

AMENDED IN ASSEMBLY APRIL 7, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1638

Introduced by Assembly Member Nava

February 22, 2005

An act to amend Section 366.26 of the Welfare and Institutions Code, relating to adoption.

LEGISLATIVE COUNSEL'S DIGEST

AB 1638, as amended, Nava. Adoption of dependent children.

Under existing law, in proceedings for the adoption of a child who is a dependent of the juvenile court, the person preparing the adoption report may be called and examined by any party to the proceeding.

This bill would provide that ~~if a petition to adopt has been filed, or if adoption is part of the permanent plan for a child, the court shall receive reports on the progress of adoptions at no less than 6 month intervals, beginning with the entry of the order terminating parental rights. If the petition is from the a foster parent who has had custody of the child and functioned satisfactorily as a de facto who has acted on a day-to-day basis in the role of parent for more than one year states an intent to adopt the child to the licensed adoption agency, and the petition that adoption is not opposed by the child or the State Department of Social Services, it the petition to adopt shall be granted within 90 days of the exhaustion of the appellate rights of the parents or within 90 days of that statement of intent, whichever is later, or the department shall show cause why the petition approval shall not be granted.~~

~~Existing law provides that, with the consent of the licensed adoption agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.~~

~~This bill would delete that provision, and provide instead that the court shall have continuing jurisdiction in the best interests of the child until a petition for adoption has been granted and shall ensure representation for the child until adoption is finalized or other permanent placement disposition is final. By increasing the duty of counties to provide legal representation in juvenile cases, the bill would impose a state-mandated local program.~~

~~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~~ no.

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

1 SECTION 1. This act shall be known and may be cited as
2 “The Abused Child Adoption Facilitation Act of 2005.”
3 SEC. 2. Section 366.26 of the Welfare and Institutions Code
4 is amended to read:
5 366.26. (a) This section applies to children who are adjudged
6 dependent children of the juvenile court pursuant to subdivision
7 (c) of Section 360. The procedures specified herein are the
8 exclusive procedures for conducting these hearings; Part 2
9 (commencing with Section 3020) of Division 8 of the Family
10 Code is not applicable to these proceedings. Section 8714.7 of
11 the Family Code is applicable and available to all dependent
12 children meeting the requirements of that section, if the
13 postadoption contact agreement has been entered into
14 voluntarily. For children who are adjudged dependent children of
15 the juvenile court pursuant to subdivision (c) of Section 360, this
16 section and Sections 8604, 8605, 8606, and 8700 of the Family
17 Code and Chapter 5 (commencing with Section 7660) of Part 3
18 of Division 12 of the Family Code specify the exclusive
19 procedures for permanently terminating parental rights with

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (e) The proceeding for the adoption of a child who is a
19 dependent of the juvenile court shall be in the juvenile court if
20 the court finds pursuant to this section that adoption is the
21 appropriate permanent plan and the petition for adoption is filed
22 in the juvenile court. Upon the filing of a petition for adoption,
23 the juvenile court shall order that an adoption hearing be set. The
24 court shall proceed with the adoption after the appellate rights of
25 the natural parents have been exhausted. The full report required
26 by Section 8715 of the Family Code shall be read and considered
27 by the court prior to the adoption and this shall be reflected in the
28 minutes of the court. The person preparing the report may be
29 called and examined by any party to the proceeding. ~~If a petition~~
30 ~~to adopt has been filed, or if adoption is part of the permanent~~
31 ~~plan for a child, the court shall receive reports on the progress of~~
32 ~~these adoptions at no less than six month intervals, beginning~~
33 ~~with the entry of the order terminating parental rights under this~~
34 ~~section. If the petition is from the foster parent who has had~~
35 ~~eustody of the child and functioned satisfactorily as a de facto~~
36 ~~parent for more than one year, and the petition is not opposed by~~
37 ~~the child or the State Department of Social Services, it shall be~~
38 ~~granted within 90 days of the exhaustion of the appellate rights of~~
39 ~~parents, or the department shall show cause why the petition~~
40 ~~approval shall not be granted. If the foster parent who has had~~

1 *custody of the child and has acted on a day-to-day basis in the*
2 *role of parent for more than one year states an intent to adopt the*
3 *child to the licensed adoption agency, and that adoption is not*
4 *opposed by the child or the department, the petition shall be*
5 *approved within 90 days of the exhaustion of the appellate rights*
6 *of the parents or within 90 days of the statement of adoption*
7 *intent, whichever is later, unless the department shall show cause*
8 *why the petition approval shall not be granted within the*
9 *required timeframe.* It is the intent of the Legislature, pursuant to
10 this subdivision, to give potential adoptive parents the option of
11 filing in the juvenile court the petition for the adoption of a child
12 who is a dependent of the juvenile court. Nothing in this section
13 is intended to prevent the filing of a petition for adoption in any
14 other court as permitted by law, instead of in the juvenile court.

15 (f) At the beginning of any proceeding pursuant to this section,
16 if the child or the parents are not being represented by previously
17 retained or appointed counsel, the court shall proceed as follows:

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

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

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

36 (g) The court may continue the proceeding for not to exceed
37 30 days as necessary to appoint counsel, and to enable counsel to
38 become acquainted with the case.

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

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

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

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

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

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

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

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

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

36 (j) If the court, by order or judgment, declares the child free
37 from the custody and control of both parents, or one parent if the
38 other does not have custody and control, the court shall at the
39 same time order the child referred to the State Department of
40 Social Services or a licensed adoption agency for adoptive

1 placement by the agency. However, a petition for adoption may
2 not be granted until the appellate rights of the natural parents
3 have been exhausted. The State Department of Social Services or
4 licensed adoption agency shall be responsible for the custody and
5 supervision of the child and shall be entitled to the exclusive care
6 and control of the child at all times until a petition for adoption is
7 ~~granted, subject to the continuing jurisdiction of the court in the~~
8 ~~best interests of the child. The court shall ensure representation~~
9 ~~for the child until an adoption is finalized or another permanent~~
10 ~~placement disposition is final.~~ *granted. With the consent of the*
11 *agency, the court may appoint a guardian of the child, who shall*
12 *serve until the child is adopted.*

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

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

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

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

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

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

37 (2) Failure to file a petition for extraordinary writ review
38 within the period specified by rule, to substantively address the
39 specific issues challenged, or to support that challenge by an

1 adequate record shall preclude subsequent review by appeal of
2 the findings and orders made pursuant to this section.

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

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

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

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

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

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

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

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

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

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

33 SEC. 3. If the Commission on State Mandates determines that
34 this act contains costs mandated by the state, reimbursement to
35 local agencies and school districts for those costs shall be made
36 pursuant to Part 7 (commencing with Section 17500) of Division
37 4 of Title 2 of the Government Code.