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## INVITATION TO COMMENT

**SPR18-27**

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Title	Action Requested
Juvenile Law: Dependency Hearings— Continued Condensing of the Rules of Court	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 5.678, 5.690, 5.695, and 5.708; repeal rule 5.526	January 1, 2019
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Kerry Doyle, 415-865-8791 <a href="mailto:kerry.doyle@jud.ca.gov">kerry.doyle@jud.ca.gov</a>
Hon. Jerilyn L. Borack, Cochair	
Hon. Mark A. Juhas, Cochair	

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### **Executive Summary and Origin**

In title 5 of the California Rules of Court, the rules that provide the procedures to be followed during dependency court hearings from the initiation of the case through each of the status review hearings repeat statutory text, which makes the rules more cumbersome and necessitates frequent amendments whenever the underlying statutes are amended. During the 2017 legislative session, four bills were enacted that require amendments to the existing rules of court. This proposal would delete some 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.

### **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 more limited 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 because of the time needed for the 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

*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.*

access up-to-date statutory materials easily and at no cost. This major change in the information infrastructure for juvenile courts warranted a reexamination of the roles of the rules of court in these proceedings. Effective January 1, 2017, the Judicial Council amended 21 rules and repealed 3 to delete language that duplicated statute.

## **The Proposal**

This proposal continues the process of condensing the rules of court governing dependency hearings and was spurred by recent legislation<sup>1</sup> that would, under the council's past practices, have required three different proposals amending multiple rules of court to include minor statutory expansions of existing provisions. Instead, the legislative changes will be addressed by rule amendments that include statutory references rather than a paraphrase of the full statutory text.

Specifically, this proposal would amend four juvenile dependency proceedings rules and repeal one 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 follow.

### **Rule 5.526. Citation to Appear; warrants of arrest; subpoenas**

This rule would be repealed because it simply restates the text in Welfare and Institutions Code sections 338–341.<sup>2</sup> (Making this change obviates the need to amend this rule to incorporate changes made by Assembly Bill 1401 [Maienschein].)

### **Rule 5.678. Findings in support of detention; factors to consider; reasonable efforts; detention alternatives**

Rule 5.678(a) would be amended to delete the specific findings drawn from section 319(b) in support of detention and replace them with a reference to that section. Rule 5.678(b) would be amended to delete the factors the court must consider that are drawn from section 319(d) and replace them with a reference to that section. Paragraph (c)(3), which restates section 319(e), would be deleted. Rule 5.678(e) would be amended to delete the possible foster care placements that are drawn from the text of section 319(f) and replace them with a reference to that section. (Making these changes obviates the need to amend this rule to incorporate the changes made by Assembly Bill 404 [Stone].) Rule 5.678(e)(1)–(2), which restates provisions of section 319(f)(3), would be deleted, as would references to section 600 et. seq. in the headers of the rule because rule 5.760, not rule 5.678, governs detention hearings for cases petitioned under section 600.

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<sup>1</sup> Assem. Bill 404 (Stone; Stats. 2017, ch. 732); Assem. Bill 1332 (Bloom; Stats. 2017, ch. 665); Assem. Bill 1401 (Maienschein; Stats. 2017, ch. 262); and Sen. Bill 89 (Comm. on Budget and Fiscal Review; Stats. 2015, ch. 425).

<sup>2</sup> All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

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

Effective January 1, 2017, the council deleted most of the text of rule 5.690(c) concerning the case plan requirements (some of which were in the rule, but many of which were not) and instead specified that a case plan must be prepared and included with the court report as required in section 16501.1(g). The committee continues to propose that a cross-reference to this statute remain in the rule. (This cross-reference obviates the need to amend this rule to incorporate the changes made by Senate Bill 89 [Comm. on Budget and Fiscal Review].) The committee now recommends, however, that the rule reference section 16501.1 in its entirety, and not merely subdivision (g). Section 16501.1 contains many important case plan requirements that require court oversight, such as the timelines by which case plans must be submitted to the court; a description of the type of home or institution in which the child is placed; the plan and timeline for transitioning the child to a less restrictive environment; and documentation that a preplacement assessment of the service needs of the child and family have been provided.

The committee further proposes that the cross-reference to section 16501.1 be moved to a paragraph of subdivision (c) governing all case plans.

