

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Alex Lee, Chair

AB 2948 (Ramos) – As Introduced February 16, 2024

SUBJECT: Adoption Assistance Program: tribal court order

SUMMARY: Allows former dependent Indian children adopted through tribal courts to access the Adoption Assistance Program (AAP). Specifically, **this bill** adds the issuance of a final order of adoption by the tribal court of the child’s tribe, in the case of an Indian child who was a dependent of the juvenile court immediately prior to the transfer of the Indian child’s case, to the conditions required to meet AAP eligibility.

EXISTING LAW:

- 1) Establishes eligibility for AAP benefits and specifies that a child is eligible for AAP benefits if all of the conditions specified in a) to i) are met or if the conditions specified in 2) are met.
 - a) It has been determined that the child cannot or should not be returned to the home of the child’s parents as evidenced by a petition for termination of parental rights, a court order terminating parental rights, a signed relinquishment, or, in the case of a tribal customary adoption, if the court has given full faith and credit to a tribal customary adoption order, or, in the case of a nonminor dependent (NMD) the court has dismissed dependency;
 - b) The child has at least one of the following characteristics that are barriers to the child’s adoption:
 - Adoptive placement without financial assistance is unlikely because of membership in a sibling group that should remain intact or by virtue of race, ethnicity, color, language, three years of age or older, or parental background of a medical or behavioral nature that can be determined to adversely affect the development of the child; or,
 - Adoptive placement without financial assistance is unlikely because the child has a mental, physical, emotional, or medical disability that has been certified by a licensed professional.
 - c) The need for an adoption subsidy is evidenced by an unsuccessful search for an adoptive home to take the child without financial assistance, as documented in the case file of the prospective adoptive child;
 - d) The child satisfies any of the following criteria: the child is under 18 years of age; the child is under 21 years of age and has a mental or physical handicap that warrants the continuation of assistance; the child is under 21 years of age and an NMD, who was 16 years of age before the adoption assistance agreement became effective, and one or more of the specified conditions related to attending school or working applies;

- e) The adoptive family is responsible for the child pursuant to the terms of an adoptive placement agreement or a final decree of adoption and has signed an adoption assistance agreement;
 - f) The adoptive family is legally responsible for the support of the child and the child is receiving support from the adoptive parent;
 - g) The California Department of Social Services (CDSS) or the county responsible for determining the child's AAP eligibility status and for providing financial aid, and the prospective adoptive parent, prior to or at the time the adoption decree is issued by the court, have signed an adoption assistance agreement that stipulates the need for, and the amount of, AAP benefits;
 - h) The prospective adoptive parent or any adult living in the prospective adoptive home has completed the required criminal background check requirements; and,
 - i) The child is a citizen of the United States or a qualified immigrant. (Welfare and Institutions Code [WIC] § 16120)
- 2) Specifies that a youth is eligible for AAP benefits if they received AAP benefits with respect to a prior adoption and is again available for adoption because the prior adoption was dissolved and the parental rights of the adoptive parents were terminated or because the youth's adoptive parents died and the youth meets the special needs criteria, as described. Specifies that when a nonminor is receiving AAP benefits after 18 years of age and the nonminor's adoptive parents die, the juvenile court may resume dependency jurisdiction over the nonminor. (WIC § 16120(m))
- 3) Requires, for initial adoption assistance agreements, the adoptive family to be paid an amount of aid based on the child's needs otherwise covered in Aid to Families with Dependent Children-Foster Care (AFDC-FC) payments and the circumstances of the adopting parents, but that shall not exceed the basic foster care maintenance payment rate structure in effect on December 31, 2007, that would have been paid based on the age-related state-approved foster family home rate, and any applicable specialized care increment, for a child placed in a licensed or approved family home. (WIC § 16121(a))
- 4) Establishes requirements related Indian child custody proceedings and specifies that if, during an Indian child custody proceeding, the court receives information suggesting that an Indian child is already a ward of a tribal court or resides within a reservation of an Indian tribe with exclusive jurisdiction over child custody proceedings, the state court must promptly notify the tribe and tribal court of the pending dismissal based on the tribe's exclusive jurisdiction. The state court is required to dismiss the child custody proceeding upon confirmation from the tribe that the child falls under their jurisdiction. (WIC § 305.5)
- 5) Declares the commitment of California to protecting the essential tribal relations and best interest of an Indian child by promoting practices in accordance with federal law, as specified. (WIC § 224(a))
- 6) Requires the court, in all Indian child custody proceedings as defined by the Indian Child Welfare Act (ICWA), to strive to promote the stability and security of Indian tribes and

