

Title	Juvenile Law: Review and Permanency Hearings in Dependency Proceedings (amend Cal. Rules of Court, rules 5.695, 5.710, 5.715, and 5.720; adopt rules 5.706, 5.708, and 5.722)
Summary	The proposed new and amended rules implement statutory changes relevant to review and permanency hearings in juvenile dependency proceedings, as mandated by Assembly Bill 2070. Further restructuring and language changes are proposed to facilitate rule usage for judicial officers and practitioners.
Source	Family and Juvenile Law Advisory Committee Hon. Jerilyn L. Borack and Hon. Susan D. Huguenor, Cochairs
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Discussion	<p>Assembly Bill 2070 (Bass) amends sections 361.5, 366.21, 366.22, 366.26, 366.27, 266.3, 366.25, and 16508.1 of, and adds section 366.25 to, the Welfare and Institutions Code, resulting in important changes in juvenile dependency law. Specifically, this bill allows for a subsequent permanency review hearing 24 months after the date the child was originally removed from the physical custody of his or her parent or guardian in certain circumstances and outlines new considerations in weighing the availability of reunification services for parents or guardians who are incarcerated, institutionalized, or in residential substance abuse treatment. Assembly Bill 2070 also amends section 361.5,¹ changing how the time periods allotted for reunification services for parents of dependent children are calculated, establishing both minimum and maximum times for reunification.</p> <p>These statutory changes became effective January 1, 2009, and must be incorporated into the affected California Rules of Court.² The existing review and permanency rules that require updates include rule 5.710, Six-month review hearing; rule 5.715, Twelve-month review hearing; and rule 5.720, Eighteen-month review hearing. In reviewing</p>

¹ Unless otherwise stated, all section references are to the Welfare and Institutions Code.

² The Welfare and Institutions Code amendments will also require a number of changes to existing California Judicial Council forms as well as the development of a new findings and orders form relevant to 24-month subsequent permanency review hearings. Given the magnitude of the project and limited staff resources, necessary form changes will be included in a future public comment cycle.

these rules, it became apparent that there is significant redundancy between them regarding the legal requirements for each hearing, and that it would increase redundancy to propose another review hearing rule applicable to 24-month review hearings incorporating the same legal provisions.

To address this issue, the Family and Juvenile Law Advisory Committee proposes revising the current rule structure. For children who have been removed from the physical custody of the parent or legal guardian, a new, general rule applicable to all review hearings would be adopted; the 6-, 12-, and 18-month rules would be significantly shortened to reduce redundancy; and a new 24-month rule would be enacted. A new rule is also proposed for family maintenance review hearings to clarify the legal requirements when a child has not been removed from the parent's or guardian's custody. The titles of the rules are also proposed to be changed to promote consistency with statutory language.

The statutory changes upon which this proposal is based included several small inconsistencies. In reconciling inconsistencies, the committee relied on the language in the review hearing statutes (sections 366.21, 366.22 and 366.25). In one instance, when section 366.22 was silent, the new statutory language from section 361.5 was used, resulting in proposed section (b)(3) of rule 5.715.

The proposed new and revised rules would be as follows:

- Proposed new rule 5.706, *Family Maintenance Review Hearings*. This new rule would be applicable specifically to review hearings under section 364 in which the child remains in the custody of the parent or legal guardian. Previously, these requirements were combined with the 6-month review hearing requirements in rule 5.710, but the committee proposes separating them because the legal mandates for the two hearing types are quite different.
- Proposed new rule 5.708, *General Review Hearing Requirements*. This rule would identify the legal requirements, including notice, reports, case plan, court considerations and findings, and court orders applicable to 6-, 12-, 18- and 24-month review hearings in which the child has been removed from the custody of the parent or guardian. Detailed information about writs and appeals was removed from the 6-,

12-, and 18-month rules and placed in this rule with references to the pending rules regarding juvenile writs and appeals.

- Proposed amended rule 5.710, *Six-Month Review Hearing*. This rule would be revised and condensed to reflect the court procedures and determinations specifically applicable at the 6-month review hearing for children in out-of-home care. Minor wording changes in subdivisions (b)(3) and (c)(1)(D) are also proposed to comply with case law (See *M.V. v. Superior Court* (2008) 167 Cal.App.4th 166, FN 3, FN8.)
- Proposed amended rule 5.715, *Twelve-Month Permanency Hearing*. This rule would be revised and condensed to reflect court procedures and determinations specifically applicable at the 12-month permanency hearing.
- Proposed amended rule 5.720, *Eighteen-Month Permanency Review Hearing*. This rule would be revised and condensed to reflect court procedures and determinations specifically applicable at the 18-month permanency review hearing.
- Proposed new rule 5.722, *Twenty-Four-Month Subsequent Permanency Review Hearing*. This new rule would reflect the court procedures and determinations specifically applicable at the 24-month subsequent permanency hearing, as outlined in Assembly Bill 2070 (Bass) and Welfare and Institutions Code sections 366.22 and 366.25.

The committee further proposes amending rule 5.695(f), *Orders of the Court*, to address new requirements regarding the timing of reunification services, as outlined in section 361.5(a)(1). Before January 1, 2009, the time periods for court-ordered services were not to exceed a period of 6 or 12 months from the date the child entered foster care, depending on the age of the child. This section now states that family reunification services must be provided “during the time beginning with the dispositional hearing and ending with the date of the hearing pursuant to subdivision (e) [or (f)] of section 366.21, unless the child is returned to the home of the parent or guardian.”

The committee proposes correcting the language in rule 5.695(f) describing the reunification time period for children under age three to indicate that services must be provided to facilitate the reunification of the family “within 6 months of the date of the dispositional hearing,

but no later than 12 months from the date the child entered foster care, if the child was under three.” This language conforms the rule to the requirements in section 361.5 as well as to the federal Title IV-E requirement that a permanency hearing occurs within 12 months of the date the child entered foster care.

The committee also proposes adding a sentence to rule 5.695(f) stating that the time period for family reunification services must be calculated consistent with Welfare and Institutions Code section 361.5(a)(1). The committee deliberately chose not to further delineate the new timing requirements in rule 5.695(f) because legislation is pending that may change the statutory language. (Assembly Bill 706, currently pending, includes proposed revisions to section 361.5(a) which, if enacted, would change the method of calculating reunification services time periods again.)

The proposed new and revised rules are necessary to comply with legal mandates. The committee seeks comments on whether the proposed reorganization of review and permanency rules facilitate judicial officer and practitioner use of the rules.

The proposed rule text is attached at pages 5–39.

Attachments

Rules 5.695, 5.710, 5.715, and 5.720 of the California Rules of Court would be amended; and rules 5.706, 5.708, and 5.722 of the California Rules of Court would be adopted, effective January 1, 2010, to read as:

1 **Rule 5.695. Orders of the court**

2
3 (a)–(e) ***

4
5 **(f) Provision of reunification services (§ 361.5)**

6
7 (1) Except as provided in (5), if a child is removed from the custody of a
8 parent or guardian, the court must order the county welfare department
9 to provide child welfare services to the child and the child's mother and
10 statutorily presumed father, or the child's legal guardian, to facilitate
11 reunification of the family within 12 months of the date the child
12 entered foster care if the child was three years or older at the time of the
13 initial removal, or within 6 months of the date ~~the child entered foster~~
14 ~~care of the dispositional hearing, but no later than 12 months from the~~
15 date the child entered foster care, if the child was under three at the
16 time of initial removal. The time period for family reunification
17 services must be calculated consistent with section 361.5(a)(1). The
18 court must inform the parent or guardian of a child who was under
19 three when initially removed that failure to participate regularly and
20 make substantive progress in court-ordered treatment programs may
21 result in the termination of reunification efforts after 6 months from the
22 date ~~the child entered foster care of the dispositional hearing.~~
23

24 (g)–(j) ***

25
26 **Rule 5.706. Family maintenance review hearings (§ 364)**

27
28 **(a) Setting of hearing (§ 364)**

29
30 If the child remains in the custody of the parent or guardian, a review hearing
31 must be held within 6 months after the date of the original dispositional
32 hearing and every 6 months thereafter as long as the child remains a
33 dependent.

34
35 **(b) Notice (§ 292)**

1 The petitioner or the court clerk must give notice of review hearings on
2 Notice of Review Hearing (form JV-280), in the manner provided in section
3 292, to all persons required to receive notice under section 292 and to any
4 CASA volunteer.

