

Date of Hearing: March 17, 2026

ASSEMBLY COMMITTEE ON JUDICIARY  
Ash Kalra, Chair  
AB 1824 (Ramos) – As Amended March 12, 2026

PROPOSED CONSENT

**SUBJECT:** INDIAN CHILDREN: GUARDIANSHIP OR CONSERVATORSHIP  
PROCEEDINGS

**KEY ISSUE:** IN ORDER TO PROMOTE CONSISTENT COMPLIANCE WITH THE FEDERAL INDIAN CHILD WELFARE ACT AND THE STATE COUNTERPART, THE CALIFORNIA INDIAN CHILD WELFARE ACT, SHOULD NUMEROUS PROVISIONS OF THE PROBATE CODE BE REPLACED OR MODIFIED TO ADD LANGUAGE CLEARLY DETAILING REQUIREMENTS NECESSARY TO COMPLY WITH BOTH FEDERAL AND STATE ACTS?

**SYNOPSIS**

*Legal proceedings involving Native American children, such as dependency, guardianship, adoption, and conservatorships, are subject to a distinct set of rules and procedures than those which do not involve Native American children. These rules, which are codified in the Indian Child Welfare Act (ICWA) and its California counterpart (CalICWA), stem from efforts to rectify the incalculable harm caused by decades of institutionalized practices that removed Native children from their parents, extended families, and communities. Unfortunately due to the fact that both act's requirements can be found throughout federal statutes, regulations, rules of court, and various state codes, adherence to ICWA's requirements have been inconsistent. In 2024, in an effort to facilitate compliance with ICWA by practitioners and judges, AB 81 (Ramos) Chap. 656, Stats. 2024 made significant amendments to provisions of the Welfare and Institutions Code addressing dependency proceedings to directly incorporate the relevant standards and requirements set out by both ICWA and CalICWA. However, AB 81 did not do the same for the Probate Code, which provides guidelines for guardianship and conservatorship proceedings that are also subject to ICWA. This bill completes the task that was started by AB 81 by revising and recasting provisions of the Probate Code relating to guardianships and conservatorships to directly incorporate ICWA's rules and standards and hopefully facilitate increased compliance by courts and practitioners.*

*This bill is sponsored by California Indian Legal Services, the California Tribal Families Coalition, the Morongo Band of Mission Indians, and the Habematolel Pomo of Upper Lake. It is additionally supported by Enterprise Rancheria, the Pechanga Band of Indians, and the Rincon Band of Luiseño Indians. There is no known opposition. Should this bill be approved by this Committee it will be heard next by the Assembly Committee on Human Services.*

**SUMMARY:** Codifies certain provisions of the federal Indian Child Welfare Act of 1978 (ICWA) into the Probate Code and creates consistency between the Probate Code and existing state law across the Family Code and Welfare Institutions Code currently referred to as the California Indian Child Welfare Act (CalICWA). Specifically, **this bill:**

- 1) Repeals existing Probate Code Section 1449 and replaces it with new Probate Code Section 1449 which defines the following:
  - a) “Indian” means any person who is a member or citizen of an Indian tribe, as defined, or who is an Alaska Native and a member or citizen of a Regional Corporation as defined by federal law;
  - b) “Indian child” means any unmarried person who is under 18 years of age and is either a member or citizen of an Indian tribe, or eligible for membership or citizenship in an Indian tribe and is a biological child of a member or citizen of an Indian tribe;
  - c) “Indian custodian” means an Indian who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control have been transferred by the parent of that child;
  - d) “Indian organization” means a group, association, partnership, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;
  - e) “Indian tribe” means an Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village as defined by federal law;
  - f) “Reservation” has the same meaning as “Indian country” as defined by federal law, and any lands that are not covered under its provisions and the title to which is either held by the United States in trust for the benefit of an Indian tribe or individual or held by an Indian tribe or individual subject to a restriction by the United States against alienation;
  - g) “Tribal court” means a court with jurisdiction over child custody proceedings, and that is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe that is vested with authority over child custody proceedings.
- 2) Defines all of the following for use in connection with proceedings involving an Indian child:
  - a) “Extended family member” has the same meaning as defined by the law or custom of the Indian child’s tribe, or in the absence of such law or custom, shall be a person who has reached 18 years of age and who is the Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;
  - b) “Parent” means a biological parent or parents of an Indian child or an Indian who has lawfully adopted an Indian child, including adoptions under tribal law or custom;
  - c) “Indian child’s tribe” means the Indian tribe in which an Indian child is a member or citizen or eligible for membership or citizenship, or in the case of an Indian child who is a member or citizen of, or eligible for membership or citizenship in, more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

- i) Provides procedures and guidelines for courts in case the child may be a member of more than one tribe.
  - ii) Prohibits a determination of the Indian child's tribe for purposes of ICWA in proceedings involving an Indian child from constituting a determination for any other purpose.
- d) "Active efforts" means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with their family. Requires, to the maximum extent possible, active efforts to be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and tribe. Requires active efforts to be tailored to the facts and circumstances of the case. Provides examples of active efforts.
- e) "Bureau of Indian Affairs" means the Bureau of Indian Affairs of the United States Department of the Interior;
- f) "Continued custody" means physical custody or legal custody or both, under any applicable tribal law or tribal custom or state law, that a parent or Indian custodian already has or had at any time in the past. The biological mother of an Indian child is deemed to have had custody of the Indian child.
- g) "Custody" means physical custody or legal custody or both, under any applicable tribal law or tribal custom or state law.
- h) "Domicile" means either of the following:
- i) For a parent, Indian custodian, or legal guardian, the place that a person has been physical present and that the person regards as home. This includes a person's true, fixed, principal, and permanent home, to which that person intends to return and remain indefinitely even though the person may be currently residing elsewhere;
  - ii) For an Indian child, the domicile of the Indian child's parents, Indian custodian, or legal guardian. In the case of an Indian child whose parents are not married to each other, the domicile of the Indian child means the domicile of the Indian child's custodial parent;
- i) "Involuntary proceeding" means any proceeding involving an Indian child in which the parent or Indian custodian does not consent of their free will, or consents under threat of removal of the child by a state court or agency and in which the parent or Indian custodian does not have the right to have the child returned upon demand.
- j) "Placement preferences" means the specified preferred order of placement in any guardianship or conservatorship and the requirements for any deviation from the preferred order.
- k) "Upon demand" means, in the case of an Indian child, the parent or Indian custodian may regain physical custody during a proceeding simply upon verbal or written request, without any delay, formalities, or contingencies.

