

Date of Hearing: March 24, 2026

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Alex Lee, Chair

AB 1824 (Ramos) – As Amended March 12, 2026

**SUBJECT:** Indian children: guardianship or conservatorship proceedings

**SUMMARY:** Codifies provisions of the federal Indian Child Welfare Act of 1978 (ICWA) as it relates to Indian probate guardianships and conservatorships to be consistent with the California Indian Child Welfare Act (Cal-ICWA). Specifically, **this bill:**

- 1) Revises and recasts existing Probate Code provisions addressing guardianships involving Native American children to incorporate ICWA's requirements and standards.
- 2) Makes conforming changes throughout Probate Code to align with the Welfare & Institutions Code.

**EXISTING LAW:**

State law:

- 1) Requires a court investigator, probation officer, or domestic relations investigator, unless waived by the court, to make an investigation and file with the court a report and recommendation concerning each proposed guardianship of a person, or guardianship of an estate, and, further, requires the report for the guardianship of a person to include, but not be limited to, an investigation and discussion of: a social history of the guardian; a social history of the proposed ward, including an assessment of any identified developmental, emotional, psychological, or educational needs of the proposed ward, and the capability of the petitioner to meet those needs; and, the anticipated duration of the guardianship and the plans of both natural parents and the proposed guardian for the stable and permanent home for the child, among other components, as specified. (Probate Code [PROB] § 1513(a))
- 2) Describes requirements for an investigation of a potential guardianship by the probate court. If a probate guardianship investigation finds that any party to the proposed guardianship alleges the minor's parent is unfit, allows but does not require, the probate court to refer the case to the social services agency designated to investigate potential dependencies. (PROB § 1513(b))
- 3) States legislative intent for the guardianship laws in the Probate Code and the juvenile court laws in the Welfare and Institutions Code to operate together as a cohesive statutory structure that ensures all cases referred by the probate court for a child welfare investigation are subject to review by the juvenile court without limiting the probate court's ability to take immediate action to protect the child while the child welfare investigation and juvenile court review are pending. The purpose of this statutory structure is to ensure the protection of every child's health, safety, and welfare and to provide due process to every child, parent, and family. (PROB § 1513(i))
- 4) Establishes implementation of Cal-ICWA to protect the best interests of Indian children and promote family stability to include a continuing duty of inquiry regarding tribal heritage,

specified notice requirements, and the necessity for qualified expert testimony in child removal proceedings. Specifies that if state law provides a higher standard of protection than federal ICWA, the court is required to apply the higher state standard. (Welfare & Institutions Code § 224 *et seq.*)

Federal law:

- 5) Establishes ICWA, which provides guidance to states regarding the jurisdictional requirements, proceedings of tribal courts, and the custody proceedings involving the removal of Indian children from the custody of their parents. (25 United States Code § 1901 *et seq.*)
- 6) Outlines federal regulations under ICWA and provides for active efforts and child custody proceedings, and clarifies tribal jurisdiction. (25 Code of Federal Regulations § 23)

**FISCAL EFFECT:** Unknown, this bill has not been analyzed by a fiscal committee.

**COMMENTS:** This analysis only discusses policy issues germane to the jurisdiction of the Assembly Committee on Human Services.

**Background:** *Indian Child Welfare Act.* ICWA governs the proceedings for determining the placement of an Indian child when they are removed from the custody of the child's parent or guardian. Prior to the mid-1970s, Indian children faced higher rates of removal than the current number, estimated to be as high as 25-35% of all Indian children, from their families, and subsequent placement in non-Indian homes. A years-long Congressional investigation in the 1970s determined that the four leading factors that contributed to removal of children and unnecessary termination of parental rights were: state child welfare standards for assessing families lacking cultural competence; due-process violations against Indian children and their parents that existed on a system-wide basis; economic incentives that favored the removal of Indian children from their families and communities; and, "social conditions existing in Indian country." This term specifically referred to the pervasive poverty and substandard housing on reservations, which were used by state social workers as grounds for child removal, regardless of the supportive nature of those homes. The Congressional investigation also found that states often failed to recognize the tribal relations of Indian people and their cultural and social standards when carrying out child custody proceedings.

In response, Congress enacted federal legislation, ICWA, to address a number of the issues related to the custody of Indian children and, ultimately, to ensure the preservation of Native American families, tribes, and tribal cultures. ICWA established minimum standards with which state courts must comply any time an Indian child is removed from their family or custodial home and placed in foster care or adoptive homes. It does not prohibit states from establishing higher standards. SB 678 (Ducheny), Chapter 838, Statutes of 2006, established Cal-ICWA, which revised and recast the portions of state code that address Indian child custody proceedings by codifying into state law various provisions of ICWA, the Bureau of Indian Affairs Guidelines for State Courts, and state Rules of Court.

Existing law states findings and declarations of the Legislature regarding Indian children, including that the state is committed to protecting the essential tribal relations and best interest of an Indian child by promoting practices in accordance with ICWA, and it is in the interest of an Indian child that the child's membership or citizenship in the child's Indian tribe and connection

to the tribal community be encouraged and protected, and requires the court to consider those findings in all Indian child custody proceedings.