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

Effective January 1, 2017, the council deleted specific required removal findings from rule 5.695(d) and replaced them with a reference to subdivision (c) of section 361, which provides these findings. The committee now recommends that the rule be amended to add a paragraph to rule 5.695(c), with a cross-reference to subdivision (d) of section 361, which was newly enacted as a result of Assembly Bill 1332 (Bloom).

**Alternatives Considered**

Initially the committee considered simply amending the existing rules of court to reflect the new statutory language but preferred to abbreviate the rules by replacing unneeded text with code references to obviate the need for further rule amendments when these statutes are again amended.

**Implementation Requirements, Costs, and Operational Impacts**

Because this proposal amends rules of court to make them more concise without changing the underlying statutory requirements, it should cost the courts nothing. 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.

## 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 remain?
- 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. Cal. Rules of Court, rules 5.526, 5.678, 5.690, 5.695, and 5.708, attached at pages 5–21
2. Assembly Bill 404,  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB404](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB404)
3. Assembly Bill 1332,  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB1332](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1332)
4. Assembly Bill 1401,  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB1401](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1401)
5. Senate Bill 89,  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB89](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB89)

Rules 5.678, 5.690, 5.695, and 5.708 of the California Rules of Court would be amended, and rule 5.526 would be repealed, effective January 1, 2019, to read:

1 **Rule 5.526. Citation to appear; warrants of arrest; subpoenas**

2  
3 **(a) — Citation to appear (§§ 338, 661)**

4  
5 ~~In addition to the notice required under rule 5.524, the court may issue a citation~~  
6 ~~directing a parent or guardian to appear at a hearing.~~

7  
8 (1) ~~The citation must state that the parent or guardian may be required to~~  
9 ~~participate in a counseling program, and the citation may direct the child's~~  
10 ~~present caregiver to bring the child to court.~~

11  
12 (2) ~~The citation must be personally served at least 24 hours before the time stated~~  
13 ~~for the appearance.~~

14  
15 **(b) — Warrant of arrest (§§ 339, 662)**

16  
17 ~~The court may order a warrant of arrest to issue against the parent, guardian, or~~  
18 ~~present custodian of the child if:~~

19  
20 (1) ~~The citation cannot be served;~~

21  
22 (2) ~~The person served does not obey it; or~~

23  
24 (3) ~~The court finds that a citation will probably be ineffective.~~

25  
26 **(c) — Protective custody or warrant of arrest for child (§§ 340, 663)**

27  
28 ~~The court may order a protective custody warrant or a warrant of arrest for a child~~  
29 ~~if the court finds that:~~

30  
31 (1) ~~The conduct and behavior of the child may endanger the health, person,~~  
32 ~~welfare, or property of the child or others; or~~

33  
34 (2) ~~The home environment of the child may endanger the health, person, welfare,~~  
35 ~~or property of the child.~~

36  
37 **(d) — Subpoenas (§§ 341, 664)**

38  
39 ~~On the court's own motion or at the request of the petitioner, child, parent,~~  
40 ~~guardian, or present caregiver, the clerk must issue subpoenas requiring attendance~~

1 and testimony of witnesses and the production of papers at a hearing. If a witness  
2 appears in response to a subpoena, the court may order the payment of witness fees  
3 as a county charge in the amount and manner prescribed by statute.  
4

5 **Rule 5.678. Findings in support of detention; factors to consider; reasonable efforts;**  
6 **detention alternatives**

7  
8 **(a) Findings in support of detention (§ 319; 42 U.S.C. § ~~600 et seq.~~)**

9  
10 The court must order the child released from custody unless the court ~~finds that:~~  
11 makes findings as specified in section 319(b).

12  
13 ~~(1) A prima facie showing has been made that the child is described by section~~  
14 ~~300;~~

15  
16 ~~(2) Continuance in the home of the parent or guardian is contrary to the child's~~  
17 ~~welfare; and~~

18  
19 ~~(3) Any of the following grounds exist:~~

20  
21 ~~(A) There is a substantial danger to the physical health of the child or the~~  
22 ~~child is suffering severe emotional damage, and there are no reasonable~~  
23 ~~means to protect the child's physical or emotional health without~~  
24 ~~removing the child from the parent's or guardian's physical custody;~~

25  
26 ~~(B) The child is a dependent of the juvenile court who has left a placement;~~

27  
28 ~~(C) The parent, guardian, or responsible relative is likely to flee the~~  
29 ~~jurisdiction of the court with the child; or~~

30  
31 ~~(D) The child is unwilling to return home and the petitioner alleges that a~~  
32 ~~person residing in the home has physically or sexually abused the child.~~

33  
34 **(b) Factors to consider**

35  
36 In determining whether to release or detain the child under (a), the court must  
37 consider the following: factors in section 319(d).