5
6 **(c) Reports (§ 364)**

7
8 At least 10 calendar days before the hearing, the petitioner must file a
9 supplemental report with the court describing the services offered to the
10 family, the progress made by the family in eliminating the conditions or
11 factors requiring court supervision, and the petitioner’s recommendation
12 regarding the necessity of continued supervision.

13
14 **(d) Court considerations and findings**

15
16 (1) The court must consider the report prepared by petitioner, the report of
17 any CASA volunteer, and the case plan submitted for this hearing.

18
19 (2) In considering the case plan submitted for the hearing, the court must
20 find as follows:

21
22 (A) The child was actively involved in the development of his or her
23 own case plan as age and developmentally appropriate; or

24
25 (B) The child was not actively involved in the development of his or
26 her own case plan. If the court makes such a finding, the court
27 must order the agency to actively involve the child in the
28 development of his or her own case plan, unless the court finds
29 that the child is unable, unavailable, or unwilling to participate;
30 and

31
32 (C) Each parent was actively involved in the development of the case
33 plan; or

34
35 (D) Each parent was not actively involved in the development of the
36 case plan. If the court makes such a finding, the court must order
37 the agency to actively involve each parent in the development of
38 the case plan, unless the court finds that each parent is unable,
39 unavailable, or unwilling to participate.

40
41 **(e) Conduct of hearing (§ 364)**

1 (1) The court must determine whether continued supervision is
2 necessary. The court must terminate its dependency jurisdiction
3 unless the court finds that petitioner has established by a
4 preponderance of the evidence that existing conditions would
5 justify initial assumption of jurisdiction under section 300 or that
6 such conditions would exist if supervision is withdrawn. Failure
7 of the parent or guardian to participate regularly in any court-
8 ordered treatment program constitutes prima facie evidence that
9 the conditions that justified initial assumption of jurisdiction still
10 exist and that continued supervision is necessary.

11
12 (2) If the court retains jurisdiction, the court must order continued
13 services and set a review hearing within 6 months under this rule.

14
15 **(f) Reasonable cause (§ 364)**

16
17 In any case in which the court has ordered that a parent or guardian retain
18 physical custody of a child subject to supervision by a social worker, and the
19 social worker subsequently receives a report of acts or circumstances that
20 indicate there is reasonable cause to believe that the child is a person
21 described under section 300(a), (d), or (e), the social worker must commence
22 juvenile dependency proceedings. If, as a result of the proceedings, the court
23 finds that the child is a person described in section 300(a), (d), or (e), the
24 court must remove the child from the care, custody, and control of the child's
25 parent or guardians and must commit the child to the care, custody, and
26 control of the social worker under section 361.

27
28
29 **Rule 5.708. General review hearing requirements**

30
31 **(a) Setting of review hearings (§ 366)**

32
33 The status of every dependent child who has been removed from the custody
34 of the parent or guardian must be reviewed periodically but no less
35 frequently than once every six months until the section 366.26 hearing is
36 completed. Review hearings must be set as described in rule 5.710 (for six-
37 month review hearings), rule 5.715 (for 12-month permanency hearings),
38 rule 5.720 (for 18-month permanency review hearings), or rule 5.722 (for 24-
39 month subsequent permanency review hearings).

40
41 **(b) Notice of hearing (§ 293)**

1 The petitioner or the court clerk must serve written notice of review hearings
2 on *Notice of Review Hearing* (form JV-280), in the manner provided in
3 section 293, to all persons required to receive notice under section 293 and to
4 any CASA volunteer.

5
6 **(c) Reports (§§ 366.05, 366.1, 366.21, 366.22, 366.25)**

7
8 Before the hearing, petitioner must investigate and file a report describing
9 the services offered to the family and progress made and, if relevant, the
10 prognosis for return of the child to the parent or guardian.

11
12 (1) The report must contain:

13
14 (A) Recommendations for court orders and the reasons for those
15 recommendations;

16
17 (B) A description of the efforts made to achieve legal permanence for
18 the child if reunification efforts fail; and

19
20 (C) A factual discussion of each item listed in sections 366.1 and
21 366.21(c).

22
23 (2) At least 10 calendar days before the hearing, the petitioner must file the
24 report and provide copies to the parent or guardian and his or her
25 counsel, to counsel for the child, and to any CASA volunteer. The
26 petitioner must provide a summary of the recommendations to any
27 foster parents, relative caregivers, or certified foster parents who have
28 been approved for adoption.

29
30 (3) The court must state on the record that the court has read and
31 considered the report of petitioner, the report of any CASA volunteer,
32 the case plan submitted for the hearing, any report submitted by the
33 child's caregiver under section 366.21(d), and any other evidence.

34
35 **(d) Return of child — detriment finding (§§ 366.21, 366.22, 366.25)**

36
37 (1) If the child was removed from the custody of the parent or guardian,
38 the court must order the child returned unless the court finds by a
39 preponderance of the evidence that return of the child to the parent or
40 guardian would create a substantial risk of detriment to the safety,
41 protection, or physical or emotional well-being of the child. The social
42 worker has the burden of establishing that detriment.

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(2) Failure of the parent or guardian to regularly participate and make substantive progress in any court-ordered treatment program is prima facie evidence that continued supervision is necessary or that return would be detrimental.

(3) In assessing detriment, the court must consider the following:

(A) The social worker’s report and recommendations and the report and recommendations of any CASA volunteer;

(B) The efforts or progress demonstrated by the parent or legal guardian; and

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

(4) The court must also consider the criminal history of the parent or legal guardian subsequent to the child’s removal to the extent that the criminal record is substantially related to the welfare of the child or the parent’s or guardian’s ability to exercise custody and control regarding his or her child.

(5) 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) Reasonable services (§§ 366, 366.21, 366.22, 366.25)

(1) If the child is not returned to the custody of the parent or 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 to support a finding that reasonable services have not been offered or provided:

1
2 (A) The child has been placed in a preadoptive home or with a family
3 that is eligible to adopt the child;

4
5 (B) The case plan includes services to achieve legal permanence for
6 the child if reunification cannot be accomplished; or

7
8 (C) Services to achieve legal permanence for the child if reunification
9 efforts fail are being provided concurrently with reunification
10 services.

11
12 **(f) Educational decisions (§ 366, 366.1)**

13
14 The court must consider whether it is necessary to limit the right of the
15 parent or guardian to make educational decisions for the child. If the court
16 limits this right, it must appoint a responsible adult as the educational
17 representative under rule 5.650 to make educational decisions for the child or
18 proceed under section 361(a).

19
20 **(g) Case plan**

21
22 The court must consider the case plan submitted for the hearing and must
23 find as follows:

24
25 (1) The child was actively involved in the development of his or her own
26 case plan and plan for permanent placement as age and
27 developmentally appropriate; or

28
29 (2) The child was not actively involved in the development of his or her
30 own case plan and plan for permanent placement. If the court makes
31 such a finding, the court must order the agency to actively involve the
32 child in the development of his or her own case plan and plan for
33 permanent placement, unless the court finds that the child is unable,
34 unavailable, or unwilling to participate; and

35
36 (3) Each parent was actively involved in the development of the case plan
37 and plan for permanent placement; or

38
39 (4) Each parent was not actively involved in the development of the case
40 plan and plan for permanent placement. If the court makes such a
41 finding, the court must order the agency to actively involve each parent
42 in the development of the case plan and plan for permanent placement,

1 unless the court finds that each parent is unable, unavailable, or
2 unwilling to participate; and

3
4 (5) For a child 12 years of age or older and in a permanent placement, the
5 court must make a finding whether or not the child was given the
6 opportunity to review the case plan, sign it, and receive a copy. If the
7 court finds that the child was not given this opportunity, the court must
8 order the agency to give the child the opportunity to review the case
9 plan, sign it, and receive a copy.

10
11 **(h) Out of state placement (§§ 361.21, 366)**

12
13 If the child has been placed out of the state, the court must consider whether
14 the placement continues to be the most appropriate placement for the child
15 and in the child's best interest.

16
17 **(i) Title IV-E findings (§ 366)**

18
19 Regardless of whether or not the child is returned home, the court must
20 consider the safety of the child and must determine all of the following:

21
22 (1) The continuing necessity for and appropriateness of the placement;

23
24 (2) The extent of the agency's compliance with the case plan in making
25 reasonable efforts, or, in the case of an Indian child, active efforts as
26 described in Section 361.7, to return the child to a safe home and to
27 complete any steps necessary to finalize the permanent placement of
28 the child. These steps include efforts to maintain relationships between
29 a child who is 10 years or older who has been in an out-of-home
30 placement for six months or longer and individuals other than the
31 child's siblings who are important to the child, consistent with the
32 child's best interests;

33
34 (3) The extent of progress that has been made by the parents or guardians
35 toward alleviating or mitigating the causes necessitating placement in
36 foster care; and

37
38 (4) The likely date by which the child may be returned to and safely
39 maintained in the home or placed for adoption, legal guardianship, or in
40 another planned permanent living arrangement.

