

AMENDED IN ASSEMBLY APRIL 28, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1338

Introduced by Assembly Member Nation

February 22, 2005

An act to amend Sections 317, 366.26, and 634 of the Welfare and Institutions Code, relating to immigrant children.

LEGISLATIVE COUNSEL'S DIGEST

AB 1338, as amended, Nation. Immigrant children.

(1) Existing law authorizes the juvenile court to adjudge a child a dependent child of the court if the child has suffered, or there is a substantial risk that the child will suffer, among other things, serious physical harm inflicted nonaccidentally upon the child by his or her parent or guardian, or serious physical harm or illness as a result of the failure or inability of the parent or guardian to adequately supervise or protect that child. Existing law authorizes the juvenile court to terminate the parental rights of a child who has been adjudged a dependent child of the court. Existing law further requires that a dependent child who has no counsel be represented by appointed counsel at all dependency proceedings, as specified.

This bill would additionally require that a dependent child of the court who is not a citizen of the United States and for whom the court has determined parental reunification is no longer an option, be provided an attorney specializing in immigration law who may pursue special immigrant status or any other avenue to obtain legal permanent resident status or citizenship for that child. The bill would require the Judicial Council to promulgate specified rules of court in relation to the qualifications of those attorneys. The bill would exempt certain counties from those requirements.

By imposing additional duties on county employees to contract for those services, the bill would impose a state-mandated local program.

(2) Existing law authorizes the juvenile court to adjudge a child a ward of the court for being habitually disobedient or truant, and provides appointed counsel for the representation thereof.

This bill would also require that a child who is adjudged a ward of the court pursuant to specified provisions of law who is not a citizen of the United States and who is in foster care or deemed unlikely to reunify with his or her parents, as specified, be provided an attorney specializing in the area of immigration law who may pursue special immigrant status or any other avenue to obtain legal permanent resident status or citizenship for that ward. The bill would require the Judicial Council to promulgate rules of court relating to the qualifications of those attorneys. The bill would exempt certain counties from those requirements.

By imposing additional duties on county employees, the bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. Section 317 of the Welfare and Institutions
2 Code is amended to read:
3 317. (a) When it appears to the court that a parent or
4 guardian of the child desires counsel but is presently financially
5 unable to afford and cannot for that reason employ counsel, the
6 court may appoint counsel as provided in this section.
7 (b) When it appears to the court that a parent or guardian of
8 the child is presently financially unable to afford and cannot for
9 that reason employ counsel, and the child has been placed in
10 out-of-home care, or the petitioning agency is recommending that

1 the child be placed in out-of-home care, the court shall appoint
2 counsel, unless the court finds that the parent or guardian has
3 made a knowing and intelligent waiver of counsel as provided in
4 this section.

5 (c) Where a child is not represented by counsel, the court shall
6 appoint counsel for the child unless the court finds that the child
7 would not benefit from the appointment of counsel. The court
8 shall state on the record its reasons for that finding. A primary
9 responsibility of any counsel appointed to represent a child
10 pursuant to this section shall be to advocate for the protection,
11 safety, and physical and emotional well-being of the child.
12 Counsel for the child may be a district attorney, public defender,
13 or other member of the bar, provided that the counsel does not
14 represent another party or county agency whose interests conflict
15 with the child's. The fact that the district attorney represents the
16 child in a proceeding pursuant to Section 300 as well as conducts
17 a criminal investigation or files a criminal complaint or
18 information arising from the same or reasonably related set of
19 facts as the proceeding pursuant to Section 300 is not in and of
20 itself a conflict of interest. The court may fix the compensation
21 for the services of appointed counsel. The appointed counsel
22 shall have a caseload and training that assures adequate
23 representation of the child. The Judicial Council shall promulgate
24 rules of court that establish caseload standards, training
25 requirements, and guidelines for appointed counsel for children
26 and shall adopt rules as required by Section 326.5 no later than
27 July 1, 2001.

