

Date of Hearing: April 8, 2025

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Alex Lee, Chair

AB 1378 (Rogers) – As Introduced February 21, 2025

**SUBJECT:** Child welfare services: prevention services: Indian tribes

**SUMMARY:** Expands when the California Department of Social Services (CDSS) is required to enter into an agreement with a tribe to also include when the agreement would prevent entry into foster care, and for the sole purpose of the administration of prevention programs.

Specifically, **this bill:**

- 1) Adds to the circumstances that require CDSS to enter into an agreement with any Indian tribe, tribal organization, or tribal consortium located in California regarding the care and custody of Indian children and jurisdiction over Indian child custody proceedings, to include agreements that prevent entry into foster care.
- 2) Specifies that notwithstanding any other law, an agreement under 1) above, may be made for the sole purpose of the administration of prevention programs pursuant to the Family First Prevention Services Act (FFPSA).
- 3) Clarifies that an Indian tribe, tribal organization, or tribal consortium, that is a party to an agreement under 1) above, shall, in accordance with the agreement, be eligible to receive allocations of administrative funds to support the cost of legal representation for the agency, parent, guardian, and children's advocates in cases under a tribe's jurisdiction pursuant to the agreement.

**EXISTING LAW:**

- 1) Requires, notwithstanding any other law, CDSS, upon an Indian tribe's request, to enter into an agreement with any Indian tribe, tribal organization, or tribal consortium located in California or with lands that extend into this state regarding the care and custody of Indian children and jurisdiction over Indian child custody proceedings, including, but not limited to, agreements that provide for orderly adjudication of, and transfer of jurisdiction on a case-by-case basis for, cases subject to exclusive tribal or state jurisdiction, or for concurrent jurisdiction between the state and tribes. (Welfare and Institutions Code [WIC] § 10553.1(a))
- 2) Provides there shall be no tribal share of costs for any agreement under 1) above. Requires an agreement concerning the provision of child welfare services to ensure that a tribe, tribal organization, or tribal consortium meets current service delivery standards. (WIC § 10553.1(b))
- 3) Requires, upon the effective date of an agreement authorized by 1) above, the tribe, tribal organization, or tribal consortium to comply with fiscal reporting requirements specified by CDSS for federal and state reimbursement of child welfare services funds or Aid to Families with Dependent Children-Foster Care services for programs operated under the agreement. (WIC § 10553.1(c))

- 4) Requires an Indian tribe, tribal organization, or tribal consortium that is a party to an agreement under 1) above, in accordance with the agreement, to be eligible to receive allocations of child welfare services funds. (WIC § 10553.1(d))
- 5) Permits an Indian tribe, tribal organization, or tribal consortium that is a party to an agreement under 1) above, to, in accordance with the agreement, be eligible to receive an allocation of child welfare services funds to assist in funding the startup costs associated with establishing a comprehensive child welfare services program. Requires the allocation to be available for expenditure by the Indian tribe, tribal organization, or tribal consortium for three years of the agreement. Specifies this shall be implemented only to the extent that funding is expressly provided in the annual Budget Act for these purposes. (WIC § 10553.1(e))
- 6) Specifies that implementation of an agreement under 1) above, does not impose liability upon, or to require indemnification by, the participating county or the State of California for any act or omission performed by an officer, agent, or employee of the participating tribe, tribal organization, or tribal consortium. (WIC § 10553.1(f))
- 7) Declares it is the Legislature's intent to exercise the option afforded to states under FFPSA to receive federal financial participation for the prevention services that are provided for a candidate for foster care or a pregnant or parenting foster youth, and their parents or kin caregivers, and the allowable costs for the proper and efficient administration of the program. (WIC § 16585(a))
- 8) Declares it is the Legislature's intent that the prevention services under FFPSA will improve outcomes for children and families, reduce entries into foster care, and reduce disproportionate entries into foster care of children and youth of color, Native American and Alaskan Native children and youth, and lesbian, gay, bisexual, transgender, queer, and plus (LGBTQ+) children and youth. (WIC § 16585(b)(2))
- 9) Declares it is the Legislature's intent that the prevention services under FFPSA will be provided in a manner that reaffirms the commitments to Indian children, Indian families, and Indian tribes. There is no resource more vital to the continued existence and integrity of Indian tribes than their children, and the State of California has an interest in ensuring that prevention services are provided in a manner consistent with the federal Indian Child Welfare Act of 1978 (ICWA). (WIC § 16585(b)(3))
- 10) Requires CDSS to consult with Indian tribes on the development of a statewide prevention plan to provide prevention services under FFPSA, associated allocation policies, and procedures for an Indian tribe, consortium of tribes, or tribal organization that has entered into an agreement with the state. (WIC § 16587(b))
- 11) Requires CDSS to negotiate in good faith with the Indian tribe, organization, or consortium in the state that requests development of an agreement with the state to administer all or part of the programs under Title IV-E of the Social Security Act on behalf of the Indian children who are under the authority of the tribe, organization, or consortium. (WIC § 16000.6)