38  
39 ~~(1) Whether the child can be returned home if the court orders services to be~~  
40 ~~provided, including services under section 306; and~~

1           ~~(2) Whether the child can be returned to the custody of his or her parent who is~~  
2           ~~enrolled in a certified substance abuse treatment facility that allows a~~  
3           ~~dependent child to reside with his or her parent.~~

4  
5       **(c) Findings of the court—reasonable efforts (§ 319; 42 U.S.C. § 600 et seq.)**

6  
7           (1) Whether the child is released or detained at the hearing, the court must  
8           determine whether reasonable efforts have been made to prevent or eliminate  
9           the need for removal and must make one of the following findings:

10  
11           (A) Reasonable efforts have been made; or

12  
13           (B) Reasonable efforts have not been made.

14  
15           (2) The court must not order the child detained unless the court, after inquiry  
16           regarding available services, finds that there are no reasonable services that  
17           would prevent or eliminate the need to detain the child or that would permit  
18           the child to return home.

19  
20       ~~(3) If the court orders the child detained, the court must:~~

21  
22           ~~(A) Determine if there are services that would permit the child to return~~  
23           ~~home pending the next hearing and state the factual bases for the~~  
24           ~~decision to detain the child;~~

25  
26           ~~(B) Specify why the initial removal was necessary; and~~

27  
28           ~~(C) If appropriate, order services to be provided as soon as possible to~~  
29           ~~reunify the child and the child's family.~~

30  
31       **(d) Order of the court (§ 319, 42 U.S.C. § 600 et seq.)**

32  
33           If the court orders the child detained, the court must order that temporary care and  
34           custody of the child be vested with the county welfare department pending  
35           disposition or further order of the court.

36  
37       **(e) Detention alternatives (§ 319)**

38  
39           The court may order the child detained ~~in the approved home of a relative, an~~  
40           ~~emergency shelter, another suitable licensed home or facility, a place exempt from~~  
41           ~~licensure if specifically designated by the court, or the approved home of a~~  
42           ~~nonrelative extended family member as defined in section 362.7. as specified in~~  
43           ~~section 319(f).~~

1  
2 (1) ~~In determining the suitability of detention with a relative or a nonrelative~~  
3 ~~extended family member, the court must consider the recommendations of~~  
4 ~~the social worker based on the approval of the home of the relative or~~  
5 ~~nonrelative extended family member, including the results of checks of~~  
6 ~~criminal records and any prior reports of alleged child abuse.~~

7  
8 (2) ~~The court must order any parent and guardian present to disclose the names,~~  
9 ~~residences (if known), and any identifying information of any maternal or~~  
10 ~~paternal relatives of the child.~~

11  
12 **Rule 5.690. General conduct of disposition hearing**

13  
14 **(a) Social study (§§ 280, 358, 358.1, 360, 361.5, 16002(b))**

15  
16 The petitioner must prepare a social study of the child. The social study must  
17 include a discussion of all matters relevant to disposition and a recommendation for  
18 disposition.

19  
20 (1) The petitioner must comply with the following when preparing the social  
21 study:

22  
23 (A) If petitioner recommends that the court appoint a legal guardian,  
24 petitioner must prepare an assessment under section 360(a), to be  
25 included in the social study report prepared for disposition or in a  
26 separate document.

27  
28 (B) If petitioner recommends removal of the child from the home, the  
29 social study must include:

30  
31 (i) A discussion of the reasonable efforts made to prevent or  
32 eliminate removal and a recommended plan for reuniting the  
33 child with the family, including a plan for visitation;

34  
35 (ii) A plan for achieving legal permanence for the child if efforts to  
36 reunify fail; and

37  
38 (iii) A statement that each parent has been advised of the option to  
39 participate in adoption planning and to voluntarily relinquish the  
40 child if an adoption agency is willing to accept the  
41 relinquishment, and the parent's response.

