court must advise the parent
28 or guardian of the following rights:

- 29
30 (1) The right to a hearing by the court on the issues raised by the petition;
31
32 (2) The right to assert any privilege against self-incrimination;
33
34 (3) The right to confront and to cross-examine all witnesses called to testify;
35
36 (4) The right to use the process of the court to compel attendance of witnesses on
37 behalf of the parent or guardian; and
38
39 (5) The right, if the child has been removed, to have the child returned to the
40 parent or guardian within two working days after a finding by the court that
41 the child does not come within the jurisdiction of the juvenile court under
42 section 300, unless the parent or guardian and the child welfare agency agree
43 that the child will be released on a later date.

1
2 **(e)(b) Admission of allegations; prerequisites to acceptance**

3
4 The court must then inquire whether the parent or guardian intends to admit or
5 deny the allegations of the petition. If the parent or guardian neither admits nor
6 denies the allegations, the court must state on the record that the parent or guardian
7 does not admit the allegations. If the parent or guardian wishes to admit the
8 allegations, the court must first find and state on the record that it is satisfied that
9 the parent or guardian understands the nature of the allegations and the direct
10 consequences of the admission, and understands and waives the rights in (b).

11
12 **(d)(c) Parent or guardian must admit**

13
14 An admission by the parent or guardian must be made personally by the parent or
15 guardian.

16
17 **(e)(d) Admission, no contest, submission**

18
19 The parent or guardian may elect to admit the allegations of the petition, plead no
20 contest, or submit the jurisdictional determination to the court based on the
21 information provided to the court and waive further jurisdictional hearing. *Waiver*
22 *of Rights—Juvenile Dependency* (form JV-190) may be completed by the parent or
23 guardian and counsel and submitted to the court.

24
25 **(f)(e) Findings of court (§ 356)**

26
27 After admission, plea of no contest, or submission, the court must make the
28 following findings noted in the order of the court:

- 29
30 (1) Notice has been given as required by law;
31
32 (2) The birthdate and county of residence of the child;
33
34 (3) The parent or guardian has knowingly and intelligently waived the right to a
35 trial on the issues by the court, the right to assert the privilege against self-
36 incrimination, and the right to confront and to cross-examine adverse
37 witnesses and to use the process of the court to compel the attendance of
38 witnesses on the parent or guardian's behalf;
39
40 (4) The parent or guardian understands the nature of the conduct alleged in the
41 petition and the possible consequences of an admission, plea of no contest, or
42 submission;
43

- 1 (5) The admission, plea of no contest, or submission by the parent or guardian is
2 freely and voluntarily made;
3
4 (6) There is a factual basis for the parent or guardian's admission;
5
6 (7) Those allegations of the petition as admitted are true as alleged; and
7
8 (8) The child is described under one or more specific subdivisions of section 300.
9

10 **(g)(f) Disposition**

11
12 After accepting an admission, plea of no contest, or submission, the court must
13 proceed to a disposition hearing under rules ~~5.686~~ and 5.690.
14

15 **Rule 5.684. Contested hearing on petition**

16
17 **(a) Contested jurisdiction hearing (§ 355)**

18
19 If the parent or guardian denies the allegations of the petition, the court must hold a
20 contested hearing and determine whether the allegations in the petition are true.
21

22 **(b) Admissibility of evidence—general (§§ 355, 355.1)**

23
24 Except as provided in section 355.1 and (c), (d), and (e), the admission and
25 exclusion of evidence must be in accordance with the Evidence Code as it applies
26 to civil cases.
27

28 **(c) Reports**

29
30 A social study, with hearsay evidence contained in it, is admissible and is sufficient
31 to support a finding that the child is described by section 300.
32

33 (1) The social study must be provided to all parties and their counsel by the
34 county welfare department within a reasonable time before the hearing.
35

36 (2) The preparer of the report must be made available for cross-examination on
37 the request of any party. The preparer may be on telephone standby if the
38 preparer can be present in court within a reasonable time.
39

40 **(d) Hearsay in the report (§ 355)**

41
42 If a party makes an objection with reasonable specificity to particular hearsay in the
43 report and provides petitioner a reasonable period to meet the objection, that

1 evidence must not be sufficient in and of itself to support a jurisdictional finding,
2 unless:

3
4 ~~(1) The hearsay is admissible under any statutory or judicial hearsay exception;~~

5
6 ~~(2) The hearsay declarant is a child under 12 years of age who is the subject of~~
7 ~~the petition, unless the objecting party establishes that the statement was~~
8 ~~produced by fraud, deceit, or undue influence and is therefore unreliable;~~

9
10 ~~(3) The hearsay declarant is a peace officer, a health practitioner, a social worker,~~
11 ~~or a teacher and the statement would be admissible if the declarant were~~
12 ~~testifying in court; or~~

13 (1) The petitioner establishes one or more of the exceptions in section 355(c); or

14
15 ~~(4)(2)~~ The hearsay declarant is available for cross-examination.

16
17 **(e) Inapplicable privileges (Evid. Code, §§ 972, 986)**

18
19 The privilege not to testify or to be called as a witness against a spouse or domestic
20 partner, and the confidential marital communication privilege, does not apply to
21 dependency proceedings.

22
23 **(f) Findings of court—allegations true (§ 356)**

24
25 If the court determines by a preponderance of the evidence that the allegations of
26 the petition are true, the court must make findings on each of the following, noted
27 in the minutes:

28
29 (1) Notice has been given as required by law;

30
31 (2) The birthdate and county of residence of the child;

32
33 (3) The allegations of the petition are true; and

34
35 (4) The child is described under one or more specific subdivisions of section 300.

36
37 **(g) Disposition and Continuance pending disposition hearing (§§ 356, 358)**

38
39 After making the findings in (f), the court must proceed to a disposition hearing
40 under rules ~~5.686 and 5.690~~. The court may continue the disposition hearing as
41 provided in section 358.

1 **(h) Findings of court—allegations not proved (§§ 356, 361.1)**

2
3 If the court determines that the allegations of the petition have not been proved by a
4 preponderance of the evidence, the court must dismiss the petition and terminate
5 any detention orders relating to the petition. The court must order that the child be
6 returned to the physical custody of the parent or guardian immediately but, in any
7 event, not more than two working days following the date of that finding, unless
8 the parent or guardian and the agency with custody of the child agree to a later date
9 for the child’s release. The court must make the following findings, noted in the
10 order of the court:

- 11
12 (1) Notice has been given as required by law;
13
14 (2) The birthdate and county of residence of the child; and
15
16 (3) The allegations of the petition are not proved.
17

18 **~~Rule 5.686. Continuance pending disposition hearing~~**

19
20 **~~(a)—Continuance pending disposition hearing (§ 358)~~**

21
22 ~~Except as provided in (b), the court may continue the disposition hearing to a date~~
23 ~~not to exceed 10 court days if the child is detained or, if the child is not detained, to~~
24 ~~a date not to exceed 30 calendar days from the date of the finding under section~~
25 ~~356. The court may for good cause continue the hearing for an additional 15~~
26 ~~calendar days if the child is not detained.~~
27

28 **~~(b)—Continuance if nonreunification is requested~~**

29
30 ~~If petitioner alleges that section 361.5(b) is applicable, the court must continue the~~
31 ~~proceedings not more than 30 calendar days. The court must order the petitioner to~~
32 ~~notify each parent or guardian of the contents of section 361.5(b) and must inform~~
33 ~~each parent that if reunification is not ordered at the disposition hearing, a section~~
34 ~~366.26 implementation hearing will be held and parental rights may be terminated.~~
35

36 **~~(e)—Detention pending continued hearing (§ 358)~~**

37
38 ~~The court in its discretion may order release or detention of the child during the~~
39 ~~continuance.~~
40

41 **~~Rule 5.688. Failure to cooperate with services (§ 360(b))~~**

1 ~~(a) —~~ **Petition**

2
3 ~~If the court has ordered services under section 360(b), and within the time period~~
4 ~~consistent with section 301 the family is unable or unwilling to cooperate with the~~
5 ~~services provided, a petition may be filed as provided in section 360(c).~~
6

7
8 ~~(b) —~~ **Order**

9
10 ~~At the hearing on the petition the court must dismiss the petition or order a new~~
11 ~~disposition hearing to be conducted under rule 5.690.~~
12

13 **Rule 5.690. General conduct of disposition hearing**

14
15 **(a) Social study (§§ 280, 358, 358.1, 360, 361.5)**

16
17 The petitioner must prepare a social study of the child. The social study must
18 include a discussion of all matters relevant to disposition and a recommendation for
19 disposition.
20

21 (1) The petitioner must comply with the following when preparing the social
22 study:

23
24 (A) If petitioner recommends that the court appoint a legal guardian,
25 petitioner must prepare an assessment under section 360(a), to be
26 included in the social study report prepared for disposition or in a
27 separate document.
28

29 (B) If petitioner recommends removal of the child from the home, the
30 social study must include:

31
32 (i) A discussion of the reasonable efforts made to prevent or
33 eliminate removal and a recommended plan for reuniting the
34 child with the family, including a plan for visitation;
35

36 (ii) A plan for achieving legal permanence for the child if efforts to
37 reunify fail; and
38

39 (iii) A statement that each parent has been advised of the option to
40 participate in adoption planning and to voluntarily relinquish the
41 child if an adoption agency is willing to accept the
42 relinquishment, and the parent's response.
43

- 1 (C) The social study should include a discussion of the social worker's
2 efforts to comply with rule 5.637, including but not limited to:
3
4 (i) The number of relatives identified and the relationship of each to
5 the child;
6
7 (ii) The number and relationship of those relatives described by item
8 (i) who were located and notified;
9
10 (iii) The number and relationship of those relatives described by item
11 (ii) who are interested in ongoing contact with the child; and
12
13 (iv) The number and relationship of those relatives described by item
14 (ii) who are interested in providing placement for the child.
15
16 (D) If petitioner alleges that section 361.5(b) applies, the social study must
17 state why reunification services should not be provided.
18
19 (E) All other relevant requirements of sections 358 and 358.1.
20

- 21 (2) The petitioner must submit the social study and copies of it to the clerk at
22 least 48 hours before the disposition hearing is set to begin, and the clerk
23 must make the copies available to the parties and attorneys. A continuance
24 within statutory time limits must be granted on the request of a party who has
25 not been furnished a copy of the social study in accordance with this rule.
26

27 **(b) Evidence considered (§§ 358, 360)**
28

29 The court must receive in evidence and consider the social study, a guardianship
30 assessment, the report of any CASA volunteer, the case plan, and any relevant
31 evidence offered by petitioner, the child, or the parent or guardian. The court may
32 require production of other relevant evidence on its own motion. In the order of
33 disposition, the court must state that the social study and the study or evaluation by
34 the CASA volunteer, if any, have been read and considered by the court.
35

36 **(c) Case plan (§ 16501.1)**
37

38 Whenever child welfare services are provided, the social worker must prepare a
39 case plan as required in section 16501.1 and include it with the court report.
40

- 41 ~~(1) A written case plan must be completed and filed with the court by the date of~~
42 ~~disposition or within 60 calendar days of initial removal or of the in-person~~

1 response required under section 16501(f) if the child has not been removed
2 from his or her home, whichever occurs first.

3
4 (2) — The court must consider the case plan and must find as follows:

5
6 (A) — The social worker solicited and integrated into the case plan the input
7 of the child, the child's family, the child's identified Indian tribe,
8 including consultation with the child's tribe on whether tribal
9 eustomary adoption as defined in section 366.24 is an appropriate
10 permanent plan for the child if reunification is unsuccessful; and other
11 interested parties, or

12
13 (B) — The social worker did not solicit and integrate into the case plan the
14 input of the child, the child's family, the child's identified Indian tribe,
15 and other interested parties. If the court finds that the social worker did
16 not solicit and integrate into the case plan the input of the child, the
17 child's family, the child's identified Indian tribe, and other interested
18 parties, the court must order that the social worker solicit and integrate
19 into the case plan the input of the child, the child's family, the child's
20 identified Indian tribe, and other interested parties, unless the court
21 finds that each of these participants was unable, unavailable, or
22 unwilling to participate.

23
24 (3) — For a child 12 years of age or older and in a permanent placement, the court
25 must consider the case plan and must find as follows:

26
27 (A) — The child was given the opportunity to review the case plan, sign it, and
28 receive a copy; or

29
30 (B) — The child was not given the opportunity to review the case plan, sign it,
31 and receive a copy. If the court makes such a finding, the court must
32 order the agency to give the child the opportunity to review the case
33 plan, sign it, and receive a copy.

34
35 **Rule 5.695. Findings and orders of the court—disposition**

36
37 **(a) Orders of the court (§§ 245.5, 358, 360, 361, 361.2, 390)**

38
39 At the disposition hearing, the court may:

40
41 (1) Dismiss the petition with specific reasons stated in the minutes;

- 1 (2) Place the child under a program of supervision as provided in section 301 and
2 order that services be provided;
3
4 (3) Appoint a legal guardian for the child without declaring dependency and
5 order the clerk to issue letters of guardianship, which are not subject to the
6 confidential protections of juvenile court documents as described in section
7 827;
8
9 (4) Declare dependency and appoint a legal guardian for the child as provided in
10 section 360 and order the clerk to issue letters of guardianship, which are not
11 subject to the confidential protections of juvenile court documents as
12 described in section 827;
13
14 (5) Declare dependency, permit the child to remain at home, and order that
15 services be provided;
16
17 (6) Declare dependency, permit the child to remain at home, limit the control to
18 be exercised by the parent or guardian, and order that services be provided; or
19
20 (7) Declare dependency, remove physical custody from the parent or guardian,
21 and:
22
23 (A) After stating on the record or in writing the factual basis for the order,
24 order custody to a noncustodial parent, terminate jurisdiction, and
25 direct that *Custody Order—Juvenile—Final Judgment* (form JV-200)
26 be prepared and filed under rule 5.700;
27
28 (B) After stating on the record or in writing the factual basis for the order,
29 order custody to a noncustodial parent with services to one or both
30 parents; or
31
32 (C) Make a placement order and consider granting specific visitation rights
33 to the child’s grandparents.
34

35 ~~(b) Appointment of a legal guardian (§ 360)~~
36

- 37 ~~(1) At the disposition hearing, the court may appoint a legal guardian for the~~
38 ~~child if:~~
39
40 ~~(A) The parent has advised the court that the parent does not wish to~~
41 ~~receive family maintenance services or family reunification services;~~
42

1 ~~(B) — The parent has executed and submitted *Waiver of Reunification*~~
2 ~~*Services (Juvenile Dependency)* (form JV 195);~~

3
4 ~~(C) — The court finds that the parent, and the child if of sufficient age and~~
5 ~~comprehension, knowingly and voluntarily waive their rights to~~
6 ~~reunification services and agree to the appointment of the legal~~
7 ~~guardian; and~~

8
9 ~~(D) — The court finds that the appointment of the legal guardian is in the best~~
10 ~~interest of the child.~~

11
12 ~~(2) — If the court appoints a legal guardian, it must:~~

13
14 ~~(A) — State on the record or in the minutes that it has read and considered the~~
15 ~~assessment;~~

16
17 ~~(B) — State on the record or in the minutes its findings and the factual bases~~
18 ~~for them;~~

19
20 ~~(C) — Advise the parent that no reunification services will be offered or~~
21 ~~provided;~~

22
23 ~~(D) — Make any appropriate orders regarding visitation between the child and~~
24 ~~the parent or other relative, including any sibling; and~~

25
26 ~~(E) — Order the clerk to issue letters of guardianship, which are not subject to~~
27 ~~the confidential protections of juvenile court documents as described in~~
28 ~~section 827.~~

29
30 ~~(3) — The court may appoint a legal guardian without declaring the child a~~
31 ~~dependent of the court. If dependency is declared, a six month review hearing~~
32 ~~must be set.~~

33
34 ~~**(e)(b) Limitations on parental control (§§ 245.5, 361, 362; Gov. Code, § 7579.5)**~~

35
36 ~~(1) If a child is declared a dependent, the court may clearly and specifically limit~~
37 ~~the control over the child by a parent or guardian.~~

38
39 ~~(2) If the court orders that a parent or guardian retain physical custody of the~~
40 ~~child subject to court-ordered supervision, the parent or guardian must be~~
41 ~~ordered to participate in child welfare services or services provided by an~~
42 ~~appropriate agency designated by the court.~~

1 (3) The court must consider whether it is necessary to limit the rights of the
2 parent or guardian to make educational or developmental-services decisions
3 for the child or youth. If the court limits those rights, it must follow the
4 procedures in rules 5.649–5.651.
5

6 **~~(d)~~(c) Removal of custody—required findings (§ 361)**
7

8 The court may not order a dependent removed from the physical custody of a
9 parent or guardian with whom the child resided at the time the petition was filed,
10 unless the court ~~finds~~ makes one or more of the findings in subdivision (c) of
11 section 361 by clear and convincing evidence, ~~any of the following:~~
12

- 13 ~~(1) There is a substantial danger to the physical health, safety, protection, or~~
14 ~~physical or emotional well-being of the child, or will be if the child is~~
15 ~~returned home, and there is no reasonable alternative means to protect that~~
16 ~~child;~~
17
18 ~~(2) The parent or guardian is unwilling to have physical custody of the child and~~
19 ~~has been notified that if the child remains out of the parent’s or guardian’s~~
20 ~~physical custody for the period specified in section 366.26, the child may be~~
21 ~~declared permanently free of his or her custody and control;~~
22
23 ~~(3) The child is suffering severe emotional damage, as indicated by extreme~~
24 ~~anxiety, depression, withdrawal, or untoward aggressive behavior toward self~~
25 ~~or others, and no reasonable alternative means to protect the child’s~~
26 ~~emotional health exists;~~
27
28 ~~(4) The child has been sexually abused by a parent or guardian or member of the~~
29 ~~household or other person known to his or her parent and there is no~~
30 ~~reasonable alternative means to protect the child or the child does not wish to~~
31 ~~return to the parent or guardian; or~~
32
33 ~~(5) The child has been left without any provisions for his or her support and there~~
34 ~~is no parent or guardian available to maintain or provide for the care, custody,~~
35 ~~and control of the child.~~
36

37 **~~(e)~~(d) Reasonable efforts finding**
38

39 The court must consider whether reasonable efforts to prevent or eliminate the need
40 for removal have been made and make one of the following findings:
41

- 42 (1) Reasonable efforts have been made; or
43

1 (2) Reasonable efforts have not been made.

