

CONCURRENCE IN SENATE AMENDMENTS

AB 81 (Ramos)

As Amended August 19, 2024

2/3 vote. Urgency.

**SUMMARY**

This bill codifies 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 Californian Indian Child Welfare Act (CalICWA).

**Major Provisions**

- 1) Finds and declares, on behalf of the Legislature, that, federally recognized tribes are sovereign nations with inherent rights to self-governance, including the right to regulate domestic relations involving their citizens. Tribes have been protecting and caring for their children from time immemorial. The State of California is committed to protecting essential tribal relations and the political status of federally recognized tribes by recognizing a tribe's right to protect the health, safety, and welfare of its citizens. It is the policy of the State of California to support, protect, and uplift this inherent tribal sovereignty.
- 2) Requires, in all Indian child custody proceedings, as defined in the federal Indian Child Welfare Act, the court to consider 1), above, in addition to other legislative findings, facts, and circumstances that the court is required to consider in such cases under existing law.
- 3) Defines the following terms in the Family Code and the Probate Code:
  - a) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in Section 1606 of Title 43 of the United States Code.
  - b) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of that child.
  - c) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village as defined in subdivision (c) of Section 1602 of Title 43 of the United States Code.
  - d) "Reservation" has the same meaning as "Indian country" as defined in Section 1151 of Title 18 of the United States Code, and any lands that are not covered under Section 1151 and the title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation.
  - e) "Tribal court" means a court with jurisdiction over child custody proceedings, and that is either a Court of Indian Offenses, a court established and operated under the code or

custom of an Indian tribe, or any other administrative body of tribe that is vested with authority over child custody proceedings.

- f) "Indian child" means any unmarried person who is under 18 years of age and either of the following:
    - i) A member of an Indian tribe.
    - ii) Eligible for membership in an Indian tribe and is a biological child of a member of an Indian tribe.
  - g) "Extended family" means the same as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached 18 years of age and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.
  - h) "Parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. "Parent" does not include an unwed father where paternity has not been acknowledged or established.
- 4) Provides that the sections of the Family Code, the Health and Safety Code, the Probate Code, and the Welfare and Institutions Code that apply to proceedings involving an Indian child, including the definitions set forth in Welfare and Institutions Code Section 224.1, shall be collectively known as the CalICWA.
- 5) Requires a notice sent pursuant to CalICWA to include the following:
- a) The name of the petitioner and the name and address of the petitioner's attorney.
  - b) The time, date, and location of any scheduled hearings.
  - c) For the notice of the initial hearing only: information of other direct lineal ancestors of the child.
- 6) Requires the notice to be sent to the following:
- a) All tribes of which the child may be a member, or eligible for membership, unless specified criteria exist.
  - b) The child's parents.
  - c) The child's Indian custodian.
- 7) Clarifies certain requirements under ICWA and CalICWA in cases involving an Indian child, including:
- a) Stating in the Probate Code that, as required by ICWA and CalICWA, in any case in which the court determines indigency, the parent or Indian custodian of an Indian child shall have the right to court-appointed counsel in any removal, placement, or termination proceeding.

- b) Requiring within the Probate Code, in any case in which the court or petitioner knows or has reason to know that a proposed ward or conservatee is an Indian Child, notice of every subsequent hearing in the proceeding to comply with specified provisions of 5) and 6), above.
  - c) Clarifying that the "active efforts" to maintain or reunite an Indian child with their family required under ICWA and CalICWA must begin at the initial agency contact with a child who is known to be, or for whom there is reason to know that child is, an Indian child; and that the contact made with extended family members should include consulting with them as possible placements for the child.
  - d) Clarifying that a county welfare department or county probation department has an obligation to inquire whether a child is an Indian child, as specified, when a child is placed on a temporary custody pursuant to a warrant.
  - e) Clarifying that the responsibility for conducting a diligent search to seek placements for an Indian child in the descending order of priority required by ICWA remains on the person or agency who removed the child from their parent, guardian, or Indian custodian's custody.
- 8) Provides that the bill shall take effect immediately.

#### **Senate Amendments**

- 1) Modify the bill's findings and declarations.
- 2) Add the definitions described in 3) of Major Provisions, above.
- 3) Add language described in 4) of Major Provisions, above, providing that the sections of the Family Code, the Health and Safety Code, the Probate Code, and the Welfare and Institutions Code that apply to proceedings involving an Indian child, including the definitions set forth in Welfare and Institutions Code Section 224.1, shall be collectively known as the CalICWA.
- 4) Add the notice requirements described in 5) and 6) of Major Provisions, above.
- 5) Add the clarifications of certain requirements under ICWA and CalICWA in cases involving an Indian child, as described in 7) of Major Provisions, above.
- 6) Add an urgency clause.
- 7) Make technical and non-substantive amendments.

