

ASSEMBLY BILL

No. 329

Introduced by Assembly Member Caldera

February 18, 1997

An act to amend Section 45 of the Code of Civil Procedure, and to amend Sections 252, 366.21, and 366.26 of the Welfare and Institutions Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

AB 329, as introduced, Caldera. Dependent children.

Existing law provides a comprehensive body of law governing the protection and placement of minors who are, or who may become, dependent children of the juvenile court. A referee may hear cases and issue orders and findings in matters concerning dependent children, as specified. Existing law authorizes a minor or parent or guardian to apply to the juvenile court for a rehearing directed to all or any part of the order and findings of a referee.

Existing law also provides for the removal of a minor from the custody or control of a parent. An appeal from a judgment freeing a minor who is a dependent child of the juvenile court from parental custody and control has precedence over all other cases before the court hearing the appeal.

Existing law also requires that reunification services be provided to parents in specified dependency cases. However, a court is authorized to terminate these services under certain conditions, and to terminate parental rights. Where the court terminates reunification services to a parent, pending a hearing regarding the termination of parental rights, the

court is required to continue to permit a parent to visit the minor unless the court finds that visitation would be detrimental to the minor.

In addition, a court must place a child with a legal guardian or in long-term foster care if the court finds that neither adoption nor termination of parental rights is in the interest of the minor, or if the court finds that specified conditions, such as the failure to provide reasonable reunification services, are applicable, as specified.

This bill would provide that an appeal from a judgment denying a recommendation to free a minor from parental custody or control shall also have precedence over other cases before the court hearing the appeal. The bill would also authorize a county welfare department to apply to the juvenile court for a rehearing of an order and findings of a referee in a dependency proceeding.

The bill would direct the court to terminate, rather than permit, visitation between a minor and a parent where the court has ordered the termination of reunification services pending a hearing on the termination of parental rights absent a specified finding. The bill would authorize a court to stay the enforcement of an order terminating parental rights pending adoption of a child under specified conditions.

The bill would also revise the last specified provision of existing law described above by directing a court to place a child with a legal guardian or in long-term foster care only where the court finds that adoption or termination of parental rights is not in the interest of the minor because one of the specified conditions applies.

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 45 of the Code of Civil
 2 Procedure is amended to read:
 3 45. An appeal from a judgment freeing a minor who
 4 is a dependent child of the juvenile court from parental
 5 custody and control, *or denying a recommendation to*
 6 *free a minor from parental custody or control*, shall have



1 precedence over all cases in the court to which an appeal
2 in the matter is taken. In order to enable the child to be
3 available for adoption as soon as possible and to minimize
4 the anxiety to all parties, the appellate court shall grant
5 an extension of time to a court reporter or to counsel only
6 upon an exceptional showing of good cause.

7 SEC. 2. Section 252 of the Welfare and Institutions
8 Code is amended to read:

9 252. At any time prior to the expiration of 10 days after
10 service of a written copy of the order and findings of a
11 referee, a minor or his *or her* parent or guardian *or, in*
12 *cases brought pursuant to Section 300, the county welfare*
13 *department* may apply to the juvenile court for a
14 rehearing. ~~Such~~—*That* application may be directed to all
15 or to any specified part of the order or findings, and shall
16 contain a statement of the reasons—~~such~~ *the* rehearing is
17 requested. If all of the proceedings before the referee
18 have been taken down by an official reporter, the judge
19 of the juvenile court may, after reading the transcript of
20 ~~such~~ *those* proceedings, grant or deny—~~such~~ *the*
21 application. If proceedings before the referee have not
22 been taken down by an official reporter,—~~such~~ *the*
23 application shall be granted as of right. If an application
24 for rehearing is not granted, denied, or extended within
25 20 days following the date of its receipt, it shall be deemed
26 granted. However, the court, for good cause, may extend
27 ~~such~~ *the* period beyond 20 days, but not in any event
28 beyond 45 days, following the date of receipt of the
29 application, at which time the application for rehearing
30 shall be deemed granted unless it is denied within—~~such~~
31 *that* period. All decisions to grant or deny the application,
32 or to extend the period, shall be expressly made in a
33 written minute order with copies provided to the minor
34 or his *or her* parent or guardian, and to the attorneys of
35 record.

36 SEC. 3. Section 366.21 of the Welfare and Institutions
37 Code, as amended by Section 6.9 of Chapter 1084 of the
38 Statutes of 1996, is amended to read:

39 366.21. (a) Every hearing conducted by the juvenile
40 court reviewing calendar. The court shall advise all



1 persons present at the hearing of the date of the future
2 hearing and of their right to be present and represented
3 by counsel.

4 (b) Except as provided in Section 366.23 and
5 subdivision (a) of Section 366.3, notice of the hearing shall
6 be mailed by the probation officer to the same persons as
7 in the original proceeding, to the minor's parent or
8 guardian, to the foster parents, community care facility,
9 or foster family agency having physical custody of the
10 minor in the case of a minor removed from the physical
11 custody of his or her parent or guardian, and to the
12 counsel of record if the counsel of record was not present
13 at the time that the hearing was set by the court, by
14 first-class mail addressed to the last known address of the
15 person to be notified, or shall be personally served on
16 those persons, not earlier than 30 days nor later than 15
17 days preceding the date to which the hearing was
18 continued. Service of a copy of the notice personally or by
19 certified mail return receipt requested, or any other form
20 of actual notice is equivalent to service by first-class mail.

21 The notice shall contain a statement regarding the
22 nature of the hearing to be held and any change in the
23 custody or status of the minor being recommended by the
24 supervising agency. The notice to the foster parent shall
25 indicate that the foster parent may attend all hearings or
26 may submit any information he or she deems relevant to
27 the court in writing.

28 (c) At least 10 calendar days prior to the hearing the
29 probation officer shall file a supplemental report with the
30 court regarding the services provided or offered to the
31 parent or guardian to enable them to assume custody, the
32 progress made, and, where relevant, the prognosis for
33 return of the minor to the physical custody of his or her
34 parent or guardian, and make his or her recommendation
35 for disposition. If the recommendation is not to return the
36 minor to a parent or guardian, the report shall specify
37 why the return of the minor would be detrimental to the
38 minor. The probation officer shall provide the parent or
39 guardian with a copy of the report, including his or her
40 recommendation for disposition, at least 10 calendar days



1 prior to the hearing. In the case of a minor removed from
2 the physical custody of his or her parent or guardian, the
3 probation officer shall provide a summary of his or her
4 recommendation for disposition to the counsel for the
5 minor, any court-appointed child advocate, foster
6 parents, community care facility, or foster family agency
7 having the physical custody of the minor at least 10
8 calendar days before the hearing.