*This bill* clarifies that ICWA protections apply in probate guardianships.

*Probate Guardianships.* When a child cannot safely live with their parents, existing state law provides two different legal systems to arrange for someone else to care for them. The first path is the dependency system, which is run through juvenile court and is triggered when a county child welfare agency steps in because a child has been abused, neglected, or abandoned.

The second path is probate guardianship, which is a civil court process initiated by a private person, usually a relative, who wants to take legal responsibility for a child without an abuse allegation required. A grandparent, aunt, older sibling, or family friend can go to probate court and ask to become a child's guardian without any involvement from child welfare. Probate guardianship is often the preferred option when families want to make a private arrangement without ongoing social worker intervention and without a child welfare case being opened. Probate guardianship lets relatives formalize their caregiving role outside of the child welfare services system. Because a dependency case involves investigations, social worker visits, court hearings, and a formal record, many families, particularly those with historical trauma involving government institutions, want to limit ongoing government intrusion. Probate guardianship allows for a different process that families can navigate largely on their own terms.

There are several distinct differences between the probate court and the dependency court. Specifically, one of the goals of the juvenile court is to maintain familial ties whenever possible, as demonstrated by the provision of family maintenance and reunification services, conducting searches for able and willing relatives to serve as placement options for youth placed in the custody of the juvenile court, and prioritizing placement with relatives and nonrelative extended family members as caregivers. The dependency system addresses children who are removed from their parents' home and placed in foster care. If a grandparent was already informally caring for a child before any removal occurred or if parents voluntarily placed the child with a relative, there may never be a dependency case at all. Probate guardianship allows the caregiver to get legal authority over medical, educational, and other decisions without the child ever entering the system. Sometimes probate guardianship is used as an exit from the foster care system. When reunification is not possible and the family chooses not to proceed to adoption, a relative caregiver can establish a probate guardianship as the permanent plan.

In probate court, the parents and children do not have the right to legal counsel (though a judge may choose to appoint counsel), meaning that parental rights may be suspended against the wishes of the parent who may not have legal representation. Unlike the juvenile court, the probate court does not provide family reunification services and has a different payment structure from the foster care rates provided to resource families. Additionally, if a child's biological parent faces certain barriers such as a substance use disorder or lack of access to housing that contributed to the need for a guardianship, under the probate court the biological parent would not be eligible to receive the supportive services to which they would be eligible under the juvenile court.

When a child is, or may be, an Indian child, both the dependency and probate systems must follow additional requirements under federal law. ICWA establishes minimum protections that apply in any court proceeding that could result in removing an Indian child from their family,

including probate guardianship. California's own parallel framework, Cal-ICWA, requires courts and parties to actively ask whether a child might have Indian heritage and to keep asking as new information emerges.

Before a court can approve placing an Indian child with anyone other than a parent, ICWA requires proof that "active efforts" were made to keep the Indian family intact. This is a higher bar than the "reasonable efforts" standard that applies in non-ICWA child welfare cases. Active efforts mean actually providing concrete assistance and services, not just making referrals, and involving the tribe, extended family, and Indian community organizations in the process.

In a non-ICWA case, a court can place a child in guardianship based on a "best interests" finding. In an ICWA case, the standard is higher: the court must find, supported by "clear and convincing evidence" and with the testimony of a qualified expert witness with knowledge of Indian child-rearing practices, that continued custody by the parent is likely to cause serious emotional or physical damage to the child.

In a probate guardianship, the petition itself must include a statement about whether the child is or may be an Indian child. At the first court hearing, the judge must ask all present parties the same question. If a parent, grandparent, relative, or the petitioner indicates that the child might have tribal ties, the court must order further inquiry which includes interviewing extended family members, contacting the Bureau of Indian Affairs (BIA), and reaching out directly to any tribe in which the child might be affiliated. If that inquiry produces a "reason to know" that the child is an Indian child, a formal ICWA notice must be sent to the tribe and to the BIA by certified mail and the court must wait at least 60 days before proceeding to give the tribe time to respond. A guardianship order obtained without completing ICWA inquiry and notice can be invalidated even after it is finalized which can create legal vulnerability for an otherwise valid guardianship.

*ICWA in Probate Guardianships.* This bill would embed the elements of Cal-ICWA that are present in statute regarding dependency proceedings, into the statute governing probate guardianships. Specifically, *this bill* would clarify that the following ICWA elements apply in probate guardianships by adding the following elements that are in the Welfare & Institutions Code into the Probate Code:

- Defining various terms consistent with ICWA provisions for purposes of guardianship and would make conforming changes to also require, if the subject of a petition is or may be an Indian child, that the petition include specified information and the efforts taken to prevent the need for the appointment of the guardian.
- Specifying that the court or a petitioner has a duty to inquire whether the child is or may be an Indian child when first filing a petition for guardianship and would require a court presiding over any guardianship proceeding that could result in placement of an Indian child with someone other than a parent or Indian custodian, to inquire at the first hearing on a petition whether the child is, or may be, an Indian child.
- Requiring the testimony of a qualified expert witness in a proceeding involving an Indian child in specified circumstances, including testimony that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and would specify notice requirements for proceedings involving Indian children, and set forth procedures for transfer of a case to the jurisdiction of the child's tribe.