#### **COMMENTS**

After a long and troubling history of separation of Native American children from their families and their tribes, Congress passed and President Carter signed the Indian Child Welfare Act (ICWA) in 1978, establishing minimum standards that state courts must follow before removing these children from their families and placing them in foster care or adoptive homes. Most recent data from the National Indian Child Welfare Association (NICWA) reports that American Indian and Alaska Native children are four times more likely to be placed in child welfare, accounting

for 2.7% of children placed outside their homes despite accounting for only 1% of children in the country.

This bill, sponsored by the California Tribal Families Coalition, acknowledges both the history of violence and exploitation of Native Americans by the State of California, and the importance of recognizing such history in child custody proceedings. The bill codifies 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 Californian Indian Child Welfare Act (CalICWA).

### **According to the Author**

AB 81 seeks to safeguard existing state statutes protecting Indian children and the rights of tribes in child welfare cases. One of the core tenets that makes ICWA and its state counterpart so successful for Indian children and families is that it grants tribal nations the right to intervene in child welfare proceedings and be involved. Tribal involvement in proceedings often make it possible for families to access more social services and culturally grounded/driven services that improve outcomes.

This bill will ensure tribes can remain involved in child welfare proceedings and will strengthen state law definitions related to child welfare proceedings for Indian children. For example, the first amendment to the bill will propose inserting a definition into Welfare and Institutions Code 224.1(c)(1) clarifying "extended family member" as being defined "by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent."

### **Arguments in Support**

Sponsor, California Tribal Families Coalition, writes the following in support of this bill:

Although ICWA was enacted over 40 years, Indian children continue to be overrepresented in the child welfare system at a rate at least two times that of White children – in some counties in California, that rate is as high as four times. This is because meaningful implementation has not yet been achieved consistently across the state. However, the federal ICWA is so important and so effective at rolling back past practices of Indian family separation, that California passed similar legislation over a decade ago. . . . AB 81 seeks to reinforce California's commitment to Indian children, families and tribes by acknowledging the past harms caused by California policies and practices by mirroring language from Executive Order N-15-19.

### **Arguments in Opposition**

No opposition on file.

## **FISCAL COMMENTS**

Unknown.

**VOTES:**

**ASM JUDICIARY: 9-0-2**

**YES:** Maienschein, Essayli, Connolly, Dixon, Haney, Pacheco, Papan, Reyes, Robert Rivas  
**ABS, ABST OR NV:** Kalra, Sanchez

**ASSEMBLY FLOOR: 75-0-5**

**YES:** Addis, Aguiar-Curry, Alanis, Alvarez, Arambula, Bains, Bauer-Kahan, Bennett, Berman, Boerner Horvath, Bonta, Bryan, Calderon, Juan Carrillo, Wendy Carrillo, Cervantes, Chen, Connolly, Davies, Dixon, Essayli, Flora, Mike Fong, Vince Fong, Friedman, Gipson, Grayson, Haney, Hart, Holden, Hoover, Irwin, Jackson, Jones-Sawyer, Kalra, Lackey, Lee, Low, Lowenthal, Maienschein, Mathis, McCarty, McKinnor, Muratsuchi, Stephanie Nguyen, Ortega, Pacheco, Papan, Jim Patterson, Joe Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Sanchez, Santiago, Schiavo, Soria, Ting, Valencia, Villapudua, Waldron, Wallis, Ward, Weber, Wicks, Wilson, Wood, Zbur, Rendon

**ABS, ABST OR NV:** Megan Dahle, Gabriel, Gallagher, Garcia, Ta

**SENATE FLOOR: 38-0-2**

**YES:** Allen, Alvarado-Gil, Archuleta, Ashby, Atkins, Becker, Blakespear, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hurtado, Jones, Laird, Limón, McGuire, Menjivar, Min, Newman, Nguyen, Ochoa Bogh, Padilla, Portantino, Roth, Rubio, Seyarto, Skinner, Smallwood-Cuevas, Stern, Umberg, Wahab, Wiener, Wilk

**ABS, ABST OR NV:** Dahle, Niello

**UPDATED**

VERSION: June 8, 2023

CONSULTANT: Alison Merrilees / JUD. / (916) 319-2334

FN: 0000179 FN: