

Introduced by Senator Runner

February 18, 2011

An act to amend Section 366.26 of the Welfare and Institutions Code, relating to dependent children.

LEGISLATIVE COUNSEL'S DIGEST

SB 908, as introduced, Runner. Dependent children.

Existing law provides that a child may be adjudged a dependent of the court due to abuse or neglect, and prescribes procedures for the juvenile court to follow when permanently terminating parental rights to, or establishing a legal guardianship of, the dependent child. Existing law requires the court, if it determines by a clear and convincing standard that it is likely the child will be adopted, to terminate parental rights and order the child placed for adoption. Under existing law, the fact that the child is not yet placed in a preadoptive home or with a relative or foster family who is prepared to adopt the child shall not constitute a basis for the court to conclude that it is not likely the child will be adopted.

This bill would make a technical, nonsubstantive change to that provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 366.26 of the Welfare and Institutions
- 2 Code, as amended by Section 15 of Chapter 287 of the Statutes of
- 3 2009, is amended to read:

1 366.26. (a) This section applies to children who are adjudged
2 dependent children of the juvenile court pursuant to subdivision
3 (d) of Section 360. The procedures specified herein are the
4 exclusive procedures for conducting these hearings; Part 2
5 (commencing with Section 3020) of Division 8 of the Family Code
6 is not applicable to these proceedings. Section 8616.5 of the Family
7 Code is applicable and available to all dependent children meeting
8 the requirements of that section, if the postadoption contact
9 agreement has been entered into voluntarily. For children who are
10 adjudged dependent children of the juvenile court pursuant to
11 subdivision (d) of Section 360, this section and Sections 8604,
12 8605, 8606, and 8700 of the Family Code and Chapter 5
13 (commencing with Section 7660) of Part 3 of Division 12 of the
14 Family Code specify the exclusive procedures for permanently
15 terminating parental rights with regard to, or establishing legal
16 guardianship of, the child while the child is a dependent child of
17 the juvenile court.

18 (b) At the hearing, which shall be held in juvenile court for all
19 children who are dependents of the juvenile court, the court, in
20 order to provide stable, permanent homes for these children, shall
21 review the report as specified in Section 361.5, 366.21, 366.22, or
22 366.25, shall indicate that the court has read and considered it,
23 shall receive other evidence that the parties may present, and then
24 shall make findings and orders in the following order of preference:

25 (1) Terminate the rights of the parent or parents and order that
26 the child be placed for adoption and, upon the filing of a petition
27 for adoption in the juvenile court, order that a hearing be set. The
28 court shall proceed with the adoption after the appellate rights of
29 the natural parents have been exhausted.

30 (2) Order, without termination of parental rights, the plan of
31 tribal customary adoption, as described in Section 366.24, through
32 tribal custom, traditions, or law of the Indian child's tribe, and
33 upon the court affording the tribal customary adoption order full
34 faith and credit at the continued selection and implementation
35 hearing, order that a hearing be set pursuant to paragraph (2) of
36 subdivision (e).

37 (3) Appoint a relative or relatives with whom the child is
38 currently residing as legal guardian or guardians for the child, and
39 order that letters of guardianship issue.

1 (4) On making a finding under paragraph (3) of subdivision (c),
2 identify adoption or tribal customary adoption as the permanent
3 placement goal and order that efforts be made to locate an
4 appropriate adoptive family for the child within a period not to
5 exceed 180 days.

6 (5) Appoint a nonrelative legal guardian for the child and order
7 that letters of guardianship issue.

8 (6) Order that the child be placed in long-term foster care,
9 subject to the periodic review of the juvenile court under Section
10 366.3.

