

## **Rights of Pregnant and Parenting Foster Youth in California**

### **A Fact Sheet Prepared by the Youth Law Center**

This fact sheet addresses the specific rights of pregnant or parenting foster youth within the foster care system. For a general overview of what rights a parent has when their child is deemed a dependent within the juvenile court’s jurisdiction, please see: [Overview of the Foster Care System](#).

#### **What happens if a youth in foster care becomes pregnant?**

If a foster youth becomes pregnant while in foster care, the decision of whether to continue the pregnancy or end it, keep the baby, arrange for care of the baby with someone else, or place the baby for adoption, is entirely up to the pregnant youth.<sup>1</sup> A foster youth has the right to obtain advice on birth control, family planning and pregnancy tests without the consent of anyone else, including their parent(s), the dependency or juvenile justice court, or social worker or probation officer.<sup>2</sup> Foster youth have the right to be provided safe and reasonable time-sensitive transportation to reproductive and sexual health related services.<sup>3</sup> Regardless of a foster youth’s decision regarding their pregnancy, their social worker or probation officer must provide referrals for services such as healthcare, family planning, and counseling.<sup>4</sup>

If a foster youth gives birth, the newborn child will not automatically become a dependent or be taken away from the foster youth. The foster youth has the rights and responsibilities of any parent to live with and care for their child.<sup>5</sup>

#### **What placements are available to parenting foster youth?**

Child welfare agencies are required to place minor or nonminor dependent<sup>6</sup> parents and their children together in as family-like a setting as possible, unless it has been determined that placement together poses a risk to the foster youth’s child.<sup>7</sup> In addition to typical foster care

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<sup>1</sup> Cal. Welf. & Inst. Code § 16001.9(a)(24)(B); Cal. Fam. Code § 6925; *American Academy of Pediatrics v. Lungren* (1997) 16 Cal. 4th 307.

<sup>2</sup> Cal. Welf. & Inst. Code § 16001.9(a)(24); see also California Department of Social Services (CDSS), All County Letter (ACL) 16-82 (2016), available at <https://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/acl/2016/16-82.pdf>.

<sup>3</sup> Cal. Code Regs. Tit. 22 § 80075(a); see also CDSS ACL 16-82 (2016).

<sup>4</sup> Cal. Welf. & Inst. Code §§ 369(h); 16001.9(a)(22)(A), (24)(A)-(C).

<sup>5</sup> Cal. Welf. & Inst. Code §§ 16002.5, 16004.5(a)-(b). See also *In re Kieshia E.* (1993), 6 Cal. 4th 68, 76, citing *Stanley v. Illinois* (1972), 405 U.S. 645, 651 regarding a parent’s “essential” and “basic” presumptive right to the care, custody, management, and companionship of his or her own child.

<sup>6</sup> A nonminor Dependent (NMD) is a 18 to 21 year-old who is currently in foster care under the placement and care of the county welfare department or county probation department and has a transitional independent living case plan. Cal. Welf. & Inst. Code § 11400(v).

<sup>7</sup> Cal. Welf. & Inst. Code §§ 16002.5, 16004.5(a)-(b).

placements that are available to non-parenting youth (relatives, nonrelative extended family members, foster homes, etc.), foster youth parents and their children may be placed in “Whole Family Foster Homes,” a placement setting that is specifically designed to assist young parents in developing the skills necessary to provide a safe, stable, and permanent home for their child.<sup>8</sup> The foster youth parent maintains custody of the child and receives help from specially trained caregivers<sup>9</sup> in these placements.<sup>10</sup>

Parenting foster youth who are over 16 years of age may also be placed in supervised transitional housing, including THP-M for youth 16 to 18 years old, or THP-NMD for nonminors 18 to 21 years-old.<sup>11</sup> Nonminor dependents also have the option of living with their child in a Supervised Independent Living Placement (SILP).<sup>12</sup> For more information about transitional housing programs, see Youth Law Center’s Fact Sheets: [THP-M](#) and [THP-NMD](#).

