

AMENDED IN ASSEMBLY MAY 6, 2008

AMENDED IN ASSEMBLY APRIL 24, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2736

Introduced by Assembly Members Cook and Beall

February 22, 2008

An act to ~~amend~~ *amend, repeal, and add* Sections 358.1, 366.26, and 16120 of the Welfare and Institutions Code, relating to Indian children.

LEGISLATIVE COUNSEL'S DIGEST

AB 2736, as amended, Cook. Indian children: parental rights: tribal customary adoptions.

(1) Existing law provides for hearings to terminate parental rights and order adoption, or establish guardianships, of minors adjudged dependent children of the juvenile court. Existing law provides for an exception to the general rule relating to the termination of parental rights in the case of an Indian child if there is a compelling reason for determining that termination of parental rights would not be in the best interests of the Indian child because (1) termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights, or (2) the child's tribe has identified guardianship, long-term foster care with a fit and willing relative, or another planned permanent living arrangement for the child.

This bill would include within this exception to the termination of parental rights for an Indian child the case in which the child's tribe has identified tribal customary adoption, as defined, for the child. The bill would specify certain court procedures and other requirements

relating to tribal customary adoptions. The Judicial Council would be required to adopt rules of court and forms to implement tribal customary adoption, as specified. *Those provisions would be in effect until January 1, 2012.*

The bill would also require the Judicial Council to study California's tribal customary adoption provisions and their affects on children, birth parents, adoptive parents, Indian custodians, tribes, and the court, and report all of its findings to the Legislature on or before January 1, 2011.

(2) Existing law requires each social study or evaluation made by a social worker or child advocate appointed by the court, for purposes of the court determining the proper disposition of a dependent child of the juvenile court, to include specified information.

This bill would, *until January 1, 2012*, require the study or evaluation to include, for an Indian child, whether tribal customary adoption is an appropriate permanency for the child if reunification is unsuccessful. By imposing additional duties on local agencies, this bill would create a state-mandated local program.

(3) The Adoption Assistance Program, administered by the State Department of Social Services and each county, requires the payment of aid to adoptive families, based on the needs of program-eligible children adopted by those families.

Under the federal Social Security Act, qualified low-income aged, blind, and disabled persons are eligible to receive cash payments.

Under existing law, one of the bases upon which a child will be eligible for adoption assistance benefits is if the child meets specified criteria, including, among others, a requirement that at the time a petition for either an agency adoption, as defined, or an independent adoption, as defined, is filed, the child has met the requirements for federal supplemental security income benefits, as determined and documented by the federal Social Security Administration.

This bill would also include in those eligibility provisions where the child has met the requirements for federal supplemental security income benefits at the time a petition for an order of adoption based on a tribal customary adoption of an Indian child is filed. *That provision would be in effect until January 1, 2012.*

Because the bill would expand the class of persons eligible for adoption assistance payments, it would impose additional duties upon local agencies, thereby creating a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. Section 358.1 of the Welfare and Institutions
2 Code is amended to read:

3 358.1. Each social study or evaluation made by a social worker
4 or child advocate appointed by the court, required to be received
5 in evidence pursuant to Section 358, shall include, but not be
6 limited to, a factual discussion of each of the following subjects:

7 (a) Whether the county welfare department or social worker has
8 considered child protective services, as defined in Chapter 5
9 (commencing with Section 16500) of Part 4 of Division 9, as a
10 possible solution to the problems at hand, and has offered these
11 services to qualified parents if appropriate under the circumstances.

12 (b) What plan, if any, for return of the child to his or her parents
13 and for achieving legal permanence for the child if efforts to reunify
14 fail, is recommended to the court by the county welfare department
15 or probation officer.

16 (c) Whether the best interests of the child will be served by
17 granting reasonable visitation rights with the child to his or her
18 grandparents, in order to maintain and strengthen the child's family
19 relationships.

20 (d) (1) Whether the child has siblings under the court's
21 jurisdiction, and, if any siblings exist, all of the following:

22 (A) The nature of the relationship between the child and his or
23 her siblings.

24 (B) The appropriateness of developing or maintaining the sibling
25 relationships pursuant to Section 16002.

26 (C) If the siblings are not placed together in the same home,
27 why the siblings are not placed together and what efforts are being

1 made to place the siblings together, or why those efforts are not
2 appropriate.

3 (D) If the siblings are not placed together, the frequency and
4 nature of the visits between siblings.

5 (E) The impact of the sibling relationships on the child's
6 placement and planning for legal permanence.

