



Judicial Council of California · Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 13, 2013

Title	Agenda Item Type
Judicial Council–Sponsored Legislation: Tribal Access to Confidential Juvenile Court Files	Action Required
Rules, Forms, Standards, or Statutes Affected Amend Welf. & Inst. Code § 827	Effective Date December 13, 2013
Recommended by Policy Coordination and Liaison Committee Hon. Kenneth K. So, Chair California Tribal Court/State Court Forum Hon. Richard C. Blake, Cochair Hon. Dennis M. Perluss, Cochair Family and Juvenile Law Advisory Committee Hon. Kimberly J. Nystrom-Geist, Cochair Hon. Jerilyn L. Borack, Cochair	Date of Report October 25, 2013
	Contact Ann Gilmour, 415-865-4207 ann.gilmour@jud.ca.gov Jennifer Walter, 415-865-7687 jennifer.walter@jud.ca.gov Julia Weber, 415-865-7693 julia.weber@jud.ca.gov Alan Herzfeld, 916-323-3121 alan.herzfeld@jud.ca.gov

Executive Summary

As a result of comments from tribal court judges and advocates, the Policy Coordination and Liaison Committee (PCLC), California Tribal Court/State Court Forum (forum), and the Family and Juvenile Law Advisory Committee (advisory committee) recommend that the Judicial Council sponsor legislation to amend section 827 of the Welfare and Institutions Code to address the issue of tribal access to confidential juvenile court files involving tribal children. The proposed legislation seeks to ensure tribal access to juvenile court files involving tribal children consistent with the mandates of existing federal and state law. Both federal and state law mandate notice to tribes of all juvenile dependency and some juvenile delinquency matters involving tribal children and provide tribes with the right to participate in these proceedings.

However, Welf. & Inst. Code § 827, which governs access to confidential juvenile court files, does not mention tribes.

Recommendation

The Policy Coordination and Liaison Committee, the California Tribal Court/State Court Forum, and the Family and Juvenile Law Advisory Committee recommend amending Welf. & Inst. Code §§ 827(a)(1)(A), (E), (F), (H), (K), (L), (M), (N) and (P)(5) and adding § 827(a)(1)(Q) to reference tribal entities and officials analogous to those currently addressed by those sections. These amendments will be applicable when a tribe has identified a child as being a member or eligible for membership in the tribe within the meaning of the *Indian Child Welfare Act*.

Previous Council Action

The Judicial Council has adopted rules and forms to implement and govern access to juvenile court records under the terms of Welf. & Inst. Code § 827. The Judicial Council adopted amendments to former rule 1423, effective January 1, 2001, to implement statutory changes requiring the release of a juvenile case file to the public in certain cases when the child is deceased. The Judicial Council adopted rule 5.553 and amended rule 5.552 effective January 1, 2009. At the same time, it adopted forms JV-569, JV-571, JV-572, JV-573, and JV-574, and revised form JV-570. These adopted and amended rules and forms implemented statutory changes concerning access to records and the right to copy those records.

Rationale for Recommendation

Under the federal Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) and California state law, tribes are entitled to notice of child welfare proceedings involving children who are either identified as members or eligible for membership in the tribe. Under state and federal law, tribes have presumptive jurisdiction over child welfare matters involving children who are either identified as members or eligible for membership in the tribe (25 U.S.C. § 1911, Welf. & Inst. Code § 305.5). Tribes are entitled to seek transfer of state court child welfare matters involving these children to tribal court. If a matter remains under state court jurisdiction, tribes are entitled to intervene and participate in those cases.

Further, various aspects of Welfare and Institutions Code implementing ICWA require child welfare agencies to consult with an Indian child's tribe on a variety of issues when an Indian child and the family come to the attention of the child welfare agency. Welf. & Inst. Code § 361.31 states that tribes are entitled to provide input on all foster care placements involving tribal children, including emergency removals. Anyone involved in the foster care placement of an Indian child must use the available services of the tribe in seeking a placement.¹ In addition, before removing an Indian child from his or her parents or Indian custodian and placing the child in foster care, an agency is required to provide "active efforts" to prevent removal in accordance

¹ Welf. & Inst. Code, § 361.31(g).

with Welf. & Inst. Code § 361.7. Active efforts require, among other things, use of available resources from the child's tribe.

