

Date of Hearing: March 26, 2019

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Eloise Gómez Reyes, Chair

AB 685 (Reyes) – As Introduced February 15, 2019

**SUBJECT:** Juveniles: Indian tribes: counsel

**SUMMARY:** Requires the State Bar of California, upon appropriation in the annual Budget Act, to administer grants to qualified legal services projects and support centers to provide legal services to Indian tribes in child welfare matters, requires topics of the Indian Child Welfare Act (ICWA) and cultural competency related to Indian children in out-of-home care be included in certain training for legal counsel, and requires the court of appeal to appoint counsel for a child's Indian tribe, as specified. Specifically, **this bill:**

- 1) Requires the State Bar of California, upon appropriation of no less than \$1,000,000 in the annual Budget Act specifically for the purposes of implementing the provisions of this bill, to administer grants to qualified legal services projects and support centers in order to provide legal services to Indian tribes in child welfare matters, as specified.
- 2) Requires the grants be provided only to qualified legal services projects and support centers that have experience handling child welfare matters under the federal ICWA or providing legal services to Indian tribes.
- 3) Includes ICWA and cultural competency and sensitivity relating to, and best practices for, providing adequate care to Indian children in out-of-home care among the training topics required of certain legal counsel appointed to a parent or guardian, as specified.
- 4) Requires the court of appeal, in any appellate proceeding involving an Indian child, to appoint separate counsel for the child's Indian tribe upon request of the child's Indian tribe.
- 5) Makes technical changes.

**EXISTING LAW:**

- 1) States that the purpose of foster care law is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, neglected, or exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of harm. (Welfare and Institutions Code [WIC] Section 300.2)
- 2) Declares the intent of the Legislature to, whenever possible, preserve and strengthen a child's family ties and, when a child must be removed from the physical custody of his or her parents, to give preferential consideration to placement with relatives. States the intent of the Legislature to reaffirm its commitment to children who are in out-of-home placement to live in the least restrictive family setting and as close to the child's family as possible, as specified. Further states the intent of the Legislature that all children live with a committed, permanent, nurturing family and states that services and supports should be tailored to meet the specific needs of the individual child and family being served, as specified. (WIC 16000)

- 3) 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 Section 1901 *et seq.*)
- 4) Declares the commitment of the State of California to protecting the essential tribal relations and best interest of an Indian child by promoting practices in accordance with federal law, as specified. (WIC 224 *et seq.*)
- 5) Requires counsel appointed for a child or nonminor dependent not represented by counsel to have a caseload and training that ensures adequate representation of the youth, including cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home care. (WIC 317 (c)(1) and (5))
- 6) Requires the court of appeal, in any appellate proceeding in which the child is an appellant, to appoint separate counsel for the child. (WIC 395 (b)(1))

**FISCAL EFFECT:** Unknown

**COMMENTS:**

***Child Welfare Services:*** California's Child Welfare Services (CWS) system exists to protect children from abuse and neglect, and in doing so, to provide for their health, safety, and overall well-being. When suspicions of abuse or neglect arise, often as a result of a report by a mandated reporter like a doctor or teacher, Child Protective Services is tasked with investigating the report. If the allegation of abuse or neglect is substantiated, it is then determined whether it is in the best interest of the child to remain in their parent's custody or be placed within the CWS system. If a child is suspected to be at risk of neglect, abuse, or abandonment, the juvenile court holds legal jurisdiction, and the CWS system appoints a social worker to ensure that the needs of a youth are met. As of October 2018, there were 59,487 youth between the ages of 0 and 21 placed in California's CWS system.

***Indian Child Welfare Act (ICWA):*** ICWA was signed into law on November 8, 1978, in response to congressional hearings held in the mid-1970s, which found that Native American children were removed from their homes in larger numbers than their non-Native peers. At the time, research demonstrated that Native American children were six to seven times more likely than non-native children to be placed in foster or adoptive homes, and 25-35% of Native American children were removed from their homes and placed in foster care, adoptive homes, or boarding schools. Specifically in California, 90% of Native American children subject to adoption were placed in non-native homes, and one in every 124 Indian children in California was in a foster home, compared to one in 367 non-native children.

