

AMENDED IN ASSEMBLY MAY 27, 2005

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 *lawful permanent resident or* 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 *lawful permanent resident or* 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 bill would also provide that funding for the purposes of administering the provisions of the act is contingent upon an appropriation in the annual Budget Act or another statute.*

(4) 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:

1 317. (a) When it appears to the court that a parent or
2 guardian of the child desires counsel but is presently financially
3 unable to afford and cannot for that reason employ counsel, the
4 court may appoint counsel as provided in this section.

5 (b) When it appears to the court that a parent or guardian of
6 the child is presently financially unable to afford and cannot for
7 that reason employ counsel, and the child has been placed in
8 out-of-home care, or the petitioning agency is recommending that
9 the child be placed in out-of-home care, the court shall appoint
10 counsel, unless the court finds that the parent or guardian has
11 made a knowing and intelligent waiver of counsel as provided in
12 this section.

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

36 (d) The counsel appointed by the court shall represent the
37 parent, guardian, or child at the detention hearing and at all
38 subsequent proceedings before the juvenile court. Counsel shall
39 continue to represent the parent or child unless relieved by the
40 court upon the substitution of other counsel or for cause. The

1 representation shall include representing the parent or the child in
2 termination proceedings and in those proceedings relating to the
3 institution or setting aside of a legal guardianship.

4 (e) The counsel for the child shall be charged in general with
5 the representation of the child's interests. To that end, the
6 counsel shall make or cause to have made any further
7 investigations that he or she deems in good faith to be reasonably
8 necessary to ascertain the facts, including the interviewing of
9 witnesses, and he or she shall examine and cross-examine
10 witnesses in both the adjudicatory and dispositional hearings.
11 The counsel may also introduce and examine his or her own
12 witnesses, make recommendations to the court concerning the
13 child's welfare, and participate further in the proceedings to the
14 degree necessary to adequately represent the child, including, but
15 not limited to, reporting to the court any problems with the
16 immigration services provided pursuant to subdivision (i). In any
17 case in which the child is four years of age or older, counsel shall
18 interview the child to determine the child's wishes and to assess
19 the child's well-being, and shall advise the court of the child's
20 wishes. Counsel for the child shall not advocate for the return of
21 the child if, to the best of his or her knowledge, that return
22 conflicts with the protection and safety of the child. In addition
23 counsel shall investigate the interests of the child beyond the
24 scope of the juvenile proceeding, *including, but not limited to,*
25 *eligibility for special immigrant juvenile status pursuant to*
26 *Section 1101(a)(27)(J) of Title 8 of the United States Code if the*
27 *child is not a lawful permanent resident or citizen of the United*
28 *States*, and report to the court other interests of the child that may
29 need to be protected by the institution of other administrative or
30 judicial proceedings. The attorney representing a child in a
31 dependency proceeding is not required to assume the
32 responsibilities of a social worker and is not expected to provide
33 nonlegal services to the child. The court shall take whatever
34 appropriate action is necessary to fully protect the interests of the
35 child.

36 (f) Either the child or the counsel for the child, with the
37 informed consent of the child if the child is found by the court to
38 be of sufficient age and maturity to so consent, may invoke the
39 psychotherapist-client privilege, physician-patient privilege, and
40 clergyman-penitent privilege. If the child invokes the privilege,

1 counsel may not waive it, but if counsel invokes the privilege, the
2 child may waive it. Counsel shall be *the* holder of these
3 privileges if the child is found by the court not to be of sufficient
4 age and maturity to so consent. For the sole purpose of fulfilling
5 his or her obligation to provide legal representation of the child,
6 counsel for a child shall have access to all records with regard to
7 the child maintained by a health care facility, as defined in
8 Section 1545 of the Penal Code, health care providers, as defined
9 in Section 6146 of the Business and Professions Code, a
10 physician and surgeon or other health practitioner, as defined in
11 paragraph (21) of subdivision (a) of Section 11165.7 of the Penal
12 Code, or a child care custodian, as described in Section 11165.7
13 of the Penal Code. Notwithstanding any other law, counsel shall
14 be given access to all records relevant to the case which are
15 maintained by state or local public agencies. All information
16 requested from a child protective agency regarding a child who is
17 in protective custody, or from a child's guardian ad litem, shall
18 be provided to the child's counsel within 30 days of the request.

