

AMENDED IN SENATE AUGUST 30, 2005

AMENDED IN SENATE JULY 5, 2005

AMENDED IN ASSEMBLY MAY 27, 2005

AMENDED IN ASSEMBLY APRIL 28, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1338**

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**Introduced by Assembly Member Nation**

February 22, 2005

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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 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~~ *This* bill would also provide that ~~funding for the purposes of administering the requirement to provide legal representation pursuant to~~ 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:

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

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

1 (d) The counsel appointed by the court shall represent the  
2 parent, guardian, or child at the detention hearing and at all  
3 subsequent proceedings before the juvenile court. Counsel shall  
4 continue to represent the parent or child unless relieved by the  
5 court upon the substitution of other counsel or for cause. The  
6 representation shall include representing the parent or the child in  
7 termination proceedings and in those proceedings relating to the  
8 institution or setting aside of a legal guardianship.

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

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

24 (g) In a county of the third class, if counsel is to be provided to  
25 a child at county expense other than by counsel for the agency,  
26 the court shall first utilize the services of the public defender  
27 prior to appointing private counsel, to provide legal counsel. This  
28 subdivision shall not be construed to require the appointment of  
29 the public defender in any case in which the public defender has  
30 a conflict of interest. In the interest of justice, a court may depart  
31 from that portion of the procedure requiring appointment of the  
32 public defender after making a finding of good cause and stating  
33 its reasons on the record.

34 (h) In a county of the third class, if counsel is to be appointed  
35 for a parent or guardian at county expense, the court shall first  
36 utilize the services of the alternate public defender, prior to  
37 appointing private counsel, to provide legal counsel. This  
38 subdivision shall not be construed to require the appointment of  
39 the alternate public defender in any case in which the public  
40 defender has a conflict of interest. In the interest of justice, a

1 court may depart from that portion of the procedure requiring  
2 appointment of the alternate public defender after making a  
3 finding of good cause and stating its reasons on the record.

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

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

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

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

1 regard to, or establishing legal guardianship of, the child while  
2 the child is a dependent child of the juvenile court.

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

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

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

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

22 (4) Order that the child be placed in long-term foster care,  
23 subject to the periodic review of the juvenile court under Section  
24 366.3.

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

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

1 months or that the parent has been convicted of a felony  
2 indicating parental unfitness, or, under Section 366.21 or 366.22,  
3 that the court has continued to remove the child from the custody  
4 of the parent or guardian and has terminated reunification  
5 services, shall constitute a sufficient basis for termination of  
6 parental rights unless the court finds a compelling reason for  
7 determining that termination would be detrimental to the child  
8 due to one or more of the following circumstances:

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

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

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

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

32 (E) There would be substantial interference with a child's  
33 sibling relationship, taking into consideration the nature and  
34 extent of the relationship, including, but not limited to, whether  
35 the child was raised with a sibling in the same home, whether the  
36 child shared significant common experiences or has existing  
37 close and strong bonds with a sibling, and whether ongoing  
38 contact is in the child's best interest, including the child's  
39 long-term emotional interest, as compared to the benefit of legal  
40 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 interest of the child and if a suitable guardian can  
8 be found. A child who is 10 years of age or older who is placed  
9 in a group home for six months or longer from the date the child  
10 entered foster care, shall be asked to identify any individuals,  
11 other than the child's siblings, who are important to the child, in  
12 order to identify potential guardians. The agency may ask any  
13 other child to provide that information, as appropriate.

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

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

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

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

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

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

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

36 (f) At the beginning of any proceeding pursuant to this section,  
37 if the child or the parents are not being represented by previously  
38 retained or appointed counsel, including, in the case of any child  
39 who is not a lawful 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 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 lawful permanent resident status or United  
 10 States citizenship. Before January 1, 2007, the Judicial Council  
 11 shall promulgate rules of court to establish standards, training  
 12 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~~ *The requirement to provide legal*  
 19 *representation pursuant to subdivision (i) of Section 317,*  
 20 *subdivision (f) of Section 366.26, and subdivision (b) of Section*  
 21 *634 of the Welfare and Institutions Code* is contingent upon an  
 22 appropriation in the annual Budget Act or another statute.

23 SEC. 5. If the Commission on State Mandates determines that  
 24 this act contains costs mandated by the state, reimbursement to  
 25 local agencies and school districts for those costs shall be made  
 26 pursuant to Part 7 (commencing with Section 17500) of Division  
 27 4 of Title 2 of the Government Code.