Federal law specifically addresses the provision of otherwise confidential child welfare matters to Indian tribal governments.

Pursuant to section 552a of Title 5, the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. § 1232g), or any other provision of law, agencies of any Indian tribe, of any State, or of the Federal Government that investigate and treat incidents of abuse of **children may provide information and records to those agencies of any Indian tribe**, any State, or the Federal Government **that need to know the information in performance of their duties**. For purposes of this section, Indian tribal governments shall be treated the same as other Federal Government entities.²

Under California law, juvenile court files are generally confidential and access to the files is governed by Welf. & Inst. Code § 827.³ Under case law,⁴ juvenile court records are broadly construed to include any agency document, report, or record pertaining to a child who is a ward or dependent of the juvenile court, or who is or was the subject of an investigation that could have resulted in an action to bring that child under the court's jurisdiction under §§ 300, 601, or 602. Currently, § 827 does not mention tribes at all.

The failure of § 827 to refer to tribes or to provide for their right of access to juvenile case files has resulted in problems. Notwithstanding the provisions of state and federal law that authorize tribal access to juvenile case files involving tribal children, tribal representatives assert that the goals of ICWA are undermined when county child welfare agencies do not provide timely information to the child's tribe at the time the agency has first contact with the child's family. ICWA provides that an Indian child shall not be unnecessarily removed from his or her Indian family without prior "active efforts," and that when Indian children are removed from their Indian families, they must be, wherever possible, placed in accordance with the placement preferences under the ICWA.

Tribal judges state that they need information from the juvenile case file to decide whether or not to accept transfer of a juvenile case from state court, and that this information is sometimes denied. As a result, they are required to file a petition requesting the information from the superior court, which unnecessarily expends tribal and state judicial resources, and can delay decisions about the Indian child's welfare.

² 25 USC § 3205 (emphasis added).

³ All further references to code sections are to the Welfare and Institutions Code.

⁴ *T.N.G. v. Superior Court* (1971) 4 Cal.3d 767.

Child welfare agencies state that their child welfare files are confidential, and they are precluded by law from divulging confidential information absent a court order. County and court resources are unnecessarily expended when these agencies are forced to file petitions asking courts to rule on notifying tribes and on providing these records to tribes in accordance with statute.

The failure of § 827 to address tribal access to juvenile court file records undermines the provisions of state and federal law that require and anticipate such access, and is causing unnecessary expenditure of judicial and county resources.

Some counties in the state have addressed the ICWA compliance problems caused by § 827 through local protocols and agreements or local rules. For instance, Mendocino County has enacted an Indian Child Welfare Act Protocol, which states in relevant part:

Indian Child Protection and Family Violence Prevention Act from 1990, 25 United States Code Section 3201-3210. There is no prohibition to workers communicating with tribal representatives to discuss possible tribal affiliation and coordination of services in referrals and cases where there is reason to believe that an Indian child is involved.

Similarly, the Sonoma County Indian Child Welfare Act Protocol states, in pertinent part:

Once a minor is identified as an Indian child, or the social worker has reason to know that the child may be Indian, the obligations will be different depending upon whether a child is or may be removed from his/her family. For voluntary family maintenance and emergency response workers: it means early inquiry into possible tribal affiliation, contacting and communicating with the tribal representatives, and making and documenting referrals to Indian providers to try to prevent the breakup of the Indian family. (See pages 8–9, “Inquiry to Family Members”.) There is no prohibition to workers communicating with tribal representatives to discuss possible tribal affiliation and coordination of services in cases where there is reason to believe that an Indian child is involved. In fact, such communication is required in cases involving Indian children (25 U.S.C. § 3205).

In Kings and Humboldt counties, tribal access to juvenile court files is dealt with through standing orders issued by the superior court.

The Kings County standing order provides that Indian tribes may have access to the juvenile court file “...upon declaration showing a legitimate need ...” Upon such declaration, a duly authorized representative of an Indian tribe may have access to records or documents “...for the purpose of ascertaining whether an Indian home is suitable for certification for foster care placement...”

The Humboldt County standing order is more comprehensive. It provides:

In potential and active dependency cases, the Humboldt County Department of Health and Human Services–Child Welfare Services may exchange information with the tribal governments of federally-recognized Indian tribes in Humboldt County (as well as their duly authorized representatives) regarding Indian children associated with their tribe.)