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

22 (e) At the review hearing held six months after the
23 initial dispositional hearing, the court shall order the
24 return of the minor to the physical custody of his or her
25 parent or guardian unless the court finds, by a
26 preponderance of the evidence, that the return of the
27 minor to his or her parent or guardian would create a
28 substantial risk of detriment to the safety, protection, or
29 physical or emotional well-being of the minor. The
30 probation officer shall have the burden of establishing
31 that detriment. The failure of the parent or guardian to
32 participate regularly in court-ordered treatment
33 programs shall be prima facie evidence that return would
34 be detrimental. In making its determination, the court
35 shall review and consider the probation officer's report
36 and recommendations and the report and
37 recommendations of any child advocate appointed
38 pursuant to Section 356.5; and shall consider the efforts or
39 progress, or both, demonstrated by the parent or
40 guardian and the extent to which he or she cooperated



1 and availed himself or herself of services provided.
2 Whether or not the minor is returned to a parent or
3 guardian, the court shall specify the factual basis for its
4 conclusion that the return would be detrimental or would
5 not be detrimental. The court also shall make appropriate
6 findings pursuant to subdivision (a) of Section 366; and
7 where relevant, shall order any additional services
8 reasonably believed to facilitate the return of the minor
9 to the custody of his or her parent or guardian. The court
10 shall also inform the parent or guardian that if the minor
11 cannot be returned home by the next review hearing, a
12 proceeding pursuant to Section 366.26 may be instituted.
13 This section does not apply in a case where, pursuant to
14 Section 361.5, the court has ordered that reunification
15 services shall not be provided.

16 If the minor was under the age of three years on the
17 date of the initial removal and the court finds by clear and
18 convincing evidence that the parent failed to participate
19 regularly in any court-ordered treatment plan, the court
20 may schedule a hearing pursuant to Section 366.26 within
21 120 days. If, however, the court finds there is a substantial
22 probability that the minor, who was under the age of
23 three years on the date of initial removal, may be
24 returned to his or her parent or guardian within six
25 months or that reasonable services have not been
26 provided, the court shall continue the case.

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

37 If the minor had been placed under court supervision
38 with a previously noncustodial parent pursuant to Section
39 361.2, the court shall determine whether supervision is
40 still necessary. The court may terminate supervision and



1 transfer permanent custody to that parent, as provided
2 for by paragraph (1) of subdivision (a) of Section 361.2.

3 In all other cases, the court shall direct that any
4 reunification services previously ordered shall continue
5 to be offered to the parent or guardian pursuant to the
6 time periods set forth in subdivision (a) of Section 361.5,
7 provided that the court may modify the terms and
8 conditions of those services. If the minor is not returned
9 to his or her parent or guardian, the court shall determine
10 whether reasonable services have been provided or
11 offered to the parent or guardian which were designed to
12 aid the parent or guardian in overcoming the problems
13 which led to the initial removal and the continued
14 custody of the minor. The court shall order that those
15 services be initiated, continued, or terminated.

16 (f) At the review hearing held 12 months after the
17 initial dispositional hearing, the court shall order the
18 return of the minor to the physical custody of his or her
19 parent or guardian unless the court finds, by a
20 preponderance of the evidence, that the return of the
21 minor to his or her parent or guardian would create a
22 substantial risk of detriment to the safety, protection, or
23 physical or emotional well-being of the minor. The
24 probation officer shall have the burden of establishing
25 that detriment. The court shall also determine whether
26 reasonable services have been provided or offered to the
27 parent or guardian which were designed to aid the parent
28 or guardian to overcome the problems that led to the
29 initial removal and continued custody of the minor. The
30 failure of the parent or guardian to participate regularly
31 in court-ordered treatment programs shall be prima facie
32 evidence that return would be detrimental. In making its
33 determination, the court shall review and consider the
34 probation officer's report and recommendations and the
35 report and recommendations of any child advocate
36 appointed pursuant to Section 356.5; shall consider the
37 efforts or progress, or both, demonstrated by the parent
38 or guardian and the extent to which he or she availed
39 himself or herself of services provided; and shall make
40 appropriate findings pursuant to subdivision (a) of



1 Section 366. Whether or not the minor is returned to his
2 or her parent or guardian, the court shall specify the
3 factual basis for its decision. If the minor is not returned
4 to a parent or guardian, the court shall specify the factual
5 basis for its conclusion that the return would be
6 detrimental. The court also shall make a finding pursuant
7 to subdivision (a) of Section 366.

8 (g) If the time period in which the court-ordered
9 services were provided has met or exceeded the time
10 period set forth in paragraph (1) or (2) of subdivision (a)
11 of Section 361.5, as appropriate, and a minor is not
12 returned to the custody of a parent or guardian at the
13 hearing held pursuant to subdivision (f), the court shall
14 do one of the following:

15 (1) Continue the case for up to six months for another
16 review hearing, provided that the hearing shall occur
17 within 18 months of the date the minor was originally
18 taken from the physical custody of his or her parent or
19 guardian. The court shall continue the case only if it finds
20 that there is a substantial probability that the minor will
21 be returned to the physical custody of his or her parent
22 or guardian within six months or that reasonable services
23 have not been provided to the parent or guardian. The
24 court shall inform the parent or guardian that if the minor
25 cannot be returned home by the next review hearing, a
26 permanent plan shall be developed at that hearing. The
27 court shall not order that a hearing pursuant to Section
28 366.26 be held unless there is clear and convincing
29 evidence that reasonable services have been provided or
30 offered to the parent or guardian.

31 (2) Order that the minor remain in long-term foster
32 care, if the court finds by clear and convincing evidence,
33 based upon the evidence already presented to it, that the
34 minor is not a proper subject for adoption and has no one
35 willing to accept legal guardianship.

