

AMENDED IN SENATE SEPTEMBER 2, 2005

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

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 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) This bill would also provide that 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) *This bill would incorporate additional changes in Section 366.26 of the Welfare and Institutions Code, proposed by AB 519, AB 1412, and SB 218, to be operative only if one or more of those bills are chaptered and become effective on or before January 1, 2006, and this bill is chaptered last.*

(5) 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

1 rules of court that establish caseload standards, training
2 requirements, and guidelines for appointed counsel for children
3 and shall adopt rules as required by Section 326.5 no later than
4 July 1, 2001.

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

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

1 responsibilities of a social worker and is not expected to provide
2 nonlegal services to the child. The court shall take whatever
3 appropriate action is necessary to fully protect the interests of the
4 child.

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

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

38 (h) In a county of the third class, if counsel is to be appointed
39 for a parent or guardian at county expense, the court shall first
40 utilize the services of the alternate public defender, prior to

1 appointing private counsel, to provide legal counsel. This
2 subdivision shall not be construed to require the appointment of
3 the alternate public defender in any case in which the public
4 defender has a conflict of interest. In the interest of justice, a
5 court may depart from that portion of the procedure requiring
6 appointment of the alternate public defender after making a
7 finding of good cause and stating its reasons on the record.

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

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

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

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

1 section and Sections 8604, 8605, 8606, and 8700 of the Family
2 Code and Chapter 5 (commencing with Section 7660) of Part 3
3 of Division 12 of the Family Code specify the exclusive
4 procedures for permanently terminating parental rights with
5 regard to, or establishing legal guardianship of, the child while
6 the child is a dependent child of the juvenile court.

7 (b) At the hearing, which shall be held in juvenile court for all
8 children who are dependents of the juvenile court, the court, in
9 order to provide stable, permanent homes for these children, shall
10 review the report as specified in Section 361.5, 366.21, or
11 366.22, shall indicate that the court has read and considered it,
12 shall receive other evidence that the parties may present, and then
13 shall make findings and orders in the following order of
14 preference:

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

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

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

26 (4) Order that the child be placed in long-term foster care,
27 subject to the periodic review of the juvenile court under Section
28 366.3.

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

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

1 subdivision (e) of Section 361.5 that reunification services shall
2 not be offered, under subdivision (e) of Section 366.21 that the
3 whereabouts of a parent have been unknown for six months or
4 that the parent has failed to visit or contact the child for six
5 months or that the parent has been convicted of a felony
6 indicating parental unfitness, or, under Section 366.21 or 366.22,
7 that the court has continued to remove the child from the custody
8 of the parent or guardian and has terminated reunification
9 services, shall constitute a sufficient basis for termination of
10 parental rights unless the court finds a compelling reason for
11 determining that termination would be detrimental to the child
12 due to one or more of the following circumstances:

13 (A) The parents or guardians have maintained regular
14 visitation and contact with the child and the child would benefit
15 from continuing the relationship.

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

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

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

36 (E) There would be substantial interference with a child's
37 sibling relationship, taking into consideration the nature and
38 extent of the relationship, including, but not limited to, whether
39 the child was raised with a sibling in the same home, whether the
40 child shared significant common experiences or has existing

1 close and strong bonds with a sibling, and whether ongoing
2 contact is in the child’s best interest, including the child’s
3 long-term emotional interest, as compared to the benefit of legal
4 permanence through adoption.

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

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

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

1 medical, physical, or mental handicap, or the child is the age of
2 seven years or more.

3 (4) (A) If the court finds that adoption of the child or
4 termination of parental rights is not in the best interest of the
5 child, because one of the conditions in subparagraph (A), (B),
6 (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the
7 court shall either order that the present caretakers or other
8 appropriate persons shall become legal guardians of the child or
9 order that the child remain in long-term foster care. Legal
10 guardianship shall be considered before long-term foster care, if
11 it is in the best interest of the child and if a suitable guardian can
12 be found. A child who is 10 years of age or older who is placed
13 in a group home for six months or longer from the date the child
14 entered foster care, shall be asked to identify any individuals,
15 other than the child's siblings, who are important to the child, in
16 order to identify potential guardians. The agency may ask any
17 other child to provide that information, as appropriate.

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

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

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

39 The licensed foster family agency shall place the child in a
40 suitable licensed or exclusive-use home that has been certified by

1 the agency as meeting licensing standards. The licensed foster
2 family agency shall be responsible for supporting the child and
3 providing appropriate services to the child, including those
4 services ordered by the court. Responsibility for the support of
5 the child shall not, in and of itself, create liability on the part of
6 the foster family agency to third persons injured by the child.
7 Those children whose care, custody, and control are transferred
8 to a foster family agency shall not be eligible for foster care
9 maintenance payments or child welfare services, except for
10 emergency response services pursuant to Section 16504.

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

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

1 (f) At the beginning of any proceeding pursuant to this section,
2 if the child or the parents are not being represented by previously
3 retained or appointed counsel, including, in the case of any child
4 who is not a lawful permanent resident or citizen of the United
5 States, counsel appointed pursuant to subdivision (i) of Section
6 317, the court shall proceed as follows:

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

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

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

25 (g) The court may continue the proceeding for not to exceed
26 30 days as necessary to appoint counsel, and to enable counsel to
27 become acquainted with the case.

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

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

38 (3) (A) The testimony of the child may be taken in chambers
39 and outside the presence of the child's parent or parents, if the

1 child's parent or parents are represented by counsel, the counsel
2 is present, and any of the following circumstances exist:

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

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

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

9 (B) After testimony in chambers, the parent or parents of the
10 child may elect to have the court reporter read back the testimony
11 or have the testimony summarized by counsel for the parent or
12 parents.

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

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

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

37 (k) Notwithstanding any other provision of law, the
38 application of any person who, as a relative caretaker or foster
39 parent, has cared for a dependent child for whom the court has
40 approved a permanent plan for adoption, or who has been freed

1 for adoption, shall be given preference with respect to that child
2 over all other applications for adoptive placement if the agency
3 making the placement determines that the child has substantial
4 emotional ties to the relative caretaker or foster parent and
5 removal from the relative caretaker or foster parent would be
6 seriously detrimental to the child's emotional well-being.

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

11 (D) (1) An order by the court that a hearing pursuant to this
12 section be held is not appealable at any time unless all of the
13 following applies:

14 (A) A petition for extraordinary writ review was filed in a
15 timely manner.

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

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

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

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

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

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

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

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

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

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

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

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

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

17 *SEC. 2.1. Section 366.26 of the Welfare and Institutions Code*
18 *is amended to read:*

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

36 (b) At the hearing, ~~that~~ *which* shall be held in juvenile court
37 for all children who are dependents of the juvenile court, the
38 court, in order to provide stable, permanent homes for these
39 children, shall review the report as specified in Section 361.5,
40 366.21, or 366.22, shall indicate that the court has read and

1 considered it, shall receive other evidence that the parties may
2 present, and then shall make findings and orders in the following
3 order of preference:

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

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

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

15 (4) Order that the child be placed in long-term foster care,
16 subject to the periodic review of the juvenile court under Section
17 366.3.

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

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

1 determining that termination would be detrimental to the child
2 due to one or more of the following circumstances:

3 (A) The parents or guardians have maintained regular
4 visitation and contact with the child and the child would benefit
5 from continuing the relationship.

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

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

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

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

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

38 (2) The court shall not terminate parental rights if at each ~~and~~
39 ~~every~~ hearing at which the court was required to consider
40 reasonable efforts or services, the court has found that reasonable

1 efforts were not made or that reasonable services were not
2 offered or provided.