- 12) Establishes Cal-ICWA and provides that a determination by an Indian tribe that an unmarried person, who is under 18 years of age, is either (1) a member or citizen of an Indian tribe or (2) eligible for membership or citizenship in an Indian tribe and a biological child of a member or citizen of an Indian tribe shall constitute a significant political affiliation with the tribe and shall require the application of the federal ICWA and other applicable state and federal law to the proceedings. (WIC § 224(e))

#### Federal law

- 13) Establishes ICWA, which provides guidance to states regarding the jurisdictional requirements, proceedings of tribal courts, and the custody proceedings involving the removal of Indian children from the custody of their parents. (25 United States Code [U.S.C.] § 1901 *et seq.*)
- 14) Outlines federal regulations under ICWA and provides for active efforts and child custody proceedings, and clarifies tribal jurisdiction. (25 Code of Federal Regulations § 23)
- 15) Implements the federal Social Security Act amendment under FFPSA allowing states and tribes to opt in to providing prevention services and receiving federal financial participation for the cost of those services. (42 U.S.C. § 671(e))
- 16) Implements the federal Social Security Act amendment under the Fostering Connections to Success and Increasing Adoptions Act that provides that states shall negotiate in good faith with any Indian tribe, tribal organization or tribal consortium in the state that requests to develop an agreement with the state to administer all, or part of, a Title IV-E program on behalf of Indian children. (42 U.S.C. § 671(a)(32))

**FISCAL EFFECT:** Unknown, this bill has not been analyzed by a fiscal committee.

#### COMMENTS:

**Background:** *Indian Child Welfare Act (ICWA)*. Prior to the mid-1970s, Indian children faced high rates of removal – estimated to be as high as 25-35% of all Indian children – from their families, and subsequent placement in non-Indian homes. A years-long Congressional investigation in the 1970s determined that the four leading factors that contributed to removal of children and unnecessary termination of parental rights were:

- State child welfare standards for assessing families that lack cultural competence;
- Due-process violations against Indian children and their parents that existed on a system-wide basis;
- Economic incentives that favored the removal of Indian children from their families and communities; and,
- Social conditions existing in Indian country.

The Congressional investigation also found that states often failed to recognize the tribal relations of Indian people and their cultural and social standards when carrying out child custody proceedings.

Congress enacted federal legislation – ICWA (25 U.S.C. § 1901 *et seq.*) to address a number of the issues related to the custody of Indian children and, ultimately, to ensure the preservation of Native American families, tribes, and tribal cultures. ICWA established minimum standards with which state courts must comply any time an Indian child is removed from their family or custodial home and placed in foster care or adoptive homes. It does not prohibit states from establishing higher standards. SB 678 (Ducheny), Chapter 838, Statutes of 2006, established Cal-ICWA, which revised and recast the portions of state code that address Indian child custody proceedings by codifying into state law various provisions of ICWA, the Bureau of Indian Affairs Guidelines for State Courts, and state Rules of Court.

*This bill* clarifies that CDSS, upon an Indian tribe’s request, must enter into an agreement that prevents entry into foster care and for the sole purpose of the administration of prevention programs under FFPSA. *The bill* also clarifies that tribes who are a party to this agreement will be eligible to receive allocations of administrative funds to support the costs of legal representation.

