

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2025-2026 Regular Session**

AB 1378 (Rogers)  
Version: February 21, 2025  
Hearing Date: July 8, 2025  
Fiscal: Yes  
Urgency: No  
AWM

**SUBJECT**

Child welfare services: prevention services: Indian tribes

**DIGEST**

This bill clarifies that Indian tribes, as defined, may enter into agreements with the California Department of Social Services (DSS) for the provision of foster care prevention services only, and that funds provided by DSS pursuant to an agreement for child welfare services can be expended on the administration of prevention programs and to support the cost of legal representation for specified parties in cases under the tribe's jurisdiction.

**EXECUTIVE SUMMARY**

The federal Indian Child Welfare Act (ICWA) and the California Indian Child Welfare Act (CalICWA) affirm that federally recognized tribes are sovereign nations with inherent rights to self-governance, including the right to exercise jurisdiction over domestic matters relating to tribal members or citizens. To that end, ICWA permits federally recognized Indian tribes to enter into agreements with states regarding the jurisdiction of tribal courts and state courts in matters regarding Indian children, which can include funding for the provision of services to prevent the entry of an Indian child into foster care.

This bill clarifies the scope of agreements into which an Indian tribe may enter with DSS in two ways. First, the bill clarifies that a tribe may enter into an agreement with DSS to administer foster care preventions services only. Second, the bill clarifies that funds received pursuant to an agreement with DSS may be used to fund the provision of legal representation to parties in a child welfare proceeding.

This bill is sponsored by the California Tribal Families Council and is supported by the Alliance of Children's Rights, the Cahto Tribe, the California Alliance of Child and Family Services, the California Family Resource Association, the Child Abuse

Prevention Center, Habematolel Pomo of Upper Lake, Jamul Indian Village of California, the Rincon Band of Luiseño Indians, and Yuhaaviatam of San Manuel Nation. The Committee has not received timely opposition to this bill. The Senate Human Services Committee passed this bill with a vote of 5-0.

### **PROPOSED CHANGES TO THE LAW**

Existing federal law:

- 1) Provides that Indian tribes are domestic independent nations that exercise inherent sovereign authority which can be modified only through Congressional action. (*E.g., Michigan v. Bay Mills Indian Community* (2014) 572 U.S. 782, 788-789.)
- 2) Establishes ICWA, which requires states to establish specific adoption preferences for a child who is a member of a federally recognized Indian tribe,<sup>1</sup> or who is eligible to be a member and is the child of a member of a federally recognized Indian tribe, and to make specified efforts to notify the child's tribe when an Indian child is placed in foster care. (25 U.S.C. §§ 1901 et seq.)
- 3) Provides that, in any state court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer the proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe; the tribal court may decline the transfer. (25 U.S.C. § 1911(b).)
- 4) Provides, under ICWA, that states and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes. (25 U.S.C. § 1919.)

Existing state law:

- 1) Establishes the California Indian Child Welfare Act (CalICWA), which includes all provisions in the Family Code, Probate Code, Health and Safety Code, and Welfare and Institutions Code involving an Indian child. (Welf. & Inst. Code, § 224(c).)
- 2) Defines the following relevant terms within CalICWA:

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<sup>1</sup> Because the relevant federal and state laws uses the term "Indian" and does not capitalize "tribe," this analysis does the same.

- a) "Indian" means any person who is a member of a citizen of an Indian tribe, or who is an Alaska Native and a member or citizen of a Regional Corporation, as defined.
  - b) "Indian tribe" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians.
  - c) "Indian child" means all of: (1) 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; (2) as used in connection with an Indian child custody proceeding, an unmarried person who is 18 years of age or over, but under 21 years of age, who is a member or citizen of an Indian tribe or eligible for membership or citizenship in an Indian tribe and is the biological child of a member or citizen of an Indian tribe, and who is under the jurisdiction of the juvenile court, unless that person or their attorney elects not to be considered an Indian child for purposes of the Indian child custody proceeding.
  - d) "Indian child custody proceeding" means a hearing during a juvenile court proceeding, or a proceeding under the Family Code or Probate Code, involving an Indian child that may culminate in specified outcomes, including foster care placement for the Indian child or termination of parental rights.
  - e) "Custody" means physical custody or legal custody, or both, under any applicable tribal law or tribal custom or state law. (Welf. & Inst. Code, § 224.1.)
- 3) Requires the juvenile court, in an Indian custody proceeding, 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. (Welf. & Inst. Code, § 224.5.)
- 4) Requires the juvenile court, if it finds, at any stage of an Indian child custody proceeding, that an Indian child is already a ward of a tribal court or resides or is domiciled within a reservation of an Indian tribe that has exclusive jurisdiction over child custody proceedings, or reassumed exclusive jurisdiction over Indian custody proceedings, to dismiss the proceeding and expeditiously notify the tribe and the tribal court of the dismissal based on the tribe's exclusive jurisdiction. (Welf. & Inst. Code, § 305.5(b), (c).)
- 5) Provides that, in the case of an Indian child who is not a ward of a tribal court or subject to the exclusive jurisdiction of a tribe, as described in 4), the state court shall 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.

