

Assembly Bill No. 1525

Passed the Assembly May 26, 1995

Chief Clerk of the Assembly

Passed the Senate September 8, 1995

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 1995, at ____ o'clock __M.

Private Secretary of the Governor



CHAPTER _____

An act to amend Section 1505 of the Health and Safety Code, to amend Sections 215, 272, 306, 11404, and 11460 of, and to add Sections 10553.1 and 10553.2 to, the Welfare and Institutions Code, relating to public social services.

LEGISLATIVE COUNSEL'S DIGEST

AB 1525, Granlund. Indian tribes: child welfare and foster care.

Existing law specifies counties shall implement child welfare services and the Aid to Families with Dependent Children-Foster Care (AFDC-FC) program, subject to regulations adopted by the State Department of Social Services.

This bill would authorize, to the extent that its provisions do not conflict with federal law, the State Department of Social Services to enter into agreements with Indian tribes with respect to the implementation of those programs, and would make conforming changes.

Under the California Community Care Facilities Act, the State Department of Social Services licenses various types of facilities that provide nonmedical care, including residential care facilities, for children and adults. Specified facilities are exempted from those provisions.

This bill would exempt certain facilities, as defined, in which only Indian children eligible under the federal Indian Child Welfare Act are placed from those provisions.

This bill would authorize the State Department of Social Services to adopt emergency regulations to implement this bill.

The people of the State of California do enact as follows:

SECTION 1. Section 1505 of the Health and Safety Code is amended to read:

1505. This chapter does not apply to any of the following:



- (a) Any health facility, as defined by Section 1250.
- (b) Any clinic, as defined by Section 1202.
- (c) Any juvenile placement facility approved by the California Youth Authority or any juvenile hall operated by a county.
- (d) Any place in which a juvenile is judicially placed pursuant to subdivision (a) of Section 727 of the Welfare and Institutions Code.
- (e) Any child day care facility, as defined in Section 1596.750.
- (f) Any facility conducted by and for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend upon prayer or spiritual means for healing in the practice of the religion of the church or denomination.
- (g) Any school dormitory or similar facility determined by the department.
- (h) Any house, institution, hotel, homeless shelter, or other similar place that supplies board and room only, or room only, or board only, provided that no resident thereof requires any element of care as determined by the director.
- (i) Recovery houses or other similar facilities providing group living arrangements for persons recovering from alcoholism or drug addiction where the facility provides no care or supervision.
- (j) Any alcoholism or drug abuse recovery or treatment facility as defined by Section 11834.11.
- (k) Any arrangement for the receiving and care of persons by a relative or any arrangement for the receiving and care of persons from only one family by a close friend of the parent, guardian, or conservator, if the arrangement is not for financial profit and occurs only occasionally and irregularly, as defined by regulations of the state department.
- (l) Any supported living arrangement for individuals with developmental disabilities as defined in Section 4689 of the Welfare and Institutions Code.



(m) (1) Any family home agency or family home, as defined in Section 4689.1 of the Welfare and Institutions Code, that is vendored by the State Department of Developmental Services and that does either of the following:

(A) As a family home approved by a family home agency, provides 24-hour care for one or two adults with developmental disabilities in the residence of the family home provider or providers and the family home provider or providers' family, and the provider is not licensed by the State Department of Social Services or the State Department of Health Services or certified by a licensee of the State Department of Social Services or the State Department of Health Services.

(B) As a family home agency, engages in recruiting, approving, and providing support to family homes.

(2) No part of this subdivision shall be construed as establishing by implication either a family home agency or family home licensing category.

(n) Any facility in which only Indian children who are eligible under the federal Indian Child Welfare Act, Chapter 21 (commencing with Section 1901) of Title 25 of the United States Code are placed and that is one of the following:

(1) An extended family member of the Indian child, as defined in Section 1903 of Title 25 of the United States Code.

(2) A foster home that is licensed, approved, or specified by the Indian child's tribe pursuant to Section 1915 of Title 25 of the United States Code.

(o) Any similar facility determined by the director.

SEC. 1.5. Section 215 of the Welfare and Institutions Code is amended to read:

215. As used in this chapter, unless otherwise specifically provided, the term "probation officer" shall mean the juvenile probation officer or the person who is both the juvenile probation officer and the adult probation officer, and shall include any social worker in a county welfare department or any social worker in a California Indian tribe or any out-of-state Indian tribe



that has reservation land that extends into the state that has authority, pursuant to an agreement with the department concerning child welfare services or foster care payments under the Aid to Families with Dependent Children program when supervising dependent children of the juvenile court pursuant to Section 272 by order of the court under Section 300, and the term “department of probation” shall mean the department of juvenile probation or the department wherein the services of juvenile and adult probation are both performed.