7 (2) The factual discussion shall include a discussion of indicators
8 of the nature of the child's sibling relationships, including, but not
9 limited to, whether the siblings were raised together in the same
10 home, whether the siblings have shared significant common
11 experiences or have existing close and strong bonds, whether either
12 sibling expresses a desire to visit or live with his or her sibling, as
13 applicable, and whether ongoing contact is in the child's best
14 emotional interest.

15 (e) If the parent or guardian is unwilling or unable to participate
16 in making an educational decision for his or her child, or if other
17 circumstances exist that compromise the ability of the parent or
18 guardian to make educational decisions for the child, the county
19 welfare department or social worker shall consider whether the
20 right of the parent or guardian to make educational decisions for
21 the child should be limited. If the study or evaluation makes that
22 recommendation, it shall identify whether there is a responsible
23 adult available to make educational decisions for the child pursuant
24 to Section 361.

25 (f) Whether the child appears to be a person who is eligible to
26 be considered for further court action to free the child from parental
27 custody and control.

28 (g) Whether the parent has been advised of his or her option to
29 participate in adoption planning, including the option to enter into
30 a postadoption contact agreement as described in Section 8714.7
31 of the Family Code, and to voluntarily relinquish the child for
32 adoption if an adoption agency is willing to accept the
33 relinquishment.

34 (h) The appropriateness of any relative placement pursuant to
35 Section 361.3. However, this consideration may not be cause for
36 continuance of the dispositional hearing.

37 (i) Whether the caregiver desires, and is willing, to provide legal
38 permanency for the child if reunification is unsuccessful.

1 (j) For an Indian child, whether tribal customary adoption is an
2 appropriate permanency for the child if reunification is
3 unsuccessful.

4 (k) *This section shall remain in effect only until January 1, 2012,*
5 *and as of that date is repealed, unless a later enacted statute, that*
6 *is enacted before January 1, 2012, deletes or extends that date.*

7 SEC. 2. *Section 358.1 is added to the Welfare and Institutions*
8 *Code, to read:*

9 358.1. *Each social study or evaluation made by a social worker*
10 *or child advocate appointed by the court, required to be received*
11 *in evidence pursuant to Section 358, shall include, but not be*
12 *limited to, a factual discussion of each of the following subjects:*

13 (a) *Whether the county welfare department or social worker*
14 *has considered child protective services, as defined in Chapter 5*
15 *(commencing with Section 16500) of Part 4 of Division 9, as a*
16 *possible solution to the problems at hand, and has offered these*
17 *services to qualified parents if appropriate under the*
18 *circumstances.*

19 (b) *What plan, if any, for return of the child to his or her parents*
20 *and for achieving legal permanence for the child if efforts to*
21 *reunify fail, is recommended to the court by the county welfare*
22 *department or probation officer.*

23 (c) *Whether the best interests of the child will be served by*
24 *granting reasonable visitation rights with the child to his or her*
25 *grandparents, in order to maintain and strengthen the child's*
26 *family relationships.*

27 (d) (1) *Whether the child has siblings under the court's*
28 *jurisdiction, and, if any siblings exist, all of the following:*

29 (A) *The nature of the relationship between the child and his or*
30 *her siblings.*

31 (B) *The appropriateness of developing or maintaining the sibling*
32 *relationships pursuant to Section 16002.*

33 (C) *If the siblings are not placed together in the same home,*
34 *why the siblings are not placed together and what efforts are being*
35 *made to place the siblings together, or why those efforts are not*
36 *appropriate.*

37 (D) *If the siblings are not placed together, the frequency and*
38 *nature of the visits between siblings.*

39 (E) *The impact of the sibling relationships on the child's*
40 *placement and planning for legal permanence.*

1 (2) *The factual discussion shall include a discussion of*
2 *indicators of the nature of the child's sibling relationships,*
3 *including, but not limited to, whether the siblings were raised*
4 *together in the same home, whether the siblings have shared*
5 *significant common experiences or have existing close and strong*
6 *bonds, whether either sibling expresses a desire to visit or live*
7 *with his or her sibling, as applicable, and whether ongoing contact*
8 *is in the child's best emotional interest.*

9 (e) *If the parent or guardian is unwilling or unable to participate*
10 *in making an educational decision for his or her child, or if other*
11 *circumstances exist that compromise the ability of the parent or*
12 *guardian to make educational decisions for the child, the county*
13 *welfare department or social worker shall consider whether the*
14 *right of the parent or guardian to make educational decisions for*
15 *the child should be limited. If the study or evaluation makes that*
16 *recommendation, it shall identify whether there is a responsible*
17 *adult available to make educational decisions for the child*
18 *pursuant to Section 361.*

19 (f) *Whether the child appears to be a person who is eligible to*
20 *be considered for further court action to free the child from*
21 *parental custody and control.*