11 In choosing among the above alternatives the court shall proceed
12 pursuant to subdivision (c).

13 (c) (1) If the court determines, based on the assessment provided
14 as ordered under subdivision (i) of Section 366.21, subdivision (b)
15 of Section 366.22, or subdivision (b) of Section 366.25, and any
16 other relevant evidence, by a clear and convincing standard, that
17 it is likely the child will be adopted, the court shall terminate
18 parental rights and order the child placed for adoption. The fact
19 that the child is not yet placed in a preadoptive home nor with a
20 relative or foster family who is prepared to adopt the child; shall
21 not constitute a basis for the court to conclude that it is not likely
22 the child will be adopted. A finding under subdivision (b) or
23 paragraph (1) of subdivision (e) of Section 361.5 that reunification
24 services shall not be offered, under subdivision (e) of Section
25 366.21 that the whereabouts of a parent have been unknown for
26 six months or that the parent has failed to visit or contact the child
27 for six months, or that the parent has been convicted of a felony
28 indicating parental unfitness, or, under Section 366.21 or 366.22,
29 that the court has continued to remove the child from the custody
30 of the parent or guardian and has terminated reunification services,
31 shall constitute a sufficient basis for termination of parental rights.
32 Under these circumstances, the court shall terminate parental rights
33 unless either of the following applies:

34 (A) The child is living with a relative who is unable or unwilling
35 to adopt the child because of circumstances that do not include an
36 unwillingness to accept legal or financial responsibility for the
37 child, but who is willing and capable of providing the child with
38 a stable and permanent environment through legal guardianship,
39 and the removal of the child from the custody of his or her relative
40 would be detrimental to the emotional well-being of the child. For

1 purposes of an Indian child, “relative” shall include an “extended
2 family member,” as defined in the federal Indian Child Welfare
3 Act (25 U.S.C. Sec. 1903(2)).

4 (B) The court finds a compelling reason for determining that
5 termination would be detrimental to the child due to one or more
6 of the following circumstances:

7 (i) The parents have maintained regular visitation and contact
8 with the child and the child would benefit from continuing the
9 relationship.

10 (ii) A child 12 years of age or older objects to termination of
11 parental rights.

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

17 (iv) The child is living with a foster parent or Indian custodian
18 who is unable or unwilling to adopt the child because of
19 exceptional circumstances, that do not include an unwillingness
20 to accept legal or financial responsibility for the child, but who is
21 willing and capable of providing the child with a stable and
22 permanent environment and the removal of the child from the
23 physical custody of his or her foster parent or Indian custodian
24 would be detrimental to the emotional well-being of the child. This
25 clause does not apply to any child who is either (I) under six years
26 of age or (II) a member of a sibling group where at least one child
27 is under six years of age and the siblings are, or should be,
28 permanently placed together.

29 (v) There would be substantial interference with a child’s sibling
30 relationship, taking into consideration the nature and extent of the
31 relationship, including, but not limited to, whether the child was
32 raised with a sibling in the same home, whether the child shared
33 significant common experiences or has existing close and strong
34 bonds with a sibling, and whether ongoing contact is in the child’s
35 best interest, including the child’s long-term emotional interest,
36 as compared to the benefit of legal permanence through adoption.

37 (vi) The child is an Indian child and there is a compelling reason
38 for determining that termination of parental rights would not be
39 in the best interest of the child, including, but not limited to:

1 (I) Termination of parental rights would substantially interfere
2 with the child’s connection to his or her tribal community or the
3 child’s tribal membership rights.

4 (II) The child’s tribe has identified guardianship, long-term
5 foster care with a fit and willing relative, tribal customary adoption,
6 or another planned permanent living arrangement for the child.

7 (C) For purposes of subparagraph (B), in the case of tribal
8 customary adoptions, Section 366.24 shall apply.

9 (D) If the court finds that termination of parental rights would
10 be detrimental to the child pursuant to clause (i), (ii), (iii), (iv),
11 (v), or (vi), it shall state its reasons in writing or on the record.

12 (2) The court shall not terminate parental rights if:

13 (A) At each hearing at which the court was required to consider
14 reasonable efforts or services, the court has found that reasonable
15 efforts were not made or that reasonable services were not offered
16 or provided.

17 (B) In the case of an Indian child:

18 (i) At the hearing terminating parental rights, the court has found
19 that active efforts were not made as required in Section 361.7.

20 (ii) The court does not make a determination at the hearing
21 terminating parental rights, supported by evidence beyond a
22 reasonable doubt, including testimony of one or more “qualified
23 expert witnesses” as defined in Section 224.6, that the continued
24 custody of the child by the parent is likely to result in serious
25 emotional or physical damage to the child.

26 (iii) The court has ordered tribal customary adoption pursuant
27 to Section 366.24.

