

Date of Hearing: April 21, 2021

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Lisa Calderon, Chair

AB 873 (Ramos) – As Introduced February 17, 2021

SUBJECT: Child welfare services: Indian tribes

SUMMARY: Prohibits an agreement concerning the administrative costs for legal representation throughout dependency court for children in foster care from requiring a matching share of cost if tribal, tribal consortium, or tribal organization attorneys provide legal representation.

EXISTING LAW:

- 1) Establishes a state and local system of child welfare services, including foster care, for children who have been adjudged by the court to be at risk of abuse and neglect or to have been abused or neglected, as specified. (Welfare and Institutions Code Section [WIC] 202)
- 2) Clarifies the purpose of provisions regarding dependent children as to provide the 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. (WIC 300.2)
- 3) Provides Legislative intent to preserve and strengthen a child's family ties whenever possible and to reunify a foster youth with their biological family whenever possible, or to provide a permanent placement alternative. (WIC 16000)
- 4) Establishes the Indian Child Welfare Act (ICWA), which provides guidance to states regarding the jurisdictional requirements, proceedings of tribal courts, and custody proceedings involving the removal of Indian children from their parents' custody. (25 United States Code Section 1901 *et seq.*)
- 5) Provides that the California Department of Social Services (CDSS) may enter into agreements with a tribe, tribal consortium, or tribal organization regarding child welfare in accordance with the ICWA; further, contains provisions on cost-sharing requirements of these agreements. (WIC 10553.1)
- 6) Establishes federal regulations for the implementation of ICWA. (25 Code of Federal Regulations Section [CFR] 23)
- 7) States 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))
- 8) 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))

- 9) Requires ICWA to apply to any proceedings regarding an unmarried minor who is either a 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))
- 10) Provides that CDSS may enter into agreements with a tribe, tribal consortium, or tribal organization regarding child welfare in accordance with ICWA; further, contains provisions on cost-sharing requirements of these agreements. (WIC 10553.1)

FISCAL EFFECT: Unknown

COMMENTS:

Child Welfare Services (CWS): California's Child Welfare Services system is established with the goal of protecting youth from abuse and neglect. The system works through collaboration to provide for the safety, health, and overall well-being of children. When a child is identified as being at risk of abuse or neglect, reports can be made to either law enforcement or a county child welfare agency. Often, reports are submitted by mandated reporters who are legally required to report any suspicion of child abuse or neglect due to their profession. When a mandated reporter submits a report to either law enforcement or the county child welfare agency, a social worker determines whether the allegation is of suspected abuse, neglect, or exploitation. The child's social worker and the court collaborate throughout evaluating and reviewing the circumstances of each individual's case. As of January 1, 2021, there were 59,716 youth placed in the CWS system.

Dependency Court: If a social worker petitions for a child to be declared a dependent of the court, current law requires the detention hearing be held within 48 hours of the petition being filed. Social workers must outline at the detention hearing the allegations of abuse or neglect made against the child's parents and the rationale for removing the child from their parent's custody. Within 15 days of a child's removal from their parents' custody, a jurisdictional hearing must occur to determine whether the allegations outlined in the social worker's petitions are true. If the allegations are deemed to be true, then the child is determined to be within the juvenile court's jurisdiction, thereby prompting a dispositional hearing within 60 days of the initial detention hearing. At the dispositional hearing, the court determines the family reunification plan parameters and determines where and with whom the child will reside. If the court determines that the child's best interests are served by removing them from their parent's custody, the child is removed, and the child's permanent placement is determined in a later hearing. When appropriate, the system works to reunite children who have been removed from the custody of their parents or guardians with individuals they consider to be family to maintain familial bonds wherever possible.

Indian Child Welfare Act: In 1978, Congress passed ICWA to address the disproportionate rate in which tribal youth were being removed from their homes. The legislation resulted from a series of investigations on unnecessary termination of parental rights done earlier in the decade, which found 25-35% of tribal children had been removed from their homes and placed as foster youth outside the tribe. ICWA was a federal attempt towards protecting the civil rights and interests of tribal children when interaction with the child welfare system is deemed appropriate.

Within ICWA are minimum standards for state courts to meet; however, states are authorized to establish higher standards above the federal baseline.

