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Senate Bill 498 (Substitute S-1 as passed by the Senate)  
Sponsor: Senator Jeff Irwin  
Committee: Housing and Human Services

*(enrolled version)*

Date Completed: 3-12-24

## **RATIONALE**

Foster care review boards meet monthly to review cases of children in the State foster care system and assess a child's care, safety, and permanency plan. Under the Indian Child Welfare Act (ICWA) and the Michigan Indian Family Preservation Act (MIFPA), a child's tribe must have an opportunity to be involved in the decisions affecting services for the child. The ICWA and MIFPA apply to any State proceeding in which a child is removed from parental care and placed in foster care and any adoption proceeding.<sup>1</sup> According to testimony before the Senate Committee on Housing and Human Services, certain boards have failed to notify tribal governments in cases involving tribal children and codifying the notification requirements for foster care review boards has been suggested.

## **CONTENT**

**The bill would amend the juvenile code to do the following:**

- Allow an agency to change a child's placement if a contracted social services agency of a Federally recognized tribal government was providing primary case management.**
- Modify the circumstances under which an agency could change a child's foster care placement if the person providing the care objected to the change.**
- Require an agency to notify an Indian child's tribe and other specified individuals of any proposed changes to an Indian child's placement.**
- Require a foster care review board to invite a child's tribal government to participate in the Indian child's foster care placement change hearing.**

"Indian child" would mean an unmarried person who is under the age of 18 and is either a member of an Indian tribe or eligible for membership in an Indian tribe as determined by that Indian tribe.

"Indian child's Tribe" would mean 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 because of their status as Indians, including any Alaska native village as defined in Federal law.

### Foster Care Placement Change

Under the code, if a child is placed under the court's jurisdiction or under the Michigan Children's Institute (MCI) jurisdiction, control, or supervision, and is placed in foster care, an

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<sup>1</sup> "ICWA/MIFPA Resources," [https://www.courts.michigan.gov/administration/offices/child-welfare-services/indian-child-welfare-act-michigan-indian-family-preservation-act-\(icwamifpa\)/](https://www.courts.michigan.gov/administration/offices/child-welfare-services/indian-child-welfare-act-michigan-indian-family-preservation-act-(icwamifpa)/). Retrieved 3-4-24.

agency cannot change the child's placement unless the person providing the foster care requests or agrees to the change. If the person providing the care objects to the proposed change, the change may occur if one of the following applies:

- The court orders the child returned home.
- The change in placement is less than 30 days after the child's initial removal from his or her home.
- The change in placement is less than 90 days after the child's initial removal from his or her home, and the new placement is with a relative.

Instead, under the bill, the agency could not change the child's placement before complying with the code's requirements, except in the following circumstances:

- The person providing the foster care requested or agreed to the change.
- A contracted social services agency of a Federally recognized tribal government was providing primary case management.

Additionally, even if the person providing the foster placement objected to a proposed change in placement, the agency could change the child's placement if the following applied:

- The court ordered the child returned home.
- The change in placement was less than 30 days after the child's initial removal from the child's home.
- The court ordered the child to be moved.
- The child was an MCI ward, and the move was a result of the MCI superintendent's denial of consent to adoption by the caregiver.
- The child was an Indian child, and the foster care placement or proposed placement was within or to the placement preferences in Section 23 of Chapter XIIB (Michigan Indian Family Preservation Act) of the code.
- The change in placement was in accordance with other provisions of the code.

(Generally, under Section 23 of Chapter XIIB, an Indian child must be placed in the least restrictive setting that most approximates a family in which his or her needs may be met, reasonably close to home, and absent good cause to the contrary the placement must be in the following order of preference:

- A member of the Indian child's extended family.
- A foster home licensed, approved, or specified by the Indian's tribe.
- An Indian foster home, licensed and approved by the DHHS.
- An institution for children approved by an Indian Tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs.)