### **What services are available to parenting youth in foster care?**

To the greatest extent possible, parenting youth and their child(ren) shall be provided with access to services targeted at supporting, maintaining, and developing the parent-child bond and the foster youth parent’s ability to provide a permanent and safe home for the child.<sup>13</sup> Available services include but are not limited to: child care, parenting and child development classes, and frequent visitation.<sup>14</sup> Pregnant and parenting foster youth are also categorically eligible for prevention services<sup>15</sup> under the Family First Prevention Services Act (enacted in 2018).<sup>16</sup> Child welfare agencies are encouraged to update case plans to reflect these services within sixty days of being informed of the pregnancy to address the needs of the expectant parent.<sup>17</sup> When updating the case plan, child welfare agencies may hold a specialized conference to help identify and address the specialized needs of pregnant or parenting foster youth and shall include the minor or nonminor dependent parent, family members and other supportive adults, and specially

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<sup>8</sup> Cal. Welf. & Inst. Code § 11400(t).

<sup>9</sup> Caregiver in this context includes a resource family, licensed foster family home, approved relative caregiver or nonrelative extended family member’s home, the home of a non-related legal guardian whose guardianship was established pursuant to Welf. & Inst. Code § 360 or 366.26, certified family home, or a host family of a transitional housing placement provider, that provides foster care for a minor or nonminor dependent parent and their child.

<sup>10</sup> Cal. Welf. & Inst. Code § 11400(t).

<sup>11</sup> Cal. Welf. & Inst. Code § 16522.1(a)(1)-(2).

<sup>12</sup> Cal. Welf. & Inst. Code § 11400(w).

<sup>13</sup> Cal. Welf. & Inst. Code § 16002.5(a).

<sup>14</sup> *Id.*

<sup>15</sup> Prevention services are defined as programs directly related to the safety, permanence, or well-being of the child or to preventing the child from entering foster care. Cal. Welf. & Inst. Code § 16586(e), 42 U.S.C. § 671(e).

<sup>16</sup> Cal. Welf. & Inst. Code § 16585 *et. seq.*

<sup>17</sup> Cal. Welf. & Inst. Code § 16002.5(b).

trained social workers.<sup>18</sup> Participation in the specialized conference shall be voluntary on the part of the foster youth or nonminor dependent and assistance in identifying and accessing resources shall not be predicated on participation in the conference.<sup>19</sup>

Child welfare agencies, local educational agencies, and child care resource and referral agencies may make reasonable and coordinated efforts to ensure that parenting foster youth who have not completed high school have access to school programs that provide onsite or coordinated child care.<sup>20</sup> Advocates working with parenting foster youth should ensure that the youth is being appropriately served and supported by these agencies and may need to intervene to ensure proper coordination. Additionally, minor and nonminor dependent parents in foster care shall be given the opportunity to attend school, complete homework, and participate in age and developmentally appropriate activities unrelated to and separate from parenting.<sup>21</sup>

### **Will the cost of care for the foster youth’s child be covered by foster care funding?**

If a foster youth’s child is living with the youth in a foster care placement, the foster care placement will receive additional funding for costs associated with the care and supervision of the child.<sup>22</sup> If the child is not also a dependent, the caregiver for the parenting youth will receive a monthly “infant supplement” in addition to the basic foster care rate set annually by the California Department of Social Services.<sup>23</sup>

As of January 1, 2022, the rate paid for a pregnant minor or nonminor dependent for the three-month period immediately prior to the month in which the birth is anticipated shall include the amount that would otherwise be paid to cover the care and supervision of a child, if born.<sup>24</sup> Any amount paid shall be an expectant parent payment used to meet the specialized needs of the

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Cal. Welf. & Inst. Code § 16002.5(d). Parenting foster youth in certain counties are also eligible for the Emergency Child Care Bridge Program (under Cal. Welf. & Inst. Code § 11461.6(d)(2)(D)), a short-term child care voucher or payment to help pay for child care, in addition to a child care navigator to assist with locating a child care provider, securing a subsidized child care placement (if eligible and available), completing child care program applications, and developing a plan for long-term child care needs. This state program is optional for counties, so youth will need to check with their child welfare agency to see if their county is participating.