IT IS FURTHER ORDERED THAT:

In potential and active dependency cases, the tribal governments of federally-recognized Indian tribes in Humboldt County (as well as their duly authorized representatives) may inspect and make copies of the juvenile case files of the Humboldt County Department of Health and Human Services–Child Welfare Services involving Indian Children associated with their tribe.

Where neither a protocol nor a standing order exists, tribes either do not receive timely information from the juvenile court file or they may be required to petition the court for access to required information.

This proposed legislation is intended to address these identified problems. The proposal would amend § 827 to define when an Indian child’s tribe and tribal government agencies shall have access to the child’s juvenile court file. The amendments would result in increased compliance with ICWA requirements, conformity with federal law, and increased cooperation between state and tribal courts as well as reducing the burden on courts, tribal governments, and county welfare departments.

Comments, Alternatives Considered, and Policy Implications

The forum considered taking no action, and also considered waiting until there were more comprehensive amendments to section 827.⁵ However, given the problems reported by tribal judges and tribal advocates, and recognizing the need to conform to federal law, the PCLC, forum, and advisory committee determined it would be appropriate to proceed with Judicial Council–sponsored legislation. This legislative proposal is identified in the forum’s current annual agenda, approved by the Judicial Council’s Executive and Planning Committee.

The Invitation to Comment on the proposal was posted on the Administrative Office of the Courts (AOC) website during the comment period from April 19, 2013, through June 19, 2013. In addition, it was circulated to a wide variety of persons interested in the subject matter, including justices, judges, attorneys, social workers, probation officers, California Department of Social Services staff, tribes and tribal advocates, and members of the public.

⁵ There has been significant discussion of the need for a comprehensive redraft of § 827 within the Family and Juvenile Law Advisory Committee, but thus far the committee has taken no formal action on a legislative proposal.

A total of ten comments were received. Of these, seven supported the proposal, two supported the proposal if modified, and one opposed the proposal. The seven comments in support came from Paulie Boynton, a social worker with the Smith River Rancheria, California Indian Legal Services, the Humboldt County Department of Social Services, the Superior Courts of California for the Counties of Los Angeles and San Diego, the Orange County Bar Association, and the Yurok Tribe Child Support Services. The two support-if-modified comments came from Legal Advocates for Children and Youth (LACY) and San Diego County Child Welfare Services. The one comment in opposition came from the Superior Court of California, County of Tulare.

LACY, while supporting the general proposition that Indian tribes should have access to juvenile case records involving their children "...in order to promote the preservation of tribal ties," suggested several revisions, including the removal of proposed § 827(a)(1)(M) which grants access to tribal representatives equivalent to a probate court investigator in a probate guardianship proceeding. The reason for this suggestion was that it was not clear that under tribal law such equivalent exists. Upon review, the advisory committee and forum concluded that inclusion of § 827(a)(1)(M) was appropriate because at least some tribes in California do have guardianship proceedings which are analogous to probate guardianships under state law. Further, Ms. Boynton, the social worker from the Smith River Rancheria, specifically cited the need for access in these circumstances in her comments.

San Diego County Child Welfare Services also supported the general proposition that tribes should have access to these records but suggested two modifications, as follows:

- An amendment to include language specifying that tribal officials' access was limited to circumstances where the officials "...need to know the information in performance of their duties." The advisory committee and forum concluded that such an amendment was unnecessary because, as with all the other similarly situated nontribal officials and entities listed in § 827, the context sufficiently implies that access to the information is for the performance of their official duties.
- Amendments to specifically limit access to situations where a child is acknowledged as a member of the tribe. The advisory committee and forum believe that this amendment is not necessary because of the references to 25 U.S.C. § 1903(5) throughout the proposed legislation, which limits the definition of a child's tribe to those situations where the tribe has acknowledged the child as a member or eligible for membership in the tribe, are sufficient to achieve this limitation.

The Superior Court of California, County of Tulare opposes the proposed amendments primarily on the basis that they are unnecessary. The court is of the view that ICWA provides sufficient notice and rights to a child's tribe and that where a tribe needs further access it can petition the court.