22 (g) *Whether the parent has been advised of his or her option to*
23 *participate in adoption planning, including the option to enter into*
24 *a postadoption contact agreement as described in Section 8714.7*
25 *of the Family Code, and to voluntarily relinquish the child for*
26 *adoption if an adoption agency is willing to accept the*
27 *relinquishment.*

28 (h) *The appropriateness of any relative placement pursuant to*
29 *Section 361.3. However, this consideration may not be cause for*
30 *continuance of the dispositional hearing.*

31 (i) *Whether the caregiver desires, and is willing, to provide*
32 *legal permanency for the child if reunification is unsuccessful.*

33 (j) *This section shall become operative on January 1, 2012.*

34 ~~SEC. 2.~~

35 SEC. 3. Section 366.26 of the Welfare and Institutions Code
36 is amended to read:

37 366.26. (a) This section applies to children who are adjudged
38 dependent children of the juvenile court pursuant to subdivision
39 (d) of Section 360. The procedures specified herein are the
40 exclusive procedures for conducting these hearings; Part 2

1 (commencing with Section 3020) of Division 8 of the Family Code
2 is not applicable to these proceedings. Section 8616.5 of the Family
3 Code is applicable and available to all dependent children meeting
4 the requirements of that section, if the postadoption contact
5 agreement has been entered into voluntarily. For children who are
6 adjudged dependent children of the juvenile court pursuant to
7 subdivision (d) of Section 360, this section and Sections 8604,
8 8605, 8606, and 8700 of the Family Code and Chapter 5
9 (commencing with Section 7660) of Part 3 of Division 12 of the
10 Family Code specify the exclusive procedures for permanently
11 terminating parental rights with regard to, or establishing legal
12 guardianship of, the child while the child is a dependent child of
13 the juvenile court.

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

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

26 (2) Appoint a relative or relatives with whom the child is
27 currently residing as legal guardian or guardians for the child, and
28 order that letters of guardianship issue.

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

33 (4) Appoint a nonrelative legal guardian for the child and order
34 that letters of guardianship issue.

35 (5) Order that the child be placed in long-term foster care,
36 subject to the periodic review of the juvenile court under Section
37 366.3.

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

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

22 (A) The child is living with a relative who is unable or unwilling
23 to adopt the child because of circumstances that do not include an
24 unwillingness to accept legal or financial responsibility for the
25 child, but who is willing and capable of providing the child with
26 a stable and permanent environment through legal guardianship,
27 and the removal of the child from the custody of his or her relative
28 would be detrimental to the emotional well-being of the child. For
29 purposes of an Indian child, “relative” shall include an “extended
30 family member,” as defined in the federal Indian Child Welfare
31 Act (25 U.S.C. Sec. 1903(2)).

32 (B) The court finds a compelling reason for determining that
33 termination would be detrimental to the child due to one or more
34 of the following circumstances:

35 (i) The parents have maintained regular visitation and contact
36 with the child and the child would benefit from continuing the
37 relationship.

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

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

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

26 (vi) The child is an Indian child and there is a compelling reason
27 for determining that termination of parental rights would not be
28 in the best interest of the child, including, but not limited to:

29 (I) Termination of parental rights would substantially interfere
30 with the child's connection to his or her tribal community or the
31 child's tribal membership rights.

32 (II) The child's tribe has identified guardianship, long-term
33 foster care with a fit and willing relative, tribal customary adoption,
34 or another planned permanent living arrangement for the child.
35 For purposes of this section, "tribal customary adoption" means
36 adoption by and through the child's tribe's custom, traditions, or
37 tribal law without termination of parental rights.

38 (C) For purposes of subparagraph (B) in the case of tribal
39 customary adoptions, all of the following apply:

1 (i) The child's tribe or the tribe's designee shall complete an
2 adoptive home study and the tribe's designee, which may include
3 the State Department of Social Services, the county ~~department~~
4 ~~of children's services~~ *child welfare agency* where the case is being
5 adjudicated, or a California licensed adoption agency, shall
6 complete a check of the Child Abuse Central Index pursuant to
7 subdivision (a) of Section 11170 of the Penal Code and any other
8 required fingerprint clearance checks through the Department of
9 Justice and the Federal Bureau of Investigations. The standard for
10 the evaluation of the home shall be the prevailing social and
11 cultural standard of the child's tribe. If and when federal or state
12 law provide that tribes may conduct all required background
13 checks, such tribally administered background checks shall satisfy
14 the requirements of this section.

