

Glossary

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AAP	American Academy of Pediatrics
AAP	Adoption Assistance Program
AB	Assembly Bill
ABA	American Bar Association
ACA	American Correctional Association
ACA	Alcohol Council of California
ACF	Administration for Children and Families (Federal)
ACIN	All County Information Notice
ACL	All County Letter
ADA	Americans with Disabilities Act
ADDA	Attention Deficit Disorder Association
ADP	Department of Alcohol and Drug Programs
ADSS	California Department of Social Services
AFCARS	Adoption and Foster Care Analysis and Reporting System
AFDC	Aid to Families with Dependent Children
AFDC-FC	Aid to Families with Dependent Children – Foster Care
AFLP	Adolescent Family Life Program
AFY	Advocates for Youth
AI/AN	American Indian and Alaskan Native
AIDS	Acquired Immunodeficiency Syndrome
AOC	Administrative Office of the Courts
AOD	Alcohol and Other Drugs
AP	Advanced Placement
APD	Advanced Planning Document

APHSA	American Public Human Services Association
APPA	American Probation and Parole Association
ARBD	Alcohol-Related Birth Defects
ASFA	Adoption and Safe Families Act (1997)
ASI	Addiction Severity Index
BARC	Bay Area Regional Committee
BATF	Bureau of Alcohol, Tobacco & Firearms
BEO	Bilingual Education Office
BIA	Bureau of Indian Affairs
BO	Business Objects
CAADAC	California Association of Alcoholism and Drug Abuse Counselors
CAARH	California Association of Alcoholic Recovery Homes
CACI	Child Abuse Central Index
CAD	County Access to Data
CAD	Computer Aided Drafting
CADCA	Community Anti-Drug Coalitions of America
CADCP	California Association of Drug Court Professionals
CADDs	California Alcohol and Drug Data System
CADFY	Californians for Drug-Free Youth, Inc.
CADPAAC	County Alcohol and Drug Program Administrators Association of California
CALDADS	California Drug Abuse Data System
CALOSHA	California Occupational Safety and Health Administration
CalWORKS	California Work Opportunity and Responsibility to Kids
CAMP	California Association of Methadone Programs
CAPAs	California Alcohol Program Administrators

CAPC	Children's Abuse Prevention Council
CAPTA	Child Abuse Prevention & Treatment Act of 1974 (PL93-274)
CASA	National Center of Addiction and Substance Abuse at Columbia University
CASA	Court Appointed Special Advocate
CASAS	Comprehensive Adult Student Assessment System
CAT	California Automotive Teachers
CAT	Comprehensive Assessment Tool
CAT/6	California Achievement Tests, Sixth Edition
CBCAP	Community-Based Child Abuse Prevention
CBCB	Caregiver Background Check Bureau
CCL	Community Care Licensing Division
CCR	California Code of Regulations
CDC	Centers for Disease Control and Prevention
CDC	California Department of Corrections
CDE	California Department of Education
CDHS	California Department of Health Services
CFR	Code of Federal Regulations
CFSR	Child & Family Services Review (federal review)
CFSR	Child and Family Service Reviews
CHDP	Children's Health and Disability Prevention
CIL	Center for Independent Living
CLETS	California Law Enforcement Telecommunications
CMHC	Community Mental Health Center
CMS	Case Management System
CMSSB	Case Management System Support Branch (in DFSD)

COLA	Cost-of-Living Adjustments
CORI	Criminal Offender Record Information
CPFSB	Child Protection and Family Support Branch (in CFSD)
CPOC	Chief Probation Officers of California
CPS	Career Performance Standard
CPS	Child Protective Services
CSAP	Center for Substance Abuse Prevention
CSAT	Center for Substance Abuse Treatment
CSB	California School for the Blind
CSD	California School for the Deaf
CSD	Charter Schools Division
CWD	County Welfare Department
CWDA	Child Welfare Directors Association
CWLA	Child Welfare League of America, Inc.
CWS	Child Welfare Services
CWS/CMS	Child Welfare Services/Case Management System
CYA	California Youth Authority
CYC	California Youth Connection
CYFS	Child Youth and Family Services
CYFSB	Child, Youth, and Family Services Branch
DATE	Drug, Alcohol, and Tobacco Education
DATOS	Drug Abuse Treatment Outcome Study
DCPO	Drug Courts Program Office
DCPP	Drug Court Partnership Program
DCRSAT	Drug Court Related Substance Abuse Treatment Program

DFSD	Child and Family Services Division
DFSP/Title	
IV-P Plan	Child and Family Services Plan (Five Year Plan submitted to Region IX)
DGS	Department of General Services
DOE	Department of Education
DOF	Department of Finance
DOJ	Department of Justice
DPA	Department of Personnel Administration
DSS	Department of Social Services
DSS	Department of Social Services
DUI	Driving Under the Influence
DWI	Driving While Intoxicated
EC	Education Code
ED	United States Department of Education
FAQ	Frequently Asked Questions
FAS	Fetal Alcohol Syndrome
FBI	Federal Bureau of Investigation
FCCH	Family Child Care Home
FFA	Future Farmers of America
FFA	Foster Family Agency
FFP	Federal Financial Participation
FFY	Federal Fiscal Year
FHS	Family and Human Services
FLSA	Fair Labor Standards Act
FOTEP	Female Offender Treatment Employment Program

FPD	Fiscal Policy Division
FRN	Family Resource Network
FTE	Full-Time Equivalent
FY	Fiscal Year
FYS	Foster Youth Services Programs
GAIN	Greater Avenues for Independence
GAO	US General Accounting Office
GPA	Governor's Performance Award
GPA	Grade Point Average
GRIP	Gang Risk Intervention Program
H&SC	Health & Safety Code
HHS	Department of Health and Human Services
HIV	Human Immunodeficiency Virus
HRY	High Risk Youth
HWDC	Health and Welfare Data Center
IACP	International Association of Chiefs of Police
ICPC	Interstate Compact of the Placement of Children
ICWA	Indian Child Welfare Act
IDA	Infant Development Association
IDEA	Individuals with Disabilities Education Act
IEP	Individualized Education Program
IFSP	Individualized Family Service Plan
IHP	Individualized Health Plan
IHS	Indian Health Service
ISDN	Integrated Service Digital Network

ISSD	Information Systems and Service Division
ITP	Individual Training Plan
ITP	Individualized Transition Plan
JAD	Joint Application Design
JC	Judicial Council
LAN	Local Area Network
MAC	Move/Add/Change
MADD	Mothers Against Drunk Driving
MM	Methadone Maintenance
MOU	Memorandum of Understanding
N & D	Neglected and Delinquent
NA	Narcotics Anonymous
NAADAC	National Association of Alcoholism and Drug Abuse Counselors
NADCP	National Association of Drug Court Professionals
NARA	Narcotic Addict Rehabilitation Act
NASADAD	National Association of State Alcohol and Drug Abuse Counselors
NASDPC	National Association of State Drug Abuse Directors
NCADD	National Council on Alcoholism and Drug Dependence, Inc.
NCADI	National Clearinghouse of Alcohol and Drug Information
NCANDS	National Child Abuse & Neglect Data System
NCCAN	National Clearinghouse on Child Abuse and Neglect Information
NCJA	National Criminal Justice Association
NCJFCJ	National Council of Juvenile and Family Court Judges
NCJJ	National Center of Juvenile Justice
NCJRS	National Criminal Justice Reference Service

NCLB	No Child Left Behind Act of 2001
NDCI	National Drug Court Institute
NDCIR	National Drug Court Institute Review
NEA	National Education Association
NIC	Network Interface Card
NIC	National Institute of Corrections
NIDA	National Institute on Drug Abuse
NIH	National Institutes of Health
NIJ	National Institute of Justice
NIJC	National Indian Justice Center
NNY	National Network for Youth (formerly National Network of Runaway and Youth Services (NNRYS))
NOA	Notice of Action
NOPA	Notice of Proposed Action
NSA	National Sheriff's Association
O&M	Operation and Maintenance
O&M	Orientation and Mobility
OAE	Office of Analysis and Evaluation - USDA child nutrition research
OASIS	Ney York State Office of Alcoholism and Substance Abuse Services
OCR	Office for Civil Rights
OCR	Optical Character Recognition
OJJDP	Office of Juvenile Justice and Delinquency Prevention
OJP	Office of Justice Programs
ONDCP	Office of National Drug Control Policy
OSC	CWS/CMS Oversight Committee
OSHA	Occupational Safety and Health Administration

OSHA	Office of State Health Administration
OSI	Office of Systems Integration
OTech	Office of Technology Services
OVC	Office for Victims of Crime
PAC	Parent Advisory Council
PACE	Projects to Advance Creativity in Education
PACE	Policy Analysis for California Education
PACE	Professional Association for Childhood Education
PAL	Pregnant or Lactating Students Program, Meal Supplements
PALS	Pregnant and Lactating Students Program
PAR	Peer Assistance and Review program for teachers
PAR	Personnel Action Request
PASHA	Program Archive on Sexuality, Health and Adolescent
PC	Personal Computer
PEN	Parenting Education Network
PEN	Public Education Network
PERB	Public Employment Relations Board
PERS	Public Employees Retirement System
PHS	United States Public Health Service
PI	Program Improvement
PIAC	Program Impact Advisory Committee
PIAP	Program Improvement Action Plan
PIC	Private Industry Council
PIG	Process Improvement Group
PIP	Program Improvement Plan

PL	Public Law
PMP	Pregnant Minors Program
PO	Probation Officer
POCR	Program Office Change Review
PP	Permanent Placement
PPS	Pupil Personnel Services
PQCR	Peer Quality Case Reviews
PQR	Program Quality Review
PR	Personnel Request
Pre- Placement Prevention Activities	30 day ER services provided to family to prevent child from entering foster care
PSSF	Promoting Safe and Stable Families Act
PSU	Program Support Unit
PTA	California Congress of Parents, Teachers, and Students, Inc.
PTA	National Parent Teacher Association
PY	Personnel Year
QAP	Quality Assurance Process
Redesign	Former CWS reform effort, now called Child Welfare Services System Improvements
Region IX	Region IX of the Administration for Children, Youth & Families
RFA	Request for Application
RFP	Request for Proposals
RFP	Request for Personnel

RLA	Responsible Local Agency
ROC	Regional Occupational Center
ROCP	Regional Occupation Centers and Programs
ROP	Regional Occupational Program
RTF	Rich Text Format
SA	County Self Assessment
SABE/2	Spanish Assessment of Basic Education, Second Edition
SAC	Student Advisory Council
SAC	School-Age Care
SACWIS	State Automated Child Welfare Information System
SACWIS	Statewide Automated Child Welfare Information System
SADD	Students Against Destructive Decisions
SAMHSA	Substance Abuse and Mental Health Services Administration
SARB	School Attendance Review Board
SAT	Scholastic Achievement Test
SAT-9	Stanford Achievement Test, Ninth Edition (Stanford 9)
SB	Senate Bill
SBC	Server Based Computing
SBE	State Board of Education
SCRUGS	Southern California Regional User Groups
SDM	Structured Decision Making
SDPO	Senior Deputy Probation Officer
Section 300	Juvenile Dependency Court
SED	Severely Emotionally Disturbed
SED	Special Education Division

SELPA	Special Education Local Plan Area
SFI	Supporting Father Involvement Study
SI	State Justice Institutions
SIP	Self Improvement Plan (County)
SPA	Service Planning Areas
SPB	State Personnel Board
SPOC	Single Point of Contact
SSB	Safety Surrendered Baby Law
SSI	Supplemental Security Income
SSP	Specialized Secondary Programs
SSP	State Superintendent of Public Instruction
STAR	Statewide Training Application Resource
STDs	Sexually Transmitted Diseases
T5	Title 5, California Code of Regulations
TA	Technical Assistance
TAC	Technical Advisory Committee
TANF	Temporary Assistance to Needy Families
TPRC	Transitional Program for Refugee Children
TTA	Training and Technical Assistance
UC	University of California
UCOP	University of California Office of the President
UCP	Uniform Complaint Procedures
UNCF	United Negro College Fund
UPS	United Parcel Service
USAC	Universal Service Administrative Company

USC	United States Code
USDA	United States Department of Agriculture
USPS	United States Postal Service
VFM	Voluntary Family Maintenance or “Informal Supervision”
VPN	Virtual Private Network
W&IC	Welfare and Institute Code
WAN	Wide Area Network
WIC	Women, Infants, and Children
WIC	Welfare & Institutions Code

CIVIL CODE

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

265. Provisions

The provisions of the interstate compact referred to in Section 264 are as follows:

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

Article 1. Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

- (a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.
- (b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.
- (c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis on which to evaluate a projected placement before it is made.
- (d) Appropriate jurisdictional arrangements for the care of children will be promoted.

Article 2. Definitions

As used in this compact:

- (a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state, a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

Article 3. Conditions for Placement

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive there from, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

Article 4. Penalty for Illegal Placement

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

Article 5. Retention of Jurisdiction

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the

period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

Article 6. Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction, and
2. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

Article 7. Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

Article 8. Limitations

This compact shall not apply to:

- (a) The sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state.
- (b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

Article 9. Enactment and Withdrawal

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

Article 10. Construction and Severability

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary

to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

266. Financial responsibility for child placed pursuant to compact

Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article 5 thereof in the first instance.

However, in the event of partial or complete default of performance thereunder, the provisions of other state laws also may be invoked.

267. Appropriate public authorities

The "appropriate public authorities" as used in Article 3 of the Interstate Compact on the Placement of Children shall, with reference to this state, means the State Department of Social Services and such department shall receive and act with reference to notices required by such Article 3.

268. Appropriate authority in receiving state

As used in paragraph (a) of Article 5 of the Interstate Compact on the Placement of Children, the phrase "appropriate authority in receiving state" with reference to this state shall mean the State Department of Social Services.

269. Agreements with party states; approval of financial obligations

The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of Article 5 of the Interstate Compact on the Placement of Children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding

unless it has the approval in writing of the Controller in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.

270. Requirements for visitation, inspection or supervision in another state

Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under the law of this state shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by paragraph (b) of Article 5 of the Interstate Compact on the Placement of Children.

271. Application of laws restricting out-of-state placements

No provision of law restricting out-of-state placement of children for adoption shall apply to placements made pursuant to the Interstate Compact on the Placement of Children.

272. Jurisdiction of courts to place delinquent children

Any court having jurisdiction to place delinquent children may place such a child in an institution in another state pursuant to Article 6 of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article 5 thereof.

273. Executive head; appointment of compact administrator

As used in Article 7 of the Interstate Compact on the Placement of children, the term "executive head" means the Governor. The Governor shall appoint a compact administrator in accordance with the terms of said Article 7.

274. Refusal to grant approval of placement in violation of state law

Approval of an interstate placement of a child for adoption shall not be granted by the compact administrator if the placement is in violation of either Section 224.20 of this code or Section 273 of the Penal Code.

HEALTH AND SAFETY CODE

1502. Facility definitions

(a) "Community care facility" means any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, incompetent persons, and abused or neglected children, and includes the following:

(1) "Residential facility" means any family home, group care facility, or similar facility determined by the director, for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual.

(2) "Adult day care facility" means any facility that provides nonmedical care to persons 18 years of age or older in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis.

(3) "Therapeutic day services facility" means any facility that provides nonmedical care, counseling, educational or vocational support, or social rehabilitation services on less than a 24-hour basis to persons under 18 years of age who would otherwise be placed in foster care or who are returning to families from foster care. Program standards for these facilities shall be developed by the department, pursuant to Section 1530, in consultation with therapeutic day services and foster care providers.

(4) "Foster family agency" means any organization engaged in the recruiting, certifying, and training of, and providing professional support to, foster parents, or in finding homes or other places for placement of children for temporary or permanent care who require that level of care as an alternative to a group home. Private foster family agencies shall be organized and operated on a nonprofit basis.

(5) "Foster family home" means any residential facility providing 24-hour care for six or fewer foster children that is owned, leased, or rented and is the residence of the foster parent or parents, including their family, in whose care the foster children have been placed. The placement may be by a public or private child placement agency or by a

court order, or by voluntary placement by a parent, parents, or guardian. It also means a foster family home described in Section 1505.2.

(6) "Small family home" means any residential facility, in the licensee's family residence, that provides 24-hour care for six or fewer foster children who have mental disorders or developmental or physical disabilities and who require special care and supervision as a result of their disabilities. A small family home may accept children with special health care needs, pursuant to subdivision (a) of Section 17710 of the Welfare and Institutions Code. In addition to placing children with special health care needs, the department may approve placement of children without special health care needs, up to the licensed capacity.

(7) "Social rehabilitation facility" means any residential facility that provides social rehabilitation services for no longer than 18 months in a group setting to adults recovering from mental illness who temporarily need assistance, guidance, or counseling. Program components shall be subject to program standards pursuant to Article 1 (commencing with Section 5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and Institutions Code.

(8) "Community treatment facility" means any residential facility that provides mental health treatment services to children in a group setting and that has the capacity to provide secure containment. Program components shall be subject to program standards developed and enforced by the State Department of Mental Health pursuant to Section 4094 of the Welfare and Institutions Code. Nothing in this section shall be construed to prohibit or discourage of placement of persons who have mental or physical disabilities into any category of community care facility that meets the needs of the individual placed, if the placement is consistent with the licensing regulations of the department.

(9) "Full-service adoption agency" means any licensed entity engaged in the business of providing adoption services, that does all of the following:

(A) Assumes care, custody, and control of a child through relinquishment of the child to the agency or involuntary termination of parental rights to the child.

(B) Assesses the birth parents, prospective adoptive parents, or child.

(C) Places children for adoption.

(D) Supervises adoptive placements. Private full-service adoption agencies shall be organized and operated on a nonprofit basis.

(10) "Noncustodial adoption agency" means any licensed entity engaged in the business of providing adoption services, that does all of the following:

(A) Assesses the prospective adoptive parents.

(B) Cooperatively matches children freed for adoption, who are under the care, custody, and control of a licensed adoption agency, for adoption, with assessed and approved adoptive applicants.

(C) Cooperatively supervises adoptive placements with a full-service adoptive agency, but does not disrupt a placement or remove a child from a placement. Private noncustodial adoption agencies shall be organized and operated on a nonprofit basis.

(11) "Transitional shelter care facility" means any group care facility that provides for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual. Program components shall be subject to program standards developed by the State Department of Social Services pursuant to Section 1502.3.

(12) "Transitional housing placement facility" means a community care facility licensed by the department pursuant to Section 1559.110 to provide transitional housing opportunities to persons at least 17 years of age, and not more than 18 years of age unless the requirements of Section 11403 of the Welfare and Institutions Code are met, who are in out-of-home placement under the supervision of the county department of social services or the county probation department, and who are participating in an independent living program.

(b) "Department" or "state department" means the State Department of Social Services.

(c) "Director" means the Director of Social Services.

1505. Exempt facilities and arrangements

This chapter does not apply to any of the following:

(a) Any health facility, as defined by Section 1250.

- (b) Any clinic, as defined by Section 1202.
- (c) Any juvenile placement facility approved by the California Youth Authority or any juvenile hall operated by a county.
- (d) Any place in which a juvenile is judicially placed pursuant to subdivision (a) of Section 727 of the Welfare and Institutions Code.
- (e) Any child day care facility, as defined in Section 1596.750.
- (f) Any facility conducted by and for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend upon prayer or spiritual means for healing in the practice of the religion of the church or denomination.
- (g) Any school dormitory or similar facility determined by the department.
- (h) Any house, institution, hotel, homeless shelter, or other similar place that supplies board and room only, or room only, or board only, provided that no resident thereof requires any element of care as determined by the director.
- (i) Recovery houses or other similar facilities providing group living arrangements for persons recovering from alcoholism or drug addiction where the facility provides no care or supervision.
- (j) Any alcoholism or drug abuse recovery or treatment facility as defined by Section 11834.11.
- (k) Any arrangement for the receiving and care of persons by a relative or any arrangement for the receiving and care of persons from only one family by a close friend of the parent, guardian, or conservator, if the arrangement is not for financial profit and occurs only occasionally and irregularly, as defined by regulations of the state department.
- (l) Any supported living arrangement for individuals with developmental disabilities as defined in Section 4689 of the Welfare and Institutions Code.
- (m) Any similar facility determined by the director.

1505.2 Requirements for Authorization of Placement of Siblings in Foster Care

A licensing agency may authorize a foster family home to provide 24-hour care for up to eight foster children, for the purpose of placing siblings or half siblings together in foster care. This authorization may be granted only if all of the following conditions are met:

- (A) The foster family home is not a specialized foster care home as defined in subdivision (i) of Section 17710 of the Welfare and Institutions Code.
- (B) The home is sufficient in size to accommodate the needs of all children in the home.
- (C) For each child to be placed, the child's placement social worker has determined that the child's needs will be met and has documented that determination. The licensing agency may authorize a foster family home to provide 24-hour care for more than eight children only if the foster family home specializes in the care of sibling groups, that placement is solely for the purpose of placing together one sibling group that exceeds eight children, and all of the above listed conditions are met.

1522.06. Criminal record check

(a) Notwithstanding subdivision (k) of Section 1505, upon adoption of a resolution by the board of supervisors of a county, any county child welfare agency may secure from municipal, county or state law enforcement personnel a criminal record through the California Law Enforcement Telecommunications System or an automated mobile and fixed location fingerprint identification system for the purpose of assessing a relative agreeing to receive and care for a minor and any other adult person residing in the home of the relative before placing the minor in the relative's home. Law enforcement shall cooperate with requests for criminal records authorized by this section and shall provide the information to the requesting entity in a timely manner.

(b) Any law enforcement officer of person authorized by this section to receive the information who obtains the information in the record and knowingly provides the information to a person not authorized by law to receive the information is guilty of a misdemeanor as specified in Section 11142 of the Penal Code.

- (c) Nothing in this section shall preclude the relative or other person living in the relative's home from refuting any of the information obtained by law enforcement if the individual believes the criminal record check revealed erroneous information.
- (d) Use of the California Law Enforcement Telecommunications System authorized by subdivision (a) shall not be applicable after January 1, 2000, or after an automated mobile and fixed location fingerprint identification system is available and accessible to a child welfare agency, whichever comes first.
- (e) For purposes of this section, "relative" means an adult who is related to the child by blood or affinity, including a half-sibling and those adults whose status is preceded by the words "step", "great", "greatgreat", or "grand" or the spouse of any of these persons, even if the marriage was terminated by death or dissolution.

1596.750. "Child day care facility"

"Child day care facility" means a facility that provides nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. Child day care facility includes day care centers and family day care homes.

FAMILY CODE

8714.5 Legal Permanency

(a) The Legislature finds and declares the following:

(1) It is the intent of the Legislature to expedite legal permanency for children who cannot return to their parents and to remove barriers to adoption by relatives of children who are already in the dependency system or who are at risk of entering the dependency system.

(2) This goal will be achieved by empowering families, including extended families, to care for their own children safely and permanently whenever possible, by preserving existing family relationships, thereby causing the least amount of disruption to the child and the family, and by recognizing the importance of sibling and half-sibling relationships.

(b) A relative desiring to adopt a child may for that purpose file a petition in the county in which the petitioner resides. Where a child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and thereafter has been freed for adoption by the juvenile court, the petition may be filed either in the county where the petitioner resides or in the county where the child was freed for adoption.

(c) Upon the filing of a petition for adoption by a relative, the county clerk shall immediately notify the State Department of Social Services in Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(d) If the adopting relative has entered into a kinship adoption agreement with the birth parent as set forth in Section 8714.7, the kinship adoption agreement, signed by the parties to the agreement, shall be attached to and filed with the petition for adoption under subdivision (b).

(e) The caption of the adoption petition shall contain the name of the relative petitioner. The petition shall state the child's name, sex, and date of birth.

(f) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship.

The petitioner shall notify the court of any petition for adoption. The guardianship proceeding shall be consolidated with the adoption proceeding.

(g) The order of adoption shall contain the child's adopted name and, if requested by the adopting relative, or if requested by the child who is 12 years of age or older, the name the child had before adoption.

8714.7 Kinship Adoption Agreements

(a) Nothing in the adoption laws of this state shall be construed to prevent the adopting parent or parents, the birth relatives, including the birth parent or parents, and the child from entering into a written agreement to permit continuing contact between the birth relatives, including the birth parent or parents, and the child if the agreement is found by the court to be in the best interests of the child at the time the adoption petition is granted. The terms of any kinship adoption agreement executed under this section shall be limited to, but need not include, all of the following:

(1) Provisions for visitation between the child and a birth parent or parents and other birth relatives, including siblings.

(2) Provisions for future contact between a birth parent or parents or other birth relatives, including siblings, or both, and the child or an adoptive parent, or both.

(3) Provisions for the sharing of information about the child in the future.

(b) At the time an adoption decree is entered pursuant to a petition filed under Section 8714.5, the court entering the decree may grant post-adoption privileges when an agreement for those privileges has been entered into pursuant to subdivision (a).

(c) This section is applicable only to kinship adoption agreements in which the adopting parent is a relative of the child or a relative to the child's half-sibling and the adoption petition is filed under Section 8714.5. For purposes of this section and Section 8714.5, "relative" means an adult who is related to the child or the child's half sibling by blood or affinity, including all relatives whose status is preceded by the words "step," "great,"

"great-great," or "grand," or the spouse of any of these persons, even if the marriage was terminated by death or dissolution.

(d) The child who is the subject of the adoption petition shall be considered a party to the kinship adoption agreement. The written consent to the terms and conditions of the kinship adoption agreement and any subsequent modifications of the agreement by a child who is 12 years of age and older is a necessary condition to the granting of privileges regarding visitation, contact, or sharing of information about the child, unless the court finds by a preponderance of the evidence that the agreement, as written, is in the best interests of the child. Any child who has been found to come within Section 300 of the Welfare and Institutions Code or who is the subject of a petition for jurisdiction of the juvenile court under Section 300 of the Welfare and Institutions Code shall be represented by an attorney for purposes of consent to the kinship adoption agreement.

(e) A kinship adoption agreement shall contain the following warnings in bold type:

(1) After the adoption petition has been granted by the court, the adoption cannot be set aside due to the failure of an adopting parent, a birth parent, a birth relative, or the child to follow the terms of this agreement or a later change to this agreement.

(2) A disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the adoption and shall not serve as a basis for orders affecting the custody of the child.

(3) A court will not act on a petition to change or enforce this agreement unless the petitioner has participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings to resolve the dispute.

(f) Upon the granting of the adoption petition and the issuing of the order of adoption of a child who is a dependent of the juvenile court, juvenile court dependency jurisdiction shall be terminated. Enforcement of the kinship adoption agreement shall be under the continuing jurisdiction of the court granting the petition of adoption. The court may not order compliance with the agreement absent a finding that the party seeking the enforcement participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings regarding the conflict, prior to the filing of the enforcement action, and that the enforcement is in the

best interests of the child. Documentary evidence or offers of proof may serve as the basis for the court's decision regarding enforcement. No testimony or evidentiary hearing shall be required. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear and convincing evidence that the best interests of the child may be protected or advanced only by such inquiry and that the inquiry will not disturb the stability of the child's home to the detriment of the child.

(g) The court may not award monetary damages as a result of the filing of the civil action pursuant to subdivision (f) of this section.

(h) A kinship adoption agreement may be modified or terminated only if either of the following occurs:

(1) All parties, including the child if the child is 12 years of age or older at the time of the requested termination or modification, have signed a modified kinship adoption agreement and the agreement is filed with the court that granted the petition of adoption.

(2) The court finds all of the following:

(A) The termination or modification is necessary to serve the best interests of the child.

(B) There has been a substantial change of circumstances since the original agreement was executed and approved by the court.

(C) The party seeking the termination or modification has participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings prior to seeking court approval of the proposed termination or modification.

(D) Documentary evidence or offers of proof may serve as the basis for the court's decision. No testimony or evidentiary hearing shall be required. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear and convincing evidence that the best interests of the child may be protected or advanced only by such inquiry and that the inquiry will not disturb the stability of the child's home to the detriment of the child.

(i) All costs and fees of mediation or other appropriate dispute resolution proceedings shall be borne by each party, excluding the child. All costs and fees of litigation shall be borne by the party filing the action to modify or enforce

the agreement when no party has been found by the court as failing to comply with an existing kinship adoption agreement. Otherwise, a party, other than the child, found by the court as failing to comply without good cause with an existing agreement shall bear all the costs and fees of litigation.