19 (g) In a county of the third class, if counsel is to be provided to
20 a child at county expense other than by counsel for the agency,
21 the court shall first utilize the services of the public defender
22 prior to appointing private counsel, to provide legal counsel.
23 ~~Nothing in this subdivision shall~~ *This subdivision shall not* be
24 construed to require the appointment of the public defender in
25 any case in which the public defender has a conflict of interest. In
26 the interest of justice, a court may depart from that portion of the
27 procedure requiring appointment of the public defender after
28 making a finding of good cause and stating ~~the reasons therefor~~
29 *its reasons* on the record.

30 (h) In a county of the third class, if counsel is to be appointed
31 for a parent or guardian at county expense, the court shall first
32 utilize the services of the alternate public defender, prior to
33 appointing private counsel, to provide legal counsel. ~~Nothing in~~
34 ~~this subdivision shall~~ *This subdivision shall not* be construed to
35 require the appointment of the alternate public defender in any
36 case in which the public defender has a conflict of interest. In the
37 interest of justice, a court may depart from that portion of the
38 procedure requiring appointment of the alternate public defender
39 after making a finding of good cause and stating the reasons
40 therefor on the record.

1 (i) (1) If the court finds that a dependent child is a resident of
2 this state but not a ~~legal~~ *lawful* permanent resident or citizen of
3 the United States, that parental reunification is no longer an
4 option for the child, and that it is in the best interest of the child,
5 the court shall appoint an immigration attorney for the child in
6 addition to counsel appointed pursuant to subdivision (c). *To the*
7 *maximum extent practicable, the court shall make every effort to*
8 *utilize the services of competent pro bono counsel who agree to*
9 *provide representation to the child without charge.* The
10 immigration attorney may pursue special immigrant juvenile
11 status for that child pursuant to Section 1101(a)(27)(J) of Title 8
12 of the United States Code, or pursue any other avenue to obtain
13 ~~legal~~ *lawful* permanent resident status or United States
14 citizenship. Before ~~July 1, 2006~~ *January 1, 2007*, the Judicial
15 Council shall promulgate rules of court that establish standards,
16 training requirements, and guidelines for attorneys eligible to be
17 appointed under this paragraph.

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

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

23 366.26. (a) This section applies to children who are adjudged
24 dependent children of the juvenile court pursuant to subdivision
25 (c) of Section 360. The procedures specified herein are the
26 exclusive procedures for conducting these hearings; Part 2
27 (commencing with Section 3020) of Division 8 of the Family
28 Code is not applicable to these proceedings. Section 8714.7 of
29 the Family Code is applicable and available to all dependent
30 children meeting the requirements of that section, if the
31 postadoption contact agreement has been entered into
32 voluntarily. For children who are adjudged dependent children of
33 the juvenile court pursuant to subdivision (c) of Section 360, this
34 section and Sections 8604, 8605, 8606, and 8700 of the Family
35 Code and Chapter 5 (commencing with Section 7660) of Part 3
36 of Division 12 of the Family Code specify the exclusive
37 procedures for permanently terminating parental rights with
38 regard to, or establishing legal guardianship of, the child while
39 the child is a dependent child of the juvenile court.

1 (b) At the hearing, ~~that~~ *which* shall be held in juvenile court
2 for all children who are dependents of the juvenile court, the
3 court, in order to provide stable, permanent homes for these
4 children, shall review the report as specified in Section 361.5,
5 366.21, or 366.22, shall indicate that the court has read and
6 considered it, shall receive other evidence that the parties may
7 present, and then shall make findings and orders in the following
8 order of preference:

9 (1) Terminate the rights of the parent or parents and order that
10 the child be placed for adoption and, upon the filing of a petition
11 for adoption in the juvenile court, order that a hearing be set. The
12 court shall proceed with the adoption after the appellate rights of
13 the natural parents have been exhausted.

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

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

20 (4) Order that the child be placed in long-term foster care,
21 subject to the periodic review of the juvenile court under Section
22 366.3.