28 (3) If the court finds that termination of parental rights would
29 not be detrimental to the child pursuant to paragraph (1) and that
30 the child has a probability for adoption but is difficult to place for
31 adoption and there is no identified or available prospective adoptive
32 parent, the court may identify adoption as the permanent placement
33 goal and without terminating parental rights, order that efforts be
34 made to locate an appropriate adoptive family for the child, within
35 the state or out of the state, within a period not to exceed 180 days.
36 During this 180-day period, the public agency responsible for
37 seeking adoptive parents for each child shall, to the extent possible,
38 ask each child who is 10 years of age or older, to identify any
39 individuals, other than the child’s siblings, who are important to
40 the child, in order to identify potential adoptive parents. The public

1 agency may ask any other child to provide that information, as
2 appropriate. During the 180-day period, the public agency shall,
3 to the extent possible, contact other private and public adoption
4 agencies regarding the availability of the child for adoption. During
5 the 180-day period, the public agency shall conduct the search for
6 adoptive parents in the same manner as prescribed for children in
7 Sections 8708 and 8709 of the Family Code. At the expiration of
8 this period, another hearing shall be held and the court shall
9 proceed pursuant to paragraph (1), (2), (3), (5), or (6) of subdivision
10 (b). For purposes of this section, a child may only be found to be
11 difficult to place for adoption if there is no identified or available
12 prospective adoptive parent for the child because of the child's
13 membership in a sibling group, or the presence of a diagnosed
14 medical, physical, or mental handicap, or the child is seven years
15 of age or more.

16 (4) (A) If the court finds that adoption of the child or
17 termination of parental rights is not in the best interest of the child,
18 because one of the conditions in clause (i), (ii), (iii), (iv), (v), or
19 (vi) of subparagraph (B) of paragraph (1) or in paragraph (2)
20 applies, the court shall either order that the present caretakers or
21 other appropriate persons shall become legal guardians of the child
22 order that the child remain in long-term foster care, or, in the case
23 of an Indian child, consider a tribal customary adoption pursuant
24 to Section 366.24. Legal guardianship shall be considered before
25 long-term foster care, if it is in the best interests of the child and
26 if a suitable guardian can be found. A child who is 10 years of age
27 or older, shall be asked to identify any individuals, other than the
28 child's siblings, who are important to the child, in order to identify
29 potential guardians or, in the case of an Indian child, prospective
30 tribal customary adoptive parents. The agency may ask any other
31 child to provide that information, as appropriate.

32 (B) If the child is living with a relative or a foster parent who
33 is willing and capable of providing a stable and permanent
34 environment, but not willing to become a legal guardian, the child
35 shall not be removed from the home if the court finds the removal
36 would be seriously detrimental to the emotional well-being of the
37 child because the child has substantial psychological ties to the
38 relative caretaker or foster parents.

39 (C) The court shall also make an order for visitation with the
40 parents or guardians unless the court finds by a preponderance of

1 the evidence that the visitation would be detrimental to the physical
2 or emotional well-being of the child.

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

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

25 (d) The proceeding for the appointment of a guardian for a child
26 who is a dependent of the juvenile court shall be in the juvenile
27 court. If the court finds pursuant to this section that legal
28 guardianship is the appropriate permanent plan, it shall appoint
29 the legal guardian and issue letters of guardianship. The assessment
30 prepared pursuant to subdivision (g) of Section 361.5, subdivision
31 (i) of Section 366.21, subdivision (b) of Section 366.22, and
32 subdivision (b) of Section 366.25 shall be read and considered by
33 the court prior to the appointment, and this shall be reflected in
34 the minutes of the court. The person preparing the assessment may
35 be called and examined by any party to the proceeding.

36 (e) (1) The proceeding for the adoption of a child who is a
37 dependent of the juvenile court shall be in the juvenile court if the
38 court finds pursuant to this section that adoption is the appropriate
39 permanent plan and the petition for adoption is filed in the juvenile
40 court. Upon the filing of a petition for adoption, the juvenile court

1 shall order that an adoption hearing be set. The court shall proceed
2 with the adoption after the appellate rights of the natural parents
3 have been exhausted. The full report required by Section 8715 of
4 the Family Code shall be read and considered by the court prior
5 to the adoption and this shall be reflected in the minutes of the
6 court. The person preparing the report may be called and examined
7 by any party to the proceeding. It is the intent of the Legislature,
8 pursuant to this subdivision, to give potential adoptive parents the
9 option of filing in the juvenile court the petition for the adoption
10 of a child who is a dependent of the juvenile court. Nothing in this
11 section is intended to prevent the filing of a petition for adoption
12 in any other court as permitted by law, instead of in the juvenile
13 court.

