

Date of Hearing: March 26, 2019

ASSEMBLY COMMITTEE ON HUMAN SERVICES
Eloise Gómez Reyes, Chair
AB 686 (Waldron) – As Introduced February 15, 2019

SUBJECT: Indian children

SUMMARY: Authorizes an Indian child's tribe or tribal organization to be eligible for adoption assistance funds under the Private Adoption Assistance Reimbursement Program (PAARP) as compensation for costs related to the placement of Indian children where the Indian Child Welfare Act (ICWA) applies, acknowledges authority of an Indian child's tribe to conduct a child-specific placement approval for an Indian child and exempts the tribe from resource family standards, and requires the Judicial Council to adopt rules of court allowing for an Indian child's tribe to participate remotely in proceedings. Specifically, **this bill:**

- 1) Requires the Judicial Council, by July 1, 2021, to adopt rules of court to allow for fee-free telephonic or other remote appearance options by an Indian child's tribe in proceedings where the federal Indian Child Welfare Act of 1978 may apply.
- 2) Prohibits provisions of current law governing the PAARP from being construed as preventing adoption assistance funds from being used to compensate an Indian child's tribe or tribal organization for the placement of Indian children where ICWA applies to their juvenile dependency case.
- 3) Prohibits an Indian tribe or tribal organization from being subject to state licensing requirements in order to be eligible for compensation under PAARP.
- 4) States that, in provisions of current law pertaining to child-specific resource family approval, if the child is an Indian child, and the Indian child's tribe so chooses, the tribe shall conduct the placement approval, as specified.
- 5) Prohibits resource family standards from applying to an Indian child's tribe in cases where the tribe conducts a child-specific approval for an Indian child.
- 6) Requires, in instances where an Indian child's tribe is not conducting a home evaluation for a child-specific approval for that child, the approval to be conducted for the specific Indian child and in accordance with specified provisions of state law pertaining to the placement of Indian children and with ICWA, applying the standards of the Indian community.
- 7) 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 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(a))
- 5) Requires the court, in all Indian child custody proceedings as defined by ICWA, to strive to promote the stability and security of Indian tribes and families, comply with ICWA, and seek to protect the best interest of the child and further, requires, whenever an Indian child is removed from a foster care home or institution, guardianship, or adoptive placement for purposes of foster care, guardianship, or adoptive placement, the placement of the child to be in accordance with ICWA. (WIC 224(b))
- 6) Requires ICWA to apply to any proceedings regarding an unmarried minor who is either the member of an Indian tribe or who is eligible for membership in an Indian tribe and a biological child of a member or citizen of an Indian tribe, as specified. (WIC 224(c))
- 7) Defines a number of terms related to Indian child welfare and delineates processes for designating an Indian child's tribe for purposes of an Indian child custody proceeding, as specified. (WIC 224.1)
- 8) Stipulates processes and requirements regarding the determination of a child's status as an Indian child, as specified. (WIC 224.2)
- 9) Establishes requirements and processes related to the placement of an Indian child who has been removed from the physical custody of his or her parents, including establishing priorities for placement preference, as specified. (WIC 361.31)
- 10) Establishes in state law the authority for a federally recognized tribe to approve a home for the purpose of foster or adoptive placement of an Indian child per ICWA, and provides for processes related to this approval. (WIC 10553.12)
- 11) Establishes the PAARP to provide compensation to licensed private adoption agencies for costs of placing for adoption children or nonminor dependents who are eligible for Adoption Assistance Program benefits, as specified. (WIC 16122)
- 12) Defines a "resource family" to mean an individual or family that has successfully met both the home environment assessment and the permanency assessment criteria, as specified, necessary for providing care for a child placed by a public or private child placement agency

by court order, or voluntarily placed by a parent or legal guardian. (Health and Safety Code [HSC] Section 1517, WIC 16519.5 (c)(1))

- 13) Define “resource family approval” to mean that the applicant or resource family successfully meets the home environment assessment and permanency assessment standards, as specified. (HSC 1517)
- 14) Requires the California Department of Social Services (CDSS) to implement the resource family approval process as a unified, family friendly, and child-centered process to replace the existing multiple processes for licensing foster family homes, certifying foster homes by licensed foster family agencies, approving relatives and nonrelative extended family members as foster care providers, and approving guardians and adoptive families. (WIC 16519.5 (a))
- 15) Stipulates that a resource family shall be considered eligible to provide foster care for children in out-of-home placement and shall be considered approved for adoption and guardianship, and authorizes a county to approve a resource family to care for a specific child, as specified. (WIC 16519.5 (c)(4))

FISCAL EFFECT: Unknown

COMMENTS:

