

Date of Hearing: April 5, 2022

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Lisa Calderon, Chair

AB 1862 (Ramos) – As Amended March 29, 2022

SUBJECT: Tribally Approved Homes Compensation Program

SUMMARY: Establishes the “Tribally Approved Homes Compensation Program” under the California Department of Social Services (CDSS) to provide tribes with funding, upon appropriation in the state budget, to recruit and approve homes for the purpose of foster or adoptive placement. Specifically, **this bill:**

- 1) Provides that a tribal organization may serve one or more federally recognized tribes in the process of approving homes consistent with the Indian Child Welfare Act (ICWA).
- 2) Establishes the “Tribally Approved Homes Compensation Program” to provide funding to eligible tribes to recruit and approve homes for the foster or adoptive placement of an Indian child in accordance with the ICWA.
- 3) Provides that to be eligible for funding, a tribe or tribal organization must submit a letter of intent to CDSS by May 1st, prior to the fiscal year in which funding is being requested describing their plan to recruit and retain tribal staff to administer the tribally approved homes process. Further, requires the letter of intent to include the estimated number of homes the tribal staff member will investigate and potentially approve each year and prohibits CDSS from establishing a minimum number of approved homes requirement.
- 4) Requires a tribe or tribal organization that receives funding to submit a progress report to CDSS by August 1 following the close of the fiscal year in which an allocation was received that includes details about how many homes were approved, recruitment efforts, and challenges experienced during the fiscal year that was funded.
- 5) Requires CDSS to annually compile the progress reports it receives from the tribal organizations and submit a report to the Legislature, as specified.

EXISTING LAW:

- 1) Establishes a state and local system of child welfare services (CWS), 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 provide a permanent placement alternative. (WIC 16000)

- 4) Defines "tribally approved home" (TAH) as a home that has been licensed or approved by an Indian child's tribe or a tribe or tribal organization designated by the Indian child's tribe for foster care or adoptive placement of an Indian child using standards established by the child's tribe, as specified. Further, declares that a TAH is not required to be licensed or approved by the state or county and is equivalent to a state-licensed or county-licensed, or approved home, including an approved resource family home. (WIC 224.1(r))
- 5) Requires a tribal agency to submit to Department of Justice (DOJ) fingerprint images and related required information of an individual applying with the tribal agency as a prospective foster parent or adoptive parent, any adult who resides or is employed in the home of an applicant, any person who has a familial or intimate relationship with any person living in the home of an applicant, or employee of the child welfare agency who may have contact with a child, for the purposes of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests and also information as to the existence and content of a record of state or federal arrests for which DOJ establishes that the person is released on bail on their own recognizance pending trial or appeal. (Penal Code Section [PEN] 11105.08(b))
- 6) Requires out-of-home placement of a child in foster care to be based upon the selection of a safe setting that is the least restrictive family setting that promotes normal childhood experiences and the most appropriate setting that meets the child's individual needs, as specified. (WIC 16501.1(d)(1))
- 7) Establishes 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.*)
- 8) Establishes federal regulations for the implementation of ICWA. (25 Code of Federal Regulations Section [CFR] 23)
- 9) 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))
- 10) 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))
- 11) 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 224.2 (c))
- 12) Provides that a federally recognized tribe is authorized, but not required, to license or approve a home for the purpose of foster or adoptive placement of an Indian child, as specified under ICWA. (WIC 10553.12 (a))

- 13) Requires the court, county welfare department, and probation department to inquire whether a child, as specified, is or may be an Indian child and establishes provisions regarding the custody and care of the child. (WIC 224.2)
- 14) 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 children's safety, health, and overall well-being. 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 October 1, 2021, there were 58,072 youth placed into the state's child welfare 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 to 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

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 the 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.

Indian Child Welfare Act: In 1978, Congress passed ICWA to address the disproportionate rate at 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 that 25-35% of tribal children had been removed from their homes and placed as foster youth outside the tribe. ICWA was a federal attempt toward 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 2006 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 clarified 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 between the state and tribes regarding child welfare. Despite several changes to policy aimed at increasing outcomes for tribal youth, CDSS reports that tribal children continue to have one of the lowest rates of achieving timely permanency.

Tribally approved homes: Under 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. However, 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.

2017 ICWA Compliance Report: A 2017 report released by the state ICWA Compliance Task Force investigated the implementation of ICWA & Cal-ICWA in the CWS. The report found that the best practices associated with ICWA were not being implemented and that training requirements for dependency counsel did not include ICWA components. The task force notes that "...almost 40 years after ICWA's passage, compliance with basic, fundamental aspects of the law (e.g., efforts to prevent the need for removal, notice and inquiry, providing appropriate reunification services, and meeting the placement preferences) remain a significant concern. The problem is further compounded by the fact that there is no reliable way to assess compliance on a systemic basis. There is no readily available data on how many cases the ICWA is or ought to be applied in...demonstrated in this report, the lack of meaningful and accurate data is a systemic failure tied to a lack of training, resources, and competency."

In addition to recognizing areas needing improvement, the report released several recommendations, including:

- 1) Reframe and reconsider ICWA compliance as a civil rights mandate;

- 2) Seek legislation to obtain positions and funding to address and develop a concrete plan of action for investigating ICWA compliance;
- 3) Secure resources to build tracking and data systems that accurately account for tribes, ICWA compliance, and case outcomes; and,
- 4) Fund authentic and robust tribal consultation to inform policies and processes for meeting, and exceeding, the civil rights mandate of ICWA.

Need for this bill: This bill would establish the “Tribally Approved Homes Compensation Program” to provide tribes with funding to assist with the recruitment and retention of tribally approved homes. Current data shows that 55% of Indian children involved in the CWS are currently placed in non-familial homes that are not tied to the child’s culture. The program established through the provisions of this bill could increase the percentage of culturally appropriate and timely permanent placements for tribal youth. As California continues to address the racial inequities prevalent in our safety net systems through policy, it is essential to ensure that the state’s historically underfunded populations are financially supported to implement the necessary strategies for meaningful change.

According to the author, “The Indian Child Welfare Act was passed as a remedial statute to protect the best interests of Indian children and tribes in ensuring that Indian children in foster care are placed in family homes in their community. Yet in California, the majority of Indian children (56%) are being placed in non-familial homes that are not tied to the child’s tribal culture even though there is a large body of evidence that children placed with extended family develop strong attachments and have better long-term outcomes than children in non-familial placements. Some researchers even say ‘ICWA placement preferences should be the gold standard for all children, not just those who are Native, given the benefits of kinship care.’”

“This bill seeks to ensure Indian children are placed in culturally appropriate and legally compliant placements by establishing the Tribally Approved Homes Compensation Program. Through the Tribally Approved Homes Compensation Program, tribes will receive funding, as non-tribal home approval agencies do, so tribes can continue providing this vital service and build additional internal capacity to approve foster and adoptive homes, thereby creating more available ICWA compliant family placements while easing county home approval workloads.”

RELATED AND PRIOR LEGISLATION:

AB 1950 (Ramos) of 2022, would establish the “Cal-ICWA County Accountability System Evaluation (CASE) Program” to measure county compliance with ICWA and Cal-ICWA regarding tribal dependency cases. AB 1950 was dropped by the author after being referred to the Assembly Human Services Committee.

AB 1055 (Ramos), Chapter 284, Statutes of 2021, revises the definition of students in foster care for purposes of the Local Control Funding Formula and for purposes of specified educational rights of students in foster care as relating to Indian children and youth in voluntary placement agreements.

AB 873 (Ramos), Chapter 284, Statutes of 2021, requires CDSS, upon request of a tribe, to enter into an agreement with a tribe, tribal organization, or tribal consortium regarding the care and custody of Indian children.

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, made 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, amended 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, codified provisions of the federal ICWA in California law.

REGISTERED SUPPORT / OPPOSITION:

Support

California Tribal Families Coalition (Sponsor)

Opposition

None on file

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