Under the code, prior to a change in foster care placement the agency must notify the SCAO of any proposed change in placement, among other things. Under the bill, the agency would have to notify the foster care review board under the SCAO of any proposed change in placement.

Additionally, if the child were an Indian child, prior to the change, the applicable agency, would have to notify the court with jurisdiction over the Indian child, the Indian child's tribe, and the Indian child's guardian ad litem, and provide the following:

- A statement that the child was an Indian Child.
- A list of active efforts to place the child in compliance with Section 23 of Chapter XIIB, including how the placement met the prevailing social and cultural standards of the Indian

tribe or tribes in which the parent or extended family resides or maintains social and cultural ties.

#### Foster Care Review Board and Investigation

The code allows a foster parent to appeal a change in placement. The foster care review board must investigate an appeal from a foster parent within seven days and must report its findings and recommendations to the court, MCI superintendent if applicable, the court, the parents, the foster care parents, and to the agency. If after an investigation the foster care review board determines that the move is in the child's best interests, the agency may move the child.

Under the bill, upon receipt of an appeal to a proposed change described above, the board would have to report its findings and recommendations about the proposed placement change, including whether or not the board determined that the change was in the child's best interests. The findings and recommendations also would have to be reported to the child's tribe. If the child were an Indian child, the report would have to include the following additional information:

- A statement that the child was an Indian child.
- A list of active efforts the agency took to place the child in compliance with Section 23 of Chapter XIIB.

The bill would specify that if the child were an Indian child, the Indian child's tribe would have to be invited to participate in investigation and the review board would have to follow the best interests of the child standards and procedures established in Section 5 of Chapter XIIB. (Section 5 of Chapter XIIB specifies that in Indian child custody proceedings the best interest of the child will be determined in consultation with the child's tribe, in accordance with the Indian Child Welfare Act, among other things.)

If an agency has reasonable cause to believe that a child suffered sexual abuse or nonaccidental physical injury, or that there is substantial risk of harm to the child's emotional well-being, the agency may change the child's foster care placement without complying with the provisions required under Foster Care Placement Change. The bill would specify that this provision also would apply to substantial risk of harm to the child's physical well-being. The agency, foster review board, or MCI would have to comply with the provisions of Section 23 of Chapter XIIB following a removal as described above.

#### Indian Child Foster Care Placement Change

Under the bill, if an Indian child who was not already removed from foster care review board consideration, under the court's jurisdiction, control, or supervision, were placed in foster care, the agency, foster care review board, or MCI could not change the child's placement or make a recommendation for a placement change before notifying the Indian child's tribe.

Before a placement change took effect, the applicable agency or MCI would have to notify an Indian tribe at least three days before any proposed placement change of an Indian child, except for a court-ordered change. This notification could be given to the designated Indian child's agent by mail or email three days before the beginning of the investigation.

At the time of, or immediately following the removal of an Indian child due to a reasonable cause of belief that the child had suffered abuse, an agency or MCI would have to inform the Indian child's tribe of the child's placement. Also, the agency, foster care review board, and

the MCI would have to comply with Section 23 of Chapter XIIB for any placement change, including a removal change.

MCL 712A.13B

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

Foster care review boards need to work effectively with tribal governments to best serve Indian children. Tribal governments' involvement allows for the consideration of prevailing social and cultural values, conditions, and ways of life, as well as specific tribe preferences for the welfare of Indian children. The ICWA and MIFPA specify placement guidelines that courts must give preference to unless there is good cause to the contrary; however, tribal governments have not always been given the opportunity to ensure these practices are occurring. By codifying the process of collaboration in the juvenile code, affected Indian children can remain connected with their communities and culture.

Legislative Analyst: Eleni Lionas

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local governments. Currently, the Department of Health and Human Services' (DHHS) policy for the placement of Indian foster care children includes a requirement for assistance from an Indian foster child's tribe in making appropriate foster care placements. As the bill would codify current DHHS policy with Federal law and MIFPA, there would be no fiscal impact.

Fiscal Analyst: Humphrey Akujobi

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.