<sup>21</sup> Cal. Welf. & Inst. Code § 16002.5(c).

<sup>22</sup> Cal. Welf. & Inst. Code §§ 11465, 16501.25; *see* CDSS ACL 06-04 (2006), *available at* <https://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl06/pdf/06-04.pdf>.

<sup>23</sup> Cal. Welf. & Inst. Code § 11465(a); *see* CDSS ACL 22-59 (2022), *available at* <https://www.cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACLs/2022/22-59.pdf?ver=2022-07-14-130951-700> for the FY 2022-23 rates.

<sup>24</sup> Cal. Welf. & Inst. Code § 11465(e).

pregnant minor or nonminor dependent and to properly prepare for the needs of the infant.<sup>25</sup> The payment will be the same regardless of placement type, and it will be paid directly to the pregnant minor or nonminor dependent.<sup>26</sup> All items bought with these funds are the property of the minor or nonminor dependent parent, and will go with them if/when their placement is changed.<sup>27</sup>

These payments will not be automated prior to July 1, 2023.<sup>28</sup> Prior to the automation of the expectant parent payment, counties shall issue a single payment in one lump sum for an expectant minor or nonminor dependent equal to three times the monthly amount paid pursuant to Cal. Welf. & Inst. Code § 11465(a). The payment will be issued as a lump sum of \$2,700 per child (in the case of twins, triplets, etc.), regardless of age, approved placement type, or status as a dependent or ward of the juvenile court (as long as the pregnant youth or NMD has an open case and is placed in an approved foster care placement).<sup>29</sup> The payment shall be issued in the month that is three months prior to the expected due date, or as soon as the county agency becomes aware of the pregnancy, and regardless of the date of entry into foster care or outcome of the pregnancy.<sup>30</sup>

In Whole Family Foster Homes, an additional monthly stipend of \$200 is provided upon developing a “Shared Responsibility Plan” between the youth, caregiver, and social worker.<sup>31</sup> This plan outlines the responsibilities of the foster youth and the adult caregiver with regard to the child, including but not limited to: feeding, clothing, hygiene, purchase of necessary items, transportation, and healthcare.<sup>32</sup>

Parenting nonminor dependents who live in a SILP can receive the infant supplement directly in addition to their monthly SILP benefits.<sup>33</sup> An additional monthly cash supplement of \$200 is provided to the nonminor dependent parent living in a SILP if they develop a Parenting Support Plan with a responsible adult mentor.<sup>34</sup>

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<sup>25</sup> *Id.*

<sup>26</sup> CDSS ACL 21-123 (2021), available at: <https://www.cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACLs/2021/21-123.pdf?ver=2021-10-08-140950-570>.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> California Department of Social Services (CDSS) All County Information Notice (ACIN) I-45-22 (2022), available at: [https://www.cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACINs/2022/I-45\\_22.pdf?ver=2022-05-24-145122-430](https://www.cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACINs/2022/I-45_22.pdf?ver=2022-05-24-145122-430).

<sup>30</sup> Cal. Welf. & Inst. Code § 11465(e)(3).

<sup>31</sup> Cal. Welf. & Inst. Code §§ 16501.25, 11465(d)(3)(A).

<sup>32</sup> Cal. Welf. & Inst. Code § 16501.25(b)(1)-(3).

<sup>33</sup> Cal. Welf. & Inst. Code §§ 11400(w), 11465.

<sup>34</sup> Cal. Welf. & Inst. Code § 11465(d)(3)(B).