(j) By July 1, 1998, the Judicial Council shall adopt rules of court and forms for motions to enforce, terminate, or modify kinship adoption agreements.

(k) The court shall not set aside a decree of adoption, rescind a relinquishment, or modify an order to terminate parental rights or any other prior court order because of the failure of a birth parent, adoptive parent, birth relative, or the child to comply with any or all of the original terms of, or subsequent modifications to, the kinship adoption agreement.

PENAL CODE

Penal Code Sections 11165 et seq. - Child Abuse Reporting Law
These statutes specify the following:

11165. Child

As used in this article "child" means a person under the age of 18 years.

11165.1. Sexual Abuse; Sexual Assault; Sexual Exploitation

As used in this article, "sexual abuse" means sexual assault or sexual exploitation as defined by the following:

- a) "Sexual assault" means conduct in violation of one or more of the following sections: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), or 647a (child molestation).
- b) Conduct described as "sexual assault" includes, but it is not limited to, all of the following:
 - (1) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.
 - (2) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.
 - (3) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that, it does not include acts performed for a valid medical purpose.
 - (4) The intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that, it does not include acts which may reasonably be construed to be normal

caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.

(5) The intentional masturbation of the perpetrator's genitals in the presence of a child.

(c) "Sexual exploitation" refers to any of the following:

(1) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(2) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes for preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, "person responsible for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential school, or other residential institution.

(3) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, video tape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

11165.2. Neglect; Severe Neglect; General Neglect

As used in this article, "neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(a) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those

situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by Section 11165.3, including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(b) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by parent or guardian after consultation with a physician or physicians who have examined the minor does not constitute neglect.

11165.3. Willful cruelty or unjustifiable punishment of a child

As used in this article, "willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered.

11165.4. Unlawful corporal punishment or injury

As used in this article, "unlawful corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition. It does not include an amount of force that is reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil, as authorized by Section 49001 of the Education Code. It also does not include the exercise of the degree of physical control authorized by Section 44807 of the Education Code. It also does not include an amount of force that is

reasonable and necessary for a peace officer to quell a disturbance threatening physical injury to person or damage to property to prevent physical injury to person or damage to property, for purposes of self-defense, to obtain possession of weapons or other dangerous objects within the control of the child, or to apprehend an escapee.

11165.5. Abuse in out-of-home care

As used in this article, "abuse in out-of-home care" means a situation of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect, or unlawful corporal punishment or injury, or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency. "Abuse in out-of-home care" does not include an injury caused by reasonable and necessary force used by a peace officer to quell a disturbance threatening physical injury to person or damage to property, to prevent physical injury to person or damage to property, for purposes of self-defense, to obtain possession of weapons or other dangerous objects within the control of a child, or to apprehend an escapee.

11165.6. Child Abuse

As used in this article, "child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child Abuse" also means the sexual abuse of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (unlawful corporal punishment or injury). "Child Abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article. "Child abuse" does not mean a mutual affray between minors. "Child abuse" does not include an injury caused by reasonable and necessary force used by a peace officer to quell a disturbance threatening physical injury to person or damage to property, to prevent physical injury to person or damage to property, for purposes of self-defense, to obtain possession of weapons or other dangerous objects within the control of a child, or to apprehend an escapee.

11165.7. Child care custodian

(a) As used in this article, "child care custodian" means a teacher; an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education; an administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; an administrator or employee of a public or private youth center, youth recreation program, or youth organization; an administrator or employee of a public or private organization whose duties require direct contact and supervision of children; a licensee, an administrator, or an employee of a licensed community care or child day care facility; a headstart teacher; a licensing worker or licensing evaluator; a public assistance worker; an employee of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; a social worker, probation officer, or parole officer; an employee of a school district police or security department; or any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(b) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.

(c) School districts which do not train the employees specified in subdivision (a) in the duties of child care custodians under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.

(d) Volunteers of public or private organizations whose duties require direct contact and supervision of children are encouraged to obtain training in the identification and reporting of child abuse.

11165.8. Health practitioner

As used in this article, "health practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code; a marriage, family and child counselor; any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code; a marriage, family and child counselor trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code; an unlicensed marriage, family and child counselor intern registered under Section 4980.44 of the Business and Professions Code; a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a medical examiner, or any other person who performs autopsies; or a religious practitioner who diagnoses, examines, or treats children.

11165.9. Child protective agency

As used in this article, "child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department. It does not include a school district police or security department.

11165.10. Commercial film and photographic print processor

As used in this article, "commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

11165.11. Licensing agency

As used in this article, "licensing agency" means the State Department of Social Services office responsible for the licensing and enforcement of the California Community Care Facilities Act [Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code], the California Child Day Care Act [Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code], and [Chapter 3.5 (commencing with Section 1596.90) of Division 2 of the Health and Safety Code], or the county licensing agency which has contracted with the state for performance of those duties.

11165.12. Unfounded report; substantiated report; unsubstantiated report

As used in this article, the following definitions shall control:

(a) "Unfounded report" means a report which is determined by a child protective agency investigator to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse, as defined in Section 11165.6.

(b) "Substantiated report" means a report which is determined by a child protective agency investigator, based upon some credible evidence, to constitute child abuse or neglect, as defined in Section 11165.6.

(c) "Unsubstantiated report" means a report which is determined by a child protective agency investigator not to be unfounded, but in which the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect, as defined in Section 11165.6, has occurred.

11165.13. Maternal substance abuse; positive toxicology screen at time of delivery; basis for reporting child abuse or neglect; assessment of needs

For purposes of this article, a positive toxicology screen at the time of the delivery of an infant is not in and of itself a sufficient basis for reporting child abuse or neglect. However, any indication of maternal substance abuse shall lead to an assessment of the needs of the mother and child pursuant to Section 123605 of the Health and Safety Code. If other factors are present that indicate risk to a child, then a report shall be made. However, a report based

on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse shall be made only to county welfare departments and not to law enforcement agencies.

11165.14. Abuse of a pupil at a schoolsite; investigation of complaint; transmission of substantiated report

The local child protective agency shall investigate a child abuse complaint filed by a parent or guardian of a pupil with a school or a local child protective agency against a school employee or other person that commits an act of child abuse, as defined in this article, against a pupil at a schoolsite and shall transmit a substantiated report, as defined in Section 11165.12, of that investigation to the governing board of the appropriate district or county office of education. A substantiated report received by a governing board of a school district or county office of education shall be subject to the provisions of Section 44031 of the Education Code.

11166. Report; duty; time

(a) Except as provided in subdivision (b), any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. A child protective agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate in his or her training and experience, to suspect child abuse. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute the basis of reasonable suspicion of sexual abuse.

(b) Any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or his or her emotional well-being is endangered in any other way, may report such known or suspected instance of child abuse to a child protective agency.

(c) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative or slide depicting a child under the age of 14 years engaged in an act of sexual conduct, shall report such instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, videotape, negative or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation, for the purpose of sexual stimulation of the viewer.

(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals, pubic or rectal areas of any person for the purpose of sexual stimulation of the viewer.

(d) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

(e) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of child abuse, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by such selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so, shall thereafter make the report.

(f) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties and no person making such a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with the provisions of this article. The internal procedures shall not require any employee required to make reports by this article to disclose his or her identity to the employer.

(g) A county probation or welfare department shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relate solely to the inability of the parent to provide the child regular care due to the parent's substance abuse, which shall only be reported to the county welfare department. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision. A law enforcement agency shall immediately or as soon as practically possible report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall only be reported to the county welfare department. A law enforcement agency shall report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

11166.1. Report of abuse occurring in facilities licensed by State Department of Social Services; notice

When a child protective agency receives a report of abuse alleged to have occurred in facilities licensed to care for children by the State Department of Social Services, it shall, within 24 hours, notify the licensing office with jurisdiction over the facility. The child protective agency shall send the licensing agency a copy of its investigation and any other pertinent materials.

11166.2. Telephoned report of child abuse to licensed agencies; written reports

In addition to the reports required under Section 11166, a child protective agency shall immediately or as soon as practically possible report by telephone to the appropriate licensing agency every known or suspected instance of child abuse when the instance of abuse occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person. A child protective agency shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision. A child protective agency shall send the licensing agency a copy of its investigation report and any other pertinent materials.

11166.3. Legislative intent; cooperative arrangements for investigation; written findings; report

(a) The Legislature intends that in each county the law enforcement agencies and the county welfare or social services department shall develop and implement cooperative arrangements in order to coordinate existing duties in connection with the investigation of suspected child abuse cases. The local law enforcement agency having jurisdiction over a case reported under Section 11166 shall report to the county welfare department that it is investigating the case within 36 hours after starting its investigation. The county welfare department or social services department shall, in cases where a minor is a victim of actions specified in Section 288 of this code and a petition has been filed pursuant to Section 300 of the Welfare and Institutions Code with regard to the minor, in

accordance with the requirements of subdivision (c) of Section 288, evaluate what action or actions would be in the best interest of the child victim. Notwithstanding any other provision of law, the county welfare department or social services department shall submit in writing its findings and the reasons therefor to the district attorney on or before the completion of the investigation. The written findings and the reasons therefor shall be delivered or made accessible to the defendant or his or her counsel in the manner specified in Sections 859 and 1430. The child protective agency shall send a copy of its investigative report and any other pertinent materials to the licensing agency upon the request of the licensing agency.

(b) The local law enforcement agency having jurisdiction over a case reported under Section 11166 shall report to the district office of the State Department of Social Services any case reported under this section if the case involves a facility specified in paragraph (5) or (6) of Section 1502 or in Section 1596.750 or 1596.76 of the Health and Safety Code and the licensing of the facility has not been delegated to a county agency. The law enforcement agency shall send a copy of its investigation report and any other pertinent materials to the licensing agency upon the request of the licensing agency.

11166.5. Employment as child care custodian, health practitioner, or with child protective agency; statement of knowledge of duty to report abuse.

(a) Any person who enters into employment on and after January 1, 1985, as a child care custodian, health practitioner, or with a child protective agency, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with its provisions. The statement shall include the following provisions: Section 11166 of the Penal Code requires any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse to report the known or suspected instance of child abuse to a child protective

agency immediately or as soon as practically possible by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

"Child care custodian" includes teachers; an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education; administrative officers, supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private school; administrators of a public or private day camp; administrators and employees of public or private youth centers, youth recreation programs, or youth organizations; administrators and employees of public or private organizations whose duties require direct contact and supervision of children and who have been trained in the duties imposed by this article; licensees, administrators, and employees of licensed community care or child day care facilities; headstart teachers; licensing workers or licensing evaluators; public assistance workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; social workers, probation officers, or parole officers; employees of a school district police or security department; or any person who is an administrator or a presenter of, or a counselor in, a child abuse prevention program in any public or private school.

"Health practitioner" includes physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, optometrists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code; marriage, family, and child counselors; emergency medical technicians I or II, paramedics, or other persons certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; psychological assistants registered pursuant to Section 2913 of the Business and Professions Code; marriage, family, and child counselor trainees as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code; unlicensed marriage, family, and child counselor interns registered under Section 4980.44 of the Business and Professions Code; state or county public health employees who treat minors for venereal disease or any other condition; coroners; paramedics; and religious

practitioners who diagnose, examine, or treat children. The signed statements shall be retained by the employer. The cost of printing, distribution, and filing of these statements shall be borne by the employer. This subdivision is not applicable to persons employed by child protective agencies, public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement shall also indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in jail or by a fine of one thousand dollars (\$1,000) or by both.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

11166.7. Interagency child death team; autopsy protocol

(a) Each county may establish an interagency child death team to assist local agencies in identifying and reviewing suspicious child deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse cases. Interagency child death teams have been used successfully to ensure that incidents of child abuse are recognized and other siblings and non-offending family members receive the appropriate services in cases where a child has expired.

(b) Each county may develop a protocol that may be used as a guideline by persons performing autopsies on children to assist coroners and other persons who perform autopsies in the identification of child abuse, in the determination of whether child abuse contributed to death or whether child abuse had occurred prior to but was not

the actual cause of death, and in the proper written reporting procedures for child abuse, including the designation of the cause and mode of death.

(c) In developing an interagency child death team and an autopsy protocol, each county, working in consultation with local members of the California State Coroner's Association and county child abuse prevention coordinating councils, may solicit suggestions and final comments from persons, including but not limited to, the following:

- (1) Experts in the field of forensic pathology.
- (2) Pediatricians with expertise in child abuse.
- (3) Coroners and medical examiners.
- (4) Criminologists.
- (5) District attorneys.
- (6) Child protective services staff.
- (7) Law enforcement personnel.
- (8) Representatives of local agencies which are involved with child abuse reporting.
- (9) County health department staff who deal with children's health issues.
- (10) Local professional associations of persons described in paragraphs (1) to (9), inclusive.

11166.8. Interagency child death team protocol

Subject to available funding, the Attorney General, working with the California Consortium of Child Abuse Councils, shall develop a protocol for the development and implementation of interagency child death teams for use by counties, which shall include relevant procedures for both urban and rural counties. The protocol shall be designed to facilitate communication among persons who perform autopsies and the various persons and agencies involved in child abuse cases so that incidents of child abuse are recognized and other siblings and nonoffending family members receive the appropriate services in cases where a child has expired. The protocol shall be completed on or before January 1, 1991.

11167. Report; contents

(a) A telephone report of a known or suspected instance of child abuse shall include the name of the person making the report, the name of the child, the present location of the child, the nature and extent of the injury, and any other information, including information that led that person to suspect child abuse, requested by the child protective agency.

(b) Information relevant to the incident of child abuse may also be given to an investigator from a child protective agency who is investigating the known or suspected case of child abuse.

(c) Information relevant to the incident of child abuse may be given to the licensing agency when it is investigating a known or suspected case of child abuse, including the investigation report, and other pertinent materials.

(d) The identity of all persons who report under this article shall be confidential and disclosed only between child protective agencies, or to counsel representing a child protective agency, or to the district attorney in a criminal prosecution or in an action initiated under Section 602 of the Welfare and Institutions code arising from alleged child abuse, or to counsel appointed pursuant to Section 318 of the Welfare and Institutions Code, or to the county counsel or district attorney in an action initiated under Section 232 of the Civil Code or Section 300 of the Welfare and Institutions code, or to a licensing agency when abuse in out-of-home care is reasonably suspected, or when those persons waive confidentiality, or by court order. No agency or person listed in this subdivision shall disclose the identity of any person who reports under this article to that person's employer, except with the employee's consent or by court order. (e) Persons who may report pursuant to subdivision (d) of Section 11166 are not required to include their names.

11167.5. Confidentiality of reports; violations; disclosure

(a) The reports required by Sections 11166 and 11166.2 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality provided by this article shall be a misdemeanor punishable by up to six months in jail or by a fine of five hundred dollars (\$500) or by both.

(b) Reports of suspected child abuse and information contained therein maybe disclosed only to the following:

- (1) Persons or agencies to whom disclosure of the identity of the reporting party is permitted under Section 11167.
- (2) Persons or agencies to whom disclosure of information is permitted under subdivision (b) of Section 11170.
- (3) Persons or agencies with whom investigations of child abuse are coordinated under the regulations promulgated under Section 11174.
- (4) Multidisciplinary personnel teams as defined in subdivision (d) of Section 18951 of the Welfare and Institutions Code.
- (5) Persons or agencies responsible for the licensing of facilities which care for children, as specified in Section 11165.7.
- (6) The State Department of Social Services or any county licensing agency which has contracted with the state, as specified in paragraph (3) of subdivision (b) of Section 11170, when an individual has applied for a community care license or child day care license, or for employment in an out-of-home care facility, or when a complaint alleges child abuse by an operator or employee of an out-of-home care facility.
- (7) Hospital scan teams. As used in this paragraph, "hospital scan team" means a team of three or more persons established by a hospital, or two or more hospitals in the same county, consisting of health care professionals and representatives of law enforcement and child protective services, the members of which are engaged in the identification of child abuse. The disclosure authorized by this section includes disclosure among hospital scan teams located in the same county.
- (8) Coroners and medical examiners when conducting a postmortem examination of a child.
- (9) The Board of Prison Terms may subpoena reports that (A) are not unfounded, pursuant to Section 11165.12, and (B) concern only the current incidents upon which parole revocation proceedings are pending against a parolee charged with child abuse. The reports and information shall be confidential pursuant to subdivision (d) of Section 11167.
- (c) Nothing in this section shall be interpreted to require the Department of Justice to disclose information contained in records maintained under Section 11169 or under the regulations promulgated pursuant to Section 11174, except as otherwise provided in this article.

(d) This section shall not be interpreted to allow disclosure of any reports or records relevant to the reports of child abuse if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of child abuse.

11168. Written reports; forms

The written reports required by Section 11166 shall be submitted on forms adopted by the Department of Justice after consultation with representatives of the various professional medical associations and county probation or welfare departments. Such forms shall be distributed by the child protective agencies.

11169. Reports of department of justice; investigations; unfounded reports; immunities

A child protective agency shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse which is determined not to be unfounded, other than cases coming within subdivision (b) of Section 11165.2. A child protective agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is not unfounded, as defined in Section 11165.12. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact and shall not retain the report. The report required by this section shall be in a form approved by the Department of Justice. A child protective agency receiving a written report from another child protective agency shall not send such report to the Department of Justice. The immunity provisions of Section 11172 shall not apply to the submission of a report by a child protective agency pursuant to this section. However, nothing in this section shall be construed to alter or diminish any other immunity provisions of state or federal law.

11170. Indexed reports; notice to child protective agencies or district attorneys; availability of information; notice to parents or guardians

(a) The Department of Justice shall maintain an index of all reports of child abuse submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(b) (1) The Department of Justice shall immediately notify a child protective agency which submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) which is relevant to the known or suspected instance of child abuse reported by the agency. A child protective agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse.

(2) When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency shall, upon completion of the investigation or after there has been a final disposition in the matter, inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The department shall make available to the State Department of Social Services or to any county licensing agency which has contracted with the state for the performance of licensing duties any information received subsequent to January 1, 1981, pursuant to this section concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisory or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 222.70, 224.30, 226.52, or 227.10 of the Civil Code. If the department has information which has been received subsequent to January 1, 1981, concerning such a person, it shall also make available to the State Department of Social Services or the county licensing agency any other information maintained pursuant to subdivision (a).

(4) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse, or the State Department of Social Services or any county licensing agency pursuant to paragraph (3), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, or licensing.

(5) The department shall make available to child protective agencies, or court investigators acting pursuant to Section 1513 of the Probate Code, responsible for placing children or assessing the possible placement of children pursuant to Article 6 (commencing with Section 300), Article 7 (commencing with Section 305), Article 10 (commencing with Section 360), or Article 14 (commencing with Section 601) of Chapter 1 of Part 2 of Division 4 of the Probate Code, information regarding a known or suspected child abuser contained in the index concerning any adult residing in the home where the child may be placed, when this information is requested for purposes of ensuring that the placement is in the best interests of the child. Upon receipt of relevant information concerning child abuse investigation reports contained in the index from the Department of Justice pursuant to this subdivision, the child protective agency or court investigator shall notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the name of the reporting agency and the date of the report.

(6) Persons of agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse, or the State Department of Social Services of any county licensing agency pursuant to paragraph (3), or a child protective agency or court investigator responsible for placing children or assessing the possible placement of children pursuant to paragraph (5), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, or placement of a child.

11171. X-rays of child; exemption from privilege

(a) A physician and surgeon or dentist or their agents and by their direction may take skeletal X-rays of the child without the consent of the child's parent or guardian, but only for purposes of diagnosing the case as one of possible child abuse and determining the extent of such child abuse.

(b) Neither the physician-patient privilege nor the psychotherapist-patient privilege applies to information reported pursuant to this article in any court proceeding or administrative hearing.

11171.5. X-rays without parental consent; application for order; liability for costs

(a) If a peace officer, in the course of an investigation of child abuse, has reasonable cause to believe that the child has been the victim of physical abuse, the officer may apply to a magistrate for an order directing that the victim be X-rayed without parental consent. Any X-ray taken pursuant to this subdivision shall be administered by a physician and surgeon or dentist or their agents.

(b) With respect to the cost of an X-ray taken by the county coroner or at the request of the county coroner in suspected child abuse cases, the county may charge the parent or legal guardian of the child-victim the costs incurred by the county for the X-ray. (c) No person who administers an X-ray pursuant to this section shall be entitled to reimbursement from the county for any administrative cost that exceeds 5 percent of the cost of the X-ray.

11172. Immunity from liability; liability for false reports; attorneys fees; failure to report; offense

(a) No child care custodian, health practitioner, employee of a child protective agency, or commercial film and photographic print processor who reports a known or suspected instance of child abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false or was made with reckless disregard of the truth or falsity of the report, and any such person who makes a report of child abuse known to be false or with reckless disregard of the truth or falsity of the report is liable for any damages caused. No

person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse, or causing photographs to be taken of a suspected victim of child abuse, without parental consent, or for disseminating the photographs with the reports required by this article. However, the provisions of this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) Any child care custodian, health practitioner, or employee of a child protective agency who, pursuant to a request from a child protective agency, provides the requesting agency with access to the victim of a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of providing that access.

(c) The Legislature finds that even though it has provided immunity from liability to persons required to report child abuse, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of child abuse. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a child care custodian, health practitioner, an employee of a child protective agency, or commercial film and photographic print processor may present a claim to the State Board of Control for reasonable attorney's fees incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The State Board of Control shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorney's fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General of the State of California at the time the award is made and shall not exceed an hourly rate greater than the rate charged by the Attorney General of the State of California at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars (\$50,000). This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

(d) A court may award attorney's fees to a commercial film and photographic print processor when a suit is brought against the processor because of a disclosure mandated by this article and the court finds this suit to be frivolous.

(e) Any person who fails to report an instance of child abuse which he or she knows to exist or reasonably should know to exist, as required by this article, is guilty of a misdemeanor and is punishable by confinement in the county jail for a term not to exceed six months or by a fine of not more than one thousand dollars (\$1,000) or by both.

11174. Guidelines

The Department of Justice, in cooperation with the State Department of Social Services, shall be prescribed by regulation guidelines for the investigation of abuse in out-of-home care, as defined in Section 11165.5, and shall ensure that the investigation is conducted in accordance with the regulations and guidelines.

11174.1. Guidelines for investigation of child abuse; regulations; orientation and training of inspectors

- (a) The Department of Justice, in cooperation with the State Department of Social Services, shall prescribe by regulation guidelines for the investigation of child abuse, as defined in Section 11165.6, in facilities licensed to care for children, and shall ensure that the investigation is conducted in accordance with the regulations and guidelines.
- (b) For community treatment facilities, day treatment facilities, group homes, and foster family agencies, the State Department of Social Services shall prescribe the following regulations:
 - (1) Regulations designed to assure that all licensees and employees of community treatment facilities, day treatment facilities, group homes, and foster family agencies licensed to care for children have had appropriate training, as determined by the State Department of Social Services, in consultation with representatives of licensees, on the provisions of this article.
 - (2) Regulations designed to assure the community treatment facilities, day treatment facilities, group homes, and foster family agencies licensed to care for children maintain a written protocol for the investigation and reporting of child abuse, as defined in Section 11165.6, alleged to have occurred involving a child placed in the facility.
- (c) The State Department of Social Services shall provide such orientation and training as it deems necessary to assure that its officers, employees, or agents who conduct inspections of facilities licensed to care for children are

knowledgeable about the reporting requirements of this article and have adequate training to identify conditions leading to, and the signs of, child abuse, as defined in Section 11165.6.

11174.3. Interviewing victim at school; presence of school staff member; confidentiality; admissibility of evidence; informing school districts and agency employees of section requirements

(a) Whenever a representative of a child protective agency deems it necessary, a suspected victim of child abuse may be interviewed during school hours, on school premises, concerning a report of suspected child abuse that occurred within the child's home. The child shall be afforded the option of being interviewed in private or selecting any adult who is a member of the staff of the school, including any certificated or classified employee or volunteer aide, to be present at the interview. A representative of the child protective agency shall inform the child of that right prior to the interview. The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible; however, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Section 11167.5. A representative of the school shall inform a member of the staff so selected by a child of the requirements of this section prior to the interview. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. Failure to comply with the requirements of this section does not affect the admissibility of evidence in a criminal or civil proceeding.

(b) The Superintendent of Public Instruction shall notify each school district, and each child protective agency shall notify each of its employees who participate in the investigation of reports of child abuse, of the requirements of this section.

PROBATE CODE

1514. Appointment of guardian

- (a) Upon hearing of the petition, if it appears necessary or convenient, the court may appoint a guardian of the person or estate of the proposed ward or both.
- (b) In appointing a guardian of the person, the court is governed by Chapter 1 (commencing with Section 3020) and Chapter 2 (commencing with Section 3040) of Part 2 of Division 8 of the Family Code, relating to custody of a minor.
- (c) The court shall appoint a guardian nominated under Section 1500 insofar as the nomination relates to the guardianship of the estate unless the court determines that the nominee is unsuitable.
- (d) The court shall appoint the person nominated under Section 1501 as guardian of the property covered by the nomination unless the court determines that the nominee is unsuitable. If the person so appointed is appointed only as guardian of the property covered by the nomination, the letters of guardianship shall so indicate.
- (e) Subject to subdivisions (c) and (d), in appointing a guardian of the estate:
 - (1) The court is to be guided by what appears to be in the best interest of the proposed ward, taking into account the proposed guardian's ability to manage and to preserve the estate as well as the proposed guardian's concern for and interest in the welfare of the proposed ward.
 - (2) If the proposed ward is of sufficient age to form an intelligent preference as to the person to be appointed as guardian, the court shall give consideration to that preference in determining the person to be so appointed.

WELFARE AND INSTITUTIONS CODE

202.5. Probation officers' duties deemed social service; governing authority

The duties of the probation officer, as described in this chapter with respect to minors alleged or adjudged to be described by Section 300, whether or not delegated pursuant to Section 272, shall be deemed to be social service as defined by Section 10051, and subject to the administration, supervision and regulations of the State Department of Social Services.

206. Separate segregated facilities for habitual delinquents or truants; secure and nonsecure facilities; temporary custody; arrest record

Persons taken into custody and persons alleged to be within the description of Section 300, or persons adjudged to be such and made dependent children of the court pursuant to this chapter solely upon that ground, shall be provided by the board of supervisors with separate facilities segregated from persons either alleged or adjudged to come within the description of Section 601 or 602 except as provided in Section 16514. Separate segregated facilities may be provided in the juvenile hall or elsewhere.

The facilities required by this section shall, with regard to minors alleged or adjudged to come within Section 300, be nonsecure. For the purposes of this section, the term "secure facility" means a facility which is designed and operated so as to insure that all entrances to, and exits from, the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or which relies on locked rooms and buildings, fences, or physical restraints in order to control behavior of its residents. The term "nonsecure facility" means a facility that is not characterized by the use of physically restricting construction, hardware, and procedures and which provides its residents access to the surrounding community with minimal supervision. A facility shall not be deemed secure due solely to any of the following conditions: (1) the existence within the facility of a small room for the protection of individual residents from themselves or others; (2) the adoption of regulations establishing reasonable hours for residents to come and go from the facility based upon

a sensible and fair balance between allowing residents free access to the community and providing the staff with sufficient authority to maintain order, limit unreasonable actions by residents, and to ensure that minors placed in their care do not come and go at all hours of the day and night or absent themselves at will for days at a time; and (3) staff control over ingress and egress no greater than that exercised by a prudent parent. The State Department of Social Services may adopt regulations governing the use of small rooms pursuant to this section.