41
42 **(j) Additional findings (§ 366)**

1 The court must enter additional findings as required by section 366.

2
3 **(k) Placement with noncustodial parent (§ 361.2)**

4
5 If at any review hearing the court places the child with a noncustodial parent,
6 or if the court has previously made such a placement, the court may:

7
8 (1) Continue supervision and reunification services;

9
10 (2) After stating on the record or in writing the factual basis for the order,
11 order custody to the noncustodial parent, continue supervision, and
12 order family maintenance services; or

13
14 (3) After stating on the record or in writing the factual basis for the order,
15 order custody to the noncustodial parent, terminate jurisdiction, and
16 direct that *Custody Order—Juvenile—Final Judgment* (form JV-200)
17 be prepared and filed under rule 5.700.

18
19 **(l) 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
22 of the 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
27 court of competent jurisdiction or by a court of competent jurisdiction
28 of another state under the statutes of that state; or

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

32
33 **(m) Setting a hearing under section 366.26; Reasonable services requirement**
34 **(§§ 366.21, 366.22)**

35
36 At any 6-month, 12-month or 18-month hearing, the court may not set a
37 hearing under section 366.26 unless the court finds by clear and convincing
38 evidence that reasonable services have been provided or offered to the parent
39 or guardian.

40
41 **(n) Requirements upon setting a 366.26 hearing or ordering another**
42 **planned permanent living arrangement (§§ 366.21, 366.22, 366.25)**

1 The court must make the following orders when setting a hearing under
2 section 366.26 or ordering another planned permanent living arrangement:

3
4 (1) The court must terminate reunification services to the parent or legal
5 guardian;

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

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

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

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

25
26 (C) May make any appropriate order to ensure that those relationships
27 are maintained.

28
29 **(o) Additional requirements upon setting a 366.26 hearing (§§ 366.21,**
30 **366.22, 366.25)**

31
32 (1) The court must follow the following additional procedures when setting
33 a hearing under section 366.26

34
35 (A) The court must direct that an assessment under section 366.21(i),
36 366.22(c), or 366.25(b) be prepared;

37
38 (B) The court must ensure that notice is provided as follows:

39
40 (i) Within 24 hours of the review hearing, the clerk of the court
41 must provide notice by first-class mail to the last known
42 address of any party who is not present at the review

1 hearing. The notice must include the advisements required
2 by rule 5.590(b).

3
4 (ii) The court must order that notice of the hearing under section
5 366.26 not be provided to any of the following:

6
7 (a) A parent, presumed parent, or alleged parent who has
8 relinquished the child for adoption and whose
9 relinquishment has been accepted and filed with notice
10 under Family Code section 8700; or

11
12 (b) An alleged parent who has denied parentage and has
13 completed section 1 of Statement Regarding Parentage
14 (Juvenile) (form JV-505).

15
16 (C) Upon setting a hearing under section 366.26, the court must
17 follow all procedures in rule 5.590 regarding writ petition rights,
18 advisements and forms.

19
20 (2) Appeal of any order setting a hearing under section 366.26 must follow
21 the procedures in rules 8.400–8.416.

22
23
24 **Rule 5.710. Six-month review hearing**

25
26 **(a) ~~Requirement for 6-month review~~ Setting 6-month review; notice (§§ 364,**
27 **366)**

28
29 The case of a dependent child of the court must be set for review hearing as
30 follows:

31
32 ~~(1)~~ If the child was removed from the custody of the parent or guardian
33 under section 361 or 361.5, the review hearing must be held within 6
34 months ~~after the date the child entered foster care, as defined in rule~~
35 ~~5.502~~ of the date of the dispositional hearing, but no later than 12
36 months from the date the child entered foster care. Notice must be
37 provided as described in rule 5.708(b).~~;~~
38

39 ~~(2)~~ If the child remains in the custody of the parent or guardian, the review
40 hearing must be held within 6 months after the date of the declaration
41 of dependency and every 6 months thereafter as long as the child
42 remains a dependent.
43

1 ~~(b) — Notice of hearing; service; contents (§§ 293, 366.21)~~

2
3 Not earlier than 30 nor less than 15 calendar days before the hearing date, the
4 petitioner or the clerk must serve written notice, on *Notice of Review*
5 *Hearing* (form JV 280), on all persons required to receive notice under
6 section 293 and to any CASA volunteer. The notice must contain the
7 information stated in section 293. The notice of hearing must be served by
8 personal service or by first class mail or certified mail addressed to the last
9 known address of the person to be notified.

10
11 ~~(c) — Report (§§ 366.1, 366.21)~~

12
13 Before the hearing, petitioner must investigate and file a report describing
14 the services offered the family and progress made and, if relevant, the
15 prognosis for return of the child to the parent or guardian.

16
17 (1) — The report must contain:

18
19 (A) — Recommendations for court orders and the reasons for those
20 recommendations;

21
22 (B) — A description of the efforts made to achieve legal permanence for
23 the child if reunification efforts fail; and

24
25 (C) — A factual discussion of each item listed in sections 366.1 and
26 366.21(c).

27
28 (2) — At least 10 calendar days before the hearing, the petitioner must file the
29 report and provide copies to the parent or guardian and his or her
30 counsel, to counsel for the child, and to any CASA volunteer. The
31 petitioner must provide a summary of the recommendations to any
32 foster parents, relative caregivers, or certified foster parents who have
33 been approved for adoption.

34
35 ~~(d) — Reports~~

36
37 The court must consider the report prepared by petitioner, the report of any
38 CASA volunteer, the case plan submitted for this hearing, and any report
39 submitted by the child's caregiver under section 366.21(d).

40
41 ~~(e)(b) — Determinations—burden of proof and conduct of hearing (§§ 364,~~
42 ~~366, 366.1, 366.21)~~

1 At the 6-month review hearing, the court and all parties must comply with all
2 relevant requirements, procedures, findings, and orders in rule 5.708,
3 General review hearings requirements. The court must proceed as follows:
4

5 (1) ~~If the child has remained in the custody of the parent or guardian, the~~
6 ~~court must terminate its dependency jurisdiction unless the court finds~~
7 ~~that petitioner has established by a preponderance of the evidence that~~
8 ~~existing conditions would justify initial assumption of jurisdiction~~
9 ~~under section 300 or that such conditions are likely to exist if~~
10 ~~supervision is withdrawn. If dependency jurisdiction is continued, the~~
11 ~~court must order continued services and set a review hearing within 6~~
12 ~~months.~~

13
14 ~~(2)(1) Return of Child—Detriment Finding: If the child has been~~
15 ~~removed from the custody of the parent or guardian, the The court must~~
16 ~~order the child returned to the custody of the parent or guardian unless~~
17 ~~the court finds that petitioner has established by a preponderance of the~~
18 ~~evidence that return would create a substantial risk of detriment to the~~
19 ~~safety, protection, or physical or emotional well-being of the child. The~~
20 ~~requirements in 5.708 (d) must be followed in establishing detriment.~~
21 ~~The requirements in 5.708(e) must be followed in entering a reasonable~~
22 ~~services finding. If the child has been removed from the custody of the~~
23 ~~parent or guardian, the court must consider whether reasonable services~~
24 ~~have been provided or offered. If the child is returned, the court may~~
25 ~~order the termination of dependency jurisdiction or order continued~~
26 ~~dependency services and set a review hearing within 6 months.~~

27
28 (2) ~~If the child has been removed from the custody of the parent or~~
29 ~~guardian, the court must order the child returned unless the court finds~~
30 ~~that petitioner has established by a preponderance of the evidence that~~
31 ~~return would create a substantial risk of detriment to the child. If the~~
32 ~~child has been removed from the custody of the parent or guardian, the~~
33 ~~court must consider whether reasonable services have been provided or~~
34 ~~offered. If the child is returned, the court may order the termination of~~
35 ~~dependency jurisdiction or order continued dependency services and set~~
36 ~~a review hearing within 6 months.~~