15 (ii) The child's tribe shall file with the court within 120 days a
16 tribal customary adoption order evidencing that a tribal customary
17 adoption has been completed. The court shall have discretion to
18 grant a continuance to the tribe for filing a tribal customary
19 adoption order up to, but not exceeding, 60 days. If the child's
20 tribe does not file the tribal customary adoption order within the
21 designated time period, the court shall make new findings and
22 orders under subdivision (b) and this subdivision to determine an
23 alternative permanent plan for the child.

24 (iii) The child, birth parents, or Indian custodian and the tribal
25 customary adoptive parents and their counsel, if applicable, may
26 present evidence to the tribe regarding the tribal customary
27 adoption order and the child's best interests.

28 (iv) The tribal customary adoption order shall include, but not
29 be limited to, a description of (1) the modification of the legal
30 relationship of the birth parents or Indian custodian and the child,
31 including contact, if any, between the child and the birth parents
32 or Indian custodian, ~~the continuing financial obligations and~~
33 responsibilities of the birth parents or Indian custodian, and the
34 rights of inheritance of the child and (2) the child's legal
35 relationship with the tribe. *The order shall not include any child*
36 *support obligation from the birth parents or Indian custodian.*
37 There shall be a conclusive presumption that any rights or
38 obligations not specified in the tribal customary adoption order
39 shall vest in the customary adoptive parents.

1 (v) Prior consent to a permanent plan of tribal customary
2 adoption of a child shall not be required of an Indian parent or
3 Indian custodian whose parental relationship to the child will be
4 modified by the tribal customary adoption.

5 (vi) Nothing in this subclause is intended to prevent the transfer
6 of those proceedings to a tribal court where such transfer is
7 otherwise permitted under applicable law.

8 (D) If the court finds that termination of parental rights would
9 be detrimental to the child pursuant to clause (i), (ii), (iii), (iv),
10 (v), or (vi) of subparagraph (B), it shall state its reasons in writing
11 or on the record.

12 (2) The court shall not terminate parental rights if:

13 (A) At each hearing at which the court was required to consider
14 reasonable efforts or services, the court has found that reasonable
15 efforts were not made or that reasonable services were not offered
16 or provided.

17 (B) In the case of an Indian child:

18 (i) At the hearing terminating parental rights, the court has found
19 that active efforts were not made as required in Section 361.7.

20 (ii) The court does not make a determination at the hearing
21 terminating parental rights, supported by evidence beyond a
22 reasonable doubt, including testimony of one or more “qualified
23 expert witnesses” as defined in Section 224.6, that the continued
24 custody of the child by the parent is likely to result in serious
25 emotional or physical damage to the child.

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

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

14 (4) (A) If the court finds that adoption of the child or
15 termination of parental rights is not in the best interest of the child,
16 because one of the conditions in clause (i), (ii), (iii), (iv), (v), or
17 (vi) of subparagraph (B) of paragraph (1) or in paragraph (2)
18 applies, the court shall either order that the present caretakers or
19 other appropriate persons shall become legal guardians of the child
20 or order that the child remain in long-term foster care. Legal
21 guardianship shall be considered before long-term foster care, if
22 it is in the best interests of the child and if a suitable guardian can
23 be found. A child who is 10 years of age or older, shall be asked
24 to identify any individuals, other than the child's siblings, who are
25 important to the child, in order to identify potential guardians. The
26 agency may ask any other child to provide that information, as
27 appropriate.

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

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

39 (5) If the court finds that the child should not be placed for
40 adoption, that legal guardianship shall not be established, and that

1 there are no suitable foster parents except exclusive-use homes
2 available to provide the child with a stable and permanent
3 environment, the court may order the care, custody, and control
4 of the child transferred from the county welfare department to a
5 licensed foster family agency. The court shall consider the written
6 recommendation of the county welfare director regarding the
7 suitability of the transfer. The transfer shall be subject to further
8 court orders.

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

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

32 (e) (1) The proceeding for the adoption of a child who is a
33 dependent of the juvenile court shall be in the juvenile court if the
34 court finds pursuant to this section that adoption is the appropriate
35 permanent plan and the petition for adoption is filed in the juvenile
36 court. Upon the filing of a petition for adoption, the juvenile court
37 shall order that an adoption hearing be set. The court shall proceed
38 with the adoption after the appellate rights of the natural parents
39 have been exhausted. The full report required by Section 8715 of
40 the Family Code shall be read and considered by the court prior

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

10 (2) In the case of an Indian child where the Indian child's tribe
11 has elected a permanent plan of tribal customary adoption, the
12 court shall, after the appellate rights of the birth parents or Indian
13 custodian have been exhausted, order that an adoption hearing be
14 set, at which time the tribal customary adoption order shall be filed
15 in the court and the court shall give the tribal customary adoption
16 order full faith and credit pursuant to Section 224.5 and the court
17 shall issue an order of adoption consistent with ~~sub-subclause (ia)~~
18 ~~of subclause (H) of clause (vi) of subparagraph (B)~~ *subparagraph*
19 *(C) of paragraph (1) of subdivision (c), unless the court finds by*
20 *clear and convincing evidence that issuance of the order would*
21 *be detrimental to the child.*

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

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

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

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

1 any of the real parties in interest are unable to afford counsel, the
2 amount shall be paid out of the general fund of the county.