Child Welfare Services: In California during calendar year 2017, almost 500,000 children had allegations of child abuse or neglect made regarding them. Of these children, approximately 71,000 (14%) had allegations that were substantiated, and 28,000 (40% of children with substantiations) were removed from their homes and entered foster care via the state’s Child Welfare Services (CWS) system. (However, children who have reports of abuse or neglect substantiated but are not removed from the home may also receive, along with their families, family maintenance services; these services may in some instances be ordered by the court and, in others, based upon a voluntary agreement with the parent where the courts is not involved. Family maintenance services typically involve a social worker working with a family in the home to prevent and remedy abuse and neglect, and can include a variety of services such as counseling, parent education, respite care, substance use disorder treatment, domestic violence intervention, and victim services.)

The CWS system serves to protect children from abuse and neglect, and to provide for their health and safety. When a county juvenile court finds that a youth is subject to or at substantial risk of maltreatment warranting their removal from the home, the court holds legal jurisdiction over the youth. A youth is served by the CWS system through the appointment of a social worker, and many opportunities exist during which the custody of the youth, or their placement outside of the home, must be evaluated, reviewed and determined by the judicial system, in consultation with the youth's social worker, to help provide the best possible services to the youth. When a youth has been removed from the home, the goal of the CWS system is, often, to reunify them with their parents or guardians, whenever appropriate. When a youth’s reunification with their family is not appropriate, the second highest placement priority of the CWS system is to place youth with other relatives or nonrelative extended family members. Youth may also be placed in foster homes – referred to as “resource family” homes – overseen by either the county or a foster family agency. Specialized placement and service options also exist for youth with significant behavioral health and other needs; these placements and related

services can include specially trained intensive services foster care resource families, and intensive, temporary placement in short-term residential therapeutic programs, which are replacing group homes under significant changes adopted in recent years per the state's Continuum of Care Reform. As of October 1, 2018, there were 59,487 children in California's child welfare system.

Indian Child Welfare Act (ICWA): Historically, Indian children have been removed from their homes at significantly high rates, with as high as 25% to 35% of Indian children being taken from the custody of their families, often to be placed as foster youth in non-Indian homes. In the 1970s, a Congressional investigation lasting multiple years found that the four main factors that contributed to removal of children and unnecessary termination of parental rights were:

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

Additionally, this Congressional investigation determined that states, when carrying out child custody proceedings, frequently neglected to recognize the tribal relations of Indian people and their cultural and social standards.

ICWA was adopted at the federal level 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 set minimum standards for state courts to meet any time an Indian child is removed from their family or custodial home and placed in foster care or adoptive homes. States were authorized to establish higher standard above the federal baseline. California's state-level implementation of ICWA was adopted with the passage of SB 678 (Ducheny), Chapter 838, Statutes of 2006. SB 678 established Cal-ICWA, revising and recasting those portions of state code that address Indian child custody proceedings as it codified into state law various provisions of ICWA, the Bureau of Indian Affairs (BIA) Guidelines for State Courts, and state Rules of Court. As of October 1, 2018, there were 59,487 children and youth in the state's child welfare services system; 1,216 were ICWA-eligible. Of those 1,216 children and youth, 466 were placed with relatives.

Continuum of Care Reform: SB 1013 (Budget and Fiscal Review Committee), Chapter 35, Statutes of 2012, was legislation that realigned child welfare services to counties, adopted a number of changes and directed CDSS to convene a working group to examine the use of group homes in California. As a result of the work of that workgroup, CDSS submitted a report to the Legislature in January 2015 containing a number of recommendations aimed at reforming the foster care system and reducing California's reliance on group home settings as acceptable placements for foster youth. Initially dubbed "Congregate Care Reform," these efforts were later renamed "Continuum of Care Reform" (CCR) in recognition of the need to strengthen the state's entire system of home-based care and supports while decreasing reliance on group homes. AB 403 (Stone), Chapter 773, Statutes of 2015, and subsequent clean-up language, adopted many of the CCR report recommendations. These adopted recommendations included adopting a sunset

for existing licensure, rate-setting, and other provisions for group homes and providing for a new licensure category of Short-Term Residential Therapeutic Programs (STRTPs) to offer temporary housing and intensive up-front services for youth prior to placing them with a family. They also included the creation of and reliance upon child and family teams to be involved in child-centered decision-making for each youth in the child welfare services system, and a child-centered approval process for all families seeking to care for a foster youth, regardless of whether or not the youth is related to the family, known as “resource family approval.”