37
38 (A) ~~The court must find that:~~

39
40 (i) ~~Reasonable services have been offered or provided; or~~

41
42 (ii) ~~Reasonable services have not been offered or provided~~

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~~(B) The following factors are not sufficient to support a finding that reasonable services have not been offered or provided:~~

~~(i) The child has been placed in a preadoptive home or with a family that is eligible to adopt the child;~~

~~(ii) The case plan includes services to achieve legal permanency for the child if reunification cannot be accomplished; or~~

~~(iii) Services to achieve legal permanency for the child if reunification efforts fail are being provided concurrently with reunification services.~~

~~(C) The court must enter additional findings as required by section 366(a)(1) and (2).~~

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

~~(4) If the child has been placed out of state, the court must consider whether the placement continues to be the most appropriate placement for the child and in the child's best interest.~~

~~(5) The court must consider whether it is necessary to limit the right of the parent or guardian to make educational decisions for the child. If the court limits this right, it must appoint a responsible adult as the educational representative under rule 5.650 to make educational decisions for the child.~~

~~(6) The court must consider the case plan submitted for this hearing and must find as follows:~~

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

~~(B) The child was not actively involved in the development of his or her own case plan and plan for permanent placement. If the court makes such a finding, the court must order the agency to actively~~

1 involve the child in the development of his or her own case plan
2 and plan for permanent placement, unless the court finds that the
3 child is unable, unavailable, or unwilling to participate; and
4

5 ~~(C) Each parent was actively involved in the development of the case
6 plan and plan for permanent placement; or~~

7
8 ~~(D) Each parent was not actively involved in the development of the
9 case plan and plan for permanent placement. If the court makes
10 such a finding, the court must order the agency to actively involve
11 each parent in the development of the case plan and plan for
12 permanent placement, unless the court finds that each parent is
13 unable, unavailable, or unwilling to participate.~~

14
15 ~~(7) For a child 12 years of age or older and in a permanent placement, the
16 court must consider the case plan submitted for this hearing and must
17 find as follows:~~

18
19 ~~(A) The child was given the opportunity to review the case plan, sign
20 it, and receive a copy; or~~

21
22 ~~(B) The child was not given the opportunity to review the case plan,
23 sign it, and receive a copy. If the court makes such a finding, the
24 court must order the agency to give the child the opportunity to
25 review the case plan, sign it, and receive a copy.~~

26
27 ~~(2) Set a 366.26 Hearing: If the court does not return custody of the child,
28 the court may set a hearing under section 366.26 within 120 days, as
29 provided in (c).~~

30
31 ~~(3) Continue the Case for a 12-Month Permanency Hearing: If the child is
32 not returned and the court does not set a section 366.26 hearing, the
33 court must order that any reunification services previously ordered will
34 continue to be offered to the parent or guardian, if appropriate. The
35 court may modify those services as appropriate or order additional
36 services reasonably believed to facilitate the return of the child to the
37 parent or guardian. The court must set a date for the next hearing no
38 later than 12 months from the date the child entered foster care.~~

39
40 ~~(f)(c) **Conduct of hearing Setting a 366.26 hearing (§ 366.21)**~~

41
42 ~~If the court does not return custody of the child:~~
43

1 (1) The court may set a hearing under section 366.26 within 120 days if:

2
3 (A) The child was removed under section 300(g) and the court finds
4 by clear and convincing evidence that the parent’s whereabouts
5 are still unknown, or the parent has failed to contact and visit the
6 child. The court must take into account any particular barriers to a
7 parent’s ability to maintain contact with his or her child due to the
8 parent’s incarceration or institutionalization;

9
10 ~~(B) The court finds by clear and convincing evidence that the parent~~
11 ~~has not had contact with the child for 6 months;~~

12
13 ~~(C)(B) * * *~~

14
15 ~~(D)(C) * * *~~

16
17 ~~(E)(D)~~ The child was under the age of three when initially removed
18 and the court finds by clear and convincing evidence that the
19 parent has failed to participate regularly and make substantive
20 progress in any court-ordered treatment plan, unless the court
21 finds a substantial probability that the child may be returned
22 within 6 months or within 12 months of the date the child entered
23 foster care, whichever is sooner, or that reasonable services have
24 not been offered or provided.

25
26 In order to find a substantial probability ~~of return~~ that the child may be
27 returned within the applicable time period, the court must find should
28 consider all of the following:

- 29
30 (i) Whether the parent or guardian has consistently and regularly
31 contacted and visited the child;
32
33 (ii) Whether the parent or guardian has made significant progress in
34 resolving the problems that led to the removal of the child; and
35
36 (iii) Whether the parent or guardian has demonstrated the capacity
37 and ability to complete the objectives of the treatment plan and to
38 provide for the child's safety, protection, physical and emotional
39 health, and special needs.

40
41 (2) The court and all parties must comply with all relevant requirements,
42 procedures, findings, and orders related to 366.26 hearings in rule
43 5.708(1)-(o).

- 1
2 (2) ~~If the court orders a hearing under section 366.26:~~
3
4 (A) ~~The court must direct that an assessment under section 366.21(i)~~
5 ~~be prepared;~~
6
7 (B) ~~The court must order the termination of reunification services to~~
8 ~~the parent or legal guardian;~~
9
10 (C) ~~The court must continue to permit the parent or legal guardian to~~
11 ~~visit the child, unless it finds that visitation would be detrimental~~
12 ~~to the child; and~~
13
14 (D) ~~If the child is 10 years of age or older and is placed in out-of-~~
15 ~~home placement for six months or longer, the court:~~
16
17 (i) ~~Must determine whether the agency has identified~~
18 ~~individuals, in addition to the child's siblings, who are~~
19 ~~important to the child and will maintain caring, permanent~~
20 ~~relationships with the child, consistent with the child's best~~
21 ~~interest;~~
22 (ii) ~~Must determine whether the agency has made reasonable~~
23 ~~efforts to nurture and maintain the child's relationships with~~
24 ~~those individuals, consistent with the child's best interest;~~
25 ~~and~~
26 (iii) ~~May make any appropriate order to ensure that those~~
27 ~~relationships are maintained.~~
28
29 (3) ~~A judgment or an order setting a hearing under section 366.26 is not~~
30 ~~immediately appealable. Review may be sought only by filing Petition~~
31 ~~for Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)~~
32 ~~(form JV 825) or other petition for extraordinary writ. If a party wishes~~
33 ~~to preserve any right to review on appeal of the findings and orders~~
34 ~~made under this rule, the party must seek an extraordinary writ under~~
35 ~~rules 8.450, 8.452, and 5.600.~~
36 (4) ~~A judgment, order, or decree setting a hearing under section 366.26~~
37 ~~may be reviewed on appeal following the order of the 366.26 hearing~~
38 ~~only if the following have occurred:~~
39
40 (A) ~~An extraordinary writ was sought by the timely filing of Petition~~
41 ~~for Extraordinary Writ (California Rules of Court, Rules 8.452,~~
42 ~~8.456) (form JV 825) or other petition for extraordinary writ; and~~
43

- 1 ~~(B) The petition for extraordinary writ was summarily denied or~~
2 ~~otherwise not decided on the merits.~~
- 3 ~~(5) Review on appeal of the order setting a hearing under section 366.26 is~~
4 ~~limited to issues raised in a previous petition for extraordinary writ that~~
5 ~~were supported by an adequate record.~~
- 6
- 7 ~~(6) Failure to file a petition for extraordinary writ review within the period~~
8 ~~specified by rules 8.450, 8.452, and 5.600, to substantively address the~~
9 ~~issues challenged, or to support the challenge by an adequate record,~~
10 ~~precludes subsequent review on appeal of the findings and orders made~~
11 ~~under this rule.~~
- 12
- 13 ~~(7) When the court orders a hearing under section 366.26, the court must~~
14 ~~advise all parties that, to preserve any right to review on appeal of the~~
15 ~~order setting the hearing, the party must seek an extraordinary writ by~~
16 ~~filing:~~
- 17
- 18 ~~(A) A notice of the party's intent to file a writ petition and a request~~
19 ~~for the record, which may be submitted on Notice of Intent to File~~
20 ~~Writ Petition and Request for Record (California Rules of Court,~~
21 ~~Rule 8.450) (form JV 820); and~~
- 22
- 23 ~~(B) A petition for an extraordinary writ, which may be submitted on~~
24 ~~Petition for Extraordinary Writ (California Rules of Court, Rules~~
25 ~~8.452, 8.456) (form JV 825).~~
- 26
- 27 ~~(8) Within 24 hours of the review hearing, the clerk of the court must~~
28 ~~provide notice by first class mail to the last known address of any party~~
29 ~~who is not present when the court orders the hearing under section~~
30 ~~366.26. This notice must include the advisement required by (f)(7).~~
- 31
- 32 ~~(9) Copies of Petition for Extraordinary Writ (California Rules of Court,~~
33 ~~Rules 8.452, 8.456) (form JV 825) and Notice of Intent to File Writ~~
34 ~~Petition and Request for Record (California Rules of Court, Rule~~
35 ~~8.450) (form JV 820) must be available in the courtroom and must~~
36 ~~accompany all mailed notices informing the parties of their rights.~~
- 37
- 38 ~~(10) If the court orders a hearing under section 366.26, the court must order~~
39 ~~that notice of the hearing under section 366.26 must not be provided to~~
40 ~~any of the following:~~
- 41
- 42 ~~(A) A parent, presumed parent, or alleged parent who has relinquished~~
43 ~~the child for adoption and whose relinquishment has been~~