14 (2) In the case of an Indian child, if the Indian child's tribe has
15 elected a permanent plan of tribal customary adoption, the court,
16 upon receiving the tribal customary adoption order will afford the
17 tribal customary adoption order full faith and credit to the same
18 extent that the court would afford full faith and credit to the public
19 acts, records, judicial proceedings, and judgments of any other
20 entity. Upon a determination that the tribal customary adoption
21 order may be afforded full faith and credit, consistent with Section
22 224.5, the court shall thereafter order a hearing to finalize the
23 adoption be set upon the filing of the adoption petition. The
24 prospective tribal customary adoptive parents and the child who
25 is the subject of the tribal customary adoption petition shall appear
26 before the court for the finalization hearing. The court shall
27 thereafter issue an order of adoption pursuant to Section 366.24.

28 (3) If a child who is the subject of a finalized tribal customary
29 adoption shows evidence of a developmental disability or mental
30 illness as a result of conditions existing before the tribal customary
31 adoption to the extent that the child cannot be relinquished to a
32 licensed adoption agency on the grounds that the child is considered
33 unadoptable, and of which condition the tribal customary adoptive
34 parent or parents had no knowledge or notice before the entry of
35 the tribal customary adoption order, a petition setting forth those
36 facts may be filed by the tribal customary adoptive parent or
37 parents with the juvenile court that granted the tribal customary
38 adoption petition. If these facts are proved to the satisfaction of
39 the juvenile court, it may make an order setting aside the tribal
40 customary adoption order. The set aside petition shall be filed

1 within five years of the issuance of the tribal customary adoption
2 order. The court clerk shall immediately notify the child's tribe
3 and the department in Sacramento of the petition within 60 days
4 after the notice of filing of the petition. The department shall file
5 a full report with the court and shall appear before the court for
6 the purpose of representing the child. Whenever a final decree of
7 tribal customary adoption has been vacated or set aside, the child
8 shall be returned to the custody of the county in which the
9 proceeding for tribal customary adoption was finalized. The
10 biological parent or parents of the child may petition for return of
11 custody. The disposition of the child after the court has entered an
12 order to set aside a tribal customary adoption shall include
13 consultation with the child's tribe.

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

17 (1) In accordance with subdivision (c) of Section 317, if a child
18 before the court is without counsel, the court shall appoint counsel
19 unless the court finds that the child would not benefit from the
20 appointment of counsel. The court shall state on the record its
21 reasons for that finding.

22 (2) If a parent appears without counsel and is unable to afford
23 counsel, the court shall appoint counsel for the parent, unless this
24 representation is knowingly and intelligently waived. The same
25 counsel shall not be appointed to represent both the child and his
26 or her parent. The public defender or private counsel may be
27 appointed as counsel for the parent.

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

35 (g) The court may continue the proceeding for a period of time
36 not to exceed 30 days as necessary to appoint counsel, and to
37 enable counsel to become acquainted with the case.

38 (h) (1) At all proceedings under this section, the court shall
39 consider the wishes of the child and shall act in the best interests
40 of the child.

1 (2) In accordance with Section 349, the child shall be present
2 in court if the child or the child's counsel so requests or the court
3 so orders. If the child is 10 years of age or older and is not present
4 at a hearing held pursuant to this section, the court shall determine
5 whether the minor was properly notified of his or her right to attend
6 the hearing and inquire as to the reason why the child is not present.

7 (3) (A) The testimony of the child may be taken in chambers
8 and outside the presence of the child's parent or parents, if the
9 child's parent or parents are represented by counsel, the counsel
10 is present, and any of the following circumstances exists:

11 (i) The court determines that testimony in chambers is necessary
12 to ensure truthful testimony.

13 (ii) The child is likely to be intimidated by a formal courtroom
14 setting.

15 (iii) The child is afraid to testify in front of his or her parent or
16 parents.