No minor described in this section may be held in temporary custody in any building that contains a jail or lockup for the confinement of adults, unless, while in the building, the minor is under continuous supervision and is not permitted to come into or remain in contact with adults in custody in the building. In addition, no minor who is alleged to be within the description of Section 300 may be held in temporary custody in a building that contains a jail or lockup for the confinement of adults, unless the minor is under the direct and continuous supervision of a peace officer or other child protective agency worker, as specified in Section 11165.9 of the Penal Code, until temporary custody and detention of the minor is assumed pursuant to Section 309. However, if a child protective agency worker is not available to supervise the minor as certified by the law enforcement agency which has custody of the minor, a trained volunteer may be directed to supervise the minor. The volunteer shall be trained and function under the auspices of the agency which utilizes the volunteer. The minor may not remain under the supervision of the volunteer for more than three hours. A county which elects to utilize trained volunteers for the temporary supervision of minors shall adopt guidelines for the training of the volunteers which guidelines shall be approved by the State Department of Social Services. Each county which elects to utilize trained volunteers for the temporary supervision of minors shall report annually to the department on the number of volunteers utilized, the number of minors under their supervision, and the circumstances under which volunteers were utilized. No record of the detention of such a person shall be made or kept by any law enforcement agency or the Department of Justice as a record of arrest.

300. Minors subject to jurisdiction; legislative intent and declarations; guardian defined

Any minor who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

- (a) The minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm inflicted nonaccidentally upon the minor by the minor's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the minor or the minor's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, "serious physical harm" does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.
- (b) The minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the minor, or the willful or negligent failure of the minor's parent or guardian to adequately supervise or protect the minor from the conduct of the custodian with whom the minor has been left, or by the willful or negligent failure of the parent or guardian to provide the minor with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the minor due to the parent's or guardian's mental illness, developmental disability, or substance abuse. No minor shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. Whenever it is alleged that a minor comes within the jurisdiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's or guardian's medical treatment, nontreatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the minor from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment proposed by the parent or guardian (2) the risks to the minor posed by the course of treatment or nontreatment proposed by the

parent or guardian (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or nontreatment proposed by the parent or guardian and agency. The minor shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the minor from risk of suffering serious physical harm or illness.

(c) The minor is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. No minor shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.

(d) The minor has been sexually abused, or there is a substantial risk that the minor will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the minor from sexual abuse when the parent or guardian knew or reasonably should have known that the minor was in danger of sexual abuse.

(e) The minor is under the age of five and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the minor. For the purposes of this subdivision, "severe physical abuse" means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A minor may not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the probation officer has made an allegation of severe physical abuse pursuant to Section 332.

- (f) The minor's parent or guardian has been convicted of causing the death of another child through abuse or neglect.
- (g) The minor has been left without any provision for support; the minor's parent has been incarcerated or institutionalized and cannot arrange for the care of the minor; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent is unknown, and reasonable efforts to locate the parent have been unsuccessful.
- (h) The minor has been freed for adoption from one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.
- (i) The minor has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the minor from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the minor was in danger of being subjected to an act or acts of cruelty.
- (j) The minor's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the minor will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the minor.
- It is the intent of the Legislature in enacting this section to provide maximum protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to protect children who are at risk of that harm. This protection includes provision of a full array of social and health services to help the child and family and to prevent reabuse of children. That protection shall focus on the preservation of the family whenever possible. Nothing in this section is intended to disrupt the family unnecessarily or to intrude inappropriately into family life, to prohibit the use of reasonable methods of parental discipline, or to prescribe a particular method of parenting. Further, nothing in this section is intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this section. To the

extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to promote services which support family maintenance and family reunification plans, such as client transportation, out-of-home respite care, parenting training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating homemaking skills. The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to this section shall center upon whether a parent's disability prevents him or her from exercising care and control. As used in this section "guardian" means the legal guardian of the child.

305. Conditions allowing temporary custody without warrant

Any peace officer may, without a warrant, take into temporary custody a minor:

- (a) When the officer has reasonable cause for believing that the minor is a person described in Section 300, and, in addition, that the minor has an immediate need for medical care, or the minor is in immediate danger of physical or sexual abuse, or the physical environment or the fact that the child is left unattended poses an immediate threat to the child's health or safety. In cases in which the child is left unattended, the peace officer shall first attempt to contact the child's parent or guardian to determine if the parent or guardian is able to assume custody of the child. If the parent or guardian cannot be contacted, the peace officer shall notify a social worker in the county welfare department to assume custody of the child.
- (b) Who is in a hospital and release of the minor to a parent poses an immediate danger to the child's health or safety.
- (c) Who is a dependent child of the juvenile court, or concerning whom an order has been made under Section 319, when the officer has reasonable cause for believing that the minor has violated an order of the juvenile court or has left any placement ordered by the juvenile court.
- (d) Who is found in any street or public place suffering from any sickness or injury which requires care, medical treatment, hospitalization, or other remedial care.

306. Performance by social worker of certain probation officer functions

Any social worker in a county welfare department, while acting within the scope of his or her regular duties under the direction of the juvenile court and pursuant to subdivision (b) of Section 272, may do all of the following:

- (a) Receive and maintain, pending investigation, temporary custody of a minor who is described in Section 300, and who has been delivered by a peace officer.
- (b) Take into and maintain temporary custody of, without a warrant, a minor who has been declared a dependent child of the juvenile court under Section 300 or who the social worker has reasonable cause to believe is a person described in subdivision (b) or (g) of Section 300, and the social worker has reasonable cause to believe that the minor has an immediate need for medical care or is in immediate danger of physical or sexual abuse or the physical environment poses an immediate threat to the child's health or safety.

Before taking a minor into custody, a social worker shall consider whether there are any reasonable services available to the worker which, if provided to the minor's parent, guardian, caretaker, or to the minor, would eliminate the need to remove the minor from the custody of his or her parent, guardian, or caretaker. In addition, the social worker shall also consider whether a referral to public assistance pursuant to Chapter 2 (commencing with Section 11200) of Part 3, Chapter 7 (commencing with Section 14000) of Part 3, Chapter 1 (commencing with Section 17000) of Part 5, and Chapter 10 (commencing with Section 18900) of Part 6, of Division 9 would eliminate the need to take temporary custody of the minor. If those services are available, they shall be utilized.

307.4 Notice to parent or guardian; written statement of procedural rights and preliminary proceedings; failure to notify

- (a) Any peace officer, probation officer, or social worker who takes into temporary custody pursuant to Sections 305 to 307, inclusive, a minor who comes within the description of Section 300 shall immediately inform, through the most efficient means available, the parent, guardian, or responsible relative, that the minor has been taken into protective custody and that a written statement is available which explains the parent's or guardian's procedural

rights and the preliminary stages of the dependency investigation and hearing. The Judicial Council shall, in consultation with the County Welfare Directors Association of California, adopt a form for the written statement, which shall be in simple language and shall be printed and distributed by the county. The written statement shall be made available for distribution through all public schools, probation offices, and appropriate welfare offices. It shall include, but is not limited to, the following information:

- (1) The conditions under which the minor will be released, hearings which may be required, and the means whereby further specific information about the minor's case and conditions of confinement may be obtained.
- (2) The rights to counsel, privileges against self-incrimination, and rights to appeal possessed by the minor, and his or her parents, guardians, or responsible relative.
- (b) If a good faith attempt was made at notification, the failure on the part of the peace officer, probation officer, or social worker to notify the parent or guardian that the written information required by subdivision (a) is available shall be considered to be due to circumstances beyond the control of the peace officer, probation officer, or social worker, and shall not be construed to permit a new defense to any juvenile or judicial proceeding or to interfere with any rights, procedures, or investigations accorded under any other law.

308. Notice to parent or guardian; right to make telephone calls

(a) When a peace officer or social worker takes a minor into custody pursuant to this article, he or she shall take immediate steps to notify the minor's parent, guardian, or a responsible relative that the minor is in custody and the place where he or she is being held, except that, upon order of the juvenile court, the parent or guardian shall not be notified of the exact whereabouts of the minor. The court shall issue such an order only upon a showing that notifying the parent or guardian of the exact whereabouts would endanger the child or his or her foster family or that the parent or guardian is likely to flee with the child. However, if it is impossible or impracticable to obtain a court order authorizing nondisclosure prior to the detention hearing, and if the peace officer or social worker has a reasonable belief that the minor or his or her foster family would be endangered by the disclosure of the minor's exact whereabouts, or that the disclosure would cause the custody of the minor to be disturbed, the peace officer or

social worker may refuse to disclose the place where the minor is being held. The county welfare department shall make a diligent and reasonable effort to ensure regular telephone contact between the parent and a child of any age, prior to the detention hearing, unless that contact would be detrimental to the child. The initial telephone contact shall take place as soon as practicable, but no later than five hours after the child is taken into custody. The court shall review any such decision not to disclose the place where the minor is being held at the detention hearing, and shall conduct that review within 24 hours upon the application of a parent, guardian, or a responsible relative.

(b) Immediately after being taken to a place of confinement pursuant to this article and, except where physically impossible, no later than one hour after he or she has been taken into custody, a minor 10 years of age or older shall be advised that he or she has the right to make at least two telephone calls from the place where he or she is being held, one call completed to his or her parent, guardian, or a responsible relative, and another call completed to an attorney. The calls shall be at public expense, if the calls are completed to telephone numbers within the local calling area, and in the presence of a public officer or employee. Any public officer or employee who willfully deprives a minor taken into custody of his or her right to make these telephone calls is guilty of a misdemeanor.

309. Requirements for Relative Assessments

(d) If an able and willing relative, as defined in Section 319, is available and requests temporary placement of the child pending the detention hearing, the social worker shall initiate an emergency assessment of the relative's suitability, which shall include an in-home visit to assess the safety of the home and the ability of the relative to care for the child on a temporary basis, and a consideration of the results of a criminal records check and allegations of prior child abuse or neglect concerning the relative and other adults in the home. The results of the assessment shall be provided to the court in the social worker's report as required by Section 319.

311. Filing petition; notice of hearing; privileges and rights

(a) If the probation officer determines that the minor shall be retained in custody, he shall immediately file a petition pursuant to Section 332 with the clerk of the juvenile court who shall set the matter for hearing on the detention

hearing calendar. The probation officer shall thereupon notify each parent or each guardian of the minor of the time and place of the hearing if the whereabouts of each parent or guardian can be ascertained by due diligence, and the probation officer shall serve those persons entitled to notice of the hearing under the provisions of Section 335 with a copy of the petition and notify these persons of the time and place of the detention hearing. This notice may be given orally and shall be given in this manner if it appears that the parent does not read.

(b) In the hearing the minor, parents or guardians have a privilege against self-incrimination and have a right to confrontation by, and cross-examination of, any person examined by the court as provided in Section 319.

319. Examination and report; release; grounds for continued detention; placement

At the initial petition hearing the court shall examine the minor's parents, guardians, or other persons having relevant knowledge and hear the relevant evidence as the minor, the minor's parents or guardians, the petitioner, or their counsel desires to present. The court may examine the minor, as provided in Section 350.

The probation officer shall report to the court on the reasons why the minor has been removed from the parent's custody; the need, if any, for continued detention; on the available services and the referral methods to those services which could facilitate the return of the minor to the custody of the minor's parents or guardians; and whether there are any relatives who are able and willing to take temporary custody of the minor. The court shall order the release of the minor from custody unless a prima facie showing has been made that the minor comes within Section 300 and any of the following circumstances exist:

(a) There is a substantial danger to the physical health of the minor or the minor is suffering severe emotional damage, and there are no reasonable means by which the minor's physical or emotional health may be protected without removing the minor from the parents' or guardians' physical custody.

(b) There is substantial evidence that a parent, guardian, or custodian of the minor is likely to flee the jurisdiction of the court.

(c) The minor has left a placement in which he or she was placed by the juvenile court.

(d) The minor indicates an unwillingness to return home, if the minor has been physically or sexually abused by a person residing in the home.

The court shall also make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the minor from his or her home and whether there are available services which would prevent the need for further detention. Services to be considered for purposes of making this determination are case management, counseling, emergency shelter care, emergency in-home caretakers, out-of-home respite care, teaching and demonstrating homemakers, parenting training, transportation, and any other child welfare services authorized by the State Department of Social Services pursuant to Chapter 5 (commencing with Section 16500) of Part 4 of Division 9. The court shall also review whether the social worker has considered whether a referral to public assistance services pursuant to Chapter 2 (commencing with Section 11200) of Part 3, Chapter 7 (commencing with Section 14000) of Part 3, Chapter 1 (commencing with Section 17000) of Part 5, and Chapter 10 (commencing with Section 18900) of Part 6, of Division 9 would have eliminated the need to take temporary custody of the minor or would prevent the need for further detention. If the minor can be returned to the custody of his or her parent or guardian through the provision of those services, the court shall place the minor with his or her parent or guardian and order that the services shall be provided. If the minor cannot be returned to the custody of his or her parent or guardian, the court shall determine if there is a relative who is able and willing to care for the child. Where the first contact with the family has occurred during an emergency situation in which the child could not safely remain at home, even with reasonable services being provided, the court shall make a finding that the lack of preplacement preventive efforts were reasonable. Whenever a court orders a minor detained, the court shall state the facts on which the decision is based, shall specify why the initial removal was necessary, and shall order services to be provided as soon as possible to reunify the minor and his or her family if appropriate. When the minor is not released from custody the court may order that the minor shall be placed in the suitable home of a relative or in an emergency shelter or other suitable licensed place or a place exempt from licensure designated by the juvenile court or in an appropriate certified family home whose license is pending and all the prelicense requirements for such a placement have been met as set forth in subdivision (e) of Section 361.2 for a period not to exceed 15 judicial days.

As used in this section, "relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including step-parents, step-siblings, and all relatives whose status is preceded by the words "step," "great," "great-great," or "grand," or the spouse of any of these persons, even if the marriage was terminated by death or dissolution. However, only the following relatives shall be given preferential consideration for placement of the child: an adult who is a grandparent, aunt, uncle, or a sibling of the child. The court shall consider the recommendations of the social worker based on the emergency assessment of the relative's suitability, including the results of a criminal records check and prior child abuse allegations, if any, prior to ordering that the child be placed with a relative. The social worker shall initiate the assessment pursuant to Section 361.3 of any relative to be considered for continuing placement.

319.1. Minors in need of specialized mental health treatment; notification of county mental health department

When the court finds a minor to be a person described by Section 300, and believes that the minor may need specialized mental health treatment while the minor is unable to reside in his or her natural home, the court shall notify the director of the county mental health department in the county where the minor resides. The county mental health department shall perform the duties required under Section 5697.5 for all those minors.

Nothing in this section shall restrict the provisions of emergency psychiatric services to those minors who are involved in dependency cases and have not yet reached the point of adjudication or disposition, nor shall it operate to restrict evaluations at an earlier stage of the proceedings or to restrict orders removing the minor from a detention facility for psychiatric treatment.

332. Petition; verification; contents

A petition to commence proceedings in the juvenile court to declare a minor a ward or a dependent child of the court shall be verified and shall contain all of the following:

- (a) The name of the court to which it is addressed.
- (b) The title of the proceeding.

- (c) The code section and the subdivision under which the proceedings are instituted. If it is alleged that the minor is a person described by subdivision (e) of Section 300, the petition shall include an allegation pursuant to that section.
- (d) The name, age, and address, if any, of the minor upon whose behalf the petition is brought.
- (e) The names and residence addresses, if known to the petitioner, of both parents and any guardian of the minor. If there is no parent or guardian residing within the state, or if his or her place of residence is not known to the petitioner, the petition shall also contain the name and residence address, if known, of any adult relative residing within the county, or, if there is none, the adult relative residing nearest to the location of the court.
- (f) A concise statement of facts, separately stated, to support the conclusion that the minor upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted.
- (g) The fact that the minor upon whose behalf the petition is brought is detained in custody or is not detained in custody, and if he or she is detained in custody, the date and the precise time the minor was taken into custody.
- (h) A notice to the father, mother, spouse, or other person liable for support of the minor child, of all of the following: (1) Section 903 makes that person, the estate of that person, and the estate of the minor child, liable for the cost of the care, support, and maintenance of the minor child in any county institution or any other place in which the child is placed, detained, or committed pursuant to an order of the juvenile court; (2) Section 903.1 makes that person, the estate of that person, and the estate of the minor child, liable for the cost to the county of legal services rendered to the minor or the parent by a private attorney or a public defender appointed pursuant to the order of the juvenile court; (3) Section 903.2 makes that person, the estate of that person, and the estate of the minor child, liable for the cost to the county of the probation supervision of the minor child by the probation officer pursuant to the order of the juvenile court; and (4) the liabilities established by these sections are joint and several.

358. Disposition of minor; evidence; continuances; proceedings

(a) After finding that a minor is a person described in Section 300, the court shall hear evidence on the question of the proper disposition to be made of the minor. Prior to making a finding required by this section, the court may continue the hearing on its own motion, the motion of the parent or guardian, or the motion of the minor, as follows:

(1) If the minor is detained during the continuance and the probation officer is not alleging that subdivision (b) of Section 361.5 is applicable, the continuance shall not exceed 10 judicial days. The court may make such order for detention of the minor or for the minor's release from detention, during the period of continuance, as is appropriate.

(2) If the minor is not detained during the continuance, the continuance shall not exceed 30 days after the date of the finding pursuant to Section 356. However, the court may, for cause, continue the hearing for an additional 15 days.

(3) If the probation officer is alleging that subdivision (b) of Section 361.5 is applicable, the court shall continue the proceedings for a period not to exceed 30 days. The probation officer shall notify each parent of the content of subdivision (b) of Section 361.5 and shall inform each parent that if the court does not order reunification a permanency planning hearing will be held, and that his or her parental rights may be terminated within the time frames specified by law.

(b) Before determining the appropriate disposition, the court shall receive in evidence the social study of the minor made by the probation officer, any study or evaluation made by a child advocate appointed by the court, and such other relevant and material evidence as may be offered. In any judgment and order of disposition, the court shall specifically state that the social study made by the probation officer and the study or evaluation made by the child advocate appointed by the court, if there be any, has been read and considered by the court in arriving at its judgment and order of disposition. Any social study or report submitted to the court by the probation officer shall include the individual child's case plan developed pursuant to Section 16501.1.

(c) If the court finds that a minor is described by subdivision (h) of Section 300 or that subdivision (b) of Section 361.5 may be applicable, the court shall conduct the dispositional proceeding pursuant to subdivision (c) of Section 361.5.

361. Limitations on parental control; grounds for removal of child; placement; findings

(a) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all such limitations. Any limitation on the right of the parent or guardian to make educational decisions for the child shall be specifically addressed in the court order. The limitations shall not exceed those necessary to protect the child.

(b) No dependent child shall be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated unless the juvenile court finds clear and convincing evidence of any of the following:

(1) There is a substantial danger to the physical health of the minor or would be if the minor was returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parents' or guardians' physical custody. The fact that a minor has been adjudicated a dependent child of the court pursuant to subdivision (e) of Section 300 shall constitute prima facie evidence that the minor cannot be safely left in the custody of the parent or guardian with whom the minor resided at the time of injury.

(2) The parent or guardian of the minor is unwilling to have physical custody of the minor, and the parent or guardian has been notified that if the minor remains out of their physical custody for the period specified in Section 366.25 or 366.26, the minor may be declared permanently free from their custody and control.

(3) The minor is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, and there are no reasonable means by which the minor's emotional health may be protected without removing the minor from the physical custody of his or her parent or guardian.

(4) The minor or a sibling of the minor has been sexually abused or is deemed to be at substantial risk of being sexually abused, by a parent, guardian, or member of his or her household, or other person known to his or her parent, and there are no reasonable means by which the minor can be protected from further sexual abuse without

removing the minor from his or her parent or guardian, or the minor does not wish to return to his or her parent or guardian.

(5) The minor has been left without any provision for his or her support, or a parent who has been incarcerated or institutionalized cannot arrange for the care of the minor, or a relative or other adult custodian with whom the child has been left by the parent is unwilling or unable to provide care or support for the child and the whereabouts of the parent is unknown and reasonable efforts to locate him or her have been unsuccessful.

(c) The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home or, if the minor is removed for one of the reasons stated in paragraph (5) of subdivision (b), whether it was reasonable under the circumstances not to make any such efforts. The court shall state the facts on which the decision to remove the minor is based.

(d) The court shall make all of the findings required by subdivision (a) of Section 366 in either of the following circumstances:

(1) The minor has been taken from the custody of his or her parents or guardians and has been living in an out-of-home placement pursuant to Section 319.

(2) The minor has been living in a voluntary out-of-home placement pursuant to Section 16507.4.

361.2 Determinations prior to order for removal; placement with parent; prerequisites; placement upon removal; grandparents' visitation

(a) When a court orders removal of a minor pursuant to Section 361, the court shall first determine whether there is a parent of the minor, with whom the minor was not residing at the time that the events or conditions arose that brought the minor within the provisions of Section 300, who desires to assume custody of the minor. If such a parent requests custody the court shall place the minor with the parent unless it finds that placement with that parent would be detrimental to the minor.

If the court places the minor with such a parent, it may do either of the following:

(1) Order that such parent become legal and physical custodian of the child. The court may also provide reasonable visitation by the noncustodial parent. The court shall then terminate its jurisdiction over the minor. The custody order shall continue unless modified by a subsequent order of the superior court. The order of the juvenile court shall be filed in any domestic relation proceeding between the parents.

(2) Order that the parent assume custody subject to the supervision of the juvenile court. In such a case the court may order that reunification services be provided to the parent or guardian from whom the minor is being removed, or the court may order that services be provided solely to the parent who is assuming physical custody in order to allow that parent to retain later custody without court supervision, or that services be provided to both parents, in which case the court shall determine, at review hearings held pursuant to Section 366, which parent, if either, shall have custody of the minor.

(b) When the court orders removal pursuant to Section 361, the court shall order the care, custody, control, and conduct of the minor to be under the supervision of the probation officer who may place the minor in any of the following:

(1) The home of a relative, including a noncustodial parent.

(2) A foster home in which the child has been placed before an interruption in foster care, if that placement is in the best interest of the child and space is available.

(3) A suitable licensed community care facility.

(4) With a foster family agency to be placed in a suitable licensed foster family home or certified family home which has been certified by the agency as meeting licensing standards.

(5) A home or facility in accordance with the federal Indian Child Welfare Act.

(c) If the minor is taken from the physical custody of the minor's parents or guardians and unless the minor is placed with relatives, the minor shall be placed in foster care in the county of residence of the minor's parents or guardians in order to facilitate reunification of the family.

In the event that there are no appropriate placements available in the parents' or guardians' county, a placement may be made in an appropriate place in another county, preferably a county located adjacent to the parents' or guardians' community of residence.

Nothing in this section shall be interpreted as requiring multiple disruptions of the minor's placement corresponding to frequent changes of residence by the parents or guardians. In determining whether the minor should be moved, the probation officer will take into consideration the potential harmful effects of disrupting the placement of the minor and the parents' or guardians' reason for the move.

(d) Whenever the probation officer must change the placement of the minor and is unable to find a suitable placement within the county and must place the minor outside the county, no such placement shall be made until he or she has served written notice on the parents or guardians at least 14 days prior to the placement, unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given. The notice shall state the reasons which require placement outside the county. The parents or guardians may object to the placement not later than seven days after receipt of the notice and, upon objection the court shall hold a hearing not later than five days after the objection and prior to the placement. The court shall order out-of-county placement if it finds that the minor's particular needs require placement outside the county.

(e) Where the court has ordered a minor placed under the supervision of the probation officer and the probation officer has found that the needs of the child cannot be met in any available licensed or exempt facility, including emergency shelter, the minor may be placed in a suitable family home that has filed a license application with the State Department of Social Services, if all of the following certification conditions are met:

- (1) A pre-placement home visit is made by the probation officer to determine the suitability of the family home.
- (2) The probation officer verifies to the licensing agency in writing that the home lacks any deficiencies which would threaten the physical health, mental health, safety, or welfare of the minor.
- (3) The probation officer notifies the licensing agency of the proposed placement and determines that the foster family home applicant has filed specific license application documents prior to and after the placement of the minor.

If the license is subsequently denied, the minor shall be removed from the home immediately. The denial of the license constitutes a withdrawal of the certification.

(f) Where the court has ordered removal of the child from the physical custody of his or her parents pursuant to Section 361, the court shall consider whether the family ties and best interest of the minor will be served by granting visitation rights to the minor's grandparents. The court shall clearly specify those rights to the supervising probation officer.

361.3 Assessment of Preferential Consideration for Relatives

(a) In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative. In determining whether placement with a relative is appropriate, the county social worker and court shall consider, but shall not be limited to, consideration of all of the following factors:

(1) The best interests of the child, including special physical, psychological, educational, medical, or emotional needs.

(2) The wishes of the parent, the relative, and child, if appropriate.

(3) The provisions of Part 6 (commencing with Section 7950) of Division 12 of the Family Code regarding relative placement.

(4) Placement of siblings and half-siblings in the same home, if such a placement is found to be in the best interests of each of the children, as provided in Section 16002.

(5) The good moral character of the relative and any other adult living in the home, including whether any individual residing in the home has a prior history of violent criminal acts or has been responsible for acts of child abuse or neglect. However, this paragraph shall not be construed to provide independent grounds for access to the child abuse central index.

(6) The nature and duration of the relationship between the child and the relative, and the relative's desire to care for the child.

(7) The ability of the relative to do the following:

(A) Provide a safe, secure and stable environment for the child.

(B) Exercise proper and effective care and control of the child.

(C) Provide a home and the necessities of life for the child.

(D) Protect the child from his or her parents.

(E) Facilitate court-ordered reunification efforts with the parents.

(F) Facilitate visitation with the child's other relatives.

(G) Facilitate implementation of all elements of the case plan.

(H) Provide legal permanence for the child if reunification fails. However, if any finding made with respect to the factor considered pursuant to this subparagraph and pursuant to subparagraph (G) shall not be the sole basis for precluding preferential placement with relatives.

(I) Arrange for appropriate and safe child care, if necessary.

(8) The safety of the relative's home. For purposes of this subparagraph, the county social worker shall conduct a direct assessment of the safety of the relative's home. The information obtained as a result of this assessment shall be documented by the county social worker in the child's case record. In this regard, the Legislature declares that a physical disability, such as blindness or deafness, is no bar to the raising of children, and a county social worker's determination as to the ability of a disabled relative to exercise care and control should center upon whether the relative's disability prevents him or her from exercising care and control. The court shall order the parent to disclose to the county social worker the names, residences, and any other known identifying information of any maternal or paternal relatives of the child.

This inquiry shall not be construed, however, to guarantee that the minor will be placed with any person so identified. The county social worker shall initially contact the relatives given preferential consideration for placement to determine if they desire the child to be placed with them. Those desiring placement shall be assessed according to the factors enumerated in this subdivision. The county social worker shall document these efforts in the social study prepared pursuant to Section 358.1. The court shall authorize the county social worker, while

assessing these relatives for the possibility of placement, to disclose to the relative, as appropriate, the fact that the child is in custody, the alleged reasons for the custody, and the projected likely date for the child's return home or placement for adoption or legal guardianship. However, this investigation shall not be construed as good cause for continuance of the dispositional hearing conducted pursuant to Section 358.

(b) In any case in which more than one appropriate relative requests preferential consideration pursuant to this section, each relative shall be considered under the factors enumerated in subdivision (a).

(c) For purposes of this section:

(1) "Preferential consideration" means that the relative seeking placement shall be the first placement to be considered and investigated.

(2) "Relative" means an adult who is related to the child or the child's half sibling by blood, adoption or affinity within the fifth degree of kinship, including step-parents, step-siblings, and all relatives whose status is preceded by the words "step," "great," "great-great," or "grand" or the spouse of any such person even if the marriage has been terminated by death or dissolution. However, only the following relatives shall be given preferential consideration for the placement of the child: an adult who is a grandparent, aunt, uncle, or sibling.

(d) Subsequent to the hearing conducted pursuant to Section 358.1 whenever a new placement of the minor must be made, consideration for placement shall again be given as described in this section to relatives who have not been found to be unsuitable and who will fulfill the minor's reunification or permanent plan requirements. In addition to the factors described in subdivision (a), the county social worker shall consider whether the relative has established and maintained a relationship with the minor.

(e) If the court does not place the child with a relative who has been considered for placement pursuant to this section, the court shall state for the record the reasons placement with that relative was denied.

