

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

AB 1824 (Ramos)  
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AWM

**SUBJECT**

Indian children: guardianship or conservatorship proceedings

**DIGEST**

This bill incorporates within the Probate Code the requirements of the Indian Child Welfare Act (25 U.S.C. §§ 1901, et seq.) (ICWA) for matters in which an Indian child, as defined, may be appointed a guardian or ward by the court.

**EXECUTIVE SUMMARY**

For over a hundred years spanning the nineteenth and twentieth centuries, U.S. policy condoned and encouraged state governments and private citizens to forcibly remove Indian children from their homes, their parents, and their tribes, with the explicit goal of cutting them off from their families and heritage. The U.S. government did not change course until 1978, when Congress enacted ICWA to establish minimum standards for proceedings involving the custody and placement of Indian children,<sup>1</sup> as defined, with the overall goal of preserving the ties between an Indian child and their tribe whenever feasible.

Although ICWA is almost 50 years old, the author and sponsors report that California's courts still inconsistently apply ICWA's requirements. Some of this confusion appears to stem from the fact that ICWA's requirements are not clearly set forth in the relevant California Codes. Two years ago, the Legislature enacted AB 81 (Ramos, Ch. 656, Stats. 2024), which named the provisions in the Family, Health and Safety, Probate, and Welfare and Institutions Codes which address the custody and placement of an Indian Child as the "California Indian Child Welfare Act" (Cal-ICWA) and incorporated ICWA's requirements into custody and placement proceedings in the Welfare and Institutions Code.

This bill follows up on AB 81 by incorporating ICWA's requirements into guardianship and conservatorship proceedings under the Probate Code involving an Indian child.

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

Placing these requirements directly in state law will make probate courts' obligations in matters involving an Indian child unambiguous, thereby reducing errors and ensuring that Indian children, their families, and their tribes are given the full protections due to them under state and federal law. The bill also provides guidance for courts when a guardianship or conservatorship proceeding involves a child who does not meet the definition of an "Indian child" under ICWA because their tribe is not federally recognized.

This bill is sponsored by California Indian Legal Services, the California Tribal Families Coalition, Habematolel Pomo of Upper Lake, and the Morongo Band of Mission Indians, and is supported by the Agua Caliente Band of Cahuilla Indians, the Hoopa Valley Tribe, the Karuk Tribe, the Mesa Grande Band of Mission Indians, the Pechanga Band of Indians, the Rincon Band of Luiseño Indians, the Santa Ynez Band of Chumash Indians, the Soboba Band of Luiseño Indians, and the Yurok Tribe. The Committee has not received timely opposition to this bill.

### **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, 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.)

Existing state law:

- 1) Establishes Cal-ICWA, which is comprised of provisions of the Family Code, Health and Safety Code, Probate Code, and Welfare and Institutions Code that apply to an Indian child. (*See* AB 81 (Ramos, Ch. 656, Stats. 2024).)
- 2) Establishes the Probate Code, which sets forth the requirements and procedures for the establishment of guardianships and conservatorships, the obligations of guardians and conservators, and the rights of wards and conservatees. (Prob. Code, div. 4, §§ 1400 et seq. (Division 4).)
- 3) Provides that, as used in Division 4, unless context otherwise requires, the terms "Indian," "Indian child," "Indian child's tribe," "Indian custodian," "Indian tribe," "reservation," and "tribal court" have the same definitions as in ICWA. (Prob. Code, § 1449(a).)

- 4) Provides that, when used in connection with an Indian child custody proceeding, the terms “extended family member” and “parent” shall have the same definitions as in ICWA, and “Indian child custody proceeding” means a “child custody proceeding” as defined in ICWA, including a voluntary or involuntary proceeding that may result in the Indian child’s temporary or long-term foster care or guardianship placement if the parent or Indian custodian cannot have the child returned upon demand, termination of parental rights, or adoptive placement. (Prob. Code, § 1449(b), (c).)
- 5) Requires a court, when an Indian child is a member of more than one tribe or is eligible for membership in more than one tribe, to make a determination, in writing together with the reasons for it, as to which tribe is the Indian child’s tribe for purposes of the Indian child custody proceeding, as follows:
  - a) If the Indian child is or becomes a member of only one tribe, that tribe shall be designated as the Indian child’s tribe, even though the child is eligible for membership in another tribe.
  - b) If an Indian child is or becomes a member of more than one tribe, or is not a member of any tribe but is eligible for membership in more than one tribe, the tribe with which the child has more significant contacts shall be designated as the child’s Indian tribe.
  - c) If an Indian child becomes a member of a tribe other than the one designated by the court as the Indian child’s tribe under 5)(b), actions taken based on the court’s determination prior to the child’s becoming a member shall continue to be valid. (Prob. Code, § 1449(d).)
- 6) Requires a court, when determining the tribe with which an Indian child has more significant contacts under 5)(b), to consider, among other things, the following factors:
  - a) The length of residence on or near the reservation of each tribe and frequency of contact with each tribe.
  - b) The child’s participation in activities of each tribe.
  - c) The child’s fluency in the language of each tribe.
  - d) Whether there has been a previous adjudication with respect to the child by a court of one of the tribes.
  - e) Tribal membership of the custodial parent or Indian custodian.
  - f) Interest asserted by each tribe in response to the notice in 9).
  - g) The child’s self-identification. (Prob. Code, § 1449(d)(2).)
- 7) Makes legislative findings and declarations relating to the importance of encouraging and protecting an Indian child’s connection with their tribe and tribal community in Indian child custody proceedings and requiring courts to comply with ICWA whenever the court must place an Indian child in a foster care placement, guardianship, or adoptive placement. (Prob. Code, § 1459.)