SEC. 2. Section 272 of the Welfare and Institutions Code is amended to read:

272. (a) (1) The board of supervisors may delegate to the county welfare department all or part of the duties of the probation officer concerning dependent children described in Section 300.

(2) The State Department of Social Services may delegate child welfare service or AFDC-FC foster care payment duties, or both, concerning dependent children described in Section 300 to any Indian tribe that has entered into an agreement pursuant to Section 10553.1.

(b) The board of supervisors may also delegate to those persons within the county welfare department and to any Indian tribe that has entered into an agreement pursuant to Section 10553.1 performing child welfare services the probation officer’s right of access to state summary criminal history information pursuant to Section 11105 of the Penal Code as is necessary to carry out its duties concerning children reasonably believed to be described by Section 300. The information shall include any current incarceration, the location of any current probation or parole, any current requirement that the individual register pursuant to Section 290 or 457.1 of the Penal Code, or pursuant to Section 11140 or 11590 of the Health and Safety Code, and any history of offenses involving abuse or neglect of, or violence against, a child, or convictions of any offenses involving violence, sexual offenses, the abuse or illegal possession, manufacture, or sale of alcohol or controlled substances,



and any arrest for which the person is released on bail or on his or her own recognizance.

(c) Notwithstanding subdivision (a), a social worker in a county welfare department or an Indian tribe that has entered into an agreement pursuant to Section 10553.1 may perform the duties specified by Section 306.

SEC. 3. Section 306 of the Welfare and Institutions Code is amended to read:

306. (a) Any social worker in a county welfare department, or an Indian tribe that has entered into an agreement pursuant to Section 10553.1 while acting within the scope of his or her regular duties under the direction of the juvenile court and pursuant to subdivision (b) of Section 272, may do all of the following:

(1) Receive and maintain, pending investigation, temporary custody of a minor who is described in Section 300, and who has been delivered by a peace officer.

(2) Take into and maintain temporary custody of, without a warrant, a minor who has been declared a dependent child of the juvenile court under Section 300 or who the social worker has reasonable cause to believe is a person described in subdivision (b) or (g) of Section 300, and the social worker has reasonable cause to believe that the minor has an immediate need for medical care or is in immediate danger of physical or sexual abuse or the physical environment poses an immediate threat to the child's health or safety.

(b) Before taking a minor into custody, a social worker shall consider whether the child can remain safely in his or her residence. The consideration of whether the child can remain safely at home shall include, but not be limited to, the following factors:

(1) Whether there are any reasonable services available to the worker which, if provided to the minor's parent, guardian, caretaker, or to the minor, would eliminate the need to remove the minor from the custody of his or her parent, guardian, or caretaker.

(2) Whether a referral to public assistance pursuant to Chapter 2 (commencing with Section 11200) of Part 3, Chapter 7 (commencing with Section 14000) of Part 3,



Chapter 1 (commencing with Section 17000) of Part 5, and Chapter 10 (commencing with Section 18900) of Part 6, of Division 9 would eliminate the need to take temporary custody of the minor. If those services are available they shall be utilized.

(3) Whether a nonoffending caretaker can provide for and protect the child from abuse and neglect and whether the alleged perpetrator voluntarily agrees to withdraw from the residence, withdraws from the residence, and is likely to remain withdrawn from the residence.

SEC. 4. Section 10553.1 is added to the Welfare and Institutions Code, to read:

10553.1. (a) Notwithstanding any other provision of law, the director may enter into an agreement, in accordance with Section 1919 of Title 25 of the United States Code, with any California Indian tribe or any out-of-state Indian tribe, as defined in Section 1903 of Title 25 of the United States Code that has reservation lands that extend into this state.

(b) (1) An agreement under subdivision (a) shall provide for the delegation to the tribe or tribes of the responsibility that would otherwise be the responsibility of the county for the provision of child welfare services or assistance payments under the AFDC-FC program, or both.

(2) An agreement under subdivision (a) concerning the provision of child welfare services shall ensure that a tribe meets current service delivery standards provided for under Chapter 5 (commencing with Section 16500) of Part 4, and provides the local matching share of costs required by Section 10101.

(3) An agreement under subdivision (a) concerning assistance payments under the AFDC-FC program shall ensure that a tribe meets current foster care standards provided for under Article 5 (commencing with Section 11400) of Chapter 2 of Part 3, and provides the local matching share of costs required by Section 15200.

(c) Upon the implementation date of an agreement authorized by subdivision (a), the county that would



otherwise be responsible for providing the child welfare services or AFDC-FC payments specified in the agreement as being provided by the tribe shall no longer be subject to that responsibility to children served under the agreement.

(d) Upon the effective date of an agreement authorized by subdivision (a), the tribe shall comply with fiscal reporting requirements specified by the department for federal and state reimbursement child welfare or AFDC-FC services.