361.5. Child welfare services; reunification of family; adoption assessments

(a) Except as provided in subdivision (b), whenever a minor is removed from a parent's or guardian's custody, the juvenile court shall order the probation officer to provide child welfare services to the minor and the minor's parents

or guardians for the purpose of facilitating reunification of the family within a maximum time period not to exceed 12 months. The court also shall make findings pursuant to subdivision (a) of Section 366. When counseling or other treatment services are ordered, the parent shall be ordered to participate in those services, unless the parent's participation is deemed by the court to be inappropriate or potentially detrimental to the child. Services may be extended up to an additional six months if it can be shown that the objectives of the service plan can be achieved within the extended time period. Physical custody of the minor by the parents or guardians during the 18-month period shall not serve to interrupt the running of the period. If at the end of the 18-month period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

Except in cases where, pursuant to subdivision (b), the court does not order reunification services, the court shall inform the parent or parents of Section 366.25 or 366.26 and shall specify that the parent's or parents' parental rights may be terminated.

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

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

(2) That the parent is suffering from a mental disability that is described in Section 232 of the Civil Code and that renders him or her incapable of utilizing those services.

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

removed pursuant to Section 361, due to additional physical or sexual abuse. However, this section is not applicable if the jurisdiction of the juvenile court has been dismissed prior to the additional abuse.

(4) That the parent of the minor has been convicted of causing the death of another child through abuse or neglect.

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

(6) That the minor has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse or the infliction of severe physical harm by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian. A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the child, or between the child and another person or animal with the actual or implied consent of, and for the financial gain or other advantage of, the parent or guardian; or the penetration or manipulation of the child's genital organs or rectum by any animate or inanimate object, for the sexual gratification of the parent or guardian, or for the sexual gratification of another person with the actual or implied consent of, and for the financial gain or other advantage of, the parent or guardian.

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

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The probation officer shall prepare a report which discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence

from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within 12 months.

When paragraph (3), (4), or (5), inclusive, of subdivision (b) is applicable, the court shall not order reunification unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The probation officer shall investigate the circumstances leading to the removal of the minor and advise the court whether there are circumstances which indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

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

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the minor, the court shall order the probation officer to provide family reunification services in accordance with this subdivision. However, the time limits specified in subdivision (a) and Section 366.25 are not tolled by the parent's absence.

(e) (1) If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines those services would be detrimental to the minor. In determining detriment, the court shall consider the age of the child, the degree of parent child bonding, the length of the sentence, the nature of the treatment, the nature of crime or illness, the degree of detriment to the child if services are not offered and, for minors 10 years of age or older, the minor's attitude toward the implementation of family reunification services, and

any other appropriate factors. Reunification services are subject to the 18- month limitation imposed in subdivision

(a). Services may include, but shall not be limited to, all of the following:

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

(B) Transportation services, where appropriate.

(C) Visitation services, where appropriate.

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

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the minor pursuant to Section 2625 of the Penal Code.

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

(f) If a court, pursuant to paragraph (2), (3), (4), or (5) of subdivision (b), does not order reunification services, it shall conduct a hearing pursuant to Section 366.25 or 366.26 within 120 days of the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a). The court may continue to permit the parent to visit the minor unless it finds that visitation would be detrimental to the minor.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.25 or 366.26 it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services

when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment which shall include:

- (1) Current search efforts for an absent parent or parents.
- (2) A review of the amount of and nature of any contact between the minor and his or her parents since the time of placement.
- (3) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status.
- (4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.
- (5) The relationship of the minor to any identified prospective, adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the minor, if the minor is 10 years of age or older, concerning placement and the adoption or guardianship.
- (6) An analysis of the likelihood that the minor will be adopted if parental rights are terminated.
- (h) In determining whether reunification services will benefit the child pursuant to paragraph (6) of subdivision (b), the court shall consider any information it deems relevant, including the following factors:
 - (1) The specific act or omission comprising the severe sexual abuse or the severe physical harm inflicted on the child.
 - (2) The circumstances under which the abuse or harm was inflicted on the child.
 - (3) The severity of the emotional trauma suffered by the child.
 - (4) Any history of abuse of other children by the offending parent or guardian.
 - (5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 18 months with no continuing supervision.
 - (6) Whether or not the child desires to be reunified with the offending parent or guardian.

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

366.21. Status review hearings; scheduling; notice; reports; evidence; orders; application

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

(b) Except as provided in Section 366.23 and subdivision (a) of Section 366.3, notice of the hearing shall be mailed by the probation officer to the same persons as in the original proceeding, to the minor's parent or guardian, to the foster parents, community care facility, or foster family agency having physical custody of the minor in the case of a minor removed from the physical custody of his or her parent or guardian, and to the counsel of record if the counsel of record was not present at the time the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued. Service of a copy of the notice personally or by certified mail return receipt requested, or any other form of actual notice is equivalent to service by first-class mail. The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the minor being recommended by the supervising agency. The notice to the foster parent shall indicate that the foster parent may attend all hearings or may submit any information he or she deems relevant to the court in writing.

(c) At least 10 calendar days prior to the hearing the probation officer shall file a supplemental report with the court regarding the services provided or offered to the parents to enable them to assume custody, the progress made, and, where relevant, the prognosis for return of the minor to the physical custody of his or her parent or guardian, and make his or her recommendation for disposition. If the recommendation is not to return the minor to a parent, the report shall specify why the return of the minor would be detrimental to the minor. The probation officer shall

provide the parent or parents with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a minor removed from the physical custody of his or her parent or guardian, the probation officer shall provide a summary of his or her recommendation for disposition to the counsel for the minor, any court appointed child advocate, foster parents, community care facility, or foster family agency having the physical custody of the minor at least 10 calendar days before the hearing.

(d) Prior to any hearing involving a minor in the physical custody of a community care facility or foster family agency that may result in the return of the minor to the physical custody of his or her parent or guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to such a hearing involving a minor in the physical custody of a foster parent, the foster parent may file with the court a report containing its recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the minor to the physical custody of his or her parents or guardians unless, by a preponderance of the evidence, it finds that the return of the child would create a substantial risk of detriment to the physical or emotional well-being of the minor. The probation department shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in any court-ordered treatment programs shall constitute prima facie evidence that return would be detrimental. In making its determination, the court shall review the probation officer's report, shall review and consider the report and recommendations of any child advocate appointed pursuant to Section 356.5, and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she cooperated and availed himself or herself of services provided; shall make appropriate findings pursuant to subdivision (a) of Section 366; and where relevant, shall order any additional services reasonably believed to facilitate the return of the minor to the custody of his or her parent or guardian. The court shall also inform the parent or guardian that if the minor cannot be returned home by the next review hearing,

a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the minor was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the minor had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (a) of Section 361.2. In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or guardian, provided that the court may modify the terms and conditions of those services. If the child is not returned to his or her parent or parents, the court shall determine whether reasonable services have been provided or offered to the parent or parents which were designed to aid the parent or parents overcome the problems which led to the initial removal and the continued custody of the minor. The court shall order that those services be initiated or continued.

(f) At the review hearing held 12 months after the initial dispositional hearing, the court shall order the return of the minor to the physical custody of his or her parent or guardian unless, by a preponderance of the evidence, it finds that return of the child would create a substantial risk or detriment to the physical or emotional well-being of the minor. The probation department shall have the burden of establishing that detriment.

The court shall also determine whether reasonable services have been provided or offered to the parent or parents which were designed to aid the parent or parents to overcome the problems which led to the initial removal and continued custody of the minor. The failure of the parent or guardian to participate regularly in any court-ordered treatment programs shall constitute prima facie evidence that return would be detrimental. In making its determination, the court shall review the probation officer's report and shall consider the efforts or progress, or

both, demonstrated by the parent or guardian and the extent to which he or she cooperated and availed himself or herself of services provided. If the minor is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If a minor is not returned to the custody of a parent or guardian at the hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for another review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or guardian. The court shall continue the case only if it finds that there is a substantial probability that the minor will be returned to the physical custody of his or her parent or guardian within six months or that reasonable services have not been provided to the parent or parents. The court shall inform the parent or guardian that if the minor cannot be returned home by the next review hearing, a permanent plan shall be developed at that hearing. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parents.

(2) Order that the minor remain in long-term foster care, if the court finds by clear and convincing evidence, based upon the evidence already presented to it, that the minor is not adoptable and has no one willing to accept legal guardianship.

(3) Order that a hearing be held within 120 days, pursuant to Section 366.26.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent. The court shall continue to permit the parent to visit the minor pending the hearing unless it finds that visitation would be detrimental to the minor.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment which shall include:

- (1) Current search efforts for an absent parent or parents.
- (2) A review of the amount of and nature of any contact between the minor and his or her parents since the time of placement.
- (3) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status.
- (4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.
- (5) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the minor, if the minor is 10 years of age or older, concerning placement and the adoption or guardianship.
- (6) An analysis of the likelihood that the minor will be adopted if parental rights are terminated.
- (j) This section shall apply to minors made dependents of the court pursuant to subdivision (c) of Section 360 on or after January 1, 1989.

366.22. 18-month hearing; return of minor to parent or guardian; permanent plan, hearing, assessment

(a) When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the court, at the 18-month hearing, shall order the return of the minor to the physical custody of his or her parent or guardian unless, by a preponderance of the evidence, it finds that return of the child would create a substantial risk of detriment to the physical or emotional well-being of the minor. The probation department shall have the burden of establishing the detriment. The failure of the parent or guardian to participate regularly in any court-ordered treatment programs shall constitute prima facie evidence that return would be detrimental. In making its determination, the court shall review the probation officer's report and shall review and consider the report and recommendations of any child advocate appointed pursuant to Section 356.6 and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she cooperated and availed himself or herself

of services provided. If the minor is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that return would be detrimental.

If the minor is not returned to a parent or guardian at the 18-month hearing, the court shall develop a permanent plan. The court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the minor. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it that the minor is not adoptable and has no one willing to accept legal guardianship, the court may order that the minor remain in long-term foster care. The hearing shall be held no later than 120 days from the date of the 18-month hearing. The court shall also order termination of reunification services to the parent. The court shall continue to permit the parent to visit the minor unless it finds that visitation would be detrimental to the minor. The court shall determine whether reasonable services have been offered or provided to the parent or guardian.

(b) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment which shall include:

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

(2) A review of the amount of and nature of any contact between the minor and his or her parents or other members of his or her extended family since the time of placement.

Although the extended family of each minor shall be reviewed on a case-by-case basis, "extended family" for the purposes of this paragraph shall include, but not be limited to, the minor's siblings, grandparents, aunts, and uncles.

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

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

- (5) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the minor, if the minor is 10 years of age or older, concerning placement and the adoption or guardianship.
- (6) An analysis of the likelihood that the minor will be adopted if parental rights are terminated.

366.23. Notice to parents or relatives of dependent child of court of hearing terminating parental rights or establishing guardianship pursuant to Section 366.26

- (a) Whenever a juvenile court schedules a hearing pursuant to Section 366.26 regarding a minor, it shall direct that the fathers, presumed and alleged, and mother of the minor, the minor, if 10 years of age or older, and any counsel of record, shall be notified of the time and place of the proceedings and advised that they may appear. The notice shall also advise them of the right to counsel, the nature of the proceedings, and of the requirement that at the proceedings the court shall select and implement a plan of adoption, legal guardianship, or long-term foster care for the minor. In all cases where a parent has relinquished his or her child for the purpose of adoption, no notice need be given to that parent. Service of the notice shall be completed at least 45 days before the date of the hearing, except in those cases where notice by publication is ordered in which case the service of the notice shall be completed at least 30 days before the date of the hearing. If the petitioner is recommending termination of parental rights, notice of this recommendation shall be either included in the notice of a hearing scheduled pursuant to Section 366.26 and served within the time period specified in this subdivision or provided by separate notice to all persons entitled to receive notice by first-class mail at least 15 days before the scheduled hearing.
- (b) Notice to the parent of the hearing may be given in any of the following manners:
 - (1) Personal service to the parent named in the notice.
 - (2) Delivery to a competent person who is at least 18 years of age at the parent's usual place of residence or business, and thereafter mailed to the parent named in the notice by first-class mail at the place where the notice was delivered.

- (3) If the place of residence is outside the state, service may be made in the manner prescribed in paragraph (1) or (2), or by certified mail, return receipt requested.
- (4) If the recommendation of the petitioner is limited to legal guardianship or long-term foster care, service may be made by first-class mail to the parent's usual place of resident or business.
- (5) If the father or mother of the minor or any person alleged to be or claiming to be the father or mother cannot, with reasonable diligence, be served as provided for in paragraph (1), (2), (3), or (4) or if his or her place of residence is not known, the probation officer shall file an affidavit with the court at least 75 days before the date of the hearing, stating the name of the father or mother or alleged father or mother and his or her place of residence, if known, setting forth the efforts that have been made to locate and serve the parent.
- (A) If the court determines that there has been due diligence in attempting to locate and serve the parent, and the petitioner limits the recommendation to legal guardianship or long-term foster care, the court shall order that notice be given to the grandparents of the minor, if there are any and if their residences and relationships to the minor are known, by first-class mail of the time and place of the proceedings and that they may appear. In any case where the residence of the parent or alleged parent becomes known, notice shall immediately be served upon the parent or alleged parent as set forth in paragraph (1), (2), (3), or (4).
- (B) If the court determines that there has been due diligence in attempting to locate and serve the parent and the petitioner does not limit the recommendation to legal guardianship or long-term foster care, the court shall order that service to the parent be by certified mail, return receipt requested, to the parent's counsel of record, if any. If the parent does not have counsel of record, the court shall order that the service be made by publication of a citation requiring the father or mother, or alleged father or mother, to appear at the time and place stated in the citation, and that the citation be published in a newspaper designated as most likely to give notice to the father or mother. Publication shall be made once a week for four successive weeks. In case of service to the parent by certified mail on the counsel of record or publication where the residence of a parent or alleged parent becomes known, notice shall immediately be served upon the parent or alleged parent as set forth in paragraph (1), (2), or (3). When service to the parent by certified mail on the counsel of record or publication is ordered, service of a copy of the notice in the

manner provided for in paragraph (1), (2), or (3) is equivalent to service by certified mail on the counsel of record or publication. In any case where service to the parent by certified mail on the counsel of record or publication is ordered, the court shall also order that notice be given to the grandparents of the minor, if there are any and if their residences and relationships to the minor are known, by firstclass mail of the time and place of the proceedings and that they may appear. If the identity of one or both of the parents or alleged parents of the minor is unknown or if the name of either or both of his or her parents or alleged parents is uncertain, then that fact shall be set forth in the affidavit and the court, if ordering publication, shall order the published citation to be directed to either the father or the mother, or both, of the minor, and to all persons claiming to be the father or mother of the minor naming and otherwise describing the minor. Personal service of a copy of the notice or any other form of actual notice to counsel of record is the equivalent of service to counsel of record by certified mail, return receipt requested.

(6) Notwithstanding paragraphs (1) to (5), inclusive, if the parent is present at the hearing at which the court schedules a hearing pursuant to Section 366.26 regarding the minor, the court shall advise the parent of the time and place of the proceedings, their right to counsel, the nature of the proceedings, and of the requirement that at the proceedings the court select and implement a plan of adoption, legal guardianship, or long-term foster care for the minor. The court shall order the parent to appear for the proceedings and then direct that the parent be noticed thereafter by first-class mail to the parent's usual place of residence or business only.

(7) Notwithstanding paragraphs (1) to (5), inclusive, whenever the whereabouts of a parent is not known at the time the court schedules a hearing pursuant to Section 366.26 regarding a minor, and the petitioner presents to the court an affidavit setting forth the name of the parent and the efforts that have been made to locate the parent, the court shall order that the notice for the parent be as set forth in subparagraph (A) or (B) of paragraph (5).

(c) Notice to the minor, if 10 years of age or older of the hearing shall be by first-class mail.

(d) Service is deemed complete at the time the notice is personally delivered to the party named in the notice, or 10 days after the notice has been placed in the mail, or at the expiration of the time prescribed by the order for publication, whichever occurs first. Notwithstanding subdivision (a), if the counsel of record is present at the time that the court schedules a hearing pursuant to Section 366.26 no further notice to the counsel of record shall be

required, except to notice counsel of a recommendation to termination parental rights as set forth in subdivision (a) or as required by subparagraph (B) of paragraph (5) of subdivision (b).

366.25. Hearings; reviews; determinations and orders; termination of jurisdiction; application of section

(a) In order to provide stable, permanent homes for children, a court shall, if the minor cannot be returned home pursuant to subdivision (e) of Section 366.2, conduct a hearing to make a determination regarding the future status of the minor no later than 12 months after the original dispositional hearing in which the child was removed from the custody of his or her parent, parents, or guardians, and in no case later than 18 months from the time of the minor's original placement pursuant to Section 319 or 16507.4 and periodically, but no less frequently than once each 18 months, thereafter during the continuation of foster care. The hearing may be combined with the six months' review as provided for in Section 366. In the case of a minor who comes within subdivision (b) of Section 361.5 and for whom the court has found that reunification services should not be provided, a hearing shall be held pursuant to Section 361.5.

(b) Notice of the proceeding to conduct the review shall be mailed by the probation officer to the same persons as in an original proceeding, to the minor's present custodian, and to the counsel of record, by certified mail addressed to the last known address of the person to be notified, or shall be personally served on those persons not earlier than 30 days, nor later than 15 days prior to the date the review is to be conducted.

(c) Except in cases where permanency planning is conducted pursuant to Section 361.5, the court shall first determine at the hearing whether the minor should be returned to his or her parent or guardian, pursuant to subdivision (e) of Section 366.2. If the minor is not returned to the custody of his or her parent or guardian the court shall determine whether there is a substantial probability that the minor will be returned to the physical custody of his or her parent or guardian within six months. If the court so determines it shall set another review hearing for not more than six months, which shall be a hearing pursuant to this section.

(d) If the court determines that the minor cannot be returned to the physical custody of his or her parent or guardian and that there is not a substantial probability that the minor will be returned within six months, the court shall

develop a permanent plan for the minor. In order to enable the minor to obtain a permanent home the court shall make the following determinations and orders:

(1) If the court finds that it is likely that the minor can or will be adopted, the court shall authorize the appropriate county or state agency to proceed to free the minor from the custody and control of his or her parents or guardians pursuant to Section 232 of the Civil Code unless the court finds that any of the following conditions exist:

(A) The parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing this relationship.

(B) A minor 10 years of age or older objects to termination of parental rights.

(C) The minor's foster parents, including relative caretakers, are unable to adopt the minor because of exceptional circumstances which do not include an unwillingness to accept legal responsibility for the minor, but are willing and capable of providing the minor with a stable and permanent environment and the removal of the minor from the physical custody of his or her foster parents would be seriously detrimental to the emotional well-being of the minor.

(2) If the court finds that it is not likely that the minor can or will be adopted or that one of the conditions in subparagraph (A), (B), or (C) of paragraph (1) applies, the court shall order the appropriate county department to initiate or facilitate the placement of the minor in a home environment that can be reasonably expected to be stable and permanent. This may be accomplished by initiating legal guardianship proceedings or long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. When the minor is in a foster home and the foster parents, including relative caretakers, are willing and capable of providing a stable and permanent environment, the minor shall not be removed from the home if the removal would be seriously detrimental to the emotional well-being of the minor because the minor has substantial psychological ties to the foster parents. The court shall also make orders for visitation with the parents or guardians unless the court finds by a preponderance of evidence that the visitation would be detrimental to the physical or emotional well-being of a minor.

(3) (A) If the court finds that it is not likely that the minor can or will be adopted, that there is no suitable adult available to become the legal guardian of the minor, and that there are no suitable foster parents except certified homes available to provide the minor with a stable and permanent environment, the court may order the care, custody, and control of the minor transferred from the county welfare department or probation department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director or chief probation officer regarding the suitability of such a transfer. The transfer shall be subject to further court orders.

(B) The licensed foster family agency shall only use a suitable licensed or other family home which has been certified by the agency as meeting licensing standards. When the care, custody, and control has been transferred to a foster family agency, it shall be responsible for supporting the minor and for providing appropriate services to the minor, including those services ordered by the court. Responsibility for support of the minor shall not in and of itself create liability on the part of the foster family agency to third persons injured by the minor. Those minors whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(C) Subsequent reviews for these minors shall be conducted every six months by the court. The licensed foster family agency shall be required to submit reports for each minor in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the minor's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the minor.

(e) The proceeding for the appointment of a guardian for a minor who is a dependent child of the juvenile court shall be in the juvenile court. The court shall receive into evidence a report and recommendation concerning the proposed guardianship. The report shall include, but not be limited to, a discussion of all of the following:

(1) A social history of the proposed guardian, including screening for criminal records and prior referrals for child abuse or neglect.

(2) A social history of the minor, including an assessment of any identified developmental, emotional, psychological, or educational needs, and the capability of the proposed guardian to meet those needs.

(3) The relationship of the minor to the proposed guardian, the duration and character of the relationship, the motivation for seeking guardianship rather than adoption, the proposed guardian's long-term commitment to provide a stable and permanent home for the minor, and a statement from the minor concerning the proposed guardianship.

(4) The plan, if any, for the natural parents for continued involvement with the minor.

(5) The proposed guardian's understanding of the legal and financial rights and responsibilities of guardianship.

The report shall be read and considered by the court prior to ruling on the petition for guardianship, and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding.

(f) Physical custody of a minor by his or her parents or guardians for insubstantial periods during the 12-month period prior to a permanency planning hearing shall not serve to interrupt the running of those periods.

(g) Notwithstanding any other provision of law, the application of any person who, as a foster parent, including relative caretakers, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the foster parent and removal from the foster parent would be seriously detrimental to the child's well-being. As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(h) Subsequent hearings need not be held if (1) the child has been freed for adoption and placed in the adoptive home identified in the previous hearing and is awaiting finalization of the adoption or (2) the child is the ward of a guardian.

(i) This section applies to minors adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 prior to January 1, 1989.

(j) An order by the court that authorizes the filing of a petition to terminate parental rights pursuant to Section 232 or that authorizes the initiation of guardianship proceedings is not an appealable order but may be the subject of review by extraordinary writ.

366.26. Hearings terminating parental rights or establishing guardianship of minors adjudged dependent children of court on or after Jan. 1, 1989; procedures and orders

(a) This section applies to minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989. The procedures specified herein are the exclusive procedures for conducting these hearings; Section 4600 of the Civil Code is not applicable to these proceedings. For minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989, this section and Sections 221.20, 222.10, and 7017 of the Civil Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the minor while the minor is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all minors who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these minors, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties present, and then shall do one of the following:

(1) Permanently sever the parent or parents' rights and order that the child be placed for adoption.

(2) Without permanently terminating parental rights, identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 60 days.

(3) Without permanently terminating parental rights, appoint a legal guardian for the minor and issue letters of guardianship.

(4) Order that the minor be placed in long-term foster care, subject to the regular review of the juvenile court.

In choosing among the above alternatives the court shall proceed pursuant to subdivision

(c) At the hearing the court shall proceed pursuant to one of the following procedures:

(1) The court shall terminate parental rights only if it determines by clear and convincing evidence that it is likely that the minor will be adopted. If the court so determines, the findings pursuant to subdivision (b) of Section 361.5 the reunification services shall not be offered, or the findings pursuant to subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or pursuant to Section 366.21 or Section 366.22 that a minor cannot or should not be returned to his or her parent or guardian, shall then constitute a sufficient basis for termination of parental rights unless the court finds that termination would be detrimental to the minor due to one of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship.

(B) A minor 10 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The minor is living with a relative or foster parent who is unable or unwilling to adopt the minor because of exceptional circumstances, which do not include an unwillingness to accept legal responsibility for the minor, but who is willing and capable of providing the minor with a stable and permanent environment and the removal of the minor from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the minor.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the minor pursuant to paragraph (1) and that the minor has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement

goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 60 days. During this 60-day period, the public agency responsible for seeking adoptive parents, for each child shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b). For purposes of this section, a minor may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the minor because of the minor's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the minor is the age of seven years or more.

(4) If the court finds that adoption of the minor or termination of parental rights is not in the interests of the minor, or that one of the conditions in subparagraph (A), (B), (C), or (D) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the minor or order that the minor remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. When the minor is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the minor shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the minor because the minor has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the minor.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the minor with a stable and permanent environment, the court may order the care, custody, and control of the minor transferred from the county welfare department or probation department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director or chief probation officer regarding the suitability of such a transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the minor in a suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the minor and for providing appropriate services to the minor, including those services ordered by the court. Responsibility for the support of the minor shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the minor. Those minors whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a minor who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanency plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) At the beginning of any proceeding pursuant to this section, if the minor or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the minor require the appointment of counsel. If the court finds that the interests of the minor do require such protection, the court shall appoint counsel to represent the minor. If the court finds that the interests of the minor require the representation of counsel, counsel shall be appointed whether or not the minor is able to afford counsel. The minor shall not be present in court unless the minor so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the minor and his or her parent.

The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the minor, in such proportions as the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(f) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(g) At all termination proceedings, the court shall consider the wishes of the child and shall act in the best interests of the child. The testimony of the minor may be taken in chambers and outside the presence of the minor's parent or parents if the minor's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The minor is likely to be intimidated by a formal courtroom setting.

(3) The minor is afraid to testify in front of his or her parent or parents. After testimony in chambers, the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a minor also may be taken in chambers and outside the presence of the guardian or guardians of a minor under the circumstances specified in this subdivision.

(h) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the minor person, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making such an order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(i) If the court, by order or judgment declared the minor free from the custody and control of both parents, or one parent if the other no longer has custody and control, the court shall at the same time order the minor referred to a licensed county adoption agency for adoptive placement by the agency. However, no petition for adoption may be

heard until the appellate rights of the natural parents have been exhausted. The licensed county adoption agency shall be responsible for the care and supervision of the minor and shall be entitled to the exclusive care and control of the minor at all times until a petition for adoption is granted.

(j) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(k) An order by the court directing that a hearing pursuant to this section be held is not an appealable order, but may be the subject of review by extraordinary writ.

366.3. Retention of jurisdiction; status reviews; dismissal of jurisdiction; termination of guardianship; notice to parents

(a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 366.25 or 366.26, the court shall retain jurisdiction over the minor until the minor is adopted or the legal guardianship is established. The status of the minor shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the minor has been granted, the court shall terminate its jurisdiction over the minor. The court may continue jurisdiction over the minor as a dependent minor of the juvenile court following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the minor as a ward of the guardianship established pursuant to Section

366.25 or 366.26 and as authorized by Section 366.4. Following a termination of parental rights, the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the minor.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the minor.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship which has been granted pursuant to Section 366.25 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the minor. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the minor, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the minor in another permanent placement. At the hearing, the parents may be considered as custodians but the minor shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the minor. The court may, if it is in the interests of the minor, order that reunification services again be provided to the parent or parents.

(c) If the minor is in a placement other than a preadoptive home or the home of a legal guardian and jurisdiction has not been dismissed, the status of the minor shall be reviewed every six months. This review may be conducted by the court or an appropriate local agency; the court shall conduct the review upon the request of the minor's parents or guardian or of the minor and shall conduct the review 18 months after the hearing held pursuant to Section 366.26 and every 18 months thereafter. The reviewing body shall inquire about the progress being made to provide a permanent home for the minor and shall determine the appropriateness of the placement, the continuing appropriateness and extent of compliance with the permanent plan for the child, the extent of compliance with the

case plan, and the adequacy of services provided to the child. The review shall also include a determination of the services needed to assist a child who is 16 years of age or older make the transition from foster care to independent living.

Each licensed foster family agency shall submit reports for each minor in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the minor's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the minor.

Unless their parental rights have been permanently terminated, the parent or parents of the minor are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the interests of the minor, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the minor. In those cases, the court may order that further reunification services be provided to the parent or parents for a period not to exceed six months.

4094. Program standards for community treatment facilities

(a) The State Department of Mental Health shall establish, by regulations adopted at the earliest possible date, but no later than December 31, 1994, program standards for any facility licensed as a community treatment facility. This section shall apply only to community treatment facilities described in this subdivision.

(b) A certification of compliance issued by the State Department of Mental Health shall be a condition of licensure for the community treatment facility by the State Department of Social Services. The department may, upon the request of a county, delegate the certification and supervision of a community treatment facility to the county department of mental health.

(c) The State Department of Mental Health shall adopt regulations to include, but not be limited to, the following:

(1) Procedures by which the Director of Mental Health shall certify that a facility requesting licensure as a community treatment facility pursuant to Section 1502 of the Health and Safety Code is in compliance with program standards established pursuant to this section.