2

3 ~~(f)~~(e) **Family-finding determination (§ 309)**

4

5 (1) If the child is removed, the court must consider and determine whether the
6 social worker has exercised due diligence in conducting the required
7 investigation to identify, locate, and notify the child’s relatives. The court
8 may consider the activities listed in (g) as examples of due diligence. The
9 court must document its determination by making a finding on the record.

10

11 If the dispositional hearing is continued, the court may set a hearing to be
12 held 30 days from the date of removal or as soon as possible thereafter to
13 consider and determine whether the social worker has exercised due diligence
14 in conducting the required investigation to identify, locate, and notify the
15 child’s relatives.

16

17 (2) If the court finds that the social worker has not exercised due diligence, the
18 court may order the social worker to exercise due diligence in conducting an
19 investigation to identify, locate, and notify the child’s relatives—except for
20 any individual the social worker identifies as inappropriate to notify under
21 rule 5.637(b)—and may require a written or oral report to the court.

22

23 ~~(g)~~(f) **Due diligence (§ 309)**

24

25 When making the determination required in (f), the court may consider, among
26 other examples of due diligence, whether the social worker has done any of the
27 following:

28

29 (1) Asked the child, in an age-appropriate manner and consistent with the child’s
30 best interest, about his or her relatives;

31

32 (2) Obtained information regarding the location of the child’s relatives;

33

34 (3) Reviewed the child’s case file for any information regarding relatives;

35

36 (4) Telephoned, e-mailed, or visited all identified relatives;

37

38 (5) Asked located relatives for the names and locations of other relatives;

39

40 (6) Used Internet search tools to locate relatives identified as supports; or

41

- 1 (7) Developed tools, including a genogram, family tree, family map, or other
2 diagram of family relationships, to help the child or parents to identify
3 relatives.
4

5 **(h)(g) Provision of reunification services (§ 361.5)**
6

- 7 (1) Unless the court makes a finding that reunification services need not be
8 provided under subdivision (b) of section 361.5 ~~Except as provided in (6),~~ if a
9 child is removed from the custody of a parent or legal guardian, the court
10 must order the county welfare department to provide reunification services to
11 the child and the child's mother and statutorily presumed parent, or the
12 child's legal guardian, to facilitate reunification of the family as required in
13 section 361.5. ~~For a child who was three years of age or older on the date of~~
14 ~~initial removal, services must be provided during the time period beginning~~
15 ~~with the dispositional hearing and ending 12 months after the date the child~~
16 ~~entered foster care, as defined by section 361.49. For a child who was under~~
17 ~~three years of age on the date of initial removal, services must be provided~~
18 ~~for a period of 6 months from the dispositional hearing, but no longer than 12~~
19 ~~months from the date the child entered foster care, as defined by section~~
20 ~~361.49. The time period for the provision of family reunification services~~
21 ~~must be calculated consistent with section 361.5(a). The court must inform~~
22 ~~the parent or legal guardian of a child who was under three when initially~~
23 ~~removed that failure to participate regularly and make substantive progress in~~
24 ~~court-ordered treatment programs may result in the termination of~~
25 ~~reunification efforts after 6 months from the date of the dispositional hearing.~~
26

- 27 ~~(2) If a child is a member of a sibling group removed from parental custody at~~
28 ~~the same time, and one member of the sibling group was under three at the~~
29 ~~time of the initial removal, reunification services for some or all members of~~
30 ~~the sibling group may be limited to 6 months from the dispositional hearing,~~
31 ~~and no later than 12 months from the date the children entered foster care.~~
32 ~~The court must inform the parent or legal guardian of a child who is a~~
33 ~~member of such a sibling group that failure to participate regularly and make~~
34 ~~substantive progress in court-ordered treatment programs may result in~~
35 ~~termination of reunification efforts after 6 months for one or more members~~
36 ~~of the sibling group.~~
37

- 38 ~~(3)~~(2) On a finding and declaration of paternity by the juvenile court or proof of a
39 prior declaration of paternity by any court of competent jurisdiction, the
40 juvenile court may order services for the child and the biological father, if the
41 court determines that such services will benefit the child.
42

1 ~~(4) Any motion to terminate reunification services before the permanency~~
2 ~~hearing set under section 366.21(f) for a child age three or older, or before~~
3 ~~the 6-month review hearing set under section 366.21(e) for a child under age~~
4 ~~three, must follow the requirements in section 388(c) and rule 5.570. A~~
5 ~~motion to terminate reunification services at the 6-month review hearing is~~
6 ~~not required if the court finds by clear and convincing evidence that one or~~
7 ~~more of the circumstances described in section 361.5(a)(2) and rule~~
8 ~~5.710(c)(1)(A) is true.~~

9
10 ~~(5)(3)~~ If a child is removed from the custody of a parent or guardian, and
11 reunification services are ordered, the court must order visitation between the
12 child and the parent or guardian for whom services are ordered. Visits are to
13 be as frequent as possible, consistent with the well-being of the child.

14
15 ~~(6)(4)~~ Reunification services must not be provided when the parent has voluntarily
16 relinquished the child and the relinquishment has been filed with the State
17 Department of Social Services, or if the court has appointed a guardian under
18 section 360. ~~Reunification services need not be provided to a parent or~~
19 ~~guardian if the court finds, by clear and convincing evidence, any of the~~
20 ~~following:~~

21
22 ~~(A) The whereabouts of the parent or guardian are unknown. This finding~~
23 ~~must be supported by a declaration or by proof that a reasonably~~
24 ~~diligent search has failed to locate the parent. Posting or publishing~~
25 ~~notice is not required.~~

26
27 ~~(B) The parent or guardian is suffering from a mental disability described~~
28 ~~in chapter 2 (commencing with section 7820) of part 4 of division 12 of~~
29 ~~the Family Code that renders the parent incapable of using those~~
30 ~~services.~~

31
32 ~~(C) The child had been previously declared a dependent under any~~
33 ~~subdivision of section 300 as a result of physical or sexual abuse;~~
34 ~~following that adjudication the child had been removed from the~~
35 ~~eustody of the parent or guardian under section 361; the child has been~~
36 ~~returned to the custody of the parent or guardian from whom the child~~
37 ~~had been taken originally; and the child is being removed under section~~
38 ~~361 because of additional physical or sexual abuse.~~

39
40 ~~(D) The parent or guardian of the child has caused the death of another~~
41 ~~child through abuse or neglect.~~

- 1 ~~(E) — The child was brought within the jurisdiction of the court under (e) of~~
2 ~~section 300 because of the conduct of that parent or guardian.~~
3
- 4 ~~(F) — The child is a dependent as a result of the determination that the child, a~~
5 ~~sibling, or a half sibling suffered severe sexual abuse, as defined in~~
6 ~~section 361.5(b)(6), by the parent or guardian or that the parent or~~
7 ~~guardian inflicted severe physical harm, as defined in section~~
8 ~~361.5(b)(6), on the child, a sibling, or a half sibling, and the court finds~~
9 ~~that attempts to reunify would not benefit the child. The court must~~
10 ~~specify on the record the basis for the finding that the child suffered~~
11 ~~severe sexual abuse or the infliction of severe physical harm.~~
12
- 13 ~~(G) — The parent or guardian is not receiving reunification services for a~~
14 ~~sibling or half sibling of the child, for reasons under (C), (E), or (F).~~
15
- 16 ~~(H) — The child was conceived as a result of the parent having committed an~~
17 ~~offense listed in Penal Code section 288 or 288.5, or by an act~~
18 ~~described by either section but committed outside California.~~
19
- 20 ~~(I) — The court has found that the child is described by (g) of section 300,~~
21 ~~that the child was willfully abandoned by the parent or guardian, and~~
22 ~~that the abandonment constituted serious danger to the child as defined~~
23 ~~in section 361.5(b)(9).~~
24
- 25 ~~(J) — The court has terminated reunification services for a sibling or half~~
26 ~~sibling of the child because the parent failed to reunify with the sibling~~
27 ~~or half sibling, and the parent or guardian has not made a reasonable~~
28 ~~effort to treat the problems that led to the removal of the sibling or half~~
29 ~~sibling from that parent or guardian.~~
30
- 31 ~~(K) — The parental rights of a parent over any sibling or half sibling of the~~
32 ~~child have been terminated, and the parent has not subsequently made a~~
33 ~~reasonable effort to treat the problem that led to the removal of the~~
34 ~~sibling or half sibling.~~
35
- 36 ~~(L) — The parent or guardian has been convicted of a violent felony as~~
37 ~~defined in Penal Code section 667.5(c).~~
38
- 39 ~~(M) — The parent or guardian has a history of extensive, abusive, and chronic~~
40 ~~use of alcohol or other drugs and has not sought or participated in~~
41 ~~treatment during the three years immediately prior to the filing of the~~
42 ~~petition under section 300, or has failed, on at least two prior occasions,~~
43 ~~to comply with an available and accessible treatment program~~

1 described in the case plan required by section 358.1, and the removal of
2 the child is based in whole or in part on the risk to the child presented
3 by the use of alcohol or other drugs.
4

5 ~~(N) — The parent or guardian, who must be represented by counsel, has
6 advised the court through the execution and submission of *Waiver of
7 Reunification Services (Juvenile Dependency)* (form JV 195) that that
8 parent or guardian does not wish to receive family maintenance or
9 reunification services and does not wish the child returned or placed in
10 the custody of that parent or guardian. The court may accept the waiver
11 only on a finding on the record that the parent or guardian has
12 knowingly and intelligently waived the right to services.~~

13
14 ~~(O) — On at least one occasion, the parent or guardian has abducted the child
15 or a sibling or half sibling from placement and has refused to disclose
16 the abducted child's whereabouts or has refused to return custody of the
17 abducted child to the placement or to the social worker.~~
18

19 ~~(7) — In deciding whether to order reunification in any case in which petitioner
20 alleges that section 361.5(b) applies, the court must consider the report
21 prepared by petitioner, which must discuss the factors contained in section
22 361.5(c).~~

23
24 ~~(8) — If the petitioner alleges that section 361.5(c) applies, the report prepared for
25 disposition must address the issue of reunification services. At the disposition
26 hearing, the court must consider the factors stated in section 361.5.~~

27
28 ~~(9) — If the court finds under (6)(A) that the whereabouts of the parent or guardian
29 are unknown and that a diligent search has failed to locate the parent or
30 guardian, the court may not order reunification services and must set the
31 matter for a 6-month review hearing. If the parent or guardian is located prior
32 to the 6-month review and requests reunification services, the welfare
33 department must seek a modification of the disposition orders. The time
34 limits for reunification services must be calculated from the date of the initial
35 removal, and not from the date the parent is located or services are ordered.~~

36
37 ~~(10) — If the court finds that allegations under (6)(B) are proved, the court must
38 nevertheless order reunification services unless evidence by mental health
39 professionals establishes by clear and convincing evidence that the parent is
40 unlikely to be able to care for the child within the next 12 months.~~

41
42 ~~(11) — If the court finds that the allegations under (6)(C), (D), (F), (G), (H), (I), (J),
43 (K), (L), (M), (N), or (O) have been proved, the court may not order~~

1 reunification services unless the party seeking the order for services proves
2 by clear and convincing evidence that reunification is in the best interest of
3 the child. If (6)(F) is found to apply, the court must consider the factors in
4 section 361.5(h) in determining whether the child will benefit from services
5 and must specify on the record the factual findings on which it based its
6 determination that the child will not benefit.

7
8 ~~(12) If the court finds that the allegations under (6)(E) have been proved, the court
9 may not order reunification services unless it finds, based on consideration of
10 factors in section 361.5(b) and (c), that services are likely to prevent reabuse
11 or continued neglect or that failure to attempt reunification will be
12 detrimental to the child.~~

13
14 ~~(13) If the parent or guardian is institutionalized, incarcerated, or detained by the
15 United States Department of Homeland Security, or has been deported to his
16 or her country of origin, the court must order reunification services unless it
17 finds by clear and convincing evidence that the services would be detrimental
18 to the child, with consideration of the factors in section 361.5(e). The court
19 may order reunification services with an institutionalized, incarcerated,
20 detained, or deported biological father whose paternity has been declared by
21 the juvenile court or another court of competent jurisdiction, if the court
22 determines that such services would benefit the child, with consideration of
23 the factors in section 361.5(e).~~

24
25 ~~(14) (5) If, with the exception of (6)(A) Except when the order is made under
26 paragraph (1) of subdivision (b) of section 361.5, if the court orders no
27 reunification services for every parent otherwise eligible for such services
28 under (1) and (2), the court must conduct a hearing under section 366.26
29 within 120 days and:~~

30
31 (A) Order that the social worker provide a copy of the child's birth
32 certificate to the caregiver consistent with sections 16010.4(e)(5) and
33 16010.5(b)-(c); and

34
35 (B) Order that the social worker provide a child or youth 16 years of age or
36 older with a certified copy of his or her birth certificate unless the court
37 finds that provision of the birth certificate would be inappropriate.

38
39 ~~(15) (6) A judgment, order, or decree setting a hearing under section 366.26 is not
40 an immediately appealable order. Review may be sought only by filing
41 *Petition for Extraordinary Writ (California Rules of Court, Rules 8.452,*
42 *8.456)* (form JV-825) or other petition for extraordinary writ. If a party
43 wishes to preserve any right to review on appeal of the findings and orders~~

1 made under this rule, the party must seek an extraordinary writ under rules
2 8.450 and 8.452.

3
4 ~~(16)~~ (7) A judgment, order, or decree setting a hearing under section 366.26 may be
5 reviewed on appeal following the order of the 366.26 hearing only if the
6 following have occurred:

7
8 (A) An extraordinary writ was sought by the timely filing of *Petition for*
9 *Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)*
10 (form JV-825) or other petition for extraordinary writ; and

11
12 (B) The petition for extraordinary writ was summarily denied or otherwise
13 not decided on the merits.

14
15 ~~(17)~~ (8) Review on appeal of the order setting a hearing under section 366.26 is
16 limited to issues raised in a previous petition for extraordinary writ that were
17 supported by an adequate record.

18
19 ~~(18)~~ (9) Failure to file a petition for extraordinary writ review within the period
20 specified by rules 8.450 and 8.452, to substantively address the issues
21 challenged, or to support the challenge by an adequate record precludes
22 subsequent review on appeal of the findings and orders made under this rule.

23
24 ~~(19)~~ (10) When the court orders a hearing under section 366.26, the court must
25 advise orally all parties present, and by first-class mail for parties not present,
26 that if the party wishes to preserve any right to review on appeal of the order
27 setting the hearing under section 366.26, the party must seek an extraordinary
28 writ by filing a *Notice of Intent to File Writ Petition and Request for Record*
29 *(California Rules of Court, Rule 8.450)* (form JV-820) or other notice of
30 intent to file a writ petition and request for record and a *Petition for*
31 *Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)* (form JV-
32 825) or other petition for extraordinary writ.

33
34 (A) Within 24 hours of the hearing, notice by first-class mail must be
35 provided by the clerk of the court to the last known address of any
36 party who is not present when the court orders the hearing under
37 section 366.26.

38
39 (B) Copies of *Petition for Extraordinary Writ (California Rules of Court,*
40 *Rules 8.452, 8.456)* (form JV-825) and *Notice of Intent to File Writ*
41 *Petition and Request for Record (California Rules of Court, Rule*
42 *8.450)* (form JV-820) must be available in the courtroom and must
43 accompany all mailed notices informing the parties of their rights.

