

AMENDED IN ASSEMBLY SEPTEMBER 2, 2005

AMENDED IN ASSEMBLY JUNE 2, 2005

AMENDED IN SENATE APRIL 21, 2005

AMENDED IN SENATE APRIL 7, 2005

**SENATE BILL**

**No. 218**

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**Introduced by Senator Scott  
(Coauthors: Senators Alquist and Migden)**

February 10, 2005

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An act to amend Section 366.26 of the Welfare and Institutions Code, relating to termination of parental rights.

LEGISLATIVE COUNSEL'S DIGEST

SB 218, as amended, Scott. Termination of parental rights: prospective adoptive parents.

Existing law provides that if the court, by order or judgment, declares a child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. Existing law provides that the State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted.

This bill would create an exception to that provision if the child is living with a caretaker who has been designated by the court as a prospective adoptive parent. The bill would authorize a court to designate a current caretaker as a prospective adoptive parent if the

child has lived with the caretaker for at least 6 months, the caretaker has expressed a commitment to adopt the child, and the caretaker has taken at least one step to facilitate the adoption, as specified. The bill would further provide that a child living in the home of a designated prospective adoptive parent may only be removed from that home after a noticed hearing in which the court finds that removal from the home is in the child's best interest, except as specified. The bill would require the Judicial Council to prepare forms to facilitate the filing of petitions under these provisions.

*The bill would incorporate additional changes in Section 366.26 of the Welfare and Institutions Code, proposed by AB 519, AB 1338, and AB 1412, to be operative only if one or more of those bills and this bill are chaptered and become effective on or before January 1, 2006, and this bill is chaptered last.*

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

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

1 SECTION 1. Section 366.26 of the Welfare and Institutions  
2 Code 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 are the  
6 exclusive procedures for conducting these hearings; Part 2  
7 (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 ~~which~~ 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 shall be held in juvenile court for all  
21 children who are dependents of the juvenile court, the court, in

1 order to provide stable, permanent homes for these children, shall  
2 review the report as specified in Section 361.5, 366.21, or  
3 366.22, shall indicate that the court has read and considered it,  
4 shall receive other evidence that the parties may present, and then  
5 shall make findings and orders in the following order of  
6 preference:

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

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

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

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

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

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

1 services, shall constitute a sufficient basis for termination of  
2 parental rights unless the court finds a compelling reason for  
3 determining that termination would be detrimental to the child  
4 due to one or more of the following circumstances:

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

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

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

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

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

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

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

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

36 (4) (A) If the court finds that adoption of the child or  
37 termination of parental rights is not in the best interest of the  
38 child, because one of the conditions in subparagraph (A), (B),  
39 (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the  
40 court shall either order that the present caretakers or other

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

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

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

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

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

1 to a foster family agency shall not be eligible for foster care  
2 maintenance payments or child welfare services, except for  
3 emergency response services pursuant to Section 16504.

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

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

33 (f) At the beginning of any proceeding pursuant to this section,  
34 if the child or the parents are not being represented by previously  
35 retained or appointed counsel, 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.

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

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

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

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

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

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

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

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

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

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or 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) Any order of the court permanently terminating parental  
5 rights under this section shall be conclusive and binding upon the  
6 child, upon the parent or parents and upon all other persons who  
7 have been served with citation by publication or otherwise as  
8 provided in this chapter. After making the order, the court shall  
9 have no power to set aside, change, or modify it, but nothing in  
10 this section shall be construed to limit the right to appeal the  
11 order.

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

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

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

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

4 (A) A petition for extraordinary writ review was filed in a  
5 timely manner.

6 (B) The petition substantively addressed the specific issues to  
7 be challenged and supported that challenge by an adequate  
8 record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (A) Applying for an adoption homestudy.

23 (B) Cooperating with an adoption homestudy.

24 (C) Being designated by the court or the licensed adoption  
25 agency as the adoptive family.

26 (D) Requesting de facto parent status.

27 (E) Signing an adoptive placement agreement.

28 (F) Engaging in discussions regarding a postadoption contact  
29 agreement.