- (2) Procedures by which the Director of Mental Health shall deny a certification to a facility or decertify a facility licensed as a community treatment facility pursuant to Section 1502 of the Health and Safety Code, but no longer complying with program standards established pursuant to this section, in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
- (3) Provisions for site visits by the State Department of Mental Health for the purpose of reviewing a facility's compliance with program standards established pursuant to this section.
- (4) Provisions for the community care licensing staff of the State Department of Social Services to report to the State Department of Mental Health when there is reasonable cause to believe that a community treatment facility is not in compliance with program standards established pursuant to this section.
- (5) Provisions for the State Department of Mental Health to provide consultation and documentation to the State Department of Social Services in any administrative proceeding regarding denial, suspension, or revocation of a community treatment facility license.
- (d) The standards adopted by regulations pursuant to subdivision (a) shall include, but not be limited to, standards for treatment staffing and for the use of psychotropic medication, discipline, and restraint in the facilities. The standards shall also meet the requirements of Section 4094.5.
- (e) During the initial public comment period for the adoption of the regulations required by this section, the community care facility licensing regulations proposed by the State Department of Social Services and the program standards proposed by the State Department of Mental Health shall be presented simultaneously.
- (f) A minor shall be admitted to a community treatment facility only if the requirements of Section 4094.5 and either of the following condition is met:
- (1) The minor is within the jurisdiction of the juvenile court, and has made voluntary application for mental health services pursuant to Section 6552.
- (2) Informed consent is given by a parent, guardian, conservator, or other person having custody of the minor.
- (g) Any minor admitted to a community treatment facility shall have the same due process rights afforded to a minor who may be admitted to a state hospital, pursuant to the holding in *In re Roger S.* (1977) 19 Cal. 3d 921.

Minors who are wards or dependents of the court and to whom this subdivision applies shall be afforded due process in accordance with Section 6552 and related case law, including *In re Michael E.* (1975) 15 Cal. 3d 183. Regulations adopted pursuant to Section 4094 shall specify the procedures for ensuring these rights, including provisions for notification of rights and the time and place of hearings.

(h) Notwithstanding Section 13340 of the Government Code, the sum of forty-five thousand dollars (\$45,000) is hereby appropriated annually from the General Fund to the State Department of Mental Health for one personnel year to carry out the provisions of this section.

4094.5. Placement and containment of children in a community treatment facility

Regulations for community treatment facilities adopted pursuant to Section 4094 shall include, but not be limited to, the following:

(a) Only seriously emotionally disturbed children, as defined in Section 5699.2, for whom other less restrictive mental health interventions have been tried, as documented in the case plan, or who are currently placed in an acute psychiatric hospital or state hospital or in a facility outside the state for mental health treatment, and who may require periods of containment to participate in, and benefit from, mental health treatment, shall be placed in a community treatment facility. For purposes of this subdivision, lesser restrictive interventions shall include, but are not limited to, outpatient therapy, family counseling, case management, family preservation efforts, special education classes, or nonpublic schooling.

(b) A facility shall have the capacity to provide secure containment. For purposes of this section, a facility or an area of a facility shall be defined as secure if residents are not permitted to leave the premises of their own volition. All or part of a facility, including its perimeter, but not a room alone, may be locked or secure. If a facility uses perimeter fencing, all beds within the perimeter shall be considered secure beds. All beds outside of a locked or secure wing or facility shall be considered nonsecure beds.

(c) A locked or secure program in a facility shall not be used for disciplinary purposes, but shall be used for the protection of the minor. It may be used as a treatment modality for a child needing that level of care. The use of the

secure facility program shall be for as short a period as possible, consistent with the child's case plan and safety. The department shall develop regulations governing the oversight, review, and duration of the use of secure beds.

(d) Fire clearance approval shall be obtained pursuant to Section 1531.2 of the Health and Safety Code.

(e) (1) Prior to admission, any child admitted to a community treatment facility shall have been certified as seriously emotionally disturbed, as defined in Section 5699.2, by a licensed mental health professional. The child shall, prior to admission, have been determined to be in need of the level of care provided by a community treatment facility, by a county interagency placement committee, as prescribed by Section 4096.

(2) Any county cost associated with the certification and the determination provided for in paragraph (1) may be billed as a utilization review expense.

4094.6. Patient's rights

The patients' rights provisions contained in Sections 5325, 5325.1, 5325.2, and 5326 shall be available to any child admitted to, or eligible for admission to, a community treatment facility. Every child placed in a community treatment facility shall have a right to a hearing by writ of habeas corpus, within two judicial days of the filing of a petition for the writ of habeas corpus with the superior court of the county in which the facility is located, for his or her release. Regulations adopted pursuant to Section 4094 shall specify the procedures by which this right shall be ensured. These regulations shall generally be consistent with the procedures contained in Section 5275 et seq., concerning habeas corpus for individuals, including children, subject to various involuntary holds.

4094.7. Community care facilities criteria and certification

(a) A community treatment facility may have both secure and nonsecure beds. However, the State Department of Mental Health shall limit the total number of beds in community treatment facilities to not more than 400 statewide. The State Department of Mental Health shall certify community treatment facilities in such a manner as to ensure an adequate dispersal of these facilities within the state. The State Department of Mental Health shall ensure that there is at least one facility in each of the State Department of Social Services' four regional licensing divisions.

- (b) The State Department of Mental Health shall notify the State Department of Social Services when a facility has been certified and has met the program standards pursuant to Section 4094. The State Department of Social Services shall license a community treatment facility for a specified number of secure beds and a specified number of nonsecure beds. The number of secure and nonsecure beds in a facility shall be modified only with the approval of both the State Department of Social Services and the State Department of Mental Health.
- (c) The State Department of Mental Health shall develop, with the advice of the State Department of Social Services, county representatives, providers, and interested parties, the criteria to be used to determine which programs among applicant providers shall be licensed. The State Department of Mental Health shall determine which agencies best meet the criteria, certify them in accordance with Section 4094, and refer them to the State Department of Social Services for licensure.
- (d) Any community treatment facility proposing to serve seriously emotionally disturbed foster children shall be incorporated as a nonprofit organization.
- (e) No later than January 1, 1996, the State Department of Mental Health shall submit its recommendation to the appropriate policy committees of the Legislature relative to the limitation on the number of beds set forth in this section.

5585.58. Funding

This part shall be funded under the Bronzan-McCorquodale Act pursuant to Part 2 (commencing with Section 5600), as part of the county performance contract.

5600.3. Mental health account funds; populations targeted for use

To the extent resources are available, the primary goal of use of funds deposited in the mental health account of the local health and welfare trust fund should be to serve the target populations identified in the following categories, which shall not be construed as establishing an order of priority:

- (a) (1) Seriously emotionally disturbed children or adolescents.

(2) For the purposes of this part, "seriously emotionally disturbed children or adolescents" means minors under the age of 18 years who have a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, other than a primary substance use disorder or developmental disorder, which results in behavior inappropriate to the child's age according to expected developmental norms. Members of this target population shall meet one or more of the following criteria:

(A) As a result of the mental disorder the child has substantial impairment in at least two of the following areas: self-care, school functioning, family relationships, or ability to function in the community; and either of the following occur:

(i) The child is at risk of removal from home or has already been removed from the home.

(ii) The mental disorder and impairments have been present for more than six months or are likely to continue for more than one year without treatment.

(B) The child displays one of the following: psychotic features, risk of suicide or risk of violence due to a mental disorder.

(C) The child meets special education eligibility requirements under Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

(b) (1) Adults and older adults who have a serious mental disorder.

(2) For the purposes of this part "serious mental disorder" means a mental disorder which is severe in degree and persistent in duration, which may cause behavioral functioning which interferes substantially with the primary activities of daily living, and which may result in an inability to maintain stable adjustment and independent functioning without treatment, support, and rehabilitation for a long or indefinite period of time. Serious mental disorders include, but are not limited to, schizophrenia, as well as major affective disorders or other severely disabling mental disorders. This section shall not be construed to exclude persons with a serious mental disorder and a diagnosis of substance abuse, developmental disability, or other physical or mental disorder.

(3) Members of this target population shall meet all of the following criteria:

(A) The person has a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, other than a primary substance use disorder or developmental disorder or acquired

traumatic brain injury pursuant to subdivision (a) of Section 4354 unless that person also has a serious mental disorder as defined in paragraph (2).

(B) (i) As a result of the mental disorder the person has substantial functional impairments or symptoms, or a psychiatric history demonstrating that without treatment there is an imminent risk of decompensation to having substantial impairments or symptoms. (ii) For the purposes of this part, "functional impairment" means being substantially impaired as the result of a mental disorder in independent living, social relationships, vocational skills, or physical condition.

(C) As a result of a mental functional impairment and circumstances the person is likely to be eligible for public assistance, services, or entitlements.

(4) For the purpose of organizing outreach and treatment options, to the extent resources are available, this target population includes, but is not limited to, persons who are any of the following:

(A) Homeless persons who are mentally ill.

(B) Persons evaluated by appropriately licensed persons as requiring care in acute treatment facilities including state hospitals, acute inpatient facilities, institutes for mental disease, and crisis residential programs.

(C) Persons arrested or convicted of crimes.

(D) Persons who require acute treatment as a result of a first episode of mental illness with psychotic features.

(c) Adults or older adults who require or are at risk of requiring acute psychiatric inpatient care, residential treatment, or outpatient crisis intervention because of a mental disorder with symptoms of psychosis, suicidality, or violence.

(d) Persons who need brief treatment as a result of a natural disaster or severe local emergency.

10950. Opportunity for hearing; priorities; recipient defined

If any applicant for or recipient of public social services is dissatisfied with any action of the county department relating to his application for or receipt of public social services, if his application is not acted upon with reasonable promptness, or if any person who desires to apply for public social services is refused the opportunity to submit a

signed application therefore, and is dissatisfied with such refusal, he shall, in person or through an authorized representative, without the necessity of filing a claim with the board of supervisors, upon filing a request with the State Department of Social Services or the State Department of Health Services, whichever department administers the public social service, be accorded an opportunity for a fair hearing. Priority in setting and deciding cases shall be given in those cases in which aid is not being provided pending the outcome of the hearing. This priority shall not be construed to permit or excuse the failure to render decisions within the time allowed under federal and state law. Notwithstanding any other provision of this code, there is no right to a state hearing when either (1) state or federal law requires automatic grant adjustment for classes of recipients unless the reason for an individual request is incorrect grant computation, or (2) the sole issue is a federal or state law requiring an automatic change in services or medical assistance which adversely affects some or all recipients.

For the purposes of administering health care services and medical assistance, the State Director of Health Services shall have those powers and duties conferred on the Director of Social Services by this chapter to conduct fair hearings in order to secure approval of a state plan under the provisions of applicable federal law. The State Director of Health Services may contract with the State Department of Social Services for the provisions of fair hearings in accordance with this chapter. As used in this chapter, "recipient" means an applicant for or recipient of public social services except aid exclusively financed by county funds or aid under Chapter 3 (commencing with Section 12000) of Part 3 of this division, or those activities conducted under Chapter 6 (commencing with Section 18350) of Part 6.

10951. Request; time

No person shall be entitled to a hearing pursuant to this chapter unless he files his request for the same within 90 days after the order or action complained of.

10952. Setting; notice

The department shall set the hearing to commence within 30 working days after the request is filed, and, at least 10 days prior to the hearing, shall give all parties concerned written notice of the time and place of the hearing.

10952.5. Position statement; availability

If regulations require a public or private agency to write a position statement concerning the issues in question in a fair hearing, or if the public or private agency chooses to develop such a statement, not less than two working days prior to the date of a hearing provided for pursuant to this chapter, the public or private agency shall make available to the applicant for, or recipient of, public social services requesting a fair hearing, a copy of the public or private agency's position statement on the forthcoming hearing. The public or private agency shall make the copy available to the applicant or recipient at the county welfare department. A public or private agency shall be required to comply with the provisions of this section only if the public or private agency has received a 10-day prior notice of the date and time of the scheduled hearing. If the public or private agency does not make the position statement available not less than two working days prior to the hearing or if the public or private agency decides to modify the position statement, the hearing shall be postponed upon the request of the applicant or recipient, provided an applicant or recipient agrees to waive the right to obtain a decision on the hearing within the deadline that would otherwise be applicable under regulations. A postponement for reason of the public or private agency not making the position statement available within not less than two working days shall be deemed a postponement for good cause for purposes of determining eligibility to any applicable benefits pending disposition of the hearing. For purposes of this section "public or private agency" shall not include the State Department of Health Services.

10953. Conduct

A hearing under this chapter shall be conducted by administrative law judges employed by the department, unless the director orders that it shall be conducted by himself or herself. However, the director may contract with the Office of Administrative Hearings to conduct hearings.

Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any hearing conducted under this chapter.

10953.5. Administrative law judges; appointment; qualifications

- (a) The director has authority to appoint the department's administrative law judges as provided in Section 10555.
- (b) Each administrative law judge shall have been admitted to practice law in this state and shall possess any other qualifications prescribed by the State Personnel Board. All persons in the office of the chief referee employed as hearing offices by the department prior to the effective date of this section shall be deemed to be administrative law judges.

10954. Powers of person conducting

The director or administrative law judge conducting the hearing, shall have all of the powers and authority conferred upon the head of a department in Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

10955. Impartiality; informality; evidence; appearance; counsel

The hearing shall be conducted in an impartial and informal manner in order to encourage free and open discussion by participants. All testimony shall be submitted under oath or affirmation. The person conducting the hearing shall not be bound by rules of procedure or evidence applicable in judicial proceedings. At the hearing, the applicant or recipient may appear in person with counsel of his own choosing, or in person and without such counsel.

10956. Perpetuation of proceedings

The proceedings at the hearing shall be reported by a phonographic reporter or otherwise perpetuated by mechanical, electronic, or other means capable of reproduction or transcription.

10957. Continuance; commencement of payments on award of aid

The person conducting the hearing, upon good cause shown, may continue the hearing for a period of not to exceed 30 days. When the refusal of a county to accept a signed application for aid or services is an issue, the director may require the county to accept the application, and may continue the case until the results of the investigation have been reported to him or her. In any such case in which aid is awarded by the director or his or her designee, the payments shall commence at the time indicated by the director or his or her designee.

10958. Administrative law judge; proposed decision

If the hearing is conducted by an administrative law judge, he or she shall prepare a fair, impartial, and independent proposed decision, in writing and in such format that it may be adopted as the director's decision and, after approval of the decision by the chief administrative law judge of the department, the chief administrative law judge shall file a copy of the proposed decision, within 75 days after the conclusion of the hearing, with the director.

10958.1. Issues addressed at hearing

The issues at the hearing shall be limited to those issues which are reasonably related to the request for hearing or other issues identified by either party which they have mutually agreed, prior to or at the hearing, to discuss. All of those issues shall be addressed in the hearing decisions.

10959. Director's powers after receipt of proposed decision; rehearing

Within 30 days after the department has received a copy of the administrative law judge's proposed decision, the director may adopt the decision in its entirety; decide the matter himself or herself on the record, including the transcript, with or without taking additional evidence; or order a further hearing to be conducted by himself or herself, or another administrative law judge on behalf of the director.

Failure of the director to adopt the proposed decision, decide the matter himself or herself on the record, including the transcript, with or without taking additional evidence or order a further hearing within the 30 days shall be

deemed an affirmation of the proposed decision. If the director decides the matter, a copy of his or her decision shall be served on the applicant or recipient and on the affected county, and, if his or her decision differs materially from the proposed decision of the administrative law judge, a copy of that proposed decision shall also be served on the applicant or recipient and on the affected county. If a further hearing is ordered, it shall be conducted in the same manner and within the same time limits specified for the original hearing.

10960. Request for rehearing; time; ruling; conduct

Within 30 days after receiving the proposed decision of an administrative law judge adopted by the director, a final decision rendered by an administrative law judge or a decision issued by the director himself or herself, the affected county or applicant or recipient may file a request with the director for a rehearing. The director shall immediately serve a copy of the request on the other party to the hearing and such other party may within five days of the service file with the director a written statement supporting or objecting to the request. The director shall grant or deny the request no earlier than the fifth nor later than the 15th working day after the receipt of the request. If the director grants the request, the rehearing shall be conducted in the same manner and subject to the same time limits as the original hearing. If action is not taken by the director within the time allowed, the request shall be deemed denied.

10961. Director's decision; contents; effect

The decision of the director need not specify the amount of the award to be paid unless the amount of the award is an issue. If the decision is in favor of the applicant or recipient, the county department shall pay to the applicant or recipient, without the necessity of establishing his or her present need, the amount of aid the director finds he or she is entitled to receive pursuant to the director's decision, payment to commence as of the date the person was first entitled thereto, or grant to him or her the services in which he or she is entitled. The award shall be determined no later than 30 days following the date that the hearing decision is received by the county, or 30 days from the date the additional information needed for compliance with the decision is provided to the county. After the award is made,

the county and the claimant shall be notified by the department of its determination regarding the county's compliance with the decision.

10962. Judicial review

The applicant or recipient or the affected county, within one year after receiving notice of the director's final decision, may file a petition with the superior court, under the provisions of Section 1094.5 of the Code of Civil Procedure, praying for a review of the entire proceedings in the matter, upon questions of law involved in the case. Such review, if granted, shall be the exclusive remedy available to the applicant or recipient or county for review of the director's decision. The director shall be the sole respondent in such proceedings. Immediately upon being served the director shall serve a copy of the petition on the other party entitled to judicial review and such party shall have right to intervene in the proceedings. No filing fee shall be required for the filing of a petition pursuant to this section. Any such petition to the superior court shall be entitled to a preference in setting a date for hearing on the petition. No bond shall be required in the case of any petition for review, nor in any appeal there from. The applicant or recipient shall be entitled to reasonable attorney's fees and costs, if he obtains a decision in his favor.

10963. Compliance with decision

The county director shall comply with and execute every decision of the director rendered pursuant to this chapter.

10964. Digest of decisions

The department shall compile and distribute to each county department a current digest of decisions, properly indexed, rendered under this chapter, and each such digest shall be open to public inspection, subject, however, to the confidentiality requirements set forth in federal and state laws and regulations.

10965. Request on behalf of decedent's estate

Nothing in this chapter shall prevent the filing of the request for a hearing by the legal representative, of, if there is no authorized legal representative, by an heir of a deceased applicant or recipient, in behalf of the decedent's estate, to the end that rights not determined at the time of death shall accrue to the estate of the applicant or recipient.

11008.15. Disregarding income of dependent child derived from participation in certain programs

Notwithstanding Sections 11008.14 and 11267, the department shall exercise the options of disregarding earned income of a dependent child derived from participation in the Job Training Partnership Act of 1982 (P.L. 97-300), a dependent child who is a full-time student pursuant to the Deficit Reduction Act of 1984 (P.L. 97-369), and a dependent child 16 years of age or older who is a participant in the Independent Living Program pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272), providing the child's Independent Living Program case plan states that the purpose of the employment is to enable the child to gain knowledge of needed work skills, work habits, and the responsibilities of maintaining employment.

11155.5. Ward or dependent child participating in Independent Living Program; retention of cash savings

(a) In addition to the personal property permitted by other provisions of this part, a child declared a ward or dependent child of the juvenile court, who is age 16 years or older, and who is a participant in the Independent Living Program pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272) may retain any cash savings, including interest, accumulated pursuant to the child's Independent Living Program case plan. The cash savings shall be the child's own money and shall be deposited by the child or on behalf of the child in any bank or savings and loan institution whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. The cash savings shall be for the child's use for purposes directly related to emancipation pursuant to Part 2.7 (commencing with Section 60) of Division 1 of the Civil Code.

(b) The cash savings accumulated and deposited pursuant to this section shall be kept separate from other types and sources of cash savings. The withdrawal of the savings shall require the written approval of the child's probation officer or social worker and shall be directly related to the goal of emancipation.

11400. Definitions

For the purposes of this article, the following definitions shall apply:

- (a) "Aid to Families with Dependent Children-Foster Care (AFDC-FC)" means the aid provided in behalf of needy children in foster care under the terms of this division.
- (b) "Case plan" means a written document which at a minimum specifies the type of home in which the child shall be placed, the appropriateness of the home for meeting the child's needs, the agency's plan for ensuring that the child, the family, and foster parents receive services, and the appropriateness of the services provided to the child, in order to meet the child's needs while in foster care, and to reunify the child with his or her family, or, when reunification is not possible, to facilitate an alternate permanent plan.
- (c) "Certified family home" means a family residence certified by a licensed foster family agency and issued a certificate of approval by that agency as meeting licensing standards, and used only by that foster family agency for placements.
- (d) "Family home" means the family residency of a licensee in which 24-hour care and supervision are provided for children.
- (e) "Small family home" means any residential facility, in the licensee's family residence, which provides 24-hour care for six or fewer foster children who have mental disorders or developmental or physical disabilities and who require special care and supervision as a result of their disabilities.
- (f) "Foster care" means the 24-hour out-of-home care provided to children whose own families are unable or unwilling to care for them, and who are in need of temporary or long-term substitute parenting.
- (g) "Foster family agency" means any individual or organization engaged in the recruiting, certifying, and training of, and providing professional support to, foster parents, or in finding homes or other places for placement of

children for temporary or permanent care who require that level of care as an alternative to a group home. Private foster family agencies shall be organized and operated on a nonprofit basis.

(h) "Group home" means a non-detention privately operated residential home, organized and operated on a non-profit basis only, of any capacity that provides services in a group setting to children in need of care and supervision, as required by paragraph (1) of subdivision (a) of Section 1502 of the Health and Safety Code.

(i) "Periodic review" means review of a child's status by the juvenile court or by an administrative review panel, which shall include a determination of the continuing need for placement in foster care, evaluation of the goals for the placement and the progress toward meeting these goals, and development of a target date for the child's return home or establishment of alternative permanent placement.

(j) "Permanency planning hearing" means a hearing conducted by the juvenile court in which the child's future status, including whether the child shall be returned home or another permanent plan shall be developed, is determined.

(k) "Placement and care" refers to the responsibility for the welfare of a child vested in an agency or organization by virtue of the agency or organization having (1) been delegated care, custody, and control of a child by the juvenile court, (2) taken responsibility, pursuant to a relinquishment or termination of parental rights on a child, (3) taken the responsibility of supervising a child detained by the juvenile court pursuant to Section 319 or 636, or (4) signed a voluntary placement agreement for the child's placement; or to the responsibility designated to an individual by virtue of his or her being appointed the child's legal guardian.

(l) "Pre-placement preventive services" means services which are designed to help children remain with their families by preventing or eliminating the need for removal.

(m) "Relative" means a person who can be a "caretaker relative" of a dependent child under Section 406 of the Social Security Act.

(n) "Voluntary placement" means an out-of-home placement of a minor by (1) county welfare department after the parents or guardians have requested the assistance of the county welfare department and have signed a voluntary placement agreement; or (2) the county welfare department licensed public or private adoption agency, or the

department acting as an adoption agency, after the parents have requested the assistance of either the county welfare department, the licensed public or private adoption agency, or the department acting as an adoption agency for the purposes of adoption planning, and have signed a voluntary placement agreement.

(o) "Voluntary placement agreement" means a written agreement between either the county welfare department, a licensed public or private adoption agency, or the department acting as an adoption agency, and the parents or guardians of a minor which specifies, at a minimum, the following:

(1) The legal status of the child.

(2) The rights and obligations of the parents or guardians, the child, and the agency in which the child is placed.

(p) "Original placement date" means the most recent date on which the court detained a child and ordered an agency to be responsible for supervising the child or the date on which an agency assumed responsibility for a child due to termination of parental rights, relinquishment, or voluntary placement.

11405. Children living with legal guardian; eligibility for aid; assessment of child parent with child living in same eligible facility

(a) AFDC-FC shall be paid to an otherwise eligible child living with a nonrelated legal guardian, provided that the legal guardian cooperates with the county welfare department in all of the following:

(1) Developing a written assessment of the child's needs;

(2) Updating the assessment no less frequently than once every six months;

(3) Carrying out the case plan developed by the county.

(b) When AFDC-FC is applied for on behalf of a child living with a nonrelated legal guardian the county welfare department shall:

(1) Develop a written assessment of the child's needs;

(2) Update such assessments no less frequently than once every six months;

(3) Develop a case plan that specifies how the problems identified in the assessment are to be addressed;

(4) Make visits to the child as often as appropriate, but in no event less often than once every six months.

(c) Where the child is a parent and has a child living with him or her in the same eligible facility, the assessment required by paragraph (1) of subdivision (a) shall include the needs of his or her child.

16500.5 Family reunification and maintenance pilot program; participating counties; AFDCFC funds; services; report; return of minor or ward to his or her home; utilization of federal funds; programs for county geographic areas

(a) (1) The Legislature hereby declares its intent to encourage the continuity of the family unit by:

(A) Providing services to families to avoid or limit out-of-home placement of children through a family preservation program serving children who are at imminent risk of placement and would be eligible for AFDC-FC if they were placed out of their own homes.

(B) Providing supportive services for those children within the meaning of Sections 361 and 364 when they are returned to the family unit or when a minor will probably soon be within the jurisdiction of the juvenile court pursuant to Section 301.

(C) Providing counseling and support designed to eradicate the situation that necessitated intervention.

(2) The Legislature finds that maintaining abused and neglected children in foster care grows increasingly costly each year, and that adequate funding for family services which might enable these children to remain in their homes is not as readily available as funding for foster care placement.

(3) The Legislature further finds that other state bodies have addressed this problem through various systems of flexible reimbursement in child welfare programs that provide for more intensive and appropriate services to prevent foster care placement or significantly reduce the length of stay in foster care.

(4) Accordingly, it is the intent of the Legislature in enacting this section to establish a system of flexible reimbursement in order to evaluate its potential as an efficient, economical, and effective alternative to out-of-home placement of children.

(b) (1) (A) (i) Any county, subject to the approval of the State Department of Social Services, may claim, on an annual basis, a portion of the state's share, and to the extent permitted, the federal share, of that county's AFDC-FC

expenditures pursuant to subdivision (d) of Section 11450 for children subject to Sections 300, 301, 361, and 364, in advance, provided the county conducts a program of family reunification and family maintenance services for families receiving these services pursuant to Sections 300, 301, 364, and, as permitted by the department, children subject to Sections 601, 602, 726, and 727 of this code, and Section 7572.5 of the Government Code.

(ii) The department or a participating county may terminate a county's participation in the program upon 30 days' notice if the project is deemed unsuccessful by either party.

(iii) For each fiscal year, a participating county may claim in advance an amount not to exceed an actual dollar amount which shall not exceed 25 percent of the projected state's share, and to the extent permitted, the federal share, of AFDC-FC funds to be expended by that county pursuant to subdivision (d) of Section 11450 for children subject to Sections 300, 301, 361, and 364.

(iv) The specific amount of funds to be advanced each year shall be determined by projecting the state share of AFDC-FC General Fund expenditures, and to the extent permitted, the federal share of AFDC-FC expenditures for abused or neglected children supervised and placed by the county welfare department pursuant to Sections 300, 301, 361, and 364, for each of the program years based upon state, and to the extent permitted, federal expenditures for AFDC-FC for the previous five years.

(B) If the county's total AFDC-FC General Fund expenditures and, to the extent permitted, the federal share of AFDC-FC expenditures, added to the amount expended from the advance to the county exceeds, by more than 5 percent, the county's total projected AFDC-FC General Fund expenditures and, to the extent permitted, the federal share of AFDC-FC expenditures for that fiscal year, the county shall fund that portion of the overage in excess of 5 percent on a 100 percent basis. If the sum of a participating county's total AFDC-FC General Fund expenditures and, to the extent permitted, the federal share of AFDC-FC expenditures for their children, added to the amount expended from the advance to the county, is less than the total projected AFDC-FC General Fund expenditures and, to the extent permitted, the federal share of AFDC-FC expenditures for their children for that fiscal year, the county shall receive 25 percent of the amount of the savings.

(2) A participating county's share of expenditures in excess of the projected total may be reduced upon approval of the department and the Department of Finance based on consideration of any unanticipated factors which result in higher than projected AFDC-FC expenditures.