28 (d) The counsel appointed by the court shall represent the
29 parent, guardian, or child at the detention hearing and at all
30 subsequent proceedings before the juvenile court. Counsel shall
31 continue to represent the parent or child unless relieved by the
32 court upon the substitution of other counsel or for cause. The
33 representation shall include representing the parent or the child in
34 termination proceedings and in those proceedings relating to the
35 institution or setting aside of a legal guardianship.

36 (e) The counsel for the child shall be charged in general with
37 the representation of the child's interests. To that end, the
38 counsel shall make or cause to have made any further
39 investigations that he or she deems in good faith to be reasonably
40 necessary to ascertain the facts, including the interviewing of

1 witnesses, and he or she shall examine and cross-examine
2 witnesses in both the adjudicatory and dispositional hearings.
3 The counsel may also introduce and examine his or her own
4 witnesses, make recommendations to the court concerning the
5 child's welfare, and participate further in the proceedings to the
6 degree necessary to adequately represent the child, including, but
7 not limited to, reporting to the court any problems with the
8 immigration services provided pursuant to subdivision (i). In any
9 case in which the child is four years of age or older, counsel shall
10 interview the child to determine the child's wishes and to assess
11 the child's well-being, and shall advise the court of the child's
12 wishes. Counsel for the child shall not advocate for the return of
13 the child if, to the best of his or her knowledge, that return
14 conflicts with the protection and safety of the child. In addition
15 counsel shall investigate the interests of the child beyond the
16 scope of the juvenile proceeding and report to the court other
17 interests of the child that may need to be protected by the
18 institution of other administrative or judicial proceedings. The
19 attorney representing a child in a dependency proceeding is not
20 required to assume the responsibilities of a social worker and is
21 not expected to provide nonlegal services to the child. The court
22 shall take whatever appropriate action is necessary to fully
23 protect the interests of the child.

24 (f) Either the child or the counsel for the child, with the
25 informed consent of the child if the child is found by the court to
26 be of sufficient age and maturity to so consent, may invoke the
27 psychotherapist-client privilege, physician-patient privilege, and
28 clergyman-penitent privilege. If the child invokes the privilege,
29 counsel may not waive it, but if counsel invokes the privilege, the
30 child may waive it. Counsel shall be holder of these privileges if
31 the child is found by the court not to be of sufficient age and
32 maturity to so consent. For the sole purpose of fulfilling his or
33 her obligation to provide legal representation of the child,
34 counsel for a child shall have access to all records with regard to
35 the child maintained by a health care facility, as defined in
36 Section 1545 of the Penal Code, health care providers, as defined
37 in Section 6146 of the Business and Professions Code, a
38 physician and surgeon or other health practitioner as defined in
39 paragraph (21) of subdivision (a) of Section 11165.7 of the Penal
40 Code or a child care custodian, as described in Section 11165.7

1 of the Penal Code. Notwithstanding any other law, counsel shall
2 be given access to all records relevant to the case which are
3 maintained by state or local public agencies. All information
4 requested from a child protective agency regarding a child who is
5 in protective custody, or from a child's guardian ad litem, shall
6 be provided to the child's counsel within 30 days of the request.

7 (g) In a county of the third class, if counsel is to be provided to
8 a child at county expense other than by counsel for the agency,
9 the court shall first utilize the services of the public defender
10 prior to appointing private counsel, to provide legal counsel.
11 Nothing in this subdivision shall be construed to require the
12 appointment of the public defender in any case in which the
13 public defender has a conflict of interest. In the interest of justice,
14 a court may depart from that portion of the procedure requiring
15 appointment of the public defender after making a finding of
16 good cause and stating the reasons therefor on the record.

17 (h) In a county of the third class, if counsel is to be appointed
18 for a parent or guardian at county expense, the court shall first
19 utilize the services of the alternate public defender, prior to
20 appointing private counsel, to provide legal counsel. Nothing in
21 this subdivision shall be construed to require the appointment of
22 the alternate public defender in any case in which the public
23 defender has a conflict of interest. In the interest of justice, a
24 court may depart from that portion of the procedure requiring
25 appointment of the alternate public defender after making a
26 finding of good cause and stating the reasons therefor on the
27 record.