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

33 (H) Attending classes required of prospective adoptive  
34 parents.

35 (3) Prior to a change in placement and as soon as possible after  
36 a decision is made to remove a child from the home of a  
37 designated prospective adoptive parent, the agency shall notify  
38 the court, the designated prospective adoptive parent or the  
39 current caretaker, if that caretaker would have met the threshold  
40 criteria to be designated as a prospective adoptive parent

1 pursuant to paragraph (1) on the date of service of this notice, the  
2 child's attorney, and the child, if the child is 10 years of age or  
3 older, of the proposal in the manner described in Section  
4 16010.6.

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

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

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

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

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

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

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

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

1     *SECTION 1.1. Section 366.26 of the Welfare and Institutions*  
2     *Code 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 are the  
6     exclusive procedures for conducting these hearings; Part 2  
7     (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~~ *shall* be held in juvenile court for all  
21    children who are dependents of the juvenile court, the court, in  
22    order to provide stable, permanent homes for these children, shall  
23    review the report as specified in Section 361.5, 366.21, or  
24    366.22, shall indicate that the court has read and considered it,  
25    shall receive other evidence that the parties may present, and then  
26    shall make findings and orders in the following order of  
27    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 of the child and if a suitable guardian can  
27 be found. A child who is 10 years of age or older who is placed  
28 in a group home for six months or longer from the date the child  
29 entered foster care, shall be asked to identify any individuals,  
30 other than the child's siblings, who are important to the child, in  
31 order to identify potential guardians. The agency may ask any  
32 other child to provide that information, as appropriate.

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

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

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

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

37 (g) The court may continue the proceeding for not to exceed  
38 30 days as necessary to appoint counsel, and to enable counsel to  
39 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~~ exists:

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) (1) Any order of the court permanently terminating  
29 parental rights under this section shall be conclusive and binding  
30 upon the child, upon the parent or parents and upon all other  
31 persons who have been served with citation by publication or  
32 otherwise as provided in this chapter. After making the order, the  
33 *juvenile* court shall have no power to set aside, change, or modify  
34 it, *except as provided in paragraph (2)*, but nothing in this  
35 section shall be construed to limit the right to appeal the order.

36 (2) *A child who has not been adopted after the passage of at*  
37 *least three years from the date the court terminated parental*  
38 *rights and for whom the court has determined that adoption is no*  
39 *longer the permanent plan may petition the juvenile court to*  
40 *reinstate parental rights pursuant to the procedure prescribed by*

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

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~~ *apply*:

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. 1.2. 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~~ shall be held in juvenile court for all*  
38 *children who are dependents of the juvenile court, the court, in*  
39 *order to provide stable, permanent homes for these children, shall*  
40 *review the report as specified in Section 361.5, 366.21, or*

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

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

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

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

38 As used in this subdivision, "preference" means that the  
39 application shall be processed and, if satisfactory, the family

1 study shall be completed before the processing of the application  
2 of any other person for the adoptive placement of the child.

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

6 (A) A petition for extraordinary writ review was filed in a  
7 timely manner.

8 (B) The petition substantively addressed the specific issues to  
9 be challenged and supported that challenge by an adequate  
10 record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 *(F) Engaging in discussions regarding a postadoption contact*  
31 *agreement.*

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

35 *(H) Attending classes required of prospective adoptive*  
36 *parents.*

37 *(3) Prior to a change in placement and as soon as possible*  
38 *after a decision is made to remove a child from the home of a*  
39 *designated prospective adoptive parent, the agency shall notify*  
40 *the court, the designated prospective adoptive parent or the*

1 *current caretaker, if that caretaker would have met the threshold*  
2 *criteria to be designated as a prospective adoptive parent*  
3 *pursuant to paragraph (1) on the date of service of this notice,*  
4 *the child's attorney, and the child, if the child is 10 years of age*  
5 *or older, of the proposal in the manner described in Section*  
6 *16010.6.*

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

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

1 *adoption of the child since the caretaker was designated as a*  
2 *prospective adoptive parent.*