There are also county-specific programs that provide some additional funding to parenting youth. For example, in Los Angeles County, the Department of Children and Family Services provides an Early Infant Supplement of \$415 per month to pregnant youth during the final trimester of their pregnancy to help prepare for the birth of the baby.<sup>35</sup>

### **What is “parentage” and how are custody and visitation determined between parents?**

Parentage is the legal term used to describe who a child’s legal parents are.<sup>36</sup> Establishing parentage is the first step to requesting custody and visitation.<sup>37</sup> If parentage is established, each individual has the rights and responsibilities of any parent, including providing financial support for the child, unless these rights are limited by the court.<sup>38</sup> There are two primary ways to establish parentage in California: (1) signing a Voluntary Declaration of Paternity,<sup>39</sup> or (2) getting a court order.<sup>40</sup> The local child support agency is available to help file a court case and provide other support in establishing parentage.<sup>41</sup>

Note: informal custody and visitation agreements can be decided between the parents of the child without established legal parentage; however, these informal agreements are not legally enforceable.<sup>42</sup> A minor in foster care or nonminor dependent parent should consult with their attorney about parentage, custody, and visitation to determine the best course of action for them since establishing legal parentage, custody, and visitation is not always the best choice for every family. Additionally, most parts of this fact sheet are equally applicable to birthing and non-birthing parents; however, whether the non-birthing parent has established legal parentage and/or is residing with their child may change these rights and ability to access services and supports.

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<sup>35</sup> See Los Angeles County Department of Children and Family Services, “Teen Parenting”, available at <https://dcfs.lacounty.gov/youth/teen-parenting/>.

<sup>36</sup> The California Uniform Parentage Act can be found at Cal. Fam. Code § 7600 *et. seq.*.

<sup>37</sup> Cal. Fam. Code § 3020 *et. seq.*.

<sup>38</sup> Cal. Fam. Code §§ 4050, 4053, 7637.

<sup>39</sup> Cal. Fam. Code § 7570 *et. seq.*.

<sup>40</sup> Cal. Fam. Code § 7630 *et. seq.*.

<sup>41</sup> Cal. Fam. Code §§ 7630(c), 7634.

<sup>42</sup> See Judicial Council of California, “Parenting Plans,” available at <https://www.courts.ca.gov/15872.htm>. The written agreement between the parents is not legally enforceable until/unless it is signed by a judge and becomes a “judgment.” A court may create a judgment by merging and incorporating the provisions of the agreement created by the parents into the judgment. The judgment then replaces the agreement and can be enforced by the court if either side violates it.

## What happens if there are concerns about a foster youth's ability to provide safe and appropriate care for their child?

If there are concerns about a foster youth's ability to care for their child, the child welfare agency may suggest providing informal supervision services or signing a voluntary placement agreement, which temporarily places the child in foster care while the foster youth parent receives voluntary family reunification services and follows the plan outlined in the agreement.<sup>43</sup> In either case, prior to a social worker arranging informal supervision services or a social worker or probation officer arranging any informal or formal custody agreement that includes a temporary or permanent voluntary relinquishment of custody by a parent who is a ward of the juvenile court or a dependent or nonminor dependent parent, or recommending that a nonparent seek legal guardianship of the child of a ward, dependent, or nonminor dependent parent, the foster youth parent shall be advised of the right and have the opportunity to consult with their legal counsel.<sup>44</sup> The social worker or probation officer shall note in the case file whether the dependent, nonminor dependent, or ward consulted with legal counsel, or if the opportunity for consultation was provided and the consultation did not occur, the reason that the consultation did not occur.<sup>45</sup>

Assembly Bill (AB) 670<sup>46</sup> provides that a child welfare investigation shall not be conducted for the child of a minor parent or nonminor dependent parent unless a report has been made pursuant to Section 11166 of the Penal Code.<sup>47</sup> When an agency receives a report alleging abuse or neglect of the child of a minor dependent parent or a nonminor dependent parent, *the agency must notify the attorney who represents the minor parent or nonminor dependent in dependency court within 36 hours of receiving the report.*<sup>48</sup> The child welfare agency may only file a petition for dependency of the foster youth parent's child if it believes that the child has been abused or neglected or is at risk of abuse or neglect in the foster youth's care.<sup>49</sup> However, the child shall not be considered at risk of abuse or neglect solely on the basis of the parent's or parents' placement history, past behaviors, or health or mental health diagnoses occurring prior to the pregnancy, although that information may be taken into account when considering whether other factors exist that place the child at risk of abuse or neglect.<sup>50</sup>

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<sup>43</sup> Cal. Welf. & Inst. Code §§ 301, 11400(o), 16507.4.