36 (3) Order that a hearing be held within 120 days,
37 pursuant to Section 366.26, if there is clear and convincing
38 evidence that reasonable services have been provided or
39 offered to the parents. Evidence that the minor has been
40 placed with a foster family that is eligible to adopt a



1 minor, or has been placed in a preadoptive home, in and
2 of itself, shall not be deemed a failure to provide or offer
3 reasonable services.

4 (h) In any case in which the court orders that a hearing
5 pursuant to Section 366.26 shall be held, it shall also order
6 the termination of reunification services to the parent.
7 ~~The court shall continue to permit the parent to visit the~~
8 ~~minor pending the hearing unless it finds that visitation~~
9 ~~would be detrimental to the minor.~~ *The court shall*
10 *terminate visitation between the minor and the parent*
11 *unless it finds that unsupervised visitation would be in the*
12 *best interest of the minor and would not interfere with*
13 *agency efforts to identify or maintain an adoptive*
14 *placement.*

15 (i) Whenever a court orders that a hearing pursuant to
16 Section 366.26 shall be held, it shall direct the agency
17 supervising the child and the licensed county adoption
18 agency, or the State Department of Social Services when
19 it is acting as an adoption agency in counties which are not
20 served by a county adoption agency, to prepare an
21 assessment regarding the likelihood that the minor will be
22 adopted if parental rights are terminated. The assessment
23 shall include:

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

26 (2) A review of the amount of and nature of any
27 contact between the minor and his or her parents since
28 the time of placement.

29 (3) An evaluation of the minor's medical,
30 developmental, scholastic, mental, and emotional status
31 and an analysis of whether any of the minor's
32 characteristics would make it difficult to find a person
33 willing to adopt the minor.

34 (4) A preliminary assessment of the eligibility and
35 commitment of any identified prospective adoptive
36 parent or guardian, particularly the caretaker, to include
37 a social history including screening for criminal records
38 and prior referrals for child abuse or neglect, the
39 capability to meet the minor's needs, and the



1 understanding of the legal and financial rights and
2 responsibilities of adoption and guardianship.

3 (5) The relationship of the minor to any identified
4 prospective adoptive parent or guardian, the duration
5 and character of the relationship, the motivation for
6 seeking adoption or guardianship, and a statement from
7 the minor concerning placement and the adoption or
8 guardianship, unless the minor's age or physical,
9 emotional, or other condition precludes his or her
10 meaningful response, and if so, a description of the
11 condition.

12 (j) This section shall apply to minors made dependents
13 of the court pursuant to subdivision (c) of Section 360 on
14 or after January 1, 1989.

15 (k) This section shall remain in effect only until
16 January 1, 1999, and as of that date is repealed, unless a
17 later enacted statute, which is enacted on or before
18 January 1, 1999, deletes or extends that date.

19 SEC. 4. Section 366.21 of the Welfare and Institutions
20 Code, as amended by Section 7.9 of Chapter 1084 of the
21 Statutes of 1996, is amended to read:

22 366.21. (a) Every hearing conducted by the juvenile
23 court reviewing the status of a dependent child shall be
24 placed on the appearance calendar. The court shall advise
25 all persons present at the hearing of the date of the future
26 hearing and of their right to be present and represented
27 by counsel.

28 (b) Except as provided in Section 366.23 and
29 subdivision (a) of Section 366.3, notice of the hearing shall
30 be mailed by the probation officer to the same persons as
31 in the original proceeding, to the minor's parent or
32 guardian, to the foster parents, community care facility,
33 or foster family agency having physical custody of the
34 minor in the case of a minor removed from the physical
35 custody of his or her parent or guardian, and to the
36 counsel of record if the counsel of record was not present
37 at the time that the hearing was set by the court, by
38 first-class mail addressed to the last known address of the
39 person to be notified, or shall be personally served on
40 those persons, not earlier than 30 days nor later than 15



1 days preceding the date to which the hearing was
2 continued. Service of a copy of the notice personally or by
3 certified mail return receipt requested, or any other form
4 of actual notice is equivalent to service by first-class mail.

5 The notice shall contain a statement regarding the
6 nature of the hearing to be held and any change in the
7 custody or status of the minor being recommended by the
8 supervising agency. The notice to the foster parent shall
9 indicate that the foster parent may attend all hearings or
10 may submit any information he or she deems relevant to
11 the court in writing.

12 (c) At least 10 calendar days prior to the hearing the
13 probation officer shall file a supplemental report with the
14 court regarding the services provided or offered to the
15 parent or guardian to enable them to assume custody, the
16 progress made, and, where relevant, the prognosis for
17 return of the minor to the physical custody of his or her
18 parent or guardian, and make his or her recommendation
19 for disposition. If the recommendation is not to return the
20 minor to a parent or guardian, the report shall specify
21 why the return of the minor would be detrimental to the
22 minor. The probation officer shall provide the parent or
23 guardian with a copy of the report, including his or her
24 recommendation for disposition, at least 10 calendar days
25 prior to the hearing. In the case of a minor removed from
26 the physical custody of his or her parent or guardian, the
27 probation officer shall provide a summary of his or her
28 recommendation for disposition to the counsel for the
29 minor, any court-appointed child advocate, foster
30 parents, community care facility, or foster family agency
31 having the physical custody of the minor at least 10
32 calendar days before the hearing.

33 (d) Prior to any hearing involving a minor in the
34 physical custody of a community care facility or foster
35 family agency that may result in the return of the minor
36 to the physical custody of his or her parent or guardian,
37 or in adoption or the creation of a legal guardianship, the
38 facility or agency shall file with the court a report
39 containing its recommendation for disposition. Prior to
40 such a hearing involving a minor in the physical custody



1 of a foster parent, the foster parent may file with the court
2 a report containing its recommendation for disposition.
3 The court shall consider the report and recommendation
4 filed pursuant to this subdivision prior to determining any
5 disposition.