*Family First Prevention Act.* On February 9, 2018, President Trump signed H.R. 1892 (Larson), P.L. 115-123, which included FFPSA to reform child welfare services systems across the country by adopting two major changes:

- Expansion of Title IV-E funds to focus on prevention: One of the largest changes made by FFPSA was expanding the use of Title IV-E funds—named for Title IV-E of the Social Security Act and which provides federal funding for states and tribes to provide foster care, transitional independent living programs for children, guardianship assistance, and adoption assistance for children with special needs—on services that would prevent the entry of children into foster care. Prior to FFPSA, states were permitted to use federal Title IV-E funds for children once they were placed in the child welfare system. Under FFPSA, states are able to claim federal reimbursement for approved prevention services prior to a child being placed in foster care in order to allow candidates for foster care to remain with their parents or kin caregivers. Allowable services under FFPSA that are eligible for Title IV-E funds include: mental health and substance abuse prevention and treatment services provided by a qualified clinician; and in-home parent skills-based programs, including parenting skills training, parent education, and individual and family counseling.
- Reduction of the number of youth in congregate care settings: The second component of FFPSA included the goal of reducing states’ use of congregate or residential group care, commonly referred to as group homes, and which, as a result of state-level reforms to California’s child welfare system, include short-term residential therapeutic programs.

*Unequal Access to Prevention Funds.* ICWA and its California counterpart, Cal-ICWA, similarly seek to prevent the removal of tribal children from their families. However, according to data compiled by the California Child Welfare Indicators Project, tribal children continue to enter foster care two and half times more often than White children. While tribes are often on the frontline of providing services to tribal children and their families, they are unable to access funding similar to counties and community-based organizations. Tribes have the strongest relationships with tribal families and are well-positioned to provide needed services; however, advocates report that the discrepancy in funding access means that many tribes are not able to provide the robust services to prevent tribal children from being separated from their families.

Under FFPSA, to qualify for funding, prevention services must meet specific evidence-based criteria. Programs are rated as either promising, supported, or well-supported by the Title IV-E Prevention Services Clearinghouse to ensure that the services are backed by research and have demonstrated effectiveness in preventing foster care placements. The Children's Bureau guidance dated July 30, 2024, to states with Title IV-E agreements with tribes, does not require tribes to comply with the evidence-based services requirements in the design of service programs. Therefore, tribes operating under such an agreement may determine the practice criteria for services that are adapted to the culture and context of the tribal communities served under the agreement.

The Children's Bureau issued guidance on July 26, 2019, clarifying that a Title IV-E agency that has an agreement with a tribe or any other public agency under section 472(a)(2)(B)(ii) of the Act may claim Title IV-E administrative costs for legal representation provided by tribal or public agency attorneys under the agreement in all stages of foster care related legal proceedings. The Title IV-E agency may also claim administrative costs for independent legal representation provided by an attorney for a candidate for Title IV-E foster care or a Title IV-E eligible child in foster care who is served under the agreement, and the child's parents, to prepare for and participate in all stages of foster care related legal proceedings.

*Current Agreements with Tribes.* Existing law allows CDSS to enter into agreements with Indian tribes within the state to administer all or part of the programs under Title IV-E of the Social Security Act and includes the following programs: Prevention Services; Foster Care Services; Adoption Services; and Kinship Guardianship Services. According to the sponsors, when the federal government makes these direct agreements with tribes and states, tribes and states are required to implement foster care and adoption programs and allow the opting in of prevention and guardianship programs. In this proposal, CDSS remains the party having the direct agreement with the federal government and meeting the requirements of implementing all programs required under Title IV-E. Because this proposal does not involve the federal agreements, but rather agreements with CDSS in which tribes take over part of the programs currently administered by the state for tribal children, the same federal rules do not apply. Both California and federal law specifically mention agreements for "all or part" of the program under Title IV-E.