3 *(C) A determination by the court that the caretaker is a*  
4 *designated prospective adoptive parent pursuant to paragraph*  
5 *(1) or subparagraph (B) does not make the caretaker a party to*  
6 *the dependency proceeding nor does it confer on the caretaker*  
7 *any standing to object to any other action of the department or*  
8 *licensed adoption agency, unless the caretaker has been declared*  
9 *a de facto parent by the court prior to the notice of removal*  
10 *served pursuant to paragraph (3).*

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

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

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

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

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

4     SEC. 1.3. *Section 366.26 of the Welfare and Institutions Code*  
5 *is amended to read:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent

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

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

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional

1 well-being of the child because the child has substantial  
2 psychological ties to the relative caretaker or foster parents.

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

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

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

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

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

19 (f) At the beginning of any proceeding pursuant to this section,  
20 if the child or the parents are not being represented by previously  
21 retained or appointed counsel, 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 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, *except as specified in subdivision (n)*. With the consent  
11 of the agency, the court may appoint a guardian of the child, who  
12 shall 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

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

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

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

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

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

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

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

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

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

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

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

*(n) (1) Notwithstanding Section 8704 of the Family Code or any other provision of law, the court, at a hearing held pursuant to this section or anytime thereafter, may designate a current caretaker as a prospective adoptive parent if the child has lived with the caretaker for at least six months, the caretaker currently expresses a commitment to adopt the child, and the caretaker has taken at least one step to facilitate the adoption process. In determining whether to make that designation, the court may*

1 *take into consideration whether the caretaker is listed in the*  
2 *preliminary assessment prepared by the county department in*  
3 *accordance with subdivision (i) of Section 366.21 as an*  
4 *appropriate person to be considered as an adoptive parent for*  
5 *the child and the recommendation of the State Department of*  
6 *Social Services or licensed adoption agency.*

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

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

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

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

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

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

15 *(F) Engaging in discussions regarding a postadoption contact*  
16 *agreement.*

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

20 *(H) Attending classes required of prospective adoptive*  
21 *parents.*

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

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

1 *proposed removal of the child may file, together with the petition*  
2 *under this subparagraph, a petition for an order designating the*  
3 *caretaker as a prospective adoptive parent for purposes of this*  
4 *subdivision.*

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

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

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

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

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

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

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

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

SEC. 1.4. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified ~~herein~~ in this section are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of

1 the Family Code is applicable and available to all dependent  
2 children meeting the requirements of that section, if the  
3 postadoption contact agreement has been entered into  
4 voluntarily. For children who are adjudged dependent children of  
5 the juvenile court pursuant to subdivision (c) of Section 360, this  
6 section and Sections 8604, 8605, 8606, and 8700 of the Family  
7 Code and Chapter 5 (commencing with Section 7660) of Part 3  
8 of Division 12 of the Family Code specify the exclusive  
9 procedures for permanently terminating parental rights with  
10 regard to, or establishing legal guardianship of, the child while  
11 the child is a dependent child of the juvenile court.

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

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

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

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

31 (4) Order that the child be placed in long-term foster care,  
32 subject to the periodic review of the juvenile court under Section  
33 366.3.

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

36 (c) (1) If the court determines, based on the assessment  
37 provided as ordered under subdivision (i) of Section 366.21 or  
38 subdivision (b) of Section 366.22, and any other relevant  
39 evidence, by a clear and convincing standard, that it is likely the  
40 child will be adopted, the court shall terminate parental rights and

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

18 (A) The parents or guardians have maintained regular  
19 visitation and contact with the child and the child would benefit  
20 from continuing the relationship.

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

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

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

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

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

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

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

1 proceed pursuant to paragraph (1) or (3) of subdivision (b). For  
2 purposes of this section, a child may only be found to be difficult  
3 to place for adoption if there is no identified or available  
4 prospective adoptive parent for the child because of the child's  
5 membership in a sibling group, or the presence of a diagnosed  
6 medical, physical, or mental handicap, or the child is the age of  
7 seven years or more.