28 (i) (1) If the court finds that a dependent child is a resident of
29 this state but not a legal permanent resident or citizen of the
30 United States, that parental reunification is no longer an option
31 for the child, and that it is in the best interest of the child, the
32 court shall appoint an immigration attorney for the child in
33 addition to counsel appointed pursuant to subdivision (c). The
34 immigration attorney may pursue special immigrant juvenile
35 status for that child pursuant to Section 1101(a)(27)(J) of Title 8
36 of the United States Code, or pursue any other avenue to obtain
37 legal permanent resident status or United States citizenship.
38 Before July 1, 2006, the Judicial Council shall promulgate rules
39 of court that establish standards, training requirements, and

1 guidelines for attorneys eligible to be appointed under this
2 paragraph.

3 (2) Paragraph (1) need not apply to a county that already
4 provides, or contracts for, those services, whether those services
5 are provided by social services agencies or attorneys.

6 SEC. 2. Section 366.26 of the Welfare and Institutions Code
7 is amended to read:

8 366.26. (a) This section applies to children who are adjudged
9 dependent children of the juvenile court pursuant to subdivision
10 (c) of Section 360. The procedures specified herein are the
11 exclusive procedures for conducting these hearings; Part 2
12 (commencing with Section 3020) of Division 8 of the Family
13 Code is not applicable to these proceedings. Section 8714.7 of
14 the Family Code is applicable and available to all dependent
15 children meeting the requirements of that section, if the
16 postadoption contact agreement has been entered into
17 voluntarily. For children who are adjudged dependent children of
18 the juvenile court pursuant to subdivision (c) of Section 360, this
19 section and Sections 8604, 8605, 8606, and 8700 of the Family
20 Code and Chapter 5 (commencing with Section 7660) of Part 3
21 of Division 12 of the Family Code specify the exclusive
22 procedures for permanently terminating parental rights with
23 regard to, or establishing legal guardianship of, the child while
24 the child is a dependent child of the juvenile court.

25 (b) At the hearing, that shall be held in juvenile court for all
26 children who are dependents of the juvenile court, the court, in
27 order to provide stable, permanent homes for these children, shall
28 review the report as specified in Section 361.5, 366.21, or
29 366.22, shall indicate that the court has read and considered it,
30 shall receive other evidence that the parties may present, and then
31 shall make findings and orders in the following order of
32 preference:

33 (1) Terminate the rights of the parent or parents and order that
34 the child be placed for adoption and, upon the filing of a petition
35 for adoption in the juvenile court, order that a hearing be set. The
36 court shall proceed with the adoption after the appellate rights of
37 the natural parents have been exhausted.

38 (2) On making a finding under paragraph (3) of subdivision
39 (c), identify adoption as the permanent placement goal and order

1 that efforts be made to locate an appropriate adoptive family for
2 the child within a period not to exceed 180 days.

3 (3) Appoint a legal guardian for the child and order that letters
4 of guardianship issue.

5 (4) Order that the child be placed in long-term foster care,
6 subject to the periodic review of the juvenile court under Section
7 366.3.

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

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

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

35 (B) A child 12 years of age or older objects to termination of
36 parental rights.

37 (C) The child is placed in a residential treatment facility,
38 adoption is unlikely or undesirable, and continuation of parental
39 rights will not prevent finding the child a permanent family

1 placement if the parents cannot resume custody when residential
2 care is no longer needed.

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

16 (E) There would be substantial interference with a child's
17 sibling relationship, taking into consideration the nature and
18 extent of the relationship, including, but not limited to, whether
19 the child was raised with a sibling in the same home, whether the
20 child shared significant common experiences or has existing
21 close and strong bonds with a sibling, and whether ongoing
22 contact is in the child's best interest, including the child's
23 long-term emotional interest, as compared to the benefit of legal
24 permanence through adoption.

25 If the court finds that termination of parental rights would be
26 detrimental to the child pursuant to subparagraph (A), (B), (C),
27 (D), or (E), it shall state its reasons in writing or on the record.