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- (C) The social study must include a discussion of the social worker’s efforts to comply with rule 5.637, including but not limited to:
    - (i) The number of relatives identified and the relationship of each to the child;
    - (ii) The number and relationship of those relatives described by item (i) who were located and notified;
    - (iii) The number and relationship of those relatives described by item (ii) who are interested in ongoing contact with the child; and
    - (iv) The number and relationship of those relatives described by item (ii) who are interested in providing placement for the child.
  - (D) If siblings are not placed together, the social study must include an explanation of why they have not been placed together in the same home, what efforts are being made to place the siblings together, or why making those efforts would be contrary to the safety and well-being of any of the siblings.
  - (E) If petitioner alleges that section 361.5(b) applies, the social study must state why reunification services should not be provided.
  - (F) All other relevant requirements of sections 358 and 358.1.
- (2) The petitioner must submit the social study and copies of it to the clerk at least 48 hours before the disposition hearing is set to begin, and the clerk must make the copies available to the parties and attorneys. A continuance within statutory time limits must be granted on the request of a party who has not been furnished a copy of the social study in accordance with this rule.

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

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

1 (c) Case plan (§ 16501.1)

2  
3 Whenever child welfare services are provided, the social worker must prepare a  
4 case plan.

5  
6 (1) A written case plan must be completed and filed with the court by the date of  
7 disposition or within 60 calendar days of initial removal or of the in-person  
8 response required under section 16501(f) if the child has not been removed  
9 from his or her home, whichever occurs first.

10  
11 (2) ~~The~~ For a child of any age the court must consider the case plan and must  
12 find as follows:

13  
14 (A) The case plan meets the requirements of section 16501.1; or

15  
16 (B) The case plan does not meet the requirements of section 16501.1. If the  
17 court finds that the case plan does not meet the requirements of section  
18 16501.1, the court must order the agency to comply with the  
19 requirements of section 16501.1; and

20  
21 ~~(A)~~ (C) The social worker solicited and integrated into the case plan the  
22 input of the child;<sub>2</sub> the child's family;<sub>2</sub> the child's identified Indian  
23 tribe, including consultation with the child's tribe on whether tribal  
24 customary adoption as defined in section 366.24 is an appropriate  
25 permanent plan for the child if reunification is unsuccessful; and other  
26 interested parties;<sub>2</sub> or

27  
28 ~~(B)~~ (D) The social worker did not solicit and integrate into the case plan  
29 the input of the child, the child's family, the child's identified Indian  
30 tribe, and other interested parties. If the court finds that the social  
31 worker did not solicit and integrate into the case plan the input of the  
32 child, the child's family, the child's identified Indian tribe, and other  
33 interested parties, the court must order that the social worker solicit and  
34 integrate into the case plan the input of the child, the child's family, the  
35 child's identified Indian tribe, and other interested parties, unless the  
36 court finds that each of these participants was unable, unavailable, or  
37 unwilling to participate.

38  
39 (3) For a child 12 years of age or older and in a permanent placement, the  
40 court must consider the case plan and must also find as follows:

41  
42 (A) The child was given the opportunity to review the case plan, sign  
43 it, and receive a copy; or

1  
2 (B) The child was not given the opportunity to review the case plan,  
3 sign it, and receive a copy. If the court makes such a finding, the  
4 court must order the agency to give the child the opportunity to  
5 review the case plan, sign it, and receive a copy.  
6

7 ~~(C) Whether the case plan was developed in compliance with and~~  
8 ~~meets the requirements of section 16501.1(g). If the court finds~~  
9 ~~that the development of the case plan does not comply with~~  
10 ~~section 16501.1(g) the court must order the agency to comply~~  
11 ~~with the requirements of section 16501.1(g).~~  
12