Resource Family Approval: Per statute, CDSS is required to implement the resource family approval process as a unified, family friendly, and child-centered process to replace the existing multiple processes for licensing foster family homes, certifying foster homes by licensed foster family agencies, approving relatives and nonrelative extended family members as foster care providers, and approving guardians and adoptive families. Initially implemented in select counties, resource family approval was adopted on a statewide basis through CCR legislation. Because it includes elements of adoption and guardianship processes, the resource family process can create opportunities for more direct routes to permanency for foster youth. The resource family approval process includes a psychosocial assessment, home environment check, and training for all resource families, including relatives, in order to prepare families to better meet the needs of vulnerable children in the foster care system.

Tribally approved homes: Pursuant to ICWA, a federally recognized Indian tribe or tribal agency is permitted to approve a home for the foster or adoptive placement of an Indian child (although it is not required to do so). These tribally approved homes are not subject to state licensing approval standards, with the exception of requirements related to criminal background checks. Tribes and tribal agencies have the independent authority to approve homes using their own socially and culturally appropriate standards. A forthcoming all-county letter from CDSS, currently in draft form, states that tribally approved homes are not subject to California’s resource family approval requirements.

Need for this bill: According to the author, “The Indian Child Welfare Act provides important rights and protections to Indian families. Progress has been made, but major concerns persist regarding ICWA compliance and how ICWA proceedings are conducted. In 2015, the California ICWA Compliance Task Force was formed to examine compliance issues and provide recommendations to improve understanding of and compliance with ICWA. The Task Force report identified ongoing concerns regarding the placement of Indian children, including an underutilization of Tribal Customary Adoption. It also documented the barriers to tribal participation in these cases due to geographic distance between the location of the tribe and the location of the state court case. This bill would increase ICWA compliance by clarifying placement approval standards for Indian children and funding for home approvals. It would also authorize the use of telephonic or other remote access by an Indian child’s tribe to ensure full participation by Indian tribes in ICWA proceedings.”

Staff comments and recommended amendments: This bill seeks to better support the tribal customary adoption process by enabling an Indian child’s tribe or tribal organization to be eligible for adoption assistance funds under PAARP as compensation for costs related to the placement of Indian children where ICWA applies. However, making tribes and tribal organizations eligible for assistance allocated for private adoption purposes is problematic. Instead, should this bill move forward, ***committee staff encourages the author to pursue legislative avenues that would enable tribes and tribal organizations to draw down federal***

funds to better support the tribal customary adoption process. Committee staff recommends the following amendment:

1) *Delete lines 28 through 40 on page 5, and lines 1 through 32 on page 6, of the bill.*

Additionally, this bill seeks to prohibit resource family standards from applying to an Indian child's tribe in cases where the tribe conducts a child-specific tribal home approval for an Indian child. Per the forthcoming all-county letter from CDSS, this is already current interpretation of law. In order to clarify this understanding in statute, *committee staff recommends the following amendments:*

2) *Delete lines 21 through 31 on page 9 of the bill.*

3) *Add new subdivision (f) to Section 10553.12 of Welfare and Institutions Code:*

(f) Pursuant to subdivision (o) of Section 1505 of Health and Safety Code, tribal home approvals conducted in compliance with this section shall not be subject to resource family approval requirements.

Lastly, in order to better realize this bill's goal of ensuring, in instances where an Indian child's placement involves resource family approval (versus placement in a tribally approved home), that prevailing social and cultural standards are heeded, *committee staff recommends the following amendment:*

4) *After line 20 on page 9 of the bill, insert the following:*

(i) In the case of an Indian child where the Tribe is not exercising its right to approve a home, resource family approval shall apply the prevailing social and cultural standards of the Indian Community as required by Section 361.31(f) and the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.). The department shall, through all-county letters or other similar instruction, provide guidance to counties regarding consistent implementation of this clause

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

RELATED AND PRIOR LEGISLATION:

AB 685 (Reyes) of 2019 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 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. AB 685 is scheduled to be heard in the Assembly Human Services Committee on March 26, 2019.

AB 3047 (Daly), Chapter 399, Statutes of 2018, provided a fee waiver for out-of-state attorneys appearing pro hac vice in specified ICWA matters.

AB 3076 (Reyes) of 2018 would have required the State Bar of California, upon appropriation in the annual Budget Act, to administer grants to qualified legal services projects and support

centers in order to provide legal services to Indian tribes in child welfare matters and would have required the grants to 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. AB 3076 was held on the Senate Appropriations Committee suspense file.

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, 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.

REGISTERED SUPPORT / OPPOSITION:**Support**

Alliance for Children's Rights (Sponsor)
Juvenile Court Judges of California
California Nations Indian Gaming Association

Opposition

None on file

Analysis Prepared by: Daphne Hunt / HUM. S. / (916) 319-2089