- 1) “Voluntary proceeding” means a proceeding involving an Indian child, that is not an involuntary proceeding, where the parents have, or the Indian custodian has knowingly and in compliance with the specified requirements, without a threat of removal by a state court or agency, consented to the placement of the Indian child and the parents have, or the Indian custodian has, the immediate right to the return of the child upon demand.
- 3) Repeals existing Probate Code Section 1459.
- 4) Establishes new Probate Code Section 1459 which makes findings and declarations regarding the sovereignty of federally recognized tribes and the sensitivity of the placement of children from Indian tribes, as well as the State’s interest in protecting Indian children.
- 5) Adds Probate Code Section 1459.1 which states the following:
  - a) Explicitly states that the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 *et seq.*) and the relevant provisions of the California Child Welfare Act, as described in Section 224 (c) of the Welfare and Institutions Code apply to guardianship or conservatorship proceedings under the Probate Code when the proposed ward or conservatee is an Indian child.
  - b) Establishes that the court and petitioner have an affirmative and continuing duty to inquire whether a child for whom a petition for guardianship, conservatorship, or temporary guardianship or conservatorship may be or has been filed, is or may be an Indian child.
  - c) Imposes the duty to inquire on a petitioner beginning when filing a petition under Division 4 of the Probate Code, including guardianship or conservatorship proceedings.
    - i) Includes but does not limit the scope of inquiry to all of the following: asking the child, parents, legal guardian, Indian custodian, extended family members, and others who have an interest in the child whether the child is, or may be, an Indian child and where the child, the parents, or Indian custodian is domiciled.
  - d) Imposes the duty to inquire at the first hearing on a petition that could result in placement of an Indian child with someone other than a parent or Indian custodian, including proceedings where the parents or Indian custodian have voluntarily consented to the placement of the child on the court presiding over the proceeding at the first hearing on the petition.
  - e) Requires the court, at the commencement of the hearing, to ask each party to the proceeding and all other interested persons present whether the child is, or may be, an Indian child, whether they know or have reason to know that the child is an Indian child, and where the child, the parents, or Indian custodian are domiciled. Also requires the inquiry to be made at the first appearance in court of each party or interested person who was not present at the first hearing on the petition.
    - i) Requires the inquiry and responses to occur on the record and requires the court to instruct the parties and persons present to inform the court if they subsequently receive information that provides reason to know the child is, or may be, an Indian child.

- f) Specifies reasons to know a child involved in a proceeding is an Indian child.
- g) Requires the court or the petitioner, in the event that either has reason to believe that an Indian child is involved in a proceeding, but does not have sufficient information to determine that there is reason to know that the child is an Indian child, to make further inquiry regarding the possible Indian status of the child, and make that inquiry as soon as practicable.
  - i) Establishes that there is reason to believe a child involved in a proceeding is an Indian child when the court or petitioner has information suggesting that either the parent of the child or the child is a member or citizen, or may be eligible for membership or citizenship, in an Indian tribe.
- h) Requires further inquiry to help the court or petitioner determine whether there is reason to know a child is an Indian child when there is reason to believe the child is an Indian child. Specifies examples of further inquiry.
- i) Requires the party seeking placement with someone other than a parent or Indian custodian, if there is reason to know that the child is an Indian child, to provide notice as specified.
- j) Requires the court, in the event there is reason to know the child is an Indian child but the court does not have sufficient evidence to determine that the child is or is not an Indian child, to confirm, by way of a report, declaration, or testimony included in the record that the party used due diligence to identify and work with all of the tribes of which there is reason to know the child may be a member or citizen, or eligible for membership or citizenship, to verify whether the child is in fact a member or whether a biological parent is a member and the child is eligible for membership or citizenship.
- k) Makes a determination by an Indian tribe that a child is or is not a member or citizen of, or eligible for membership or citizenship in, that tribe, or testimony attesting to that status by a person authorized by the tribe to provide that determination conclusive. Clarifies that information that the child is not enrolled, or is not eligible for enrollment in, the tribe is not determinative of the child's membership or citizenship status unless the tribe also confirms in writing that enrollment is a prerequisite for membership or citizenship under tribal law or custom.
- l) Requires the court, when there is reason to know that the child is an Indian child, to treat the child as an Indian child unless and until the court determines on the record and after review of the report of due diligence as described and a review of the copies of notice, return receipts, and tribal responses required, that the child does not meet the definition of an Indian child as specified.
- m) Allows the court, if it makes a finding that proper and adequate further inquiry and due diligence as required have been conducted and there is no reason to know whether the child is an Indian child, to make a finding that ICWA does not apply to the proceedings, subject to reversal based on sufficiency of the evidence. Requires the court to reverse its determination if it subsequently receives information providing reason to believe that the child is an Indian child and order the petitioner to conduct further inquiry as specified.

- n) Notwithstanding a determination that the ICWA does not apply to the proceedings, requires the party seeking placement to provide additional information to any tribes entitled to notice and to the United States Secretary of the Interior's designated agent if the court or the petitioner subsequently receives any information required that was not previously available or included in the notice issued.
  - o) Notwithstanding any other law, authorizes an Indian child's tribe to participate by telephone, or other remote appearance options, in proceedings in which the ICWA may apply. Authorizes the court to determine the method of appearance consistent with court capacity and contractual obligations, and taking into account the capacity of the tribe, as long as a method of effective remote appearance and participation sufficient to allow the tribe to fully exercise its rights is provided. Prohibits fees from being charged for court appearances conducted in whole or in part by remote means.
- 6) Establishes Probate Code Section 1459.2 which does the following:
- a) Requires the court or petitioner to provide the specified notice if either knows or has reason to know, as described, that an Indian child is involved. Requires the notice to be provided for any proceeding involving an Indian child. Requires the notice to be sent to the child's parents or legal guardian, Indian custodian, if any, and the child's tribe. Requires copies of all notices to be served on all parties to the proceeding and their attorneys.
  - b) Imposes specified requirements for adequate notice including identifying who service must be provided to, the documents that must be served, and what contact information for the relevant parties must be included.
  - c) Requires notice to be sent whenever it is known or there is reason to know that an Indian child is involved, and for every hearing that may culminate in a proceeding as specified, unless it is determined that the ICWA does not apply to the case. Specifies information that does not need to be included in the notice after a tribe acknowledges that the child is a member of, or eligible for membership in, that tribe, or after a tribe intervenes in a proceeding.
  - d) Requires proof of the notice, including copies of notices sent and all return receipts and responses received, to be filed with the court in advance of the hearing, except as specified.
  - e) Prohibits a proceeding from being held until at least 10 days after receipt of notice by the parent, the Indian custodian, the tribe, or the Bureau of Indian Affairs. Requires the parent, Indian custodian, or tribe, to be granted up to 20 additional days to prepare for that proceeding upon their request.
  - f) Makes a party subject to court sanctions with respect to giving notice to Indian tribes if that person knowingly and willfully falsifies or conceals a material fact concerning whether the child is an Indian child, or counsels a party to do so.
  - g) Exempts inclusion of contact information of any adult or child that would otherwise be required to be included in the notification pursuant to this bill if that person is at risk of harm as a result of domestic violence, child abuse, sexual abuse, or stalking.

- h) Requires notice to the child's parents, Indian custodian, and tribe for any hearing that does not meet the definition of a proceeding involving an Indian child to be provided as specified.
- 7) Establishes Probate Code Section 1459.3 which grants the Indian child's tribe, parent, and Indian custodian the right to intervene at any point in a proceeding involving an Indian child.
- 8) Establishes Probate Code Section 1459.4 which requires the court, in a proceeding involving an Indian child, to give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe applicable to the proceeding to the same extent that such entities give full faith and credit to the public acts, records, judicial proceedings, and judgments of any other entity, regardless of whether the Indian child's tribe exercises the right to intervene.
- 9) Repeals existing Probate Code Section 1459.5.
- 10) Establishes new Probate Code Section 1459.5 which states the following:
  - a) Requires a party seeking a placement of an Indian child to provide evidence to the court that active efforts, as defined, have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. Requires, when the court or petitioner knows a child is an Indian child, or has reason to know a child is an Indian child, the party petitioning under this provision to provide active efforts upon filing the petition or at first contact with the Indian child or family. Requires the active efforts to be documented in detail in the record.
  - b) Requires determination of what constitutes active efforts to be assessed on a case-by-case basis. Requires the active efforts to be made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe. Requires active efforts to utilize the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.
  - c) Prohibits issuance of a guardianship or conservatorship in the proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of a qualified expert witness, that the continued custody of the child by the parent or Indian custodial is likely to result in serious emotional or physical damage to the child.
  - d) Requires, when testimony of a qualified expert witness is required in a proceeding involving an Indian child, a qualified expert witness to be qualified to testify regarding whether continued custody of the child by the parent or Indian custodial is likely to result in serious emotional or physical damage to the child and to be qualified to testify to the prevailing social and cultural standards of the Indian child's tribe. Prohibits the individual from being an employee of the person or agency recommending guardianship or conservatorship placement.
  - e) Requires the court to satisfy both of the following when considering whether to remove an Indian child from the custody of a parent or Indian custodian or to terminate the parental rights of the parent of an Indian child:

- i) Require that a qualified expert witness testify regarding whether continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child;
  - ii) Consider evidence concerning the prevailing social and cultural standards of the Indian child's tribe, including that tribe's family organization and child-rearing practices.
- f) Identifies persons with the specified characteristics as those most likely to meet the requirements for a qualified expert witness for purposes of a proceeding involving an Indian child.
- g) Authorizes the court or any party to request the assistance of the Indian child's tribe or Bureau of Indian Affairs agency serving the Indian child's tribe in locating persons to serve as qualified witnesses.
- h) Authorizes the court to accept a declaration or affidavit from a qualified expert witness in lieu of testimony only if the parties have stipulated in writing and the court is satisfied the stipulation is made knowingly, intelligently, and voluntarily.
- i) Requires, in a proceeding involving an Indian child, the initial and any subsequent placement of the Indian child to comply with the placement preferences specified.
- 11) Establishes Probate Code Section 1459.6 which does all of the following:
- a) Requires the court, in a proceeding involving an Indian child, to determine the child's residence and domicile, as defined.
  - b) Requires the state court to expeditiously notify the tribe and tribal court of the pending dismissal based on the tribe's exclusive jurisdiction if at any stage of a proceeding involving an Indian child and in ICWA, the court receives information from the petitioner, a child welfare agency, or any other source that suggests an Indian child is already a ward of the tribal court or resides or is domiciled within a reservation of an Indian tribe that has exclusive jurisdiction over child custody proceedings, as recognized by federal law, or reassumed exclusive jurisdiction over proceedings involving an Indian child pursuant to federal law. Requires the notification to advise the tribe that the state court will dismiss the child custody proceeding upon receiving confirmation from the tribe that the child is a ward of a tribal court or subject to the tribe's exclusive jurisdiction.
  - c) Requires the state court, upon receipt of confirmation that the child is already a ward of a tribal court or is subject to the exclusive jurisdiction of an Indian tribe as described, to dismiss the child custody proceeding and ensure that the tribal court is sent all information regarding the proceeding, including, but not limited to, the pleadings and any state court record, unless otherwise agreed upon by the state and tribe.
  - d) Requires the court to order that the local agency transfer physical custody of the Indian child to the child's tribe, if the party has not already done so, without delay and hold in abeyance any dismissal order pending confirmation that the Indian child is in the physical custody of the tribe.