(3) Services which may be provided under this program may include, but are not limited to, counseling, mental health treatment and substance abuse treatment services, parenting, respite, day treatment, transportation, and homemaking. Each county that chooses to provide mental health treatment and substance abuse treatment shall identify and develop these services in consultation with county mental health treatment and substance abuse treatment agencies. Additional services may include those enumerated in Sections 16506 and 16507. The services to be provided pursuant to this section may be determined by each participating county. Each county may contract with individuals and organizations for services to be provided pursuant to this section. Each county shall utilize available private nonprofit resources in the county prior to developing new county-operated resources when these private nonprofit resources are of at least equal quality and costs as county-operated resources and shall utilize available county resources of at least equal quality and cost prior to new private nonprofit resources.

(4) Participating counties authorized by this subdivision shall provide specific programs of direct services based on individual family needs as reflected in the service plans to families of the following:

(A) Children who are dependent children not taken from physical custody of their parents or guardians pursuant to Section 364.

(B) Children who are dependent children removed from the physical custody of their parents or guardian pursuant to Section 364.

(C) Children who it is determined will probably soon be within the jurisdiction of the juvenile court pursuant to Section 301.

(D) Upon approval of the department, children who have been adjudged wards of the court pursuant to Sections 601 and 602.

(E) Upon approval of the department, families of children subject to Sections 726 and 727.

(F) Upon approval of the department, children who are determined to require out-of home placement pursuant to Section 7572.5 of the Government Code.

(5) The services shall only be provided to families whose children will be placed in out-of-home care without the provision of services or to be children who can be returned to their families with the provision of services.

(6) The services selected by any participating county shall be reasonable and meritorious and shall demonstrate cost effectiveness and success at avoiding out-of-home placement, or reducing the length of stay in out-of-home placement. A county shall not expend more funds for services under this subdivision than that amount which would be expended for placement in out-of-home care.

(7) The program in each county shall be deemed successful if it meets the following standards:

(A) At least 75 percent of the children receiving services remain in their own home for six months after termination of services.

(B) During the first year after services are terminated:

(i) At least 60 percent of the children receiving services remain at home one year after services are terminated.

(ii) The average length of stay in out-of-home care of children selected to receive services who have already been removed from their home and placed in out-of-home care is 50 percent less than the average length of stay in out-of-home care of children who do not receive program services.

(C) Two years after the termination of family preservation services:

(i) The average length of out-of-home stay of children selected to receive services under this section who, at the time of selection, are in out-of-home care, is 50 percent less than the average length of stay in out-of-home care for children in out-of-home care who do not receive services pursuant to this section.

(ii) At least 60 percent of the children who were returned home pursuant to this section remain at home.

(8) Funds used for services provided under this section shall supplement, not supplant, child welfare services funds available for services pursuant to Sections 16506 and 16507.

(9) Each county participating in the program authorized by this section shall only continue to utilize the advance fund-claiming mechanism specified in paragraph (1) if the department finds the county has demonstrated the successful outcome of the county program, based on the criteria for success specified in paragraph (7).

(10) The department shall submit a report to the Legislature that includes data from each participating county demonstrating to what extent each has met the criteria specified in this section. An interim report shall be submitted by the department no later than six months after the conclusion of the three pilot projects with a final report to be submitted after pilot project completion. Programs authorized after the original pilot projects shall submit data to the department upon the department's request. Subsequent reports to the Legislature on the programs administered pursuant to this section shall be included with the child welfare system report to the Legislature.

(c) (1) A county welfare department social worker or probation officer may, pursuant to an appropriate court order, return a dependent minor or ward of the court removed from the home pursuant to Section 361 to his or her home, with appropriate interagency family preservation program services.

(2) The county probation department may, with the approval of the State Department of Social Services, through an interagency agreement with the county welfare department, refer cases to the county welfare department for the direct provision of services under this subdivision. (d) State foster care funds shall remain within the administrative authority of the county welfare department and shall be used only for placement services or placement prevention services or county welfare department administrative cost related to the interagency family preservation program.

(e) To the extent permitted by federal law, any federal funds provided for services to families and children may be utilized for the purposes of this section.

(f) A county may establish family preservation programs that serve one or more geographic areas of the county, subject to the approval of the State Department of Social Services.

16501. Definitions; provision of child welfare services pursuant to approved service plan and regulations; contracts; volunteers

(a) As used in this chapter, "child welfare services" means public social services which are directed toward the accomplishment of any or all the following purposes: protecting and promoting the welfare of all children, including handicapped, homeless, dependent, or neglected children; preventing or remedying, or assisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children; preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal is desirable and possible; restoring to their families children who have been removed, by the provision of services to the child and the families; identifying children to be placed in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate; and assuring adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption. "Child welfare services" also means services provided on behalf of children alleged to be the victims of child abuse, neglect, or exploitation. The child welfare services provided on behalf of each child represent a continuum of services, including emergency response services, family preservation services, family maintenance services, family reunification services, and permanent placement services. The individual child's case plan is the guiding principle in the provision of these services. The case plan shall be developed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the jurisdictional hearing pursuant to Section 356, whichever comes first.

(1) Child welfare services may include, but are not limited to, a range of service-funded activities, including case management, counseling, emergency shelter care, emergency in-home caretakers, temporary in-home caretakers, respite care, therapeutic day services, teaching and demonstrating homemakers, parenting training, substance abuse testing, and transportation. These service-funded activities shall be available to children and their families in all phases of the child welfare program in accordance with the child's case plan and departmental regulations. Funding for services is limited to the amount appropriated in the annual Budget Act and other available county funds.

- (2) Service-funded activities to be provided may be determined by each county, based upon individual child and family needs as reflected in the service plan.
- (3) As used in this chapter, "emergency shelter care" means emergency shelter provided to children who have been removed pursuant to Section 300 from their parent or parents or their guardian or guardians. The department may establish, by regulation, the time periods for which emergency shelter care shall be funded.
- (b) As used in this chapter, "respite care" means temporary care for periods not to exceed 72 hours. This care may be provided to the child's parents or guardians. This care shall not be limited by regulation to care over 24 hours. These services shall not be provided for the purpose of routine, ongoing child care.
- (c) The county shall provide child welfare services as needed pursuant to an approved service plan and in accordance with regulations promulgated, in consultation with the counties, by the department. Counties may contract for service-funded activities as defined in paragraph (1) of subdivision (a). Each county shall use available private child welfare resources prior to developing new county-operated resources when the private child welfare resources are of at least equal quality and lesser or equal cost as compared with county-operated resources. Counties shall not contract for needs assessment, client eligibility determination, or any other activity as specified by regulations of the State Department of Social Services.
- (d) Nothing in this chapter shall be construed to affect duties which are delegated to probation officers pursuant to Sections 601 and 654.
- (e) Any county may utilize volunteer individuals to supplement professional child welfare services by providing ancillary support services in accordance with regulations adopted by the State Department of Social Services.
- (f) As used in this chapter, emergency response services consist of a response system providing in person response, 24 hours a day, seven days a week, to reports of abuse, neglect, or exploitation, as required by Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code for the purpose of investigation pursuant to Section 11166 of the Penal Code and to determine the necessity for providing initial intake services and crisis intervention to maintain the child safely in his or her own home or to protect the safety of the child. County welfare departments shall respond to any report of imminent danger to a child immediately and all other reports

within 10 calendar days. An in-person response is not required when the county welfare department, based upon an evaluation of risk, determines that an in-person response is not appropriate. This evaluation includes collateral contacts, a review of previous referrals, and other relevant information, as indicated.

(g) As used in this chapter, family maintenance services are activities designed to provide in-home protective services to prevent or remedy neglect, abuse, or exploitation, for the purposes of preventing separation of children from their families.

(h) As used in this chapter, family reunification services are activities designed to provide time limited foster care services to prevent or remedy neglect, abuse, or exploitation, when the child cannot safely remain at home, and needs temporary foster care, while services are provided to reunite the family.

(i) As used in this chapter, permanent placement services are activities designed to provide an alternate permanent family structure for children who because of abuse, neglect, or exploitation cannot safely remain at home and who are unlikely to ever return home. These services shall be provided on behalf of children for whom there has been a judicial determination of a permanent plan for adoption, legal guardianship, or long-term foster care.

(j) As used in this chapter, family preservation services include those services specified in Section 16500.5 to avoid or limit out-of-home placement of children, and may include those services specified in that section to place children in the least restrictive environment possible.

16501.1. Case plan; legislative findings and declarations; use for out-of-home placement; completion; update; sufficiency; development; consideration by court

(a) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(b) The Legislature further finds and declares that a case plan ensures that the child receives protection and proper case management, and that services are provided to the parents or other caretakers as appropriate. A case plan shall be based upon the principles of this section and shall document that a preplacement assessment of the service needs

of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made.

(c) When out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of the least restrictive or most family like setting, selection of the environment best suited to meet the child's special needs and best interests, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 275 of the Civil Code.

(d) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the jurisdictional hearing pursuant to Section 356, whichever comes first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.25 or 366.26, but no less frequently than once every six months.

(e) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(f) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances which required child welfare services intervention.

(2) The case plan shall identify specific goals, and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents which led to child welfare services intervention.

- (4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services.
- (5) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.
- (6) When out-of-home services are used, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.
- (7) Parents and legal guardians shall have an opportunity to review the case plan, sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.
- (8) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan.
- (g) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings be provided with information necessary to accomplish this visitation. Nothing in this section shall be construed to require or prohibit the probation officer's facilitation, transportation, or supervision of visits between the child and his or her siblings.

16501.6. Child welfare services case management system; information concerning foster child; study; report

(a) It is the intent of the Legislature for the State Department of Social Services to enhance the Child Welfare Services Case Management System to include information concerning the level of care required, educational accomplishments, and health history of children placed in foster care. If appropriate, this enhancement could be made after the system is operational statewide as required in Section 16501.5.

(b) The department shall conduct a study to examine the most efficient methods of collecting and maintaining all of the following data for each child in foster care:

(1) The names and addresses of the child's health and educational providers.

(2) The child's grade level performance.

(3) The child's school record.

(4) Assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement.

(5) A record of the child's immunizations.

(6) The child's known, medical problems.

(7) The child's medications.

(8) Any other relevant level of care, health and education information concerning the child as determined appropriate by the department.

(c) In conducting its study, the department shall, as required, examine county health passport systems for possible replication on a statewide basis and consult with other state departments, county associations, and provider groups.

(d) By February 15, 1992, the department shall submit a report to the appropriate policy and fiscal committees of the Legislature on the results of its study. The department shall include the following in its report:

(1) Recommendations for coordinating data collection among local child health and disability prevention programs, other health care providers, county welfare departments, schools, and other agencies providing services for foster children.

- (2) Recommendations for the interfacing with any alternative system recommended pursuant to paragraph (1) with the mental health assessment required by Section 5407, and with other requirements of law.
- (e) The report required by subdivision (d) shall address the feasibility, time frame, and estimated costs of doing either of the following:
 - (1) Incorporating the data specified in subdivision (b) in the Child Welfare Services Case Management System.
 - (2) Implementing an alternative system which is more appropriate for the collection and maintenance of the data specified in subdivision (b).

16502. Certification of plan; establishment and operation of child welfare services

The child welfare services authorized by this chapter shall be established in any county or combination of counties when a plan which includes financing of such services has been certified by the department. Such certified plan of child welfare services shall then be operated in accordance with standards and regulations established by the department, subject to all the provisions of this code relating to the supervision of public social services by the department.

16503. Administrative review; foster care placement

- (a) Subsequent to completion of the hearing conducted pursuant to Section 366.25 or 366.26, the agency responsible for placement and care of a minor, as defined in subdivision (e) of Section 11400, shall ensure that a child in foster care shall receive administrative reviews periodically but no less frequently than once every six months. The administrative review shall determine the appropriateness of the placement, the continuing appropriateness and extent of compliance with the case plan, and adequacy of services provided to the child.
- (b) The term "administrative review" means a review open to the participation of the parents of a child in foster care conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to either the child or the parents who are the subject of the review.

- (c) The department shall develop and implement regulations establishing processes, procedures and standards for the conduct of administrative reviews that conform to Section 675.6 of Title 42 of the United States Code.
- (d) The requirements of this section shall not be interpreted as requiring duplicate concurrent court and administrative reviews.

16504. Initial intake and evaluation of risk services; eligibility; 24-hour response system; operative date of section

Any child reported to the county welfare department to be endangered by abuse, neglect, or exploitation shall be eligible for initial intake and evaluation of risk services. Each county welfare department shall maintain and operate a 24-hour response system. An immediate in-person response shall be made by a county welfare department social worker in emergency situations in accordance with regulations of the department. The person making any initial response to a request for child welfare services shall consider providing appropriate social services to maintain the child safely in his or her own home. However, an in-person response is not required when the county welfare department, based upon an evaluation of risk, determines that an in-person response is not appropriate. An evaluation of risk includes collateral contacts, a review of previous referrals, and other relevant information, as indicated. This section shall become operative on October 1, 1983, unless a later enacted statute extends or deletes that date.

16506. Family maintenance services; eligibility

Family maintenance services shall be provided or arranged for by county welfare department staff in order to maintain the child in his or her own home. These services shall be limited to six months, and may be extended for one six-month period if it can be shown that the objectives of the service plan can be achieved within the extended time periods. Family maintenance services shall be available without regard to income and shall only be provided to any of the following:

- (a) Families whose child has been adjudicated a dependent of the court under Section 300, and where the court has ordered the county welfare department to supervise while the child remains in the child's home.

(b) Families whose child is in potential danger of abuse, neglect, or exploitation, who are willing to accept services and participate in corrective efforts, and where it is safe for the child to remain in the child's home only with the provision of services.

(c) Families in which the child is in the care of previously noncustodial parent, under the supervision of the juvenile court.

16507. Family reunification services; purpose; duration of services; eligibility; visitation by grandparents; limitation of services to children in foster care

(a) Family reunification services shall be provided or arranged for by county welfare department staff in order to reunite the child separated from his or her parent because of abuse, neglect, or exploitation. These services shall not exceed 12 months except as provided in subdivision (a) of Section 361.5 and subdivision (c) of Section 366.3. Family reunification services shall be available without regard to income to families whose child has been adjudicated or is in the process of being adjudicated a dependent child of the court under the provisions of Section 300. Family reunification services shall include a plan for visitation of the child by his or her grandparents, where the visitation is in the best interests of the child and will serve to maintain and strengthen the family relationships of the child. (b) Family reunification services shall only be provided when a child has been placed in out-of-home care, or is in the care of a previously noncustodial parent under the supervision of the juvenile court.

(c) When a minor has been placed in foster care with a nonparent, family reunification services may be provided to one or both parents.

16507.2. Retention of family unity through child welfare services; priority

Prior to entering into a voluntary placement agreement with a parent or guardian, the social worker shall make every attempt to keep the family together by offering appropriate child welfare services except in the case of a voluntary placement pending relinquishment as provided for in subdivision (c) of Section 16507.4.

16507.3. Limitation of duration of child welfare services; initial placement of seriously emotionally disturbed child

(a) Beginning on October 1, 1982, child welfare services for children placed voluntarily after January 1, 1982, shall be limited to a period not to exceed six months. Subject to the availability of federal funding, voluntary placement services for federally eligible children may be extended for an additional six months, for a total period not to exceed 12 months for either of the following:

(1) Families who have a custodial parent or guardian in residential substance abuse treatment who is demonstrating progress that indicates the problems warranting the initial placement are likely to be resolved within the extended time period.

(2) Families whose minor child is seriously emotionally disturbed, who requires placement in a residential treatment facility, who otherwise would be likely to be found to fit the description in subdivision (c) of Section 300, and who reasonably may be expected to be returned home within the extended time period.

(b) Whenever a seriously emotionally disturbed child as described in paragraph (2) of subdivision (a) is initially voluntarily placed, the initial placement shall be made pursuant to the approval of an interagency administrative review board as described in paragraph (4) of subdivision (a) of Section 16507.6.

(c) The extension of voluntary placement services for an additional six months shall be subject to the approval of an administrative review board pursuant to paragraphs (4) and (5) of subdivision (a) of Section 16507.6. The extension of voluntary placement services is contingent upon the receipt of federal funding. Any administrative and foster care costs that exceed the amount of federal reimbursement shall be paid solely with county funds.

(d) An otherwise eligible child placed voluntarily prior to January 1, 1982, may remain eligible for child welfare services without regard to the length of time in placement until April 1, 1984. Beginning on October 1, 1982, such a child shall receive administrative review pursuant to the requirements of Section 16503.

16507.6. Voluntary out-of-home placement; procedure after six months

(a) If a minor has been voluntarily placed with the county welfare department subsequent to January 1, 1982, for out-of-home placement by his or her parents or guardians pursuant to this chapter and the minor has remained out of their physical custody for six consecutive months, the department shall do one of the following:

- (1) Return the minor to the physical custody of his or her parents or guardians.
- (2) Refer the minor to a licensed adoption agency for consideration of adoptive planning and receipt of a permanent relinquishment of care and custody rights from the parents pursuant to Section 222.10 of the Civil Code.
- (3) Apply for a petition pursuant to Section 332 and file the petition with the juvenile court to have the minor declared a dependent child of the court under Section 300.
- (4) Refer the minor placed pursuant to paragraph (2) of subdivision (a) of Section 16507.3 to an interagency administrative review board as may be required in federal regulations. One member of the board shall be a licensed mental health practitioner. The review board shall review the appropriateness and continued necessity of six additional months of voluntary placement, the extent of the compliance with the voluntary placement plan, and the adequacy of services to the family and child. If the minor cannot be returned home by the 12th month of voluntary placement services, the department shall proceed pursuant to paragraph (2) or (3).
- (5) Refer the minor placed pursuant to paragraph (1) of subdivision (a) of Section 16507.3 to an administrative review board as may be required in federal regulations and as described in subdivision (b) of Section 16503. If the minor cannot be returned home by the 12th month of voluntary placement services, the department shall proceed as described in paragraph (1) or (2).

(b) For those children placed voluntarily prior to January 1, 1981, the six-month consecutive time period for provision of child welfare services shall commence October 1, 1982.

16507.7. Family maintenance and family reunification programs; parenting courses; requirements

Each agency or entity, except for a community college, which offers a parenting course as part of a family maintenance or family reunification effort for a parent or parents of a child who has been adjudicated or is in the

process of being adjudicated a dependent child of the court under Section 300, or whose family is participating in a voluntary family maintenance program, shall meet all of the requirements specified in this section. Effective July 1, 1992, organizations which receive state funding for the purpose of providing parenting courses shall meet those requirements as a condition of receiving state funding. The requirements are as follows:

- (a) Each parenting course shall be no more than six months in duration, and shall meet for a specified number of hours determined by each program as sufficient for the program to meet all of the requirements listed in subdivision (b).
- (b) The curriculum shall include all of the following components:
 - (1) Building self-esteem, including, but not limited to, parents' building a positive parental identity and building the self-esteem of their children.
 - (2) Handling stress and anger.
 - (3) The growth and development of children, including, but not limited to, safety, nutrition, and health.
 - (4) Developing and increasing communication skills in order that a parent may learn to listen to and speak with his or her child or children.
 - (5) Learning to use positive disciplinary mechanisms as alternatives to the physical punishment of a child, including, but not limited to, learning what constitutes abuse and neglect.
 - (6) Learning the boundaries of permissible sexual conduct by adults with regard to children.
 - (7) Respect for, and sensitivity to, cultural differences in child rearing practices in addressing all of the topics listed in paragraphs (1) to (6), inclusive.
- (c) Each parenting course is encouraged to have a maximum parent to teacher ratio of 15 parents for each teacher.
- (d) Each parenting course is encouraged to conduct an initial assessment and interview of each parent enrolled in the course.
- (e) Each parenting course shall give a preliminary examination prior to the start of the parenting course and an examination at the conclusion of the parenting course to measure changes in parental attitudes.

- (f) Each parenting course shall enter into a written agreement with each parent with respect to the responsibilities a parent must satisfy in order to pass the course.
- (g) The staff of each parenting course shall have training in the following areas:
 - (1) The prevention of child abuse and neglect.
 - (2) Parenting techniques.
- (h) Each parenting course shall provide all of the following information to the county welfare department of the county in which the course is taught, for clients referred through child welfare services programs:
 - (1) Level of participation by parents.
 - (2) Number of course hours completed.
 - (3) Topics covered during attendance in class by a parent and topics covered during a parent's absence from class.
 - (4) Assessment of a parent's gain in his or her knowledge about parenting as demonstrated by tests prior to and after the parenting course.

16508. Permanent placement services; eligibility

Permanent placement services shall be provided or arranged for by county welfare department staff for children who cannot safely live with their parents and are not likely to return to their own homes. Permanent placement services shall be available without regard to income to the following children:

- (a) Children judged dependent under Section 300 where a review has determined that reunification, adoption, or guardianship is inappropriate.
- (b) Recipients of public assistance under nonfederally funded Aid to Families with Dependent Children programs who are wards of a legal guardian where a review has determined that reunification or adoption is inappropriate.

16514. Voluntarily placed or dependent children; placement with habitual truants or criminal law violators; responsibility for child

(a) A minor who has been voluntarily placed, adjudged a dependent child of the juvenile court pursuant to Section 300, or as to whom a petition has been filed under Section 325, may be housed in an emergency shelter or, pursuant to the procedures for placement set forth in this code, placed in a foster family home, or with a foster family agency for subsequent placement in a suitable licensed foster family home or certified family home, with minors adjudged wards of the juvenile court pursuant to Section 601.

(b) A minor who has been voluntarily placed, adjudged a dependent child of the juvenile court pursuant to Section 300, or adjudged a ward of the juvenile court pursuant to Section 601, shall not be housed in an emergency shelter with any minor adjudged a ward of the juvenile court pursuant to Section 602.

(c) A minor who has been voluntarily placed, adjudged a dependent child of the juvenile court pursuant to Section 300, or as to whom a petition has been filed under Section 325, shall not be placed or detained in a group home or licensed foster family home or with a foster family agency to be subsequently placed in a certified family home with any minor adjudged a ward of the juvenile court pursuant to Section 601 or 602, unless the social worker or probation officer has determined that the group home or licensed foster family home or foster family agency has a program that meets the specific needs of the minor being placed or detained, and there is a commonality of needs with the other minors in the group home or licensed foster family home or certified family home.

(d) Nothing in this section shall transfer or eliminate the responsibility of the placing agency for the care, custody, or control of the child. Nothing in this section shall relieve a foster family agency of its responsibilities for or on behalf of a child placed with it. For purposes of this section, the placing of children by foster family agencies shall be referred to as "subsequent placement" to distinguish the activity from the placing by public agencies.

STATE REGULATIONS

MANUAL OF POLICIES AND PROCEDURES DIVISION 19 CONFIDENTIALITY OF INFORMATION

CHAPTER 19-000 CONFIDENTIALITY OF RECORDS

19-001 CONFIDENTIALITY OF RECORDS - OBJECTIVE AND SCOPE

In accordance with Welfare and Institutions Code (W&IC) Section 10850 and 45 CFR Section 205.50(a), these regulations were created to protect the applicants and recipients against identification, exploitation or embarrassment that could result from the release of information identifying them as having applied for or having received public assistance. They also outline under what circumstances and to whom such information may be released. These regulations pertain to all records, papers, files and communications pertaining to the following public social service programs, both aid and services, administered or supervised by the State Department of Social Services (SDSS), AFDC (including WIN, and Child Welfare Services), APSB, SSP (all segments), and Title XX, unless otherwise indicated. These regulations bind public and private agencies with whom the county contracts to perform any part of the covered public social service programs. The SDSS programs not covered by these regulations have their own rules regarding records and confidentiality which are to be referred to when dealing with such records, e.g., food stamps in Section 63-201.3 and Adoptions in Title 22 of the California Administrative Code. The term public social services programs is defined as both assistance and social service programs administered or supervised by SDSS or the State Department of Health Services.

19-002 INFORMATION THAT IS CONFIDENTIAL

.1 General

Names, addresses and all other information concerning the circumstances of any individual for whom or about whom information is obtained is confidential and shall be safeguarded. This is true of all information whether written or oral. No disclosure of any information, obtained by a representative, agent or employee of the county, in the course of discharging his or her duties, shall be made, directly or indirectly other than in the administration of

public social service programs. (This includes acknowledgement by a welfare department receptionist or telephone operator that a person is receiving assistance.) Disclosure of information which identifies by name or address any applicant or recipient of public social services to federal, state or local legislative bodies and their committees without such applicant or recipient's consent is prohibited. Such bodies include the United States Congress, the California State Senate and Assembly, city councils and county boards of supervisors. Exceptions to this rule are found in Section 19-004.3 of this division regarding audits and MPP Section 25-480, concerning discharge of accounts. Both the release and possession of confidential information in violation of the rules of this division are misdemeanors.

.2 Federal Tax Information

.21 Definition

For the purposes of this section, the term "tax information" means any information supplied by the Internal Revenue Service (IRS), concerning a taxpayer's identity, the nature, source, or amount of his/her earned income, unearned income (including interest or dividends), payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over assessments, or tax payments.

.22 Confidentiality and Disclosure

No employee or former employee of the county who has or had access to tax information in any manner connected with his/her service shall disclose any tax information obtained by him/her except for the purposes provided in Section 20-006.

.23 Safeguards

Counties shall establish the following safeguards in order to protect the confidentiality of, and to prevent the unauthorized disclosure of, tax information received from IRS:

.231 Establish and maintain a secure area or place in which IRS tax information shall be stored;

.232 Restrict access to the tax information only to persons whose duties or responsibilities require access to this information;

.233 Provide other such safeguards or controls as prescribed by IRS guidelines and necessary or appropriate to protect the confidentiality of tax information;

.234 Report annually in a format prescribed by SDSS the safeguard procedures utilized by the counties for ensuring that the confidentiality of tax information is being maintained; and

.235 The county shall destroy IRS source material upon the independent verification of IRS tax information or upon completion of appropriate case action, whichever is earlier. Methods of destruction shall be those used for confidential material.

HANDBOOK BEGINS HERE

Penalties for Unauthorized Disclosure of Tax Information State Tax Information (Franchise Tax Board) "Except as otherwise provided in this article, it is a misdemeanor for the Franchise Tax Board or any member thereof, or any deputy, agent, clerk, or other officer or employee of the state (including its political subdivisions), or any former officer or employee or other individual, who in the course of his or her employment or duty has or had access to returns, reports, or documents required under this part, to disclose or make known in any manner information as to the amount of income or any particulars set forth or disclosed therein."

Federal Tax Information (Internal Revenue Service)

a) Criminal Penalties

"It shall be unlawful for any person (not described in paragraph (1)) willfully to disclose to any person, except as authorized in this title, any return or, return information (as defined in Section 6103(b)) acquired by him or another person under subsection (d), (i)(3)(B)(i), (l)(6), (7), (8), (9), (10), or (11), or (m)(2) or (4) of Section 6103. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution."

b) Civil Damage

"If any person who is not an officer or employee of the United States knowingly, or by reason of negligence, discloses any return or return information with respect to a taxpayer in violation of any provision of Section 6103, such taxpayer may bring a civil action for damages against such person in a district court of the United States."

HANDBOOK ENDS HERE

19-003 NONCONFIDENTIAL INFORMATION

Statistical information and social data, that is not identified with a particular individual may be released. Examples of information that may be released would include, but are not limited to such information as statements of the number of recipients, total expenditures per program or administration, average grant figures, and other general information concerning the case load as a whole.

19-004 RELEASE OF CONFIDENTIAL INFORMATION

.1 General Rule

.11 Confidential information may be released without the consent of the applicant/recipient, only for purposes directly connected with the administration of public social services except as specified in Section 19-004.4. Public social services are defined as aid or services administered or supervised by SDSS or the State Department of Health Services.

.2 Contractors

Whenever a contract is entered into with a public or private agency which involves the release of confidential information, the contract shall contain a provision insuring that such information will be used in accordance with the restrictions found in W&IC Section 10850 and this division.

.3 Public Officials

.31 Certain public officials, and their duly appointed agents, and deputies, are entitled to examine confidential information. The right of public officials, including law enforcement personnel, to examine public assistance

records does not exist if the request is for a purpose not connected with the administration of the public social service programs. Examples of situations under which information may not be given out include but are not limited to such things as traffic violations, tax fraud investigation, or criminal investigations not related to welfare except pursuant to Section 19-004.4. Both the release and possession of confidential information in violation of these regulations is a misdemeanor. The officials who are entitled to examine confidential information include but are not limited to:

.311 District Attorney or County Counsel

(a) In the administration of aid, it is necessary to disclose information to these offices when they are conducting investigations, prosecutions, criminal or civil proceedings directly connected to public social services including child support services and the location of families in which the caretaker has abducted or kidnapped the aided child(ren).