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

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

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

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

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

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

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

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

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

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

1 (2) A tribal customary adoption order evidencing that the Indian
2 child has been the subject of a tribal customary adoption shall be
3 afforded full faith and credit and shall have the same force and
4 effect as an order of adoption authorized by this section. The rights
5 and obligations of the parties as to the matters determined by the
6 Indian child's tribe shall be binding on all parties. ~~Disputes between~~
7 ~~the parties as to the rights and obligations of each shall be resolved~~
8 ~~through family mediation services of the court or dispute resolution~~
9 ~~through the tribe. A court shall not order compliance with the order~~
10 ~~absent a finding that the party seeking the enforcement~~
11 ~~participated, or attempted to participate, in good faith, in family~~
12 ~~mediation services of the court or dispute resolution through the~~
13 ~~tribe regarding the conflict, prior to the filing of the enforcement~~
14 ~~action.~~ The Judicial Council shall adopt rules of court and
15 necessary forms required to implement tribal customary adoption
16 as a permanent plan for dependent Indian children effective July
17 1, 2009. *The Judicial Council shall study California's tribal*
18 *customary adoption provisions and their affects on children, birth*
19 *parents, adoptive parents, Indian custodians, tribes, and the court,*
20 *and shall report all of its findings to the Legislature on or before*
21 *January 1, 2011.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (5) This subdivision shall only apply to cases in which an order
4 to set a hearing pursuant to this section is issued on or after January
5 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 take
16 into consideration whether the caretaker is listed in the preliminary
17 assessment prepared by the county department in accordance with
18 subdivision (i) of Section 366.21 as an appropriate person to be
19 considered as an adoptive parent for the child and the
20 recommendation of the State Department of Social Services or
21 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 home study.

25 (B) Cooperating with an adoption home study.

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 parents.

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

1 designated as a prospective adoptive parent pursuant to paragraph
2 (1) on the date of service of this notice, the child's attorney, and
3 the child, if the child is 10 years of age or older, of the proposal
4 in the manner described in Section 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 attorney,
7 or the designated prospective adoptive parent may file a petition
8 with the court objecting to the proposal to remove the child, or the
9 court, upon its own motion, may set a hearing regarding the
10 proposal. The court may, for good cause, extend the filing period.
11 A caretaker who would have met the threshold criteria to be
12 designated as a prospective adoptive parent pursuant to paragraph
13 (1) on the date of service of the notice of proposed removal of the
14 child may file, together with the petition under this subparagraph,
15 a petition for an order designating the caretaker as a prospective
16 adoptive parent for purposes of this subdivision.

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

39 (C) A determination by the court that the caretaker is a
40 designated prospective adoptive parent pursuant to paragraph (1)

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

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

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

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

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

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

38 (o) The implementation and operation of the amendments to
39 paragraph (3) of subdivision (c) and subparagraph (A) of paragraph
40 (4) of subdivision (c) enacted at the 2005–06 Regular Session shall

1 be subject to appropriation through the budget process and by
2 phase, as provided in Section 366.35.

3 *(p) This section shall remain in effect only until January 1, 2012,*
4 *and as of that date is repealed, unless a later enacted statute, that*
5 *is enacted before January 1, 2012, deletes or extends that date.*

6 SEC. 4. Section 366.26 is added to the Welfare and Institutions
7 Code, to read:

8 366.26. (a) *This section applies to children who are adjudged*
9 *dependent children of the juvenile court pursuant to subdivision*
10 *(d) of Section 360. The procedures specified herein are the*
11 *exclusive procedures for conducting these hearings; Part 2*
12 *(commencing with Section 3020) of Division 8 of the Family Code*
13 *is not applicable to these proceedings. Section 8616.5 of the Family*
14 *Code is applicable and available to all dependent children meeting*
15 *the requirements of that section, if the postadoption contact*
16 *agreement has been entered into voluntarily. For children who*
17 *are adjudged dependent children of the juvenile court pursuant to*
18 *subdivision (d) of Section 360, this section and Sections 8604,*
19 *8605, 8606, and 8700 of the Family Code and Chapter 5*
20 *(commencing with Section 7660) of Part 3 of Division 12 of the*
21 *Family Code specify the exclusive procedures for permanently*
22 *terminating parental rights with regard to, or establishing legal*
23 *guardianship of, the child while the child is a dependent child of*
24 *the juvenile court.*

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

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

37 (2) *Appoint a relative or relatives with whom the child is*
38 *currently residing as legal guardian or guardians for the child,*
39 *and order that letters of guardianship issue.*

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

5 (4) Appoint a nonrelative legal guardian for the child and order
6 that letters of guardianship issue.