17 (B) After testimony in chambers, the parent or parents of the
18 child may elect to have the court reporter read back the testimony
19 or have the testimony summarized by counsel for the parent or
20 parents.

21 (C) The testimony of a child also may be taken in chambers and
22 outside the presence of the guardian or guardians of a child under
23 the circumstances specified in this subdivision.

24 (i) (1) Any order of the court permanently terminating parental
25 rights under this section shall be conclusive and binding upon the
26 child, upon the parent or parents and upon all other persons who
27 have been served with citation by publication or otherwise as
28 provided in this chapter. After making the order, the juvenile court
29 shall have no power to set aside, change, or modify it, except as
30 provided in paragraph (2), but nothing in this section shall be
31 construed to limit the right to appeal the order.

32 (2) A tribal customary adoption order evidencing that the Indian
33 child has been the subject of a tribal customary adoption shall be
34 afforded full faith and credit and shall have the same force and
35 effect as an order of adoption authorized by this section. The rights
36 and obligations of the parties as to the matters determined by the
37 Indian child's tribe shall be binding on all parties. A court shall
38 not order compliance with the order absent a finding that the party
39 seeking the enforcement participated, or attempted to participate,
40 in good faith, in family mediation services of the court or dispute

1 resolution through the tribe regarding the conflict, prior to the
2 filing of the enforcement action.

3 (3) A child who has not been adopted after the passage of at
4 least three years from the date the court terminated parental rights
5 and for whom the court has determined that adoption is no longer
6 the permanent plan may petition the juvenile court to reinstate
7 parental rights pursuant to the procedure prescribed by Section
8 388. The child may file the petition prior to the expiration of this
9 three-year period if the State Department of Social Services or
10 licensed adoption agency that is responsible for custody and
11 supervision of the child as described in subdivision (j) and the
12 child stipulate that the child is no longer likely to be adopted. A
13 child over 12 years of age shall sign the petition in the absence of
14 a showing of good cause as to why the child could not do so. If it
15 appears that the best interests of the child may be promoted by
16 reinstatement of parental rights, the court shall order that a hearing
17 be held and shall give prior notice, or cause prior notice to be
18 given, to the social worker or probation officer and to the child's
19 attorney of record, or, if there is no attorney of record for the child,
20 to the child, and the child's tribe, if applicable, by means prescribed
21 by subdivision (c) of Section 297. The court shall order the child
22 or the social worker or probation officer to give prior notice of the
23 hearing to the child's former parent or parents whose parental
24 rights were terminated in the manner prescribed by subdivision
25 (f) of Section 294 where the recommendation is adoption. The
26 juvenile court shall grant the petition if it finds by clear and
27 convincing evidence that the child is no longer likely to be adopted
28 and that reinstatement of parental rights is in the child's best
29 interest. If the court reinstates parental rights over a child who is
30 under 12 years of age and for whom the new permanent plan will
31 not be reunification with a parent or legal guardian, the court shall
32 specify the factual basis for its findings that it is in the best interest
33 of the child to reinstate parental rights. This subdivision is intended
34 to be retroactive and applies to any child who is under the
35 jurisdiction of the juvenile court at the time of the hearing
36 regardless of the date parental rights were terminated.

37 (j) If the court, by order or judgment, declares the child free
38 from the custody and control of both parents, or one parent if the
39 other does not have custody and control, or declares the child
40 eligible for tribal customary adoption, the court shall at the same

1 time order the child referred to the State Department of Social
2 Services or a licensed adoption agency for adoptive placement by
3 the agency. However, except in the case of a tribal customary
4 adoption where there is no termination of parental rights, a petition
5 for adoption may not be granted until the appellate rights of the
6 natural parents have been exhausted. The State Department of
7 Social Services or licensed adoption agency shall be responsible
8 for the custody and supervision of the child and shall be entitled
9 to the exclusive care and control of the child at all times until a
10 petition for adoption or tribal customary adoption is granted, except
11 as specified in subdivision (n). With the consent of the agency,
12 the court may appoint a guardian of the child, who shall serve until
13 the child is adopted.

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

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

28 (l) (1) An order by the court that a hearing pursuant to this
29 section be held is not appealable at any time unless all of the
30 following apply:

31 (A) A petition for extraordinary writ review was filed in a timely
32 manner.