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

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

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

35 (5) If the court finds that the child should not be placed for  
36 adoption, that legal guardianship shall not be established, and  
37 that there are no suitable foster parents except exclusive-use  
38 homes available to provide the child with a stable and permanent  
39 environment, the court may order the care, custody, and control  
40 of the child transferred from the county welfare department to a

1 licensed foster family agency. The court shall consider the  
2 written recommendation of the county welfare director regarding  
3 the suitability of the transfer. The transfer shall be subject to  
4 further court orders.

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

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

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

1 potential adoptive parents the option of filing in the juvenile  
2 court the petition for the adoption of a child who is a dependent  
3 of the juvenile court. Nothing in this section is intended to  
4 prevent the filing of a petition for adoption in any other court as  
5 permitted by law, instead of in the juvenile court.

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

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

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

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

30 (g) The court may continue the proceeding for not to exceed  
31 30 days as necessary to appoint counsel, and to enable counsel to  
32 become acquainted with the case.

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

36 (2) In accordance with Section 349, the child shall be present  
37 in court if the child or the child's counsel so requests or the court  
38 so orders. If the child is 10 years of age or older and is not  
39 present at a hearing held pursuant to this section, the court shall  
40 determine whether the minor was properly notified of his or her

1 right to attend the hearing and inquire as to the reason why the  
2 child is not present.

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

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

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

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

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

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

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

28 (2) *A child who has not been adopted after the passage of at*  
29 *least three years from the date the court terminated parental*  
30 *rights and for whom the court has determined that adoption is no*  
31 *longer the permanent plan may petition the juvenile court to*  
32 *reinstate parental rights pursuant to the procedure prescribed by*  
33 *Section 388. The child may file the petition prior to the*  
34 *expiration of this three-year period if the State Department of*  
35 *Social Services or licensed adoption agency that is responsible*  
36 *for custody and supervision of the child as described in*  
37 *subdivision (j) and the child stipulate that the child is no longer*  
38 *likely to be adopted. A child over 12 years of age shall sign the*  
39 *petition in the absence of a showing of good cause as to why the*  
40 *child could not do so. If it appears that the best interests of the*

1 *child may be promoted by reinstatement of parental rights, the*  
2 *court shall order that a hearing be held and shall give prior*  
3 *notice, or cause prior notice to be given, to the social worker or*  
4 *probation officer and to the child's attorney of record, or, if there*  
5 *is no attorney of record for the child, to the child, and the child's*  
6 *tribe, if applicable, by means prescribed by subdivision (c) of*  
7 *Section 297. The court shall order the child or the social worker*  
8 *or probation officer to give prior notice of the hearing to the*  
9 *child's former parent or parents whose parental rights were*  
10 *terminated in the manner prescribed by subdivision (f) of Section*  
11 *294 where the recommendation is adoption. The juvenile court*  
12 *shall grant the petition if it finds by clear and convincing*  
13 *evidence that the child is no longer likely to be adopted and that*  
14 *reinstatement of parental rights is in the child's best interest. If*  
15 *the court reinstates parental rights over a child who is under 12*  
16 *years of age and for whom the new permanent plan will not be*  
17 *reunification with a parent or legal guardian, the court shall*  
18 *specify the factual basis for its findings that it is in the best*  
19 *interest of the child to reinstate parental rights. This subdivision*  
20 *is intended to be retroactive and applies to any child who is*  
21 *under the jurisdiction of the juvenile court at the time of the*  
22 *hearing regardless of the date parental rights were terminated.*

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

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 *(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    SEC. 1.5. *Section 366.26 of the Welfare and Institutions Code*  
12    *is amended to read:*

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

30    (b) At the hearing, ~~that~~ *which* shall be held in juvenile court  
31    for all children who are dependents of the juvenile court, the  
32    court, in order to provide stable, permanent homes for these  
33    children, shall review the report as specified in Section 361.5,  
34    366.21, or 366.22, shall indicate that the court has read and  
35    considered it, shall receive other evidence that the parties may  
36    present, and then shall make findings and orders in the following  
37    order of preference:

38    (1) Terminate the rights of the parent or parents and order that  
39    the child be placed for adoption and, upon the filing of a petition  
40    for adoption in the juvenile court, order that a hearing be set. The

1 court shall proceed with the adoption after the appellate rights of  
2 the natural parents have been exhausted.