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

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

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

33 (A) The child is living with a relative who is unable or unwilling
34 to adopt the child because of circumstances that do not include
35 an unwillingness to accept legal or financial responsibility for the
36 child, but who is willing and capable of providing the child with
37 a stable and permanent environment through legal guardianship,
38 and the removal of the child from the custody of his or her relative
39 would be detrimental to the emotional well-being of the child. For
40 purposes of an Indian child, “relative” shall include an “extended

1 family member,” as defined in the federal Indian Child Welfare
2 Act (25 U.S.C. Sec. 1903(2)).

3 (B) The court finds a compelling reason for determining that
4 termination would be detrimental to the child due to one or more
5 of the following circumstances:

6 (i) The parents have maintained regular visitation and contact
7 with the child and the child would benefit from continuing the
8 relationship.

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

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

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

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

37 (vi) The child is an Indian child and there is a compelling reason
38 for determining that termination of parental rights would not be
39 in the best interest of the child, including, but not limited to:

1 (I) Termination of parental rights would substantially interfere
2 with the child's connection to his or her tribal community or the
3 child's tribal membership rights.

4 (II) The child's tribe has identified guardianship, long-term
5 foster care with a fit and willing relative, or another planned
6 permanent living arrangement for the child.

7 If the court finds that termination of parental rights would be
8 detrimental to the child pursuant to clause (i), (ii), (iii), (iv), (v),
9 or (vi), it shall state its reasons in writing or on the record.

10 (2) The court shall not terminate parental rights if:

11 (A) At each 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 offered
14 or provided.

15 (B) In the case of an Indian child:

16 (i) At the hearing terminating parental rights, the court has
17 found that active efforts were not made as required in Section
18 361.7.

19 (ii) The court does not make a determination at the hearing
20 terminating parental rights, supported by evidence beyond a
21 reasonable doubt, including testimony of one or more "qualified
22 expert witnesses" as defined in Section 224.6, that the continued
23 custody of the child by the parent is likely to result in serious
24 emotional or physical damage to the child.

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

1 public adoption agencies regarding the availability of the child
2 for adoption. During the 180-day period, the public agency shall
3 conduct the search for adoptive parents in the same manner as
4 prescribed for children in Sections 8708 and 8709 of the Family
5 Code. At the expiration of this period, another hearing shall be
6 held and the court shall proceed pursuant to paragraph (1) or (4)
7 of subdivision (b). For purposes of this section, a child may only
8 be found to be difficult to place for adoption if there is no identified
9 or available prospective adoptive parent for the child because of
10 the child's membership in a sibling group, or the presence of a
11 diagnosed medical, physical, or mental handicap, or the child is
12 the age of seven years or more.

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

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

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

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

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

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

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

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

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

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

12 (1) In accordance with subdivision (c) of Section 317, if a child
13 before the court is without counsel, the court shall appoint counsel
14 unless the court finds that the child would not benefit from the
15 appointment of counsel. The court shall state on the record its
16 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
24 a 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 a period of time
31 not to exceed 30 days as necessary to appoint counsel, and to
32 enable counsel to 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 present
39 at a hearing held pursuant to this section, the court shall determine
40 whether the minor was properly notified of his or her right to

1 attend the hearing and inquire as to the reason why the child is
2 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 exists:

7 (i) The court determines that testimony in chambers is necessary
8 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 and
18 outside the presence of the guardian or guardians of a child under
19 the circumstances specified in this subdivision.

20 (i) (1) Any order of the court permanently terminating parental
21 rights under this section shall be conclusive and binding upon the
22 child, upon the parent or parents and upon all other persons who
23 have been served with citation by publication or otherwise as
24 provided in this chapter. After making the order, the juvenile court
25 shall have no power to set aside, change, or modify it, except as
26 provided in paragraph (2), but nothing in this section shall be
27 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 rights
30 and for whom the court has determined that adoption is no longer
31 the permanent plan may petition the juvenile court to reinstate
32 parental rights pursuant to the procedure prescribed by Section
33 388. The child may file the petition prior to the expiration of this
34 three-year period if the State Department of Social Services or
35 licensed adoption agency that is responsible for custody and
36 supervision of the child as described in subdivision (j) and the
37 child stipulate that the child is no longer likely to be adopted. A
38 child over 12 years of age shall sign the petition in the absence of
39 a showing of good cause as to why the child could not do so. If it
40 appears that the best interests of the child may be promoted by

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

1 shall be given preference with respect to that child over all other
2 applications for adoptive placement if the agency making the
3 placement determines that the child has substantial emotional ties
4 to the relative caretaker or foster parent and removal from the
5 relative caretaker or foster parent would be seriously detrimental
6 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 study
9 shall be completed before the processing of the application of any
10 other person for the adoptive placement of the child.