- 8) Provides that ICWA applies to the following guardianship or conservatorship proceedings under Division 4 when the proposed ward or conservatee is a child:
  - a) In any case in which the petition is a petition for guardianship of the person and the proposed guardian is not a natural parent or Indian custodian of the proposed ward, unless the proposed guardian has been nominated by the natural parents, as specified, and the parents retain the right to have custody of the child returned to them upon demand.
  - b) 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. (Prob. Code, § 1459.5(a).)
  
- 9) Provides that, when a court or the petitioner knows or has reason to know that the proposed ward or conservatee may be an Indian child, any notice sent to the minor's parent or legal guardian, Indian custodian, if any, and the Indian child's tribe in a proceeding in which ICWA applies shall comply with all of the following requirements:
  - a) Notice shall be sent by registered or certified mail with return receipt requested; additional notice by first-class mail is recommended, but not required.
  - b) Notice to the tribe shall be to the tribal chairperson, unless the tribe has designated another agent for service.
  - c) Notice shall be sent to all tribes of which the child may be a member or eligible for membership until the court makes a determination as to which tribe is the Indian child's tribe, in accordance with 5), after which notice need only be sent to the tribe determined to be the Indian child's tribe.
  - d) Notice to the extent required by law, shall be sent to the Secretary of the Interior's designated agent, the Sacramento Area Director, Bureau of Indian Affairs. If the identity or location of the Indian child's tribe is known, a copy of the notice shall also be sent directly to the Secretary of the Interior, unless the Secretary of the Interior has waived notice in writing and the person responsible for giving notice has filed proof of the waiver with the court.
  - e) The notice shall include specified information, including the name, birthdate, and birthplace of the Indian child, if known; the name of any Indian tribe in which the child is a member or may be eligible for membership, if known; all names known of specified relatives or Indian custodians of the Indian child, and specified identifying information, if known; a copy of the petition; a copy of the child's birth certificate, if available; the location, mailing address, and telephone number of the court and all parties notified; and a statement of the rights of the child's parents, Indian custodians, and tribe in the proceeding

and the potential legal consequences of the proceedings. (Prob. Code, § 1460.2(a), (b).)

- 10) Requires the notice in 9) to be sent whenever it is known or there is reason to know that an Indian child is involved, and for every hearing thereafter, including, but not limited to, the hearing at which a final adoption order is to be granted; after a tribe acknowledges that the child is a member or eligible for membership in the tribe, or after the Indian child's tribe intervenes in a proceeding, the notice need not include specified information required under 9). (Prob. Code, § 1460.2(c).)
- 11) Requires, when an Indian custodian or biological parent of an Indian child lacks the financial ability to retain counsel and requests the appointment of counsel in a proceeding under 8), the court to apply ICWA and appoint counsel. (Prob. Code, § 1474.)
- 12) Establishes requirements for the nomination and appointment of a guardian for an Indian child. (Prob. Code, §§ 1500.1, 1510, 1511, 1516.5.)