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

33 (4) (A) If the court finds that adoption of the child or
34 termination of parental rights is not in the best interest of the
35 child, because one of the conditions in subparagraph (A), (B),
36 (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the
37 court shall either order that the present caretakers or other
38 appropriate persons shall become legal guardians of the child or
39 order that the child remain in long-term foster care. Legal
40 guardianship shall be considered before long-term foster care, if

1 it is in the best-~~interests~~ *interest* of the child and if a suitable
2 guardian can be found. A child who is 10 years of age or older
3 who is placed in a group home for six months or longer from the
4 date the child entered foster care, shall be asked to identify any
5 individuals, other than the child's siblings, who are important to
6 the child, in order to identify potential guardians. The agency
7 may ask any other child to provide that information, as
8 appropriate.

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

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

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

30 The licensed foster family agency shall place the child in a
31 suitable licensed or exclusive-use home that has been certified by
32 the agency as meeting licensing standards. The licensed foster
33 family agency shall be responsible for supporting the child and
34 providing appropriate services to the child, including those
35 services ordered by the court. Responsibility for the support of
36 the child shall not, in and of itself, create liability on the part of
37 the foster family agency to third persons injured by the child.
38 Those children whose care, custody, and control are transferred
39 to a foster family agency shall not be eligible for foster care

1 maintenance payments or child welfare services, except for
2 emergency response services pursuant to Section 16504.

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

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

32 (f) At the beginning of any proceeding pursuant to this section,
33 if the child or the parents are not being represented by previously
34 retained or appointed counsel, *including, in the case of any child*
35 *who is not a lawful permanent resident or citizen of the United*
36 *States, counsel appointed pursuant to subdivision (i) of Section*
37 *317, the court shall proceed as follows:*

38 (1) In accordance with subdivision (c) of Section 317, if a
39 child before the court is without counsel, the court shall appoint
40 counsel unless the court finds that the child would not benefit

1 from the appointment of counsel. The court shall state on the
2 record its reasons for that finding.

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

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

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

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

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

29 (3) (A) The testimony of the child may be taken in chambers
30 and outside the presence of the child's parent or parents, if the
31 child's parent or parents are represented by counsel, the counsel
32 is present, and any of the following circumstances ~~exist~~ *exists*:

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

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

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

39 (B) After testimony in chambers, the parent or parents of the
40 child may elect to have the court reporter read back the testimony

1 or have the testimony summarized by counsel for the parent or
2 parents.

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

6 (i) (1) Any order of the court permanently terminating
7 parental rights under this section shall be conclusive and binding
8 upon the child, upon the parent or parents and upon all other
9 persons who have been served with a citation by publication or
10 otherwise as provided in this chapter. After making the order, the
11 juvenile court shall have no power to set aside, change, or modify
12 it, *except as provided in paragraph (2)*, but nothing in this
13 section shall be construed to limit the right to appeal the order.

14 (2) *A child who has not been adopted after the passage of at
15 least three years from the date the court terminated parental
16 rights and for whom the court has determined that adoption is no
17 longer the permanent plan may petition the juvenile court to
18 reinstate parental rights pursuant to the procedure prescribed by
19 Section 388. The child may file the petition prior to the
20 expiration of this three-year period if the State Department of
21 Social Services or licensed adoption agency that is responsible
22 for custody and supervision of the child as described in
23 subdivision (j) and the child stipulate that the child is no longer
24 likely to be adopted. A child over 12 years of age shall sign the
25 petition in the absence of a showing of good cause as to why the
26 child could not do so. If it appears that the best interests of the
27 child may be promoted by reinstatement of parental rights, the
28 court shall order that a hearing be held and shall give prior
29 notice, or cause prior notice to be given, to the social worker or
30 probation officer and to the child's attorney of record, or, if there
31 is no attorney of record for the child, to the child, and the child's
32 tribe, if applicable, by means prescribed by subdivision (c) of
33 Section 297. The court shall order the child or the social worker
34 or probation officer to give prior notice of the hearing to the
35 child's former parent or parents whose parental rights were
36 terminated in the manner prescribed by subdivision (f) of Section
37 294 where the recommendation is adoption. The juvenile court
38 shall grant the petition if it finds by clear and convincing
39 evidence that the child is no longer likely to be adopted and that
40 reinstatement of parental rights is in the child's best interest. If*

1 *the court reinstates parental rights over a child who is under 12*
2 *years of age and for whom the new permanent plan will not be*
3 *reunification with a parent or legal guardian, the court shall*
4 *specify the factual basis for its findings that it is in the best*
5 *interest of the child to reinstate parental rights. This subdivision*
6 *is intended to be retroactive and applies to any child who is*
7 *under the jurisdiction of the juvenile court at the time of the*
8 *hearing regardless of the date parental rights were terminated.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 *SEC. 2.2. Section 366.26 of the Welfare and Institutions Code*
2 *is amended to read:*

3 366.26. (a) This section applies to children who are adjudged
4 dependent children of the juvenile court pursuant to subdivision
5 (c) of Section 360. The procedures specified ~~herein~~ *in this section*
6 are the exclusive procedures for conducting these hearings; Part
7 2 (commencing with Section 3020) of Division 8 of the Family
8 Code is not applicable to these proceedings. Section 8714.7 of
9 the Family Code is applicable and available to all dependent
10 children meeting the requirements of that section, if the
11 postadoption contact agreement has been entered into
12 voluntarily. For children who are adjudged dependent children of
13 the juvenile court pursuant to subdivision (c) of Section 360, this
14 section and Sections 8604, 8605, 8606, and 8700 of the Family
15 Code and Chapter 5 (commencing with Section 7660) of Part 3
16 of Division 12 of the Family Code specify the exclusive
17 procedures for permanently terminating parental rights with
18 regard to, or establishing legal guardianship of, the child while
19 the child is a dependent child of the juvenile court.

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

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

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

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

1 (4) Order that the child be placed in long-term foster care,
2 subject to the periodic review of the juvenile court under Section
3 366.3.

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

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

28 (A) The parents or guardians have maintained regular
29 visitation and contact with the child and the child would benefit
30 from continuing the relationship.

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

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

38 (D) The child is living with a relative or foster parent who is
39 unable or unwilling to adopt the child because of exceptional
40 circumstances, that do not include an unwillingness to accept

1 legal or financial responsibility for the child, but who is willing
2 and capable of providing the child with a stable and permanent
3 environment and the removal of the child from the physical
4 custody of his or her relative or foster parent would be
5 detrimental to the emotional well-being of the child. This
6 subparagraph does not apply to any child who is living with a
7 nonrelative and who is either (i) under six years of age or (ii) a
8 member of a sibling group where at least one child is under six
9 years of age and the siblings are, or should be, permanently
10 placed together.

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (f) At the beginning of any proceeding pursuant to this section,
17 if the child or the parents are not being represented by previously
18 retained or appointed counsel, *including, in the case of any child*
19 *who is not a lawful permanent resident or citizen of the United*
20 *States, counsel appointed pursuant to subdivision (i) of Section*
21 *317, the court shall proceed as follows:*

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

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

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

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

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

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

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

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

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

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

24 (B) After testimony in chambers, the parent or parents of the
25 child may elect to have the court reporter read back the testimony
26 or have the testimony summarized by counsel for the parent or
27 parents.

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

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

39 (j) If the court, by order or judgment, declares the child free
40 from the custody and control of both parents, or one parent if the

1 other does not have custody and control, the court shall at the
2 same time order the child referred to the State Department of
3 Social Services or a licensed adoption agency for adoptive
4 placement by the agency. However, a petition for adoption may
5 not be granted until the appellate rights of the natural parents
6 have been exhausted. The State Department of Social Services or
7 licensed adoption agency shall be responsible for the custody and
8 supervision of the child and shall be entitled to the exclusive care
9 and control of the child at all times until a petition for adoption is
10 granted. With the consent of the agency, the court may appoint a
11 guardian of the child, who shall serve until the child is adopted.