33 (B) The petition substantively addressed the specific issues to
34 be challenged and supported that challenge by an adequate record.

35 (C) The petition for extraordinary writ review was summarily
36 denied or otherwise not decided on the merits.

37 (2) Failure to file a petition for extraordinary writ review within
38 the period specified by rule, to substantively address the specific
39 issues challenged, or to support that challenge by an adequate

1 record shall preclude subsequent review by appeal of the findings
2 and orders made pursuant to this section.

3 (3) The Judicial Council shall adopt rules of court, effective
4 January 1, 1995, to ensure all of the following:

5 (A) A trial court, after issuance of an order directing a hearing
6 pursuant to this section be held, shall advise all parties of the
7 requirement of filing a petition for extraordinary writ review as
8 set forth in this subdivision in order to preserve any right to appeal
9 in these issues. This notice shall be made orally to a party if the
10 party is present at the time of the making of the order or by
11 first-class mail by the clerk of the court to the last known address
12 of a party not present at the time of the making of the order.

13 (B) The prompt transmittal of the records from the trial court
14 to the appellate court.

15 (C) That adequate time requirements for counsel and court
16 personnel exist to implement the objective of this subdivision.

17 (D) That the parent or guardian, or their trial counsel or other
18 counsel, is charged with the responsibility of filing a petition for
19 extraordinary writ relief pursuant to this subdivision.

20 (4) The intent of this subdivision is to do both of the following:

21 (A) Make every reasonable attempt to achieve a substantive and
22 meritorious review by the appellate court within the time specified
23 in Sections 366.21, 366.22, and 366.25 for holding a hearing
24 pursuant to this section.

25 (B) Encourage the appellate court to determine all writ petitions
26 filed pursuant to this subdivision on their merits.

27 (5) This subdivision shall only apply to cases in which an order
28 to set a hearing pursuant to this section is issued on or after January
29 1, 1995.

30 (m) Except for subdivision (j), this section shall also apply to
31 minors adjudged wards pursuant to Section 727.31.

32 (n) (1) Notwithstanding Section 8704 of the Family Code or
33 any other provision of law, the court, at a hearing held pursuant
34 to this section or anytime thereafter, may designate a current
35 caretaker as a prospective adoptive parent if the child has lived
36 with the caretaker for at least six months, the caretaker currently
37 expresses a commitment to adopt the child, and the caretaker has
38 taken at least one step to facilitate the adoption process. In
39 determining whether to make that designation, the court may take
40 into consideration whether the caretaker is listed in the preliminary

1 assessment prepared by the county department in accordance with
2 subdivision (i) of Section 366.21 as an appropriate person to be
3 considered as an adoptive parent for the child and the
4 recommendation of the State Department of Social Services or
5 licensed adoption agency.

6 (2) For purposes of this subdivision, steps to facilitate the
7 adoption process include, but are not limited to, the following:

8 (A) Applying for an adoption home study.

9 (B) Cooperating with an adoption home study.

10 (C) Being designated by the court or the licensed adoption
11 agency as the adoptive family.

12 (D) Requesting de facto parent status.

13 (E) Signing an adoptive placement agreement.

14 (F) Engaging in discussions regarding a postadoption contact
15 agreement.

16 (G) Working to overcome any impediments that have been
17 identified by the State Department of Social Services and the
18 licensed adoption agency.

19 (H) Attending classes required of prospective adoptive parents.

20 (3) Prior to a change in placement and as soon as possible after
21 a decision is made to remove a child from the home of a designated
22 prospective adoptive parent, the agency shall notify the court, the
23 designated prospective adoptive parent or the current caretaker, if
24 that caretaker would have met the threshold criteria to be
25 designated as a prospective adoptive parent pursuant to paragraph
26 (1) on the date of service of this notice, the child's attorney, and
27 the child, if the child is 10 years of age or older, of the proposal
28 in the manner described in Section 16010.6.

29 (A) Within five court days or seven calendar days, whichever
30 is longer, of the date of notification, the child, the child's attorney,
31 or the designated prospective adoptive parent may file a petition
32 with the court objecting to the proposal to remove the child, or the
33 court, upon its own motion, may set a hearing regarding the
34 proposal. The court may, for good cause, extend the filing period.
35 A caretaker who would have met the threshold criteria to be
36 designated as a prospective adoptive parent pursuant to paragraph
37 (1) on the date of service of the notice of proposed removal of the
38 child may file, together with the petition under this subparagraph,
39 a petition for an order designating the caretaker as a prospective
40 adoptive parent for purposes of this subdivision.

1 (B) A hearing ordered pursuant to this paragraph shall be held
2 as soon as possible and not later than five court days after the
3 petition is filed with the court or the court sets a hearing upon its
4 own motion, unless the court for good cause is unable to set the
5 matter for hearing five court days after the petition is filed, in
6 which case the court shall set the matter for hearing as soon as
7 possible. At the hearing, the court shall determine whether the
8 caretaker has met the threshold criteria to be designated as a
9 prospective adoptive parent pursuant to paragraph (1), and whether
10 the proposed removal of the child from the home of the designated
11 prospective adoptive parent is in the child's best interest, and the
12 child may not be removed from the home of the designated
13 prospective adoptive parent unless the court finds that removal is
14 in the child's best interest. If the court determines that the caretaker
15 did not meet the threshold criteria to be designated as a prospective
16 adoptive parent on the date of service of the notice of proposed
17 removal of the child, the petition objecting to the proposed removal
18 filed by the caretaker shall be dismissed. If the caretaker was
19 designated as a prospective adoptive parent prior to this hearing,
20 the court shall inquire into any progress made by the caretaker
21 towards the adoption of the child since the caretaker was designated
22 as a prospective adoptive parent.

23 (C) A determination by the court that the caretaker is a
24 designated prospective adoptive parent pursuant to paragraph (1)
25 or subparagraph (B) does not make the caretaker a party to the
26 dependency proceeding nor does it confer on the caretaker any
27 standing to object to any other action of the department or licensed
28 adoption agency, unless the caretaker has been declared a de facto
29 parent by the court prior to the notice of removal served pursuant
30 to paragraph (3).

31 (D) If a petition objecting to the proposal to remove the child
32 is not filed, and the court, upon its own motion, does not set a
33 hearing, the child may be removed from the home of the designated
34 prospective adoptive parent without a hearing.

35 (4) Notwithstanding paragraph (3), if the State Department of
36 Social Services or a licensed adoption agency determines that the
37 child must be removed from the home of the caretaker who is or
38 may be a designated prospective adoptive parent immediately, due
39 to a risk of physical or emotional harm, the agency may remove
40 the child from that home and is not required to provide notice prior

1 to the removal. However, as soon as possible and not longer than
 2 two court days after the removal, the agency shall notify the court,
 3 the caretaker who is or may be a designated prospective adoptive
 4 parent, the child’s attorney, and the child, if the child is 10 years
 5 of age or older, of the removal. Within five court days or seven
 6 calendar days, whichever is longer, of the date of notification of
 7 the removal, the child, the child’s attorney, or the caretaker who
 8 is or may be a designated prospective adoptive parent may petition
 9 for, or the court on its own motion may set, a noticed hearing
 10 pursuant to paragraph (3). The court may, for good cause, extend
 11 the filing period.

12 (5) Except as provided in subdivision (b) of Section 366.28, an
 13 order by the court issued after a hearing pursuant to this subdivision
 14 shall not be appealable.

15 (6) Nothing in this section shall preclude a county child
 16 protective services agency from fully investigating and responding
 17 to alleged abuse or neglect of a child pursuant to Section 11165.5
 18 of the Penal Code.

19 (7) The Judicial Council shall prepare forms to facilitate the
 20 filing of the petitions described in this subdivision, which shall
 21 become effective on January 1, 2006.

22 (o) The implementation and operation of the amendments to
 23 paragraph (3) of subdivision (c) and subparagraph (A) of paragraph
 24 (4) of subdivision (c) enacted at the 2005–06 Regular Session shall
 25 be subject to appropriation through the budget process and by
 26 phase, as provided in Section 366.35.

27 (p) This section shall remain in effect only until January 1, 2014,
 28 and as of that date is repealed, unless a later enacted statute, that
 29 is enacted before January 1, 2014, deletes or extends that date.