This bill:

- 1) Repeals the existing statute setting forth cross-references to ICWA definitions in Division 4 and replaces it with definitions of the following terms, which are generally consistent with the existing definitions in ICWA and Cal-ICWA: "Indian," "Indian child," "Indian custodian," "Indian organization," "Indian tribe," "Reservation," "Tribal court," "Extended family member," "parent," "child's Indian tribe," "active efforts," "Bureau of Indian Affairs," "continued custody," "domicile," "involuntary proceeding," "placement preferences," "upon demand," and "voluntary proceeding."
- 2) Repeals the existing provisions setting forth how a probate court should determine an Indian child's tribal membership when they are or may be a member of, or are eligible for membership in, more than one tribe, and replaces it with the following:
  - a) Deference should be given to the tribe of which the Indian child is already a member or citizen, unless otherwise agreed to by the tribes.
  - b) If an Indian child meets the definition of "Indian child" through more than one tribe because the child is a member or citizen of more than one tribe or the child is not a member or citizen, but is eligible for membership or citizenship in more than one tribe, the court shall provide the tribes the opportunity to determine which tribe shall be designated as the child's Indian tribe.
  - c) If the tribes are able to reach an agreement, the agreed-upon tribe shall be designated as a child's Indian tribe.
  - d) If the tribes are unable to reach an agreement, the court shall designate as the child's Indian tribe as the tribe with which the child has the more significant contacts, taking into consideration specified factors, including the preference

- of the parents and the self-identification of the child, if the child is of sufficient age and capacity to meaningfully self-identify.
- 3) Repeals the existing findings and declarations relating to guardianship and conservatorship proceedings involving Indian children and replaces them with new findings and declarations, including:
    - a) Federally recognized tribes are sovereign nations with inherent rights to self-governance and the sole authority to determine their tribal membership or citizenship, including the right to regulate domestic relations involving their members or citizens.
    - b) There is no resource that is more vital to the continued existence and integrity of Indian tribes than their children, and the State of California has a continued interest in protecting Indian children; California is committed to protecting the essential tribal relations and best interest of an Indian child by promoting practices, in accordance with ICWA and other applicable law, designed to prevent their involuntary out-of-home placement and, whenever such placement is necessary, by placing the child, whenever possible, in a placement that reflects the unique values of the child's tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the child's tribe and tribal community.
  - 4) Requires a probate court, in all proceedings involving an Indian child, including a new placement in a guardianship or conservatorship, to consider all of the findings in 3), strive to promote the stability and security of Indian tribes and families, comply with ICWA and other applicable federal law, and seek to protect the best interest of the child.
  - 5) Provides that a determination by an Indian tribe that an unmarried person, who is under 18 years of age, is either (1) a member or citizen of an Indian tribe, or (2) eligible for membership or citizenship in an Indian tribe and a biological child of a member or citizen of an Indian tribe shall constitute a significant political affiliation with the tribe and shall require the application of ICWA and other applicable state and federal law to the proceedings.
  - 6) Provides, in all guardianship or conservatorship proceedings involving an Indian child, that the Indian child's tribe shall have the right to examine all reports or other documents filed with the court, including, but not limited to, the reports or other documents upon which any decision to place the Indian child in the custody of someone other than the parent or Indian custodian will be based.
  - 7) Requires a court, when the Probate Code or other applicable state or federal law provides a higher standard of protection to the rights of a parent or Indian custodian of an Indian child, or the Indian child's tribe, than the rights provided under ICWA, to apply the higher standard.

- 8) Permits an Indian child, the Indian child's tribe, or the parent or Indian custodian from whose custody the child has been removed, to petition the court to invalidate an action in a proceeding involving an Indian child for guardianship or conservatorship placement if the action violated specified ICWA provisions.
- 9) Provides that ICWA and Cal-ICWA apply to guardianship and conservatorship proceedings under Division 4 when the proposed ward or conservatee is an Indian child, and that the court and petitioner have an affirmative and continuing duty to inquire whether a child for whom a guardianship or conservatorship petition has been filed is or may be an Indian child.
- 10) Adds Probate Code Section 1459.1, which does the following:
  - a) Explicitly states that ICWA and the relevant provisions of Cal-ICWA 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, including guardianship or conservatorship proceedings, and lists acts that are included in the scope of inquiry.
  - 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.
    - i. The inquiry must 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.
    - ii. The inquiry and responses must occur on the record, and the court must 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; 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, and 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) Provides that 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, is conclusive; 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; the court must 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) Requires a party seeking placement, notwithstanding a determination that ICWA does not apply to the proceedings, 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) Authorizes an Indian child's tribe, notwithstanding any other law, to participate by telephone, or other remote appearance options, in proceedings in which ICWA may apply.
    - i. The court has the discretion to determine the method of appearance consistent with court capacity and contractual obligations, 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.
    - ii. No fees may be charged for court appearances conducted in whole or in part by remote means.
- 11) 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 in any proceeding involving the Indian child; the notice must be sent to the child's parents or legal guardian, Indian custodian, if any, and the child's tribe, and copies must be served on all parties to the proceeding and their attorneys.
  - b) Imposes specified requirements for adequate notice, including identifying to whom service must be provided, the documents which 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 ICWA does not apply to the case; 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, specified information need not be included in the notice.
  - 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; the parent, Indian custodian, or tribe must be granted up to 20 additional days to prepare for that proceeding upon their request.
  - f) Provides that, if a party knowingly and willfully falsifies or conceals a material fact concerning whether the child is an Indian child, or counsels a party to do so, the party is subject to court sanctions.
  - g) Provides that contact information of any adult or child that would otherwise be required to be included in the notification should be exempted 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.