For the reasons discussed above, the advisory committee and forum believe that the current legislation does not clearly define the right of access of an Indian child's tribe, and that this results in inconsistent access and unnecessary petitions for access which are time-consuming for the courts. The PCLC, advisory committee, and forum believe that the proposed legislative amendments are preferable to the existing situation.

Implementation Requirements, Costs, and Operational Impacts

The PCLC, advisory committee, and forum have not identified any costs associated with the proposal. The PCLC, advisory committee, and forum believe that there will likely be cost savings as a result of this proposal by reducing the number of petitions that tribes are required to file with the superior courts concerning access to juvenile court files.

Relevant Strategic Plan Goals and Operational Plan Objectives

The proposal advances Judicial Council strategic Goal I, Access, Fairness, and Diversity; Goal III, Modernization of Management and Administration, policy number 6, to "Manage and coordinate cases effectively by sharing appropriate information between and within the courts and other justice system partners"; and Goal IV, Quality of Justice and Service to the Public, by recognizing and acknowledging the role that tribal governments and courts play in child welfare cases involving their children and providing an efficient and effective framework for information sharing on these cases to take place.

Attachments

1. Proposed amendments to Welfare and Institutions Code, at pages 8–9
2. Chart of comments, LEG13-03, at pages 10–16

The Welfare and Institutions Code, Division 2. Children, Part 1. Delinquents and Wards of the Juvenile Court, Chapter 2. Juvenile Court Law, Article 22. Wards and Dependent Children—Records, section 827(a)(1) would be amended, effective January 1, 2015, to read:

1 Section 827.

2

3 (a)(1)(A) Court personnel, including personnel from a court of the Indian child's
4 tribe as defined by the Indian Child Welfare Act under Section 1903(5) of Title 25 of the United
5 States Code.

6 (B)–(D) * * *

7 (E) The attorneys for the parties, judges, referees, other hearing officers, probation
8 officers, and law enforcement officers who are actively participating in criminal or juvenile
9 proceedings involving the minor, including proceedings taking place in a court of the Indian
10 child's tribe as defined by the Indian Child Welfare Act under Section 1903(5) of Title 25 of the
11 United States Code.

12 (F) The county counsel, city attorney, or any other attorney representing the petitioning
13 agency in a dependency action, including an action in a court of the Indian child's tribe as
14 defined by the Indian Child Welfare Act under Section 1903(5) of Title 25 of the United States
15 Code.

16 (G) * * *

17 (H) Members of the child protective agencies as defined in Section 11165.9 of the Penal
18 Code, and including child welfare agencies of the Indian child's tribe as defined by the Indian
19 Child Welfare Act under Section 1903(5) of Title 25 of the United States Code.

20 (I)–(J) * * *

21 (K) Members of children's multidisciplinary teams, persons, or agencies providing
22 treatment or supervision of the minor, including representatives and service providers from the
23 Indian child's tribe as defined by the Indian Child Welfare Act under Section 1903(5) of Title 25
24 of the United States Code.

25 (L) A judge, commissioner, or other hearing officer assigned to a family law case with
26 issues concerning custody or visitation, or both, involving the minor, a judge or other hearing
27 officer from a court of the Indian child's tribe as defined by the Indian Child Welfare Act under
28 Section 1903(5) of Title 25 of the United States Code, and the following persons, if actively
29 participating in the family law case: a family court mediator assigned to a case involving the
30 minor pursuant to Article 1 (commencing with Section 3160) of Chapter 11 of Part 2 of Division
31 8 of the Family Code, a court-appointed evaluator or a person conducting a court-connected
32 child custody evaluation, investigation, or assessment pursuant to Section 3111 or 3118 of the
33 Family Code, and counsel appointed for the minor in the family law case pursuant to Section
34 3150 of the Family Code. Prior to allowing counsel appointed for the minor in the family law
35 case to inspect the file, the court clerk may require counsel to provide a certified copy of the
36 court order appointing him or her as the minor's counsel.

37 (M) A court-appointed investigator who is actively participating in a guardianship case
38 involving a minor pursuant to Part 2 (commencing with Section 1500) of Division 4 of the

1 Probate Code and acting within the scope of his or her duties in that case, or an individual
2 serving in a similar capacity on behalf of a court of the Indian child's tribe as defined by the
3 Indian Child Welfare Act under Section 1903(5) of Title 25 of the United States Code.