- e) Requires the court, in the case of an Indian child who is not a ward of a tribal court or subject to the exclusive jurisdiction of an Indian tribe, to transfer the proceeding to the jurisdiction of the child's tribe upon petition of either parent, the Indian custodian, or the child's tribe, unless the state court finds good cause not to transfer. Authorizes the petition for transfer to be made orally on the record or in writing at any stage of the proceedings. Requires the state court to terminate jurisdiction upon receipt of a petition for transfer only after receiving confirmation that the tribal court has accepted the transfer. Requires the state court to also do both of the following:
  - i) Expediently provide the tribal court with all records related to the proceeding, including, but not limited to the pleadings and any state court record;
  - ii) Work with the tribal court to ensure that the transfer of the child and of the proceeding is accomplished smoothly and in a way that minimizes the disruption of services to the family.
- f) Requires the state court, if a petition to transfer proceedings is made orally on the record or in writing, to find good cause to deny the petition if either of the following circumstances are shown to exist:
  - i) One or both of the child's parents object to the transfer;
  - ii) The tribal court of the child's tribe declines the transfer.
- g) Prohibits a state court from considering specified factors when determining whether good cause exists to deny a transfer.
- h) Assigns the burden of establishing good cause not to transfer to the party opposing the transfer. Requires the reasons for a belief or assertion by either the state court or any party that good cause not to transfer exists to be stated orally on the record or in writing and made available to all parties who are petitioning for the transfer, and requires the petitioner to have the opportunity to provide information or evidence in rebuttal of the belief or assertion.
- i) Prohibits this section or the relevant provisions of federal law from being construed as requiring a tribe to petition the United States Secretary of the Interior to reassume exclusive jurisdiction pursuant to federal law prior to exercising jurisdiction over a proceeding transferred under this section.
- j) Requires the state court to decline jurisdiction over the petition and immediately return the child to their parent or Indian custodian if any petitioner in a proceeding involving an Indian child has improperly removed the child from the custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, unless retaining the child outside the custody of their parent or Indian custodian is necessary to prevent imminent physical damage or harm.
- k) Notwithstanding any provision related to the confidentiality of the child's records in a guardianship, conservatorship, or adoption proceeding, requires the child's entire case file to be provided when an Indian child is transferred from a state court to an Indian tribe pursuant to this section.

- 12) Establishes Probate Code Section 1459.7 which states all of the following:
- a) Authorizes the court to permit the tribe from which the child is descended to participate in the proceeding upon request of the Tribe in a proceeding involving a child who would otherwise be an Indian child based on the specified definition, but is not an Indian child based on the child's Indian tribe not having federal recognition, as specified.
  - b) Authorizes the tribe to take specified actions, upon consent of the court, if the court permits a tribe to participate in a proceeding.
  - c) Authorizes the court to limit participation to the tribe with which the child has most significant contacts in the event that more than one tribe requests to participate in a proceeding.
  - d) Specifies that this provision is intended to assist the court in making decisions that are in the best interest of the child by permitting a tribe in the circumstances set out to inform the court and parties to the proceeding about placement options for the child within the child's extended family or the tribal community, services and programs available to the child and the child's parents as Indians, and other unique interests the child or the child's parents may have as Indians. Prohibits the section from being construed to make the California Indian Child Welfare Act (CalICWA) or ICWA, or any state law implementing ICWA, applicable to the proceedings, or to limit the court's discretion to permit other interested persons to participate in these or any proceedings.
  - e) Requires the court, on a case-by-case basis, to make a determination if this section is applicable and authorizes the court to request information from the tribe, or the entity claiming to be a tribe, from which the child is descended for the purposes of making this determination, if the child would otherwise be an Indian child as specified.
- 13) Amends Probate Code Section 1460 to require the court or petitioner who knows or has reason to know, that an Indian child is involved in a proceeding as described to provide notice as specified. Requires the notice to be sent to the minor's parents or legal guardian, Indian custodian, if any, and the child's tribe.
- 14) Repeals existing Probate Code Section 1460.2.
- 15) Amends Probate Code Section 1500.1 to authorize the parent of an Indian child to withdraw their consent to guardianship for any reason at any time and requires the child to be immediately returned to the parent.
- 16) Amends Probate Code Section 1510 to require a petitioner or proposed guardian who has knowledge of an investigation by a county welfare agency regarding the safety of the child to disclose the information in the petition.
- 17) Amends Probate Code Section 1510 to require a petition for guardianship of the minor where the proposed ward is or may be an Indian child to state the following:
- a) The reasons to know or believe the child of the petition is or may be an Indian child;

- b) The manner in which the petitioner provided notice of the petition to the Indian child's parents, tribe, and Indian custodian;
  - c) The manner in which the petitioner has provided active efforts to the parent or Indian custodian to prevent the need for the appointment of a guardian;
  - d) How the petitioner will secure testimony from a qualified expert witness;
  - e) How the petitioner has complied with the placement preferences in the nomination of the proposed guardian.
- 18) Amends Section 1513 of the Probate Code relating to investigations and recommendations concerning proposed guardianship and authorizing a probate court to refer a probate proceeding to dependency court as follows:
- a) Requires the specified report to include information relating to any reason to believe or know that the child is or may be an Indian child and how notice was provided to the Indian child's parent, tribe or tribes, and Indian custodian;
  - b) Requires a referral to the local child welfare agency to initiate an investigation into whether the proposed ward is or may be described by Section 300 of the Welfare and Institutions Code to include a summary of any active efforts required to support the Indian child, and barriers the petitioner has with providing active efforts to the child and family, and the testimony of a qualified expert witness of a proceeding involving an Indian child, if provided;
  - c) Requires proceedings that are commenced pursuant to Section 1513 to be considered a California Indian child custody proceeding that is initiated in juvenile state court for purposes of Tribal Dependency Representation funding.
- 19) Makes conforming changes throughout the Probate Code.

**EXISTING LAW:**

- 1) 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 the custody of their parents. (25 U.S.C. 1901 *et seq.*; 25 C.F.R. Part 23.)
- 2) Governs, through ICWA, specified custody proceedings involving Indian children, including:
  - a) Establishing federal policy to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs. (25 U.S.C. Section 1902.)
  - b) Providing definitions for terms related to ICWA. (25 U.S.C. Section 1903.)

- c) Establishing jurisdictional requirements, and allowing for notice of, and intervention in, Indian child custody proceedings by a tribe. (25 U.S.C. Sections 1911, 1912, 1918, 1920.)
  - d) Providing that an indigent parent or Indian custodian has the right to court-appointed counsel. (25 U.S.C. Section 1912.)
  - e) Requiring, where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent to be invalid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. (25 U.S.C. Section 1913.)
  - f) Authorizing the parent of an Indian child, after the entry of a final decree of adoption of an Indian child in any State court, to withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and to petition the court to vacate the decree. (25 U.S.C. Section 1913.)
  - g) Authorizing any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe to petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated Section 1911, 1912, and 1913. (25 U.S.C. Section 1914.)
  - h) Requiring states to keep records of Indian child placements and providing them to the Secretary of the Interior and the child's tribe. (25 U.S.C. Sections 1915 and 1951.)
- 3) Defines Alaska Native and its governing tribes. (43 U.S.C. Section 1606, 43 USC Section 1602 (c).)
- 4) Defines "Indian country" as all land within the limits of any Indian reservation under the United States Government, all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. (18 U.S.C. Section 1151.)
- 5) Defines "Indian," "Indian child," "Indian child's tribe," "Indian custodian," "Indian tribe," "reservation," and "tribal court" as having the same definition as the same terms in ICWA for purposes of guardianship, conservatorship, and other protective proceedings under the Probate Code. (Probate Code Section 1449.)
- 6) Makes findings and declarations regarding the importance to the continued existence and integrity of recognized Indian tribes that their children and the State have an interest in protecting Indian children who are members of, or eligible for membership in an Indian tribe. Further requires courts to consider specified factors in the findings to promote the stability and security of Indian tribes and families. Requires the court, in any case where the code imposes a higher standard of protection to the rights of the parent or Indian custodian of an Indian child, or the Indian child's tribe, than the rights provided under ICWA, to apply the

higher state or federal standard. Authorizes any Indian child, the Indian child's tribe, or the parent or Indian custodial from whose custody the child has been removed, to petition the court to invalidate an action in an Indian child custody proceeding for foster care or guardianship placement or termination of parental rights if the action violated existing provisions of ICWA. (Probate Code Section 1459.)

- 7) Applies ICWA to the following guardianship or conservatorship proceedings under Division 4 of the Probate Code when the proposed ward or conservatee is an Indian child:
  - a) In any case in which the petition is a petition for guardianship of the person and the proposed guardian is not the natural parent or Indian custodian of the proposed ward, unless the proposed guardian has been nominated by the natural parents and the parents retain the right to have custody of the child returned to them upon demand;
  - b) To a proceeding to have an Indian child declared free from the custody and control of one or both parents brought in a guardianship proceeding;
  - c) In any case in which the petition is a petition for conservatorship of the person of a minor whose marriage has been dissolved, the proposed conservator is seeking physical custody of the minor, the proposed conservator is not the natural parent or Indian custodian of the proposed conservatee and the natural parent or Indian custodian does not retain the right to have custody of the child returned to them upon demand. (Probate Code Section 1459.5.)
- 8) Requires, if notice of hearing is required in a probate proceeding but the applicable provision does not fix the manner of giving notice of hearing, the notice of the time and place of the hearing to be given at least 15 days before the day of the hearing as provided. Requires the petitioner to cause the notice to be delivered to each of the specified parties. (Probate Code Section 1460.)
- 9) Requires the court or petitioner, if either knows or has reason to know that the proposed ward or conservatee may be an Indian child, to provide notice to the minor's parent or legal guardian, Indian custodian, if any, and the Indian child's tribe, and comply with specified requirements. (Probate Code Section 1460.2 (a).)
- 10) Applies the specified provisions of ICWA and relevant federal regulations in the event an Indian custodian or biological parent of an Indian child lacks the financial ability to retain counsel and requests the appointment of counsel. (Probate Code Section 1474.)
- 11) Notwithstanding any other section under the provisions regulating guardianship proceedings in the Probate Code, and in accordance with ICWA, makes consent to nomination of a guardian of the person or of a guardian of the person and the estate given by an Indian child's parent invalid unless the consent is executed in writing at least 10 days after the child's birth and recorded before a judge and the judge certifies that the terms and consequences of the consent were fully explained in detail in English and were fully understood by the parent or that they were interpreted into a language that the parent understood. (Probate Code Section 1500.1 (a).)

- 12) Authorizes the parent of an Indian child to withdraw his or her consent to guardianship for any reason at any time prior to the issuance of letters of guardianship and requires the child to be returned to the parent. (Probate Code Section 1500.1 (b).)
- 13) Governs who is authorized to petition for guardianship of a minor, and various facts required to be stated in the petition for guardianship. (Probate Code Section 1510.)
  - a) If the proposed ward is or may be an Indian child, requires the petition to state that fact. (Probate Code Section 1510 (b).)
- 14) Governs notice requirements relevant to petitions for the appointment of a guardian. (Probate Code Section 1511.)
- 15) Governs the required investigation and report by a court investigator, probation officer, or domestic relations investigator concerning each proposed guardianship of the person or guardianship of the estate. (Probate Code Section 1513.)
- 16) Requires, to the extent resources are available, the court to implement procedures to ensure that every guardian completes and returns to the court an annual status report. (Probate Code Section 1513.2.)
- 17) Authorizes a proceeding to have a child declared free from the custody and control of one or both parents to be brought in accordance with the specified procedures within an existing guardianship proceeding, in an adoption action, or in a separate action filed for that purpose. (Probate Code Section 1516.5.)
- 18) Governs petitions for temporary guardianship of the person or estate or both, and of temporary conservator of the person or estate or both. (Probate Code Section 2250.)

**FISCAL EFFECT:** As currently in print this bill is keyed fiscal.

**COMMENTS:** Legal proceedings involving Native American children, such as dependency, guardianship, adoption, and conservatorships, are subject to a distinct set of rules and procedures than those which do not involve Native American children. These rules, which are codified in the Indian Child Welfare Act (ICWA) and its California counterpart, stem from efforts to rectify the incalculable harm caused by decades of institutionalized practices that removed Native children from their parents, extended families, and communities.

***Basics of the Indian Child Welfare Act and California's counterparts.*** Congress enacted the Indian Child Welfare Act (ICWA) in 1978 as a result of congressional hearings held in the mid-1970s, which found that Native American children were removed from their homes in large numbers. At the time, studies showed that Native American children were six to seven times as likely as non-native children to be placed in foster care or adoptive homes, and approximately 25-35 percent of all Native American children were removed from their homes and placed in foster care, adoptive homes, or boarding schools.

In California, Native American children were more than eight times as likely as non-native children to be placed in adoptive homes, and over 90 percent of California Native American children subject to adoption were placed in non-native homes. One in every 124 Indian children in California was in a foster home, compared to a rate of one in 367 for non-native children. In

order to ensure the preservation of Native American families, tribes, and tribal cultures, Congress passed ICWA as civil rights legislation to protect the interests of Native American children and families involved with the child welfare system. In June of 2016, the Bureau of Indian Affairs promulgated new regulations, effective December 12, 2016, updating requirements that courts and child welfare agencies must meet to comply with ICWA.

In enacting ICWA, Congress explained that states “often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families,” and that the removal of Indian children was “often unwarranted.” (25 U.S.C. § 1901.) The goal of ICWA is thus to “protect the best interests of Indian children and to promote the stability and security of Indian tribes and families.” (25 U.S.C. § 1902.) ICWA establishes minimum federal standards, both procedural and substantive, that govern the removal of Indian children from their families and subsequent placement in foster or adoptive homes. (*Fresno County Dep’t of Children & Family Services v. Superior Court* (2004) 122 Cal.4th 626.) Under ICWA, there is a presumption that it is in the best interest of an Indian child to retain tribal ties and cultural heritage, and that this serves the interest of the tribe in preserving future generations.

***ICWA’S requirements, briefly.*** Among other things, ICWA sets forth minimum federal standards by: (1) establishing jurisdictional requirements; (2) allowing for notice of, and intervention in, Indian child custody proceedings by a tribe; and (3) providing that the acts, records, and judicial proceedings of tribal courts are entitled to full faith and credit to the same extent that the acts, records, or judicial proceedings of another state would be. ICWA provides that an indigent Indian parent or custodian has the right to court-appointed counsel. (*Id.* at § 1912(b).) ICWA also prohibits placement in foster care unless clear and convincing evidence shows that continued custody of the child by the parent or custodian is likely to result in serious emotional or physical damage to the child. (*Id.* at (e).) Finally, ICWA prohibits termination of parental rights for an Indian child absent evidence beyond a reasonable doubt that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. (*Id.* at (f).)

In 2024, AB 81 (Ramos, Chap. 656, Stats. 2024) was signed into law. In an effort to ensure that all dependency proceedings complied with ICWA and CalICWA, that bill sought to directly incorporate the requirements outlined by ICWA, relevant federal and state regulations, and California Rules of Court into the Welfare and Institutions Code.

***California’s Version of ICWA.*** In the early 2000s, the California Legislature adopted its over version of ICWA with the passage of SB 678 (Ducheny), Chap. 838, Stats. 2006. That bill codified many of the ICWA requirements into California law. As a result, the court in a child welfare proceeding involving an Indian child must not only consider the child’s interests, but also the interests of the child’s tribe. In any child custody proceeding in which the court knows or has reason to know that an Indian child is involved, the child’s tribe must be notified of the proceeding and of their right to intervene in the proceeding. (25 U.S.C. § 1912(a); Welf. & Inst. Code § 224.2(a).) Over the years, additional changes have been made to California’s statutes to better implement ICWA. In 2018, AB 3176 (Waldron, Ch. 833, Stats. 2018) made several changes to state law regarding the removal of Indian children from their families and their out-of-home placement in order to conform to federal regulations governing ICWA.