.312 State Department of Social Services, State Department of Health Services, and Department of Health, Education, and Welfare (HEW), and county welfare departments within the State of California.

(a) These agencies, their representatives and employees shall have access to public social services records as needed in the administration of public social services.

.313 County Auditor

(a) In addition to the authority to examine claims and other financial transactions in the routine line of duty, the auditor may examine records as necessary to satisfy himself/herself that fiscal accountability is being maintained and that progress relating to payment, claiming and repayment of aid are proper and effective.

.314 Audits

(a) Federal, State and County auditors having direct or delegated authority are authorized to examine records as necessary to perform fiscal audits and/or procedure reviews. Legislative bodies and their committees authorized by law to conduct audits or similar activities in connection with the administration of public social services shall be permitted to examine records.

(b) Such committees include, but are not limited to, the California Joint Legislative Audit Committee, the California Auditor General and their staff, and the United States General Accounting Office.

.315 Legislatures and their Committees

(a) Refer to Section 19-002 for the prohibition against release of confidential information to legislatures without applicant/recipient consent. Any releases made to legislatures or their committees should be accompanied by the warning that Welfare and Institutions Code Section 10850 makes the use or release of the information for a purpose not directly connected with the administration of public social services a misdemeanor.

.4 Exception to General Rule - Law Enforcement Officials

.41 Pursuant to the procedures and restrictions in Welfare and Institutions Code Sections 10850.3 and 10850.7, law enforcement officials may be given otherwise confidential information when:

.411 The applicant/recipient is deceased, Welfare and Institutions Code Section 10850.7.

HANDBOOK BEGINS HERE

(a) Welfare and Institutions Code Section 10850.7 provides: Notwithstanding the provisions of Section 10850, an authorized employee of a county welfare department may disclose confidential information concerning a public social services applicant or recipient to any law enforcement agency where the applicant or recipient is deceased. Information that may be released pursuant to this section shall be limited to the name, address, telephone number, birth date, social security number, and physical description of the applicant for, or recipient of, public social services. A county welfare department may release the information specified by this section to any law enforcement agency only upon a written request from the head of the agency specifying that the applicant or recipient is deceased and that the agency is otherwise unable to adequately identify the deceased. The information specified may alternately be released by telephone, whereupon the head of the law enforcement agency shall submit the request in writing within five days of the release. This section shall not be construed to authorize the release of a general list identifying individuals applying for or receiving public social services. The provisions of this section

shall be operative only to the extent permitted by federal law. The section shall not apply to, but shall exclude the Medi-Cal program established pursuant to Chapter 7 (commencing with Section 14000) and following.

HANDBOOK ENDS HERE

.412 A felony arrest warrant has been issued for the applicant/recipient, Welfare and Institutions Code Section 10850.3.

HANDBOOK BEGINS HERE

Welfare and Institutions Code Section 10850.3(b) provides in part: A county welfare department may release the information specified by this section to any law enforcement agency only upon a written request from the agency specifying that a warrant of arrest for the commission of a felony has been issued as to the applicant or recipient. This request may be made only by the head of the law enforcement agency, or by an employee of the agency so authorized and identified by name and title by the head of the agency in writing to the county welfare department.

HANDBOOK ENDS HERE

(a) Information releasable pursuant to a felony arrest warrant shall be further limited to data contained within disbursement records for AFDC, Special Circumstances, and social service cases other than Child Welfare Service records. Release shall be limited to name, address, telephone number, birth date, and social security account number (where such items are present) from the record of disbursement.

(1) No data shall be released from the case record.

(2) No data shall be released from SSI/SSP records except for Special Circumstances.

(3) This section shall not be construed to limit releases pursuant to Penal Code Section 11166.

(b) Food Stamp and Adoption records, including AAP, are not within the scope of this Division.

.5 Release of Confidential Information in Conjunction With a Lawsuit

If an applicant/recipient or caretaker relative becomes a party or plaintiff in any suit against the State of California, any political subdivision of the state, or any agency administering the laws governing the administration of public social services and such suit challenges the validity of the laws governing the administration of public social services or the manner in which the laws have been applied, the attorney representing the state, political subdivision, or agency shall be given access to all files and records relating to the plaintiff. Such files and records may be disclosed to the court having jurisdiction of the lawsuit insofar as they are relevant to the determination of any factual or legal issue in the case. In such cases, it should be brought to the court's attention, when presented with the requested information, of the state law and policy against further disclosure of the information. On notice of court action ordering records to be produced, where the action is not connected with the administration of public social services, (see 19-002), the county shall notify the appropriate legal officer (county counsel). Such legal officer shall be requested to take immediate action to safeguard the confidential nature of the records.

.6 Release to Schools

.61 Confidential case information may be released to county superintendents of school and superintendents of school districts, and their representatives, as necessary for the administration of federally-assisted programs which provide assistance in cash, in-kind, or services directly to individuals on the basis of need. If such confidential information is released, the superintendent shall be informed of the criminal prohibition against the use or disclosure of such information for any purpose other than that for which it was obtained.

.62 Information concerning the number of AFDC families living within a particular school district requested to support entitlement to funds under the Elementary and Secondary Education Act (ESEA) may be released to authorized representatives of the school district. A signed agreement with the school district stating that the confidential information obtained will only be used for purposes of fund claiming under the ESEA and that the district understands that there is a criminal penalty for release or use by the school district for any other purpose shall be obtained. This prohibition includes the use of the confidential records to identify applicants or recipients to school teachers and administrators.

.7 Disclosure to Parents Who Wish to be Reunited With Their Family

.71 Where a person claims to be an absent parent, her/his identification should be verified.

.72 No acknowledgement to the requesting parent that the child(ren) or other parent are receiving aid may be made.

.73 If the family is aided, the aided caretaker shall be contacted for permission to release information. If permission is granted, the information shall be released.

.74 If the absent parent alleges that the aided parent has kidnapped, abused or neglected the child(ren), the case should be referred to the child protective services for appropriate action. The name and address of the applicant or recipient may be released to law enforcement officials for the purpose of locating abducting parents and the abducted child(ren).

.8 Release to Research Organizations

Information requested by research organizations may be released without authorization of the applicant/recipient. Research organizations requesting information must guarantee in writing that they will meet the conditions and protections of this division and Welfare and Institutions Code Section 10850.

19-005 RELEASE TO APPLICANT/RECIPIENT OR AUTHORIZED REPRESENTATIVE

.1 Information Supplied By the Applicant/Recipient

Information relating to eligibility that was provided solely by the applicant/recipient contained in applications and other records made or kept by the county welfare department in connection with the administration of the public assistance program shall be open to inspection by the applicant/recipient or his/her authorized representative.

.2 Authorizations

For purposes of this section, an authorized representative is a person or group who has authorization from the applicant/recipient to act for him/her.

.21 Written Authorizations

Except, as otherwise provided, all authorizations are to be written. Written authorizations shall be dated and shall expire one year from the date on which they are given unless they are expressly limited to a shorter period or revoked. In cases involving pending appeals or state hearings, the time period, unless the authorization is expressly

limited or revoked, shall extend to the final disposition of the issue involved in the fair hearing or, where applicable, by the courts. When the authorized representative and the applicant/recipient, or responsible relative caring for the AFDC child are both present, no written authorization is required for that particular occasion.

.22 Telephone Authorizations

Telephone authorizations may be accepted in lieu of a written authorization where the circumstances insure that the applicant or recipient has adequately identified himself or herself to the county. A telephone authorization is temporary and should be followed up by a written authorization. Acceptable items of identification are to be determined by the county but may include such items as case numbers, driver's license numbers, social security account numbers or the mother's maiden name. The procedure for telephone authorizations will usually involve the applicant or recipient first calling their eligibility worker and notifying the worker of whom will be calling on their behalf. This call will authorize the release of confidential information. Examples of typical circumstances for releasing confidential information by telephone authorization include inquiries from medical offices, welfare rights organizations or legislators calling on behalf of the recipient.

.3 Applicant/Recipient Written Requests for Assistance to Legislators

Written inquiries to members of legislative bodies signed by applicants or recipients of public social services concerning the receipt of public social services may serve as authorization for release of information sufficient to answer such an inquiry.

.4 Release of Information in Conjunction With a State Hearing

The applicant/recipient or his/her attorney or authorized representative may inspect the case records including the entire case narrative relating to the applicant or recipient which are held by DSS, DHS, or any agency supervised by DSS with the following exceptions listed below in Section 19-006.

19-006 INFORMATION WHICH MAY NOT BE RELEASED TO THE APPLICANT/RECIPIENT

Privileged Communications

Portions of the applicant/recipient's record which would qualify as privileged communications as defined by the Evidence Code. This would include Sections 954 (lawyer-client), and 1041 (identity of informer).

NOTE: The physician-patient privilege in Evidence Code Section 990, et seq., belongs to the patient and may be waived by him/her. The right of the patient to inspect his/her records is confined to record maintained by the CWD and does not extend to the records kept by the physician.

19-007 ELIGIBILITY DETERMINATIONS

.1 Collateral Contacts in AFDC and APSB

Pursuant to EAS Sections 40-157.22 and 40-181.31 individual consent forms, signed by the applicant or recipient are required for each contact made during the evidence gathering process. An exception to this rule is found in MPP Section 20-007.36 which exempts SIUs from the requirement of permission to contact collateral sources.

.11 Permission

If the applicant or recipient does not wish the county to contact a private or public source in order to determine eligibility, the applicant or recipient shall have the opportunity to obtain the desired information or verification himself or herself.

.12 Acceptability and Discontinuances

If the information or verification is unacceptable to the county and the applicant refuses to grant the county permission to collect the information, the applicant will be given the opportunity to withdraw his or her application or the application shall be denied for noncooperation pursuant to EAS Section 40-105.11. Recipients who refuse to give consent for a collateral contact for which no acceptable evidence or verification has been obtained by the recipient, shall be given the opportunity to withdraw from the program or shall be terminated pursuant to EAS Section 40-105.11.

.13 Nothing in .11 or .12 shall prevent an investigation for fraud by the SIU.

.2 Title XX Services -- Outside Contacts by Agencies Other Than The County Welfare Department

.21 When the provider agency determines eligibility, it shall inform the applicant or recipient that, if it is necessary to contact outside sources (including employers) and the applicant or recipient wishes to keep the service confidential, he/she is entitled to request that such contacts be made by the county, and

.22 The county, upon notification of the individual's request, shall make the outside contacts and relay the information to the provider. While a client may not object to such contacts, he or she may object to a contact's learning of the particular kind of service sought. To the maximum extent possible, such inquiries should not reveal the specific nature of the service sought by the client. (45 CFR Section 228.6(f)(1) and (2).)

19-008 RECORD KEEPING

The purpose of public assistance and social service records is to evidence eligibility and delivery of public social services. The applicant's or recipient's record should only contain facts relevant to his or her case.

CHAPTER 21-100 NONDISCRIMINATION IN STATE AND FEDERALLY ASSISTED PROGRAMS

21-101 PURPOSE

The purpose of Division 21 is to effectuate the provisions of Title VI and Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, as amended, the Age Discrimination Act of 1975, the Food Stamp Act of 1977 and other applicable federal and state laws to ensure that employment practices and the administration of public assistance and social services programs are nondiscriminatory, and that no person shall, because of race, color, national origin, political affiliation, religion, marital status, sex, age or handicap be excluded from participation in or be denied the benefits of any program receiving federal or state assistance. Administrative methods/procedures which have the effect of subjecting individuals to discrimination or defeating the objectives of these regulations are prohibited.

21-103 SCOPE OF DIVISION

These requirements shall apply to the State Department of Social Services (SDSS), all county welfare departments and all other agencies receiving federal or state assistance through the Department of Social Services for the administration of Public Assistance, Food Stamps, Child Support Enforcement and Social Services.

.1 Civil Rights requirements addressing the Child Support Program in the county District Attorney's offices are covered in separate plans of cooperation (see MPP Chapter 11-600).

.2 The State Department of Social Services reserves the right to review, copy or otherwise obtain all data, records, reports, case files and other materials determined necessary in the conduct of complaint investigations and/or compliance reviews involving all agencies subject to the requirements of this division.

21-104 DEFINITIONS

The following definitions shall apply to the terms used in this Division:

(a) Accessibility - The accommodation of public facilities for use by handicapped persons.

(b) Agency - County welfare departments, other governmental entities, private parties or individuals receiving state or federal assistance through SDSS for the provision of services.

(c) Authorized representative - An individual or group that has written authorization from the applicant/recipient to act in his/her behalf (see MPP, Division 19, Section 19-005.2).

(d) "Culturally aware persons" are those who possess knowledge and understanding of cultural environments, religious beliefs, life styles, self-concepts and language characteristics of the populations they serve. Such knowledge is necessary to effectively communicate and provide the same level of service being provided to the welfare population at large.

(e) "Handicapped person" is any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment or is regarded as having such an impairment.

(1) "Physical or mental impairment" means:

- (A) Any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine; or
- (B) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.
- (2) "Major life activities" include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
- (3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
- (4) "Is regarded as having an impairment" means:
- (A) Has a physical or mental impairment that does not substantially limit major life activities, but that is treated by the agency as constituting such a limitation;
- (B) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or
1. Has none of the impairments defined in this section but is treated by an agency as having such an impairment.
- (f) International Symbol of Accessibility - The symbol specified in the State Building Code, Title 24, Part 2, Section 2-1720 used to identify facilities accessible to handicapped persons.
- (g) Major Occupational Group - Groups shall include, but are not limited to, the following general positions/classifications: Social Service Supervisors, Eligibility Supervisors, Social Workers, Eligibility Workers, Welfare Aids, Receptionists, Clerical Employees. Agency personnel whose position/classification is not included, but whose primary duties/responsibilities correspond to any one of the above shall be included in that major occupational group.
- (h) "Non-English-speaking" persons are defined as those whose primary language is other than English and which language must be used to effectively communicate program information and requirements. Sign language is subject to this definition.

(i) "Public contact positions" include, but are not limited to, the following positions and activities, regardless of particular job classification or title: agency employees assigned to the front desk or registration counter, telephone operators, eligibility workers/supervisors, social service workers/supervisors, welfare service aides, vocational counselors, homemakers, investigators, and any employee providing interpretive service on a continuing or as needed basis.

(j) "Qualified bilingual employee" is defined as an employee who, in addition to possessing the necessary qualifications for the particular classification, is certified through an SDSS approved or administered process to be proficient in and will use oral and/or written communication in the non-English language of the persons to be served. This definition shall also apply to an employee who is certified in the use of sign language to communicate with hearing-impaired persons.

(k) Sign Language - the use of fingers and hands by deaf and hearing impaired persons to communicate.

(l) "Substantial Number". For the purposes of this Division, "substantial number" is defined as five percent or more non-English-speaking or hearing-impaired persons (see 21-115.12).

21-107 DISSEMINATION OF INFORMATION

.1 General Requirements

Each agency shall take appropriate steps to inform all applicants, recipients and other persons, including those whose primary language is other than English, and those with impaired hearing or vision or other disabling conditions, of the provisions of this division and its applicability to the programs for which the agency receives federal or state assistance. Such notification shall also identify the employee responsible for the agency's compliance with this division. If not immediately available this information must be provided within ten days of the date requested.

.2 Specific Methods to be Utilized

.21 Posters

.211 Posters on nondiscrimination provided by the Department of Social Services shall be prominently displayed in all waiting rooms and reception areas. The county welfare department shall place on the posters the telephone number of the person in the agency who is responsible for processing discrimination complaints.

.212 All instructional and directional signs posted in waiting areas and other places frequented by a substantial number of non-English speaking applicants/recipients shall be translated into appropriate languages. Such signs, or an additional sign, shall state that applicants/recipients may request aid or services in their primary language.

.22 Pamphlets

.221 Pamphlets supplied by SDSS entitled "Your Rights Under California Welfare Programs" shall be made available in all CWD waiting rooms and reception areas and shall be distributed and explained to each applicant/recipient at intake and redetermination of eligibility. The pamphlets, as available from SDSS, shall be in the primary languages of the CWD's applicant/recipient population.

.23 Notice

The agency shall implement procedures to ensure that interested persons, including persons with impaired vision or hearing or other disabling conditions, can obtain information which includes, but is not limited to the following:

.231 Existence and location of services

.232 Activities and services accessible to handicapped persons

.233 Basic eligibility requirements for public assistance

.234 Prohibited acts of discrimination

.235 Procedures for filing discrimination complaints

21-109 DISCRIMINATORY PRACTICES PROHIBITED

.1 In administering programs to which this division applies, agencies may not, on the basis of race, color, national origin, religion, political affiliation, marital status, sex, age or handicap, directly or through contractual, licensing, or other arrangements:

.11 Provide aid, benefits, or services to an individual or group which is different than that provided to others unless such action is necessary to provide qualified individuals or groups with aid, benefits, or services that are as effective as those provided to others. The exclusion of an individual or group from the benefits of a program limited by federal statute or executive order to a specific class of individual or group is not prohibited.

12 Deny an individual the opportunity to be a member of an advisory board which is an integral part of any program.

.2 Location of Facilities

In determining the location of a facility, agencies shall not make selections which have the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any programs to which this regulation applies.

.21 When units of the total available services are relocated to a new facility beyond the present facility's program area, the agency shall ensure that services are provided in a manner equally as effective as were provided in the central facility.

.22 Prior to relocating a facility or units of a facility, a determination shall be made of other alternative services that will remain in the area, and the effect of the proposed relocation on the community.

.23 When selecting the location for a facility, the agency shall consider the availability of transportation (public and private) used by the recipient population.

.24 When selecting the location for a public facility, the agency shall select a building accessible to handicapped and aged persons.

.3 Employment Practices

To ensure equal opportunity to, and nondiscriminatory treatment of, present and potential employees, discrimination on the grounds of race, color, national origin, religion, political affiliation, sex, marital status, age or handicap is prohibited. Discriminatory practices in the hiring, compensation, benefits and firing practices are among the employment practices subject to this requirement, to the extent that such practices tend to exclude individuals from participation in a program or deny them the receipt of benefits.

21-111 ACCESSIBILITY OF FACILITIES

HANDBOOK BEGINS HERE

.1 The State Building Code, Title 24, Parts 2, 3, and 5, of the California Administrative Code, contains the regulations governing structural accommodations for handicapped persons in public facilities.

HANDBOOK ENDS HERE

.2 When public areas (reception, waiting room, interview booth) public restrooms, employee restrooms, and public drinking fountains are provided, they shall be accessible to handicapped persons and identified by the international symbol of accessibility in compliance with the State Building Code. When parking is provided to the general public, it shall be accessible to handicapped persons pursuant to local ordinance and/or the State Building Code.

21-115 PROVISION FOR SERVICES TO NON-ENGLISH-SPEAKING AND HANDICAPPED APPLICANTS AND RECIPIENTS

Agencies shall ensure that effective bilingual services are provided to serve the needs of the non-English-speaking population. This need shall be met as indicated below.

.1 A sufficient number of qualified bilingual employees shall be assigned to public contact positions in each program and/or location serving a substantial number of non-English-speaking persons. These employees shall have the language skills and cultural awareness necessary to communicate fully and effectively and provide the same level of service to non-English-speaking applicants/recipients as is provided to the client population at large.

.11 The number of public contact positions in each major occupational group shall be determined for each program and/or location whose non-English language cases equal or exceed five percent of the total cases for each program or location.

.12 In determining this percentage, primary language groups shall be considered individually, rather than cumulatively.

.13 To determine the percentage of non-English-language cases in any program and/or location, divide the number of ongoing (continuing) non-English-language cases for each primary language group by the total ongoing (continuing) cases in that program and/or location.

.14 To determine the required number of bilingual employees in a program and/or location, multiply the percentage of non-English-language cases by the number of public contact positions in each major occupational group in that program and/or location. If application of the formula results in a whole number plus a fraction of less than one-half, it shall be rounded to the next lower number, e.g., 1.49 = 1.0. If the resultant fraction is one-half or greater, it shall be rounded to the next higher number, e.g., 1.50 = 2.0.

HANDBOOK BEGINS HERE

EXAMPLE AFDC Program - Main Office

20 EWs x .08 Spanish Language Case Percentage 1.60 Equals Two Qualified Spanish Speaking EW Contact Positions

HANDBOOK ENDS HERE

.141 When the computation (to determine required bilingual staffing) results in a need for less than one full-time position for a major occupational group in a program and/or location, the agency may provide services through the use of a qualified bilingual employee from another program within the same location.

EXAMPLE:

District Office

AFDC NAFS SOCIAL SERVICES

Spanish Language Spanish Language Spanish Language

Cases 20% Cases 25% Cases 10%

Total EWs x1 Total Ews x2 Total Ews x1

Required .2 Required .50 Required .1

In the example above, one full time Spanish-speaking worker in any program would satisfy the requirements for all programs, provided that the worker would be available to interpret for the other two programs.

HANDBOOK ENDS HERE

.15 When the percentage of non-English cases in a program and/or location is less than five percent, the agency shall ensure that effective bilingual services are provided. This requirement may be met through utilization of paid interpreters, qualified bilingual employees, qualified employees of other agencies or community resources.

.16 Applicants/recipients may provide their own interpreter; however, the agency shall not require them to do so. Only under extenuating circumstances or at the specific request of the applicant/recipient shall an agency allow a minor (under the age of 18 years) to act as an interpreter.

.2 Forms and other written material required for the provision of aid or services shall be available and offered to the applicant/recipient in the individual's primary language when such forms and other written material are provided by SDSS. When such forms and other written material contain spaces (other than "for agency use only") in which the agency is to insert information, this inserted information shall also be in the individual's primary language.

.3 Each agency shall ensure that administrative practices do not have the effect of denying non-English-speaking and handicapped persons equal access to and participation in the available programs.

.4 Auxiliary Aids

An agency shall provide auxiliary aids to persons with impaired hearing, speech, vision or manual skills where necessary to afford such persons an equal opportunity to benefit from aids or services. Auxiliary aids may include brailled and taped material, interpreters, teletype writing machines and other effective aids for persons with impaired hearing, speech, vision or manual skills. Compliance with this section can be accomplished through use of volunteer services from community organizations and individuals.

.5 Program Accessibility

- .51 Each agency, with instructions and assistance provided by the Department of Social Services, shall evaluate its practices and policies to ensure they do not discriminate on the basis of handicap.
- .52 The agency shall ensure that each program is readily accessible to handicapped persons.
- .53 In choosing available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.
- .54 In the event that structural modifications are required to provide program accessibility, they shall conform to accessibility standards approved by the Office of the State Architect, pursuant to Title XXIV of the California Administrative Code.
- .55 Where structural modifications are not practical, the agency shall provide services at an alternate accessible site.

21-116 DOCUMENTATION OF APPLICANT/RECIPIENT CASE RECORDS

- .1 Each agency shall maintain case record documentation in sufficient detail to permit a reviewer to determine the agency's compliance with the requirements of Division 21.
- .2 Each agency shall ensure that case record documentation identifies the applicant's/recipient's ethnic origin and primary language in accordance with Section 21-201.21. In those cases where the applicant/recipient is non-English speaking, the agency shall:
 - .21 Document the individual's acceptance or refusal of forms or other written material offered in the individual's primary language (HANDBOOK: see Section 21-115.2)].
 - .22 Document the method used to provide bilingual services, e.g., assigned worker is bilingual, other bilingual employee acted as interpreter, volunteer interpreter, client provided interpreter.

21-117 STAFF DEVELOPMENT AND TRAINING

- .1 Each public contact employee shall receive training in the requirements of Division XXI. These requirements of Division XXI shall be incorporated into the content of the agency's orientation and continuing training programs.

This shall include familiarization with the discrimination complaint process. The Department of Social Services will provide program guidelines and technical assistance upon request.

.2 Each agency shall develop and conduct cultural awareness training programs for all public contact employees. Cultural awareness training shall pertain to specific cultural characteristics in order to ensure equal delivery of services, and when possible shall involve community groups and/or representatives in the cultural awareness training presentations.

.3 Appropriate agency staff shall be instructed in the investigation of discrimination complaints.

21-201 COMPLIANCE PROCEDURES AND REPORTING

.1 Assignment of Resources to Implement Requirements of This Division Responsibility for the implementation of nondiscrimination requirements shall be centralized within each agency. Each agency shall designate an employee as the Civil Rights Coordinator, and shall allocate adequate personnel and resources to implement the provisions of this division and ensure nondiscrimination in the delivery of services. Methods and staff used to meet Division 21 requirements may vary from county to county. To determine agency compliance, the following factors will be considered:

.11 Level and quantity of personnel assigned to activities related to this division.

.12 Comparison of the civil rights unit's workload, actual or anticipated, to the workload of other administrative units.

.13 Extent to which the existence and responsibilities of the civil rights unit has been publicized within the agency and to the public.

.14 Comparison of physical space and equipment assigned to civil rights personnel with that assigned to other offices of similar level in the agency.

.2 Compliance Reports

Each agency shall keep timely and accurate compliance records. This information shall be submitted to the Department of Social Services whenever and in such form as the Department may determine necessary.

.21 Each agency shall collect primary language and ethnic origin data by district offices in all AFDC, nonassistance food stamps and social services cases. This data shall be collected for each head of household or, in social services cases, each primary recipient.

.211 Ethnic origin and primary language shall be determined by the applicant/recipient completing the appropriate section of the application forms. Should he/she decline to make a self-declaration, the worker will make a visual determination and record the information in the appropriate place on the form.

.212 Each agency shall submit this information by countywide total to SDSS annually. Source data substantiating the compliance report is to be maintained by district office.

.22 County Civil Rights Plans

All county welfare departments shall submit to the Department of Social Services an initial Civil Rights Plan and subsequent annual updates. Each plan shall function as a guide in developing the agency's policy of providing equal delivery of services. The Civil Rights Plan and updates will be in such format and will contain such information as the Department of Social Services may determine necessary.

.3 Contractor and Vendor Compliance

Contractors, vendors, consultants and other providers of service who receive federal or state assistance through the Department of Social Services or through agencies covered by these regulations shall comply with nondiscrimination requirements of this division. In addition, written assurances of nondiscrimination in employment practices shall be required. Discriminatory employment practices prohibited in Section 21-109.3 are fully applicable to all vendors, contractors, consultants and other providers of service.

21-203 APPLICANT/RECIPIENT COMPLAINTS OF DISCRIMINATORY TREATMENT

Agencies are responsible for investigating discrimination complaints made by applicants/recipients or by their authorized representatives, and for investigating complaints remanded by the State Department of Social Services, U.S. Health and Human Services (HHS) or the U.S. Department of Agriculture (USDA).

An applicant/recipient or his/her authorized representative may file a complaint of discrimination with the state or local agency involved or directly with the appropriate agency of the federal government. Information concerning the complaint process shall be available and shall include procedures for filing complaints or appeals with the State Department of Social Services, U.S. Health and Human Services or the U.S. Department of Agriculture. The complaint must be received not later than 180 days from the date of the alleged discriminatory act unless the filing date is extended by the Department of Social Services or the responsible federal agency.

.1 Complainant's Right to a State Hearing (Fair Hearing)

This regulation does not limit or restrict a complainant's right to request a state hearing in accordance with Division 22. Should the complaint involve, in addition to allegations of discriminatory treatment, program issues may be the subject of a state hearing, it will be the agency's responsibility to advise the complainant of his/her right to a state hearing and the necessity to request such a hearing within 90 days as prescribed in Section 22-009, in addition to the filing of a complaint of discriminatory treatment. The complainant shall also be advised of the 10-day limitation for filing to receive aid paid pending.

.11 Should a complaint of discrimination arise during a state hearing, the Hearing Office shall remand the complaint to the SDSS Civil Rights Bureau to be handled in accordance with these regulations.

.12 The right to a state hearing on an issue of discrimination is reserved pending completion of the county investigation and report and any independent investigation by the Department of Social Services.

.2 Procedures for Processing Complaints

All complaints of discrimination will be addressed in accordance with the following procedures:

.21 The CWD shall maintain a control log in which all complaints of discrimination are entered in alphabetical order by the complainant's last name. At a minimum, the log shall provide:

.211 Complainant's name.