families, comply with ICWA, and seek to protect the best interest of the child and further, requires, whenever an Indian child is removed from a foster care home or institution, guardianship, or adoptive placement for purposes of foster care, guardianship, or adoptive placement, the placement of the child to be in accordance with ICWA and other applicable state and federal law. (WIC § 224(b))

- 7) Requires ICWA to apply to any proceedings regarding an unmarried minor who is either the member or citizen of an Indian tribe or who is eligible for membership or citizenship in an Indian tribe and a biological child of a member of an Indian tribe, as specified. (WIC § 224(c))
- 8) Defines a number of terms related to Indian child welfare and delineates processes for designating an Indian child's tribe for purposes of an Indian child custody proceeding. (WIC § 224.1)
- 9) Establishes requirements related to notifications sent regarding Indian child custody proceedings. (WIC § 224.2)
- 10) Stipulates processes and requirements regarding the determination of a child's status as an Indian child. (WIC § 224.3)
- 11) Stipulates processes and procedures regarding jurisdiction over, and transfer of, child custody proceedings, including delineating good-cause justifications for denying a petition to transfer. (WIC § 305.5)
- 12) Establishes requirements and processes related to the placement of an Indian child who has been removed from the physical custody of their parents, including establishing priorities for placement preference. (WIC § 361.31)
- 13) Requires a party seeking involuntary foster care placement of, or termination of parental rights over, an Indian child to provide evidence to the court that active efforts 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. (WIC § 367.7 (a))
- 14) Requires, for an out-of-home placement of a minor Indian child without adjudication by the juvenile court to occur: the parent or Indian custodian's consent to the voluntary out-of-home placement is executed in writing at least 10 days after the child's birth and recorded before a judge; the judge certifies that the terms and consequences of the consent were fully explained in detail in English and were fully understood by the parent or that they were interpreted into a language that the parent understood; and a parent of an Indian child may withdraw their consent for any reason at any time and the child shall be returned to the parent. (WIC § 16507.4)

Federal law:

- 15) Establishes ICWA, which provides guidance to states regarding the jurisdictional requirements, proceedings of tribal courts, and the custody proceedings involving the removal of Indian children from the custody of their parents. (25 United States Code [U.S.C.] 1901 *et seq.*)

FISCAL EFFECT: Unknown, this bill has not been analyzed by a fiscal committee.

COMMENTS:

Background: *The Adoption Assistance Program.* The AAP provides financial and medical coverage to facilitate the adoption of children who otherwise would remain in long-term foster care. AAP is available to both relative and non-relative families who adopt children from foster care and is designed to reduce financial barriers to the adoption of children who might otherwise remain in foster care. The AAP rate is negotiated with each family and is based on the child's basic and special needs and the circumstances of the family.

This bill would allow an Indian child who was a dependent of the juvenile court immediately prior to the transfer of their case and was issued a final order of adoption by the tribal court of their tribe and met all other specified conditions in existing law, to be eligible for AAP benefits.