6 (e) At the review hearing held six months after the
7 initial dispositional hearing, the court shall order the
8 return of the minor to the physical custody of his or her
9 parent or guardian unless the court finds, by a
10 preponderance of the evidence, that the return of the
11 minor to his or her parent or guardian would create a
12 substantial risk of detriment to the safety, protection, or
13 physical or emotional well-being of the minor. The
14 probation officer shall have the burden of establishing
15 that detriment. The failure of the parent or guardian to
16 participate regularly in court-ordered treatment
17 programs shall be prima facie evidence that return would
18 be detrimental. In making its determination, the court
19 shall review and consider the probation officer's report
20 and recommendations and the report and
21 recommendations of any child advocate appointed
22 pursuant to Section 356.5; and shall consider the efforts or
23 progress, or both, demonstrated by the parent or
24 guardian and the extent to which he or she availed
25 himself or herself of services provided. Whether or not
26 the minor is returned to a parent or guardian, the court
27 shall specify the factual basis for its conclusion that the
28 return would be detrimental or would not be
29 detrimental. The court also shall make appropriate
30 findings pursuant to subdivision (a) of Section 366; and
31 where relevant, shall order any additional services
32 reasonably believed to facilitate the return of the minor
33 to the custody of his or her parent or guardian. The court
34 shall also inform the parent or guardian that if the minor
35 cannot be returned home by the next review hearing, a
36 proceeding pursuant to Section 366.26 may be instituted.
37 This section does not apply in a case where, pursuant to
38 Section 361.5, the court has ordered that reunification
39 services shall not be provided.



1 If the minor was under the age of three years on the
2 date of the initial removal and the court finds by clear and
3 convincing evidence that the parent failed to participate
4 regularly in any court-ordered treatment plan, the court
5 may schedule a hearing pursuant to Section 366.26 within
6 120 days. If, however, the court finds there is a substantial
7 probability that the minor, who was under the age of
8 three years on the date of initial removal, may be
9 returned to his or her parent or guardian within six
10 months or that reasonable services have not been
11 provided, the court shall continue the case.

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

22 If the minor had been placed under court supervision
23 with a previously noncustodial parent pursuant to Section
24 361.2, the court shall determine whether supervision is
25 still necessary. The court may terminate supervision and
26 transfer permanent custody to that parent, as provided
27 for by paragraph (1) of subdivision (a) of Section 361.2.

28 In all other cases, the court shall direct that any
29 reunification services previously ordered shall continue
30 to be offered to the parent or guardian pursuant to the
31 time periods set forth in subdivision (a) of Section 361.5,
32 provided that the court may modify the terms and
33 conditions of those services.

34 If the minor is not returned to his or her parent or
35 guardian, the court shall determine whether reasonable
36 services have been provided or offered to the parent or
37 guardian which were designed to aid the parent or
38 guardian in overcoming the problems which led to the
39 initial removal and the continued custody of the minor.



1 The court shall order that those services be initiated,
2 continued, or terminated.

3 (f) At the review hearing held 12 months after the
4 initial dispositional hearing, the court shall order the
5 return of the minor to the physical custody of his or her
6 parent or guardian unless the court finds, by a
7 preponderance of the evidence, that the return of the
8 minor to his or her parent or guardian would create a
9 substantial risk of detriment to the safety, protection, or
10 physical or emotional well-being of the minor. The
11 probation officer shall have the burden of establishing
12 that detriment. The failure of the parent or guardian to
13 participate regularly in court-ordered treatment
14 programs shall be prima facie evidence that return would
15 be detrimental. In making its determination, the court
16 shall review and consider the probation officer’s report
17 and recommendations and the report and
18 recommendations of any child advocate appointed
19 pursuant to Section 356.5; shall consider the efforts or
20 progress, or both, demonstrated by the parent or
21 guardian and the extent to which he or she availed
22 himself or herself of services provided; and shall make
23 appropriate findings pursuant to subdivision (a) of
24 Section 366. Whether or not the minor is returned to his
25 or her parent or guardian, the court shall specify the
26 factual basis for its decision. If the minor is not returned
27 to a parent or guardian, the court shall specify the factual
28 basis for its conclusion that the return would be
29 detrimental. The court also shall make a finding pursuant
30 to subdivision (a) of Section 366.

31 (g) If the time period in which the court-ordered
32 services were provided has met or exceeded the time
33 period set forth in paragraph (1) or (2) of subdivision (a)
34 of Section 361.5, as appropriate, and a minor is not
35 returned to the custody of a parent or guardian at the
36 hearing held pursuant to subdivision (f), the court shall
37 do one of the following:

38 (1) Continue the case for up to six months for another
39 review hearing, provided that the hearing shall occur
40 within 18 months of the date the minor was originally



1 taken from the physical custody of his or her parent or
2 guardian. The court shall continue the case only if it finds
3 that there is a substantial probability that the minor will
4 be returned to the physical custody of his or her parent
5 or guardian within six months or that reasonable services
6 have not been provided to the parent or guardian. The
7 court shall inform the parent or guardian that if the minor
8 cannot be returned home by the next review hearing, a
9 permanent plan shall be developed at that hearing. The
10 court shall not order that a hearing pursuant to Section
11 366.26 be held unless there is clear and convincing
12 evidence that reasonable services have been provided or
13 offered to the parent or guardian.

14 (2) Order that the minor remain in long-term foster
15 care, if the court finds by clear and convincing evidence,
16 based upon the evidence already presented to it, that the
17 minor is not a proper subject for adoption and has no one
18 willing to accept legal guardianship.

19 (3) Order that a hearing be held within 120 days,
20 pursuant to Section 366.26, if there is clear and convincing
21 evidence that reasonable services have been provided or
22 offered to the parents. Evidence that the minor has been
23 placed with a foster family that is eligible to adopt a
24 minor, or has been placed in a preadoptive home, in and
25 of itself, shall not be deemed a failure to provide or offer
26 reasonable services.

27 (h) In any case in which the court orders that a hearing
28 pursuant to Section 366.26 shall be held, it shall also order
29 the termination of reunification services to the parent.
30 ~~The court shall continue to permit the parent to visit the~~
31 ~~minor pending the hearing unless it finds that visitation~~
32 ~~would be detrimental to the minor—The court shall~~
33 *terminate visitation between the minor and the parent*
34 *unless it finds that unsupervised visitation would be in the*
35 *best interest of the minor and would not interfere with*
36 *agency efforts to identify or maintain an adoptive*
37 *placement.*

38 (i) Whenever a court orders that a hearing pursuant to
39 Section 366.26 shall be held, it shall direct the agency
40 supervising the minor and the licensed county adoption



1 agency, or the State Department of Social Services when
2 it is acting as an adoption agency in counties which are not
3 served by a county adoption agency, to prepare an
4 assessment which shall include:

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

7 (2) A review of the amount of and nature of any
8 contact between the minor and his or her parents since
9 the time of placement.