11 (l) (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 apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (A) Applying for an adoption home study.

33 (B) Cooperating with an adoption home study.

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

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

37 (E) Signing an adoptive placement agreement.

38 (F) Engaging in discussions regarding a postadoption contact
39 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 parents.

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

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

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

1 as a prospective adoptive parent on the date of service of the notice
2 of proposed removal of the child, the petition objecting to the
3 proposed removal filed by the caretaker shall be dismissed. If the
4 caretaker was designated as a prospective adoptive parent prior
5 to this hearing, the court shall inquire into any progress made by
6 the caretaker towards the adoption of the child since the caretaker
7 was designated as a prospective adoptive parent.

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

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

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

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

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

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

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

13 (p) This section shall become operative on January 1, 2012.

14 ~~SEC. 3.~~

15 *SEC. 5.* Section 16120 of the Welfare and Institutions Code is
16 amended to read:

17 16120. A child shall be eligible for Adoption Assistance
18 Program benefits if all of the conditions specified in subdivisions
19 (a) through (g), inclusive, are met or if the conditions specified in
20 subdivision (h) are met.

21 (a) The child has at least one of the following characteristics
22 that are barriers to his or her adoption:

23 (1) Adoptive placement without financial assistance is unlikely
24 because of membership in a sibling group that should remain intact
25 or by virtue of race, ethnicity, color, language, age of three years
26 or older, or parental background of a medical or behavioral nature
27 that can be determined to adversely affect the development of the
28 child.

29 (2) Adoptive placement without financial assistance is unlikely
30 because the child has a mental, physical, emotional, or medical
31 disability that has been certified by a licensed professional
32 competent to make an assessment and operating within the scope
33 of his or her profession. This paragraph shall also apply to children
34 with a developmental disability as defined in subdivision (a) of
35 Section 4512, including those determined to require out-of-home
36 nonmedical care as described in Section 11464.

37 (b) The need for adoption subsidy is evidenced by an
38 unsuccessful search for an adoptive home to take the child without
39 financial assistance, as documented in the case file of the
40 prospective adoptive child. The requirement for this search shall

1 be waived when it would be against the best interest of the child
2 because of the existence of significant emotional ties with
3 prospective adoptive parents while in the care of these persons as
4 a foster child.

5 (c) The child meets either of the following criteria:

6 (1) At the time a petition for an agency adoption, as defined in
7 Section 8506 of the Family Code, an order of adoption based on
8 a tribal customary adoption of an Indian child, or an independent
9 adoption, as defined in Section 8524 of the Family Code, is filed,
10 the child has met the requirements to receive federal supplemental
11 security income benefits pursuant to Subchapter 16 (commencing
12 with Section 1381) of Chapter 7 of Title 42 of the United States
13 Code, as determined and documented by the federal Social Security
14 Administration.

15 (2) The child is the subject of an agency adoption as defined in
16 Section 8506 of the Family Code and was any of the following:

17 (A) Under the supervision of a county welfare department as
18 the subject of a legal guardianship or juvenile court dependency.

19 (B) Relinquished for adoption to a licensed California private
20 or public adoption agency, or the department, and would have
21 otherwise been at risk of dependency as certified by the responsible
22 public child welfare agency.

23 (C) Committed to the care of the department pursuant to Section
24 8805 or 8918 of the Family Code.

25 (d) The child is under 18 years of age, or under 21 years of age
26 and has a mental or physical handicap that warrants the
27 continuation of assistance.

28 (e) The adoptive family is responsible for the child pursuant to
29 the terms of an adoptive placement agreement or a final decree of
30 adoption and has signed an adoption assistance agreement.

31 (f) The adoptive family is legally responsible for the support of
32 the child and the child is receiving support from the adoptive
33 parent.

34 (g) The department or the county responsible for determining
35 the child's Adoption Assistance Program eligibility status and for
36 providing financial aid, and the prospective adoptive parent, prior
37 to or at the time the adoption decree is issued by the court, have
38 signed an adoption assistance agreement that stipulates the need
39 for, and the amount of, Adoption Assistance Program benefits.