1
2 **(h) Information regarding termination of parent-child relationship (§§ 361,**
3 **361.5)**

4
5 If a child is removed from the physical custody of the parent or guardian under
6 either section 361 or 361.5, the court must:

- 7
8 (1) State the facts on which the decision is based; and
9
10 (2) Notify the parents that their parental rights may be terminated if custody is
11 not returned within 6 months of the dispositional hearing or within 12 months
12 of the date the child entered foster care, whichever time limit is applicable.
13

14 **~~(j)~~ (i) Setting 6-month review (§§ 361.5, 366)**

15
16 ~~Review of the status of every dependent child must be performed within 6 months~~
17 ~~after the date of the original disposition order, and no later than 6 months after the~~
18 ~~date the child is determined to have entered foster care; the review must be~~
19 ~~scheduled on the appearance calendar. The court must advise the dependent child~~
20 ~~of the child's right to petition for modifications of court orders as required in~~
21 ~~section 353.1.~~
22

23 **~~(k)~~ (i) Fifteen-day reviews (§ 367)**

24
25 If a child is detained pending the execution of the disposition order, the court must
26 review the case at least every 15 calendar days to determine whether the delay is
27 reasonable. During each review the court must inquire about the action taken by the
28 probation or welfare department to carry out the court's order, the reasons for the
29 delay, and the effect of the delay on the child.
30

31 **~~(l)~~ (i) Setting a hearing under section 366.26**

32
33 At the disposition hearing, the court may not set a hearing under section 366.26 to
34 consider termination of the rights of only one parent unless that parent is the only
35 surviving parent, or the rights of the other parent have been terminated by a
36 California court of competent jurisdiction or by a court of competent jurisdiction of
37 another state under the statutes of that state, or the other parent has relinquished
38 custody of the child to the county welfare department.
39

40 **Rule 5.700 * * ***

41
42 **Rule 5.705 * * ***

1
2 **Rule 5.706. Family maintenance review hearings (§ 364)**
3

4 **(a) — Setting of hearing (§ 364)**
5

6 ~~If the child remains in the custody of the parent or legal guardian, a review hearing~~
7 ~~must be held within six months after the date of the original dispositional hearing~~
8 ~~and no less frequently than once every six months thereafter as long as the child~~
9 ~~remains a dependent.~~

10
11 **(b)(a) Notice (§ 292)**
12

13 The petitioner or the court clerk must give notice of review hearings on *Notice of*
14 *Review Hearing* (form JV-280), in the manner provided in section 292, to all
15 persons required to receive notice under section 292 and to any CASA volunteer
16 that has been appointed on the case.
17

18 **(c) — Reports (§ 364)**
19

20 ~~At least 10 calendar days before the hearing, the petitioner must file a supplemental~~
21 ~~report with the court describing the services offered to the family, the progress~~
22 ~~made by the family in eliminating the conditions or factors requiring court~~
23 ~~supervision, and the petitioner's recommendation regarding the necessity of~~
24 ~~continued supervision. A copy of the report must be provided to all parties at least~~
25 ~~10 calendar days before the hearing.~~
26

27 **(d)(b) Court considerations and findings**
28

- 29 (1) The court must consider the report prepared by the petitioner, the report of
30 any CASA volunteer, and the case plan submitted for this hearing.
31
- 32 (2) In considering the case plan submitted for the hearing, the court must find as
33 follows:
34
- 35 (A) The child was actively involved in the development of his or her own
36 case plan as age and developmentally appropriate; or
37
- 38 (B) The child was not actively involved in the development of his or her
39 own case plan. If the court makes such a finding, the court must order
40 the agency to actively involve the child in the development of his or her
41 own case plan, unless the court finds that the child is unable,
42 unavailable, or unwilling to participate; and
43

1 (C) Each parent was actively involved in the development of the case plan;
2 or

3
4 (D) Each parent was not actively involved in the development of the case
5 plan. If the court makes such a finding, the court must order the agency
6 to actively involve each parent in the development of the case plan,
7 unless the court finds that each parent is unable, unavailable, or
8 unwilling to participate.
9

10 **(e)(c) Conduct of hearing (§ 364)**

11
12 ~~(1) — The court must determine whether continued supervision is necessary. The~~
13 ~~court must terminate its dependency jurisdiction unless the court finds that~~
14 ~~the petitioner has established by a preponderance of the evidence that existing~~
15 ~~conditions would justify initial assumption of jurisdiction under section 300~~
16 ~~or that such conditions are likely to exist if supervision is withdrawn. Failure~~
17 ~~of the parent or legal guardian to participate regularly in any court ordered~~
18 ~~treatment program constitutes prima facie evidence that the conditions that~~
19 ~~justified initial assumption of jurisdiction still exist and that continued~~
20 ~~supervision is necessary.~~

21
22 ~~(2) If the court retains jurisdiction, the court must order continued services and~~
23 ~~set a review hearing within six months, under this rule.~~
24

25 **(f)(d) Reasonable cause (§ 364)**

26
27 In any case in which the court has ordered that a parent or legal guardian retain
28 physical custody of a child subject to supervision by a social worker, and the social
29 worker subsequently receives a report of acts or circumstances that indicate there is
30 reasonable cause to believe that the child is a person described under section
31 300(a), (d), or (e), the social worker must file a subsequent petition under section
32 342 or a supplemental petition under section 387. If, as a result of the proceedings
33 under the section 342 or 387 petition, the court finds that the child is a person
34 described in section 300(a), (d), or (e), the court must remove the child from the
35 care, custody, and control of the child's parent or legal guardian and must commit
36 the child to the care, custody, and control of the social worker under section 361.
37

38 **(g)(e) Child's education (§§ 361, 366, 366.1)**

39
40 The court must consider the child's education, including whether it is necessary to
41 limit the right of the parent or legal guardian to make educational decisions for the
42 child, following the requirements and procedures in rules 5.650 and 5.651 and in
43 section 361(a).

1
2 **Rule 5.707 * * ***

3
4 **Rule 5.708. General review hearing requirements**

5
6 ~~(a)~~ **Setting of review hearings (§ 366)**

7
8 The status of every dependent child who has been removed from the custody of the
9 parent or legal guardian must be reviewed periodically but no less frequently than
10 once every 6 months until the section 366.26 hearing is completed. Review
11 hearings must be set as described in rule 5.710 (for 6-month review hearings), rule
12 5.715 (for 12-month permanency hearings), rule 5.720 (for 18-month permanency
13 review hearings), or rule 5.722 (for 24-month subsequent permanency review
14 hearings).

15
16 ~~(b)~~**(a) Notice of hearing (§ 293)**

17
18 The petitioner or the clerk must serve written notice of review hearings on *Notice*
19 *of Review Hearing* (form JV-280), in the manner provided in section 293, to all
20 persons or entities entitled to notice under section 293 and to any CASA volunteer,
21 educational rights holder, or surrogate parent appointed to the case.
22

23 ~~(e)~~**(b) Reports (§§ 366.05, 366.1, 366.21, 366.22, 366.25, 16002)**

24
25 Before the hearing, the social worker must investigate and file a report describing
26 the services offered to the family, progress made, and, if relevant, the prognosis for
27 return of the child to the parent or legal guardian.

28
29 (1) The report must include:

30
31 (A) Recommendations for court orders and the reasons for those
32 recommendations;

33
34 (B) A description of the efforts made to achieve legal permanence for the
35 child if reunification efforts fail;

36
37 (C) A factual discussion of each item listed in sections 366.1 and 366.21(c);
38 and

39
40 (D) A factual discussion of the information required by section 16002(b).

41
42 (2) At least 10 calendar days before the hearing, the social worker must file the
43 report and provide copies to the parent or legal guardian and his or her

1 counsel, to counsel for the child, to any CASA volunteer, and, in the case of
2 an Indian child, to the child's identified Indian tribe. The social worker must
3 provide a summary of the recommendations to any foster parents, relative
4 caregivers, or certified foster parents who have been approved for adoption.
5

- 6 (3) The court must read and consider, and state on the record that it has read and
7 considered, the report of the social worker, the report of any CASA
8 volunteer, the case plan submitted for the hearing, any report submitted by
9 the child's caregiver under section 366.21(d), and any other evidence.
10

11 ~~(d) Return of child—detriment finding (§§ 366.21, 366.22, 366.25)~~

12
13 ~~(1) If the child was removed from the custody of the parent or legal guardian, the~~
14 ~~court must order the child returned unless the court finds by a preponderance~~
15 ~~of the evidence that return of the child to the parent or legal guardian would~~
16 ~~create a substantial risk of detriment to the safety, protection, or physical or~~
17 ~~emotional well-being of the child. The social worker has the burden of~~
18 ~~establishing that detriment.~~

19
20 ~~(2) The court must consider whether the child can be returned to the custody of~~
21 ~~his or her parent who is enrolled in a certified substance abuse treatment~~
22 ~~facility that allows a dependent child to reside with his or her parent.~~

23
24 ~~(3) Failure of the parent or legal guardian to regularly participate and make~~
25 ~~substantive progress in any court-ordered treatment program is prima facie~~
26 ~~evidence that continued supervision is necessary or that return would be~~
27 ~~detrimental.~~

28
29 ~~(4) In making its determination about whether returning the child would be~~
30 ~~detrimental, the court must consider the following:~~

31
32 ~~(A) The social worker's report and recommendations and the report and~~
33 ~~recommendations of any CASA volunteer who has been appointed on~~
34 ~~the case;~~

35
36 ~~(B) The efforts or progress demonstrated by the parent or legal guardian;~~
37 ~~and~~

38
39 ~~(C) The extent to which the parent or legal guardian availed himself or~~
40 ~~herself of the services provided, taking into account the particular~~
41 ~~barriers to an incarcerated or institutionalized parent or legal guardian's~~
42 ~~access to court-mandated services and the ability to maintain contact~~
43 ~~with his or her child.~~

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~~(5) — If the parent or legal guardian agreed to submit fingerprints to obtain criminal history information as part of the case plan, the court must consider the criminal history of the parent or legal guardian after the child’s removal to the extent that the criminal record is substantially related to the welfare of the child or the parent’s or legal guardian’s ability to exercise custody and control regarding his or her child.~~

~~(6) — Regardless of whether the child is returned home, the court must specify the factual basis for its conclusion that the return would or would not be detrimental.~~

(e)(c) Reasonable services (§§ 366, 366.21, 366.22, 366.25)

(1) If the child is not returned to the custody of the parent or legal guardian, the court must consider whether reasonable services have been offered or provided. The court must find that:

- (A) Reasonable services have been offered or provided; or
- (B) Reasonable services have not been offered or provided.

~~(2) — The following factors are not sufficient, in and of themselves, to support a finding that reasonable services have not been offered or provided:~~

- ~~(A) — The child has been placed in a preadoptive home or with a family that is eligible to adopt the child;~~
- ~~(B) — The case plan includes services to achieve legal permanence for the child if reunification cannot be accomplished; or~~
- ~~(C) — Services to achieve legal permanence for the child if reunification efforts fail are being provided concurrently with reunification services.~~

(f)(d) Educational and developmental-services needs (§§ 361, 366, 366.1, 366.3)

The court must consider the educational and developmental-services needs of each child and nonminor or nonminor dependent, including whether it is necessary to limit the rights of the parent or legal guardian to make educational or developmental-services decisions for the child or youth. If the court limits those rights or, in the case of a nonminor or nonminor dependent youth who has chosen not to make educational or developmental-services decisions for him- or herself or has been deemed incompetent, finds that appointment would be in the best interests

1 of the nonminor or nonminor dependent the court must appoint a responsible adult
2 as the educational rights holder as defined in rule 5.502. Any limitation on the
3 rights of a parent or guardian to make educational or developmental-services
4 decisions for the child or youth must be specified in the court order. The court must
5 follow the procedures in rules 5.649–5.651.

6
7 **(g)(e) Case plan (§§ 16001.9, 16501.1)**

8
9 The court must consider the case plan submitted for the hearing and must
10 determine:

- 11
- 12 (1) Whether the child was actively involved, as age- and developmentally
13 appropriate, in the development of his or her own case plan and plan for
14 permanent placement. If the court finds that the child or youth was not
15 appropriately involved, the court must order the agency to actively involve
16 the child in the development of his or her own case plan and plan for
17 permanent placement, unless the court finds that the child is unable,
18 unavailable, or unwilling to participate.
19
 - 20 (2) Whether each parent was actively involved in the development of the case
21 plan and plan for permanent placement. If the court finds that any parent was
22 not actively involved, the court must order the agency to actively involve that
23 parent in the development of the case plan and plan for permanent placement,
24 unless the court finds that the parent is unable, unavailable, or unwilling to
25 participate.
26
 - 27 (3) In the case of an Indian child, whether the agency consulted with the Indian
28 child’s tribe, as defined in rule 5.502, and the tribe was actively involved in
29 the development of the case plan and plan for permanent placement,
30 including consideration of tribal customary adoption as an appropriate
31 permanent plan for the child if reunification is unsuccessful. If the court finds
32 that the agency did not consult the Indian child’s tribe, the court must order
33 the agency to do so, unless the court finds that the tribe is unable,
34 unavailable, or unwilling to participate.
35
 - 36 (4) For a child 12 years of age or older in a permanent placement, whether the
37 child was given the opportunity to review the case plan, sign it, and receive a
38 copy. If the court finds that the child or youth was not given this opportunity,
39 the court must order the agency to give the child the opportunity to review
40 the case plan, sign it, and receive a copy.

41
42 **~~(h) — Out-of-state placement (§§ 361.21, 366)~~**

1 If the child has been placed out of the state, the court must consider whether the
2 placement continues to be the most appropriate placement for the child and in the
3 child's best interest. If the child is in an out of state group home, the court must
4 follow the requirements in section 361.21.
5

6 ~~(i)~~ **Title IV-E findings (§ 366)**
7

8 Regardless of whether or not the child is returned home, the court must consider the
9 safety of the child and must determine all of the following:
10

11 (1) ~~The continuing necessity for and appropriateness of the placement;~~
12

13 (2) ~~The extent of the agency's compliance with the case plan in making reasonable~~
14 ~~efforts or, in the case of an Indian child, active efforts as described in section~~
15 ~~361.7, to return the child to a safe home and to complete any steps necessary~~
16 ~~to finalize the permanent placement of the child. These steps include efforts to~~
17 ~~maintain relationships between a child who is 10 years or older who has been~~
18 ~~in an out-of-home placement for 6 months or longer and individuals other than~~
19 ~~the child's siblings who are important to the child, consistent with the child's~~
20 ~~best interest;~~
21

22 (3) ~~The extent of progress that has been made by the parents or legal guardians~~
23 ~~toward alleviating or mitigating the causes necessitating placement in foster~~
24 ~~care; and~~
25

26 (4) ~~The likely date by which the child may be returned to and safely maintained in~~
27 ~~the home or placed for adoption, legal guardianship, or in another planned~~
28 ~~permanent living arrangement.~~
29

30 ~~(j)~~(f) **Sibling findings; additional findings (§§ 366, 16002)**
31

32 (1) The court must determine whether the child has other siblings under the
33 court's jurisdiction. If so, the court must make the additional determinations
34 required by section 366(a)(1)(D); and
35

36 (2) The court must enter any additional findings as required by section 366 and
37 section 16002.
38

39 ~~(k)~~(g) **Placement with noncustodial parent (§ 361.2)**
40

41 If at any review hearing the court places the child with a noncustodial parent, or if
42 the court has previously made such a placement, the court may, after stating on the
43 record or in writing the factual basis for the order:

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- (1) Continue supervision and reunification services;
- (2) Order custody to the noncustodial parent, continue supervision, and order family maintenance services; or
- (3) Order custody to the noncustodial parent, terminate jurisdiction, and direct that *Custody Order—Juvenile—Final Judgment* (form JV-200) be prepared and filed under rule 5.700.

~~(h)~~(h) Setting a hearing under section 366.26 for one parent

The court may not set a hearing under section 366.26 to consider termination of the rights of only one parent unless:

- (1) That parent is the only surviving parent;
- (2) The rights of the other parent have been terminated by a California court of competent jurisdiction or by a court of competent jurisdiction of another state under the statutes of that state; or
- (3) The other parent has relinquished custody of the child to the county welfare department.

~~(m)~~ Setting a hearing under section 366.26; reasonable services requirement (§§ 366.21, 366.22)

~~At any 6 month, 12 month, or 18 month hearing, the court may not set a hearing under section 366.26 unless the court finds by clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.~~

~~(n)~~(i) Requirements on setting a section 366.26 hearing (§§ 366.21, 366.22, 366.25)

The court must make the following orders and determinations when setting a hearing under section 366.26:

- ~~(1) The court must terminate reunification services to the parent or legal guardian and:~~
 - ~~(A) Order that the social worker provide a copy of the child’s birth certificate to the caregiver as consistent with sections 16010.4(e)(5) and 16010.5(b)–(c); and~~

1 ~~(B) — Order that the social worker provide a child 16 years of age or older~~
2 ~~with a copy of his or her birth certificate unless the court finds that~~
3 ~~provision of the birth certificate would be inappropriate.~~
4

5 ~~(2) — The court must continue to permit the parent or legal guardian to visit the~~
6 ~~child, unless it finds that visitation would be detrimental to the child;~~
7

8 ~~(3) — If the child is 10 years of age or older and is placed in an out-of-home~~
9 ~~placement for 6 months or longer, the court must enter any other appropriate~~
10 ~~orders to enable the child to maintain relationships with other individuals~~
11 ~~who are important to the child, consistent with the child's best interest.~~
12 ~~Specifically, the court:~~
13

14 ~~(A) — Must determine whether the agency has identified individuals, in~~
15 ~~addition to the child's siblings, who are important to the child and will~~
16 ~~maintain caring, permanent relationships with the child, consistent with~~
17 ~~the child's best interest;~~
18

19 ~~(B) — Must determine whether the agency has made reasonable efforts to~~
20 ~~nurture and maintain the child's relationships with those individuals,~~
21 ~~consistent with the child's best interest; and~~
22

23 ~~(C) — May make any appropriate order to ensure that those relationships are~~
24 ~~maintained.~~
25

26 ~~(4) — The court must direct the county child welfare agency and the appropriate~~
27 ~~county or state adoption agency to prepare an assessment under section~~
28 ~~366.21(i), 366.22(c), or 366.25(b);~~
29

30 ~~(5)(1)~~ The court must ensure that notice is provided as follows:
31

32 (A) Within 24 hours of the review hearing, the clerk of the court must
33 provide notice by first-class mail to the last known address of any party
34 who is not present at the review hearing. The notice must include the
35 advisements required by rule 5.590(b).
36

37 (B) The court must order that notice of the hearing under section 366.26 not
38 be provided to any of the following:
39

40 (i) Any parent—whether natural, presumed, biological, or alleged—
41 who has relinquished the child for adoption and whose
42 relinquishment has been accepted and filed with notice under
43 Family Code section 8700; or

- 1
2 (ii) An alleged parent who has denied parentage and has completed
3 item 2 of *Statement Regarding Parentage (Juvenile)* (form JV-
4 505).