***This bill revises and recasts existing Probate Code provisions addressing guardianships and conservatorships involving Native American children to directly incorporate ICWA’s***

**requirements and standards.** While AB 81 dealt only with dependency proceedings, where parental rights may be terminated and a child may be placed into foster care, this measure focuses on the Probate Code. In probate proceedings, namely guardianship and conservatorship matters, a minor may be placed in the custody of another adult who is given the legal authority to make decisions for the child, but parental rights remain in place. While there is no question that ICWA applies to guardianship and conservatorship proceedings under the Probate Code, the existing relevant provisions often include confusing and inaccurate cross-references to ICWA, Rules of Court, and the Welfare and Institutions Code. References to the Welfare and Institutions Code are particularly problematic. The Welfare and Institutions Code (WIC) guides proceedings in dependency, where the main actor in removing a child from their home is the state. Therefore, the language of the WIC largely refers to the state or state agencies. Conversely, guardianship and conservatorship proceedings under the Probate Code are almost entirely between private parties, therefore reference to the state or state agencies, outside of the court itself, are largely inaccurate. AB 1824 incorporates the same standards and requirements as AB 81 that are laid out in ICWA, CalICWA, and other sources of law, but in a more comprehensive manner that identifies the relevant parties. According to the author:

When the Indian Child Welfare Act was under attack, California took action with the enactment of AB 81 in 2024. We moved to strengthen our laws to ensure that we do not go back to the days when Indian children were taken away from their homes and their tribal communities. With AB 1824, we continue that work by bringing clarity that ICWA must be applied in all judicial systems where the law mandates. We will continue to uphold essential protections for Indian children and families.

**Revised definitions incorporate the exact language of ICWA into the Probate Code in Section 1449.** Existing Probate Code section 1449 incorporates ICWA by reference and some, but not all, of ICWA's lengthy definitional sections. Welfare and Institutions (WIC) Code Section 224.1 currently incorporates all of the same definitions as the proposed new section. By directly incorporating the same language into the Probate Code, AB 1824 eliminates any need for a cross reference to the WIC and facilitates ease of reference by practitioners.

**Revised findings and declarations in Section 1459.** Existing Probate Code Section 1459 reflected the findings and declarations that accompanied SB 678 which first established some of ICWA's provisions in California law. The new findings and declarations proposed by AB 1824 not only make reference to the importance of ICWA and SB 678, but acknowledge the continued challenges Indian families, tribes, courts, and children have faced in the inconsistent application of the law. It also explicitly lays out ICWA's mandate that in *all* proceedings involving an Indian child, as defined by ICWA, the court and parties have explicit obligations to ensure that the Indian child's tribe, parent, or Indian custodian are afforded sufficient notice and opportunity to intervene, among other standards that must be met. Importantly, the new section would explicitly establish the authority for an Indian child, the child's tribe, or the parent or Indian custodian from whose custody the child has been removed to petition a court to invalidate a proceeding that has not complied with ICWA's requirements, as provided for in Section 1914 of ICWA.

**New Probate Code Section 1459.1 clarifies ICWA's application to probate court proceedings currently found at Probate Code Section 1459.5.** 25 U.S.C. Section 1903 (1)(i) defines "foster care placement" as any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution *or the home of a guardian or conservator* where the parent or Indian custodian cannot have the child returned upon demand, but where

parental rights have not been terminated. Existing Probate Code Section 1459.5 states that ICWA applies in guardianship or conservatorship proceedings when the proposed ward or conservatee is an Indian child 1) in any case in which the petition is a petition for guardianship of the person and the proposed guardian is not the natural parent or Indian custodial of the proposed ward, unless the proposed guardian has been nominated by the natural parents pursuant to Probate Code Section 1500 *and* the parents retain the right to have custody of the child returned to them upon demand, 2) in a proceeding to have an Indian child declared free from the custody and control of one or both parents brought in a guardianship proceeding, and finally 3) in any case for conservatorship of the person of a minor whose marriage has been dissolved, the proposed conservator is seeking physical custody of the minor, the proposed conservator is not the natural parent or Indian custodian of the proposed conservatee and the natural parent or Indian custodian does not retain the right to have custody of the child returned to them upon demand.

Existing Section 1459.5 also requires, in cases where ICWA applies, the court to apply specified sections of the Welfare and Institutions Code and the specified Rules of Court. These sections taken together consist of ICWA's requirements for various parties to make inquiry into the status of the child as an Indian child.

The existing language at 1459.5, while arguably comprehensive, is also cumbersome. As the author and sponsors contend, part of the challenge in appropriately following the letter of the law as required by ICWA is that it appears to be fairly dispersed throughout different sources of law. While the bulk of the requirements applicable in probate proceedings are in ICWA itself, others have been developed in regulation, the Welfare and Institutions Code, and California Rules of Court. In order to consolidate all of these sources into one, more manageable point of reference, AB 1824 proposes new Section 1459.1 that clearly identifies what types of proceedings fall under ICWA's purview and what inquiry requirements would therefore apply.

***New Probate Code Section 1459.2*** lays out the court and petitioner's responsibilities to notice an Indian child's parents or legal guardian, Indian custodian, if any, and the child's tribe as detailed ICWA Section 1912. Additionally, subdivision (a)(vi) identifies that if the child's parents or Indian custodians are unable to afford counsel, they will be appointed counsel to represent them pursuant to ICWA Section 1912 and Probate Code Section 1474. The bill incorporates conforming amendments to existing Section 1460, which governs the notice requirements for guardianship and conservatorship proceedings. These two changes work together to clarify the existing language at Section 1460.2, thus allowing the bill to strike the existing section. Finally, new Section 1459.2 is incorporated by cross-reference in proposed new Section 1459.1 and existing provisions of the Probate Code where necessary.

***New Probate Code Section 1459.3*** states the Indian child's tribe, parent, and Indian custodian's right to intervene at any point in a proceeding involving an Indian child. This right is codified at 25 U.S.C. Section 1911.

***New Probate Code Section 1459.4*** describes ICWA's requirements that state courts extend full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe that may be relevant to the proceeding, regardless of whether the tribe has intervened in the proceeding. This requirement is codified at 25 U.S.C. Section 1911.

***New Probate Code Section 1459.5*** sets out ICWA's evidentiary standards. Particularly noteworthy are the requirement that any party seeking to place an Indian child outside of their home must demonstrate that they made "active efforts" to keep or reunite the child with their

family in a way that is consistent with the tribe's cultural conditions, and executed in partnership with the child, their parents, family, and tribe. The new section additionally spells out ICWA's requirement that, prior to issuance of a guardianship or conservatorship, a court make a determination, supported by clear and convincing evidence, that custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The necessary evidence must include testimony of a qualified expert witness, defined by the statute to include someone designated by the tribe as qualified to testify to the tribe's social and cultural standards; a member or citizen of the tribe who is knowledgeable in tribal customs and child-rearing practices; and an expert witness with substantial experience in the delivery of child and family services to Indians. Both requirements are codified at 25 U.S.C. Section 1912.