1 accepted and filed with notice under Family Code section 8700;
2 or

3 ~~(B) An alleged parent who has denied parentage and has completed~~
4 ~~section 1 of Statement Regarding Parentage (Juvenile) (form JV-~~
5 ~~505).~~

6
7 ~~(11) If the child is not returned and the court does not set a section 366.26~~
8 ~~hearing, then the court must order that any reunification services~~
9 ~~previously ordered will continue to be offered to the parent or guardian,~~
10 ~~and the court may modify those services as appropriate. The court must~~
11 ~~set a date for the next review hearing no later than 12 months from the~~
12 ~~date the child entered foster care.~~

13
14 ~~(g)~~**(d) Setting a hearing under section 366.26 for siblings (§ 366.21)**

15
16 In determining whether to set a hearing under section 366.26 for one or more
17 members of a sibling group when one member of that group was under the
18 age of three at the time of the initial removal, the court may terminate or
19 continue services for any or all members of the group, based on the
20 following considerations and for reasons specified on the record:

21
22 ~~(1)–(9) * * *~~

23
24 ~~(h)~~**Noncustodial parents**

25
26 ~~If the court has previously placed or at this hearing places the child with a~~
27 ~~noncustodial parent, the court may:~~

28
29 ~~(1) Continue supervision and reunification services;~~

30
31 ~~(2) After stating on the record or in writing the factual basis for the order,~~
32 ~~order custody to the noncustodial parent, continue supervision, and~~
33 ~~order family maintenance services; or~~

34
35 ~~(3) After stating on the record or in writing the factual basis for the order,~~
36 ~~order custody to the noncustodial parent, terminate jurisdiction, and~~
37 ~~direct that Custody Order Juvenile Final Judgment (form JV-200) be~~
38 ~~prepared and filed under rule 5.700.~~

39
40 ~~(i)~~**Setting a hearing under section 366.26**

41
42 ~~At the 6 month review hearing, the court may not set a hearing under section~~
43 ~~366.26 to consider termination of the rights of only one parent unless:~~

- 1
2 (1) ~~That parent is the only surviving parent;~~
3 (2) ~~The rights of the other parent have been terminated by a California~~
4 ~~court of competent jurisdiction or by a court of competent jurisdiction~~
5 ~~of another state under the statutes of that state; or~~
6
7 (3) ~~The other parent has relinquished custody of the child to the county~~
8 ~~welfare department.~~
9

10 **Rule 5.715. Twelve-month review permanency hearing**

11
12 **(a) Requirement for 12-month review; setting of hearing; notice (§§ 293,**
13 **366.21)**

14
15 The case of any dependent child whom the court has removed from the
16 custody of the parent or guardian must be set for ~~review~~ a permanency
17 hearing within 12 months of the date the child entered foster care, as defined
18 in rule 5.502, and no later than 18 months from the date of the initial
19 removal. Notice of the hearing must be ~~given as provided~~ as described in
20 ~~section 293~~ rule 5.708(b).
21

22 **~~(b) Reports (§§ 366.1, 366.21)~~**

23
24 ~~Before the hearing the petitioner must prepare a report describing services~~
25 ~~offered to the family and progress made.~~
26

27 ~~(1) The report must include:~~

28
29 ~~(A) Recommendations for court orders and the reasons for those~~
30 ~~recommendations;~~

31
32 ~~(B) A description of the efforts made to achieve legal permanency for~~
33 ~~the child if reunification efforts fail; and~~

34
35 ~~(C) A factual discussion of each item listed in sections 366.1 and~~
36 ~~366.21(c).~~
37

38 ~~(2) At least 10 calendar days before the hearing, the petitioner must file the~~
39 ~~report, provide copies to the parent or guardian and his or her counsel,~~
40 ~~to counsel for the child, and to any CASA volunteer. The petitioner~~
41 ~~must provide a summary of the recommendations to any foster parents,~~
42 ~~relative caregivers, or certified foster parents who have been approved~~
43 ~~for adoption.~~

1
2 **(e)(b) Determinations and conduct of hearing (§§ 361.5, 366, 366.1,**
3 **366.21)**
4

5 At the hearing, the court ~~must state on the record that the court has read and~~
6 ~~considered the report of petitioner, the report of any CASA volunteer, the~~
7 ~~case plan submitted for this hearing, any report submitted by the child's~~
8 ~~caregiver under section 366.21(d), and any other evidence, and must proceed~~
9 ~~as follows: and all parties must comply with all relevant requirements,~~
10 ~~procedures, findings, and orders in rule 5.708, *General review hearing*~~
11 ~~*requirements.* The court must proceed as follows:~~
12

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

24 ~~(2) If the court has previously placed or at this hearing places the child~~
25 ~~with a noncustodial parent, the court may:~~
26

27 ~~(A) Continue supervision and reunification services;~~
28

29 ~~(B) After stating on the record or in writing the factual basis for the~~
30 ~~order, order custody to that parent, continue supervision, and~~
31 ~~order family maintenance services; or~~
32

33 ~~(C) After stating on the record or in writing the factual basis for the~~
34 ~~order, order custody to the noncustodial parent, terminate~~
35 ~~jurisdiction, and direct that Custody Order Juvenile Final~~
36 ~~Judgment (form JV 200) be prepared and filed under rule 5.700.~~
37

38 ~~(3) If the court does not order return of the child, the court must specify the~~
39 ~~factual basis for its finding of risk of detriment to the child. The court~~
40 ~~must order a permanent plan unless the court determines that there is a~~
41 ~~substantial probability of return within 18 months of the removal of the~~
42 ~~child. In order to find a substantial probability of return within the 18-~~
43 ~~month period, the court must find all of the following:~~

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41

~~(A) The parent or guardian has consistently and regularly contacted and visited the child;~~

~~(B) The parent or guardian has made significant progress in resolving the problems that led to the removal of the child; and~~

~~(C) The parent or guardian has demonstrated the capacity and ability to complete the objectives of the treatment plan and to provide for the child's safety, protection, physical and emotional health, and special needs.~~

~~(4) If the child is not returned to the custody of the parent or guardian, the court must consider whether reasonable services have been provided or offered. The court must find that:~~

~~(A) Reasonable services have been offered or provided; or~~

~~(B) Reasonable services have not been offered or provided.~~

~~(5) The following factors are not sufficient 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.~~

~~(6) The court must consider whether it is necessary to limit the right of the parent or guardian to make educational decisions for the child. If the court limits this right, it must appoint a responsible adult as the educational representative under rule 5.650 to make educational decisions for the child.~~

~~(7) The court must consider the case plan and must find as follows:~~

1 ~~(A) The child was actively involved in the development of his or her~~
2 ~~own 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~~
6 ~~her own case plan and plan for permanent placement as age and~~
7 ~~developmentally appropriate. If the court makes such a finding,~~
8 ~~the court must order the agency to involve the child in the~~
9 ~~development of his or her own case plan and plan for permanent~~
10 ~~placement, unless the court finds that the child is unable,~~
11 ~~unavailable, or unwilling to participate; and~~
12

13 ~~(C) Each parent was actively involved in the development of the case~~
14 ~~plan and plan for permanent placement; or~~
15

16 ~~(D) Each parent was not actively involved in the development of the~~
17 ~~case plan and plan for permanent placement. If the court makes~~
18 ~~such a finding, the court must order the agency to actively involve~~
19 ~~each parent in the development of the case plan and plan for~~
20 ~~permanent placement, unless the court finds that each parent is~~
21 ~~unable, unavailable, or unwilling to participate.~~
22