- a) The petition for transfer may be made orally on the record or in writing at any stage of the proceeding, and upon receipt of a petition, the court shall terminate jurisdiction only after receiving confirmation that the tribal court has accepted transfer.
  - b) At the time the state court terminates jurisdiction, the state court shall expeditiously provide the tribal court with all records related to the proceeding and 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. (Welf. & Inst. Code, § 305.5(d).)
- 6) Requires the DSS, upon an Indian tribe's request, to enter into an agreement, consistent with specified state and federal law, with any Indian tribe, tribal organization, or tribal consortium located in California or with lands that extend into this state regarding the care and custody of Indian children and jurisdiction over Indian child custody proceedings, including, but not limited to, agreements that provide for the orderly adjudication of, and transfer jurisdiction on a case-by-case basis for, cases subject to exclusive tribal or state jurisdiction, or for concurrent jurisdiction between the state and tribes. (Welf. & Inst. Code, § 10553.1(a).)
- 7) Provides that there shall be no tribal share of costs for any agreement under 3), and requires that the agreements meet specified state law standards and ensure that a tribe, tribal organization, or tribal consortium claims and uses all eligible funding under Title IV-E of the federal Social Security Act. (Welf. & Inst. Code, § 10553.1(b).)
- 8) Provides that an Indian tribe, tribal organization, or tribal consortium that is party to an agreement under 3) shall, in accordance with the agreement, be eligible to receive allocations of child welfare services funds. (Welf. & Inst. Code, § 10553.1(d).)
- 9) Requires the juvenile court, in a dependency proceeding, to appoint counsel for the parties as follows:
  - a) When it appears to the court that a parent or Indian custodian in an Indian custody proceeding desires counsel but is presently unable to afford and cannot for that reason employ counsel, the court shall appoint counsel for the parent or Indian custodian.
  - b) When it appears to the court that a parent or guardian of the child is presently financially unable to afford and cannot for that reason employ counsel, and the child has been placed in out-of-home care, or the petitioning agency is recommending that the child be placed in out-of-home care, the court shall appoint counsel for the parent or guardian, unless the court finds that the parent or guardian has made a knowing and intelligent waiver of counsel, as specified.

- c) If a child or nonminor dependent is not represented by counsel, the court shall appoint counsel for the child or nonminor dependent, unless the court finds that the child or nonminor dependent would not benefit from the appointment of counsel; the court shall state on the record its reasons for that finding. (Welf. & Inst. Code, § 317.)

This bill:

- 1) Clarifies that the agreements into which DSS, pursuant to 6), above, can enter into with an Indian tribe, tribal organization, or tribal consortium includes agreements that prevent entry into foster care.
- 2) Clarifies that an agreement between DSS and an Indian tribe, tribal organization, or tribal consortium, pursuant to 6), above, may be made for the sole purpose of the administration of prevention programs, as defined.
- 3) Clarifies that the allocations of child welfare services funds that an Indian tribe, tribal organization, or tribal consortium is eligible to receive pursuant to an agreement under 1) includes, but is not limited to, administrative funds to support the cost of legal representation for the agency, parent, guardian, and children's advocates in cases under a tribe's jurisdiction pursuant to the agreement.

### COMMENTS

#### 1. Author's comment

According to the author:

California is proudly home to the highest Native American population per capita of any state, with our district encompassing many recognized and unrecognized Tribes. For generations, tribal nations and their families have been profoundly affected by state and federal laws and policies that have marginalized their communities. Native American children continue to be disproportionately represented in the California child welfare system, with their rates of involvement two and a half times higher than those of White children. That is a shocking and sad statistic. Every one of those kids represents a family that has been torn apart. AB 1378 aims to address these historic disparities by providing Tribes with resources equal to those of county agencies, empowering them to offer direct services that help keep families together before intervention from child welfare services becomes necessary. This bill is good policy, but more importantly it's the right thing to do for California's kids.