***New Probate Code Section 1459.6*** specifies the requirement for the court to determine the child's residence and domicile. It additionally outlines how a probate case involving an Indian child may be transferred to tribal court and the relevant notice requirements to do so. The provisions of proposed Section 1459.6 reflect the standards and procedures delineated in 25 U.S.C. Section 1912 and relevant federal regulations. (25 CFR Part 23.)

***New Probate Code Section 1459.7*** authorizes a court to make an allowance for various actions by a federally unrecognized tribe in a proceeding for a child from the tribe that would otherwise meet the definition of an Indian child save for the fact that the tribe is unrecognized. This language directly mirrors existing Welfare and Institutions Code Section 306.6.

***Amendments to Probate Code Section 1500.1***, which establishes the requirements for consent to nomination of a guardianship in proceedings involving Indian children, incorporates authorization for a parent to withdraw their consent for guardianship at any time at which point the child must be returned to the parent. This authorization is codified at 25 U.S.C. Section 1913.

***Amendments to Probate Code Section 1510***, which sets out the general requirements for a petition for guardianship, are largely conforming in nature. The bill would also make changes to Section 1510 to specify that any petition for guardianship where the proposed ward is or may be an Indian child must state various facts, including the reasons to know or believe the child is an Indian child, the manner in which notice is provided to the relevant parties, the manner in which the petitioner has provided active efforts to prevent the need for the appointment of guardian, how the petitioner will secure testimony from a qualified expert witness, and how the petitioner has complied with the relevant placement preferences. Each of these standards can be found at 25 U.S.C. 1912 and 1915.

***Amendments to Probate Code Section 1513***. Section 1513 provides guidelines for the required report and recommendations that a court investigator or other agent must complete for each proposed guardianship. Additionally, Section 1513 authorizes probate courts to refer proceedings to a local child welfare agency to initiate the requisite dependency proceedings. Along with various conforming amendments, AB 1824 proposes to amend Section 1513 to require the report to detail any reason to believe the child is or may be an Indian child and how the required notice was provided and any active efforts or barriers to active efforts completed. Amendments to the section would also authorize the tribe to apply to juvenile court proceedings to commence dependency proceedings and incorporate the relevant funding references. Changes to the section would also require the report to be delivered to the child's tribe. Finally, the bill amends Section 1513 to clarify that proceedings that are referred to a local child welfare agency for dependency

proceedings are considered a California Indian child custody proceeding initiated in juvenile state court for purposes of Tribal Dependency Representation funding.

*Finally, the bill incorporates clarifying and conforming amendments to Probate Code Sections 1474, 1511, 1513.2, 1516, and 2250.*

In sum, AB 1824 represents the latest efforts in a campaign that reaches back to at least 2006 to facilitate full compliance with ICWA in state courts. As the policy underlying ICWA is to encourage the maintenance of Native American communities and families, it seems only logical to take every step possible to assist courts and stakeholders to comply with the law.

**ARGUMENTS IN SUPPORT:** This bill is sponsored by California Indian Legal Services, the California Tribal Families Coalition, the Morongo Band of Mission Indians, and the Habematolel Pomo of Upper Lake. In support of the measure the California Tribal Families Coalition submits:

AB 1824 (Ramos) builds upon the foundational work of AB 81 (Chapter 656, Statutes 2023) and advances the intention of the legislation, “to create a comprehensive act to protect and preserve Indian families in California and to aid in improving implementation of applicable state and federal laws.” Welf. & Inst. Code, § 224 (a)(1)(C). While the amendments made by AB 81 clarified ICWA implementation within the Welfare & Institutions Code, the essential parallel provisions were not extended to the Probate Code. This bill addresses that statutory gap by ensuring consistent ICWA standards apply across all relevant and Indian child custody proceedings, strengthening compliance and protecting Indian children and families.

Despite the Legislature’s intent that ICWA protections apply broadly, the absence of clear Probate Code provisions has resulted in inconsistent application and in some cases, the failure to provide crucial procedural and substantive ICWA protections for tribal children and families in probate proceedings. In practice, probate judges, attorneys, and petitioners primarily rely on the Probate Code as the governing authority for probate proceedings. Because ICWA requirements applicable to child-custody proceedings, including these probate proceedings, are dispersed across multiple statutory codes and court rules, their application in probate matters often depends on practitioners having specialized knowledge of where those provisions exist. Many probate professionals and often unrepresented family member Petitioners, lack the ICWA-specific training or experience, resulting in probate proceedings without proper inquiry, notice to Tribes, or application of ICWA standards and protections, contrary to existing law. Placing explicit ICWA and Cal-ICWA requirements directly within the Probate Code reflects how probate proceedings function in real-world practice and promotes consistent application of the law.

[...]

This bill does not impose new or additional requirements, rather, it clarifies existing obligations and ensures they are applied consistently in probate, guardianship and conservatorship proceedings involving Indian children. In addition to not expanding ICWA beyond existing state and federal law, it supports courts and practitioners with clear guidance to practice according to what the law already requires, which leads to reduced costs related to non-compliance.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Indian Legal Services (co-sponsor)  
California Tribal Families Coalition (co-sponsor)  
Habematolel Pomo of Upper Lake (co-sponsor)  
Morongo Band of Mission Indians (co-sponsor)  
Enterprise Rancheria  
Pechanga Band of Indians  
Rincon Band of Luiseño Indians

**Opposition**

None on file

**Analysis Prepared by:** Manuela Boucher-de la Cadena / JUD. / (916) 319-2334