5
6 ~~(6)(2)~~ The court must follow all procedures in rule 5.590 regarding writ petition
7 rights, advisements, and forms.
8

9 ~~(e)(j)~~ **Appeal of order setting section 366.26 hearing**

10
11 An appeal of any order setting a hearing under section 366.26 must follow the
12 procedures in rules 8.400–8.416.
13

14 **Rule 5.710. Six-month review hearing**

15
16 ~~(a)~~ **Setting 6-month review; notice (§§ 364, 366, 366.21)**

17
18 ~~The case of any dependent child whom the court has removed from the custody of~~
19 ~~the parent or legal guardian under section 361 or 361.5 must be set for a review~~
20 ~~hearing within 6 months of the date of the dispositional hearing, but no later than~~
21 ~~12 months from the date the child entered foster care, as defined by section 361.49,~~
22 ~~whichever occurs earlier. Notice must be provided as described in section 293 and~~
23 ~~rule 5.708.~~
24

25 ~~(b)~~ **(a) Determinations and conduct of hearing (§§ 364, 366, 366.1, 366.21)**

26
27 At the hearing, the court and all parties must comply with all relevant requirements
28 and procedures in rule 5.708, General review hearing requirements. The court must
29 make all appropriate findings and orders specified in rule 5.708 and proceed under
30 section 366.21(e) and as follows:
31

- 32 (1) *Order return of the child or find that return would be detrimental*

33
34 ~~The court must order the child returned to the custody of the parent or legal~~
35 ~~guardian unless the court finds that the petitioner has established by a~~
36 ~~preponderance of the evidence that return would create a substantial risk of~~
37 ~~detriment to the safety, protection, or physical or emotional well-being of the~~
38 ~~child. The requirements in rule 5.708(d) must be followed in establishing~~
39 ~~detriment. The requirements in rule 5.708(e) must be followed in entering a~~
40 ~~reasonable services finding. If the child is returned, the court may order the~~
41 ~~termination of dependency jurisdiction or order continued dependency~~
42 ~~services and set a review hearing within 6 months.~~
43

1 (2) *Place with noncustodial parent*

2

3 If the court has previously placed or at this hearing places the child with a
4 noncustodial parent, the court must follow the procedures in rule 5.708(k)(g)
5 and section 361.2.

6

7 (3) *Set a section 366.26 hearing*

8

9 If the court does not return custody of the child, the court may set a hearing
10 under section 366.26 within 120 days, as provided in (c).

11

12 (4) *Continue the case for a 12-month permanency hearing*

13

14 If the child is not returned and the court does not set a section 366.26 hearing,
15 the court must order that any reunification services previously ordered will
16 continue to be offered to the parent or legal guardian, if appropriate. The
17 court may modify those services as appropriate or order additional services
18 reasonably believed to facilitate the return of the child to the parent or legal
19 guardian. The court must set a date for the next hearing no later than 12
20 months from the date the child entered foster care.

21

22 **(e)(b) Setting a section 366.26 hearing (§§ 366.21, 366.215)**

23

24 (1) The court may set a hearing under section 366.26 within 120 days if any of
25 the conditions in section 366.21(e) are met or ÷

26

27 ~~(A) The child was removed under section 300(g) and the court finds by~~
28 ~~clear and convincing evidence that the parent's whereabouts are still~~
29 ~~unknown, or the parent has failed to contact and visit the child, or the~~
30 ~~parent has been convicted of a felony indicating parental unfitness. The~~
31 ~~court must take into account any particular barriers to a parent's ability~~
32 ~~to maintain contact with his or her child due to the parent's~~
33 ~~incarceration or institutionalization;~~

34

35 ~~(B) The court finds by clear and convincing evidence that the parent has~~
36 ~~been convicted of a felony indicating parental unfitness;~~

37

38 ~~(C) The parent is deceased, ÷ or~~

39

40 ~~(D) The child was under the age of three when initially removed, or a~~
41 ~~member of a sibling group described in section 361.5(a)(1)(C), and the~~
42 ~~court finds by clear and convincing evidence that the parent has failed~~
43 ~~to participate regularly and make substantive progress in any court-~~

1 ordered treatment plan. If, however, the court finds a substantial
2 probability that the child may be returned within 6 months or within 12
3 months of the date the child entered foster care, whichever is sooner, or
4 that reasonable services have not been offered or provided, the court
5 must continue the case to the 12-month permanency hearing.
6

7 (i) — In order to find a substantial probability that the child may be
8 returned within the applicable time period, the court should
9 consider the following factors along with any other relevant
10 evidence:

11
12 a. — Whether the parent or legal guardian has consistently and
13 regularly contacted and visited the child;

14
15 b. — Whether the parent or legal guardian has made significant
16 progress in resolving the problems that led to the removal
17 of the child; and

18
19 c. — Whether the parent or legal guardian has demonstrated the
20 capacity and ability to complete the objectives of the
21 treatment plan and to provide for the child's safety,
22 protection, physical and emotional health, and special
23 needs.
24

25 (ii) — The court, in determining whether court-ordered services may be
26 extended to the 12-month point, must take into account any
27 particular barriers to a parent's or guardian's ability to maintain
28 contact with his or her child due to the parent's or guardian's
29 incarceration, institutionalization, detention by the United States
30 Department of Homeland Security, or deportation. The court may
31 also consider, among other factors, whether the incarcerated,
32 institutionalized, detained, or deported parent or guardian has
33 made good faith efforts to maintain contact with the child and
34 whether there are any other barriers to the parent's or guardian's
35 access to services.
36

37 (2) At the hearing, the court and all parties must comply with all relevant
38 requirements and procedures related to section 366.26 hearings in rule 5.708,
39 General review hearing requirements. The court must make all appropriate
40 findings and orders specified in rule 5.708.

41
42 **(d) — Sibling groups (§ 366.21)**
43

1 In determining whether to set a hearing under section 366.26 for one or more
2 members of a sibling group when one member of that group was under the age of
3 three at the time of the initial removal, the court may terminate or continue services
4 for any or all members of the group, based on the following considerations and for
5 reasons specified on the record:

- 6
- 7 (1) ~~Whether the siblings were removed as a group;~~
 - 8
 - 9 (2) ~~The closeness and strength of the sibling bond;~~
 - 10
 - 11 (3) ~~The ages of the siblings;~~
 - 12
 - 13 (4) ~~The appropriateness of maintaining the sibling group together;~~
 - 14
 - 15 (5) ~~The detriment to the child if sibling ties are not maintained;~~
 - 16
 - 17 (6) ~~The likelihood of finding a permanent home for the group;~~
 - 18
 - 19 (7) ~~Whether the group is placed together in a preadoptive home, if there is a~~
20 ~~concurrent plan for permanency for all siblings in the same home;~~
 - 21
 - 22 (8) ~~The wishes of each child; and~~
 - 23
 - 24 (9) ~~The best interest of each member of the sibling group.~~

25 -
26 **Rule 5.715. Twelve-month permanency hearing**

27
28 **(a) Requirement for 12-month review; setting of hearing; notice (§§ 293, 366.21)**

29
30 The case of any dependent child whom the court has removed from the custody of
31 the parent or legal guardian must be set for a permanency hearing within 12 months
32 of the date the child entered foster care, as defined in section 361.49, and no later
33 than 18 months from the date of the initial removal. ~~Notice of the hearing must be~~
34 ~~provided as described in section 293 and rule 5.708.~~

35
36 **(b) Determinations and conduct of hearing (§§ 361.5, 366, 366.1, 366.21)**

37
38 At the hearing, the court and all parties must comply with all relevant requirements
39 and procedures in rule 5.708, General review hearing requirements. The court must
40 make all appropriate findings and orders specified in rule 5.708 and proceed under
41 section 366.21(f) and as follows:
42

1 ~~(1) The court must order the child returned to the custody of the parent or legal~~
2 ~~guardian unless the court finds the petitioner has established, by a~~
3 ~~preponderance of the evidence, that return would create a substantial risk of~~
4 ~~detriment to the safety, protection, or physical or emotional well-being of the~~
5 ~~child. Failure of the parent or legal guardian to regularly participate and make~~
6 ~~substantive progress in a court-ordered treatment program is prima facie~~
7 ~~evidence that return would be detrimental. The requirements in rule 5.708(d)~~
8 ~~must be followed in establishing detriment.~~

9
10 ~~(2)(1) The requirements in rule 5.708(e)(c) must be followed in entering a~~
11 ~~reasonable services finding.~~

12
13 ~~(3)(2) If the court has previously placed or at this hearing places the child with a~~
14 ~~noncustodial parent, the court must follow the procedures in rule 5.708(k)(g)~~
15 ~~and section 361.2.~~

16
17 ~~(4)(3) If the court does not order return of the child to the parent or legal guardian~~
18 ~~and the time period for providing court-ordered services has been met or~~
19 ~~exceeded, as provided in section 361.5(a)(1), the court must specify the~~
20 ~~factual basis for its finding of risk of detriment to the child and proceed as~~
21 ~~follows in selecting a permanent plan:~~

22
23 ~~(A) If the court finds that there is a substantial probability that the child will~~
24 ~~be returned within 18 months or that reasonable services have not been~~
25 ~~offered or provided, the court must continue the case for a permanency~~
26 ~~review hearing to a date not later than 18 months from the date of the~~
27 ~~initial removal. If the court continues the case for an 18-month~~
28 ~~permanency review hearing, the court must inform the parent or legal~~
29 ~~guardian that if the child cannot be returned home by the next hearing,~~
30 ~~a proceeding under section 366.26 may be instituted.~~

31
32 ~~(i) In order to find a substantial probability that the child will be~~
33 ~~returned within the 18-month period, the court must find all of~~
34 ~~the following:~~

35
36 ~~a. The parent or legal guardian has consistently and regularly~~
37 ~~contacted and visited the child;~~

38
39 ~~b. The parent or legal guardian has made significant progress in~~
40 ~~resolving the problems that led to the removal of the child;~~
41 ~~and~~

1 e. ~~The parent or legal guardian has demonstrated the capacity~~
2 ~~and ability to complete the objectives of the treatment plan~~
3 ~~and to provide for the child's safety, protection, physical~~
4 ~~and emotional health, and special needs.~~

5
6 (ii) ~~In determining whether court-ordered services may be extended~~
7 ~~to the 18-month point, the court must consider the special~~
8 ~~circumstances of a parent or legal guardian who is incarcerated,~~
9 ~~institutionalized or court-ordered to a residential substance abuse~~
10 ~~treatment program, or arrested and issued an immigration hold,~~
11 ~~detained by the United States Department of Homeland Security,~~
12 ~~or deported to his or her country of origin, including, but not~~
13 ~~limited to, barriers to the parent's or legal guardian's access to~~
14 ~~services and ability to maintain contact with his or her child. The~~
15 ~~court must also consider, among other factors, good faith efforts~~
16 ~~that the parent or legal guardian has made to maintain contact~~
17 ~~with the child.~~

18
19 (B) ~~If (1), (4)(A), or (4)(C) do not apply, the court must terminate~~
20 ~~reunification services and order a hearing under section 366.26 within~~
21 ~~120 days. The court and all parties must comply with all relevant~~
22 ~~requirements, procedures, findings, and orders related to section 366.26~~
23 ~~hearings in rule 5.708.~~

24
25 (C) ~~If the court finds by clear and convincing evidence, including a~~
26 ~~recommendation by the appropriate state or county adoption agency,~~
27 ~~that there is a compelling reason for determining that a section 366.26~~
28 ~~hearing is not in the best interest of the child because the child is not a~~
29 ~~proper subject for adoption and has no one willing to accept legal~~
30 ~~guardianship:~~

31
32 (i) ~~The court must terminate reunification services and order that the~~
33 ~~child remain in a planned permanent living arrangement.~~

34
35 (ii) ~~If the court orders that the child remain in a planned permanent~~
36 ~~living arrangement, it must identify the foster care setting by~~
37 ~~name and identify a specific permanency goal for the child.~~

38
39 (iii) ~~The court may order that the name and address of the foster home~~
40 ~~remain confidential.~~

1 (iv) ~~The court must continue to permit the parent or legal guardian to~~
2 ~~visit the child, unless it finds that visitation would be detrimental~~
3 ~~to the child.~~

4
5 (v) ~~If the child is 10 years of age or older and is placed in out-of-~~
6 ~~home placement for six months or longer, the court must enter~~
7 ~~any other appropriate orders to enable the child to maintain~~
8 ~~relationships with other individuals who are important to the~~
9 ~~child, consistent with the child's best interest. Specifically, the~~
10 ~~court:~~

11
12 a. ~~Must determine whether the agency has identified~~
13 ~~individuals, in addition to the child's siblings, who are~~
14 ~~important to the child and will maintain caring, permanent~~
15 ~~relationships with the child, consistent with the child's best~~
16 ~~interest;~~

17
18 b. ~~Must determine whether the agency has made reasonable~~
19 ~~efforts to nurture and maintain the child's relationships~~
20 ~~with those individuals, consistent with the child's best~~
21 ~~interest; and~~

22
23 e. ~~May make any appropriate order to ensure that those~~
24 ~~relationships are maintained.~~

25
26 ~~(5)(3)~~ If the child is not returned to his or her parent or legal guardian, the court
27 must consider and state, for the record, in state and out of state options for
28 permanent placement, including, in the case of an Indian child, determine
29 whether:

30
31 (A) The agency has consulted the child's tribe about tribal customary
32 adoption;

33
34 (B) The child's tribe concurs with tribal customary adoption; and

35
36 (C) Tribal customary adoption is an appropriate permanent plan for the
37 child.

38
39 (4) If the child is not returned to his or her parent or legal guardian and the court
40 terminates reunification services, the court must find as follows:

41
42 (A) The agency has made diligent efforts to locate an appropriate relative;
43 or

1
2 (B) The agency has not made diligent efforts to locate an appropriate
3 relative. If the court or administrative review panel makes such a
4 finding, the court or administrative review panel must order the agency
5 to make diligent efforts to locate an appropriate relative; and
6

7 (C) Each relative whose name has been submitted to the agency as a
8 possible caregiver has been evaluated as an appropriate placement
9 resource; or
10

11 (D) Each relative whose name has been submitted to the agency as a
12 possible caregiver has not been evaluated as an appropriate placement
13 resource. If the court or administrative review panel makes such a
14 finding, the court or administrative review panel must order the agency
15 to evaluate as an appropriate placement resource, each relative whose
16 name has been submitted to the agency as a possible caregiver.
17

18 **Rule 5.720. Eighteen-month permanency review hearing**
19

20 **~~(a)~~ — Requirement for 18-month permanency review hearing; setting of hearing;**
21 **~~notice (§§ 293, 366.22)~~**
22

23 ~~For any dependent child whom the court has removed from the custody of the~~
24 ~~parent or legal guardian, and who was not returned at the 6- or 12-month review~~
25 ~~hearing, a permanency review hearing must be held no later than 18 months from~~
26 ~~the date of the initial removal. Notice of the hearing must be given as provided in~~
27 ~~section 293 and rule 5.708(b).~~
28

29 **~~(b)~~(a) Determinations and conduct of hearing (§§ 361.5, 366.22)**
30

31 At the hearing the court and all parties must comply with all relevant requirements
32 and procedures in rule 5.708, General review hearing requirements. The court must
33 make all appropriate findings and orders specified in rule 5.708, and proceed under
34 section 366.22 and as follows:
35

36 (1) ~~The court must order the child returned to the custody of the parent or legal~~
37 ~~guardian unless the court finds the petitioner has established, by a~~
38 ~~preponderance of the evidence, that return would create a substantial risk of~~
39 ~~detriment to the safety, protection, or physical or emotional well-being of the~~
40 ~~child. Failure of the parent or legal guardian to regularly participate and make~~
41 ~~substantive progress in a court-ordered treatment program is prima facie~~
42 ~~evidence that continued supervision is necessary or that return would be~~
43 ~~detrimental. The requirements in rule 5.708(d) must be followed in~~

1 ~~establishing detriment. The requirements in rule 5.708(e) must be followed in~~
2 ~~entering a reasonable services finding.~~

3
4 ~~(2)(1) If the court has previously placed or at this hearing places the child with a~~
5 ~~noncustodial parent, the court must follow the procedures in rule 5.708(k)(g)~~
6 ~~and section 361.2.~~