## 2. Background on ICWA and CalICWA

Before ICWA was enacted, the federal government and governments of the states, in the nineteenth and twentieth centuries, deliberately stole Indian children from their families as a means of destroying Indian tribal culture. “Taking [Indian children] from their parents when small and keeping them away until parents and children become strangers to each other...the problem of the [Indian] could be solved by educating the children, not to return to the reservation, but to be absorbed one by one into the white population.”<sup>2</sup> “State actors removed children with ‘few standards and no systematic review of judgments’ by impartial tribunals” and “Indian parents rarely received adequate notice, almost never received paid counsel, and generally had no meaningful opportunity to respond” to the removals.<sup>3</sup> After decades of this practice:

It was estimated that state governments removed between 25 [percent] and 30 [percent] of all Indian children nationwide from their families, placing about 90 [percent] of those removed children in non-Indian homes. No one will ever know the exact numbers; far too many removals were paperless and lacked even rudimentary process.<sup>4</sup>

The United States did not halt the states’ practice of wantonly removing Indian children from their families until 1978, when Congress finally took action and passed ICWA. ICWA recognized “that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions.”<sup>5</sup> The stated policy of ICWA is:

[T]o 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.<sup>6</sup>

Until last year, California implemented ICWA through a combination of provisions codified in state law and in federal law. In 2024, however, the Legislature enacted AB 81 (Ramos, Ch. 656, Stats. 2024), which fully codified ICWA in state law and renamed

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<sup>2</sup> United States Department of the Interior, Federal Indian Boarding School Initiative: Investigative Report (May 2022) p. 38.

<sup>3</sup> Fletcher & Sengel, Indian Children and the Federal-Tribal Trust Relationship, 95 Neb. L. Rev. 885, 954 (2017).

<sup>4</sup> *Id.* at pp. 954-955.

<sup>5</sup> See 25 U.S.C. § 1901(4).

<sup>6</sup> *Id.*, § 1902.

statutory provisions relating to Indian children as “CalICWA.” AB 81 was enacted to provide an independent state-law basis for ICWA’s provisions in the event that ICWA – which have been the subject of challenges in the federal courts<sup>7</sup> – is weakened. In some cases, California’s protections for Indian children and families go beyond what is required by ICWA.<sup>8</sup>

3. Under ICWA and CalICWA, tribal courts have exclusive jurisdiction over some matters involving Indian children, and may exercise jurisdiction over other such matters

One principle underlying ICWA and CalICWA is that federally recognized tribes are sovereign nations with inherent rights to self-governance, including “the right to regulate domestic relations involving their members or citizens.”<sup>9</sup> To that end, ICWA and CalICWA give tribal courts exclusive jurisdiction over child custody matters involving Indian children who reside or are domiciled within their tribe’s reservation, and requires a juvenile court to transfer a proceeding involving an Indian child in a dependency matter, on the request of a party or the child’s tribe, unless the juvenile court finds good cause not to transfer the case.<sup>10</sup> Upon the granting of such a request, the juvenile court must effectuate the transfer and terminate its jurisdiction over the matter.<sup>11</sup> These provisions ensure that questions over an Indian child’s custody and care are dealt with by the child’s tribe, according to the tribe’s tribal law or customs.

4. This bill clarifies the scope of agreements into which DSS may enter with Indian tribes, tribal organizations, and tribal consortiums relating to prevention services and the provision of counsel

This bill clarifies the scope of agreements into which DSS may enter with tribes, tribal organizations, and tribal consortiums in connection with prevention services, and the purposes for which funds provided in connection with those agreements may be used.

First, as the analysis of the Senate Human Services Committee explains, this bill will help tribes enter into agreements that will allow them to obtain federal funding to provide preventive legal services to tribal families:

Under existing law, CDSS can enter into agreements with Indian tribes to administer all or part of Title IV-E of the Social Security Act. This includes prevention services, foster care services, adoption services, and kinship guardian services. Administering these programs takes immense resources, and as such,

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<sup>7</sup> See, e.g., *Haaland v. Brackeen* (2023) 599 U.S. 255.

<sup>8</sup> Compare, e.g., 25 U.S.C. § 1912 with Welf. & Inst. Code, § 224.2. Additional requirements at the federal level have been imposed via regulations. (See, e.g., 25 C.F.R. §§ 23.2, 23.120.)

<sup>9</sup> Welf. & Inst. Code, § 224(a).

<sup>10</sup> 25 U.S.C. § 1911; Welf. & Inst. Code, § 305.5.

<sup>11</sup> Welf. & Inst. Code, § 305.5.

only two of the 109 tribes in California have entered into an agreement with CDSS. Many tribes are interested in providing preventative services, and this bill would clarify that CDSS can enter into these narrower agreements under existing federal authorization and funding.

Relevant to this Committee's jurisdiction, the bill also clarifies that funds from these agreements may be used to, among other things, support the cost of legal representations for the agency, parent, guardian, and children's advocates in cases under a tribe's jurisdiction pursuant to the agreement. In dependency cases in the juvenile court, the court appoints counsel for the parent(s), guardian(s), and the child or nonminor dependent when they are unable to afford their own counsel.<sup>12</sup> When a dependency case is transferred to a tribal court, however, the parties lose their court-appointed counsel paid for by the county. While a tribe can appoint counsel for the parties, the tribe is responsible for the cost, which is prohibitive for many tribes.

This bill, therefore, clarifies that a tribe may use prevention funds received under an agreement with DSS to, among other things, pay for counsel for the parties in a tribal dependency matter. As the author and sponsors note, this clarification should help provide Indian children and families in tribal court matters with the same protections as non-Indian children and families appearing in the juvenile court.

## 5. Arguments in support

According to the California Tribal Families Coalition:

Tribes, like our members, share in California's goal of targeting services that care for children and families early and directly in the community to reduce the entry of tribal children into the foster care system. This shared goal needs to be pursued with urgency as Native American children continue to enter foster care at two and a half times the rate of white children in California.

AB 1378 is an important step toward our shared goal. Through AB 1378, Tribes will have the opportunity to make agreements with DSS to create tribal programs that provide services directly in our local communities. Through these agreements, Tribes can have the same opportunity currently available to counties and community-based organizations, to access funding to support these programs. Tribes are uniquely situated to provide these programs directly as they already have established relationships with families and the knowledge and ability to provide services that are culturally based. Many of our member Tribes, like other Tribes in California, are interested in providing these programs, and simply need a path to utilize the funding available to do so.

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<sup>12</sup> *Id.*, § 317.



In addition to the support for prevention programs, this legislation also seeks to confirm requirements for equitable funding and services for Tribes with existing agreements who provide the full spectrum of child welfare services from prevention to foster care, adoption and guardianship. Specifically, confirming that the allocations received by these Tribes will include covering the cost of legal representation for children and parents during a child welfare proceeding in the tribal court. Although these legal services are currently funded for counties, the DSS states they do not have authority to provide the same support to Tribes. When Tribes are implementing foster care, guardianship and adoption programs they are taking over all the activities of the county who would be providing those services, but they are not provided the equivalent support that is required to implement these programs.

### **SUPPORT**

California Tribal Families Coalition (co-sponsor)  
Alliance of Children's Rights  
Cahto Tribe  
California Alliance of Child and Family Services  
California Family Resource Association  
Child Abuse Prevention Center  
Habematolel Pomo of Upper Lake  
Jamul Indian Village of California  
Rincon Band of Luiseño Indians  
Yuhaaviatam of San Manuel Nation

### **OPPOSITION**

None received

### **RELATED LEGISLATION**

Pending legislation: None known.

Prior legislation:

AB 81 (Ramos, Ch. 656, Stats. 2024) codified within State law certain provisions relating to Indian children currently codified in the federal Indian Child Welfare Act of 1978 (ICWA), and renames the provisions of the Family Code, the Probate Code, and the Welfare and Institutions Code as the CalICWA.

AB 2948 (Ramos, Ch. 175, Stats. 2024) added a final order of adoption issued by a tribal court as a qualifying circumstance to make a child eligible for the Adoption Assistance Program.

AB 1862 (Ramos, 2022) would have established the Tribally Approved Homes Compensation Program to provide funding to eligible tribes and tribal organizations in California to assist in funding the costs associated with recruiting and approving homes for the purpose of foster or adoptive placement of an Indian child pursuant to ICWA. AB 1862 died in the Senate Appropriations Committee.

AB 873 (Ramos, Ch. 284, Stats. 2021) eliminated tribal share of cost requirements for an agreement entered into by the CDSS with a tribe, tribal consortium, or tribal organization regarding care and custody of Indian children and jurisdiction over Indian child custody proceedings, and struck existing law related to the breakdown of the tribal share of costs, as provided, to bring California into compliance with federal requirements.

**PRIOR VOTES:**

Senate Human Services Committee (Ayes 5, Noes 0)  
Assembly Floor (Ayes 79, Noes 0)  
Assembly Appropriations Committee (Ayes 14, Noes 0)  
Assembly Judiciary Committee (Ayes 12, Noes 0)  
Assembly Human Services Committee (Ayes 6, Noes 0)

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