13 **Rule 5.695. Findings and orders of the court—disposition**  
14

15 **(a) Orders of the court (§§ 245.5, 358, 360, 361, 361.2, 390)**  
16

17 At the disposition hearing, the court may:  
18

- 19 (1) Dismiss the petition with specific reasons stated in the minutes;  
20
- 21 (2) Place the child under a program of supervision for a time period consistent  
22 with section 301 and order that services be provided;  
23
- 24 (3) Appoint a legal guardian for the child without declaring dependency and  
25 order the clerk to issue letters of guardianship, which are not subject to the  
26 confidential protections of juvenile court documents as described in section  
27 827;  
28
- 29 (4) Declare dependency and appoint a legal guardian for the child if the  
30 requirements of section 360 are met and order the clerk to issue letters of  
31 guardianship, which are not subject to the confidential protections of juvenile  
32 court documents as described in section 827;  
33
- 34 (5) Declare dependency, permit the child to remain at home, and order that  
35 services be provided;  
36
- 37 (6) Declare dependency, permit the child to remain at home, limit the control to  
38 be exercised by the parent or guardian, and order that services be provided; or  
39
- 40 (7) Declare dependency, remove physical custody from the parent or guardian,  
41 and:  
42

1 (A) After stating on the record or in writing the factual basis for the order,  
2 order custody to a noncustodial parent, terminate jurisdiction, and  
3 direct that *Custody Order—Juvenile—Final Judgment* (form JV-200)  
4 be prepared and filed under rule 5.700;

5  
6 (B) After stating on the record or in writing the factual basis for the order,  
7 order custody to a noncustodial parent with services to one or both  
8 parents; or

9  
10 (C) Make a placement order and consider granting specific visitation rights  
11 to the child’s grandparents.

12  
13 **(b) Limitations on parental control (§§ 245.5, 361, 362; Gov. Code, § 7579.5)**

14  
15 (1) If a child is declared a dependent, the court may clearly and specifically limit  
16 the control over the child by a parent or guardian.

17  
18 (2) If the court orders that a parent or guardian retain physical custody of the  
19 child subject to court-ordered supervision, the parent or guardian must be  
20 ordered to participate in child welfare services or services provided by an  
21 appropriate agency designated by the court.

22  
23 (3) The court must consider whether it is necessary to limit the rights of the  
24 parent or guardian to make educational or developmental-services decisions  
25 for the child or youth. If the court limits those rights, it must follow the  
26 procedures in rules 5.649–5.651.

27  
28 **(c) Removal of custody—required findings (§ 361)**

29  
30 (1) The court may not order a dependent removed from the physical custody of a  
31 parent or guardian with whom the child resided at the time the petition was  
32 filed, unless the court makes one or more of the findings in subdivision (c) of  
33 section 361 by clear and convincing evidence.

34  
35 (2) The court may not order a dependent removed from the physical custody of a  
36 parent with whom the child did not reside at the time the petition was initiated  
37 unless the juvenile court makes one of the findings in subdivision (d) of section  
38 361 by clear and convincing evidence.

39  
40 **(d) Reasonable efforts finding**

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

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- (1) Reasonable efforts have been made to prevent removal; or
- (2) Reasonable efforts have not been made to prevent removal.

**(e) Family-finding determination (§ 309)**

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

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

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

**(f) Due diligence (§ 309)**

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

- (1) Asked the child, in an age-appropriate manner and consistent with the child’s best interest, about his or her relatives;
- (2) Obtained information regarding the location of the child’s relatives;
- (3) Reviewed the child’s case file for any information regarding relatives;
- (4) Telephoned, e-mailed, or visited all identified relatives;
- (5) Asked located relatives for the names and locations of other relatives;
- (6) Used Internet search tools to locate relatives identified as supports; or

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

**(g) Provision of reunification services (§ 361.5)**

(1) Unless the court makes a finding that reunification services need not be provided under subdivision (b) of section 361.5 if a child is removed from the custody of a parent or legal guardian, the court must order the county welfare department to provide reunification services to the child and the child’s mother and statutorily presumed parent, or the child’s legal guardian, to facilitate reunification of the family as required in section 361.5.

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

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

(4) Reunification services must not be provided when the parent has voluntarily relinquished the child and the relinquishment has been filed with the State Department of Social Services, or if the court has appointed a guardian under section 360.

(5) Except when the order is made under paragraph (1) of subdivision (b) of section 361.5, if the court orders no reunification services for every parent otherwise eligible for such services, the court must conduct a hearing under section 366.26 within 120 days and:

- (A) Order that the social worker provide a copy of the child’s birth certificate to the caregiver consistent with sections 16010.4(e)(5) and 16010.5(b)–(c); and
- (B) Order that the social worker provide a child or youth 16 years of age or older with a certified copy of his or her birth certificate unless the court finds that provision of the birth certificate would be inappropriate.