7
8 ~~(3)(2) If the court does not order return of the child to the custody of the parent or~~
9 ~~legal guardian, the court must specify the factual basis for its finding of risk~~
10 ~~of detriment and do one of the following:~~

11
12 ~~(A) — Continue the case for a subsequent permanency review hearing not~~
13 ~~later than 24 months from the date of the initial removal if the court~~
14 ~~finds that there is a substantial probability that the child will be~~
15 ~~returned within that time or that reasonable services have not been~~
16 ~~offered or provided. To extend services to the 24-month point, the court~~
17 ~~must also find by clear and convincing evidence that additional~~
18 ~~reunification services are in the best interest of the child and that the~~
19 ~~parent or legal guardian is making significant and consistent progress in~~
20 ~~a substance abuse treatment program, or a parent or legal guardian has~~
21 ~~recently been discharged from incarceration, institutionalization, or the~~
22 ~~custody of the United States Department of Homeland Security and is~~
23 ~~making significant and consistent progress in establishing a safe home~~
24 ~~for the child's return. The court must also inform the parent or legal~~
25 ~~guardian that, if the child cannot be returned home by the subsequent~~
26 ~~permanency review hearing, a hearing under section 366.26 may be~~
27 ~~instituted.~~

28
29 ~~In order to find a substantial probability that the child will be returned~~
30 ~~within the 24-month period, the court must find all of the following:~~

31
32 ~~(i) — The parent or legal guardian has consistently and regularly~~
33 ~~contacted and visited the child;~~

34
35 ~~(ii) — The parent or legal guardian has made significant and consistent~~
36 ~~progress in the prior 18 months in resolving the problems that led~~
37 ~~to the removal of the child; and~~

38
39 ~~(iii) — The parent or legal guardian has demonstrated the capacity and~~
40 ~~ability both to complete the objectives of his or her substance~~
41 ~~abuse treatment plan as evidenced by reports from a substance~~
42 ~~abuse provider, as applicable, or to complete a treatment plan~~
43 ~~postdischarge from incarceration, institutionalization, or~~

1 detention or following deportation to his or her country of origin
2 or his or her return to the United States, and to provide for the
3 child's safety, protection, physical and emotional health, and
4 special needs.
5

6 (B) — ~~Terminate reunification services and order that the child remain in a
7 planned permanent living arrangement, if it finds by clear and
8 convincing evidence already presented, including a recommendation by
9 the appropriate state or county adoption agency, that there is a
10 compelling reason for determining that a section 366.26 hearing is not
11 in the best interest of the child because the child is not a proper subject
12 for adoption and has no one willing to accept legal guardianship.~~

13
14 (i) — ~~If the court orders that the child remain in a planned permanent
15 living arrangement, it must identify the foster care setting by
16 name and identify a specific permanency goal for the child.~~

17
18 (ii) The court may order that the name and address of the foster home
19 remain confidential.
20

21 (iii) — ~~The court must continue to permit the parent or legal guardian to
22 visit the child, unless it finds that visitation would be detrimental
23 to the child;~~

24
25 (iv) — ~~If the child is 10 years of age or older and is placed in out-of-
26 home placement for six months or longer, the court must enter
27 any other appropriate orders to enable the child to maintain
28 relationships with other individuals who are important to the
29 child, consistent with the child's best interest. Specifically, the
30 court:~~

31
32 a. — ~~Must determine whether the agency has identified
33 individuals, in addition to the child's siblings, who are
34 important to the child and will maintain caring, permanent
35 relationships with the child, consistent with the child's best
36 interest;~~

37
38 b. — ~~Must determine whether the agency has made reasonable
39 efforts to nurture and maintain the child's relationships
40 with those individuals, consistent with the child's best
41 interest; and
42~~

1 e. ~~May make any appropriate order to ensure that those~~
2 ~~relationships are maintained.~~

3
4 ~~(C) If (1), (3)(A), or (3)(B) do not apply, the court must terminate~~
5 ~~reunification services and order a hearing under section 366.26 within~~
6 ~~120 days. The court and all parties must comply with all relevant~~
7 ~~requirements, procedures, and findings and orders related to section~~
8 ~~366.26 hearings in rule 5.708.~~

9
10 ~~(4)(3) If the child is not returned to his or her parent or legal guardian, the court~~
11 ~~must consider and state, for the record, in state and out of state options for~~
12 ~~permanent placement, including, in the case of an Indian child, determine~~
13 ~~whether:~~

14
15 (A) The agency has consulted the child's tribe about tribal customary
16 adoption;

17
18 (B) The child's tribe concurs with tribal customary adoption; and

19
20 (C) Tribal customary adoption is an appropriate permanent plan for the
21 child.

22
23 ~~(4) If the child is not returned to his or her parent or legal guardian and the court~~
24 ~~terminates reunification services, the court must find as follows:~~

25
26 ~~(A) The agency has made diligent efforts to locate an appropriate relative;~~
27 ~~or~~

28
29 ~~(B) The agency has not made diligent efforts to locate an appropriate~~
30 ~~relative. If the court makes such a finding, the court must order the~~
31 ~~agency to make diligent efforts to locate an appropriate relative; and~~

32
33 ~~(C) Each relative whose name has been submitted to the agency as a~~
34 ~~possible caregiver has been evaluated as an appropriate placement~~
35 ~~resource; or~~

36
37 ~~(D) Each relative whose name has been submitted to the agency as a~~
38 ~~possible caregiver has not been evaluated as an appropriate placement~~
39 ~~resource. If the court makes such a finding, the court or administrative~~
40 ~~review panel must order the agency to evaluate as an appropriate~~
41 ~~placement resource, each relative whose name has been submitted to~~
42 ~~the agency as a possible caregiver.~~

1
2 **Rule 5.722. Twenty-four-month subsequent permanency review hearing**

3
4 **~~(a) — Requirement for 24-month subsequent permanency review hearing; setting of~~**
5 **~~hearing; notice (§ 366.25)~~**
6

7 ~~For any dependent child whom the court has removed from the custody of the~~
8 ~~parent or legal guardian, and whose case has been continued under section~~
9 ~~366.22(b), the subsequent permanency review hearing must be held no later than 24~~
10 ~~months from the date of initial removal. Notice must be provided as described in~~
11 ~~rule 5.708.~~
12

13 **~~(b)(a) Determinations and Ceonduct of hearing (§ 366, 366.1, 366.25)~~**
14

15 At the hearing, the court and all parties must comply with all relevant requirements
16 and procedures in rule 5.708, General review hearing requirements. The court must
17 make all appropriate findings and orders specified in rule 5.708, and proceed under
18 section 366.25 and as follows:
19

20 (1) ~~The court must order the child returned to the custody of the parent or legal~~
21 ~~guardian unless the court finds that petitioner has established by a~~
22 ~~preponderance of the evidence that return would create a substantial risk of~~
23 ~~detriment to the safety, protection, or physical or emotional well being of the~~
24 ~~child. Failure of the parent or legal guardian to regularly participate and make~~
25 ~~substantive progress in a court ordered treatment program is prima facie~~
26 ~~evidence that return would be detrimental. The requirements in rule 5.708(d)~~
27 ~~must be followed in establishing detriment. The requirements in rule~~
28 ~~5.708(e)(c) must be followed in entering a reasonable services finding.~~
29

30 (2) If the court does not order the return of the child to the custody of the parent
31 or legal guardian, the court must specify the factual basis for its finding of
32 risk of detriment ~~and do one of the following:~~
33

34 (A) ~~If the court finds by clear and convincing evidence, including a~~
35 ~~recommendation by the appropriate state or county adoption agency,~~
36 ~~that there is a compelling reason for determining that a section 366.26~~
37 ~~hearing is not in the best interest of the child because the child is not a~~
38 ~~proper subject for adoption and has no one willing to accept legal~~
39 ~~guardianship, the court must terminate reunification services and order~~
40 ~~that the child remain in a planned permanent living arrangement.~~
41

1 (i) ~~If the court orders that the child remain in a planned permanent~~
2 ~~living arrangement, it must identify the foster care setting by~~
3 ~~name and identify a specific permanency goal for the child.~~

4
5 (ii)(3) The court may order that the name and address of the foster
6 home remain confidential.

7
8 (iii) ~~The court must continue to permit the parent or legal guardian to~~
9 ~~visit the child, unless it finds that visitation would be detrimental~~
10 ~~to the child.~~

11
12 (iv) ~~If the child is 10 years of age or older and is placed in out-of-~~
13 ~~home placement for six months or longer, the court must enter~~
14 ~~any other appropriate orders to enable the child to maintain~~
15 ~~relationships with other individuals who are important to the~~
16 ~~child, consistent with the child's best interest. Specifically, the~~
17 ~~court:~~

18
19 a. ~~Must determine whether the agency has identified~~
20 ~~individuals, in addition to the child's siblings, who are~~
21 ~~important to the child and will maintain caring, permanent~~
22 ~~relationships with the child, consistent with the child's best~~
23 ~~interest;~~

24
25 b. ~~Must determine whether the agency has made reasonable~~
26 ~~efforts to nurture and maintain the child's relationships~~
27 ~~with those individuals, consistent with the child's best~~
28 ~~interest; and~~

29
30 c. ~~May make any appropriate order to ensure that those~~
31 ~~relationships are maintained.~~

32
33 (B) ~~If (1) or (2)(A) do not apply, the court must terminate reunification~~
34 ~~services and order that a hearing be held under section 366.26 within~~
35 ~~120 days. The court and all parties must comply with all relevant~~
36 ~~requirements, procedures, findings, and orders related to section 366.26~~
37 ~~hearings in rule 5.708(f) (e). (h)-(j).~~

38
39 (3) If the child is not returned to his or her parent or legal guardian, the court
40 must consider and state, for the record, in-state and out-of-state options for
41 permanent placement, including, in the case of an Indian child, determine
42 whether:
43

- 1 (A) The agency has consulted the child’s tribe about tribal customary
2 adoption;
3
4 (B) The child’s tribe concurs with tribal customary adoption; and
5
6 (C) Tribal customary adoption is an appropriate permanent plan for the
7 child.
8
9 (4) If the child is not returned to his or her parent or legal guardian and the court
10 terminates reunification services, the court must find as follows:
11
12 (A) The agency has made diligent efforts to locate an appropriate relative;
13 or
14
15 (B) The agency has not made diligent efforts to locate an appropriate
16 relative. If the court or administrative review panel makes such a
17 finding, the court must order the agency to make diligent efforts to
18 locate an appropriate relative; and
19
20 (C) Each relative whose name has been submitted to the agency as a
21 possible caregiver has been evaluated as an appropriate placement
22 resource; or
23
24 (D) Each relative whose name has been submitted to the agency as a
25 possible caregiver has not been evaluated as an appropriate placement
26 resource. If the court makes such a finding, the court or administrative
27 review panel must order the agency to evaluate as an appropriate
28 placement resource, each relative whose name has been submitted to
29 the agency as a possible caregiver.
30

31 **Rule 5.725. Selection of permanent plan (§§ 366.26, 727.31)**
32

33 **(a) Application of rule**
34

35 This rule applies to children who have been declared dependents or wards of the
36 juvenile court.
37

- 38 ~~(1) Only section 366.26 and division 12, part 3, chapter 5 (commencing with~~
39 ~~section 7660) of the Family Code or Family Code sections 8604, 8605, 8606,~~
40 ~~and 8700 apply for the termination of parental rights. Part 4 (commencing~~
41 ~~with section 7800) of division 12 of the Family Code does not apply.~~
42

1 ~~(2)~~(1) The court may not terminate the rights of only one parent under section
2 366.26 unless that parent is the only surviving parent; or unless the rights of
3 the other parent have been terminated under division 12, part 3, chapter 5
4 (commencing with section 7660), or division 12, part 4 (commencing with
5 section 7800) of the Family Code, or Family Code sections 8604, 8605, or
6 8606; or unless the other parent has relinquished custody of the child to the
7 welfare department.

8
9 ~~(3)~~(2) Only section 366.26 and 727.31 apply ~~applies~~ for establishing legal
10 guardianship.

11
12 ~~(4)~~(3) For termination of the parental rights of an Indian child, the procedures in
13 this rule and in rule 5.485 must be followed.

14
15
16 **(b) Notice of hearing (§ 294)**

17
18 In addition to the requirements stated in section 294, notice must be given to any
19 CASA volunteer, the child's present caregiver, and any de facto parent on *Notice of*
20 *Hearing on Selection of a Permanent Plan* (form JV-300).

21
22 **(c) Report**

23
24 Before the hearing, petitioner must prepare an assessment under section 366.21(i).
25 At least 10 calendar days before the hearing, the petitioner must file the assessment,
26 provide copies to each parent or guardian and all counsel of record, and provide a
27 summary of the recommendations to the present custodians of the child, to any
28 CASA volunteer, and to the tribe of an Indian child.

29
30 **(d) Conduct of hearing**

31
32 At the hearing, the court must state on the record that the court has read and
33 considered the report of petitioner, the report of any CASA volunteer, the case plan
34 submitted for this hearing, any report submitted by the child's caregiver under
35 section 366.21(d), and any other evidence, and must proceed under section 366.26
36 and as follows:

37
38 (1) In the case of an Indian child, after the agency has consulted with the tribe,
39 when the court has determined with the concurrence of the tribe that tribal
40 customary adoption is the appropriate permanent plan for the child, order a
41 tribal customary adoption in accordance with section 366.24. ~~;~~ ~~or~~
42

1 (2) ~~Order parental rights terminated and the child placed for adoption if the court~~
2 ~~determines, by clear and convincing evidence, that it is likely the child will~~
3 ~~be adopted, unless:~~

4
5 (A) ~~At each and every hearing at which the court was required to consider~~
6 ~~reasonable efforts or services, the court has found that reasonable~~
7 ~~efforts were not made or that reasonable services were not offered or~~
8 ~~provided; or~~

9
10 (B) ~~The child is living with a relative who is unable or unwilling to adopt~~
11 ~~the child because of circumstances that do not include an unwillingness~~
12 ~~to accept legal or financial responsibility for the child, but who is~~
13 ~~willing and capable of providing the child with a stable and permanent~~
14 ~~environment through legal guardianship, and removal from the home of~~
15 ~~the relative would be detrimental to the emotional well-being of the~~
16 ~~child. For an Indian child, “relative” includes an “extended family~~
17 ~~member,” as defined in the federal Indian Child Welfare Act (25 U.S.C.~~
18 ~~§1903(2)); or~~

19
20 (C) ~~The court finds a compelling reason to determine that termination~~
21 ~~would be detrimental to the child because of the existence of one of the~~
22 ~~following circumstances:~~

23
24 (i) ~~The parents or guardians have maintained regular visitation and~~
25 ~~contact with the child and the child would benefit from~~
26 ~~continuing the relationship;~~

27
28 (ii) ~~A child 12 years of age or older objects to termination of parental~~
29 ~~rights;~~

30
31 (iii) ~~The child is placed in a residential treatment facility and adoption~~
32 ~~is unlikely or undesirable while the child remains in that~~
33 ~~placement, and continuation of parental rights will not prevent~~
34 ~~the finding of an adoptive home if the parents cannot resume~~
35 ~~custody when residential care is no longer needed;~~

36
37 (iv) ~~The child is living with a foster parent or Indian custodian who is~~
38 ~~unable or unwilling to adopt the child because of exceptional~~
39 ~~circumstances, but who is willing and capable of providing the~~
40 ~~child with a stable and permanent home, and removal from the~~
41 ~~home of the foster parent or Indian custodian would be~~
42 ~~detrimental to the emotional well-being of the child. This~~
43 ~~exception does not apply to (1) a child under 6 or (2) a child who~~

1 has a sibling under 6 who is also a dependent and with whom the
2 child should be placed permanently; or

3
4 ~~(v) There would be a substantial interference with the child's~~
5 ~~relationship with a sibling, taking into consideration the nature~~
6 ~~and extent of the relationship. To make this determination, the~~
7 ~~court may consider whether the child was raised in the same~~
8 ~~home as the sibling, whether the child and the sibling shared~~
9 ~~common experiences or have close and strong bonds, and~~
10 ~~whether ongoing contact with the sibling is in the child's best~~
11 ~~interest. For purposes of this subdivision, determination of the~~
12 ~~child's best interest may include a comparison of the child's~~
13 ~~long-term emotional interest with the benefit of legal permanency~~
14 ~~in an adoptive home.~~

15
16 ~~(vi) The child is an Indian child and termination of parental rights~~
17 ~~would substantially interfere with the child's connection to his or~~
18 ~~her tribal community or the child's tribal membership rights, or~~
19 ~~the child's tribe has identified guardianship, long-term foster care~~
20 ~~with a fit and willing relative, tribal customary adoption, or~~
21 ~~another planned permanent living arrangement as the appropriate~~
22 ~~permanent plan for the child.~~

23
24 ~~(3) The court must not fail to find that the child is likely to be adopted based on~~
25 ~~the fact that the child is not yet placed in a preadoptive home or with a~~
26 ~~relative or foster family willing to adopt the child.~~

27
28 ~~(4)(2) The party claiming that termination of parental rights would be detrimental~~
29 ~~to the child has the burden of proving the detriment.~~

30
31 ~~(5) If the court finds termination of parental rights to be detrimental to the child~~
32 ~~for reasons stated in (2)(B), the court must state the reasons in writing or on~~
33 ~~the record.~~