23 ~~(8) For a child 12 years of age or older and in a permanent placement, the~~
24 ~~court must consider the case plan submitted for this hearing and must~~
25 ~~find as follows:~~
26

27 ~~(A) The child was given the opportunity to review the case plan, sign~~
28 ~~it, and receive a copy; or~~
29

30 ~~(B) The child was not given the opportunity to review the case plan,~~
31 ~~sign it, and receive a copy. If the court makes such a finding, the~~
32 ~~court must order the agency to give the child the opportunity to~~
33 ~~review the case plan, sign it, and receive a copy.~~
34

35 ~~(d) Determinations and orders~~
36

37 ~~The court must proceed as follows:~~
38

39 ~~(2) If the court does not order return of the child to the parent or guardian~~
40 ~~and the time period for providing court-ordered services has been met~~
41 ~~or exceeded, as provided in section 361.5(a)(1), the court must specify~~
42 ~~the factual basis for its finding of risk of detriment to the child and~~
43 ~~proceed as follows in selecting a permanent plan:~~

1
2 ~~(1)(A)~~ If the court finds that there is a substantial probability that
3 the child will be returned within 18 months or that reasonable
4 services have not been offered or provided, the court must
5 continue the case for a permanency review hearing to a date not
6 later than 18 months from the date of the initial removal if the
7 court finds that there is a substantial probability of return within
8 that time or that reasonable services have not been offered or
9 provided. If the court continues the case for an 18-month
10 permanency review hearing, the court must inform the parent or
11 guardian that if the child cannot be returned home by the next
12 hearing, a proceeding under section 366.26 may be instituted; or .
13

14 (i) In order to find a substantial probability of return within the
15 18-month period, the court must find all of the following:
16

17 (a) The parent or guardian has consistently and regularly
18 contacted and visited the child;
19

20 (b) The parent or guardian has made significant progress in
21 resolving the problems that led to the removal of the
22 child; and
23

24 (c) The parent or guardian has demonstrated the capacity
25 and ability to complete the objectives of the treatment
26 plan and to provide for the child's safety, protection,
27 physical and emotional health, and special needs.
28

29 (ii) In determining whether court-ordered services may be
30 extended to the 18-month point, the court must consider the
31 special circumstances of a parent or guardian who is
32 incarcerated or institutionalized or court-ordered to a
33 residential substance abuse treatment program, including,
34 but not limited to barriers to the parent's or guardian's
35 access to services and ability to maintain contact with his or
36 her child. The court must also consider, among other
37 factors, good faith efforts that the parent or guardian has
38 made to maintain contact with the child.
39

40 (B) If (1), (2)(A), or (2)(C) do not apply, the court must terminate
41 reunification services and order a hearing under section 366.26
42 within 120 days. The court and all parties must comply with all

1 relevant requirements, procedures, findings, and orders related to
2 366.26 hearings in rule 5.708(1).

3
4 (C) If the court finds by clear and convincing evidence that there is a
5 compelling reason for determining that a section 366.26 hearing is
6 not in the best interest of the child because the child is not a
7 proper subject for adoption and has no one willing to accept legal
8 guardianship, the court must terminate reunification services and
9 order that the child remain in foster care. If the court orders that
10 the child remain in foster care, it must identify the foster care
11 setting by name and identify a specific permanency goal for the
12 child. The court may order that the name and address of the foster
13 home remain confidential.

14
15 (3) If the child is not returned to his or her parent or legal guardian, the
16 court must consider and state, for the record, in-state and out-of-state
17 options for permanent placement.

18
19 ~~(2) Order that the child remain in foster care if it finds by clear and~~
20 ~~convincing evidence already presented that a section 366.26 hearing is~~
21 ~~not in the best interest of the child because the child is not a proper~~
22 ~~subject for adoption and has no one willing to accept legal~~
23 ~~guardianship.~~

24
25 ~~(A) If the court orders that the child remain in foster care, it must~~
26 ~~identify the foster care setting by name and identify a specific~~
27 ~~permanency goal for the child. The court may order that the name~~
28 ~~and address of the foster home remain confidential.~~

29
30 ~~(B) If the child is 10 years of age or older and is placed in out-of-~~
31 ~~home placement for six months or longer, the court:~~

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

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

1 ~~(iii) May make any appropriate order to ensure that those~~
2 ~~relationships are maintained; or~~

3
4 ~~(3) If the court does not find that there is a substantial probability of return~~
5 ~~within 18 months of the initial removal, and finds that reasonable~~
6 ~~services have been offered or provided to the parent or guardian, the~~
7 ~~court must order a hearing under section 366.26 within 120 days.~~

8
9 ~~(A) If the court orders a hearing under section 366.26, the court must~~
10 ~~also order termination of reunification services. Visitation must~~
11 ~~continue unless the court finds it would be detrimental to the~~
12 ~~child. The court must enter any other appropriate orders to enable~~
13 ~~the child to maintain relationships with other individuals who are~~
14 ~~important to the child, consistent with the child's best interest.~~

15
16 ~~(B) If the court orders a hearing under section 366.26, the court must~~
17 ~~direct that an assessment be prepared as stated in section~~
18 ~~366.21(i).~~

19
20 ~~(C) A judgment or an order setting a hearing under section 366.26 is~~
21 ~~not immediately appealable. Review may be sought only by filing~~
22 ~~Petition for Extraordinary Writ (California Rules of Court, Rules~~
23 ~~8.452, 8.456) (form JV-825) or other petition for extraordinary~~
24 ~~writ. If a party wishes to preserve any right to review on appeal of~~
25 ~~the findings and orders made under this rule, the party must seek~~
26 ~~an extraordinary writ under rules 8.450, 8.452, and 5.600.~~

27
28 ~~(D) A judgment, order, or decree setting a hearing under section~~
29 ~~366.26 may be reviewed on appeal following the order of the~~
30 ~~section 366.26 hearing only if the following have occurred:~~

31
32 ~~(i) An extraordinary writ was sought by the timely filing of~~
33 ~~Petition for Extraordinary Writ (California Rules of Court,~~
34 ~~Rules 8.452, 8.456) (form JV-825) or other petition for~~
35 ~~extraordinary writ; and~~

36
37 ~~(ii) The petition for extraordinary writ was summarily denied or~~
38 ~~otherwise not decided on the merits.~~

39
40 ~~(E) Review on appeal of the order setting a hearing under section~~
41 ~~366.26 is limited to issues raised in a previous petition for~~
42 ~~extraordinary writ that were supported by an adequate record.~~
43

1 ~~(F) Failure to file a petition for extraordinary writ review within the~~
2 ~~period specified by rules 8.450, 8.452, and 5.600, to substantively~~
3 ~~address the issues challenged, or to support the challenge by an~~
4 ~~adequate record, precludes subsequent review on appeal of the~~
5 ~~findings and orders made under this rule.~~

6
7 ~~(G) When the court orders a hearing under section 366.26, the court~~
8 ~~must advise all parties that, to preserve any right to review on~~
9 ~~appeal of the order setting the hearing, the party must seek an~~
10 ~~extraordinary writ by filing:~~

11
12 ~~(i) A notice of intent to file a writ petition and a request for the~~
13 ~~record, which may be submitted on Notice of Intent to File~~
14 ~~Writ Petition and Request for Record (California Rules of~~
15 ~~Court, Rule 8.450) (form JV 820); and~~

16
17 ~~(ii) A petition for an extraordinary writ, which may be~~
18 ~~submitted on Petition for Extraordinary Writ (California~~
19 ~~Rules of Court, Rules 8.452, 8.456) (form JV 825).~~

20
21 ~~(H) Within 24 hours of the review hearing, the clerk of the court must~~
22 ~~provide notice by first class mail to the last known address of any~~
23 ~~party who is not present when the court orders the hearing under~~
24 ~~section 366.26. This notice must include the advisement required~~
25 ~~by (d)(3)(G).~~

26
27 ~~(I) Copies of Petition for Extraordinary Writ (California Rules of~~
28 ~~Court, Rules 8.452, 8.456) (form JV 825) and Notice of Intent to~~
29 ~~File Writ Petition and Request for Record (California Rules of~~
30 ~~Court, Rule 8.450) (form JV 820) must be available in the~~
31 ~~courtroom and must accompany all mailed notices informing the~~
32 ~~parties of their trial rights~~

33
34 ~~(J) If the court orders a hearing under section 366.26, the court must~~
35 ~~order that notice of the hearing under section 366.26 must not be~~
36 ~~provided to any of the following:~~