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

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

9 (4) Order that the child be placed in long-term foster care,  
10 subject to the periodic review of the juvenile court under Section  
11 366.3.

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

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

36 (A) The parents or guardians have maintained regular  
37 visitation and contact with the child and the child would benefit  
38 from continuing the relationship.

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

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

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

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

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

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

36 (3) If the court finds that termination of parental rights would  
37 not be detrimental to the child pursuant to paragraph (1) and that  
38 the child has a probability for adoption but is difficult to place for  
39 adoption and there is no identified or available prospective  
40 adoptive parent, the court may identify adoption as the

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

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

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

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

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

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

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

1 366.22 shall be read and considered by the court prior to the  
2 appointment, and this shall be reflected in the minutes of the  
3 court. The person preparing the assessment may be called and  
4 examined by any party to the proceeding.

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

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

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

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

37 (3) Private counsel appointed under this section shall receive a  
38 reasonable sum for compensation and expenses, the amount of  
39 which shall be determined by the court. The amount shall be paid  
40 by the real parties in interest, other than the child, in any

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

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

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

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

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

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

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

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

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

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

34 (i) (1) Any order of the court permanently terminating  
35 parental rights under this section shall be conclusive and binding  
36 upon the child, upon the parent or parents and upon all other  
37 persons who have been served with citation by publication or  
38 otherwise as provided in this chapter. After making the order, the  
39 *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 (o) The implementation and operation of the amendments to  
26 paragraph (3) of subdivision (c) and subparagraph (A) of  
27 paragraph (4) of subdivision (c) enacted at the 2005-06 Regular  
28 Session shall be subject to appropriation through the budget  
29 process and by phase, as provided in Section 366.35.

30 SEC. 1.6. Section 366.26 of the Welfare and Institutions Code  
31 is amended to read:

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

voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

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

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

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

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

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

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

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

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

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

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

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

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

38 (E) There would be substantial interference with a child's  
39 sibling relationship, taking into consideration the nature and  
40 extent of the relationship, including, but not limited to, whether

1 the child was raised with a sibling in the same home, whether the  
2 child shared significant common experiences or has existing  
3 close and strong bonds with a sibling, and whether ongoing  
4 contact is in the child's best interest, including the child's  
5 long-term emotional interest, as compared to the benefit of legal  
6 permanence through adoption.

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

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

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

1 prospective adoptive parent for the child because of the child's  
2 membership in a sibling group, or the presence of a diagnosed  
3 medical, physical, or mental handicap, or the child is the age of  
4 seven years or more.

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

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

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

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

1 the suitability of the transfer. The transfer shall be subject to  
2 further court orders.

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

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

26 (e) The proceeding for the adoption of a child who is a  
27 dependent of the juvenile court shall be in the juvenile court if  
28 the court finds pursuant to this section that adoption is the  
29 appropriate permanent plan and the petition for adoption is filed  
30 in the juvenile court. Upon the filing of a petition for adoption,  
31 the juvenile court shall order that an adoption hearing be set. The  
32 court shall proceed with the adoption after the appellate rights of  
33 the natural parents have been exhausted. The full report required  
34 by Section 8715 of the Family Code shall be read and considered  
35 by the court prior to the adoption and this shall be reflected in the  
36 minutes of the court. The person preparing the report may be  
37 called and examined by any party to the proceeding. It is the  
38 intent of the Legislature, pursuant to this subdivision, to give  
39 potential adoptive parents the option of filing in the juvenile  
40 court the petition for the adoption of a child who is a dependent

1 of the juvenile court. Nothing in this section is intended to  
2 prevent the filing of a petition for adoption in any other court as  
3 permitted by law, instead of in the juvenile court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3     (F) *Engaging in discussions regarding a postadoption contact*  
4 *agreement.*