- 1 (6) A judgment, order, or decree setting a hearing under section 366.26 is not an  
2 immediately appealable order. Review may be sought only by filing a *Notice*  
3 *of Intent to File Writ Petition and Request for Record (California Rules of*  
4 *Court, Rule 8.450)* (form JV-820) or other notice of intent to file a writ  
5 petition and request for record, and a *Petition for Extraordinary Writ*  
6 *(California Rules of Court, Rules 8.452, 8.456)* (form JV-825) or other  
7 petition for extraordinary writ. If a party wishes to preserve any right to  
8 review on appeal of the findings and orders made under this rule, the party  
9 must seek an extraordinary writ under rules 8.450 and 8.452.
- 10
- 11 (7) A judgment, order, or decree setting a hearing under section 366.26 may be  
12 reviewed on appeal following the order of the 366.26 hearing only if the  
13 following have occurred:
- 14
- 15 (A) An extraordinary writ was sought by the timely filing of a *Notice of*  
16 *Intent to File Writ Petition and Request for Record (California Rules of*  
17 *Court, Rule 8.450)* (form JV-820) or other notice of intent to file a writ  
18 petition and request for record, and a *Petition for Extraordinary Writ*  
19 *(California Rules of Court, Rules 8.452, 8.456)* (form JV-825) or other  
20 petition for extraordinary writ; and
- 21
- 22 (B) The petition for extraordinary writ was summarily denied or otherwise  
23 not decided on the merits.
- 24
- 25 (8) Review on appeal of the order setting a hearing under section 366.26 is  
26 limited to issues raised in a previous petition for extraordinary writ that were  
27 supported by an adequate record.
- 28
- 29 (9) Failure to file a notice of intent to file a writ petition and request for record  
30 and a petition for extraordinary writ review within the period specified by  
31 rules 8.450 and 8.452 to substantively address the issues challenged, or to  
32 support the challenge by an adequate record, precludes subsequent review on  
33 appeal of the findings and orders made under this rule.
- 34
- 35 (10) When the court orders a hearing under section 366.26, the court must advise  
36 orally all parties present, and by first-class mail for parties not present, that if  
37 the party wishes to preserve any right to review on appeal of the order setting  
38 the hearing under section 366.26, the party must seek an extraordinary writ  
39 by filing a *Notice of Intent to File Writ Petition and Request for Record*  
40 *(California Rules of Court, Rule 8.450)* (form JV-820) or other notice of  
41 intent to file a writ petition and request for record and a *Petition for*  
42 *Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)* (form JV-  
43 825) or other petition for extraordinary writ.

1  
2 (A) Within 24 hours of the hearing, notice by first-class mail must be  
3 provided by the clerk of the court to the last known address of any  
4 party who is not present when the court orders the hearing under  
5 section 366.26.

6  
7 (B) Copies of *Petition for Extraordinary Writ (California Rules of Court,*  
8 *Rules 8.452, 8.456)* (form JV-825) and *Notice of Intent to File Writ*  
9 *Petition and Request for Record (California Rules of Court, Rule*  
10 *8.450)* (form JV-820) must be available in the courtroom and must  
11 accompany all mailed notices informing the parties of their rights.

12  
13 **(h) Information regarding termination of parent-child relationship (§§ 361, 361.5)**

14  
15 If a child is removed from the physical custody of the parent or guardian under  
16 either section 361 or 361.5, the court must:

- 17  
18 (1) State the facts on which the decision is based; and  
19  
20 (2) Notify the parents that their parental rights may be terminated if custody is  
21 not returned within 6 months of the dispositional hearing or within 12 months  
22 of the date the child entered foster care, whichever time limit is applicable.

23  
24 **(i) Setting a hearing under section 366.26**

25  
26 At the disposition hearing, the court may not set a hearing under section 366.26 to  
27 consider termination of the rights of only one parent unless that parent is the only  
28 surviving parent, or the rights of the other parent have been terminated by a  
29 California court of competent jurisdiction or by a court of competent jurisdiction of  
30 another state under the statutes of that state, or the other parent has relinquished  
31 custody of the child to the county welfare department.