- 12) 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 guardianship or conservatorship proceeding involving an Indian child.
- 13) 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.
- 14) Repeals existing Probate Code Section 1459.5.
- 15) Establishes new Probate Code Section 1459.5, which does 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; 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 must provide active efforts upon filing the petition or at first contact with the Indian child or family, which must be documented in detail in the record.
  - b) Requires the determination of what constitutes active efforts to be assessed on a case-by-case basis; active efforts must 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, and must 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 custodian is likely to result in serious emotional or physical damage to the child.
  - d) Permits, when testimony of a qualified expert witness is required in a proceeding involving an Indian child, a qualified expert witness to be permitted to 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 and to testify to the prevailing social and cultural standards of the Indian child's tribe; the witness may not be an employee of the person or agency recommending guardianship or conservatorship placement.
  - e) Requires the court, 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, to do both of the following:

- i. Require a qualified expert witness to 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, 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 specified placement preferences.
- 16) 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.
  - b) Requires, if 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, the court to expeditiously notify the tribe and tribal court of the pending dismissal based on the tribe's exclusive jurisdiction, as specified.
  - 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 pursuant to ICWA.
  - 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; the petition for transfer may be made orally on the record or in writing at any stage of the proceedings, but the state court shall terminate jurisdiction upon receipt of a petition for transfer only after receiving confirmation that the tribal court has accepted the transfer. The state court must also do both of the following:
- i. Expeditiously 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, and that those reasons 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 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) Requires, notwithstanding any provision related to the confidentiality of the child's records in a guardianship, conservatorship, or adoption proceeding, 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.
- 17) Establishes Probate Code Section 1459.7, which does 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, with the court's consent, 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 without federal recognition 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 specified circumstances, 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, and prohibits the section from being construed to make Cal-ICWA, 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 as to whether 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.
- 18) Amends Probate Code Section 1460 to require a 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, which must be sent to the minor's parents or legal guardian, Indian custodian, if any, and the child's tribe.
- 19) Repeals the existing Probate Code Section 1460.2.
- 20) 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.
- 21) 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.

- 22) 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 may be a dependent of the juvenile court to include a summary of any active efforts required to support the Indian child, 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 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.
- 23) Makes nonsubstantive technical and conforming changes.

### COMMENTS

1. Author's comment

According to the author:

The Indian Child Welfare Act is already the law, and it already applies when court proceedings may result in the placement of an Indian child outside their family. What this bill does is provide clear guidance on how ICWA applies in probate, guardianship, and conservatorship proceedings.

Right now, the lack of clarity in these areas leads to inconsistent application across courts. When ICWA is misunderstood or overlooked in probate matters, it creates delays, appeals, and harm to children, families, and tribes. This bill simply clarifies that existing ICWA protections apply to these proceedings and must be followed according to law.

By providing explicit direction in the Probate Code, we reduce judicial error, prevent unintentional ICWA avoidance, and promote uniform compliance statewide. This clarification strengthens the integrity of our courts and ensures that Indian children and tribes receive the protections they are already entitled to under state and federal law.

## 2. Background on ICWA and Cal-ICWA

ICWA was enacted by Congress in 1978 to halt the states' practice of deliberately removing Indian children from their families for the purpose of destroying Indian culture.<sup>2</sup> ICWA recognizes "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>3</sup> ICWA's stated policy 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>4</sup>

Among other things, ICWA requires states, in adoptive and foster placement decisions involving a child who is a member of a federally recognized tribe, or eligible to be a member of a federally recognized tribe, to give certain preferences to the child's extended family, other members of the child's tribe, or another Indian family.<sup>5</sup> ICWA's preferences for Indian children are based on a political classification, i.e., persons who are members or eligible to be members in a federally recognized Indian tribe.<sup>6</sup> Indian tribes have a "unique legal status" under federal law, "based on a history of treaties and the assumption of a 'guardian-ward' status by the federal government over tribes."<sup>7</sup> As such, statutes addressing Indians specifically have generally understood to treat Indians as members of quasi-sovereign tribal entities.<sup>8</sup>

In 2024, the Legislature enacted AB 81 (Ramos, Ch. 656, Stats. 2024), which enacted Cal-ICWA and fully incorporated ICWA requirements into the Welfare and Institutions Codes. Early versions of AB 81 also made changes to the Probate Code and other Codes, but AB 81 ultimately amended only the Welfare and Institutions Code and did not incorporate ICWA's requirements into Probate Code guardianship and conservatorship matters involving an Indian child.

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<sup>2</sup> For further discussion of this issue, see this Committee's original analysis of AB 81, which is incorporated herein by reference. (See Sen. Com. on Judiciary, Analysis of Assem. Bill No. 81 (2023-2024 Reg. Sess.) as amended June 8, 2023.)

<sup>3</sup> See 25 U.S.C. § 1901(4).

<sup>4</sup> *Id.*, § 1902.

<sup>5</sup> *Id.*, § 1915.

<sup>6</sup> 25 U.S.C. § 1903(3), (4), (5), (8).

<sup>7</sup> *Morton v. Mancari* (1974) 417 U.S. 535, 551.

<sup>8</sup> *Id.* at p. 554.

3. This bill clarifies how ICWA protections must be applied in the probate courts in guardianship and conservatorship matters involving an Indian child

In guardianship and conservatorship matters under the Probate Code, a minor may be placed in the custody of an adult, other than their parent, who is granted the legal authority to make decisions for the child while parental rights remain in place. There is no question that ICWA applies to these proceedings, but the existing relevant provisions often include confusing and inaccurate cross-references to ICWA, the California Rules of Court, and the Welfare and Institutions Code. This bill, therefore, incorporates the same standards and requirements as AB 81 that are laid out in ICWA and other sources of law into the Probate Code, comprehensively establishing the requirements in a guardianship or conservatorship proceeding involving a child who is, or may be, an Indian child.

In addition to clarifying the ICWA requirements as they apply to Probate Code guardianship and conservatorship proceedings, this bill provides guidance to courts in matters where the child would otherwise qualify as an Indian child, but for the fact that the child's tribe does not have federal recognition. As noted in Comment 2, a child's status as an Indian child under ICWA is dependent on the child's tribe having federal recognition, so children of tribes without federal recognition do not receive the same protections. This bill is clear that it is not attempting to extend ICWA's protections to non-federally recognized tribes, contrary to federal law; instead, it provides guidelines for when, and how, a probate court may permit a child's non-federally recognized tribe to participate in guardianship or conservatorship proceedings.

4. Arguments in support

According to the California Tribal Families Coalition:

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.

As an organization that represents Tribes in probate proceedings involving Indian children, we see every day the lack of understanding by courtroom practitioners of how ICWA must be applied. This lack of implementation of federal law in these proceedings results in both parents and Tribes often having no knowledge of the placement of their children until permanent guardianship orders have been made. The lack of due process for Tribes and parents under the ICWA in these proceedings we believe can be corrected by clearly including its provisions directly in the Probate Code...

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.

#### **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)  
Agua Caliente Band of Cahuilla Indians  
Hoopa Valley Tribe  
Karuk Tribe  
Mesa Grande Band of Mission Indians  
Pechanga Band of Indians  
Rincon Band of Luiseño Indians  
Santa Ynez Band of Chumash Indians  
Soboba Band of Luiseño Indians  
Yurok Tribe

#### **OPPOSITION**

None received

#### **RELATED LEGISLATION**

Pending legislation: AB 1689 (Quirk-Silva) streamlines the procedure through which a juvenile court may take jurisdiction of a matter relating to a minor who is a ward under the jurisdiction of the juvenile court when the minor was previously appointed a temporary guardian by the probate court. AB 1689 is pending before the Senate Public Safety Committee

Prior legislation:

AB 81 (Ramos, Ch. 656, Stats. 2024) enacted Cal-ICWA and codified certain ICWA requirements in the Welfare and Institutions Code. AB 81 is discussed further in Comment 2 of this analysis.

AB 3176 (Waldron, Ch. 833, Stats. 2018) revised and recast the state statutes implementing ICWA to comply with federal regulations, including revising the specific steps a social worker, probation officer, or court is required to take in making an inquiry of a child's possible status as an Indian child and the various notice requirements that are mandated during an Indian child custody proceeding.

**PRIOR VOTES**

Assembly Floor (Ayes 68, Noes 0)  
Assembly Appropriations Committee (Ayes 14, Noes 0)  
Assembly Human Services Committee (Ayes 7, Noes 0)  
Assembly Judiciary Committee (Ayes 12, Noes 0)

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