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

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

20 (5) The relationship of the minor to any identified
21 prospective adoptive parent or guardian, the duration
22 and character of the relationship, the motivation for
23 seeking adoption or guardianship, and a statement from
24 the minor concerning placement and the adoption or
25 guardianship, unless the minor's age or physical,
26 emotional, or other condition precludes his or her
27 meaningful response, and if so, a description of the
28 condition.

29 (6) An analysis of the likelihood that the minor will be
30 adopted if parental rights are terminated.

31 (j) This section shall apply to minors made dependents
32 of the court pursuant to subdivision (c) of Section 360 on
33 or after January 1, 1989.

34 (k) This section shall become operative January 1,
35 1999.

36 SEC. 5. Section 366.26 of the Welfare and Institutions
37 Code, as amended by Section 5.5 of Chapter 1083 of the
38 Statutes of 1996, is amended to read:

39 366.26. (a) This section applies to minors who are
40 adjudged dependent children of the juvenile court



1 pursuant to subdivision (c) of Section 360 on or after
2 January 1, 1989. The procedures specified herein are the
3 exclusive procedures for conducting these hearings; Part
4 2 (commencing with Section 3020) of Division 8 of the
5 Family Code is not applicable to these proceedings. For
6 minors who are adjudged dependent children of the
7 juvenile court pursuant to subdivision (c) of Section 360
8 on or after January 1, 1989, this section and Sections 8604,
9 8605, 8606, and 8700 of the Family Code and Chapter 5
10 (commencing with Section 7660) of Part 3 of Division 12
11 of the Family Code specify the exclusive procedures for
12 permanently terminating parental rights with regard to,
13 or establishing legal guardianship of, the minor while the
14 minor is a dependent child of the juvenile court.

15 (b) At the hearing, which shall be held in juvenile
16 court for all minors who are dependents of the juvenile
17 court, the court, in order to provide stable, permanent
18 homes for these minors, shall review the report as
19 specified in Section 361.5, 366.21, or 366.22, shall indicate
20 that the court has read and considered it, shall receive
21 other evidence that the parties present, including, but
22 not limited to, the parent's or guardian's failure to
23 cooperate, except for good cause, in the provision of
24 services specified in the child welfare services case plan,
25 and then shall do one of the following:

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

32 (2) *Permanently terminate the rights of the parent or*
33 *parents and stay the enforcement of this order until an*
34 *adoptive placement agreement is signed. While the stay*
35 *is in effect, parental rights and responsibilities shall be*
36 *considered terminated and the court shall not order*
37 *visitation between the parents and the child. This stay*
38 *shall not be construed to extend the statutory time period*
39 *for filing an appeal of the order.*



1 (3) Without permanently terminating parental rights,
2 identify adoption as the permanent placement goal and
3 order that efforts be made to locate an appropriate
4 adoptive family for the minor within a period not to
5 exceed 90 days.

6 ~~(3)~~

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

10 ~~(4)~~

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

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

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

17 (1) The court shall terminate parental rights only if it
18 determines by clear and convincing evidence that it is
19 likely that the minor will be adopted based upon the
20 assessment made pursuant to subdivision (i) of Section
21 366.21 or subdivision (b) of Section 366.22. If the court so
22 determines, the findings pursuant to subdivision (b) or
23 paragraph (1) of subdivision (e) of Section 361.5 that
24 reunification services shall not be offered, or the findings
25 pursuant to subdivision (e) of Section 366.21 that the
26 whereabouts of a parent have been unknown for six
27 months or that the parent has failed to visit or contact the
28 minor for six months or that the parent has been
29 convicted of a felony indicating parental unfitness, or
30 pursuant to Section 366.21 or 366.22 that a minor cannot
31 or should not be returned to his or her parent or guardian,
32 shall then constitute a sufficient basis for termination of
33 parental rights unless the court finds that termination
34 would be detrimental to the minor due to one of the
35 following circumstances:

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

39 (B) A minor 12 years of age or older objects to
40 termination of parental rights.



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

7 (D) The minor is living with a relative or foster parent
8 who is unable or unwilling to adopt the minor because of
9 exceptional circumstances, which do not include an
10 unwillingness to accept legal or financial responsibility
11 for the minor, but who is willing and capable of providing
12 the minor with a stable and permanent environment and
13 the removal of the minor from the physical custody of his
14 or her relative or foster parent would be detrimental to
15 the emotional well-being of the minor. This subparagraph
16 does not apply to any minor, who is living with a
17 nonrelative and who is either (i) under six years of age or
18 (ii) a member of a sibling group where at least one minor
19 is under six years of age and the siblings are, or should be,
20 permanently placed together.

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

26 (3) If the court finds that termination of parental
27 rights would not be detrimental to the minor pursuant to
28 paragraph (1) and that the minor has a probability for
29 adoption but is difficult to place for adoption and there
30 are no prospective adoptive homes available to the
31 minor, the court may identify adoption as the permanent
32 placement goal and without terminating parental rights,
33 order that efforts be made to locate an appropriate
34 adoptive family for the minor for a period not to exceed
35 90 days. During this 90-day period, the public agency
36 responsible for seeking adoptive parents, for each minor
37 shall, to the extent possible, contact other private and
38 public adoption agencies regarding the availability of the
39 minor for adoption. During the 90-day period, the public
40 agency shall conduct the search for adoptive parents in



1 the same manner as prescribed for children in Sections
2 8708 and 8709 of the Family Code. At the expiration of this
3 period, another hearing shall be held and the court shall
4 proceed pursuant to paragraph (1), ~~(3)~~ (4), or ~~(4)~~ (5) of
5 subdivision (b). For purposes of this section, a minor may
6 only be found to be difficult to place for adoption if there
7 are no prospective adoptive homes available to the minor
8 because of the minor's membership in a sibling group, or
9 the presence of a diagnosed medical, physical, or mental
10 handicap, or the minor is aged seven years or more, and
11 evidence presented to the court in the assessment made
12 pursuant to subdivision (i) of Section 366.21 or
13 subdivision (b) of Section 366.22 indicates that the
14 presence and severity of one or more of these factors
15 renders the minor difficult to place.