32  
33 **Rule 5.708. General review hearing requirements**

34  
35 **(a) Notice of hearing (§ 293)**

36  
37 The petitioner or the clerk must serve written notice of review hearings on *Notice*  
38 *of Review Hearing* (form JV-280), in the manner provided in sections 224.2 or 293  
39 as appropriate, to all persons or entities entitled to notice under sections 224.2 and  
40 293 and to any CASA volunteer, educational rights holder, or surrogate parent  
41 appointed to the case.  
42

1 **(b) Reports (§§ 366.05, 366.1, 366.21, 366.22, 366.25, 16002)**

2  
3 Before the hearing, the social worker must investigate and file a report describing  
4 the services offered to the family, progress made, and, if relevant, the prognosis for  
5 return of the child to the parent or legal guardian.

6  
7 (1) The report must include:

8  
9 (A) Recommendations for court orders and the reasons for those  
10 recommendations;

11  
12 (B) A description of the efforts made to achieve legal permanence for the  
13 child if reunification efforts fail;

14  
15 (C) A factual discussion of each item listed in sections 366.1 and 366.21(c);  
16 and

17  
18 (D) A factual discussion of the information required by section 16002(b).

19  
20 (2) At least 10 calendar days before the hearing, the social worker must file the  
21 report and provide copies to the parent or legal guardian and his or her  
22 counsel, to counsel for the child, to any CASA volunteer, and, in the case of  
23 an Indian child, to the child's identified Indian tribe. The social worker must  
24 provide a summary of the recommendations to any foster parents, relative  
25 caregivers, or certified foster parents who have been approved for adoption.

26  
27 (3) The court must read and consider, and state on the record that it has read and  
28 considered, the report of the social worker, the report of any CASA  
29 volunteer, the case plan submitted for the hearing, any report submitted by  
30 the child's caregiver under section 366.21(d), and any other evidence.

31  
32  
33 **(c) Reasonable services (§§ 366, 366.21, 366.22, 366.25, 366.3)**

34  
35 (1) If the child is not returned to the custody of the parent or legal guardian, the  
36 court must consider whether reasonable services have been offered or  
37 provided. The court must find that reasonable services have been offered or  
38 provided or have not been offered or provided.

39  
40 (2) If the child is not returned to the custody of the parent or legal guardian, the  
41 court must consider the safety of the child and make the findings listed in  
42 sections 366(a) and 16002.

43

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

2  
3 The court must consider the educational and developmental-services needs of each  
4 child and nonminor or nonminor dependent, including whether it is necessary to  
5 limit the rights of the parent or legal guardian to make educational or  
6 developmental-services decisions for the child. If the court limits those rights or, in  
7 the case of a nonminor or nonminor dependent who has chosen not to make  
8 educational or developmental-services decisions for him- or herself or has been  
9 deemed incompetent, finds that appointment would be in the best interests of the  
10 nonminor or nonminor dependent, the court must appoint a responsible adult as the  
11 educational rights holder as defined in rule 5.502. Any limitation on the rights of a  
12 parent or guardian to make educational or developmental-services decisions for the  
13 child must be specified in the court order. The court must follow the procedures in  
14 rules 5.649–5.651.

15  
16 (e) Case plan (§§ 16001.9, 16501.1)

17  
18 ~~The court must consider the case plan submitted for the hearing and must~~  
19 ~~determine:~~

20  
21 The court must consider the case plan and must determine find as follows:

22  
23 (1) The case plan meets the requirements of section 16501.1; or

24  
25 (2) The case plan does not meet the requirements of section 16501.1. If the court  
26 finds that the case plan does not meet the requirements of section 16501.1, the  
27 court must order the agency to comply with the requirements of section  
28 16501.1; and

29  
30 (3) ~~Whether the~~ The child was actively involved, as age- and developmentally  
31 appropriate, in the development of the case plan and plan for permanent  
32 placement; or

33  
34 (4) The child was not actively involved, as age- and developmentally appropriate,  
35 in the development of the case plan and plan for permanent placement. If the  
36 court finds the child was not appropriately involved, the court must order the  
37 agency to actively involve the child in the development of the case plan and  
38 plan for permanent placement, unless the court finds the child is unable,  
39 unavailable, or unwilling to participate; and