Eligibility criteria for AAP benefits require, "Evidence that the child cannot or should not be returned to the home of the child's parents" per a petition for termination of parental rights. Because tribes typically do not terminate parental rights as part of the tribal adoption process, as recognized by ICWA, youth transferring from state jurisdiction to tribal jurisdiction may not meet all elements of the Three-part Special Needs Determination required to receive AAP benefits:

- **Age Eligibility:** The child must be under the age of 18;
- **Special Needs Determination:** The child must meet the criteria for special needs. This determination considers factors such as physical, emotional, or developmental challenges that make the child harder to place for adoption; and,
- **Citizenship and Funding Requirements:** Title IV-E (Federal) Funding Requirements: If the child is eligible for federal funding under Title IV-E of the Social Security Act (SSA), they can receive AAP benefits. State Funding Requirements: If the child does not qualify for federal funding but meets state guidelines, they may still receive AAP benefits.

California is eligible to draw down Title IV-E reimbursement for dependents, as are federally recognized Tribes with Title IV-E agreements. However, the Author and stakeholders report that former dependent Indian children adopted through tribal courts of federally recognized tribes without a Title IV-E agreement cannot currently access AAP. This means that every dependent child may be eligible for AAP payments from the county up to the point where a non-Title IV-E tribe exercises its sovereign right to have a child's adoption proceeding occur in a Tribal Court. However, payment from the county stops upon jurisdiction transfers. As a result, tribes and tribal children of non-Title IV-E tribes are treated inequitably in their eligibility for AAP payments.

This bill would allow a final order of adoption issued by the tribal court of the child's tribe to be included among the conditions to establish eligibility for the AAP program.

AAP is a realigned program: the 2011-12 Budget realigned \$1.6 billion in state funding for the child welfare services, foster care, and adoptions programs, to the counties. For the first year of

the 2011 realignment, no changes were made to state law governing child welfare services and adoptions programs. During the 2012-13 budget process, however, the Administration proposed programmatic trailer bill language related to specific major themes, all of which were addressed by SB 1013 (Committee on Budget and Fiscal Review), Chapter 35, Statutes of 2012, which also requires counties to report to CDSS on the expenditure of savings realized as a result of maximizing available federal adoption assistance funding.

The Adoption Assistance and Child Welfare Act of 1980 was enacted on June 17, 1980, and provides funds to states to facilitate the timely placement of children, whose special needs or circumstances would otherwise make it difficult to place, with adoptive families. The Act authorized under title IV-E of the SSA, the federal AAP program to provide federal matching funds of 50% to 83%, depending on the state's per capita income. Funding is contingent upon an approved state plan to administer or supervise the administration of the program and requires states to submit yearly estimates of program expenditures as well as quarterly reports of estimated and actual program expenditures. Funds are available for a one-time payment to assist with the costs of adopting a child as well as for monthly subsidies to adoptive families to assist with the care of the eligible child. Additionally, funds are available for administrative costs to manage the program; training staff and adoptive parents; adoptive parent recruitment; and other related expenses.

The average monthly number of children receiving IV-E Adoption Assistance in FY 2017 was approximately 469,000. In 2020, 57 Native American children were adopted out of 5,644 total adoptions in California, which represents 1.10% of total adoptions in the state. This is all adoptions of Native American children, which means the number that go to a tribal court to finalize their adoption is smaller, and therefore less than 1%.

Because cases are closed when transferred to a tribal jurisdiction to complete, or later completed as an adoption under tribal law and custom, it is unknown the exact number of youth this bill will operationally impact; but it is estimated likely only a handful every year.

Indian Child Welfare Act. Prior to the mid-1970s, Indian children faced high rates of removal – estimated to be as high as 25% to 35% of all Indian children – from their families, and subsequent placement in non-Indian homes. A years-long Congressional investigation in the 1970s determined that the four leading factors that contributed to the removal of children and unnecessary termination of parental rights were:

- 1) State child welfare standards for assessing families that lack cultural competence;
- 2) Due-process violations against Indian children and their parents that existed on a system-wide basis;
- 3) Economic incentives that favored the removal of Indian children from their families and communities; and,
- 4) Social conditions existing in Indian country.

The Congressional investigation also found that states often failed to recognize the tribal relations of Indian people and their cultural and social standards when carrying out child custody proceedings.