1 (h) A child shall be eligible for Adoption Assistance Program
2 benefits if the child received Adoption Assistance Program benefits
3 with respect to a prior adoption and the child is again available for
4 adoption because the prior adoption was dissolved and the parental
5 rights of the adoptive parents were terminated or because the
6 child's adoptive parents died.

7 (i) *This section shall remain in effect only until January 1, 2012,*
8 *and as of that date is repealed, unless a later enacted statute, that*
9 *is enacted before January 1, 2012, deletes or extends that date.*

10 SEC. 6. *Section 16120 is added to the Welfare and Institutions*
11 *Code, to read:*

12 *16120. A child shall be eligible for Adoption Assistance*
13 *Program benefits if all of the conditions specified in subdivisions*
14 *(a) through (g), inclusive, are met or if the conditions specified in*
15 *subdivision (h) are met.*

16 (a) *The child has at least one of the following characteristics*
17 *that are barriers to his or her adoption:*

18 (1) *Adoptive placement without financial assistance is unlikely*
19 *because of membership in a sibling group that should remain intact*
20 *or by virtue of race, ethnicity, color, language, age of three years*
21 *or older, or parental background of a medical or behavioral nature*
22 *that can be determined to adversely affect the development of the*
23 *child.*

24 (2) *Adoptive placement without financial assistance is unlikely*
25 *because the child has a mental, physical, emotional, or medical*
26 *disability that has been certified by a licensed professional*
27 *competent to make an assessment and operating within the scope*
28 *of his or her profession. This paragraph shall also apply to children*
29 *with a developmental disability as defined in subdivision (a) of*
30 *Section 4512, including those determined to require out-of-home*
31 *nonmedical care as described in Section 11464.*

32 (b) *The need for adoption subsidy is evidenced by an*
33 *unsuccessful search for an adoptive home to take the child without*
34 *financial assistance, as documented in the case file of the*
35 *prospective adoptive child. The requirement for this search shall*
36 *be waived when it would be against the best interest of the child*
37 *because of the existence of significant emotional ties with*
38 *prospective adoptive parents while in the care of these persons as*
39 *a foster child.*

40 (c) *The child meets either of the following criteria:*

1 (1) *At the time a petition for an agency adoption, as defined in*
2 *Section 8506 of the Family Code, or an independent adoption, as*
3 *defined in Section 8524 of the Family Code, is filed, the child has*
4 *met the requirements to receive federal supplemental security*
5 *income benefits pursuant to Subchapter 16 (commencing with*
6 *Section 1381) of Chapter 7 of Title 42 of the United States Code,*
7 *as determined and documented by the federal Social Security*
8 *Administration.*

9 (2) *The child is the subject of an agency adoption as defined in*
10 *Section 8506 of the Family Code and was any of the following:*

11 (A) *Under the supervision of a county welfare department as*
12 *the subject of a legal guardianship or juvenile court dependency.*

13 (B) *Relinquished for adoption to a licensed California private*
14 *or public adoption agency, or the department, and would have*
15 *otherwise been at risk of dependency as certified by the responsible*
16 *public child welfare agency.*

17 (C) *Committed to the care of the department pursuant to Section*
18 *8805 or 8918 of the Family Code.*

19 (d) *The child is under 18 years of age, or under 21 years of age*
20 *and has a mental or physical handicap that warrants the*
21 *continuation of assistance.*

22 (e) *The adoptive family is responsible for the child pursuant to*
23 *the terms of an adoptive placement agreement or a final decree*
24 *of adoption and has signed an adoption assistance agreement.*

25 (f) *The adoptive family is legally responsible for the support of*
26 *the child and the child is receiving support from the adoptive*
27 *parent.*

28 (g) *The department or the county responsible for determining*
29 *the child's Adoption Assistance Program eligibility status and for*
30 *providing financial aid, and the prospective adoptive parent, prior*
31 *to or at the time the adoption decree is issued by the court, have*
32 *signed an adoption assistance agreement that stipulates the need*
33 *for, and the amount of, Adoption Assistance Program benefits.*

34 (h) *A child shall be eligible for Adoption Assistance Program*
35 *benefits if the child received Adoption Assistance Program benefits*
36 *with respect to a prior adoption and the child is again available*
37 *for adoption because the prior adoption was dissolved and the*
38 *parental rights of the adoptive parents were terminated or because*
39 *the child's adoptive parents died.*

40 (i) *This section shall become operative on January 1, 2012.*

1 ~~SEC. 4.~~

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

7

8

9 **CORRECTIONS:**

10 **Text—Pages 22 to 35, inclusive.**

11

O