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

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

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

29 (A) A petition for extraordinary writ review was filed in a
30 timely manner.

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

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

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

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

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

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

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

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

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

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

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

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

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

31 *(n) The implementation and operation of the amendments to*
32 *paragraph (3) of subdivision (c) and subparagraph (A) of*
33 *paragraph (4) of subdivision (c) enacted at the 2005-06 Regular*
34 *Session shall be subject to appropriation through the budget*
35 *process and by phase, as provided in Section 366.35.*

36 *SEC. 2.3. Section 366.26 of the Welfare and Institutions Code*
37 *is amended to read:*

38 366.26. (a) This section applies to children who are adjudged
39 dependent children of the juvenile court pursuant to subdivision
40 (c) of Section 360. The procedures specified ~~herein~~ *in this section*

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

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

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

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

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

34 (4) Order that the child be placed in long-term foster care,
35 subject to the periodic review of the juvenile court under Section
36 366.3.

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

39 (c) (1) If the court determines, based on the assessment
40 provided as ordered under subdivision (i) of Section 366.21 or

1 subdivision (b) of Section 366.22, and any other relevant
2 evidence, by a clear and convincing standard, that it is likely the
3 child will be adopted, the court shall terminate parental rights and
4 order the child placed for adoption. The fact that the child is not
5 yet placed in a preadoptive home nor with a relative or foster
6 family who is prepared to adopt the child, shall not constitute a
7 basis for the court to conclude that it is not likely the child will
8 be adopted. A finding under subdivision (b) or paragraph (1) of
9 subdivision (e) of Section 361.5 that reunification services shall
10 not be offered, under subdivision (e) of Section 366.21 that the
11 whereabouts of a parent have been unknown for six months or
12 that the parent has failed to visit or contact the child for six
13 months or that the parent has been convicted of a felony
14 indicating parental unfitness, or, under Section 366.21 or 366.22,
15 that the court has continued to remove the child from the custody
16 of the parent or guardian and has terminated reunification
17 services, shall constitute a sufficient basis for termination of
18 parental rights unless the court finds a compelling reason for
19 determining that termination would be detrimental to the child
20 due to one or more of the following circumstances:

21 (A) The parents or guardians have maintained regular
22 visitation and contact with the child and the child would benefit
23 from continuing the relationship.

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

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

31 (D) The child is living with a relative or foster parent who is
32 unable or unwilling to adopt the child because of exceptional
33 circumstances, that do not include an unwillingness to accept
34 legal or financial responsibility for the child, but who is willing
35 and capable of providing the child with a stable and permanent
36 environment and the removal of the child from the physical
37 custody of his or her relative or foster parent would be
38 detrimental to the emotional well-being of the child. This
39 subparagraph does not apply to any child who is living with a
40 nonrelative and who is either (i) under six years of age or (ii) a

1 member of a sibling group where at least one child is under six
2 years of age and the siblings are, or should be, permanently
3 placed together.

4 (E) There would be substantial interference with a child's
5 sibling relationship, taking into consideration the nature and
6 extent of the relationship, including, but not limited to, whether
7 the child was raised with a sibling in the same home, whether the
8 child shared significant common experiences or has existing
9 close and strong bonds with a sibling, and whether ongoing
10 contact is in the child's best interest, including the child's
11 long-term emotional interest, as compared to the benefit of legal
12 permanence through adoption.

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

16 (2) The court shall not terminate parental rights if at each and
17 every hearing at which the court was required to consider
18 reasonable efforts or services, the court has found that reasonable
19 efforts were not made or that reasonable services were not
20 offered or provided.

21 (3) If the court finds that termination of parental rights would
22 not be detrimental to the child pursuant to paragraph (1) and that
23 the child has a probability for adoption but is difficult to place for
24 adoption and there is no identified or available prospective
25 adoptive parent, the court may identify adoption as the
26 permanent placement goal and without terminating parental
27 rights, order that efforts be made to locate an appropriate
28 adoptive family for the child within a period not to exceed 180
29 days. During this 180-day period, the public agency responsible
30 for seeking adoptive parents for each child shall, to the extent
31 possible, ask each child who is 10 years of age or older who is
32 placed in a group home for six months or longer from the date
33 the child entered foster care, to identify any individuals, other
34 than the child's siblings, who are important to the child, in order
35 to identify potential adoptive parents. The public agency may ask
36 any other child to provide that information, as appropriate.
37 During the 180-day period, the public agency shall, to the extent
38 possible, contact other private and public adoption agencies
39 regarding the availability of the child for adoption. During the
40 180-day period, the public agency shall conduct the search for

1 adoptive parents in the same manner as prescribed for children in
2 Sections 8708 and 8709 of the Family Code. At the expiration of
3 this period, another hearing shall be held and the court shall
4 proceed pursuant to paragraph (1) or (3) of subdivision (b). For
5 purposes of this section, a child may only be found to be difficult
6 to place for adoption if there is no identified or available
7 prospective adoptive parent for the child because of the child's
8 membership in a sibling group, or the presence of a diagnosed
9 medical, physical, or mental handicap, or the child is the age of
10 seven years or more.

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

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

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

38 (5) If the court finds that the child should not be placed for
39 adoption, that legal guardianship shall not be established, and
40 that there are no suitable foster parents except exclusive-use

1 homes available to provide the child with a stable and permanent
2 environment, the court may order the care, custody, and control
3 of the child transferred from the county welfare department to a
4 licensed foster family agency. The court shall consider the
5 written recommendation of the county welfare director regarding
6 the suitability of the transfer. The transfer shall be subject to
7 further court orders.

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

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

31 (e) The proceeding for the adoption of a child who is a
32 dependent of the juvenile court shall be in the juvenile court if
33 the court finds pursuant to this section that adoption is the
34 appropriate permanent plan and the petition for adoption is filed
35 in the juvenile court. Upon the filing of a petition for adoption,
36 the juvenile court shall order that an adoption hearing be set. The
37 court shall proceed with the adoption after the appellate rights of
38 the natural parents have been exhausted. The full report required
39 by Section 8715 of the Family Code shall be read and considered
40 by the court prior to the adoption and this shall be reflected in the

1 minutes of the court. The person preparing the report may be
2 called and examined by any party to the proceeding. It is the
3 intent of the Legislature, pursuant to this subdivision, to give
4 potential adoptive parents the option of filing in the juvenile
5 court the petition for the adoption of a child who is a dependent
6 of the juvenile court. Nothing in this section is intended to
7 prevent the filing of a petition for adoption in any other court as
8 permitted by law, instead of in the juvenile court.

9 (f) At the beginning of any proceeding pursuant to this section,
10 if the child or the parents are not being represented by previously
11 retained or appointed counsel, *including, in the case of any child*
12 *who is not a lawful permanent resident or citizen of the United*
13 *States, counsel appointed pursuant to subdivision (i) of Section*
14 *317, the court shall proceed as follows:*

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

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

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

33 (g) The court may continue the proceeding for not to exceed
34 30 days as necessary to appoint counsel, and to enable counsel to
35 become acquainted with the case.

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

39 (2) In accordance with Section 349, the child shall be present
40 in court if the child or the child's counsel so requests or the court

1 so orders. If the child is 10 years of age or older and is not
2 present at a hearing held pursuant to this section, the court shall
3 determine whether the minor was properly notified of his or her
4 right to attend the hearing and inquire as to the reason why the
5 child is not present.

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

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

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

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

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

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

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

31 (j) If the court, by order or judgment, declares the child free
32 from the custody and control of both parents, or one parent if the
33 other does not have custody and control, the court shall at the
34 same time order the child referred to the State Department of
35 Social Services or a licensed adoption agency for adoptive
36 placement by the agency. However, a petition for adoption may
37 not be granted until the appellate rights of the natural parents
38 have been exhausted. The State Department of Social Services or
39 licensed adoption agency shall be responsible for the custody and
40 supervision of the child and shall be entitled to the exclusive care

1 and control of the child at all times until a petition for adoption is
2 granted, *except as specified in subdivision (n)*. With the consent
3 of the agency, the court may appoint a guardian of the child, who
4 shall serve until the child is adopted.

5 (k) Notwithstanding any other provision of law, the
6 application of any person who, as a relative caretaker or foster
7 parent, has cared for a dependent child for whom the court has
8 approved a permanent plan for adoption, or who has been freed
9 for adoption, shall be given preference with respect to that child
10 over all other applications for adoptive placement if the agency
11 making the placement determines that the child has substantial
12 emotional ties to the relative caretaker or foster parent and
13 removal from the relative caretaker or foster parent would be
14 seriously detrimental to the child's emotional well-being.

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

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

22 (A) A petition for extraordinary writ review was filed in a
23 timely manner.

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

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

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

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

36 (A) A trial court, after issuance of an order directing a hearing
37 pursuant to this section be held, shall advise all parties of the
38 requirement of filing a petition for extraordinary writ review as
39 set forth in this subdivision in order to preserve any right to
40 appeal in these issues. This notice shall be made orally to a party

1 if the party is present at the time of the making of the order or by
2 first-class mail by the clerk of the court to the last known address
3 of a party not present at the time of the making of the order.

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

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

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

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

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

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

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

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

24 *(n) (1) Notwithstanding Section 8704 of the Family Code or*
25 *any other provision of law, the court, at a hearing held pursuant*
26 *to this section or anytime thereafter, may designate a current*
27 *caretaker as a prospective adoptive parent if the child has lived*
28 *with the caretaker for at least six months, the caretaker currently*
29 *expresses a commitment to adopt the child, and the caretaker has*
30 *taken at least one step to facilitate the adoption process. In*
31 *determining whether to make that designation, the court may*
32 *take into consideration whether the caretaker is listed in the*
33 *preliminary assessment prepared by the county department in*
34 *accordance with subdivision (i) of Section 366.21 as an*
35 *appropriate person to be considered as an adoptive parent for*
36 *the child and the recommendation of the State Department of*
37 *Social Services or licensed adoption agency.*

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

40 *(A) Applying for an adoption homestudy.*

- 1 (B) Cooperating with an adoption homestudy.
 - 2 (C) Being designated by the court or the licensed adoption
 - 3 agency as the adoptive family.
 - 4 (D) Requesting *de facto* parent status.
 - 5 (E) Signing an adoptive placement agreement.
 - 6 (F) Engaging in discussions regarding a postadoption contact
 - 7 agreement.
 - 8 (G) Working to overcome any impediments that have been
 - 9 identified by the State Department of Social Services and the
 - 10 licensed adoption agency.
 - 11 (H) Attending classes required of prospective adoptive
 - 12 parents.
- 13 (3) Prior to a change in placement and as soon as possible
- 14 after a decision is made to remove a child from the home of a
- 15 designated prospective adoptive parent, the agency shall notify
- 16 the court, the designated prospective adoptive parent or the
- 17 current caretaker, if that caretaker would have met the threshold
- 18 criteria to be designated as a prospective adoptive parent
- 19 pursuant to paragraph (1) on the date of service of this notice,
- 20 the child's attorney, and the child, if the child is 10 years of age
- 21 or older, of the proposal in the manner described in Section
- 22 16010.6.
- 23 (A) Within five court days or seven calendar days, whichever
- 24 is longer, of the date of notification, the child, the child's
- 25 attorney, or the designated prospective adoptive parent may file
- 26 a petition with the court objecting to the proposal to remove the
- 27 child, or the court, upon its own motion, may set a hearing
- 28 regarding the proposal. The court may, for good cause, extend
- 29 the filing period. A caretaker who would have met the threshold
- 30 criteria to be designated as a prospective adoptive parent
- 31 pursuant to paragraph (1) on the date of service of the notice of
- 32 proposed removal of the child may file, together with the petition
- 33 under this subparagraph, a petition for an order designating the
- 34 caretaker as a prospective adoptive parent for purposes of this
- 35 subdivision.
- 36 (B) A hearing ordered pursuant to this paragraph shall be
- 37 held as soon as possible and not later than five court days after
- 38 the petition is filed with the court or the court sets a hearing
- 39 upon its own motion, unless the court for good cause is unable to
- 40 set the matter for hearing five court days after the petition is

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

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

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

31 (4) Notwithstanding paragraph (3), if the State Department of
32 Social Services or a licensed adoption agency determines that the
33 child must be removed from the home of the caretaker who is or
34 may be a designated prospective adoptive parent immediately,
35 due to a risk of physical or emotional harm, the agency may
36 remove the child from that home and is not required to provide
37 notice prior to the removal. However, as soon as possible and
38 not longer than two court days after the removal, the agency
39 shall notify the court, the caretaker who is or may be a
40 designated prospective adoptive parent, the child's attorney, and

1 *the child, if the child is 10 years of age or older, of the removal.*
2 *Within five court days or seven calendar days, whichever is*
3 *longer, of the date of notification of the removal, the child, the*
4 *child's attorney, or the caretaker who is or may be a designated*
5 *prospective adoptive parent may petition for, or the court on its*
6 *own motion may set, a noticed hearing pursuant to paragraph*
7 *(3). The court may, for good cause, extend the filing period.*

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

11 *(6) Nothing in this section shall preclude a county child*
12 *protective services agency from fully investigating and*
13 *responding to alleged abuse or neglect of a child pursuant to*
14 *Section 11165.5 of the Penal Code.*

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

18 *SEC. 2.4. Section 366.26 of the Welfare and Institutions Code*
19 *is amended to read:*

20 366.26. (a) This section applies to children who are adjudged
21 dependent children of the juvenile court pursuant to subdivision
22 (c) of Section 360. The procedures specified ~~herein~~ *in this section*
23 *are the exclusive procedures for conducting these hearings; Part*
24 *2 (commencing with Section 3020) of Division 8 of the Family*
25 *Code is not applicable to these proceedings. Section 8714.7 of*
26 *the Family Code is applicable and available to all dependent*
27 *children meeting the requirements of that section, if the*
28 *postadoption contact agreement has been entered into*
29 *voluntarily. For children who are adjudged dependent children of*
30 *the juvenile court pursuant to subdivision (c) of Section 360, this*
31 *section and Sections 8604, 8605, 8606, and 8700 of the Family*
32 *Code and Chapter 5 (commencing with Section 7660) of Part 3*
33 *of Division 12 of the Family Code specify the exclusive*
34 *procedures for permanently terminating parental rights with*
35 *regard to, or establishing legal guardianship of, the child while*
36 *the child is a dependent child of the juvenile court.*

37 (b) At the hearing, ~~that~~ *which* shall be held in juvenile court
38 for all children who are dependents of the juvenile court, the
39 court, in order to provide stable, permanent homes for these
40 children, shall review the report as specified in Section 361.5,

1 366.21, or 366.22, shall indicate that the court has read and
2 considered it, shall receive other evidence that the parties may
3 present, and then shall make findings and orders in the following
4 order of preference:

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

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

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

16 (4) Order that the child be placed in long-term foster care,
17 subject to the periodic review of the juvenile court under Section
18 366.3.

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

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

1 determining that termination would be detrimental to the child
2 due to one or more of the following circumstances:

3 (A) The parents or guardians have maintained regular
4 visitation and contact with the child and the child would benefit
5 from continuing the relationship.

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

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

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

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

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

38 (2) The court shall not terminate parental rights if at each ~~and~~
39 ~~every~~ hearing at which the court was required to consider
40 reasonable efforts or services, the court has found that reasonable

1 efforts were not made or that reasonable services were not
2 offered or provided.

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

33 (4) (A) If the court finds that adoption of the child or
34 termination of parental rights is not in the best interest of the
35 child, because one of the conditions in subparagraph (A), (B),
36 (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the
37 court shall either order that the present caretakers or other
38 appropriate persons shall become legal guardians of the child or
39 order that the child remain in long-term foster care. Legal
40 guardianship shall be considered before long-term foster care, if

1 it is in the best-~~interests~~ *interest* of the child and if a suitable
2 guardian can be found. A child who is 10 years of age or older
3 ~~who is placed in a group home for six months or longer from the~~
4 ~~date the child entered foster care~~, shall be asked to identify any
5 individuals, other than the child's siblings, who are important to
6 the child, in order to identify potential guardians. The agency
7 may ask any other child to provide that information, as
8 appropriate.

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

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

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

30 The licensed foster family agency shall place the child in a
31 suitable licensed or exclusive-use home that has been certified by
32 the agency as meeting licensing standards. The licensed foster
33 family agency shall be responsible for supporting the child and
34 providing appropriate services to the child, including those
35 services ordered by the court. Responsibility for the support of
36 the child shall not, in and of itself, create liability on the part of
37 the foster family agency to third persons injured by the child.
38 Those children whose care, custody, and control are transferred
39 to a foster family agency shall not be eligible for foster care

1 maintenance payments or child welfare services, except for
2 emergency response services pursuant to Section 16504.

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

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

32 (f) At the beginning of any proceeding pursuant to this section,
33 if the child or the parents are not being represented by previously
34 retained or appointed counsel, *including, in the case of any child*
35 *who is not a lawful permanent resident or citizen of the United*
36 *States, counsel appointed pursuant to subdivision (i) of Section*
37 *317, the court shall proceed as follows:*

38 (1) In accordance with subdivision (c) of Section 317, if a
39 child before the court is without counsel, the court shall appoint
40 counsel unless the court finds that the child would not benefit

1 from the appointment of counsel. The court shall state on the
2 record its reasons for that finding.

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

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

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

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

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

29 (3) (A) The testimony of the child may be taken in chambers
30 and outside the presence of the child's parent or parents, if the
31 child's parent or parents are represented by counsel, the counsel
32 is present, and any of the following circumstances ~~exist~~ *exists*:

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

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

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

39 (B) After testimony in chambers, the parent or parents of the
40 child may elect to have the court reporter read back the testimony

1 or have the testimony summarized by counsel for the parent or
2 parents.

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

6 (i) (1) Any order of the court permanently terminating
7 parental rights under this section shall be conclusive and binding
8 upon the child, upon the parent or parents and upon all other
9 persons who have been served with a citation by publication or
10 otherwise as provided in this chapter. After making the order, the
11 juvenile court shall have no power to set aside, change, or modify
12 it, *except as provided in paragraph (2)*, but nothing in this
13 section shall be construed to limit the right to appeal the order.

14 (2) *A child who has not been adopted after the passage of at
15 least three years from the date the court terminated parental
16 rights and for whom the court has determined that adoption is no
17 longer the permanent plan may petition the juvenile court to
18 reinstate parental rights pursuant to the procedure prescribed by
19 Section 388. The child may file the petition prior to the
20 expiration of this three-year period if the State Department of
21 Social Services or licensed adoption agency that is responsible
22 for custody and supervision of the child as described in
23 subdivision (j) and the child stipulate that the child is no longer
24 likely to be adopted. A child over 12 years of age shall sign the
25 petition in the absence of a showing of good cause as to why the
26 child could not do so. If it appears that the best interests of the
27 child may be promoted by reinstatement of parental rights, the
28 court shall order that a hearing be held and shall give prior
29 notice, or cause prior notice to be given, to the social worker or
30 probation officer and to the child's attorney of record, or, if there
31 is no attorney of record for the child, to the child, and the child's
32 tribe, if applicable, by means prescribed by subdivision (c) of
33 Section 297. The court shall order the child or the social worker
34 or probation officer to give prior notice of the hearing to the
35 child's former parent or parents whose parental rights were
36 terminated in the manner prescribed by subdivision (f) of Section
37 294 where the recommendation is adoption. The juvenile court
38 shall grant the petition if it finds by clear and convincing
39 evidence that the child is no longer likely to be adopted and that
40 reinstatement of parental rights is in the child's best interest. If*

1 *the court reinstates parental rights over a child who is under 12*
2 *years of age and for whom the new permanent plan will not be*
3 *reunification with a parent or legal guardian, the court shall*
4 *specify the factual basis for its findings that it is in the best*
5 *interest of the child to reinstate parental rights. This subdivision*
6 *is intended to be retroactive and applies to any child who is*
7 *under the jurisdiction of the juvenile court at the time of the*
8 *hearing regardless of the date parental rights were terminated.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 *(n) The implementation and operation of the amendments to*
2 *paragraph (3) of subdivision (c) and subparagraph (A) of*
3 *paragraph (4) of subdivision (c) enacted at the 2005-06 Regular*
4 *Session shall be subject to appropriation through the budget*
5 *process and by phase, as provided in Section 366.35.*

6 *SEC. 2.5. 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~~ *in this section*
11 are the exclusive procedures for conducting these hearings; Part
12 2 (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~~ *which* shall be held in juvenile court
26 for all children who are dependents of the juvenile court, the
27 court, in order to provide stable, permanent homes for these
28 children, shall review the report as specified in Section 361.5,
29 366.21, or 366.22, shall indicate that the court has read and
30 considered it, shall receive other evidence that the parties may
31 present, and then shall make findings and orders in the following
32 order of 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~~ *interest* of the child and if a suitable
32 guardian can be found. A child who is 10 years of age or older
33 who is placed in a group home for six months or longer from the
34 date the child entered foster care, shall be asked to identify any
35 individuals, other than the child's siblings, who are important to
36 the child, in order to identify potential guardians. The agency
37 may ask any other child to provide that information, as
38 appropriate.

39 (B) If the child is living with a relative or a foster parent who
40 is willing and capable of providing a stable and permanent

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

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

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

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

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

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) (1) Any order of the court permanently terminating
36 parental rights under this section shall be conclusive and binding
37 upon the child, upon the parent or parents and upon all other
38 persons who have been served with a citation by publication or
39 otherwise as provided in this chapter. After making the order, the
40 *juvenile* court shall have no power to set aside, change, or modify

1 it, *except as provided in paragraph (2)*, but nothing in this
2 section shall be construed to limit the right to appeal the order.

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

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

1 same time order the child referred to the State Department of
2 Social Services or a licensed adoption agency for adoptive
3 placement by the agency. However, a petition for adoption may
4 not be granted until the appellate rights of the natural parents
5 have been exhausted. The State Department of Social Services or
6 licensed adoption agency shall be responsible for the custody and
7 supervision of the child and shall be entitled to the exclusive care
8 and control of the child at all times until a petition for adoption is
9 granted, *except as specified in subdivision (n)*. With the consent
10 of the agency, the court may appoint a guardian of the child, who
11 shall serve until the child is adopted.

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

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

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

29 (A) A petition for extraordinary writ review was filed in a
30 timely manner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 *(A) Applying for an adoption homestudy.*

8 *(B) Cooperating with an adoption homestudy.*

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

11 *(D) Requesting de facto parent status.*

12 *(E) Signing an adoptive placement agreement.*

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

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

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

20 *(3) Prior to a change in placement and as soon as possible*
21 *after a decision is made to remove a child from the home of a*
22 *designated prospective adoptive parent, the agency shall notify*
23 *the court, the designated prospective adoptive parent or the*
24 *current caretaker, if that caretaker would have met the threshold*
25 *criteria to be designated as a prospective adoptive parent*
26 *pursuant to paragraph (1) on the date of service of this notice,*
27 *the child's attorney, and the child, if the child is 10 years of age*
28 *or older, of the proposal in the manner described in Section*
29 *16010.6.*

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

1 caretaker as a prospective adoptive parent for purposes of this
2 subdivision.

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

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

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

38 (4) Notwithstanding paragraph (3), if the State Department of
39 Social Services or a licensed adoption agency determines that the
40 child must be removed from the home of the caretaker who is or

1 *may be a designated prospective adoptive parent immediately,*
2 *due to a risk of physical or emotional harm, the agency may*
3 *remove the child from that home and is not required to provide*
4 *notice prior to the removal. However, as soon as possible and*
5 *not longer than two court days after the removal, the agency*
6 *shall notify the court, the caretaker who is or may be a*
7 *designated prospective adoptive parent, the child's attorney, and*
8 *the child, if the child is 10 years of age or older, of the removal.*
9 *Within five court days or seven calendar days, whichever is*
10 *longer, of the date of notification of the removal, the child, the*
11 *child's attorney, or the caretaker who is or may be a designated*
12 *prospective adoptive parent may petition for, or the court on its*
13 *own motion may set, a noticed hearing pursuant to paragraph*
14 *(3). The court may, for good cause, extend the filing period.*

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

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

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

25 *SEC. 2.6. Section 366.26 of the Welfare and Institutions Code*
26 *is amended to read:*

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

1 procedures for permanently terminating parental rights with
2 regard to, or establishing legal guardianship of, the child while
3 the child is a dependent child of the juvenile court.

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

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

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

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

23 (4) Order that the child be placed in long-term foster care,
24 subject to the periodic review of the juvenile court under Section
25 366.3.

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

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

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

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

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

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

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

33 (E) There would be substantial interference with a child's
34 sibling relationship, taking into consideration the nature and
35 extent of the relationship, including, but not limited to, whether
36 the child was raised with a sibling in the same home, whether the
37 child shared significant common experiences or has existing
38 close and strong bonds with a sibling, and whether ongoing
39 contact is in the child's best interest, including the child's

1 long-term emotional interest, as compared to the benefit of legal
2 permanence through adoption.

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

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

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

1 (4) (A) If the court finds that adoption of the child or
2 termination of parental rights is not in the best interest of the
3 child, because one of the conditions in subparagraph (A), (B),
4 (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the
5 court shall either order that the present caretakers or other
6 appropriate persons shall become legal guardians of the child or
7 order that the child remain in long-term foster care. Legal
8 guardianship shall be considered before long-term foster care, if
9 it is in the best ~~interests~~ *interest* of the child and if a suitable
10 guardian can be found. A child who is 10 years of age or older
11 ~~who is placed in a group home for six months or longer from the~~
12 ~~date the child entered foster care~~, shall be asked to identify any
13 individuals, other than the child's siblings, who are important to
14 the child, in order to identify potential guardians. The agency
15 may ask any other child to provide that information, as
16 appropriate.

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

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

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

38 The licensed foster family agency shall place the child in a
39 suitable licensed or exclusive-use home that has been certified by
40 the agency as meeting licensing standards. The licensed foster

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

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

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

39 (f) At the beginning of any proceeding pursuant to this section,
40 if the child or the parents are not being represented by previously

1 retained or appointed counsel, *including, in the case of any child*
2 *who is not a lawful permanent resident or citizen of the United*
3 *States, counsel appointed pursuant to subdivision (i) of Section*
4 *317, the court shall proceed as follows:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (k) Notwithstanding any other provision of law, the
37 application of any person who, as a relative caretaker or foster
38 parent, has cared for a dependent child for whom the court has
39 approved a permanent plan for adoption, or who has been freed
40 for adoption, shall be given preference with respect to that child

1 over all other applications for adoptive placement if the agency
2 making the placement determines that the child has substantial
3 emotional ties to the relative caretaker or foster parent and
4 removal from the relative caretaker or foster parent would be
5 seriously detrimental to the child's emotional well-being.

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

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

13 (A) A petition for extraordinary writ review was filed in a
14 timely manner.

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

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

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

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

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

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

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

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

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

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

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

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

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

17 *(n) (1) Notwithstanding Section 8704 of the Family Code or*
18 *any other provision of law, the court, at a hearing held pursuant*
19 *to this section or anytime thereafter, may designate a current*
20 *caretaker as a prospective adoptive parent if the child has lived*
21 *with the caretaker for at least six months, the caretaker currently*
22 *expresses a commitment to adopt the child, and the caretaker has*
23 *taken at least one step to facilitate the adoption process. In*
24 *determining whether to make that designation, the court may*
25 *take into consideration whether the caretaker is listed in the*
26 *preliminary assessment prepared by the county department in*
27 *accordance with subdivision (i) of Section 366.21 as an*
28 *appropriate person to be considered as an adoptive parent for*
29 *the child and the recommendation of the State Department of*
30 *Social Services or licensed adoption agency.*

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

33 *(A) Applying for an adoption homestudy.*

34 *(B) Cooperating with an adoption homestudy.*

35 *(C) Being designated by the court or the licensed adoption*
36 *agency as the adoptive family.*

37 *(D) Requesting de facto parent status.*

38 *(E) Signing an adoptive placement agreement.*

39 *(F) Engaging in discussions regarding a postadoption contact*
40 *agreement.*

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

4 (H) Attending classes required of prospective adoptive
5 parents.

6 (3) Prior to a change in placement and as soon as possible
7 after a decision is made to remove a child from the home of a
8 designated prospective adoptive parent, the agency shall notify
9 the court, the designated prospective adoptive parent or the
10 current caretaker, if that caretaker would have met the threshold
11 criteria to be designated as a prospective adoptive parent
12 pursuant to paragraph (1) on the date of service of this notice,
13 the child's attorney, and the child, if the child is 10 years of age
14 or older, of the proposal in the manner described in Section
15 16010.6.

16 (A) Within five court days or seven calendar days, whichever
17 is longer, of the date of notification, the child, the child's
18 attorney, or the designated prospective adoptive parent may file
19 a petition with the court objecting to the proposal to remove the
20 child, or the court, upon its own motion, may set a hearing
21 regarding the proposal. The court may, for good cause, extend
22 the filing period. A caretaker who would have met the threshold
23 criteria to be designated as a prospective adoptive parent
24 pursuant to paragraph (1) on the date of service of the notice of
25 proposed removal of the child may file, together with the petition
26 under this subparagraph, a petition for an order designating the
27 caretaker as a prospective adoptive parent for purposes of this
28 subdivision.

29 (B) A hearing ordered pursuant to this paragraph shall be
30 held as soon as possible and not later than five court days after
31 the petition is filed with the court or the court sets a hearing
32 upon its own motion, unless the court for good cause is unable to
33 set the matter for hearing five court days after the petition is
34 filed, in which case the court shall set the matter for hearing as
35 soon as possible. At the hearing, the court shall determine
36 whether the caretaker has met the threshold criteria to be
37 designated as a prospective adoptive parent pursuant to
38 paragraph (1), and whether the proposed removal of the child
39 from the home of the designated prospective adoptive parent is in
40 the child's best interest, and the child may not be removed from

1 *the home of the designated prospective adoptive parent unless*
2 *the court finds that removal is in the child's best interest. If the*
3 *court determines that the caretaker did not meet the threshold*
4 *criteria to be designated as a prospective adoptive parent on the*
5 *date of service of the notice of proposed removal of the child, the*
6 *petition objecting to the proposed removal filed by the caretaker*
7 *shall be dismissed. If the caretaker was designated as a*
8 *prospective adoptive parent prior to this hearing, the court shall*
9 *inquire into any progress made by the caretaker towards the*
10 *adoption of the child since the caretaker was designated as a*
11 *prospective adoptive parent.*

12 *(C) A determination by the court that the caretaker is a*
13 *designated prospective adoptive parent pursuant to paragraph*
14 *(1) or subparagraph (B) does not make the caretaker a party to*
15 *the dependency proceeding nor does it confer on the caretaker*
16 *any standing to object to any other action of the department or*
17 *licensed adoption agency, unless the caretaker has been declared*
18 *a de facto parent by the court prior to the notice of removal*
19 *served pursuant to paragraph (3).*

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

24 *(4) Notwithstanding paragraph (3), if the State Department of*
25 *Social Services or a licensed adoption agency determines that the*
26 *child must be removed from the home of the caretaker who is or*
27 *may be a designated prospective adoptive parent immediately,*
28 *due to a risk of physical or emotional harm, the agency may*
29 *remove the child from that home and is not required to provide*
30 *notice prior to the removal. However, as soon as possible and*
31 *not longer than two court days after the removal, the agency*
32 *shall notify the court, the caretaker who is or may be a*
33 *designated prospective adoptive parent, the child's attorney, and*
34 *the child, if the child is 10 years of age or older, of the removal.*
35 *Within five court days or seven calendar days, whichever is*
36 *longer, of the date of notification of the removal, the child, the*
37 *child's attorney, or the caretaker who is or may be a designated*
38 *prospective adoptive parent may petition for, or the court on its*
39 *own motion may set, a noticed hearing pursuant to paragraph*
40 *(3). The court may, for good cause, extend the filing period.*

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

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

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

11 (o) The implementation and operation of the amendments to
12 paragraph (3) of subdivision (c) and subparagraph (A) of
13 paragraph (4) of subdivision (c) enacted at the 2005-06 Regular
14 Session shall be subject to appropriation through the budget
15 process and by phase, as provided in Section 366.35.

16 SEC. 2.7. Section 366.26 of the Welfare and Institutions Code
17 is amended to read:

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

35 (b) At the hearing, ~~that~~ which shall be held in juvenile court
36 for all children who are dependents of the juvenile court, the
37 court, in order to provide stable, permanent homes for these
38 children, shall review the report as specified in Section 361.5,
39 366.21, or 366.22, shall indicate that the court has read and
40 considered it, shall receive other evidence that the parties may

1 present, and then shall make findings and orders in the following
2 order of preference:

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

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

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

14 (4) Order that the child be placed in long-term foster care,
15 subject to the periodic review of the juvenile court under Section
16 366.3.

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

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

1 (A) The parents or guardians have maintained regular
2 visitation and contact with the child and the child would benefit
3 from continuing the relationship.

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

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

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

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

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

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

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

31 (4) (A) If the court finds that adoption of the child or
32 termination of parental rights is not in the best interest of the
33 child, because one of the conditions in subparagraph (A), (B),
34 (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the
35 court shall either order that the present caretakers or other
36 appropriate persons shall become legal guardians of the child or
37 order that the child remain in long-term foster care. Legal
38 guardianship shall be considered before long-term foster care, if
39 it is in the ~~best-interests~~ *interest* of the child and if a suitable
40 guardian can be found. A child who is 10 years of age or older

1 ~~who is placed in a group home for six months or longer from the~~
2 ~~date the child entered foster care,~~ shall be asked to identify any
3 individuals, other than the child's siblings, who are important to
4 the child, in order to identify potential guardians. The agency
5 may ask any other child to provide that information, as
6 appropriate.

7 (B) If the child is living with a relative or a foster parent who
8 is willing and capable of providing a stable and permanent
9 environment, but not willing to become a legal guardian, the
10 child shall not be removed from the home if the court finds the
11 removal would be seriously detrimental to the emotional
12 well-being of the child because the child has substantial
13 psychological ties to the relative caretaker or foster parents.

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

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

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

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

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

30 (f) At the beginning of any proceeding pursuant to this section,
31 if the child or the parents are not being represented by previously
32 retained or appointed counsel, *including, in the case of any child*
33 *who is not a lawful permanent resident or citizen of the United*
34 *States, counsel appointed pursuant to subdivision (i) of Section*
35 *317, the court shall proceed as follows:*

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

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

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

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

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

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

27 (3) (A) The testimony of the child may be taken in chambers
28 and outside the presence of the child's parent or parents, if the
29 child's parent or parents are represented by counsel, the counsel
30 is present, and any of the following circumstances ~~exist~~ *exists*:

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

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

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

37 (B) After testimony in chambers, the parent or parents of the
38 child may elect to have the court reporter read back the testimony
39 or have the testimony summarized by counsel for the parent or
40 parents.

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

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

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

1 *reunification with a parent or legal guardian, the court shall*
2 *specify the factual basis for its findings that it is in the best*
3 *interest of the child to reinstate parental rights. This subdivision*
4 *is intended to be retroactive and applies to any child who is*
5 *under the jurisdiction of the juvenile court at the time of the*
6 *hearing regardless of the date parental rights were terminated.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 *(n) (1) Notwithstanding Section 8704 of the Family Code or*
2 *any other provision of law, the court, at a hearing held pursuant*
3 *to this section or anytime thereafter, may designate a current*
4 *caretaker as a prospective adoptive parent if the child has lived*
5 *with the caretaker for at least six months, the caretaker currently*
6 *expresses a commitment to adopt the child, and the caretaker has*
7 *taken at least one step to facilitate the adoption process. In*
8 *determining whether to make that designation, the court may*
9 *take into consideration whether the caretaker is listed in the*
10 *preliminary assessment prepared by the county department in*
11 *accordance with subdivision (i) of Section 366.21 as an*
12 *appropriate person to be considered as an adoptive parent for*
13 *the child and the recommendation of the State Department of*
14 *Social Services or licensed adoption agency.*

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

17 *(A) Applying for an adoption homestudy.*

18 *(B) Cooperating with an adoption homestudy.*

19 *(C) Being designated by the court or the licensed adoption*
20 *agency as the adoptive family.*

21 *(D) Requesting de facto parent status.*

22 *(E) Signing an adoptive placement agreement.*

23 *(F) Engaging in discussions regarding a postadoption contact*
24 *agreement.*

25 *(G) Working to overcome any impediments that have been*
26 *identified by the State Department of Social Services and the*
27 *licensed adoption agency.*

28 *(H) Attending classes required of prospective adoptive*
29 *parents.*

30 *(3) Prior to a change in placement and as soon as possible*
31 *after a decision is made to remove a child from the home of a*
32 *designated prospective adoptive parent, the agency shall notify*
33 *the court, the designated prospective adoptive parent or the*
34 *current caretaker, if that caretaker would have met the threshold*
35 *criteria to be designated as a prospective adoptive parent*
36 *pursuant to paragraph (1) on the date of service of this notice,*
37 *the child's attorney, and the child, if the child is 10 years of age*
38 *or older, of the proposal in the manner described in Section*
39 *16010.6.*

1 (A) Within five court days or seven calendar days, whichever
2 is longer, of the date of notification, the child, the child's
3 attorney, or the designated prospective adoptive parent may file
4 a petition with the court objecting to the proposal to remove the
5 child, or the court, upon its own motion, may set a hearing
6 regarding the proposal. The court may, for good cause, extend
7 the filing period. A caretaker who would have met the threshold
8 criteria to be designated as a prospective adoptive parent
9 pursuant to paragraph (1) on the date of service of the notice of
10 proposed removal of the child may file, together with the petition
11 under this subparagraph, a petition for an order designating the
12 caretaker as a prospective adoptive parent for purposes of this
13 subdivision.

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

37 (C) A determination by the court that the caretaker is a
38 designated prospective adoptive parent pursuant to paragraph
39 (1) or subparagraph (B) does not make the caretaker a party to
40 the dependency proceeding nor does it confer on the caretaker

1 any standing to object to any other action of the department or
2 licensed adoption agency, unless the caretaker has been declared
3 a de facto parent by the court prior to the notice of removal
4 served pursuant to paragraph (3).