Congress enacted federal legislation – ICWA (25 U.S.C. § 1901 *et seq.*) to address a number of the issues related to the custody of Indian children and, ultimately, to ensure the preservation of Native American families, tribes, and tribal cultures. ICWA established minimum standards with which state courts must comply any time an Indian child is removed from their family or custodial home and placed in foster care or adoptive homes. It does not prohibit states from establishing higher standards. SB 678 (Ducheny), Chapter 838, Statutes of 2006, established Cal-ICWA, which revised and recast portions of state code that address Indian child custody proceedings by codifying into state law various provisions of ICWA, the Bureau of Indian Affairs (BIA) Guidelines for State Courts, and state Rules of Court.

Indian Child Custody Proceedings. Existing law defines an “Indian child custody proceeding” to mean a hearing during a juvenile court proceeding, involving an Indian child, other than an emergency proceeding, that may culminate in one of the following outcomes:

- Foster care placement, which includes removal of an Indian child from their parent, parents, or Indian custodian for placement in a foster home, institution, or the home of a guardian or conservator, in which the parent or Indian custodian may not have the child returned upon demand, but in which parental rights have not been terminated;
- Termination of parental rights, which includes any action involving an Indian child resulting in the termination of the parent-child relationship;
- Pre-adoptive placement, which includes the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to, or in lieu of, adoptive placement;
- Adoptive placement, which includes the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption; or,
- If a child is placed in foster care or another out-of-home placement as a result of a status offense, that status offense proceeding is considered an Indian child custody proceeding.

“Indian child custody proceeding” does not include a voluntary foster care or guardianship placement if the parent or Indian custodian retains the right to have the child returned upon demand.

Author’s Statement: According to the Author, “Under current law, tribal children are being left behind and not being adopted at the same rate as non-tribal children because they simply don’t have the same backing by the state for their care. [This bill] would ensure that tribal children are provided the same benefits through the Adoption Assistance Program as non-tribal children, making adoption more likely and allowing them to have an equal opportunity to adopted.”

Equity Implications: The most recent update on racial and ethnic disproportionalities in California’s child welfare system published by the Legislative Analyst Office (LAO) on April 3, 2024, notes that the proportions of Black and Native American youth in foster care are around four times larger than the proportions of Black and Native American youth in California overall. The LAO report further states, “In addition, recent research on cumulative child welfare system involvement of California’s 1999 birth cohort found nearly one in two Black and Native American children experienced some level of child welfare involvement by the time they turned 18 years of age (compared to around 29% of Hispanic/Latino children, 22% of white children,

and 13% of Asian/Pacific Islander children).” By establishing these new criteria, a barrier that has denied these children from receiving the same benefits as their non-tribal counterparts can be removed.

Double referral: Should this bill pass out of this committee, it will be referred to the Assembly Committee of Judiciary.

RELATED AND PRIOR LEGISLATION:

AB 2255 (Joe Patterson) of the current legislative session, expands the eligibility for AAP benefits and requires counties to include an application for an extension of benefits when notifying adoptive parents of the expiration of benefits due to age. *AB 2255 is pending before this committee and set for a hearing on April 9, 2023.*

AB 3047 (Daly), 2018, Chapter 399, Statutes of 2018, allowed certain fees to be waived when the applicant is an attorney representing a tribe in a child welfare matter.

AB 3076 (Reyes) of 2018, would have required CDSS to administer grants to qualified nonprofit legal services organizations in order to provide legal services, training, and technical assistance related to ICWA issues to Indian tribes, and would have required CDSS to annually report certain data to the Legislature. *AB 3076 was held on the Senate Appropriations Committee suspense file.*

SB 678 (Ducheny), Chapter 838, Statutes of 2006, revised and recast portions of state code that address Indian child custody proceedings by codifying into state law various provisions of ICWA, the BIA Guidelines for State Courts, and state Rules of Court.

REGISTERED SUPPORT / OPPOSITION:

Support

Alliance for Children's Rights
California Alliance of Child and Family Services

Opposition

None on file.

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