4 (N) A local child support agency, including a child support agency of the Indian child's
5 tribe as defined by the Indian Child Welfare Act under Section 1903(5) of Title 25 of the United
6 States Code for the purpose of establishing paternity and establishing and enforcing child support
7 orders.

8 (O) * * *

9 (P)(2)-(4) * * *

10 (5) Individuals listed in subparagraphs (A), (B), (C), (D), (E), (F), (H), (I), and (Q) of
11 paragraph (1) may also receive copies of the case file. In these circumstances, the requirements
12 of paragraph (4) shall continue to apply to the information received.

13 (Q) The authorized representative of an Indian tribe as defined by the Indian Child
14 Welfare Act under Section 1903(8) of Title 25 of the United States Code for the purpose of the
15 protection and welfare of the Indian child.

16

LEG13-03

Proposed Legislation: Tribal Access to Confidential Juvenile Court Files (Amend Welfare & Institutions Code § 827)

All comments are verbatim unless indicated by an asterisk (*)

	Commentator	Position	Comment	Committee Response
1.	Boynnton, Paulie, SW II, Smith River Rancheria	A	I agree with the proposed changes, however would like to see it expanded by mandating a standing order process for counties and Tribes to share information regarding probation and dependency cases that may not yet be in court jurisdiction. For example a guardianship filed in Tribal Court and the Tribal Social Services dept is asked to make a recommendation, but does not have access to CWS/CMS records and counties will not release information without a signed release or Court Order. Counties such as Humboldt have addressed this issue with a standing court order allowing information to flow between County and Tribal probation and Social Service agencies.	The committee does not believe that the suggested change is necessary. Under case law (<i>T.N.G. v. Superior Court</i> (1971) 4 Cal. 3d 767, at 822; <i>In re Elijah S.</i> (2005) 24 Cal.Rptr.3d 16, at 21-22), juvenile court records under section 827 of the Welfare and Institutions code are broadly construed to include any agency document, report or record pertaining to a child who is a ward or dependent of the juvenile court, or who is or was the subject of an investigation that could have resulted in an action to bring that child under the court's jurisdiction. Proposed amended section 827 (a) (1) (H) would appear to provide sufficient authority for a tribal social service agency to access the records in the scenario described. The committee does not want to place an unnecessary burden on local courts to enact standing orders if the statute itself is sufficient.
2.	California Indian Legal Services, Delia Parr, Directing Attorney	A	As an organization that has represented numerous tribes in countless Indian Child Welfare Act cases, CILS supports this proposal. Our Eureka office worked with local tribes and the juvenile court to obtain the Humboldt County standing order referenced in the Invitation to Comment. In our opinion, it has been effective in increasing collaboration between tribes and the county social services department, yielding both legal and financial benefits. Ensuring that tribes throughout the state have timely access to juvenile case files will produce similar benefits. First, as noted in the Invitation to Comment, it	No response necessary.

LEG13-03

Proposed Legislation: Tribal Access to Confidential Juvenile Court Files (Amend Welfare & Institutions Code § 827)

All comments are verbatim unless indicated by an asterisk (*)

	Commentator	Position	Comment	Committee Response
			<p>should improve compliance with the requirement that pre-removal active efforts take into account the prevailing social and cultural values, conditions, and way of life of an Indian child's tribe, and that the available resources of a child's tribe are utilized in the course of such efforts. It will also decrease judicial, county, and tribal expenses that result from a tribe seeking to remedy denial of access to a case file under the current language of Section 827.</p> <p>Moreover, it should increase the number of families for whom pre-removal services are successful, thereby decreasing the number of families who need additional post-removal services. For obvious reasons, there is a historical distrust of government agencies ingrained in many Indian families. Often, making use of the cultural expertise of tribal social services departments is the best way of connecting with families early on, when remedial and rehabilitative efforts can be most effective.</p> <p>From a practical standpoint, tribes have post-removal access to juvenile case files anyway as soon as they intervene in a dependency proceeding. It makes little sense to hinder access to such information early on when involvement of tribal agencies is more likely to create a positive outcome for all concerned.</p>	
3.	Humboldt County Department of	A	The Humboldt County Department of Health	No response necessary.