(e) An Indian tribe that is a party to an agreement under subdivision (a), shall, in accordance with the agreement, be eligible to receive allocations of child welfare services funds pursuant to Section 10102.

SEC. 5. Section 10553.2 is added to the Welfare and Institutions Code, to read:

10553.2. Child welfare services allocation methodologies for Indian tribes pursuant to Section 10553.1 shall be developed in consultation with, and agreed to by, the State Department of Social Services, the affected counties, and the affected Indian tribe.

SEC. 5.5. Section 11404 of the Welfare and Institutions Code is amended to read:

11404. (a) Except as provided in Section 11405, a child is not eligible for AFDC-FC unless responsibility for placement and care of the child is with the county welfare department or Indian tribe that entered into an agreement pursuant to Section 10553.1, the county probation department which has an agreement with the county welfare department, or a licensed public adoption agency, licensed private adoption agency or the department.

(b) In order for the child to be eligible for AFDC-FC, the agency with responsibility for the child's placement and care shall in accordance with departmental regulations:

(1) For children removed after October 1, 1983, document that it provided preplacement preventive services to the child prior to the child's placement in foster care, and document why provisions of these



services were not successful in maintaining the child in his or her home, unless it is documented that these services were not provided due to:

(A) Either the voluntary relinquishment of the child by one or both parents or court action declaring a child free from the custody and control of one or both parents.

(B) The child's residence with a nonrelated legal guardian.

(2) Develop a written assessment of the reasons necessitating the child's placement in foster care and the treatment needs of the child while in foster care to be updated by the agency no less frequently than once every six months. Where the child is a parent who has a child living with him or her in the same eligible facility, the assessment shall also address the needs of his or her child.

(3) Develop a case plan for the child within 30 days of placement.

(4) Ensure that services are provided to return the child to his or her own home or establish an alternative permanent placement for the child if return home is not possible or is inappropriate.

SEC. 6. Section 11460 of the Welfare and Institutions Code is amended to read:

11460. (a) Foster care providers shall be paid a per child per month rate in return for the care and supervision of the AFDC-FC child placed with them. The department is designated the single organizational unit whose duty it shall be to administer a state system for establishing rates in the AFDC-FC program. State functions shall be performed by the department or by delegation of the department to county welfare departments or Indian tribes that have entered into an agreement pursuant to Section 10553.1.

(b) "Care and supervision" includes food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation.

(1) For a child placed in a group home, care and supervision shall also include reasonable administration



and operational activities necessary to provide the items listed in this subdivision.

(2) For a child placed in a group home, care and supervision may also include reasonable activities performed by social workers employed by the group home provider which are not otherwise considered daily supervision or administration activities.

(c) It is the intent of the Legislature to establish the maximum level of state participation in out-of-state foster care group home program rates effective January 1, 1992.

(1) The department shall develop regulations that establish the method for determining the level of state participation for each out-of-state group home program. The department shall consider all of the following methods:

(A) A standardized system based on the level of care and services per child per month as detailed in Section 11462.

(B) A system which considers the actual allowable and reasonable costs of care and supervision incurred by the program.

(C) A system which considers the rate established by the host state.

(D) Any other appropriate methods as determined by the department.

(2) State reimbursement for the AFDC-FC group home rate to be paid to an out-of-state program on or after January 1, 1992, shall only be paid to programs which have done both of the following:

(A) Submitted a rate application to the department and received a determination of the level of state participation.

(i) The level of state participation shall not exceed the current fiscal year's standard rate for rate classification level 14.

(ii) The level of state participation shall not exceed the rate determined by the ratesetting authority of the state in which the facility is located.

(iii) The level of state participation shall not decrease for any child placed prior to January 1, 1992, who



continues to be placed in the same out-of-state group home program.

(B) Agreed to comply with information requests, and program and fiscal audits as determined necessary by the department.

(3) State reimbursement for an AFDC-FC rate paid on or after January 1, 1993, shall only be paid to a group home organized and operated on a nonprofit basis.

(d) A foster care provider that accepts payments, following the effective date of this section, based on a rate established under this section, shall not receive rate increases or retroactive payments as the result of litigation challenging rates established prior to the effective date of this section. This shall apply regardless of whether a provider is a party to the litigation or a member of a class covered by the litigation.

(e) Nothing shall preclude a county from using a portion of its county funds to increase rates paid to family homes and foster family agencies within that county, and to make payments for specialized care increments, clothing allowances, or infant supplements to homes within that county, solely at that county's expense.

SEC. 7. This act shall be implemented only to the extent that its provisions do not conflict with federal law.

SEC. 8. The State Department of Social Services may adopt emergency regulations to implement this act in accordance with the Administrative Procedure Act, provided for under Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The initial adoption of emergency regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. The regulations shall not remain in effect more than 120 days.



Approved _____, 1995

Governor