<sup>44</sup> Cal. Welf. & Inst. Code §§ 301(c), 361.8(c).

<sup>45</sup> *Id.*

<sup>46</sup> Assembly Bill 670 (Calderon, 2021), effective January 1, 2022, *available at* [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB670](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB670). *See also* CDSS ACIN I-45-22 (2022).

<sup>47</sup> Cal. Welf. & Inst. Code § 361.8(b)(4).

<sup>48</sup> Cal. Penal Code § 11166.1(c)(1).

<sup>49</sup> Cal. Welf. & Inst. Code §§ 300, 325, 332.

<sup>50</sup> Cal. Welf. & Inst. Code § 361.8(a).

It is important to note that the foster youth also has the right to legal representation as a parent if a petition has been filed in dependency court regarding their child, and if the minor or nonminor dependent parent is unable to afford an attorney, the court will appoint counsel for the parent.<sup>51</sup> Additionally, it is considered best practice to appoint counsel for a minor parent at the outset of any dependency case, regardless of whether or not the minor parent has requested the court to do so.<sup>52</sup> Finally, the appointment of a guardian ad litem shall not be required for a minor who is a parent of the child who is the subject of the dependency petition, unless the minor parent is unable to understand the nature of the proceedings or to assist counsel in preparing the case.<sup>53</sup>

Finally, it is worth emphasizing that a foster youth parent whose child is the subject of a dependency petition has all the same basic rights and responsibilities in that process as a parent who is not in foster care,<sup>54</sup> and the dependency court process will proceed in the same way.

### **What happens if the foster youth's child also becomes a dependent?**

If the court finds that the foster youth's child is a dependent, the court may order the agency to place the child with the parent or in a separate foster care arrangement if placement together poses a risk of harm to the child.<sup>55</sup> If the child is in a separate placement, the foster care provider in that arrangement will be responsible for caring for the child with supervision by the court and child welfare agency.<sup>56</sup>

Note: parenting foster youth have the right to receive records and make decisions about their child's medical, educational, and developmental needs even if the child is in a separate placement in foster care, unless the court has restricted those rights.<sup>57</sup>

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<sup>51</sup> Cal. Welf. & Inst. Code §§ 307.4, 317(b), 301(c).

<sup>52</sup> See Gary C. Seiser & Hon. Kurt Kumli, California Juvenile Courts Practice and Procedure at § 2.61[4] (2020). This is contrary to the normal requirement that a parent express the desire for court appointed counsel *In re Ebony W.* (1996) 47 Cal. App. 4th 1643, 1646-1648.

<sup>53</sup> Cal. Welf. & Inst. Code § 326.7.

<sup>54</sup> In fact, parenting foster youth who are minors have additional rights and protections in a child welfare proceeding regarding their own child. See Cal. Welf. & Inst. Code § 361.8.

<sup>55</sup> Cal. Welf. & Inst. Code § 361.

<sup>56</sup> See Cal. Welf. & Inst. Code § 361.2(e), providing that when the court orders removal of a child pursuant to Cal. Welf. & Inst. Code § 361, the court shall order care, custody, control, and conduct of the child to be under the supervision of the social worker who may place the child in an approved placement.

<sup>57</sup> Cal. Welf. & Inst. Code § 361.

## **What type of visitation is available between a foster youth and their child if the child is living separately?**

Foster youth have a right to have contact with family members, including their own children.<sup>58</sup> This includes visitation, phone calls, and other forms of contact.<sup>59</sup> The child welfare agency has an affirmative duty to facilitate frequent visitation and contact between a foster youth and their child when the contact is in the child's best interest.<sup>60</sup> If the foster youth's child is a dependent of the juvenile court and was placed in a separate foster care arrangement, the order placing the child in foster care must provide for frequent visitation between the foster youth parent and their child, consistent with the child's well-being.<sup>61</sup>