16 (4) If the court finds that adoption of the minor or
17 termination of parental rights is not in the ~~interests~~
18 *interest* of the minor, ~~or that~~ *because* one of the
19 conditions in subparagraph (A), (B), (C), or (D) of
20 paragraph (1) or in paragraph (2) applies, the court shall
21 either order that the present caretakers or other
22 appropriate persons shall become legal guardians of the
23 minor or order that the minor remain in long-term foster
24 care. Legal guardianship shall be considered before
25 long-term foster care, if it is in the best interests of the
26 minor and if a suitable guardian can be found. When the
27 minor is living with a relative or a foster parent who is
28 willing and capable of providing a stable and permanent
29 environment, but not willing to become a legal guardian,
30 the minor shall not be removed from the home if the
31 court finds the removal would be seriously detrimental to
32 the emotional well-being of the minor because the minor
33 has substantial psychological ties to the relative caretaker
34 or foster parents. The court shall also make an order for
35 visitation with the parents or guardians unless the court
36 finds by a preponderance of the evidence that the
37 visitation would be detrimental to the physical or
38 emotional well-being of the minor.

39 (5) If the court finds that the minor should not be
40 placed for adoption, that legal guardianship shall not be



1 established, and that there are no suitable foster parents
2 except exclusive-use homes available to provide the
3 minor with a stable and permanent environment, the
4 court may order the care, custody, and control of the
5 minor transferred from the county welfare department
6 or probation department to a licensed foster family
7 agency. The court shall consider the written
8 recommendation of the county welfare director or chief
9 probation officer regarding the suitability of such a
10 transfer. The transfer shall be subject to further court
11 orders.

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

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

38 (e) The proceeding for the adoption of a minor who is
39 a dependent of the juvenile court shall be in the juvenile
40 court if the court finds pursuant to this section that



1 adoption is the appropriate permanency plan and the
2 petition for adoption is filed in the juvenile court. Upon
3 the filing of a petition for adoption pursuant to Section
4 8714 of the Family Code, the juvenile court shall order
5 that an adoption hearing be set. The court shall proceed
6 with the adoption after the appellate rights of the natural
7 parents have been exhausted. The full report required by
8 Section 8715 of the Family Code shall be read and
9 considered by the court prior to the adoption and this
10 shall be reflected in the minutes of the court. The person
11 preparing the report may be called and examined by any
12 party to the proceeding. It is the intent of the Legislature,
13 pursuant to this subdivision, to give potential adoptive
14 parents the option of filing in the juvenile court the
15 petition for the adoption of a minor who is a dependent
16 of the juvenile court. Nothing in this section is intended
17 to prevent the filing of such a petition for adoption in any
18 other court as permitted by law, instead of in the juvenile
19 court.

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

24 (1) The court shall consider whether the interests of
25 the minor require the appointment of counsel. If the
26 court finds that the interests of the minor do require this
27 protection, the court shall appoint counsel to represent
28 the minor. If the court finds that the interests of the minor
29 require the representation of counsel, counsel shall be
30 appointed whether or not the minor is able to afford
31 counsel. The minor shall not be present in court unless the
32 minor so requests or the court so orders.

33 (2) If a parent appears without counsel and is unable
34 to afford counsel, the court shall appoint counsel for the
35 parent, unless this representation is knowingly and
36 intelligently waived. The same counsel shall not be
37 appointed to represent both the minor and his or her
38 parent. The public defender or private counsel may be
39 appointed as counsel for the parent.



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

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

12 (h) At all termination proceedings, the court shall
13 consider the wishes of the minor and shall act in the best
14 interests of the minor.

15 The testimony of the minor may be taken in chambers
16 and outside the presence of the minor's parent or parents
17 if the minor's parent or parents are represented by
18 counsel, the counsel is present, and any of the following
19 circumstances exist:

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

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

24 (3) The minor is afraid to testify in front of his or her
25 parent or parents.

26 After testimony in chambers, the parent or parents of
27 the minor may elect to have the court reporter read back
28 the testimony or have the testimony summarized by
29 counsel for the parent or parents.

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

34 (i) Any order of the court permanently terminating
35 parental rights under this section shall be conclusive and
36 binding upon the minor person, upon the parent or
37 parents and upon all other persons who have been served
38 with citation by publication or otherwise as provided in
39 this chapter. After making such an order, the court shall
40 have no power to set aside, change, or modify it, but



1 nothing in this section shall be construed to limit the right
2 to appeal the order.

3 (j) If the court, by order or judgment declares the
4 minor free from the custody and control of both parents,
5 or one parent if the other does not have custody and
6 control, the court shall at the same time order the minor
7 referred to the State Department of Social Services or a
8 licensed adoption agency for adoptive placement by the
9 agency. However, no petition for adoption may be
10 granted until the appellate rights of the natural parents
11 have been exhausted. The State Department of Social
12 Services or licensed adoption agency shall be responsible
13 for the custody and supervision of the minor and shall be
14 entitled to the exclusive care and control of the minor at
15 all times until a petition for adoption is granted. With the
16 consent of the agency, the court may appoint a guardian
17 of the minor, who shall serve until the minor is adopted.

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

30 As used in this subdivision, “preference” means that
31 the application shall be processed and, if satisfactory, the
32 family study shall be completed before the processing of
33 the application of any other person for the adoptive
34 placement of the minor.

35 (l) (1) An order by the court that a hearing pursuant
36 to this section be held is not appealable at any time unless
37 all of the following applies:

38 (A) A petition for extraordinary writ review was filed
39 in a timely manner.



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

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

7 (2) Failure to file a petition for extraordinary writ
8 review within the period specified by rule, to
9 substantively address the specific issues challenged, or to
10 support that challenge by an adequate record shall
11 preclude subsequent review by appeal of the findings and
12 orders made pursuant to this section.