34
35 ~~(6) If termination of parental rights would not be detrimental to the child, but the~~
36 ~~child is difficult to place for adoption because the child (1) is a member of a~~
37 ~~sibling group that should stay together; (2) has a diagnosed medical, physical,~~
38 ~~or mental handicap; or (3) is 7 years of age or older and no prospective~~
39 ~~adoptive parent is identified or available, the court may, without terminating~~
40 ~~parental rights, identify adoption as a permanent placement goal and order~~
41 ~~the public agency responsible for seeking adoptive parents to make efforts to~~
42 ~~locate an appropriate adoptive family for a period not to exceed 180 days.~~
43 ~~During the 180-day period, in order to identify potential adoptive parents, the~~

1 agency responsible for seeking adoptive parents for each child must, to the
2 extent possible, ask each child who is 10 years of age or older and who is
3 placed in out of home placement for six months or longer to identify any
4 individuals who are important to the child. The agency may ask any other
5 child to provide that information, as appropriate. After that period the court
6 must hold another hearing and proceed according to (1), (2), or (7).
7

8 ~~(7)~~(3) If the court finds that (2)(A) or (2)(B) applies, the court must appoint the
9 present custodian or other appropriate person to become the child's legal
10 guardian or must order the child to remain in foster care.
11

12 (A) ~~If the court orders that the child remain in foster care, it must identify~~
13 ~~the foster care setting by name and identify a specific permanency goal~~
14 ~~for the child. The court may order that the name and address of the~~
15 ~~foster home remain confidential.~~
16

17 ~~(B) Legal guardianship must be given preference over foster care when it is~~
18 ~~in the interest of the child and a suitable guardian can be found.~~
19

20 ~~(C) A child who is 10 years of age or older who is placed in a out of home~~
21 ~~placement for six months or longer must be asked to identify any adults~~
22 ~~who are important to him or her in order for the agency to investigate~~
23 ~~and the court to determine whether any of those adults would be~~
24 ~~appropriate to serve as legal guardians. Other children may be asked for~~
25 ~~this information, as age and developmentally appropriate.~~
26

27 ~~(D)~~(B) If the court finds that removal of the child from the home of a foster
28 parent or relative who is not willing to become a legal guardian for the
29 child would be seriously detrimental to the emotional well-being of the
30 child, then the child must not be removed. The foster parent or relative
31 must be willing to provide, and capable of providing, a stable and
32 permanent home for the child and must have substantial psychological
33 ties with the child.
34

35 ~~(E) The court must make an order for visitation with each parent or~~
36 ~~guardian unless the court finds by a preponderance of the evidence that~~
37 ~~the visitation would be detrimental to the child.~~
38

39 ~~(8)~~(4) The court must consider the case plan submitted for this hearing and must
40 find as follows:
41

42 (A) The child was actively involved in the development of his or her own
43 case plan and plan for permanent placement as age and

1 developmentally appropriate, including being asked for a statement
2 regarding his or her permanent placement plan, and the case plan
3 contains the social worker's assessment of those stated wishes; or
4

5 (B) The child was not actively involved in the development of his or her
6 own case plan and plan for permanent placement, including being
7 asked for a statement regarding his or her permanent placement plan
8 and the case plan does not contain the social worker's assessment of
9 those stated wishes. If the court makes such a finding, the court must
10 order the agency to actively involve the child in the development of his
11 or her own case plan and plan for permanent placement, including
12 asking the child for a statement regarding his or her permanent plan,
13 unless the court finds that the child is unable, unavailable, or unwilling
14 to participate. If the court finds that the case plan does not contain the
15 social worker's assessment of the child's stated wishes, the court must
16 order the agency to submit the assessment to the court; and
17

18 (C) In the case of an Indian child, the agency consulted with the child's
19 tribe and the tribe was actively involved in the development of the case
20 plan and plan for permanent placement, including consideration of
21 whether tribal customary adoption is an appropriate permanent plan for
22 the child if reunification is unsuccessful; or
23

24 (D) In the case of an Indian child, the agency did not consult with the
25 child's tribe. If the court makes such a finding, the court must order the
26 agency to consult with the tribe, unless the court finds that the tribe is
27 unable, unavailable, or unwilling to participate.
28

29 ~~(9)~~(5) For a child 12 years of age or older and in a permanent placement, the court
30 must consider the case plan and must find as follows:
31

32 (A) The child was given the opportunity to review the case plan, sign it, and
33 receive a copy; or
34

35 (B) The child was not given the opportunity to review the case plan, sign it,
36 and receive a copy. If the court makes such a finding, the court must
37 order the agency to give the child the opportunity to review the case
38 plan, sign it, and receive a copy.
39

40 ~~(10)~~(6) If no adult is available to become legal guardian, and no suitable foster
41 home is available, the court may order the care, custody, and control of the
42 child transferred to a licensed foster family agency, subject to further orders
43 of the court.

1
2 **(e) Procedures—adoption**
3

4 ~~(1) The court may not terminate parental rights or order adoption if a review of~~
5 ~~the prior findings and orders reveals that at each and every prior hearing at~~
6 ~~which the court was required to consider reasonable efforts or services the~~
7 ~~court found that reasonable efforts had not been made or that reasonable~~
8 ~~services had not been offered or provided. If at any prior hearing the court~~
9 ~~found that reasonable efforts had been made or that reasonable services had~~
10 ~~been offered or provided, the court may terminate parental rights.~~

11
12 ~~(2)~~(1) An order of the court terminating parental rights, ordering adoption under
13 section 366.26, or, in the case of an Indian child, ordering tribal customary
14 adoption under section 366.24 is conclusive and binding on the child, the
15 parent, and all other persons who have been served under the provisions of
16 section 294. The order may not be set aside or modified by the court, except
17 as provided in rules 5.538, 5.540, and 5.542 with regard to orders by a
18 referee.

19
20 ~~(3) If the court declares the child free from custody and control of the parents,~~
21 ~~the court must at the same time order the child referred to a licensed county~~
22 ~~adoption agency for adoptive placement. A petition for adoption of the child~~
23 ~~may be filed and heard in the juvenile court but may not be granted until the~~
24 ~~appellate rights of all parents have been exhausted.~~

25
26 ~~(4)~~(2) In the case of an Indian child for whom tribal customary adoption has been
27 ordered in accordance with section 366.24, the court may continue the
28 hearing for up to 120 days to permit the tribe to complete the process for
29 tribal customary adoption. In its discretion, the court may grant a further
30 continuance not exceeding 60 days.

31
32 (A) No less than 20 days before the date set for the continued hearing, the
33 tribe must file the completed tribal customary adoption order with the
34 court.

35
36 (B) The social worker must file an addendum report with the court at least
37 7 days before the hearing.

38
39 (C) If the tribe does not file the tribal customary adoption order within the
40 designated time period, the court must make new findings and orders
41 under section 366.26(b) and select a new permanent plan for the child.
42

1 **(f) Procedures—legal guardianship**

2
3 The proceedings for appointment of a legal guardian for a dependent child of the
4 juvenile court must be in the juvenile court as provided in rule 5.735.

5
6 **(g) Purpose of termination of parental rights**

7
8 The purpose of termination of parental rights is to free the child for adoption.
9 Therefore, the court must not terminate the rights of only one parent unless that
10 parent is the only surviving parent, or the rights of the other parent have been
11 terminated by a California court of competent jurisdiction or by a court of
12 competent jurisdiction of another state under the statutes of that state, or the other
13 parent has relinquished custody of the child to the county welfare department. The
14 rights of all parents—whether natural, presumed, biological, alleged, or unknown—
15 must be terminated in order to free the child for adoption.

16
17 **(h) Advisement of appeal rights**

18
19 The court must advise all parties of their appeal rights as provided in rule 5.585 and
20 section 366.26(1).

21
22 **Rule 5.726. Prospective adoptive parent designation (§ 366.26(n))**

23
24 **(a) Request procedure**

25
26 A dependent child’s caregiver may be designated as a prospective adoptive parent.
27 The court may make the designation on its own motion or on a request by a
28 caregiver, the child, a social worker, the child’s identified Indian tribe, or the
29 attorney for any of these parties.

- 30
31 (1) A request for designation as a prospective adoptive parent may be made at a
32 hearing where parental rights are terminated or a plan of tribal customary
33 adoption is ordered or thereafter, whether or not the child’s removal from the
34 home of the prospective adoptive parent is at issue.
35
36 (2) A request may be made orally.
37
38 (3) If a request for prospective adoptive parent designation is made in writing, it
39 must be made on *Request for Prospective Adoptive Parent Designation* (form
40 JV-321).
41
42 (4) The address and telephone number of the caregiver and the child may be kept
43 confidential by filing *Confidential Information—Prospective Adoptive Parent*

(form JV-322), with form JV-321. Form JV-322 must be kept in the court file under seal, and only the court, the child’s attorney, the agency, and the child’s CASA volunteer may have access to this information.

(b) ~~Criteria for designation as prospective adoptive parent~~ Facilitation steps

~~A caregiver must meet the following criteria to be designated as a prospective adoptive parent:~~

- ~~(1) The child has lived with the caregiver for at least six months;~~
- ~~(2) The caregiver currently expresses a commitment to adopt the child; and~~
- ~~(3) The caregiver has taken at least one step to facilitate the adoption process. Steps to facilitate the adoption process include: those listed in 366.26(n)(2) and in
 - ~~(A) Applying for an adoption home study;~~
 - ~~(B) Cooperating with an adoption home study;~~
 - ~~(C) Being designated by the court or the licensed adoption agency as the adoptive family;~~
 - ~~(D) In the case of an Indian child when tribal customary adoption has been identified as the child’s permanent plan, the child’s identified Indian tribe has designated the caregiver as the prospective adoptive parent;~~
 - ~~(E) Requesting de facto parent status;~~
 - ~~(F) Signing an adoptive placement agreement;~~
 - ~~(G) Discussing a postadoption contact agreement with the social worker, child’s attorney, child’s CASA volunteer, adoption agency, or court;~~
 - ~~(H) Working to overcome any impediments that have been identified by the California Department of Social Services and the licensed adoption agency; and~~
 - ~~(I) Attending any of the classes required of prospective adoptive parents.~~~~

(c) Hearing on request for prospective adoptive parent designation

1 The court must evaluate whether the caregiver meets the criteria in (b).

2
3 (1) The petitioner must show on the request that the caregiver meets the criteria
4 in ~~(b)~~, 366.26(n)(1).

5
6 (2) If the court finds that the petitioner does not show that the caregiver meets
7 the criteria in ~~(b)~~, 366.26(n)(1), the court may deny the request without a
8 hearing.

9
10 (3) If the court finds that the petitioner has shown that the current caregiver
11 meets the criteria in ~~(b)~~, 366.26(n)(1), the court must set a hearing as set forth
12 in (4) below.

13
14 (4) If it appears to the court that the request for designation as a prospective
15 adoptive parent will be contested, or if the court wants to receive further
16 evidence on the request, the court must set a hearing.

17
18 (A) If the request for designation is made at the same time as an objection
19 to removal, the court must set a hearing as follows:

20
21 (i) The hearing must be set as soon as possible and not later than
22 five court days after the objection is filed with the court.

23
24 (ii) If the court for good cause is unable to set the matter for hearing
25 five court days after the petition is filed, the court must set the
26 matter for hearing as soon as possible.

27
28 (iii) The matter may be set for hearing more than five court days after
29 the objection is filed if this delay is necessary to allow
30 participation by the child's identified Indian tribe or the child's
31 Indian custodian.

32
33 (B) If the request for designation is made before a request for removal is
34 filed or before an emergency removal has occurred, the court must
35 order that the hearing be set at a time within 30 calendar days after the
36 filing of the request for designation.

37
38 (5) If all parties stipulate to the request for designation of the caregiver as a
39 prospective adoptive parent, the court may order the designation without a
40 hearing.

41
42 **(d) Notice of designation hearing**

43

1 After the court has ordered a hearing on a request for prospective-adoptive-parent
2 designation, notice of the hearing must be as described below.

3
4 (1) The following participants must be noticed:

5
6 (A) The adoption agency;

7
8 (B) The current caregiver,

9
10 (C) The child's attorney;

11
12 (D) The child, if the child is 10 years of age or older;

13
14 (E) The child's identified Indian tribe if any;

15
16 (F) The child's Indian custodian if any; and

17
18 (G) The child's CASA program if any.

19
20 (2) If the request for designation was made at the same time as a request for
21 hearing on a proposed or emergency removal, notice of the designation
22 hearing must be provided with notice of the proposed removal hearing, as
23 stated in rule 5.727.

24
25 (3) If the request for designation was made before a request for removal was
26 filed or before an emergency removal occurred, notice must be as follows:

27
28 (A) Service of the notice must be either by first-class mail sent at least 15
29 calendar days before the hearing date to the last known address of the
30 person to be noticed, or by personal service on the person at least 10
31 calendar days before the hearing.

32
33 (B) *Prospective Adoptive Parent Designation Order* (form JV-327) must be
34 used to provide notice of a hearing on the request for prospective
35 adoptive parent designation.

36
37 (C) The clerk must provide notice of the hearing to the participants listed in
38 (1) above, if the court, caregiver, or child requested the hearing.

39
40 (D) The child's attorney must provide notice of the hearing to the
41 participants listed in (1) above, if the child's attorney requested the
42 hearing.

43

1 (E) *Proof of Notice* (form JV-326) must be filed with the court before the
2 hearing on the request for prospective adoptive parent designation.

3
4 **(e) Termination of designation**

5
6 If the prospective adoptive parent no longer meets the criteria in ~~rule 5.726(b)~~,
7 section 366.26(n)(1), a request to vacate the order designating the caregiver as a
8 prospective adoptive parent may be filed under section 388 and rule 5.570.

9
10 **(f) Confidentiality**

11
12 If the telephone or address of the caregiver or the child is confidential, all forms
13 must be kept in the court file under seal. Only the court, the child's attorney, the
14 agency, and the child's CASA volunteer may have access to this information.

15
16 **Rule 5.727. Proposed removal (§ 366.26(n))**

17
18 **(a) Application of rule**

19
20 This rule applies, after termination of parental rights or, in the case of tribal
21 customary adoption, modification of parental rights, to the removal by the
22 Department of Social Services (DSS) or a licensed adoption agency of a dependent
23 child from a prospective adoptive parent under rule 5.726(b) or from a caregiver
24 who may meet the criteria for designation as a prospective adoptive parent under
25 rule 5.726(b). This rule does not apply if the caregiver requests the child's removal.

26
27 **(b) Participants to be served with notice**

28
29 Before removing a child from the home of a prospective adoptive parent under rule
30 5.726(b) or from the home of a caregiver who may meet the criteria of a
31 prospective adoptive parent under rule 5.726(b), and as soon as possible after a
32 decision is made to remove the child, the agency must notify the following
33 participants of the proposed removal:

- 34
35 (1) The court;
- 36
37 (2) The current caregiver, if that caregiver either is a designated prospective
38 adoptive parent or, on the date of service of the notice, meets the criteria in
39 ~~rule 5.726(b)~~ section 366.26(n)(1);
- 40
41 (3) The child's attorney;
- 42
43 (4) The child, if the child is 10 years of age or older;

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- (5) The child’s identified Indian tribe if any;
- (6) The child’s Indian custodian if any; and
- (7) The child’s CASA program if any.

(c) Form of notice

DSS or the agency must provide notice on *Notice of Intent to Remove Child* (form JV-323). A blank copy of *Objection to Removal* (form JV-325) and *Request for Prospective Adoptive Parent Designation* (form JV-321) must also be provided.

(d) Service of notice

DSS or the agency must serve notice of its intent to remove a child as follows:

- (1) DSS or the agency must serve notice either by first-class mail, sent to the last known address of the person to be noticed, or by personal service.
- (2) If service is by first-class mail, service is completed and time to respond is extended by five calendar days.
- (3) Notice to the child’s identified Indian tribe and Indian custodian must be given under rule 5.481.
- (4) Proof of service of the notice on *Proof of Notice* (form JV-326) must be filed with the court.

(e) Objection to proposed removal

Each participant who receives notice under (b) may object to the proposed removal of the child and may request a hearing.

- (1) A request for hearing on the proposed removal must be made on *Objection to Removal* (form JV-325).
- (2) A request for hearing on the proposed removal must be made within five court or seven calendar days from date of notification, whichever is longer. If service is by mail, time to respond is extended by five calendar days.
- (3) The court must order a hearing as follows:

- 1 (A) The hearing must be set as soon as possible and not later than five court
2 days after the objection is filed with the court.
3
4 (B) If the court for good cause is unable to set the matter for hearing five
5 court days after the petition is filed, the court must set the matter for
6 hearing as soon as possible.
7
8 (C) The matter may be set for hearing more than five court days after the
9 objection is filed if this delay is necessary to allow participation by the
10 child's identified Indian tribe or the child's Indian custodian.
11

12 **(f) Notice of hearing on proposed removal**

13
14 After the court has ordered a hearing on a proposed removal, notice of the hearing
15 must be as follows:
16

- 17 (1) The clerk must provide notice of the hearing to the agency and the
18 participants listed in (b) above, if the court, caregiver, or child requested the
19 hearing.
20
21 (2) The child's attorney must provide notice of the hearing to the agency and the
22 participants listed in (b) above, if the child's attorney requested the hearing.
23
24 (3) Notice must be either by personal service or by telephone. Notice by personal
25 service must include a copy of the forms *Notice of Intent to Remove Child*
26 (form JV-323) and *Objection to Removal* (form JV-325). Telephone notice
27 must include the reasons for and against the removal, as indicated on forms
28 JV-323 and JV-325.
29
30 (4) Proof of notice on *Proof of Notice* (form JV-326) must be filed with the
31 court before the hearing on the proposed removal.
32

33 **(g) Burden of proof**

34
35 At a hearing on an intent to remove the child, the agency intending to remove the
36 child must prove by a preponderance of the evidence that the proposed removal is
37 in the best interest of the child.
38

39 **(h) Confidentiality**

40
41 If the telephone or address of the caregiver or the child is confidential, all forms
42 must be kept in the court file under seal. Only the court, the child's attorney, the
43 agency, and the child's CASA volunteer may have access to this information.