23 In choosing among the above alternatives, the court shall
24 proceed pursuant to subdivision (c).

25 (c) (1) If the court determines, based on the assessment
26 provided as ordered under subdivision (i) of Section 366.21 or
27 subdivision (b) of Section 366.22, and any other relevant
28 evidence, by a clear and convincing standard, that it is likely the
29 child will be adopted, the court shall terminate parental rights and
30 order the child placed for adoption. The fact that the child is not
31 yet placed in a preadoptive home nor with a relative or foster
32 family who is prepared to adopt the child, shall not constitute a
33 basis for the court to conclude that it is not likely the child will
34 be adopted. A finding under subdivision (b) or paragraph (1) of
35 subdivision (e) of Section 361.5 that reunification services shall
36 not be offered, under subdivision (e) of Section 366.21 that the
37 whereabouts of a parent have been unknown for six months or
38 that the parent has failed to visit or contact the child for six
39 months or that the parent has been convicted of a felony
40 indicating parental unfitness, or, under Section 366.21 or 366.22,

1 that the court has continued to remove the child from the custody
2 of the parent or guardian and has terminated reunification
3 services, shall constitute a sufficient basis for termination of
4 parental rights unless the court finds a compelling reason for
5 determining that termination would be detrimental to the child
6 due to one or more of the following circumstances:

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

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

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

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

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

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

4 (2) The court shall not terminate parental rights if at each and
5 every hearing at which the court was required to consider
6 reasonable efforts or services, the court has found that reasonable
7 efforts were not made or that reasonable services were not
8 offered or provided.

9 (3) If the court finds that termination of parental rights would
10 not be detrimental to the child pursuant to paragraph (1) and that
11 the child has a probability for adoption but is difficult to place for
12 adoption and there is no identified or available prospective
13 adoptive parent, the court may identify adoption as the
14 permanent placement goal and without terminating parental
15 rights, order that efforts be made to locate an appropriate
16 adoptive family for the child within a period not to exceed 180
17 days. During this 180-day period, the public agency responsible
18 for seeking adoptive parents for each child shall, to the extent
19 possible, ask each child who is 10 years of age or older who is
20 placed in a group home for six months or longer from the date
21 the child entered foster care, to identify any individuals, other
22 than the child's siblings, who are important to the child, in order
23 to identify potential adoptive parents. The public agency may ask
24 any other child to provide that information, as appropriate.
25 During the 180-day period, the public agency shall, to the extent
26 possible, contact other private and public adoption agencies
27 regarding the availability of the child for adoption. During the
28 180-day period, the public agency shall conduct the search for
29 adoptive parents in the same manner as prescribed for children in
30 Sections 8708 and 8709 of the Family Code. At the expiration of
31 this period, another hearing shall be held and the court shall
32 proceed pursuant to paragraph (1) or (3) of subdivision (b). For
33 purposes of this section, a child may only be found to be difficult
34 to place for adoption if there is no identified or available
35 prospective adoptive parent for the child because of the child's
36 membership in a sibling group, or the presence of a diagnosed
37 medical, physical, or mental handicap, or the child is the age of
38 seven years or more.

39 (4) (A) If the court finds that adoption of the child or
40 termination of parental rights is not in the best interest of the

1 child, because one of the conditions in subparagraph (A), (B),
2 (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the
3 court shall either order that the present caretakers or other
4 appropriate persons shall become legal guardians of the child or
5 order that the child remain in long-term foster care. Legal
6 guardianship shall be considered before long-term foster care, if
7 it is in the ~~best-interests~~ *interest* of the child and if a suitable
8 guardian can be found. A child who is 10 years of age or older
9 who is placed in a group home for six months or longer from the
10 date the child entered foster care, shall be asked to identify any
11 individuals, other than the child's siblings, who are important to
12 the child, in order to identify potential guardians. The agency
13 may ask any other child to provide that information, as
14 appropriate.

15 (B) If the child is living with a relative or a foster parent who
16 is willing and capable of providing a stable and permanent
17 environment, but not willing to become a legal guardian, the
18 child shall not be removed from the home if the court finds the
19 removal would be seriously detrimental to the emotional
20 well-being of the child because the child has substantial
21 psychological ties to the relative caretaker or foster parents.

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

26 (5) If the court finds that the child should not be placed for
27 adoption, that legal guardianship shall not be established, and
28 that there are no suitable foster parents except exclusive-use
29 homes available to provide the child with a stable and permanent
30 environment, the court may order the care, custody, and control
31 of the child transferred from the county welfare department to a
32 licensed foster family agency. The court shall consider the
33 written recommendation of the county welfare director regarding
34 the suitability of the transfer. The transfer shall be subject to
35 further court orders.

36 The licensed foster family agency shall place the child in a
37 suitable licensed or exclusive-use home that has been certified by
38 the agency as meeting licensing standards. The licensed foster
39 family agency shall be responsible for supporting the child and
40 providing appropriate services to the child, including those

1 services ordered by the court. Responsibility for the support of
2 the child shall not, in and of itself, create liability on the part of
3 the foster family agency to third persons injured by the child.
4 Those children whose care, custody, and control are transferred
5 to a foster family agency shall not be eligible for foster care
6 maintenance payments or child welfare services, except for
7 emergency response services pursuant to Section 16504.

8 (d) The proceeding for the appointment of a guardian for a
9 child who is a dependent of the juvenile court shall be in the
10 juvenile court. If the court finds pursuant to this section that legal
11 guardianship is the appropriate permanent plan, it shall appoint
12 the legal guardian and issue letters of guardianship. The
13 assessment prepared pursuant to subdivision (g) of Section 361.5,
14 subdivision (i) of Section 366.21, and subdivision (b) of Section
15 366.22 shall be read and considered by the court prior to the
16 appointment, and this shall be reflected in the minutes of the
17 court. The person preparing the assessment may be called and
18 examined by any party to the proceeding.

19 (e) The proceeding for the adoption of a child who is a
20 dependent of the juvenile court shall be in the juvenile court if
21 the court finds pursuant to this section that adoption is the
22 appropriate permanent plan and the petition for adoption is filed
23 in the juvenile court. Upon the filing of a petition for adoption,
24 the juvenile court shall order that an adoption hearing be set. The
25 court shall proceed with the adoption after the appellate rights of
26 the natural parents have been exhausted. The full report required
27 by Section 8715 of the Family Code shall be read and considered
28 by the court prior to the adoption and this shall be reflected in the
29 minutes of the court. The person preparing the report may be
30 called and examined by any party to the proceeding. It is the
31 intent of the Legislature, pursuant to this subdivision, to give
32 potential adoptive parents the option of filing in the juvenile
33 court the petition for the adoption of a child who is a dependent
34 of the juvenile court. Nothing in this section is intended to
35 prevent the filing of a petition for adoption in any other court as
36 permitted by law, instead of in the juvenile court.

37 (f) At the beginning of any proceeding pursuant to this section,
38 if the child or the parents are not being represented by previously
39 retained or appointed counsel, including, in the case of any child
40 who is not a legal permanent resident or citizen of the United

1 States, counsel appointed pursuant to subdivision (i) of Section
2 317, the court shall proceed as follows:

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

8 (2) If a parent appears without counsel and is unable to afford
9 counsel, the court shall appoint counsel for the parent, unless this
10 representation is knowingly and intelligently waived. The same
11 counsel shall not be appointed to represent both the child and his
12 or her parent. The public defender or private counsel may be
13 appointed as counsel for the parent.

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

21 (g) The court may continue the proceeding for not to exceed
22 30 days as necessary to appoint counsel, and to enable counsel to
23 become acquainted with the case.

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

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

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

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

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

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

5 (B) After testimony in chambers, the parent or parents of the
6 child may elect to have the court reporter read back the testimony
7 or have the testimony summarized by counsel for the parent or
8 parents.

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

12 (i) Any order of the court permanently terminating parental
13 rights under this section shall be conclusive and binding upon the
14 child, upon the parent or parents and upon all other persons who
15 have been served with a citation by publication or otherwise as
16 provided in this chapter. After making the order, the court shall
17 have no power to set aside, change, or modify it, but nothing in
18 this section shall be construed to limit the right to appeal the
19 order.

20 (j) If the court, by order or judgment, declares the child free
21 from the custody and control of both parents, or one parent if the
22 other does not have custody and control, the court shall at the
23 same time order the child referred to the State Department of
24 Social Services or a licensed adoption agency for adoptive
25 placement by the agency. However, a petition for adoption may
26 not be granted until the appellate rights of the natural parents
27 have been exhausted. The State Department of Social Services or
28 licensed adoption agency shall be responsible for the custody and
29 supervision of the child and shall be entitled to the exclusive care
30 and control of the child at all times until a petition for adoption is
31 granted. With the consent of the agency, the court may appoint a
32 guardian of the child, who shall serve until the child is adopted.

33 (k) Notwithstanding any other provision of law, the
34 application of any person who, as a relative caretaker or foster
35 parent, has cared for a dependent child for whom the court has
36 approved a permanent plan for adoption, or who has been freed
37 for adoption, shall be given preference with respect to that child
38 over all other applications for adoptive placement if the agency
39 making the placement determines that the child has substantial
40 emotional ties to the relative caretaker or foster parent and

1 removal from the relative caretaker or foster parent would be
2 seriously detrimental to the child's emotional well-being.

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

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

10 (A) A petition for extraordinary writ review was filed in a
11 timely manner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 634. (a) When it appears to the court that the minor or his or
15 her parent or guardian desires counsel but is unable to afford and
16 cannot for that reason employ counsel, the court may appoint
17 counsel. In a case in which the minor is alleged to be a person
18 described in Section 601 or 602, the court shall appoint counsel
19 for the minor if he or she appears at the hearing without counsel,
20 whether he or she is unable to afford counsel or not, unless there
21 is an intelligent waiver of the right of counsel by the minor. In
22 the absence of that waiver, if the parent or guardian does not
23 furnish counsel and the court determines that the parent or
24 guardian has the ability to pay for counsel, the court shall appoint
25 counsel at the expense of the parent or guardian. In any case in
26 which it appears to the court that there is a conflict of interest
27 between a parent or guardian and child that one attorney could
28 not properly represent both, the court shall appoint counsel, in
29 addition to counsel already employed by a parent or guardian or
30 appointed by the court to represent the minor or parent or
31 guardian. In a county in which there is no public defender, the
32 court may fix the compensation to be paid by the county for
33 service of that appointed counsel.

34 (b) (1) If the court finds that a ward of the court pursuant to
35 Section 601 or subdivision (a) of Section 602 is a resident of this
36 state, but is not a ~~legal~~ *lawful* permanent resident or citizen of the
37 United States, is in foster care pursuant to paragraph (1), (2), or
38 (3) of subdivision (a) of Section 727 or is deemed unlikely to
39 reunify with his or her parents as determined by a probation
40 officer, social worker, or the court, and that it is in the best

1 interest of the child, the court shall appoint an immigration
 2 attorney for the child in addition to counsel appointed pursuant to
 3 subdivision (a). *To the maximum extent practicable, the court*
 4 *shall make every effort to utilize the services of competent pro*
 5 *bono counsel who agree to provide representation to the child*
 6 *without charge.* The immigration attorney may pursue special
 7 immigrant juvenile status for the ward pursuant to Section
 8 1101(a)(27)(J) of Title 8 of the United States Code, or pursue any
 9 other avenue to obtain ~~legal~~ *lawful* permanent resident status or
 10 United States citizenship. Before January 1, 2007, the Judicial
 11 Council shall promulgate rules of court to establish standards,
 12 training requirements, and guidelines for attorneys eligible to be
 13 appointed under this paragraph.

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

17 *SEC. 4. Funding for the purposes of administering the*
 18 *provisions of this act is contingent upon an appropriation in the*
 19 *annual Budget Act or another statute.*

20 ~~SEC. 4.—~~

21 *SEC. 5.* If the Commission on State Mandates determines that
 22 this act contains costs mandated by the state, reimbursement to
 23 local agencies and school districts for those costs shall be made
 24 pursuant to Part 7 (commencing with Section 17500) of Division
 25 4 of Title 2 of the Government Code.