LEG13-03

Proposed Legislation: Tribal Access to Confidential Juvenile Court Files (Amend Welfare & Institutions Code § 827)

All comments are verbatim unless indicated by an asterisk (*)

	Commentator	Position	Comment	Committee Response
	Health and Human Services, Blair Angus, Deputy County Counsel		<p>and Human Services offers its wholehearted support for the proposed changes to Welfare and Institutions Code section 827. The modified language removes unnecessary barriers to full collaboration with Tribes and will assist the department in better serving the needs of Native American Children.</p> <p>The office of the Humboldt County Counsel joins in this endorsement of the proposed language.</p>	
4.	Legal Advocates for Children and Youth, Andrew Cain Supervising Attorney	AM	<p>1. LACY supports expanding the provisions of Welfare and Institutions Code 827 to allow for access to juvenile case records by representatives from Indian tribes in order to promote the preservation of tribal ties. Thus, LACY supports the majority of this legislative proposal. LACY recommends the following changes to the proposal:</p> <p>a. Remove the proposed changes to Welfare and Institutions Code section 827(a)(1)(M). It is not clear under tribal law that a proceeding akin to a guardianship proceeding under the Probate Code exists. Therefore, there would not be a representative from a tribe acting in a capacity similar to that of a Probate Court Investigator.</p>	<p>As sovereign, each tribe develops its own system of laws. These do not always correspond to the system of laws enacted by the state of California. At least some tribes in California have enacted laws that provide for guardianships. For instance see section 5-1-180 of the Domestic Relations Code of the Smith River Rancheria (http://www.tolowa-nsn.gov/wp-content/uploads/2010/11/DomesticRelationsCode1.pdf) as noted in the comment above from Ms. Boynton of the Smith River Rancheria, investigations are done in such cases. Accordingly the committee believes it is</p>

LEG13-03

Proposed Legislation: Tribal Access to Confidential Juvenile Court Files (Amend Welfare & Institutions Code § 827)

All comments are verbatim unless indicated by an asterisk (*)

	Commentator	Position	Comment	Committee Response
			<p>b. The various proposed amendments to Welfare and Institutions Code 827 capture the categories of individuals from a tribe that would require access to juvenile case records. Therefore, the inclusion of a catch-all provision, as outlined in proposed Welfare and Institutions Code section 827(a)(1)(Q) is unnecessary. In addition, the phrase “authorized representative of an Indian tribe...for the purpose of protection and welfare of the Indian child” is broad and could lead to access rights being conferred upon a wider range of individuals than warranted. LACY recommends removing this proposed change.</p>	<p>appropriate to leave the references to equivalent tribal personnel in this section.</p> <p>Because tribal governments may not be structured in a way that exactly corresponds to the categories of officials described by state law, the committee believes it is appropriate to retain a category such as that contained in proposed section 827(a)(1)(Q). The committee believes that requiring that an individual prove that they are an authorized representative of a tribe which has acknowledged that the child is a member or eligible for membership provides protection against unwarranted access to confidential juvenile files.</p>
5.	Superior Court of California, County of Los Angeles Superior Court	A	No substantive comments.	No response necessary.
6.	Orange County Bar Association, Wayne R. Gross, President	A	No substantive comments.	No response necessary.
7.	San Diego County Child Welfare Services, Corey Kissel, CWS Policy Analyst	AM	<p>Recommendations:</p> <ul style="list-style-type: none"> Add to WIC 827 the language from the federal code regarding information sharing with tribes would be based on “need to know the information in performance of their duties” 	The committee does not believe it is necessary to include this wording found in 25 U.S.C. 3205. As will all the other and similarly situated non-tribal officials and entities listed in Welfare and Institutions Code 827, the context sufficiently

LEG13-03

Proposed Legislation: Tribal Access to Confidential Juvenile Court Files (Amend Welfare & Institutions Code § 827)

All comments are verbatim unless indicated by an asterisk (*)