According to the sponsors, because the administration of all these programs requires tribes to have immense existing administrative and social services capacity, there are currently only two out of 109 tribes that have entered into an agreement with CDSS under this authority. There are many tribes in California that do not have the capacity or desire to administer foster care, adoption and kinship guardian programs, but are eager to administer prevention programs. By allowing CDSS to enter into agreements with tribes to administer prevention services, it would open the door to existing federal funding to tribes. The sponsors note that this segmentation of Title IV-E programs is already federally allowable, and the intent of this legislation is simply to clarify that CDSS can follow the federal authorization to enter into an agreement with tribes for a single part of the Title IV-E funding. This would allow tribes to provide culturally driven services that could prevent the entry of tribal children into foster care, therefore, saving the State of California funding on needing to provide out-of-home care.

In addition to the clarity for authority for prevention program-only agreements, this legislation would also clarify that tribes with Title IV-E agreements can utilize child welfare services allocations to pay for the allowable costs of parent, child, and agency legal representation in

dependency cases under tribal court jurisdictions. When tribes with Title IV-E agreements are implementing foster care, adoption and guardianship programs, they are required by CDSS to provide legal representation for the child at a minimum. According to the sponsors, although these legal services are currently funded for counties, CDSS states they do not have authority to provide the same support to tribes. This legislation aims to provide authority to CDSS so that tribes with existing and future agreements can meet requirements and implement prevention programs.

**Author's Statement:** According to the Author, "California is proudly home to the highest Native American population per capita of any state, with our district encompassing many recognized and unrecognized Tribes. For generations, tribal nations and their families have been profoundly affected by state and federal laws and policies that have marginalized their communities. Native American children continue to be disproportionately represented in the California child welfare system, with their rates of involvement two and a half times higher than those of White children. That is a shocking and sad statistic. Every one of those kids represents a family that has been torn apart. [This bill] aims to address these historic disparities by providing Tribes with resources equal to those of county agencies, empowering them to offer direct services that help keep families together before intervention from child welfare services becomes necessary. This bill is good policy, but more importantly it's the right thing to do for California's kids."

**Equity Implications:** The provisions of *this bill* seek to clarify CDSS' authority to make agreements with tribes in California to administer prevention services-only programs. *This bill* also seeks to clarify that tribes with agreements to provide foster care, adoption, and guardianship programs may use their existing child welfare services allocation funding to support advocates in tribal court for the tribal child.

According to the Association of American Indian Affairs, Title IV-E funding through state/tribal agreements provides critically needed infrastructure supports to tribes caring for tribal children in foster care. State/tribal agreements vary widely across states, but best practices allow for the maximum extent of funding to be provided to tribes through these agreements. The legal clarification proposed by this legislation would address the continued inequity in funding that tribes experience to care directly for their children and families, and would result in the reduction of tribal children in foster care.

In the implementation of FFPSA in California, CDSS has allowed county agencies to contract with a variety of community partners to provide prevention services and yet does not make agreements with tribes in the same manner. Through this legislation, tribes will have the same access to prevention program funding that other community-based service providers already have. Access to funding on par with counties will allow tribes to provide culturally driven prevention services through government-to-government agreements, the most appropriate mechanism that respects the sovereign status of tribal nations in California.

**Double referral:** Should this bill pass out of this committee, it will be referred to the Assembly Judiciary Committee.

**RELATED AND PRIOR LEGISLATION:**

*AB 3176 (Waldron) Chapter 833, Statutes of 2018*, made a number of changes to state law regarding the removal of Indian children from their families and their out-of-home placement in order to conform to changes to federal regulations governing ICWA.

*SB 678 (Ducheny), Chapter 838, Statutes of 2006*, see comments above.

**REGISTERED SUPPORT / OPPOSITION:****Support**

California Tribal Families Coalition (Co-Sponsor)  
Alliance for Children's Rights  
Bishop Paiute Tribal Court  
California Alliance of Child and Family Services  
California Family Resource Association  
Child Abuse Prevention Center and Its Affiliates Safe Kids California, Prevent Child Abuse  
California and The California Family Resource Association  
Children's Law Center of California  
County of Humboldt  
Fort Independence Indian Community  
Karuk Tribe  
Mechoopda Indian Tribe of Chico Rancheria  
Redding Rancheria  
Redwood Valley Little River Band of Pomo Indians  
Rincon Band of Luiseño Indians  
Yurok Tribe

**Opposition**

None on file.

**Analysis Prepared by:** Jessica Langtry / HUM. S. / (916) 319-2089