1
2 **(i) Appeal**

3
4 If the court order made after a hearing on an intent to remove a child is appealed,
5 the appeal must be made under rules 8.454 and 8.456.
6

7 **Rule 5.728. Emergency removal (§ 366.26(n))**

8
9 **(a) Application of rule**

10
11 This rule applies, after termination of parental rights or, in the case of tribal
12 customary adoption, modification of parental rights, to the removal by the
13 Department of Social Services (DSS) or a licensed adoption agency of a dependent
14 child from a prospective adoptive parent under rule 5.726(b) or from a caregiver
15 who may meet the criteria for designation as a prospective adoptive parent under
16 rule 5.726(b) when the DSS or the licensed adoption agency has determined a
17 removal must occur immediately due to a risk of physical or emotional harm. This
18 rule does not apply if the child's removal is carried out at the request of the
19 caregiver.
20

21 **(b) Participants to be noticed**

22
23 After removing a child from the home of a prospective adoptive parent under rule
24 5.726(b), or from the home of a caregiver who may meet the criteria of a
25 prospective adoptive parent under rule 5.726(b), because of immediate risk of
26 physical or emotional harm, the agency must notify the following participants of
27 the emergency removal:
28

- 29 (1) The court;
- 30
31 (2) The current caregiver, if that caregiver either is a designated prospective
32 adoptive parent or, on the date of service of the notice, meets the criteria in
33 ~~rule 5.726(b)~~ section 366.26(n)(1);
- 34
35 (3) The child's attorney;
- 36
37 (4) The child if the child is 10 years of age or older;
- 38
39 (5) The child's identified Indian tribe if any;
- 40
41 (6) The child's Indian custodian if any; and
- 42
43 (7) The child's CASA program if any.

1
2 **(c) Form of notice**

3
4 *Notice of Emergency Removal* (form JV-324) must be used to provide notice of an
5 emergency removal, as described below.

- 6
7 (1) The agency must provide notice of the emergency removal as soon as
8 possible but no later than two court days after the removal.
9
10 (2) Notice must be either by telephone or by personal service of the form.
11
12 (3) Telephone notice must include the reasons for removal as indicated on the
13 form, and notice of the right to object to the removal.
14
15 (4) Whenever possible, the agency, at the time of the removal, must give a blank
16 copy of the form to the caregiver and, if the child is 10 years of age or older,
17 the child.
18
19 (5) Notice to the court must be by filing of the form with the court. The proof of
20 notice included on the form must be completed when the form is filed with
21 the court.
22

23 **(d) Objection to emergency removal**

24
25 Each participant who receives notice under (b) may object to the removal of the
26 child and may request a hearing.

- 27
28 (1) A request for hearing on the emergency removal must be made on *Objection*
29 *to Removal* (form JV-325).
30
31 (2) The court must order a hearing as follows:
32
33 (A) The hearing must be set as soon as possible and not later than five court
34 days after the objection is filed with the court.
35
36 (B) If the court for good cause is unable to set the matter for hearing within
37 five court days after the petition is filed, the court must set the matter
38 for hearing as soon as possible.
39
40 (C) The matter may be set for hearing more than five court days after the
41 objection is filed if this delay is necessary to allow participation by the
42 child's identified Indian tribe or the child's Indian custodian.
43

1 (e) **Notice of emergency removal hearing**

2
3 After the court has ordered a hearing on an emergency removal, notice of the
4 hearing must be as follows:

- 5
6 (1) Notice must be either by personal service or by telephone. Notice by personal
7 service must include a copy of *Notice of Emergency Removal* (form JV-324).
8 Telephone notice must include the reasons for and against the removal, as
9 indicated on forms JV-324 and JV-325.
10
11 (2) The clerk must provide notice of the hearing to the agency and the
12 participants listed in (b) above, if the court, the caregiver, or the child
13 requested the hearing.
14
15 (3) The child’s attorney must provide notice of the hearing to the agency and the
16 participants listed in (b) above, if the child’s attorney requested the hearing.
17
18 (4) Proof of notice on *Proof of Notice* (form JV-326) must be filed with the court
19 before the hearing on the emergency removal.
20

21 (f) **Burden of proof**

22
23 At a hearing on an emergency removal, the agency that removed the child must
24 prove by a preponderance of the evidence that the removal is in the best interest of
25 the child.
26

27 (g) **Confidentiality**

28
29 If the telephone or address of the caregiver or the child is confidential, all forms
30 must be kept in the court file under seal. Only the court, the child’s attorney, the
31 agency, and the child’s CASA volunteer and program may have access to this
32 information.
33

34 **Rule 5.730. Adoption**

35
36 (a) **Procedures—adoption**

- 37
38 (1) The petition for the adoption of a dependent child who has been freed for
39 adoption may be filed in the juvenile court with jurisdiction over the
40 dependency.
41
42 (2) All adoption petitions must be completed on *Adoption Request* (form
43 ADOPT-200) and must be verified. In addition, the petitioner must complete

1 *Adoption Agreement* (form ADOPT-210) and *Adoption Order* (form
2 ADOPT-215).

3
4 (3) A petitioner seeking to adopt an Indian child must also complete *Adoption of*
5 *Indian Child* (form ADOPT-220). If applicable, *Parent of Indian Child*
6 *Agrees to End Parental Rights* (form ADOPT-225) may be filed.

7
8 (4) The clerk must open a confidential adoption file for each child and this file
9 must be separate and apart from the dependency file, with an adoption case
10 number different from the dependency case number.

11
12 **(b) Notice**

13
14 The clerk of the court must give notice of the adoption hearing to:

15
16 (1) Any attorney of record for the child;

17
18 (2) Any CASA volunteer;

19
20 (3) The child welfare agency;

21
22 (4) The tribe of an Indian child; and

23
24 (5) The California Department of Social Services. The notice to the California
25 Department of Social Services must include a copy of the completed
26 *Adoption Request* (form ADOPT-200) and a copy of any adoptive placement
27 agreement or agency joinder filed in the case.

28
29 **(c) Hearing**

30
31 If the petition for adoption is filed in the juvenile court, the proceeding for adoption
32 must be heard in juvenile court once appellate rights have been exhausted. Each
33 petitioner and the child must be present at the hearing. The hearing may be heard
34 by a referee if the referee is acting as a temporary judge.

35
36 **(d) Record**

37
38 The record must reflect that the court has read and considered the assessment
39 prepared for the hearing held under section 366.26 and as required by section
40 366.22(b), the report of any CASA volunteer, and any other reports or documents
41 admitted into evidence.

1 (e) **Assessment**

2
3 The preparer of the assessment may be called and examined by any party to the
4 adoption proceeding.

5
6 (f) **Consent**

7
8 (1) At the hearing, each adoptive parent must execute *Adoption Agreement* (form
9 ADOPT-210) in the presence of and with the acknowledgment of the court.

10
11 (2) If the child to be adopted is 12 years of age or older, he or she must also
12 execute *Adoption Agreement* (form ADOPT-210), except in the case of a
13 tribal customary adoption.

14
15 (g) **Dismissal of jurisdiction**

16
17 If the petition for adoption is granted, the juvenile court must dismiss the
18 dependency, terminate jurisdiction over the child, and vacate any previously set
19 review hearing dates. A completed *Termination of Dependency (Juvenile)* (form
20 JV-364) must be filed in the child’s juvenile dependency file.

21
22
23 **Advisory Committee Comment**

24
25 Family Code section 8600.5 exempts tribal customary adoption from various provisions of the
26 Family Code applicable to adoptions generally, including section 8602, which requires the
27 consent of a child over the age of 12 to an adoption. However, under Welfare and Institutions
28 Code section 366.24(c)(7), “[t]he child, birth parents, or Indian custodian and the tribal customary
29 adoptive parents and their counsel, if applicable, may present evidence to the tribe regarding the
30 tribal customary adoption and the child’s best interest.” Under Welfare and Institutions Code
31 section 317(e), for all children over 4 years of age, the attorney for the child must determine the
32 child’s wishes and advise the court of the child’s wishes. Welfare and Institutions Code section
33 361.31(e) provides that “[w]here appropriate, the placement preference of the Indian child, when
34 of sufficient age, . . . shall be considered.” This is consistent with Guideline F-3 of the *Guidelines*
35 *for State Courts; Indian Child Custody Proceedings* issued by the Bureau of Indian Affairs on
36 November 26, 1979, which recognizes that the request and wishes of a child of sufficient age are
37 important in making an effective placement. The committee concludes, therefore, that while the
38 consent of a child over the age of 12 is not required for a tribal customary adoption, the wishes of
39 a child are still an important and appropriate factor for the court to consider and for children’s
40 counsel to ascertain and present to the court when determining whether tribal customary adoption
41 is the appropriate permanent plan for an Indian child.

1 **Rule 5.735. Legal guardianship**

2
3 **(a) Proceedings in juvenile court (§ 366.26(d))**

4
5 The proceedings for the appointment of a legal guardian for a dependent child must
6 be in the juvenile court. The request for appointment of a guardian must be
7 included in the social study report prepared by the county welfare department or in
8 the assessment prepared for the hearing under section 366.26. Neither a separate
9 petition nor a separate hearing is required.

10
11 **(b) Notice; hearing**

12
13 Notice for the guardianship hearing must be given under section 294, and the
14 hearing must proceed under section 366.26.

15
16 **(c) Conduct of hearing**

- 17
18 (1) Before appointing a guardian, the court must read and consider the social
19 study report specified in section 366.26 and note its consideration in the
20 minutes of the court.
21
22 (2) The preparer of the social study report may be called in and examined by any
23 party to the proceedings.
24

25 **(d) Findings and orders**

- 26
27 (1) If the court finds that legal guardianship is the appropriate permanent plan,
28 the court must appoint the guardian and order the clerk to issue letters of
29 guardianship, which will not be subject to the confidentiality protections of
30 juvenile court documents as described in section 827.
31
32 (2) The court ~~may~~ must issue orders regarding visitation of the child by a parent
33 or ~~other relative~~ guardian, unless the court finds that visitation would be
34 detrimental to the physical or emotional well-being of the child.
35
36 (3) The court may issue orders regarding visitation of the child by a relative.
37
38 ~~(3)~~ (4) On appointment of a guardian under section 366.26, the court may terminate
39 dependency.
40

41 **(e) Notification of appeal rights**

42
43 The court must advise all parties of their appeal rights as provided in rule 5.585.

1 **Rule 5.740. Hearings subsequent to a permanent plan (§§ 366.26, 366.3)**

2
3 **(a) Review hearings—adoption and guardianship**

4
5 Following an order for termination of parental rights or, in the case of tribal
6 customary adoption, modification of parental rights, or a plan for the establishment
7 of a guardianship under section 366.26, the court must retain jurisdiction and
8 conduct review hearings at least every 6 months to ensure the expeditious
9 completion of the adoption or guardianship.

10
11 (1) At the review hearing, the court must consider the report of the petitioner
12 required by section 366.3(g), the report of any CASA volunteer, the case plan
13 submitted for this hearing, and any report submitted by the child’s caregiver
14 under section 366.21(d); inquire about the progress being made to provide a
15 permanent home for the child; consider the safety of the child; and enter
16 findings as required by section 366.3(e).

17
18 (2) When adoption is granted, the court must terminate its jurisdiction.

19
20 (3) When legal guardianship is granted, the court may continue dependency
21 jurisdiction if it is in the best interest of the child, or the court may terminate
22 dependency jurisdiction and retain jurisdiction over the child as a ward of the
23 guardianship.

24
25 (4) Notice of the hearing must be given as provided in section 295.

26
27 **(b) Review hearings—foster care**

28
29 Following the establishment of a plan other than those provided for in (a), review
30 hearings must be conducted at least every 6 months by the court or by a local
31 administrative review panel.

32
33 (1) At the review hearing, the court or administrative review panel must consider
34 the report of the petitioner, the report of any CASA volunteer, the case plan
35 submitted for this hearing, and any report submitted by the child’s caregiver
36 under section 366.21(d); inquire about the progress being made to provide a
37 permanent home for the child; consider the safety of the child; and enter
38 findings regarding each item listed in section 366.3(e).

39
40 (2) The court or administrative review panel must consider the case plan
41 submitted for this hearing and must find as follows:
42

- 1 (A) The child was actively involved in the development of his or her own
2 case plan and plan for permanent placement as age and
3 developmentally appropriate; or
4
- 5 (B) The child was not actively involved in the development of his or her
6 own case plan and plan for permanent placement as age and
7 developmentally appropriate. If the court or administrative review
8 panel makes such a finding, the court must order the agency to actively
9 involve the child in the development of his or her own case plan and
10 plan for permanent placement, unless the court finds that the child is
11 unable, unavailable, or unwilling to participate.
12
- 13 (3) For a child 12 years of age or older and in a permanent placement, the court
14 must consider the case plan and must find as follows:
15
- 16 (A) The child was given the opportunity to review the case plan, sign it, and
17 receive a copy; or
18
- 19 (B) The child was not given the opportunity to review the case plan, sign it,
20 and receive a copy. If the court makes such a finding, the court must
21 order the agency to give the child the opportunity to review the case
22 plan, sign it, and receive a copy.
23
- 24 (4) If the child is not placed for adoption, the court or administrative review
25 panel must find as follows:
26
- 27 (A) The agency has made diligent efforts to locate an appropriate relative;
28 or
29
- 30 (B) The agency has not made diligent efforts to locate an appropriate
31 relative. If the court or administrative review panel makes such a
32 finding, the court or administrative review panel must order the agency
33 to make diligent efforts to locate an appropriate relative; and
34
- 35 (C) Each relative whose name has been submitted to the agency as a
36 possible caregiver has been evaluated as an appropriate placement
37 resource; or
38
- 39 (D) Each relative whose name has been submitted to the agency as a
40 possible caregiver has not been evaluated as an appropriate placement
41 resource. If the court or administrative review panel makes such a
42 finding, the court or administrative review panel must order the agency

1 to evaluate as an appropriate placement resource, each relative whose
2 name has been submitted to the agency as a possible caregiver.
3

4 (4) ~~(5)~~ No less frequently than once every 12 months, the court must conduct a
5 review of the previously ordered permanent plan to consider whether the plan
6 continues to be appropriate for the child. The review of the permanent plan
7 may be combined with the 6-month review.
8

9 ~~(5)~~ (6) If circumstances have changed since the permanent plan was ordered, the
10 court may order a new permanent plan under section 366.26 at any
11 subsequent hearing, or any party may seek a new permanent plan by a motion
12 filed under section 388 and rule 5.570.
13

14 ~~(6)~~ (7) Notice of the hearing must be given as provided in section 295.
15

16 ~~(7)~~ (8) The court must continue the child in foster care unless the parents prove, by
17 a preponderance of the evidence, that further efforts at reunification are the
18 best alternative for the child. In those cases, the court may order reunification
19 services for a period not to exceed 6 months.
20

21 ~~(8)~~ ~~At a review held 12 months after an original or subsequent order for the child~~
22 ~~to remain in foster care, the court must consider all permanency planning~~
23 ~~options, including whether the child should be returned to a parent or~~
24 ~~guardian, placed for adoption, or appointed a legal guardian. If the court~~
25 ~~orders that the child remain in foster care, it must identify the foster care~~
26 ~~setting by name and identify a specific permanency goal for the child. The~~
27 ~~court may order that the name and address of the foster home remain~~
28 ~~confidential.~~
29

30 ~~(9)~~ ~~At a review held 12 months after an original or subsequent order for the child~~
31 ~~to remain in foster care, the court must order a hearing under section 366.26~~
32 ~~unless the court finds by clear and convincing evidence that there is a~~
33 ~~compelling reason for determining that a section 366.26 hearing is not in the~~
34 ~~child's best interest because the child is being returned to the home of the~~
35 ~~parent, the child is not a proper subject for adoption, or there is no one~~
36 ~~available to assume guardianship.~~
37

38 ~~(10)~~ ~~If the court makes the findings in (9), the court may order that the child~~
39 ~~remain in foster care.~~
40

41 (c) **Hearing on petition to terminate guardianship or modify guardianship orders**
42

1 A petition to terminate a guardianship established by the juvenile court, to appoint
2 a successor guardian, or to modify or supplement orders concerning the
3 guardianship must be filed in juvenile court. The procedures described in rule 5.570
4 must be followed, and *Request to Change Court Order* (form JV-180) must be
5 used.