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

8     (H) *Attending classes required of prospective adoptive*  
9 *parents.*

10    (3) *Prior to a change in placement and as soon as possible*  
11 *after a decision is made to remove a child from the home of a*  
12 *designated prospective adoptive parent, the agency shall notify*  
13 *the court, the designated prospective adoptive parent or the*  
14 *current caretaker, if that caretaker would have met the threshold*  
15 *criteria to be designated as a prospective adoptive parent*  
16 *pursuant to paragraph (1) on the date of service of this notice,*  
17 *the child's attorney, and the child, if the child is 10 years of age*  
18 *or older, of the proposal in the manner described in Section*  
19 *16010.6.*

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

33    (B) *A hearing ordered pursuant to this paragraph shall be*  
34 *held as soon as possible and not later than five court days after*  
35 *the petition is filed with the court or the court sets a hearing*  
36 *upon its own motion, unless the court for good cause is unable to*  
37 *set the matter for hearing five court days after the petition is*  
38 *filed, in which case the court shall set the matter for hearing as*  
39 *soon as possible. At the hearing, the court shall determine*  
40 *whether the caretaker has met the threshold criteria to be*

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

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

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

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

1 *child's attorney, or the caretaker who is or may be a designated*  
2 *prospective adoptive parent may petition for, or the court on its*  
3 *own motion may set, a noticed hearing pursuant to paragraph*  
4 *(3). The court may, for good cause, extend the filing period.*

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

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

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

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

20 *SEC. 1.7 Section 366.26 of the Welfare and Institutions Code*  
21 *is amended to read:*

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

39 *(b) At the hearing, ~~that~~ which shall be held in juvenile court*  
40 *for all children who are dependents of the juvenile court, the*

1 court, in order to provide stable, permanent homes for these  
2 children, shall review the report as specified in Section 361.5,  
3 366.21, or 366.22, shall indicate that the court has read and  
4 considered it, shall receive other evidence that the parties may  
5 present, and then shall make findings and orders in the following  
6 order of preference:

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

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

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

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

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

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

1 services, shall constitute a sufficient basis for termination of  
2 parental rights unless the court finds a compelling reason for  
3 determining that termination would be detrimental to the child  
4 due to one or more of the following circumstances:

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

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

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

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

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

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

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

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

36 (4) (A) If the court finds that adoption of the child or  
37 termination of parental rights is not in the best interest of the  
38 child, because one of the conditions in subparagraph (A), (B),  
39 (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the  
40 court shall either order that the present caretakers or other

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

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

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

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

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

1 Those children whose care, custody, and control are transferred  
2 to a foster family agency shall not be eligible for foster care  
3 maintenance payments or child welfare services, except for  
4 emergency response services pursuant to Section 16504.

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

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

34 (f) At the beginning of any proceeding pursuant to this section,  
35 if the child or the parents are not being represented by previously  
36 retained or appointed counsel, *including, in the case of any child*  
37 *who is not a lawful permanent resident or citizen of the United*  
38 *States, counsel appointed pursuant to subdivision (i) of Section*  
39 *317*, the court shall proceed as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 294 where the recommendation is adoption. The juvenile court  
2 shall grant the petition if it finds by clear and convincing  
3 evidence that the child is no longer likely to be adopted and that  
4 reinstatement of parental rights is in the child's best interest. If  
5 the court reinstates parental rights over a child who is under 12  
6 years of age and for whom the new permanent plan will not be  
7 reunification with a parent or legal guardian, the court shall  
8 specify the factual basis for its findings that it is in the best  
9 interest of the child to reinstate parental rights. This subdivision  
10 is intended to be retroactive and applies to any child who is  
11 under the jurisdiction of the juvenile court at the time of the  
12 hearing regardless of the date parental rights were terminated.

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

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

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

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

4 (A) A petition for extraordinary writ review was filed in a  
5 timely manner.

6 (B) The petition substantively addressed the specific issues to  
7 be challenged and supported that challenge by an adequate  
8 record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 *(F) Engaging in discussions regarding a postadoption contact*  
29 *agreement.*

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

33 *(H) Attending classes required of prospective adoptive*  
34 *parents.*

35 *(3) Prior to a change in placement and as soon as possible*  
36 *after a decision is made to remove a child from the home of a*  
37 *designated prospective adoptive parent, the agency shall notify*  
38 *the court, the designated prospective adoptive parent or the*  
39 *current caretaker, if that caretaker would have met the threshold*  
40 *criteria to be designated as a prospective adoptive parent*

1 pursuant to paragraph (1) on the date of service of this notice,  
2 the child's attorney, and the child, if the child is 10 years of age  
3 or older, of the proposal in the manner described in Section  
4 16010.6.

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

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

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

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

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

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

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

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

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

SEC. 2. (a) *Section 1.1 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by both this bill and AB 519. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 366.26 of the Welfare and Institutions Code, (3) AB 1338 and AB 1412 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 519, in which case Sections 1, 1.2, 1.3, 1.4, 1.5, 1.6, and 1.7 of this bill shall not become operative.*

(b) *Section 1.2 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by both this bill and AB 1338. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 366.26 of the Welfare and Institutions Code, (3) AB 519 and AB 1412 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1338 in which case Sections 1, 1.1, 1.3, 1.4, 1.5, 1.6, and 1.7 of this bill shall not become operative.*

(c) *Section 1.3 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by both this bill and AB 1412. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 366.26 of the Welfare and Institutions Code, (3) AB 519 and AB 1338 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1412, in which case Sections 1, 1.1, 1.2, 1.4, 1.5, 1.6, and 1.7 of this bill shall not become operative.*

(d) *Section 1.4 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by this bill, AB 519, and AB 1338. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2006, (2) all three bills amend Section 366.26 of the Welfare and Institutions Code, (3) AB 1412 is not enacted or as enacted does not amend that section and (4) this bill is enacted*

1 *after AB 519 and AB 1338, in which case Sections 1, 1.1, 1.2,*  
2 *1.3, 1.5, 1.6, and 1.7 of this bill shall not become operative.*

3 *(e) Section 1.5 of this bill incorporates amendments to Section*  
4 *366.26 of the Welfare and Institutions Code proposed by this bill,*  
5 *AB 519, and AB 1412. It shall only become operative if (1) all*  
6 *three bills are enacted and become effective on or before*  
7 *January 1, 2006, (2) all three bills amend Section 366.26 of the*  
8 *Welfare and Institutions Code, (3) AB 1338 is not enacted or as*  
9 *enacted does not amend that section and (4) this bill is enacted*  
10 *after AB 519 and AB 1412, in which case Sections 1, 1.1, 1.2,*  
11 *1.3, 1.4, 1.6, and 1.7 of this bill shall not become operative.*

12 *(f) Section 1.6 of this bill incorporates amendments to Section*  
13 *366.26 of the Welfare and Institutions Code proposed by this bill,*  
14 *AB 1338, and AB 1412. It shall only become operative if (1) all*  
15 *three bills are enacted and become effective on or before*  
16 *January 1, 2006, (2) all three bills amend Section 366.26 of the*  
17 *Welfare and Institutions Code, (3) AB 519 is not enacted or as*  
18 *enacted does not amend that section and (4) this bill is enacted*  
19 *after AB 1338 and AB 1412, in which case Sections 1, 1.1, 1.2,*  
20 *1.3, 1.4, 1.5, and 1.7 of this bill shall not become operative.*

21 *(g) Section 1.7 of this bill incorporates amendments to Section*  
22 *366.26 of the Welfare and Institutions Code proposed by this bill,*  
23 *AB 519, AB 1338, and AB 1412. It shall only become operative if*  
24 *(1) all four bills are enacted and become effective on or before*  
25 *January 1, 2006, (2) all four bills amend Section 366.26 of the*  
26 *Welfare and Institutions Code, and (3) this bill is enacted after*  
27 *AB 519, AB 1338, and AB 1412 in which case Sections 1, 1.1,*  
28 *1.2, 1.3, 1.4, 1.5, and 1.6 of this bill shall not become operative.*