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

9 (4) Notwithstanding paragraph (3), if the State Department of
10 Social Services or a licensed adoption agency determines that the
11 child must be removed from the home of the caretaker who is or
12 may be a designated prospective adoptive parent immediately,
13 due to a risk of physical or emotional harm, the agency may
14 remove the child from that home and is not required to provide
15 notice prior to the removal. However, as soon as possible and
16 not longer than two court days after the removal, the agency
17 shall notify the court, the caretaker who is or may be a
18 designated prospective adoptive parent, the child's attorney, and
19 the child, if the child is 10 years of age or older, of the removal.
20 Within five court days or seven calendar days, whichever is
21 longer, of the date of notification of the removal, the child, the
22 child's attorney, or the caretaker who is or may be a designated
23 prospective adoptive parent may petition for, or the court on its
24 own motion may set, a noticed hearing pursuant to paragraph
25 (3). The court may, for good cause, extend the filing period.

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

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

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

36 (o) The implementation and operation of the amendments to
37 paragraph (3) of subdivision (c) and subparagraph (A) of
38 paragraph (4) of subdivision (c) enacted at the 2005-06 Regular
39 Session shall be subject to appropriation through the budget
40 process and by phase, as provided in Section 366.35.

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

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

23 (b) (1) If the court finds that a ward of the court pursuant to
24 Section 601 or subdivision (a) of Section 602 is a resident of this
25 state, but is not a lawful permanent resident or citizen of the
26 United States, is in foster care pursuant to paragraph (1), (2), or
27 (3) of subdivision (a) of Section 727 or is deemed unlikely to
28 reunify with his or her parents as determined by a probation
29 officer, social worker, or the court, and that it is in the best
30 interest of the child, the court shall appoint an immigration
31 attorney for the child in addition to counsel appointed pursuant to
32 subdivision (a). To the maximum extent practicable, the court
33 shall make every effort to utilize the services of competent pro
34 bono counsel who agree to provide representation to the child
35 without charge. The immigration attorney may pursue special
36 immigrant juvenile status for the ward pursuant to Section
37 1101(a)(27)(J) of Title 8 of the United States Code, or pursue any
38 other avenue to obtain lawful permanent resident status or United
39 States citizenship. Before January 1, 2007, the Judicial Council
40 shall promulgate rules of court to establish standards, training

1 requirements, and guidelines for attorneys eligible to be
2 appointed under this 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. 4. The requirement to provide legal representation
7 pursuant to subdivision (i) of Section 317, subdivision (f) of
8 Section 366.26, and subdivision (b) of Section 634 of the
9 Welfare and Institutions Code is contingent upon an
10 appropriation in the annual Budget Act or another statute.

11 SEC. 5. (a) *Section 2.1 of this bill incorporates amendments*
12 *to Section 366.26 of the Welfare and Institutions Code proposed*
13 *by both this bill and AB 519. It shall only become operative if (1)*
14 *both bills are enacted and become effective on or before January*
15 *1, 2006, (2) each bill amends Section 366.26 of the Welfare and*
16 *Institutions Code, (3) AB 1412 and SB 218 are not enacted or as*
17 *enacted do not amend that section, and (4) this bill is enacted*
18 *after AB 519, in which case Sections 2, 2.2, 2.3, 2.4, 2.5, 2.6, and*
19 *2.7 of this bill shall not become operative.*

20 (b) *Section 2.2 of this bill incorporates amendments to Section*
21 *366.26 of the Welfare and Institutions Code proposed by both*
22 *this bill and AB 1412. It shall only become operative if (1) both*
23 *bills are enacted and become effective on or before January 1,*
24 *2006, (2) each bill amends Section 366.26 of the Welfare and*
25 *Institutions Code, (3) AB 519 and SB 218 are not enacted or as*
26 *enacted do not amend that section, and (4) this bill is enacted*
27 *after AB 1412, in which case Sections 2, 2.1, 2.3, 2.4, 2.5, 2.6,*
28 *and 2.7 of this bill shall not become operative.*

29 (c) *Section 2.3 of this bill incorporates amendments to Section*
30 *366.26 of the Welfare and Institutions Code proposed by both*
31 *this bill and SB 218. It shall only become operative if (1) both*
32 *bills are enacted and become effective on or before January 1,*
33 *2006, (2) each bill amends Section 366.26 of the Welfare and*
34 *Institutions Code, (3) AB 519 and AB 1412 are not enacted or as*
35 *enacted do not amend that section, and (4) this bill is enacted*
36 *after SB 218, in which case Sections 2, 2.1, 2.2, 2.4, 2.5, 2.6, and*
37 *2.7 of this bill shall not become operative.*

38 (d) *Section 2.4 of this bill incorporates amendments to Section*
39 *366.26 of the Welfare and Institutions Code proposed by this bill,*
40 *AB 519, and AB 1412. It shall only become operative if (1) all*

1 *three bills are enacted and become effective on or before*
2 *January 1, 2006, (2) all three bills amend Section 366.26 of the*
3 *Welfare and Institutions Code, (3) SB 218 is not enacted or as*
4 *enacted does not amend that section and (4) this bill is enacted*
5 *after AB 519 and AB 1412, in which case Sections 2, 2.1, 2.2,*
6 *2.3, 2.5, 2.6, and 2.7 of this bill shall not become operative.*

7 *(e) Section 2.5 of this bill incorporates amendments to Section*
8 *366.26 of the Welfare and Institutions Code proposed by this bill,*
9 *AB 519, and SB 218. It shall only become operative if (1) all*
10 *three bills are enacted and become effective on or before*
11 *January 1, 2006, (2) all three bills amend Section 366.26 of the*
12 *Welfare and Institutions Code, (3) AB 1412 is not enacted or as*
13 *enacted does not amend that section and (4) this bill is enacted*
14 *after AB 519 and SB 218, in which case Sections 2, 2.1, 2.2, 2.3,*
15 *2.4, 2.6, and 2.7 of this bill shall not become operative.*

16 *(f) Section 2.6 of this bill incorporates amendments to Section*
17 *366.26 of the Welfare and Institutions Code proposed by this bill,*
18 *AB 1412, and SB 218. It shall only become operative if (1) all*
19 *three bills are enacted and become effective on or before*
20 *January 1, 2006, (2) all three bills amend Section 366.26 of the*
21 *Welfare and Institutions Code, (3) AB 519 is not enacted or as*
22 *enacted does not amend that section and (4) this bill is enacted*
23 *after AB 1412 and SB 218, in which case Sections 2, 2.1, 2.2, 2.3,*
24 *2.4, 2.5, and 2.7 of this bill shall not become operative.*

25 *(g) Section 2.7 of this bill incorporates amendments to Section*
26 *366.26 of the Welfare and Institutions Code proposed by this bill,*
27 *AB 519, AB 1412, and SB 218. It shall only become operative if*
28 *(1) all four bills are enacted and become effective on or before*
29 *January 1, 2006, (2) all four bills amend Section 366.26 of the*
30 *Welfare and Institutions Code, and (3) this bill is enacted after*
31 *AB 519, AB 1412, and SB 218 in which case Sections 2, 2.1, 2.2,*
32 *2.3, 2.4, 2.5, and 2.6 of this bill shall not become operative.*

33 ~~SEC. 5.~~

34 *SEC. 6.* If the Commission on State Mandates determines that
35 this act contains costs mandated by the state, reimbursement to
36 local agencies and school districts for those costs shall be made
37 pursuant to Part 7 (commencing with Section 17500) of Division
38 4 of Title 2 of the Government Code.

1 _____
2 CORRECTIONS:
3 Text-Pages 25, 33, 55, 79, 87, 91, 93, and 94.
4 _____

O