- 6
- 7 (1) Proceedings on a petition to terminate a guardianship established under
8 section 366.26 must be heard in the juvenile court. If dependency was
9 terminated at the time of or subsequent to the appointment of the guardian,
10 and dependency is later declared in another county, proceedings to terminate
11 the guardianship may be held in the juvenile court with current dependency
12 jurisdiction.
- 13
- 14 (2) Not less than 15 court days before the hearing date, the petitioner must serve
15 notice of the hearing on the department of social services; the guardian; the
16 child, if 10 years or older; parents whose parental rights have not been
17 terminated; the court that established the guardianship, if in another county;
18 and counsel of record for those entitled to notice.
- 19
- 20 (3) At the hearing on the petition to terminate the guardianship, the court may do
21 one of the following:
- 22
- 23 (A) Deny the petition to terminate guardianship;
- 24
- 25 (B) Deny the petition and request the county welfare department to provide
26 services to the guardian and the ward for the purpose of maintaining the
27 guardianship, consistent with section 301; or
- 28
- 29 (C) Grant the petition to terminate the guardianship.
- 30
- 31 (4) If the petition is granted and the court continues or resumes dependency, the
32 court must order that a new plan be developed to provide stability and
33 permanency to the child. Unless the court has already scheduled a hearing to
34 review the child's status, the court must conduct a hearing within 60 days.
35 Parents whose parental rights have not been terminated must be notified of
36 the hearing on the new plan. The court may consider further efforts at
37 reunification only if the parent proves, by a preponderance of the evidence,
38 that the efforts would be the best alternative for the child.
- 39
- 40 (5) If the court terminates a guardianship established in another county, the clerk
41 of the county of current dependency jurisdiction must transmit a certified
42 copy of the order terminating guardianship within 15 days to the court that
43 established the original guardianship.

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**DISPOSITIONAL ATTACHMENT:
REMOVAL FROM CUSTODIAL PARENT—PLACEMENT WITH NONPARENT
(Welf. & Inst. Code, §§ 361, 361.2)**

1. The child is a person described by Welf. & Inst. Code, § 300 (check all that apply):
- | | | | | |
|---------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| <input type="checkbox"/> 300(a) | <input type="checkbox"/> 300(c) | <input type="checkbox"/> 300(e) | <input type="checkbox"/> 300(g) | <input type="checkbox"/> 300(i) |
| <input type="checkbox"/> 300(b) | <input type="checkbox"/> 300(d) | <input type="checkbox"/> 300(f) | <input type="checkbox"/> 300(h) | <input type="checkbox"/> 300(j) |
- and is adjudged a dependent of the court.**

Circumstances justifying removal from custodial parent

2. There is clear and convincing evidence of the circumstances stated in Welf. and Inst. Code, § 361 regarding the persons specified below (check all that apply):
- | | 361(c)(1) | 361(c)(2) | 361(c)(3) | 361(c)(4) | 361(c)(5) |
|---|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| a. <input type="checkbox"/> Mother | <input type="checkbox"/> |
| b. <input type="checkbox"/> Presumed father | <input type="checkbox"/> |
| c. <input type="checkbox"/> Biological father | <input type="checkbox"/> |
| d. <input type="checkbox"/> Legal guardian | <input type="checkbox"/> |
| e. <input type="checkbox"/> Indian custodian | <input type="checkbox"/> |
| f. <input type="checkbox"/> Other (specify): | <input type="checkbox"/> |

3. The child is may be an Indian child, and, by clear and convincing evidence, including testimony of a qualified expert witness, continued physical custody by the following person is likely to cause that child serious emotional or physical damage.
- | | | |
|---|--|---|
| <input type="checkbox"/> mother | <input type="checkbox"/> biological father | <input type="checkbox"/> legal guardian |
| <input type="checkbox"/> presumed father | <input type="checkbox"/> Indian custodian | |
| <input type="checkbox"/> other (specify): | | |

4. Reasonable efforts were were not made to prevent or eliminate the need for removal from the home.

5. The child is may be an Indian child, and,
- by clear and convincing evidence, active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family, and these efforts were unsuccessful.
 - active efforts were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family.
 - there has been consultation with the child's identified Indian tribe regarding whether tribal customary adoption is an appropriate permanent plan for the child if reunification is unsuccessful.

6. **Based on the facts stated on the record, continuance in the home is contrary to the child's welfare and physical custody is removed from** (check all that apply):
- | | | |
|---|--|---|
| <input type="checkbox"/> Mother | <input type="checkbox"/> Biological father | <input type="checkbox"/> Legal guardian |
| <input type="checkbox"/> Presumed father | <input type="checkbox"/> Indian custodian | |
| <input type="checkbox"/> Other (specify): | | |

Family finding and engagement

- The county agency has made diligent efforts to identify, locate, and contact the child's relatives.
- The county agency has not made diligent efforts to identify, locate, and contact the child's family members.
 - The county agency is ordered to make such diligent efforts, except for individuals the agency has determined to be inappropriate to contact because of their involvement with family or domestic violence.
 - The county agency must submit a report to the court on or before (date):
detailing the diligent efforts made and the results of such efforts.

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Case plan development

8. a. The county agency solicited and integrated into the case plan the input of the child mother father representative of child's identified Indian tribe other (*specify*):
- b. The county agency did not solicit and integrate into the case plan the input of the child mother father representative of child's identified Indian tribe other (*specify*):
and the agency is ordered to do so and submit an updated case plan within 30 days of the date of this hearing.
- c. The county agency did not solicit and integrate into the case plan the input of the child mother father representative of child's identified Indian tribe other (*specify*):
and the agency is not required to do so because these persons are unable, unavailable, or unwilling to participate.

Custody and Placement

9. The mother presumed father biological father did not reside with the child at the time the petition was filed and does does not desire custody of the child.
- a. By clear and convincing evidence, placement with the following parent would be detrimental to the safety, protection, or physical or emotional well-being of the child:
 Mother Presumed father Biological father
- b. The factual basis for the findings in this item is stated on the record.
10. **The care, custody, control, and conduct of the child is under the supervision of the county agency for placement**
- a. in the approved home of a relative.
- b. in the approved home of a nonrelative extended family member.
- c. in the foster home in which the child was placed before an interruption in foster care because that placement is in the child's best interest and space is available.
- d. with a foster family agency for placement in a foster family home.
- e. in a suitable licensed community care facility.
- f. in a home or facility in accordance with the federal Indian Child Welfare Act.
11. **Placement with the child's relative, (name):**
has been independently considered by the court and is denied for the reasons stated on the record.
12. **The statutory preference order for placement in a suitable Indian home is modified for good cause as**
- a. stated on the record.
- b. described in the social worker's report.
- c. Other (*specify*):
13. **The child's out-of-home placement is necessary.**
14. **The child's current placement is appropriate.**
15. **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.
- a. The matter is continued to the date and time indicated in form JV-415, item 17 for a written oral report by the county agency on the progress made in locating an appropriate place.
- b. Other (*specify*):

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16. **The child is placed outside the state of California and that out-of-state placement**
- a. continues to be the most appropriate placement for the child and is in the best interest of the child.
- b. is not the most appropriate placement for the child and is not in the best interest of the child.
 The matter is continued to the date and time indicated in form JV-415, item 17 for a written oral report by the county agency on the progress made toward.
- (1) returning the child to California and locating an appropriate placement within California.
- (2) locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
- (3) other (*specify*):

Reunification services

17. **Provision of reunification services to the biological father** will will not benefit the child.
18. **The mother is incarcerated** and is seeking to participate in the Department of Corrections and Rehabilitation community treatment program.
- a. Participation in the program is is not in the child's best interest.
- b. The program is is not suitable to meet the needs of the mother and child.

19. **The following person is incarcerated:**
- mother legal guardian other (*specify*):
- presumed father Indian custodian
- and reasonable reunification services are
- a. granted.
- b. denied, because, by clear and convincing evidence, providing reunification services would be detrimental to the child.

20. **As provided in Welf. & Inst. Code, § 361.5(b), by clear and convincing evidence:**
- a. The mother legal guardian other (*specify*):
- presumed father Indian custodian
- is a person described in Welf. & Inst. Code, § (*specify*):
- 361.5(b)(3) 361.5(b)(7) 361.5(b)(9) 361.5(b)(11) 361.5(b)(13)
- 361.5(b)(4) 361.5(b)(8) 361.5(b)(10) 361.5(b)(12) 361.5(b)(15)
- and reunification services are
- (1) granted, because, by clear and convincing evidence, reunification is in the best interest of the child.
- (2) denied.
- b. The mother legal guardian other (*specify*):
- presumed father Indian custodian
- is a person described in Welf. & Inst. Code, § 361.5(b)(1), and a reasonably diligent search has failed to locate the person. Reunification services are denied.
- c. The mother legal guardian other (*specify*):
- presumed father Indian custodian
- is a person described in Welf. & Inst. Code, § 361.5(b)(2), and and reunification services are
- (1) granted.
- (2) denied, because the person, even with the provision of services, is unlikely to be capable of adequately caring for the child within the statutory time limits.

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20. d. The mother legal guardian other (*specify*):
 presumed father Indian custodian
 is a person described in Welf. & Inst. Code, § 361.5(b)(5), and reunification services are
 (1) granted, because
 (a) reunification services are likely to prevent reabuse or neglect.
 (b) the failure to try reunification will be detrimental to the child because the child is closely and positively bonded to the person.
 (2) denied.

e. The mother legal guardian
 presumed father Indian custodian
 other person who is a legal parent of the child (*name*):
 is a person described in Welf. & Inst. Code, § 361.5(b)(6), and reunification services are
 (1) granted, because, by clear and convincing evidence, reunification is in the best interest of the child.
 (2) denied, because the child or the child's sibling suffered severe sexual abuse or the infliction of severe physical harm by the person, and it would not benefit the child to pursue reunification with that person.
 (3) The factual basis for the findings in this item is stated on the record.

f. The mother legal guardian other (*specify*):
 presumed father Indian custodian
 is a person described in Welf. & Inst. Code, § 361.5(b)(14). The court advised the person of any right to services and the possible consequences of a waiver. The person executed the *Waiver of Reunification Services (Juvenile Dependency)* (form JV-195), and the court accepts the waiver, the person having knowingly and intelligently waived the right to serves. Reunification services are denied.

21. a. **The county agency must provide reunification services**, and the following must participate in the reunification services stated in the case plan:

- mother biological father legal guardian other (*specify*):
 presumed father Indian custodian

b. **The likely date** by which the child may be returned to and safely maintained in the home or another permanent plan achieved is (*specify*):

Efforts

22. The county agency

- a. has
 b. has not

complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child and by making reasonable efforts to complete any steps necessary to finalize the permanent placement of the child.

23. The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:

	<u>None</u>	<u>Minimal</u>	<u>Adequate</u>	<u>Substantial</u>	<u>Excellent</u>
a. <input type="checkbox"/> Mother	<input type="checkbox"/>				
b. <input type="checkbox"/> Presumed father	<input type="checkbox"/>				
c. <input type="checkbox"/> Biological father	<input type="checkbox"/>				
d. <input type="checkbox"/> Legal guardian	<input type="checkbox"/>				
e. <input type="checkbox"/> Indian custodian	<input type="checkbox"/>				
f. <input type="checkbox"/> Other (<i>specify</i>):	<input type="checkbox"/>				

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Siblings

24. **The child does not have siblings under the court's jurisdiction.**
25. **The child has siblings under the court's jurisdiction.** *Sibling Attachment: Contact and Placement* (form JV-403) is attached and incorporated by reference.

Health and education

26. The mother biological father Indian custodian
 presumed father Legal guardian other (*specify*):
 is unable unwilling unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code. § 369 and vested with the county agency.
27. a. A limitation on the right of the parents to make educational decisions for the child is **not** necessary. The parents hold educational rights and responsibilities in regard to the child's education, including those described in rule 5.650(e)-(f) of the California Rules of Court. A copy of the rule 5.650(e)-(f) may be obtained from the court clerk.
- b. A limitation on the right of the parents to make educational decisions for the child is necessary and those rights are limited as stated in *Order Designating Educational Rights Holder* (form JV-535) filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e)-(f) of the California Rules of Court. A copy of rule 5.650(e)-(f) may be obtained from the court clerk.
28. a. The child's educational needs are are not being met.
 b. The child's physical needs are are not being met.
 c. The child's mental health needs are are not being met.
 d. The child's developmental needs are are not being met.
29. The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 28 or other concerns are:
 a. stated in the social worker's report.
 b. specified here:
30. The following persons are ordered to make the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 29:
 a. social worker.
 b. parent (*name*):
 c. surrogate parent (*name*):
 d. educational representative (*name*):
 e. other (*name*):
31. The child's education placement has changed since the date the child was physically removed from the home.
 a. The child's educational records, including any evaluation regarding a disability, were requested by the child's new school within two business days of the request to enroll, and those records were provided by the child's former school to the child's new school within two business days of the receipt of the educational records request.
 b. The child is enrolled in school.
 c. The child is attending school.

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32. **Child 14 years of age or older:**

- a. The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.
- b. The services stated in the case plan do not include those needed to assist the child in making the transition from foster care to successful adulthood.
- c. To assist the child in making the transition to successful adulthood, the county agency must add to the case plan and provide the services.
- (1) stated on the record
- (2) as follows:

Advisements

33. **Child under the age of three years or member of a sibling group as described in Welf. & Inst. Code, § 361.5(a)91)(C)**
The court informed all parties present at the time of the hearing and further advises all parties that, because the child was under the age of three years on the date of initial removal or is a member of a sibling group:
- a. **Failure to participate regularly and make substantive progress in court-ordered treatment programs may result in the termination of reunification services** for all or some members of the sibling group at the hearing scheduled on a date within six months from the date of the dispositional hearing, but no later than twelve months from the date the child entered foster care, as defined by section 361.49, whichever occurs earlier.
- Six-month hearing date:**
- b. **At the six-month hearing** under Welf. & Inst. Code, § 366.21(e), the court will consider the following factors in deciding whether to limit reunification services to six months for all or some members of the sibling group:
- Whether the sibling group was removed from parental care as a group;
 - The closeness and strength of the sibling bond;
 - The ages of the siblings;
 - The appropriateness of maintaining the sibling group;
 - The detriment to the child if sibling ties are not maintained;
 - The likelihood of finding a permanent home for the sibling group;
 - Whether the sibling group is currently placed in the same preadoptive home or has a concurrent plan goal of legal permanency in the same home;
 - The wishes of each child whose age and physical and emotional condition permits a meaningful response; and
 - The best interest of each child in the sibling group.
- c. **At the six-month hearing** under Welf. & Inst. Code, § 366.21(e), if the child is not returned to the custody of a parent, the case may be referred to a selection and implementation hearing under Welf. & Inst. Code, § 366.26. The selection and implementation hearing **may result in the termination of parental rights and adoption of the child and other members of the sibling group or, in the case of an Indian child for whom tribal customary adoption under section 366.24 is selected as the permanent plan goal, modification of parental rights and the adoption of the child and other members of the sibling group.**

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34. **Child three years of age or older who is not a member of a sibling group as described in Welf. & Inst. Code, § 361.5 (a)(1)(C).** The court informed all parties present at the time of the hearing and further advises all parties that, because the child was three years of age or older with no siblings under the age of three years at the time of initial removal, if the child is not returned to the custody of a parent at the Welf. & Inst. Code, §366.21(f) permanency hearing set on a date within 12 months from the date the child entered foster care, the case may be referred to a selection and implementation hearing under Welf. & Inst. Code, § 366.26. The selection and implementation hearing **may result in the termination of parental rights and adoption of the child or, in the case of an Indian child for whom tribal customary adoption under section 366.24 is selected as the permanent plan goal, modification of parental rights and the adoption of the child.**

Twelve-month permanency hearing date:
--

35. a. **The matter is ordered set for hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child.**
- b. By clear and convincing evidence, the court found that reunification services were not to be provided to the child's parents, legal guardian, or Indian custodian under Welf. & Inst. Code, § 361.5(b).
- c. The county agency and the licensed county adoption agency or the California Department of Social Services acting as an adoption agency will prepare and serve an assessment report as described in Welf. & Inst. Code, § 361.5(g).
- d. The court advised all parties present in court that to preserve any right to review on appeal of this order, a party must seek an extraordinary writ by filing notice of intent to file a writ petition and a request for the record, which may be submitted on *Notice of Intent to File Writ Petition and Request for Record* (form JV-820), and a petition for extraordinary writ, which may be submitted on *Petition for Extraordinary Writ* (form JV-825). A copy of each form is available in the courtroom. The court further advised all parties present in court that, as to them, a notice of intent to file a writ petition and request for record must be filed with the juvenile court clerk within seven days of the date of this hearing. The clerk of the court is directed to provide written notice as stated in rule 5.695(g)(10) of the California Rules of Court to any party not present.
- e. The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person named below, who is a mother, a presumed father, or an alleged father and who has relinquished the child for adoption where the relinquishment has been accepted and filed with notice under Fam. Code, § 8700, or an alleged father who has denied paternity and has executed section 2 of *Statement Regarding Parentage (Juvenile)* (form JV-505).
- (1) (name):
- (2) (name):
- (3) (name):
- (4) (name):
- f. **The likely date** by which the child may be placed for adoption, or another permanent plan selected is *(specify date)*: