

## ASSEMBLY THIRD READING

AB 1862 (Ramos)

As Amended March 29, 2022

Majority vote

**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.

**Major Provisions**

- 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.

**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.

*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."

#### **Arguments in Support**

A sponsor of the bill, the California Tribal Families Coalition, state that, "ICWA placement preferences are known as the "gold standard" in child welfare because they ensure child placement with family and kin when possible. This bill is an important step in making funding available to tribes for internal capacity building that will allow tribes to approve more homes and ease the burden on county child welfare agencies in the already difficult foster care and adoptive placement process. We further support the added amendment that requires CDSS to submit an annual report to the legislature."

#### **Arguments in Opposition**

None on file

### **FISCAL COMMENTS**

According to the Assembly Appropriations Committee on April 27, 2022:

- 1) Estimated ongoing costs in the range of \$5 million to \$8 million (General Fund (GF)), to provide an annual allocation of \$75,000 to each eligible tribe and tribal organization and cover their associated administrative costs. There are 109 federally recognized tribes in

California and many additional others. If 75 tribes each received \$75,000, the annual cost would be \$5.6 million.

- 2) Estimated costs of approximately \$200,000 (GF) to CDSS for one staff position in the Office of Tribal Affairs and one quarter-time administrative position to administer the program, process the new fund and provide technical assistance to recipients.

(The author is also pursuing this proposal in the Legislative budget process.)

## **VOTES**

### **ASM HUMAN SERVICES: 8-0-0**

**YES:** Calderon, Davies, Arambula, Mia Bonta, Bryan, Stone, Villapudua, Waldron

### **ASM APPROPRIATIONS: 16-0-0**

**YES:** Holden, Bigelow, Bryan, Calderon, Carrillo, Megan Dahle, Davies, Mike Fong, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

## **UPDATED**

VERSION: March 29, 2022

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