## **Does being a dependent preclude a parenting foster youth from reunification services?**

No. If a child has been removed from a foster youth parent by the dependency court, in most cases, the foster youth parent is entitled to a case plan with family reunification services that are meant to alleviate the circumstances that led to the removal of the child (as with any other parent).<sup>62</sup> The case plan must be individually tailored to the family's needs,<sup>63</sup> designed to help the foster youth parent overcome the issues which led to the child's removal, and identify specific goals for the family and the appropriate services to meet those goals to assist in family reunification.<sup>64</sup> The case plan should include frequent visitation, and can include (amongst other services), parenting classes, individual therapy or other mental health services, substance abuse treatment, and services to address domestic violence.

In very rare circumstances, a foster youth parent may not be entitled to reunification services;<sup>65</sup> however, there are additional protections regarding bypass of family reunification services under AB 670 which are incorporated in Welf. & Inst. Code section 361.5(b)(10)(B) or (b)(11)(B).<sup>66</sup> A party seeking involuntary placement or termination of parental rights over a child born to a parent or parents who were minors or nonminor dependents at the time of the child's birth shall demonstrate to the court that reasonable efforts were made to provide remedial services designed

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<sup>58</sup> Cal. Welf. & Inst. Code §§ 362.1, 16001.9(a)(12).

<sup>59</sup> Cal. Welf. & Inst. Code §§ 362.1, 16001.9(a)(12)-(13).

<sup>60</sup> Cal. Welf. & Inst. Code § 16002.5(f).

<sup>61</sup> Cal. Welf. & Inst. Code § 362.1.

<sup>62</sup> Cal. Welf. & Inst. Code § 361.5.

<sup>63</sup> *In re Dino E.* (1992) 6 Cal. App. 4th 1768, 1777.

<sup>64</sup> Cal. Welf. & Inst. Code §§ 366.21(e)-(f); 366.22(a); 16501.1(a)(2).

<sup>65</sup> Cal. Welf. & Inst. Code § 361.5(b).

<sup>66</sup> See Cal. Welf. & Inst. Code § 361.8(b)(1) indicating that Cal. Welf. & Inst. Code § 361.5(b)(10) or (b)(11) shall not apply unless one or more of the circumstances under § 361.5(b)(1)-(9) inclusive, and (12)-(17) inclusive, also apply.



to prevent the removal of the child from the minor or nonminor dependent parents, and that these efforts have proved unsuccessful.<sup>67</sup> The agency shall utilize the available resources of the child and the child's minor or nonminor dependent parents' extended family, social services agencies, caregivers, and other available service providers.<sup>68</sup> Finally, a social worker or probation officer shall use a strengths-based approach to supporting a minor or nonminor dependent parent in providing a safe and permanent home for their child, including when the social worker or probation officer is conducting an investigation.<sup>69</sup>

For additional information on reunification services, case planning, and subsequent dependency court hearings and processes, please see [Overview of the Foster Care System](#).

### **Resources:**

California Department of Social Services, ALL COUNTY LETTERS

<http://www.cdss.ca.gov/inforesources/Letters-Regulations/Letters-and-Notices/All-CountyLetters>

California Department of Social Services, ALL COUNTY INFORMATION NOTICES

<https://www.cdss.ca.gov/inforesources/letters-regulations/letters-and-notices/all-county-information-notices>

California Courts, CUSTODY AND PARENTING TIME (VISITATION)

<https://www.courts.ca.gov/selfhelp-custody.htm>

California Courts, PARENTAGE

<https://www.courts.ca.gov/selfhelp-parentage.htm?rdeLocaleAttr=en>

California Courts, GUIDE TO DEPENDENCY COURT - FOR PARENTS

<https://www.courts.ca.gov/1205.htm?rdeLocaleAttr=en>

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<sup>67</sup> Cal. Welf. & Inst. Code § 361.8(b)(2).

<sup>68</sup> Cal. Welf. & Inst. Code § 361.8(b)(3).

<sup>69</sup> Cal. Welf. & Inst. Code § 361.8(b)(4).