37
38 ~~(i) A parent, presumed parent, or alleged parent who has~~
39 ~~relinquished the child for adoption and the relinquishment~~
40 ~~has been accepted and filed with notice under Family Code~~
41 ~~section 8700; or~~
42

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

5 ~~(e) Setting a hearing under section 366.26~~

6
7 At the 12-month review hearing, the court may not set a hearing under
8 section 366.26 to consider termination of the rights of only one parent
9 unless:

10
11 (1) That parent is the only surviving parent;

12
13 (2) The rights of the other parent have been terminated by a California
14 court of competent jurisdiction or by a court of competent jurisdiction
15 of another state under the statutes of that state; or

16
17 (3) The other parent has relinquished custody of the child to the county
18 welfare department.
19

20 **Rule 5.720. Eighteen-month permanency review hearing**

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

24
25 For any dependent child whom the court has removed from the custody of
26 the parent or guardian, and who If a child was not returned at the 6- or 12-
27 month review hearing, a permanency review hearing must be held no later
28 than 18 months from the date of the initial removal. Notice of the hearing
29 must be given as provided in section 293 and rule 5.708(b).
30

31 ~~(b) Reports (§§ 366.1, 366.21)~~

32
33 ~~Before the hearing the petitioner must prepare a report describing services~~
34 ~~offered to the family and progress made.~~

35
36 (1) The report must include:

37
38 (A) ~~Recommendations for court orders and the reasons for those~~
39 ~~recommendations;~~

40
41 (B) ~~A description of the efforts made to achieve legal permanence for~~
42 ~~the child if reunification efforts fail; and~~
43

1 ~~(C) A factual discussion of each item listed in sections 366.1 and~~
2 ~~366.21(e).~~

3 ~~(2) At least 10 calendar days before the hearing, the petitioner must file the~~
4 ~~report and provide copies to the parent or guardian and his or her~~
5 ~~counsel, to counsel for the child, and to any CASA volunteer. The~~
6 ~~petitioner must provide a summary of the recommendations to any~~
7 ~~foster parents, relative caregivers, or certified foster parents who have~~
8 ~~been approved for adoption.~~

9
10 **(e)(b) Determinations and conduct of hearing (§§ 361.5, 366.22)**

11
12 ~~At the hearing the court must state on the record that the court has read and~~
13 ~~considered the report of petitioner, the report of any CASA volunteer, the~~
14 ~~case plan submitted for this hearing, any report submitted by the child's~~
15 ~~caregiver under section 366.21(d), and any other evidence, and must proceed~~
16 ~~as follows: and all parties must comply with all relevant requirements,~~
17 ~~procedures, findings and orders in rule 5.708, General review hearing~~
18 ~~requirements. The court must proceed as follows:~~

19
20 (1) The court must order the child returned to the custody of the parent or
21 guardian unless the court finds the petitioner has established, by a
22 preponderance of the evidence, that return would create a substantial
23 risk of detriment to the safety, protection, or physical or emotional
24 well-being of the child. Failure of the parent or guardian to regularly
25 participate and make substantive progress in a court-ordered treatment
26 program is prima facie evidence that continued supervision is necessary
27 or that return would be detrimental. The requirements in rule 5.708(d)
28 must be followed in establishing detriment. The requirements in rule
29 5.708(e) must be followed in entering a reasonable services finding.

30
31 ~~(2) If the court has previously placed or at this hearing places the child~~
32 ~~with a noncustodial parent, the court may:~~

33
34 ~~(A) Continue supervision;~~

35
36 ~~(B) After stating on the record or in writing the factual basis for the~~
37 ~~order, order custody to that parent, continue supervision, and~~
38 ~~order family maintenance services; or~~

39
40 ~~(C) After stating on the record or in writing the factual basis for the~~
41 ~~order, order custody to the noncustodial parent, terminate~~
42 ~~jurisdiction, and direct that Custody Order Juvenile Final~~
43 ~~Judgment (form JV 200) be prepared and filed under rule 5.700.~~

1
2 ~~(3)~~(2) If the court does not order return of the child to the custody of the
3 parent or guardian, the court must specify the factual basis for its
4 finding of risk of detriment, ~~terminate reunification services~~, and do
5 one of the following:

6
7 (A) Continue the case for a subsequent permanency review hearing
8 not later than 24 months from the date of the initial removal if the
9 court finds that there is a substantial probability that the child will
10 be returned within that time or that reasonable services have not
11 been offered or provided. To extend services to the 24-month
12 point, the court must also find by clear and convincing evidence
13 that additional reunification services are in the best interests of the
14 child and that the parent or legal guardian is making significant
15 and consistent progress in a substance abuse treatment program,
16 or a parent is recently discharged from incarceration or
17 institutionalization and making significant and consistent progress
18 in establishing a safe home for the child's return. The court must
19 also inform the parent or guardian that, if the child cannot be
20 returned home by the subsequent permanency review hearing, a
21 hearing under section 366.26 may be instituted.

22
23 (i) In order to find a substantial probability that the child will
24 be returned within the 24-month period, the court must find
25 all of the following:

26
27 (a) The parent or guardian has consistently and regularly
28 contacted and visited the child;

29
30 (b) The parent or guardian has made significant and
31 consistent progress in the prior 18 months in resolving
32 the problems that led to the removal of the child; and

33
34 (c) The parent or guardian has demonstrated the capacity
35 and ability both to complete the objectives of his or her
36 substance abuse treatment plan as evidenced by reports
37 from a substance abuse provider as applicable, or
38 complete a treatment plan postdischarge from
39 incarceration or institutionalization, and to provide for
40 the child's safety, protection, physical and emotional
41 health, and special needs.
42

1 ~~(A)~~(B) Terminate reunification services and oOrder that the child
2 remain in foster care, if it finds by clear and convincing evidence
3 already presented that there is a compelling reason for
4 determining that a section 366.26 hearing is not in the best
5 interest of the child because the child is not a proper subject for
6 adoption and has no one willing to accept legal guardianship. If
7 the court orders that the child remain in foster care, it must
8 identify the foster care setting by name and identify a specific
9 permanency goal for the child. The court may order that the name
10 and address of the foster home remain confidential. ~~If the child is~~
11 ~~10 years of age or older and is placed in out-of-home placement~~
12 ~~for six months or longer, the court:~~

13
14 ~~(i) — Must determine whether the agency has identified~~
15 ~~individuals, in addition to the child's siblings, who are~~
16 ~~important to the child and will maintain caring, permanent~~
17 ~~relationships with the child, consistent with the child's best~~
18 ~~interest;~~

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

24
25 ~~(iii) — May make any appropriate order to ensure that those~~
26 ~~relationships are maintained; or~~

27
28 ~~(B) — Order a hearing under section 366.26 within 120 days.~~

29
30 ~~(C) If (1), (2)(A) or (2)(B) do not apply, the court must terminate~~
31 ~~reunification services and order a hearing under section 366.26~~
32 ~~within 120 days. The court and all parties must comply with all~~
33 ~~relevant requirements, procedures, and findings and orders related~~
34 ~~to 366.26 hearings in rule 5.708(1)-(o).~~

35
36 ~~(3) If the child is not returned to his or her parent or legal guardian, the~~
37 ~~court must consider and state, for the record, in-state and out-of-state~~
38 ~~options for permanent placement.~~

39
40 ~~(4) — Visitation must continue unless the court finds it would be detrimental~~
41 ~~to the child. The court may enter any other appropriate orders to enable~~
42 ~~the child to maintain relationships with other individuals who are~~
43 ~~important to the child, consistent with the child's best interest.~~

1
2 ~~(5) The court must consider whether reasonable services have been~~
3 ~~provided. Evidence that the child has been placed with a relative or~~
4 ~~foster family who is eligible to adopt or that the child has been placed~~
5 ~~in a preadoptive home is insufficient alone to support a finding that~~
6 ~~reasonable services have not been offered or provided. The court must~~
7 ~~find that:~~

8
9 ~~(A) Reasonable services were offered or provided; or~~

10
11 ~~(B) Reasonable services were not offered or provided.~~

12
13 ~~(6) The court must consider the case plan submitted for this hearing and~~
14 ~~must find as follows:~~

15
16 ~~(A) The child was actively involved in the development of his or her~~
17 ~~own case plan and plan for permanent placement as age and~~
18 ~~developmentally appropriate; or~~