California codified the provisions of ICWA in 2016 with the passage of SB 678 (Ducheny), Chapter 838, Statutes of 2006, known as Cal-ICWA. SB 678 codified the state's intent to preserve a child's connection to their tribal culture and community whenever possible and contains provisions on the process for tribal child custody proceedings. In addition to codifying ICWA practices into state law, SB 678 clarifies that ICWA applies to probate guardianships and conservatorships; imposes a duty to inquire whether a child in a child-custody proceeding may be a tribal child; and requires that available tribal resources be used when trying to meet ICWA's placement preferences. Since the passage of Cal-ICWA, the state continues to enact policies that seek to improve the process of collaboration for the state and tribes regarding child welfare.

Continuum of Care Reform (CCR): In recent years, California has enacted legislation, known as CCR, to improve placement and treatment options for youth in foster care. AB 403 (Stone), Chapter 773, Statutes of 2015, sponsored by CDSS, sought to improve outcomes for children and youth served by the CWS system by working to ensure that foster youth have their day-to-day physical, mental, and emotional needs met, that they have the opportunity to grow up in permanent and supportive homes, and have the opportunities necessary to become self-sufficient and successful adults. CCR also sought to reduce the use of congregate care as a frequently used placement option for youth, as data have demonstrated that youth placed in congregate care settings experience poorer outcomes than youth placed in family settings. Subsequent legislation to further facilitate implementation of CCR efforts include AB 1997 (Stone), Chapter 612, Statutes of 2016, AB 404 (Stone), Chapter 732, Statutes of 2017, AB 1930 (Stone), Chapter 910, Statutes of 2018, AB 819 (Stone), Chapter 777, Statutes of 2019, and AB 2944 (Stone), Chapter 104, Statutes of 2020.

Coronavirus Pandemic: In March of 2020, Governor Gavin Newsom declared a statewide state of emergency in response to the global COVID-19 pandemic. With over 500,000 deaths resulting from coronavirus across our country, the impact of this virus has touched almost every aspect of everyday life. We have watched as the effects of COVID-19 have added strain on California's public programs, healthcare system, and the financial security of many. As our state begins the road to recovery, many youth who have been isolated will make their way back to classrooms and communal settings, allowing mandated reports to resume contact and creating an anticipated spike in reports of suspected abuse and neglect.

Need for this bill: This bill would prohibit an agreement between CDSS and a tribal organization regarding the dependency of a tribal youth from including an administrative share of cost if the tribe provides legal representation. Under current law, the provisions for legal representation for tribal youth are included in the agreement made with CDSS and the representative of the tribal organization. The current process often leaves tribal youth with the sole representative of a social worker in complex cases involving both tribal law and state child welfare policy. By prohibiting title IV-E agreements from containing administrative share of costs if tribal legal representation is provided, tribes could be further encouraged to participate in these proceedings.

According to the author, "A child's future, when they are removed from their family and enter the foster care system, is decided in a courtroom. All of the parties in state court cases have legal counsel provided to them, except in a case involving an Indian Child, where the tribe, an essential party, does not have a right to resources for legal counsel. Because of a lack of

resources, a tribal social worker is often the only voice in court trying to protect the complex legal rights of a tribe. The result is that cases that could be resolved in Tribal Courts remain in the overburdened and underequipped state courts with often elongated court proceedings, appeals which drain tribal and judicial resources and tribal children losing their connection to culture and community."

RELATED AND PRIOR LEGISLATION:

AB 685 (Reyes) of 2019, would have required the State Bar of California to administer grants to nonprofit legal service organizations to provide support and technical assistance related to the implementation of ICWA. AB 3076 was substantially amended to remove provisions relating to the ICWA.

AB 3176 (Waldron), Chapter 833, Statutes of 2018, makes a number of changes to court proceedings related to tribal children in CWS.

AB 3076 (Reyes) of 2018, would have required the State Bar of California to administer grants to nonprofit legal service organizations to provide support and technical assistance related to the implementation of ICWA. AB 3076 was held on the Senate Appropriations Committee suspense file.

AB 1962 (Wood), Chapter 748, Statutes of 2018, amends the definition of foster youth for Local Control Funding Formula purposes by including a student who is in foster care under the placement and care responsibility of an Indian tribe.

SB 678 (Ducheny), Chapter 838, Statutes of 2006, codifies provisions of the federal ICWA in California law.

REGISTERED SUPPORT / OPPOSITION:

Support

Yurok Tribe

Opposition

None on file

Analysis Prepared by: Emmalynn Mathis / HUM. S. / (916) 319-2089