- Authorizing the court, in a proceeding involving a child who would otherwise be an Indian child, but is not, based on the child’s Indian tribe not having federal recognition, to permit the tribe to participate in the proceeding upon request from the tribe.

Because ICWA laws fall within many other statutory codes and rules and are not included in the current Probate Code, the Author and sponsors report this causes difficulty for judges, attorneys and petitioners to locate the ICWA protections necessary for compliance with law. The sponsors contend that because ICWA obligations are not specifically embedded in the Probate Code, courts and practitioners incorrectly assume ICWA does not apply which can lead to not identifying when an Indian child is involved in a proceeding, thereby depriving children, parents, and tribes of their existing rights under federal and state law. Additionally, when ICWA is not applied, or is incorrectly implemented, children can be placed improperly into guardianships that later face invalidation because there is no statute of limitations on this challenge.

*Current Gap in Compliance.* This bill is a continuation of the work that began in AB 81, (Ramos), Chapter 656, Statutes 2023, which was not heard by this Committee. The goal of that legislation was, “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 and only updated the Welfare & Institutions Code to clarify ICWA implementation and compliance in California.

If a probate guardianship results in the child being placed outside the parental home, ICWA requires the court to follow a specific order of preference when selecting a guardian. That order is:

- 1) Extended Family: This includes grandparents, aunts, uncles, or cousins (as defined by the child's tribal custom);
- 2) Tribal Members: A foster home licensed, approved, or specified by the child’s tribe, which includes any placement in the home of a guardian;
- 3) Other Indian Families: An Indian foster home licensed or approved by an authorized non-Indian licensing authority; and,
- 4) Tribal Institutions: An institution for children approved by an Indian tribe or operated by an Indian organization.

The court can deviate from this order only upon a specific finding of “good cause” and best interests of the child alone is not good cause. The tribe may also establish its own placement preferences by resolution, which take precedence over the federal defaults. This preference structure often means that a non-Indian relative or family friend who might otherwise be appointed as guardian in a standard probate proceeding may not be the first choice under ICWA. Courts and petitioners are required to document diligent efforts to identify and assess preferred ICWA placements before proceeding with a non-preferred caregiver.

*This bill* seeks to continue the provision of safeguards through existing state statutes to tribes and Indian children and families dealing with probate guardianships by adding the relevant language to ensure compliance with ICWA and Cal-ICWA in probate guardianship proceedings.

**Author’s Statement:** 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 [this bill], 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.”

**Equity Implications:** The provisions of *this bill* will add language to the Probate Code to strengthen compliance with ICWA and Cal-ICWA in probate guardianships to eliminate confusion and ensure probate courts consistently apply ICWA protections that already exist under state and federal law. The sponsors contend that almost all Native American parents, due to lack of resources to retain legal counsel, in probate guardianship cases appear pro se, meaning someone representing themselves in court, and appear unaware of the protections afforded to them under ICWA. By clarifying and providing guidance on the application of ICWA in probate proceedings involving Native American children, the court and petitioners can ensure Native American parents' rights are understood and protected.

**Double referral:** This bill was previously heard in the Assembly Committee on Judiciary on March 17, 2026, and was approved on a 12-0 vote.

**Arguments in Support:** Habematolel Pomo of Upper Lake, a co-sponsor writes, “[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.”

**Arguments in Opposition:** None on file.

#### **RELATED AND PRIOR LEGISLATION:**

***AB 81 (Ramos), Chapter 656, Statutes of 2024,*** see comments above.

***AB 260 (Stone), Chapter 578, Statutes of 2021,*** allowed a probate judge to request that their child welfare referral of a child who is subject to a guardianship petition and who appears to have been neglected or abused, be reviewed by the juvenile court.

***AB 686 (Waldron), Chapter 434, Statutes of 2019,*** clarified requirements pertaining to the out-of-home placement of Indian children, and required the Judicial Council to adopt rules of court allowing for an Indian child's tribe to participate remotely in proceedings.

***AB 3176 (Waldron), Chapter 833, Statutes of 2018,*** updated state law to align with revised federal BIA regulations, clarifying definitions for "active efforts," notice requirements, and the duty of inquiry and made a number of changes to state law regarding the removal of Indian children from their families and their out-of-home placement in order to conform to changes to federal regulations governing ICWA.

***AB 1325 (Cook), Chapter 287, Statutes of 2009,*** established Tribal Customary Adoption, allowing Indian children to be adopted without terminating parental rights, in accordance with tribal traditions.

*SB 678 (Ducheny), Chapter 838, Statutes of 2006*, see comments above.

**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  
Redwood Valley Rancheria  
Rincon Band of Luiseño Indians  
Santa Ynez Band of Chumash Indians

**Opposition**

None on file.

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