19
20 ~~(B) The child was not actively involved in the development of his or~~
21 ~~her own case plan and plan for permanent placement as age and~~
22 ~~developmentally appropriate. If the court makes such a finding,~~
23 ~~the court must order the agency to involve the child in the~~
24 ~~development of his or her own case plan and plan for permanent~~
25 ~~placement, unless the court finds that the child is unable,~~
26 ~~unavailable, or unwilling to participate; and~~

27
28 ~~(C) Each parent was actively involved in the development of the case~~
29 ~~plan and plan for permanent placement; or~~

30
31 ~~(D) Each parent was not actively involved in the development of the~~
32 ~~case plan and plan for permanent placement. If the court makes~~
33 ~~such a finding, the court must order the agency to actively involve~~
34 ~~each parent in the development of the case plan and plan for~~
35 ~~permanent placement, unless the court finds that each parent is~~
36 ~~unable, unavailable, or unwilling to participate.~~

37
38 ~~(7) For a child 12 years of age or older and in a permanent placement, the~~
39 ~~court must consider the case plan and must find as follows:~~

40
41 ~~(A) The child was given the opportunity to review the case plan, sign~~
42 ~~it, and receive a copy; or~~

1 ~~(B) The child was not given the opportunity to review the case plan,~~
2 ~~sign it, and receive a copy. If the court makes such a finding, the~~
3 ~~court must order the agency to give the child the opportunity to~~
4 ~~review the case plan, sign it, and receive a copy, unless the court~~
5 ~~finds that the child is unable, unavailable, or unwilling to~~
6 ~~participate.~~

7
8 ~~(8) If the court orders a hearing under section 366.26, the court must~~
9 ~~terminate reunification services and direct that an assessment be~~
10 ~~prepared as stated in section 366.22(b). Visitation must continue unless~~
11 ~~the court finds it would be detrimental to the child. The court must~~
12 ~~enter any other appropriate orders to enable the child to maintain~~
13 ~~relationships with other individuals who are important to the child,~~
14 ~~consistent with the child's best interest.~~

15
16 ~~(9) A judgment or an order setting a hearing under section 366.26 is not~~
17 ~~immediately appealable. Review may be sought only by filing Petition~~
18 ~~for Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)~~
19 ~~(form JV 825) or other petition for extraordinary writ. If a party wishes~~
20 ~~to preserve any right to review on appeal of the findings and orders~~
21 ~~made under this rule, the party is required to seek an extraordinary writ~~
22 ~~under rules 8.450, 8.452, and 5.600.~~

23
24 ~~(10) A judgment, order, or decree setting a hearing under section 366.26~~
25 ~~may be reviewed on appeal following the order of the 366.26 hearing~~
26 ~~only if the following have occurred:~~

27
28 ~~(A) An extraordinary writ was sought by the timely filing of Petition~~
29 ~~for Extraordinary Writ (California Rules of Court, Rules 8.452,~~
30 ~~8.456) (form JV 825) or other petition for extraordinary writ; and~~

31
32 ~~(B) The petition for extraordinary writ was summarily denied or~~
33 ~~otherwise not decided on the merits.~~

34
35 ~~(11) Review on appeal of the order setting a hearing under section 366.26 is~~
36 ~~limited to issues raised in a previous petition for extraordinary writ that~~
37 ~~were supported by an adequate record.~~

38
39 ~~(12) Failure to file a petition for extraordinary writ review within the period~~
40 ~~specified by rules 8.450, 8.452, and 5.600, to substantively address the~~
41 ~~issues challenged, or to support the challenge by an adequate record~~
42 ~~precludes subsequent review on appeal of the findings and orders made~~
43 ~~under this rule.~~

1
2 ~~(13) When the court orders a hearing under section 366.26, the court must~~
3 ~~advise orally all parties that to preserve any right to review on appeal of~~
4 ~~the order setting the hearing, the party is required to seek an~~
5 ~~extraordinary writ by filing:~~

6
7 ~~(A) A notice of the party's intent to file writ petition and request for~~
8 ~~the record, which may be submitted on Notice of Intent to File~~
9 ~~Writ Petition and Request for Record (California Rules of Court,~~
10 ~~Rule 8.450) (form JV 820); and~~

11
12 ~~(B) A petition for an extraordinary writ, which may be submitted on~~
13 ~~Petition for Extraordinary Writ (California Rules of Court, Rules~~
14 ~~8.452, 8.456) (form JV 825).~~

15
16 ~~(14) Within 24 hours of the review hearing, the clerk of the court must~~
17 ~~provide notice by first class mail to the last known address of any party~~
18 ~~who is not present when the court orders the hearing under section~~
19 ~~366.26. The notice must include the advisement required by (c)(13).~~
20

21 ~~(15) Copies of Petition for Extraordinary Writ (California Rules of Court,~~
22 ~~Rules 8.452, 8.456) (form JV 825) and Notice of Intent to File Writ~~
23 ~~Petition and Request for Record (California Rules of Court, Rule~~
24 ~~8.450) (form JV 820) must be available in the courtroom and must~~
25 ~~accompany all mailed notices informing the parties of their rights.~~
26

27 ~~(16) If the court orders a hearing under section 366.26, the court must order~~
28 ~~that notice of the hearing under section 366.26 must not be provided to~~
29 ~~any of the following:~~

30
31 ~~(A) A parent, presumed parent, or alleged parent who has relinquished~~
32 ~~the child for adoption and whose relinquishment has been~~
33 ~~accepted and filed with notice under Family Code section 8700;~~
34 ~~or~~

35
36 ~~(B) An alleged parent who has denied parentage and has completed~~
37 ~~section 1 of Statement Regarding Parentage (Juvenile) (form JV-~~
38 ~~505).~~

39
40 ~~(d) Setting a hearing under section 366.26~~
41

1 ~~At the 18-month review hearing, the court must not set a hearing under~~
2 ~~section 366.26 to consider termination of the rights of only one parent~~
3 ~~unless:~~

4
5 (1) ~~That parent is the only surviving parent;~~

6
7 (2) ~~The rights of the other parent have been terminated by a California~~
8 ~~court of competent jurisdiction or by a court of competent jurisdiction~~
9 ~~of another state under the statutes of that state; or~~

10
11 (3) ~~The other parent has relinquished custody of the child to the county~~
12 ~~welfare department.~~

13
14
15
16
17 **Rule 5.722. Twenty-four-month subsequent permanency review hearing**

18
19 **(a) Setting the 24-month subsequent permanency hearing; notice (§ 366.25)**

20
21 When a case has been continued under section 366.22(b), the subsequent
22 permanency hearing must be held no later than 24 months from the date of
23 initial removal. Notice must be provided as described in Rule 5.708(b)

24
25 **(b) Determinations and conduct of hearing (§ 366, 366.1, 366.25)**

26
27 At the hearing, the court and all parties must comply with all relevant
28 requirements, procedures, findings and orders in rule 5.708, *General review*
29 *hearing requirements*. The court must proceed as follows:

30
31 (1) The court must order the child returned to the custody of the parent or
32 guardian unless the court finds by a preponderance of the evidence that
33 return would create a substantial risk of detriment to the safety,
34 protection, or physical or emotional well-being of the child. Failure of
35 the parent or guardian to regularly participate and make substantive
36 progress in a court-ordered treatment program is prima facie evidence
37 that return would be detrimental. The requirements in 5.708(d) must be
38 followed in establishing detriment. The requirements in 5.708(e) must
39 be followed in entering a reasonable services finding.

40
41 (2) If the court does not order the return of the child to the custody of the
42 parent or guardian, the court must specify the factual basis for its
43 finding of risk of detriment and do one of the following:

1
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3
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22

(A) If the court finds by clear and convincing evidence that there is a compelling reason for determining that a section 366.26 hearing is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship, the court must terminate reunification services and order that the child remain in foster care. If the court orders that the child remain in foster care, it must identify the foster care setting by name and identify a specific permanency goal for the child. The court may order that the name and address of the foster home remain confidential.

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

(3) If the child is not returned to his or her parent or legal guardian, the court must consider and state, for the record, in-state and out-of-state options for permanent placement.

Item SPR09-34 Response Form

Title: Juvenile Law: Review and Permanency Hearings in Dependency Proceedings (amend Cal. Rules of Court, rules 5.695, 5.710, 5.715, and 5.720; adopt rules 5.706, 5.708, and 5.722)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ Title: _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: <http://www.courtinfo.ca.gov/invitationstocomment/>

Email: invitations@jud.ca.gov

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Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 17, 2009
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Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.