	Commentator	Position	Comment	Committee Response
			<ul style="list-style-type: none"> • Correctly reference applicable federal code. Proposed addition to WIC 827 E & F are about tribal courts and should therefore reference ICWA 1903(12) of Title 25 of the USC in addition to the child’s tribe reference 1903 (5). • Spell out and confirm that information sharing is limited to the Indian child’s tribe and not the parent’s tribe (if those differ); this may require a clarification of ICWA 1903(5) of Title 25 of the USC which defines a child’s tribe. • Spell out and confirm that information sharing is only after a child is confirmed as a member of the tribe. 	<p>implies that access to the information is for the performance of official duties.</p> <p>The purpose of the reference to 25 U.S.C. 1903 (5) is to limit tribal access only to those cases where a child has been confirmed as a member or eligible for membership in the specific tribe seeking access. The committee does not believe it is necessary to reference 25 U.S.C. 1903 (12), definition of tribal court.</p> <p>The purpose of the reference to 25 U.S.C. 1903 (5) throughout the proposed amendments is to limit tribal access to those cases in which a child has been confirmed as a member or eligible for membership in a specific tribe as defined by 25 U.S.C. 1903 (5). Where a child has not been established to be a member or eligible for membership in a specific tribe, the tribe would not come within the definition of “Indian child’s tribe” as set out in 25 U.S.C. 1903 (5) and officials of the tribe would not have access to the child’s confidential juvenile court file under the proposed amendments to Welf & Inst. Code 827.</p>
8.	Superior Court of California, County of San Diego, Mike Roddy, CEO	A	No substantive comments.	No response necessary.
9.	Superior Court of California, County of Tulare, Sherry Pacillas, Court Operations Manager	N	Opposed to this legislation as Juvenile Court files are confidential and often times parents who claim Native American Indian ancestry are found to be ineligible for tribal membership. The agency’s common practice is to notify all federally recognized identified tribes, the Bureau of Indian Affairs, and the Secretary of	The proposal would not affect a court and/or agency’s duty with respect to inquiry, notice or other substantive requirements of the federal <i>Indian Child Welfare Act</i> (25 U.S.C. §1901 <i>et seq.</i>) It would not apply to all cases in which a parent or parents claim Native American Indian ancestry. By limiting its application to those

LEG13-03

Proposed Legislation: Tribal Access to Confidential Juvenile Court Files (Amend Welfare & Institutions Code § 827)

All comments are verbatim unless indicated by an asterisk (*)

	Commentator	Position	Comment	Committee Response
			<p>the Interior whenever a parent claims Native American Indian ancestry in accordance with the provisions under the Indian Child Welfare Act. Any federally recognized tribes have a right to be present at the initial Detention Hearing and can opt to intervene in the jurisdiction of the case. Additionally, the Judicial Officer proceeding over the case has to make a finding if the agency has complied with the placement mandates under ICWA. It is not necessary for the tribe to make that finding unless they have officially indicated they intend to intervene in the matter. Furthermore, as indicated in the proposed legislation, alternatives to filing a 827 petition to release Juvenile Court records can be addressed via a local rule of court and does not need a change in legislation.</p>	<p>cases in which a child’s tribe has been identified within the scope of section 1903 (5) of ICWA, it would only apply to those cases in which a tribe makes a determination that the child is a member or eligible for membership. In these cases only, it would clarify and facilitate access by specified tribal agencies and representatives.</p> <p>The comment does not appear to object that tribes who have identified a specific child as being a member or eligible for membership in a specific case should not have access to the court file. Instead the comment appears to be that in such cases there are sufficient alternative means by which tribes can gain access to the information. Tribes can file petitions for access in each individual case or jurisdictions that choose to do so can adopt local rules of court.</p> <p>While some jurisdictions have chosen to address the challenges in sharing information with tribal entities under the current legislation by enacting local rules or standing orders, for several reasons the committee still believes that the amendments would be beneficial. First, when a legislative gap is identified which has state-wide implications, it is appropriate to the legislation to be amended to promote state-wide consistency and uniformity of practice. The lack of a statewide solution puts an unnecessary burden on local courts to fill the gap with local rules, standing orders and protocols which would be unnecessary if the legislative proposal were adopted. In the absence of such</p>

LEG13-03

Proposed Legislation: Tribal Access to Confidential Juvenile Court Files (Amend Welfare & Institutions Code § 827)

All comments are verbatim unless indicated by an asterisk (*)

	Commentator	Position	Comment	Committee Response
				local rules, standing orders and protocols tribes must file petitions seeking access to these files which is also an inefficient use of tribal and judicial resources.
10.	Yurok Tribe Child Support Services, Denise Bareilles, Attorney,	A	This proposed rule of court is necessary for Yurok Child Support Services to access files for the establishment of paternity, and the establishment and enforcement of support orders.	No response necessary.