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

15 (A) A trial court, after issuance of an order directing
16 a hearing pursuant to this section be held, shall advise all
17 parties of the requirement of filing a petition for
18 extraordinary writ review as set forth in this subdivision
19 in order to preserve any right to appeal in these issues.
20 This notice shall be made orally to a party if they are
21 present at the time of the making of the order or by
22 first-class mail by the clerk of the court to the last known
23 address of a party not present at the time of the making
24 of the order.

25 (B) The prompt transmittal of the records from the
26 trial court to the appellate court.

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

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

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

36 (A) Make every reasonable attempt to achieve a
37 substantive and meritorious review by the appellate
38 court within the time specified in Sections 366.21 and
39 366.22 for holding a hearing pursuant to this section.



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

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

7 (m) This section shall remain in effect only until
8 January 1, 1999, and as of that date is repealed, unless a
9 later enacted statute, which is enacted on or before
10 January 1, 1999, deletes or extends that date.

11 SEC. 6. Section 366.26 of the Welfare and Institutions
12 Code, as amended by Section 6.5 of Chapter 1083 of the
13 Statutes of 1996, is amended to read:

14 366.26. (a) This section applies to minors who are
15 adjudged dependent children of the juvenile court
16 pursuant to subdivision (c) of Section 360 on or after
17 January 1, 1989. The procedures specified herein are the
18 exclusive procedures for conducting these hearings; Part
19 2 (commencing with Section 3020) of Division 8 of the
20 Family Code is not applicable to these proceedings. For
21 minors who are adjudged dependent children of the
22 juvenile court pursuant to subdivision (c) of Section 360
23 on or after January 1, 1989, this section and Sections 8604,
24 8605, 8606, and 8700 of the Family Code and Chapter 5
25 (commencing with Section 7660) of Part 3 of Division 12
26 of the Family Code specify the exclusive procedures for
27 permanently terminating parental rights with regard to,
28 or establishing legal guardianship of, the minor while the
29 minor is a dependent child of the juvenile court.

30 (b) At the hearing, which shall be held in juvenile
31 court for all minors who are dependents of the juvenile
32 court, the court, in order to provide stable, permanent
33 homes for these minors, shall review the report as
34 specified in Section 361.5, 366.21, or 366.22, shall indicate
35 that the court has read and considered it, shall receive
36 other evidence that the parties present, including, but
37 not limited to, the parent's or guardian's failure to sign the
38 child welfare services case plan or failure to cooperate in
39 the provision of services specified in the child welfare
40 services case plan, and then shall do one of the following:



1 (1) Permanently terminate the rights of the parent or
2 parents and order that the minor be placed for adoption
3 and, upon the filing of a petition for adoption in the
4 juvenile court, order that a hearing be set. The court shall
5 proceed with the adoption after the appellate rights of
6 the natural parents have been exhausted.

7 (2) *Permanently terminate the rights of the parent or*
8 *parents and stay the enforcement of this order until an*
9 *adoptive placement agreement is signed. While the stay*
10 *is in effect, parental rights and responsibilities shall be*
11 *considered terminated and the court shall not order*
12 *visitation between the parents and the child. This stay*
13 *shall not be construed to extend the statutory time period*
14 *for filing an appeal of the order.*

15 (3) Without permanently terminating parental rights,
16 identify adoption as the permanent placement goal and
17 order that efforts be made to locate an appropriate
18 adoptive family for the minor for a period not to exceed
19 90 days.

20 ~~(3)~~

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

24 ~~(4)~~

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

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

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

31 (1) The court shall terminate parental rights only if it
32 determines by clear and convincing evidence that it is
33 likely that the minor will be adopted. If the court so
34 determines, the findings pursuant to subdivision (b) or
35 paragraph 1 of subdivision (e) of Section 361.5 that
36 reunification services shall not be offered, or the findings
37 pursuant to subdivision (e) of Section 366.21 that the
38 whereabouts of a parent have been unknown for six
39 months or that the parent has failed to visit or contact the
40 child for six months or that the parent has been convicted



1 of a felony indicating parental unfitness, or, pursuant to
2 Section 366.21 or 366.22, that a minor cannot or should not
3 be returned to his or her parent or guardian, shall then
4 constitute a sufficient basis for termination of parental
5 rights unless the court finds that termination would be
6 detrimental to the minor due to one of the following
7 circumstances:

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

11 (B) A minor 12 years of age or older objects to
12 termination of parental rights.

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

19 (D) The minor is living with a relative or foster parent
20 who is unable or unwilling to adopt the minor because of
21 exceptional circumstances, which do not include an
22 unwillingness to accept legal or financial responsibility
23 for the minor, but who is willing and capable of providing
24 the minor with a stable and permanent environment and
25 the removal of the minor from the physical custody of his
26 or her relative or foster parent would be detrimental to
27 the emotional well-being of the minor. This subparagraph
28 does not apply to any minor who is living with a
29 nonrelative and who is either (i) under six years of age or
30 (ii) a member of a sibling group where at least one minor
31 is under six years of age and the sibling is, or should be,
32 permanently placed together.

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

38 (3) If the court finds that termination of parental
39 rights would not be detrimental to the minor pursuant to
40 paragraph (1) and that the minor has a probability for



1 adoption but is difficult to place for adoption and there is
2 no identified or available prospective adoptive parent,
3 the court may identify adoption as the permanent
4 placement goal and without terminating parental rights,
5 order that efforts be made to locate an appropriate
6 adoptive family for the minor for a period not to exceed
7 90 days. During this 90-day period, the public agency
8 responsible for seeking adoptive parents, for each minor
9 shall, to the extent possible, contact other private and
10 public adoption agencies regarding the availability of the
11 minor for adoption. During the 90-day period, the public
12 agency shall conduct the search for adoptive parents in
13 the same manner as prescribed for children in Sections
14 8708 and 8709 of the Family Code. At the expiration of this
15 period, another hearing shall be held and the court shall
16 proceed pursuant to paragraph (1), ~~(3)~~ (4), or ~~(4)~~ (5) of
17 subdivision (b). For purposes of this section, a minor may
18 only be found to be difficult to place for adoption if there
19 is no identified or available prospective adoptive parent
20 for the minor because of the minor's membership in a
21 sibling group, or the presence of a diagnosed medical,
22 physical, or mental handicap, or the minor is the age of
23 seven years or more.

24 (4) If the court finds that adoption of the minor or
25 termination of parental rights is not in the ~~interests~~
26 *interest* of the minor, ~~or that~~ *because* one of the
27 conditions in subparagraph (A), (B), (C), or (D) of
28 paragraph (1) or in paragraph (2) applies, the court shall
29 either order that the present caretakers or other
30 appropriate persons shall become legal guardians of the
31 minor or order that the minor remain in long-term foster
32 care. Legal guardianship shall be considered before
33 long-term foster care, if it is in the best interests of the
34 minor and if a suitable guardian can be found. When the
35 minor is living with a relative or a foster parent who is
36 willing and capable of providing a stable and permanent
37 environment, but not willing to become a legal guardian,
38 the minor shall not be removed from the home if the
39 court finds the removal would be seriously detrimental to
40 the emotional well-being of the minor because the minor



1 has substantial psychological ties to the relative caretaker
2 or foster parents. The court shall also make an order for
3 visitation with the parents or guardians unless the court
4 finds by a preponderance of the evidence that the
5 visitation would be detrimental to the physical or
6 emotional well-being of the minor.

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

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

34 (d) The proceeding for the appointment of a guardian
35 for a minor who is a dependent of the juvenile court shall
36 be in the juvenile court. If the court finds pursuant to this
37 section that legal guardianship is the appropriate
38 permanency plan, it shall appoint the legal guardian and
39 issue letters of guardianship. The assessment prepared
40 pursuant to subdivision (g) of Section 361.5, subdivision



1 (i) of Section 366.21, and subdivision (b) of Section 366.22
2 shall be read and considered by the court prior to the
3 appointment, and this shall be reflected in the minutes of
4 the court. The person preparing the assessment may be
5 called and examined by any party to the proceeding.

6 (e) The proceeding for the adoption of a minor who is
7 a dependent of the juvenile court shall be in the juvenile
8 court if the court finds pursuant to this section that
9 adoption is the appropriate permanency plan and the
10 petition for adoption is filed in the juvenile court. Upon
11 the filing of a petition for adoption, the juvenile court
12 shall order that an adoption hearing be set. The court shall
13 proceed with the adoption after the appellate rights of
14 the natural parents have been exhausted. The full report
15 required by Section 8715 of the Family Code shall be read
16 and considered by the court prior to the adoption and this
17 shall be reflected in the minutes of the court. The person
18 preparing the report may be called and examined by any
19 party to the proceeding. It is the intent of the Legislature,
20 pursuant to this subdivision, to give potential adoptive
21 parents the option of filing in the juvenile court the
22 petition for the adoption of a minor who is a dependent
23 of the juvenile court. Nothing in this section is intended
24 to prevent the filing of such a petition for adoption in any
25 other court as permitted by law, instead of in the juvenile
26 court.

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

31 (1) The court shall consider whether the interests of
32 the minor require the appointment of counsel. If the
33 court finds that the interests of the minor do require this
34 protection, the court shall appoint counsel to represent
35 the minor. If the court finds that the interests of the minor
36 require the representation of counsel, counsel shall be
37 appointed whether or not the minor is able to afford
38 counsel. The minor shall not be present in court unless the
39 minor so requests or the court so orders.



1 (2) If a parent appears without counsel and is unable
 2 to afford counsel, the court shall appoint counsel for the
 3 parent, unless this representation is knowingly and
 4 intelligently waived. The same counsel shall not be
 5 appointed to represent both the minor and his or her
 6 parent. The public defender or private counsel may be
 7 appointed as counsel for the parent.

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

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

19 (h) At all termination proceedings, the court shall
 20 consider the wishes of the minor and shall act in the best
 21 interests of the minor.

22 The testimony of the minor may be taken in chambers
 23 and outside the presence of the minor’s parent or parents
 24 if the minor’s parent or parents are represented by
 25 counsel, the counsel is present, and any of the following
 26 circumstances exist:

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

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

31 (3) The minor is afraid to testify in front of his or her
 32 parent or parents.

33 After testimony in chambers, the parent or parents of
 34 the minor may elect to have the court reporter read back
 35 the testimony or have the testimony summarized by
 36 counsel for the parent or parents.

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



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

10 (j) If the court, by order or judgment declares the
11 minor free from the custody and control of both parents,
12 or one parent if the other does not have custody and
13 control, the court shall at the same time order the minor
14 referred to the State Department of Social Services or a
15 licensed adoption agency for adoptive placement by the
16 agency. However, no petition for adoption may be
17 granted until the appellate rights of the natural parents
18 have been exhausted. The State Department of Social
19 Services or licensed adoption agency shall be responsible
20 for the custody and supervision of the minor and shall be
21 entitled to the exclusive care and control of the minor at
22 all times until a petition for adoption is granted. With the
23 consent of the agency, the court may appoint a guardian
24 of the minor, who shall serve until the minor is adopted.

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

37 As used in this subdivision, "preference" means that
38 the application shall be processed and, if satisfactory, the
39 family study shall be completed before the processing of



1 the application of any other person for the adoptive
2 placement of the minor.

3 (I) (1) An order by the court that a hearing pursuant
4 to this section be held is not appealable at any time unless
5 all of the following applies:

6 (A) A petition for extraordinary writ review was filed
7 in a timely manner.

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

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

14 (2) Failure to file a petition for extraordinary writ
15 review within the period specified by rule, to
16 substantively address the specific issues challenged, or to
17 support that challenge by an adequate record shall
18 preclude subsequent review by appeal of the findings and
19 orders made pursuant to this section.

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

22 (A) A trial court, after issuance of an order directing
23 a hearing pursuant to this section be held, shall advise all
24 parties of the requirement of filing a petition for
25 extraordinary writ review as set forth in this subdivision
26 in order to preserve any right to appeal in these issues.
27 This notice shall be made orally to a party if they are
28 present at the time of the making of the order or by
29 first-class mail by the clerk of the court to the last known
30 address of a party not present at the time of the making
31 of the order.

32 (B) The prompt transmittal of the records from the
33 trial court to the appellate court.

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

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



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

3 (A) Make every reasonable attempt to achieve a
4 substantive and meritorious review by the appellate
5 court within the time specified in Sections 366.21 and
6 366.22 for holding a hearing pursuant to this section.

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

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

13 (m) This section shall be operative January 1, 1999.