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

33 (3) If the court finds that termination of parental rights would
34 not be detrimental to the child pursuant to paragraph (1) and that
35 the child has a probability for adoption but is difficult to place for
36 adoption and there is no identified or available prospective
37 adoptive parent, the court may identify adoption as the
38 permanent placement goal and without terminating parental
39 rights, order that efforts be made to locate an appropriate
40 adoptive family for the child within a period not to exceed 180

1 days. During this 180-day period, the public agency responsible
 2 for seeking adoptive parents for each child shall, to the extent
 3 possible, ask each child who is 10 years of age or older who is
 4 placed in a group home for six months or longer from the date
 5 the child entered foster care, to identify any individuals, other
 6 than the child's siblings, who are important to the child, in order
 7 to identify potential adoptive parents. The public agency may ask
 8 any other child to provide that information, as appropriate.
 9 During the 180-day period, the public agency shall, to the extent
 10 possible, contact other private and public adoption agencies
 11 regarding the availability of the child for adoption. During the
 12 180-day period, the public agency shall conduct the search for
 13 adoptive parents in the same manner as prescribed for children in
 14 Sections 8708 and 8709 of the Family Code. At the expiration of
 15 this period, another hearing shall be held and the court shall
 16 proceed pursuant to paragraph (1) or (3) of subdivision (b). For
 17 purposes of this section, a child may only be found to be difficult
 18 to place for adoption if there is no identified or available
 19 prospective adoptive parent for the child because of the child's
 20 membership in a sibling group, or the presence of a diagnosed
 21 medical, physical, or mental handicap, or the child is the age of
 22 seven years or more.

23 (4) (A) If the court finds that adoption of the child or
 24 termination of parental rights is not in the best interest of the
 25 child, because one of the conditions in subparagraph (A), (B),
 26 (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the
 27 court shall either order that the present caretakers or other
 28 appropriate persons shall become legal guardians of the child or
 29 order that the child remain in long-term foster care. Legal
 30 guardianship shall be considered before long-term foster care, if
 31 it is in the best interests of the child and if a suitable guardian can
 32 be found. A child who is 10 years of age or older who is placed
 33 in a group home for six months or longer from the date the child
 34 entered foster care, shall be asked to identify any individuals,
 35 other than the child's siblings, who are important to the child, in
 36 order to identify potential guardians. The agency may ask any
 37 other child to provide that information, as appropriate.

38 (B) If the child is living with a relative or a foster parent who
 39 is willing and capable of providing a stable and permanent
 40 environment, but not willing to become a legal guardian, the

1 child shall not be removed from the home if the court finds the
2 removal would be seriously detrimental to the emotional
3 well-being of the child because the child has substantial
4 psychological ties to the relative caretaker or foster parents.

5 (C) The court shall also make an order for visitation with the
6 parents or guardians unless the court finds by a preponderance of
7 the evidence that the visitation would be detrimental to the
8 physical or emotional well-being of the child.

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

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

31 (d) The proceeding for the appointment of a guardian for a
32 child who is a dependent of the juvenile court shall be in the
33 juvenile court. If the court finds pursuant to this section that legal
34 guardianship is the appropriate permanent plan, it shall appoint
35 the legal guardian and issue letters of guardianship. The
36 assessment prepared pursuant to subdivision (g) of Section 361.5,
37 subdivision (i) of Section 366.21, and subdivision (b) of Section
38 366.22 shall be read and considered by the court prior to the
39 appointment, and this shall be reflected in the minutes of the

1 court. The person preparing the assessment may be called and
2 examined by any party to the proceeding.

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

21 (f) At the beginning of any proceeding pursuant to this section,
22 if the child or the parents are not being represented by previously
23 retained or appointed counsel, including, in the case of any child
24 who is not a legal permanent resident or citizen of the United
25 States, counsel appointed pursuant to subdivision (i) of Section
26 317, the court shall proceed as follows:

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

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

38 (3) Private counsel appointed under this section shall receive a
39 reasonable sum for compensation and expenses, the amount of
40 which shall be determined by the court. The amount shall be paid

1 by the real parties in interest, other than the child, in any
2 proportions the court deems just. However, if the court finds that
3 any of the real parties in interest are unable to afford counsel, the
4 amount shall be paid out of the general fund of the county.

5 (g) The court may continue the proceeding for not to exceed
6 30 days as necessary to appoint counsel, and to enable counsel to
7 become acquainted with the case.

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

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

18 (3) (A) The testimony of the child may be taken in chambers
19 and outside the presence of the child's parent or parents, if the
20 child's parent or parents are represented by counsel, the counsel
21 is present, and any of the following circumstances exist:

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

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

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

28 (B) After testimony in chambers, the parent or parents of the
29 child may elect to have the court reporter read back the testimony
30 or have the testimony summarized by counsel for the parent or
31 parents.

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

35 (i) Any order of the court permanently terminating parental
36 rights under this section shall be conclusive and binding upon the
37 child, upon the parent or parents and upon all other persons who
38 have been served with citation by publication or otherwise as
39 provided in this chapter. After making the order, the court shall
40 have no power to set aside, change, or modify it, but nothing in

1 this section shall be construed to limit the right to appeal the
2 order.

3 (j) If the court, by order or judgment, declares the child free
4 from the custody and control of both parents, or one parent if the
5 other does not have custody and control, the court shall at the
6 same time order the child referred to the State Department of
7 Social Services or a licensed adoption agency for adoptive
8 placement by the agency. However, a petition for adoption may
9 not be granted until the appellate rights of the natural parents
10 have been exhausted. The State Department of Social Services or
11 licensed adoption agency shall be responsible for the custody and
12 supervision of the child and shall be entitled to the exclusive care
13 and control of the child at all times until a petition for adoption is
14 granted. With the consent of the agency, the court may appoint a
15 guardian of the child, who shall serve until the child is adopted.

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

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

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

33 (A) A petition for extraordinary writ review was filed in a
34 timely manner.

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 3. Section 634 of the Welfare and Institutions Code is amended to read:

634. (a) When it appears to the court that the minor or his or her parent or guardian desires counsel but is unable to afford and cannot for that reason employ counsel, the court may appoint

counsel. In a case in which the minor is alleged to be a person described in Section 601 or 602, the court shall appoint counsel for the minor if he or she appears at the hearing without counsel, whether he or she is unable to afford counsel or not, unless there is an intelligent waiver of the right of counsel by the minor. In the absence of that waiver, if the parent or guardian does not furnish counsel and the court determines that the parent or guardian has the ability to pay for counsel, the court shall appoint counsel at the expense of the parent or guardian. In any case in which it appears to the court that there is a conflict of interest between a parent or guardian and child that one attorney could not properly represent both, the court shall appoint counsel, in addition to counsel already employed by a parent or guardian or appointed by the court to represent the minor or parent or guardian. In a county in which there is no public defender, the court may fix the compensation to be paid by the county for service of that appointed counsel.

(b) (1) If the court finds that a ward of the court pursuant to Section 601 or subdivision (a) of Section 602 is a resident of this state, but is not a legal permanent resident or citizen of the United States, is in foster care pursuant to paragraph (1), (2), or (3) of subdivision (a) of Section 727 or is deemed unlikely to reunify with his or her parents as determined by a probation officer, social worker, or the court, and that it is in the best interest of the child, the court shall appoint an immigration attorney for the child in addition to counsel appointed pursuant to subdivision (a). The immigration attorney may pursue special immigrant juvenile status for the ward pursuant to Section 1101(a)(27)(J) of Title 8 of the United States Code, or pursue any other avenue to obtain legal permanent resident status or United States citizenship. Before ~~July 1, 2006~~, *January 1, 2007* the Judicial Council shall promulgate rules of court to establish standards, training requirements, and guidelines for attorneys eligible to be appointed under this paragraph.

(2) Paragraph (1) need not apply to a county that already provides, or contracts for, those services, whether those services are provided by social services agencies or attorneys.

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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