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**DEPARTMENT OF SOCIAL SERVICES**  
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ARNOLD SCHWARZENEGGER  
GOVERNOR

February 23, 2009

ALL COUNTY LETTER NO. 09-09

TO: ALL COUNTY WELFARE DIRECTORS  
ALL COUNTY CHIEF PROBATION OFFICERS  
ALL COUNTY CHILD WELFARE SERVICES PROGRAM MANAGERS  
ALL COUNTY JUVENILE COURT JUDGES  
ALL TITLE IV-E AGREEMENT TRIBES

SUBJECT: RELATIVE CAREGIVERS AND PERMANENCY OPTIONS

REFERENCE: WELFARE AND INSTITUTIONS CODE (W&IC) SECTIONS 361.5,  
366.21, 366.22, 366.26, and 366.3  
ASSEMBLY BILL (AB) 298 (Chapter 565, Statutes of 2007)

The purpose of this All County Letter (ACL) is to advise county child welfare and probation departments, and others of legislation, which impacts their responsibilities and/or programs.

Enactment of AB 298 amended W&IC Sections 361.5, 366.21, 366.22, 366.26, and 366.3, which became effective January 1, 2008. This bill made changes to statutes regarding how legal guardianship for a relative is considered as a permanency placement option in the following manner:

- Sections 361.5(g)(2)(A), 366.21(i)(2)(A), and 366.22(b)(2)(A) were amended so that a relative caregiver's preference for legal guardianship over adoption, if it is due to circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, cannot be the sole basis for recommending the removal of a child from the relative caregiver for purposes of adoptive placement.
- Sections 361.5(g)(2)(B), 366.21(i)(2)(B), and 366.22(b)(2)(B) were amended to require that a relative caregiver be given information regarding the permanency options of guardianship and adoption. This information should include the

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

long-term benefits and consequences of each option. In order to ensure consistency among all counties, it is important that the information provided by the counties is both comprehensive and comparable. To initiate a dialogue, it is suggested that the relative caregiver be provided with a copy of PUB 344, *Giving a Child a Permanent Home – Choices for Relatives*, found at the following web address: <http://www.cdss.ca.gov/cdssweb/entres/forms/English/pub344.pdf>. This information may be provided at the first inquiry/discussion about guardianship or adoption, and further discussed with the relative caregiver prior to beginning the process to attain legal guardianship or adoption.

To assist the caseworker in explaining the options to the caregivers, more detailed information can be found in two charts, which are a part of the California Social Work Education Center's (CalSWEC) training curriculum. One chart provides a side-by-side comparison of financial benefits and the other explains legal and psychosocial factors. The complete document, *A Guide to Permanency Options for Youth*, can be found at CalSWEC's website at [http://calswec.berkeley.edu/CalSWEC/OtherTraining\\_b.html](http://calswec.berkeley.edu/CalSWEC/OtherTraining_b.html).

- Section 366.26(b)(2) was amended changing the order of preference for findings and orders for permanent placement of the child. The court shall now consider, as the second option after that of termination of parental rights, appointing as the legal guardian the relative with whom the child is currently residing. The remaining options are: (3) identifying adoption as the permanent placement and making efforts to locate an appropriate adoptive home within 180 days; (4) appointing a nonrelated legal guardian; and (5) ordering the child placed in long-term foster care.
- Section 366.26(c)(1) was amended to require that the court, under certain circumstances, not terminate parental rights if the child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship, and the removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child. In considering the five options, if this circumstance exists, the court may not terminate parental rights. If this condition does not exist, the court proceeds to consider if one of the six compelling reasons exist. This section also specifies that for purposes of an Indian child, "relative" shall include an "extended family member," as defined in the federal Indian Child Welfare Act (25 U.S.C. Sec. 1903(2)).
- Section 366.3(b) was amended as to the report that the county must prepare for the court prior to proceedings to terminate a guardianship that has been

established by the juvenile court. The requirements of the report have been amended to address circumstances in which the child may be returned to the guardian and whether family maintenance or reunification services are recommended.

If you have any questions regarding this ACL, please contact the Kinship Care Policy and Support Unit at (916) 657-1858, or me at (916) 657-2614.

Sincerely,

***Original Document Signed By:***

GREGORY E. ROSE  
Deputy Director  
Children and Family Services Division