.212 Date complaint was received.

.213 SDSS/CRB case number, if any.

.214 Program(s) involved.

.215 Basis of discrimination: age, race, sex, etc.

.216 Resolution: early resolution, CWD investigation, withdrawn.

.217 Decision: discrimination, no discrimination.

.22 A complaint of discrimination shall be filed either verbally or in writing.

.221 The CWD shall be permitted to ask the complainant to fill out a complaint form but shall not make it a condition of filing a complaint.

.222 The CWD shall accept complaints of discrimination filed anonymously.

.23 The CWD/SDSS will first attempt an early resolution by conferring with the parties involved.

.24 If a resolution cannot be reached, an investigation will be conducted (see 21-203.31).

.25 Within ten days of receipt of the complaint, the CWD/SDSS must inform the complainant in writing that an investigation will be conducted.

.26 For those complaints requiring investigation by the CWD, the investigation, including any attempted early resolution, must be completed within 30 calendar days following the acknowledgement of the complaint. Within ten working days following the completion of the investigation, the CWD shall:

.261 inform the complainant in writing of the results of the investigation, clearly stating the basis for the decision, and

.262 forward a complete copy of the investigation report to SDSS.

.27 The CWD shall inform the complainant of the right to appeal a CWD decision to SDSS or the appropriate federal agency within 30 calendar days of the date on which the CWD mails, or otherwise provides the complainant with the results of the investigation. SDSS shall inform the complainant of the right to similarly appeal an SDSS decision to the appropriate agency.

.271 A CWD/SDSS decision resulting from a complaint based on race, color, national origin, political affiliation, religion, sex, age or handicap may be appealed to the United States Department of Agriculture (USDA) if the complaint involves the Food Stamp Program.

.272 A CWD/SDSS decision resulting from a complaint based on race, color, national origin, age or handicap may be appealed to the United States Department of Health and Human Services (HHS) for all other federally assisted programs.

.28 Nothing in these regulations shall preclude a complainant's pursuing remedies through civil proceedings.

.3 Procedures for Investigation Complaints

In order to maintain consistency in the conduct of investigations, the following procedures shall apply.

.31 The CWD/SDSS shall designate an employee to conduct investigations. In no case shall an employee be assigned to investigate a complaint involving actions taken by him/her or by an employee under his/her immediate supervision, or where that designated employee's responsibilities in another program or capacity within CWD/SDSS may result in a conflict of interest.

.32 Interview with Complainant

When scheduling an interview with the complainant, the complainant shall be advised that a representative or counsel may be present at the interview.

.321 Prior to beginning the interview, the person assigned to investigate the case shall explain confidentiality requirements, and make reasonable efforts to ensure that the complainant is able to communicate effectively, using interpreters, readers, etc., if necessary. The following information shall be obtained during the interview:

- (a) Complainant's name, case number, address and telephone.
- (b) Names of individuals responsible for the action, decision or condition alleged to be discriminatory.
- (c) Date and place of alleged discriminatory treatment.
- (d) Discriminatory criterion (race, sex, handicap, etc.).
- (e) Nature of the action, decision, or conditions of the alleged discrimination.
- (f) Information known to the complainant in support of his/her allegation.
- (g) Possible witnesses whom the complainant wishes to have interviewed.
- (h) Other information specific to the complaint.
- (i) Any indications of reprisal, intimidation or harassment as a result of the complaint.

(j) Relief sought by the complainant.

.33 Interview with the employee alleged to have acted in a discriminatory manner. When scheduling an interview with the employee, the employee shall be advised of the right to have a representative or counsel present.

.331 The investigator should identify the complainant and describe the nature of the complaint. The employee's statement should be taken concerning the complaint issues. The employee should be advised that such statements will be available to the complainant as part of the investigation.

.34 Review of Issues Specific to the Complaint In reviewing the issues involved in the applicant/recipient complaint, the investigator shall:

- a. Review Division 21 regulations affecting the issues in the complaint and, if necessary, obtain clarification from the Department of Social Services.
- b. Review complaint documents concerning the discrimination issues.
- c. Interview witnesses as indicated by circumstances or the nature of the allegation.

.35 Investigation of the General Environment

In evaluating the general environment in which the alleged discriminatory action occurred, the investigator may:

- a. Select and review cases to compare the treatment of members of the same race, handicap or ethnic group, etc., with cases selected from the general welfare population.
- b. Compare the treatment of recipients by the individual who allegedly discriminated with the treatment provided by other employees for a similar group.
- c. Interview the employee alleged to have discriminated.
- d. Interview the supervisor of the employee named in the complaint and survey the general environment in which the complaint arose. Record details which may indicate needed corrective action or exonerate the employees alleged to have discriminated.
- e. Review other supporting documents as appropriate.

.4 Report of Investigation

The investigation report shall address all issues raised by the complainant. Where there is conflicting evidence, further investigations should be conducted. If the conflict cannot be resolved, the investigator shall ensure that such issues are fairly represented in the report.

.5 Retaliatory Acts Prohibited

No official or employee shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by these regulations or because he or she has made a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing.

.6 Confidentiality of Information

The identity of any complainant and the employee or official alleged to have discriminated must be confidential, except to the extent necessary to carry out the complaint process including the conduct of any investigation, hearing, or judicial proceeding arising there under. (See Division 19.)

.7 Retention

The agency shall retain the written complaint, a record of its disposition and the investigation report required by Section 21-203.24 for a minimum of three (3) years from final disposition. All such records shall be maintained in a secure location with access limited to personnel assigned to the Civil Rights Program.

21-205 CORRECTIVE ACTION

.1 Corrective action may be required as a result of an investigation, compliance review, or other determination by SDSS that an agency is not in compliance with the requirements of Division 21. Such corrective action shall accomplish the following:

.11 Resolution of the problem which initiated, or was discovered as a result of an investigation or compliance review.

.12 Development of a policy or plan to ensure that problems of a similar nature will not recur.

.2 An agency shall implement corrective action determined necessary as a result of an investigation, compliance review, or other determination within a reasonable time, as determined by SDSS after conferring with the agency. In no event shall initial implementation be extended beyond 60 days.

.3 Sanctions for Noncompliance

Should an agency fail to comply with the requirements imposed by Division 21 or with applicable sections of state or federal law, fiscal sanctions or other legal remedies may be invoked in accordance with Welfare and Institutions Code Section 10605, or Government Code Section 11135-39, or the issue may be referred to the appropriate federal agency for further compliance action. The Department of Social Services may also initiate procedures which include, but are not limited to:

.31 Action to suspend or terminate agencies from further program participation.

.32 Recommending appropriate sanctions to other state or local agencies whose jurisdiction is involved.

23-353 RETENTION PERIODS

The general statute in California (Welfare and Institutions Code Section 10851) requires that public social service records (aid and services) be maintained for three years from the last date of aid or services. It also provides that certain records in active cases may be destroyed after three years. Federal law (45 CFR 74.20) requires that case records which provide the basis for fiscal claims are to be retained for three years, starting on the day the state submits the last expenditure report to HHS for the period. In the case of supplemental expenditure reports, this might require retention for a much longer period than three years. Under these requirements, counties shall insure that records needed to prove eligibility may not be destroyed unless three years have passed from the date the last state expenditure report was made to HHS for the period in which such records were last used to document eligibility.

.1 Case Narratives

The Board of Supervisors may authorize destruction within the rules stated above.

.2 Other Case Documents

The Board of Supervisors may authorize destruction within the rules stated above. However, documents which were not necessary to show eligibility may, with board authorization, be destroyed when they are over three years old.

.3 Permanent records, as specified in Section 23-351.13, shall be retained until all records for that particular case are destroyed.

.4 Warrant registers must be retained for fifteen years. County welfare warrants must be retained for five years.

.5 Certain Special Circumstances records shall be retained as outlined in Sections 23-356.2 and .3.

.6 Alternate Retention Period

Unless a county has made or intends to make a supplemental expenditure report concerning specific cases which it wishes to purge or destroy, it may consider the retention period to be 3-1/2 years from the date a document was last needed to document eligibility or 3-1/2 years from the date the case was closed. Using this retention period will insure that the records are retained at least 3 years beyond the filing of the final state expenditure report.

.7 Duplicates

Copies of records need not be retained unless the originals are not available.

.8 Records Related to Civil or Criminal Actions

Notwithstanding the above, if a civil or criminal action is commenced before the expiration of the retention period, no portion of the case record of such person shall be destroyed until such action is terminated.

.9 Potential Future Collection of IV-A Cases

The county shall retain Form ABCD 278L or its equivalent for a period of ten years following case closure in all cases where notification to do so by the child support agency has been received.

40-107 COUNTY RESPONSIBILITY (Continued)

.6 Provision of Informational Materials

.61 Informational materials required by SDSS shall either be given to applicants during the application interview or mailed with Notice of Action forms approving or restoring AFDC grants or Certifications for Medical Assistance (see 40-171.21).

.611 For AFDC-FG/U, brochures describing benefits available under the Child Health and Disability Prevention (CHDP) program and how and where these benefits are provided within the county shall be given to the applicant during the application interview. Provision of CHDP informational materials shall be documented by notation upon the CA 2 form.

.612 For AFDC-FC, the placement worker shall assess the applicant child's need for CHDP services, and shall provide information to the foster care provider and/or, as appropriate, to the child. Provision of CHDP informational material shall be documented in the service case record, as specified in Section 30-209.66.

.62 The CWD shall inform all AFDC applicants/recipients of the availability of family planning services. For those AFDC applicants/recipients who voluntarily request such services, the CWD shall provide information and referral for family planning services. (See Section 40-131.3(h).)

.621 The CWD shall designate personnel who shall:

(a) Be generally knowledgeable in the area of family planning.

(b) Be responsible for the coordination of family planning services activities within the CWD and with family planning resources outside of the CWD.

.622 The CWD shall display in waiting rooms and make available to AFDC applicants/recipients, copies of notices, pamphlets and other written materials which contain information concerning the availability of family planning services.

.623 The CWD shall ensure that written notice of the availability of family planning services is sent to: (1) applicants for AFDC upon denial of AFDC benefits; or

(2) all AFDC recipients upon termination of AFDC benefits.

45-203 STATE AFDC-FC PROGRAM (Continued)

.6 Special Provisions

.61 Children with Nonrelated Legal Guardians

.611 A child living with a nonrelated legal guardian shall be eligible for AFDC-FC provided:

(a) All general AFDC-FC requirements specified in 45-201.1 through 45-201.3 are met.

(b) The state requirements specified in .1 and .4 above are met.

(c) The legal guardian cooperates with the county welfare department in its provision of the social services specified in Section 45-201.4. When the legal guardian is not cooperating, the provisions of Section 45-302.241 shall apply.

.612 The county welfare department shall provide the social services specified in Section 45-201.4.

.62 (Repealed by Manual Letter No. 84-65.)

.63 Children in Voluntary Placement

.631 After January 1, 1983, the decision regarding the need for a child's voluntary placement shall be made by the county welfare department, a licensed public or private adoption agency, or the department and shall not be delegated to any other individual or agency.

.632 Time Limitations

Except as provided in (a), (b), and (c) below, AFDC-FC funding for voluntarily placed children shall be available for a maximum of six months for each child provided all other eligibility requirements continue to be met. The six months need not be one continuous voluntary placement. If more than one placement occurs, the aggregate AFDC-FC payments for all the voluntary placements of the same child shall not exceed a total of six months.

(a) If placed voluntarily prior to January 1, 1981, the child shall be eligible for AFDC-FC payments provided all other eligibility requirements continue to be met.

(b) If placed voluntarily on or after January 1, 1981 and before January 1, 1982, the child may continue to receive AFDC-FC payments until January 1, 1982, provided all other eligibility requirements continue to be met. After January 1, 1982, the provisions of .632 above shall apply.

(c) If the authority for placement changes from a voluntary placement to another authority for placement specified in Sections 45-202.4 or 45-203.31, the six-month time limitation no longer applies.

42 UNITED STATES CODE (USC)

675. Definitions

As used in this part or part B of this subchapter:

(1) The term "case plan" means a written document which includes at least the following:

(A) A description of the type of home or institution in which a child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child in accordance with section 672(a)(1) of this title.

(B) A plan for assuring that the child receives proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.

(C) To the extent available and accessible, the health and education records of the child, including--

(i) the names and addresses of the child's health and educational providers;

(ii) the child's grade level performance;

(iii) the child's school record;

(iv) assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement;

(v) a record of the child's immunizations;

(vi) the child's known medical problems;

(vii) the child's medications; and

(viii) any other relevant health and education information concerning the child determined to be appropriate by the State agency.

Where appropriate, for a child age 16 or over, the case plan must also include a written description of the programs and services which will help such child prepare for the transition from foster care to independent living.

(2) The term "parents" means biological or adoptive parents or legal guardians, as determined by applicable State law.

(3) The term "adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adoptive parents of a minor child which at a minimum (A) specifies the nature and amount of any payments, services, and assistance to be provided under such agreement, and (B) stipulates that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time. The agreement shall contain provisions for the protection (under an interstate compact approved by the Secretary or otherwise) of the interests of the child in cases where the adoptive parents and child move to another State while the agreement is effective.

(4) (A) The term "foster care maintenance payments" means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

(B) In cases where--

(i) a child placed in a foster family home or childcare institution is the parent of a son or daughter who is in the same home or institution, and

(ii) payments described in subparagraph (A) are being made under this part with respect to such child, the foster care maintenance payments made with respect to such child as otherwise determined under subparagraph (A) shall also include such amounts as may be necessary to cover the cost of the items described in that subparagraph with respect to such son or daughter.

(5) The term "case review system" means a procedure for assuring that--

(A) each child has a case plan designed to achieve placement in the least restrictive (most family like) setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child,

(B) the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review (as defined in paragraph (6)) in order to determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship,

(C) with respect to each such child, procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a dispositional hearing to be held, in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than eighteen months after the original placement (and periodically thereafter during the continuation of foster care), which hearing shall determine the future status of the child (including, but not limited to, whether the child should be returned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should (because of the child's special needs or circumstances) be continued in foster care on a permanent or long-term basis) and, in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living; and procedural safeguards shall also be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents; and

(D) a child's health and education record (as described in paragraph (1)(A)) is reviewed and updated, and supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the child in foster care.

(6) The term "administrative review" means a review open to the participation of the parents of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review.

677. Independent living initiatives

(a) Payments for fiscal years 1987 through 1992; purpose; entitlement of States

(1) Payments shall be made in accordance with this section for the purpose of assisting States and localities in establishing and carrying out programs designed to assist children described in paragraph (2) who have attained age 16 in making the transition from foster care to independent living. Any State which provides for the establishment and carrying out of one or more such programs in accordance with this section for a fiscal year shall be entitled to receive payments under this section for such fiscal year, in an amount determined under subsection (e) of this section. Such payments shall be made only for the fiscal years 1987 through 1992.

(2) A program established and carried out under paragraph (1)--

(A) shall be designed to assist children with respect to whom foster care maintenance payments are being made by the State under this part,

(B) may at the option of the State also include any or all other children in foster care under the responsibility of the State, and

(C) may at the option of the State also include any child who has not attained age 21 to whom foster care maintenance payments were previously made by a State under this part and whose payments were discontinued on or after the date such child attained age 16, and any child who previously was in foster care described in subparagraph (B) and for whom such care was discontinued on or after the date such child attained age 16; and a written transitional independent living plan of the type described in subsection (d)(6) of this section shall be developed for such child as a part of such program.

(b) Administration or supervision of programs by State agency; payments to State to conduct and provide activities and services. The State agency administering or supervising the administration of the State's programs under this part shall be responsible for administering or supervising the administration of the State's programs described in subsection (a) of this section. Payment under this section shall be made to the State, and shall be used for the purpose of conducting and providing in accordance with this section (directly or under contracts with local

governmental entities or private non-profit organizations) the activities and services required to carry out the program or programs involved.

(c) Description of program; assurances of effective and efficient operation of program and of compliance; time for submission to Secretary

In order for a State to receive payments under this section for any fiscal year, the State agency must submit to the Secretary, in such manner and form as the Secretary may prescribe, a description of the program together with satisfactory assurances that the program will be operated in an effective and efficient manner and will otherwise meet the requirements of this section. In the case of payments for fiscal year 1987, such description and assurances must be submitted within 90 days after the Secretary promulgates regulations as required under subsection (i) of this section, and in the case of payments for any of the fiscal years 1988 through 1992, such description and assurances must be submitted prior to February 1 of such fiscal year.

(d) Objective of programs; programs to help participating individuals live independently upon leaving foster care; types of programs In carrying out the purpose described in subsection (a) of this section, it shall be the objective of each program established under this section to help the individuals participating in such program to prepare to live independently upon leaving foster care. Such programs may include (subject to the availability of funds) programs to--

(1) enable participants to seek a high school diploma or its equivalent or to take part in appropriate vocational training;

(2) provide training in daily living skills, budgeting, locating and maintaining housing, and career planning;

(3) provide for individual and group counseling;

(4) integrate and coordinate services otherwise available to participants;

(5) provide for the establishment of outreach programs designed to attract individuals who are eligible to participate in the program;

(6) provide each participant a written transitional independent living plan which shall be based on an assessment of his needs, and which shall be incorporated into his case plan, as described in section 675(1) of this title; and

(7) provide participants with other services and assistance designed to improve their transition to independent living. (e) Formula for determination of State entitlement for fiscal years 1987 through 1992 for transitional independent living programs; reallocation of amounts to other States; amounts in addition to amounts under other law

CHILD WELFARE SERVICES PROGRAM

Handbook REQUIREMENTS Handbook

(1) (A) The basic amount to which a State shall be entitled under section 674(a)(4) of this title for each of the fiscal years 1987 through 1992 shall be an amount which bears the same ratio to the basic ceiling for such fiscal year as such State's average number of children receiving foster care maintenance payments under this part in fiscal year 1984 bears to the total of the average number of children receiving such payments under this part for all States for fiscal year 1984.

(B) The maximum additional amount to which a State shall be entitled under section 674(a)(4) of this title for fiscal years 1991 and 1992 shall be an amount which bears the same ratio to the additional ceiling for such fiscal year as the basic amount of such State bears to \$45,000,000.

(C) As used in this section:

(i) The term "basic ceiling" means--

(I) For fiscal year 1990, \$50,000,000; and

(II) for each fiscal year other than fiscal year 1990, \$45,000,000.

(ii) The term "additional ceiling" means--

(I) for fiscal year 1991, \$15,000,000; and

(II) for fiscal year 1992, \$25,000,000.

(2) If any State does not apply for funds under this section for any fiscal year within the time provided in subsection (c) of this section, the funds to which such State would have been entitled for such fiscal year shall be reallocated to

one or more other States on the basis of their relative need for additional payments under this section (as determined by the Secretary).

(3) Any amounts payable to States under this section shall be in addition to amounts payable to States under subsections (a)(1), (a)(2), and (a)(3) of section 674 of this title, and shall supplement and not replace any other funds which may be available for the same general purposes in the localities involved. Amounts payable under this section may not be used for the provision of room or board.

(f) Payments; restrictions; estimation and adjustment; time of expenditure. Payments made to a State under this section for any fiscal year--

(1) shall be used only for the specific purposes described in this section;

(2) may be made on an estimated basis in advance of the determination of the exact amount, with appropriate subsequent adjustments to take account of any error in the estimates; and

(3) shall be expended by such State in such fiscal year or in the succeeding fiscal year. Notwithstanding paragraph (3), payments made to a State under this section for the fiscal year 1987 and unobligated may be expended by such State in the fiscal year 1989.

(g) Report by States to Secretary; evaluation by Secretary and report to Congress

(1) Not later than the first January 1 following the end of each fiscal year, each State shall submit to the Secretary a report on the programs carried out during such fiscal year with the amounts received under this section. Such report--

(A) shall be in such form and contain such information as may be necessary to provide an accurate description of such activities, to provide a complete record of the purposes for which the funds were spent, and to indicate the extent to which the expenditure of such funds succeeded in accomplishing the purpose described in subsection (a) of this section; and

(B) shall specifically contain such information as the Secretary may require in order to carry out the evaluation under paragraph (2).

(2) (A) Not later than July 1, 1988, the Secretary shall submit an interim report on the activities carried out under this section.

(B) Not later than March 1, 1989, the Secretary, on the basis of the reports submitted by States under paragraph (1) for the fiscal years 1987 and 1988, and on the basis of such additional information as the Secretary may obtain or develop, shall evaluate the use by States of the payments made available under this section for such fiscal year with respect to the purpose of this section, with the objective of appraising the achievements of the programs for which such payments were made available, and developing comprehensive information and data on the basis of which decisions can be made with respect to the improvement of such programs and the necessity for providing further payments in subsequent years. The Secretary shall report such evaluation to the Congress. As a part of such evaluation, the Secretary shall include, at a minimum, a detailed overall description of the number and characteristics of the individuals served by the programs, the various kinds of activities conducted and services provided and the results achieved, and shall set forth in detail findings and comments with respect to the various State programs and a statement of plans and recommendations for the future.

(h) Payments and services not considered income or resources in determining eligibility for aid and services to needy families with children or for foster care and adoption assistance. Notwithstanding any other provision of this subchapter, payments made and services provided to participants in a program under this section, as a direct consequence of their participation in such program, shall not be considered as income or resources for purposes of determining eligibility (or the eligibility of any other persons) for aid under the State's plan approved under section 602 or 671 of this title, or for purposes of determining the level of such aid.

45 CODE OF FEDERAL REGULATIONS

233.120 Emergency assistance to needy families with children.

(a) Requirements for State plans. A State plan under Title IV, Part A, of the Social Security Act, providing for emergency assistance to needy families with children must:

- (1) Specify the eligibility conditions imposed for the receipt of emergency assistance. These conditions may be more liberal than those applicable to other parts of the plan. (See paragraph (b)(1) of this section for scope of Federal financial participation.)
- (2) Specify if migrant workers with families will be included and, if emergency assistance will not be available to them Statewide, the part or parts of the State in which it will be provided.
- (3) Specify the emergency needs that will be met, whether mass feeding or clothing distribution are included, and the methods of providing payments, medical care, and other remedial care.
- (4) Specify which of the following services will be provided: Information, referral, counseling, securing family shelter, child care, legal services, and any other services that meet needs attributable to the emergency or unusual crisis situations.
- (5) Provide that emergency assistance will be given forthwith.

(b) Federal financial participation. Beginning with the effective date of approval of the amendment to the State plan for AFDC which provides for emergency assistance to needy families with children pursuant to section 406(e) of the Act:

- (1) Federal financial participation is available for emergency assistance to or on behalf of a needy child under the age of 21 and any other member of the household in which he is living if:
 - (i) Such child is (or, within 6 months prior to the month in which such assistance is requested, has been) living with any of the relatives specified in section 406(a)(1) of the Act in a place of residence maintained by one or more of such relatives as his or their own home,
 - (ii) Such child is without resources immediately accessible to meet his needs,

- (iii) The emergency assistance is necessary to avoid destitution of such child or to provide living arrangements for him in a home, and
 - (iv) His destitution or need for living arrangements did not arise because he or such relative refused without good cause to accept employment or training for employment.
- (2) The rate of Federal financial participation in expenditures during a quarter as emergency assistance in accordance with the provisions of an approved State plan is 50 percent of the total amount of such expenditures which are (i) in the form of money payments, payments in kind, or such other payments as the State agency specifies, including loans and vendor payments, or medical or remedial care recognized under State law, with respect to or on behalf of individuals described in paragraph (b)(1) of this section; (ii) for the following services provided to individuals described in paragraph (b)(1) of this section, directly by staff of the agency, or by purchase from other sources: Information, referral, counseling, securing family shelter, child care, legal services, and any other services that meet needs attributable to the emergency or unusual crisis situations.
- (3) Federal matching is available only for emergency assistance which the State authorizes during one period of 30 consecutive days in any 12 consecutive months, including payments which are to meet needs which arose before such 30-day period or are for such needs as rent which extend beyond the 30-day period. Another condition for Federal participation is that the State has a reasonable method of determining the value of goods in kind or services provided for emergency assistance.

1340.15 Services and treatment for disabled infants.

- (a) Purpose. The regulations in this section implement certain provisions of the Child Abuse Amendments of 1984, including section 4(b)(2)(K) of the Child Abuse Prevention and Treatment Act governing the protection and care of disabled infants with life-threatening conditions.
- (b) Definitions.
- (1) The term "medical neglect" means the failure to provide adequate medical care in the context of the definitions of "child abuse and neglect" in section 3 of the Act and Section 1340.2(d) of this part. The term "medical neglect"

includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition.

(2) The term "withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's (or physicians') reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's (or physicians') reasonable medical judgment any of the following circumstances apply:

(i) The infant is chronically and irreversibly comatose:

(ii) The provision of such treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; or

(iii) The provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

(3) Following are definitions of terms used in paragraph (b)(2) of this section:

(i) The term "infant" means an infant less than one year of age. The reference to less than one year of age shall not be construed to imply that treatment should be changed or discontinued when an infant reaches one year of age, or to affect or limit any existing protections available under State laws regarding medical neglect of children over one year of age. In addition to their applicability to infants less than one year of age, the standards set forth in paragraph (b)(2) of this section would be consulted thoroughly in the evaluation of any issue of medical neglect involving an infant older than one year of age who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability.

(ii) The term "reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

c) Eligibility Requirements.

- (1) In addition to the other eligibility requirements set forth in this Part, to qualify for a grant under this section, a State must have programs, procedures, or both, in place within the State's child protective service system for the purpose of responding to the reporting of medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions.
- (2) These programs and/or procedures must provide for:
 - (i) Coordination and consultation with individuals designated by and within appropriate health care facilities;
 - (ii) Prompt notification by individuals designated by and within appropriate health care facilities of cases of suspected medical neglect (including instances of the withholding of medically indicated treatment from disabled infants with life threatening conditions); and
 - (iii) The authority, under State law, for the State child protective service system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.
- (3) The programs and/or procedures must specify that the child protective service system will promptly contact each health care facility to obtain the name, title, and telephone number of the individual(s) designated by such facility for the purpose of the coordination, consultation, and notification activities identified in paragraph (c)(2) of this section, and will at least annually re-contact each health care facility to obtain any changes in the designations.
- (4) These programs and/or procedures must be in writing and must conform with the requirements of section 4(b)(2) of the Act and Section 1340.14 of this part. In connection with the requirement of conformity with the requirements of section 4(b)(2) of the Act and Section 1340.14 of this part, the programs and/or procedures must specify the procedures the child protective services system will follow to obtain, in a manner consistent with State law:
 - (i) Access to medical records and or other pertinent information when such access is necessary to assure an appropriate investigation of a report of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions); and
 - (ii) A court order for an independent medical examination of the infant, or otherwise effect such an examination in accordance with processes established under State law, when necessary to assure an appropriate resolution of a

report of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions).

(5) The eligibility requirements contained in this section shall be effective October 9, 1985.

(d) Documenting eligibility.

(1) In addition to the information and documentation required by and pursuant to Sections 1340.12(b) and (c), each State must submit with its application for a grant sufficient information and documentation to permit the Commissioner to find that the State is in compliance with the eligibility requirements set forth in paragraph (c) of this section.

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(2) This information and documentation shall include:

(i) A copy of the written programs and/or procedures established by, and followed within, the State for the purpose of responding to the reporting of medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions;

(ii) Documentation that the State has authority, under State law, for the State child protective service system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions. This documentation shall consist of:

(A) A copy of the applicable provisions of State statute(s); or

(B) A copy of the applicable provisions of State rules or regulations, along with a copy of the State statutory provisions that provide the authority for such rules or regulations; or

(C) A copy of an official, numbered opinion of the Attorney General of the State that so provides, along with a copy of the applicable provisions of the State statute that provides a basis for the opinion, and a certification that the official opinion has been distributed to interested parties within the State, at least including all hospitals; and

(iii) Such other information and documentation as the Commissioner may require.

(e) Regulatory construction.

(1) No provision of this section or part shall be construed to affect any right, protection, procedures, or requirement under 45 CFR Part 84, Nondiscrimination in the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

(2) No provision of this section or part may be so construed as to authorize the Secretary or any other governmental entity to establish standards prescribing specific medical treatments for specific conditions, except to the extent that such standards are authorized by other laws or regulations.