The high rate of interaction between Native American children and the child welfare system, combined with a desire to preserve Native American familial ties and tribal cultures, facilitated Congressional approval of ICWA, which serves as civil rights legislation intended to protect the interests of Native American children should they come into contact with the child welfare system. California later codified the provisions of ICWA through SB 678 (Ducheny), Chapter 838, Statutes of 2006. Known as Cal-ICWA, SB 678 declared that a Native American child's best interest is served by protecting and encouraging connection to their tribal community. Cal-

ICWA included additional protections not included in federal ICWA, such as: imposing a duty to inquire whether a child in a child custody proceeding may be a Native American child, requiring that available tribal resources be used when trying to meet ICWA's placement preferences, and clarifying that ICWA applies to probate guardianships and conservatorships, among other things.

Between January 1, 2017, and December 31, 2017, of the 28,359 youth who entered the child welfare system, 409 of those youth were Native American, an increase from 364 in 2016. As of October 1, 2018, 42.7% of Native American children in the child welfare system were placed with relatives, and approximately 35.6% were placed with non-relatives who were not Native American.

***Legal Services Trust Program:*** Founded in 1981 and administered by the State Bar of California, the Legal Services Trust Fund Program aims to expand the availability and improve the quality of existing free legal services to low-income individuals. Interest earned on certain accounts held by California attorneys is required, by law, to be forwarded to the State Bar, and a portion of those proceeds are allocated to qualified legal services projects and qualified legal support centers. In 2018, the State Bar administered just over \$49.5 million in grants to a variety of organizations that provide legal aid to low-income individuals.

***Need for this bill:*** The provisions of this bill seek to ensure that, when Native American children face involvement with the child welfare services system, quality legal representation is available, and finances do not provide a barrier to adequate representation. Specifically, this bill would provide grants, subject to an appropriation in the annual Budget Act, to qualified legal services projects and support centers that have experience handling child welfare matters under ICWA, or providing legal services to Indian tribes.

According to the author, "In 1978, Congress passed the Indian Child Welfare Act to protect the interests of Native children and promote stability and security of tribes and families. In 2005, the California State Legislature passed SB 678 (Ducheny), and codified ICWA standards into state law, known as Cal-ICWA. California is leading the nation in ICWA related appeals, with a total of 152 cases appeals in 2017 alone. This caseload, as well as a variety of issues brought forward by the California ICWA Compliance Task Force Report to the California Attorney General's Bureau of Children's Justice, indicates that California remains heavily non-compliant with ICWA. This is of grave concern, as families continue to get torn apart, particularly with cases that lack appropriate legal counsel due to extreme financial burden placed on tribes. [This bill] will remedy this problem and help ensure California becomes compliant with ICWA and protects tribal communities by providing adequate legal counsel to families dealing with ICWA related cases."

**Double referral:** This bill will referred to the Assembly Judiciary Committee should it pass out of this committee.

## **RELATED AND PRIOR LEGISLATION**

***AB 686 (Waldron) of 2019*** requires the Judicial Council to establish additional rules of court related to Native American children removed from their parents' custody, requires Indian tribes be reimbursed in certain cases pursuant to ICWA, and in certain circumstances, allows an Indian child's tribe to conduct the resource family approval process for resource family applicants. AB 686 is set to be heard by this committee on March 26, 2019.

*AB 3076 (Reyes) of 2018* was substantially similar to this bill and would have required the State Bar of California, upon an appropriation in the annual Budget Act, to administer grants for the purpose of providing legal services to Indian tribes in child welfare matters under ICWA. AB 3076 was held on the Senate Appropriations Committee suspense file.

*AB 3176 (Waldron), Chapter 833, Statutes of 2018*, makes a number of changes to court proceedings related to Native American children in the child welfare system.

*AB 3047 (Daly), Chapter 399, Statutes of 2018*, allows certain fees to be waived when the applicant is an attorney representing a tribe in a child welfare matter.

*AB 1325 (Cook), Chapter 287, Statutes of 2009*, allowed dependent tribal children in need of long-term placement plans to be adopted without first terminating parental rights.

*SB 678 (Ducheny), Chapter 838, Statutes of 2006*, codified elements of ICWA in California statute.

*S. 1214 (Abourezk), P.L. 96-608*, federal legislation that dictates procedures governing the jurisdiction over the removal of Native American children from their families.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

National Center for Youth Law (Sponsor)  
Alliance for Children's Right  
Juvenile Court Judges of California

##### **Opposition**

None on file

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