40  
41 (1) (5) ~~Whether each~~ Each parent or legal guardian was actively involved in the  
42 development of the case plan and plan for permanent placement; or

1           (6) Each parent or legal guardian was not actively involved in the development  
2 of the case plan and plan for permanent placement. If the court finds that any  
3 parent or legal guardian was not actively involved, the court must order the  
4 agency to actively involve that parent or legal guardian in the development of  
5 the case plan and plan for permanent placement, unless the court finds that  
6 the parent is unable, unavailable, or unwilling to participate; and

7  
8           ~~(3)~~(7) In the case of an Indian child, ~~whether~~ the agency consulted with the Indian  
9 child's tribe, as defined in rule 5.502, and the tribe was actively involved in  
10 the development of the case plan and plan for permanent placement,  
11 including consideration of tribal customary adoption as an appropriate  
12 permanent plan for the child if reunification is unsuccessful; or

13  
14           (8) The agency did not consult with the Indian child's tribe, as defined in rule  
15 5.502, and the tribe was not actively involved in the development of the case  
16 plan and plan for permanent placement, including consideration of tribal  
17 customary adoption as an appropriate permanent plan for the child if  
18 reunification is unsuccessful. If the court finds that the agency did not consult  
19 the Indian child's tribe, the court must order the agency to do so, unless the  
20 court finds that the tribe is unable, unavailable, or unwilling to participate; and  
21 and

22  
23           ~~(4)~~(9) For a child 12 years of age or older in a permanent placement, ~~whether~~ the  
24 child was given the opportunity to review the case plan, sign it, and receive a  
25 copy; or

26  
27           (10) The child was not given the opportunity to review the case plan, sign it, and  
28 receive a copy. If the court finds that the child was not given this opportunity,  
29 the court must order the agency to give the child the opportunity to review  
30 the case plan, sign it, and receive a copy.

31  
32           ~~(5) — Whether the case plan was developed in compliance with and meets the~~  
33 ~~requirements of section 16501.1(g). If the court finds that the development of~~  
34 ~~the case plan does not comply with section 16501.1(g), the court must order~~  
35 ~~the agency to comply with the requirements of section 16501.1(g).~~

36  
37 **(f) Sibling findings; additional findings (§§ 366, 16002)**

38  
39           (1) The court must determine whether the child has other siblings under the  
40 court's jurisdiction. If so, the court must make the additional determinations  
41 required by section 366(a)(1)(D); and  
42

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

3  
4 **(g) Placement with noncustodial parent (§ 361.2)**

5  
6 If at any review hearing the court places the child with a noncustodial parent, or if  
7 the court has previously made such a placement, the court may, after stating on the  
8 record or in writing the factual basis for the order:

9  
10 (1) Continue supervision and reunification services;

11  
12 (2) Order custody to the noncustodial parent, continue supervision, and order  
13 family maintenance services; or

14  
15 (3) Order custody to the noncustodial parent, terminate jurisdiction, and direct  
16 that *Custody Order—Juvenile—Final Judgment* (form JV-200) be prepared  
17 and filed under rule 5.700.

18  
19 **(h) Setting a hearing under section 366.26 for one parent**

20  
21 The court may not set a hearing under section 366.26 to consider termination of the  
22 rights of only one parent unless:

23  
24 (1) That parent is the only surviving parent;

25  
26 (2) The rights of the other parent have been terminated by a California court of  
27 competent jurisdiction or by a court of competent jurisdiction of another state  
28 under the statutes of that state; or

29  
30 (3) The other parent has relinquished custody of the child to the county welfare  
31 department.

32  
33 **(i) Requirements on setting a section 366.26 hearing (§§ 366.21, 366.22, 366.25)**

34  
35 The court must make the following orders and determinations when setting a  
36 hearing under section 366.26:

37  
38 (1) The court must ensure that notice is provided as required by section 294.

39  
40 (2) The court must follow all procedures in rule 5.590 regarding writ petition  
41 rights, advisements, and forms.

1 **(j) Appeal of order setting section 366.26 hearing**

2

3 An appeal of any order setting a hearing under section 366.26 must follow the  
4 procedures in rules 8.400–8.416.