

Date of Hearing: April 16, 2024

ASSEMBLY COMMITTEE ON JUDICIARY
Ash Kalra, Chair
AB 2948 (Ramos) – As Introduced February 16, 2024

PROPOSED CONSENT

SUBJECT: ADOPTION ASSISTANCE PROGRAM: TRIBAL COURT ORDER

KEY ISSUE: SHOULD AN INDIAN CHILD WHO WAS A DEPENDENT OF THE JUVENILE COURT IMMEDIATELY PRIOR TO THE TRANSFER OF THEIR CASE TO A TRIBAL COURT, AND WHO WAS ISSUED A FINAL ORDER OF ADOPTION BY A TRIBAL COURT, BE ELIGIBLE FOR THE ADOPTION ASSISTANCE PROGRAM, SO LONG AS THEY MEET ALL OTHER CRITERIA FOR THE PROGRAM?

SYNOPSIS

The Adoption Assistance Program (AAP) is a federal entitlement program that provides financial and medical coverage to facilitate the adoption of children who otherwise would remain in long-term foster care. Part of the federal Adoption Assistance and Child Welfare Act of 1980, the program creates incentives to encourage the adoption of special needs and older children, who are typically much less likely to be adopted. The California State Legislature created the state Adoption Assistance Program to implement federal law, so that foster youth in California will have access to these federally funded benefits. However, eligibility criteria for AAP benefits require, among other things, “evidence that the child cannot or should not be returned to the home of the child’s parents” and a corresponding termination of parental rights.

Tribal courts, consistent with the Indian Child Welfare Act (ICWA), generally do not terminate parental rights. Therefore, children transferring from state foster care jurisdiction to tribal courts may not meet all criteria for AAP benefits. This non-controversial bill would correct this inconsistency in existing law by allowing dependent Indian children adopted through tribal courts to access the Adoption Assistance Program (AAP). Specifically, the bill does this by adding the issuance of a final order of adoption by the tribal court of the child’s tribe to the conditions required to meet AAP eligibility.

The bill recently passed out of the Assembly Human Services Committee on 6-0 vote. It is supported by the Alliance for Children’s Rights and the California Alliance of Child and Family Services. There is no registered opposition to the bill.

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, under federal law, the Indian Child Welfare Act (ICWA), which provides guidance to states regarding the jurisdictional requirements, proceedings of tribal courts, and

custody proceedings involving the removal of Indian children from the custody of their parents. (25 U.S.C. 1901 *et seq.*; 25 C.F.R. Part 23.)

- 2) Governs, through ICWA, specified custody proceedings involving Indian children, including:
 - a) Establishing jurisdictional requirements, and allowing for notice of and intervention in Indian child custody proceedings by a tribe. (25 U.S.C. Sections 1911, 1912, 1918, 1920.)
 - b) Providing that an indigent parent or Indian custodian has the right to court-appointed counsel. (25 U.S.C. Section 1912.)
 - c) Requiring states to keep records of Indian child placements and providing them to the Secretary of the Interior and the child's tribe. (25 U.S.C. Sections 1915 and 1951.)
- 3) Declares California's commitment to protecting the essential tribal relations and best interest of an Indian child by promoting practices in accordance with federal law. Requires the court, in all Indian child custody proceedings as defined by 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. 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. (Welfare and Institutions Code Section 224. Subsequent section numbers reference this code unless otherwise indicated.)
- 4) Establishes requirements related to custody proceedings involving Indian children 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. The state court is required to dismiss the child custody proceeding upon confirmation from the tribe that the child falls under their jurisdiction. (Section 305.5.)
- 5) 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 that 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. (Section 224 (b).)
- 6) Establishes the Adoption Assistance Program (AAP) and sets forth criteria for determining requirements for AAP benefits, including that there has been a determination 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. (Section 16120.)
- 7) Defines "special needs child" to mean a child for whom all of the following are true:

- a) It has been determined that the child cannot or should not be returned to the parent's home, as evidenced by a petition for termination of parental rights, a court order terminating parental rights, or a signed relinquishment.
- b) The child has at least one of the following characteristics that is a barrier to adoption: (1) 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, age of three years or older, or parental background of a medical or behavioral nature that can be determined to adversely affect the development of the child. (2) 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 competent to make an assessment and operating within the scope of that person's profession. (Family Code Section 8545.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: According to the author, under existing law, "a child is eligible for Adoption Assistance Program (AAP) benefits only if certain criteria is met. However, there is no provision, in statute, for instances where a tribal child's case is being transferred from juvenile court over to a tribal court. According to the California Department of Social Services (CDSS), tribal children who find themselves in this situation have been denied AAP benefits even though they met the criteria required to receive them." The result, the author notes, is that "tribal children with disabilities are being left behind and not being adopted at the same rate as their non-tribal counterparts simply because they do have the backing of the state when it comes to their care. This bill would ensure that tribal children have the same benefits that other non-tribal children receive that help make adoption more likely."

Adoption Assistance Program. The Adoption Assistance Program (AAP) is a federal entitlement program that provides financial and medical coverage to facilitate the adoption of children who otherwise would remain in long-term foster care. Part of the federal Adoption Assistance and Child Welfare Act of 1980, the program creates incentives to encourage the adoption of special needs and older children, who are much less likely to be adopted. California's Adoption Assistance Program (AAP) was created to reduce the number of children in foster care and help provide stable, secure adoptive homes for eligible children. The amount of AAP support is based on the child's needs and family's circumstances, and continues until the child reaches age 18, unless a mental or physical disability creates eligibility until the age of 21. In some cases, the child is also eligible for AAP until age 21 if the child turned 16 before the AAP agreement became effective. These extensions in time reflect that fact that disabled and older foster youth are less likely to be adopted. AAP assistance encourages the adoptions of these older and "special needs" children. In short, AAP mitigates the financial difficulty many adoptive parents experience when meeting the special needs of children who were formerly placed in California's foster care system, and who might otherwise remain in foster care.

ICWA and AAP. After a long and egregious history of separation of Native American children from their families and their tribes, Congress established the Indian Child Welfare Act (ICWA) in 1978, which established minimum standards that state courts must follow before removing Native American children from their families and placing them in foster care or adoptive homes. At the time, studies showed that Native American children were six to seven times as likely as non-native children to be placed in foster care or adoptive homes, and approximately 25-35

percent of all Native American children were removed from their homes and placed in foster care, adoptive homes, or boarding schools. In California, Native American children were more than eight times as likely as non-native children to be placed in adoptive homes, and over 90 percent of California Native American children subject to adoption were placed in non-native homes. California codified many of the provisions of ICWA with the passage of SB 678 (Chap. 838, Stats. 2006), and declared that Native American children's best interests are served by protecting and encouraging connection to their tribal community.

In principle, there is nothing that would prevent Native American children, even those whose adoptions were handled by tribal courts, from receiving AAP benefits. However, as a general rule, children in California cannot be adopted unless parental rights have been terminated. Consistent with this, eligibility criteria for AAP benefits require, among other things, "evidence that the child cannot or should not be returned to the home of the child's parents" as evidence in a petition to terminate parental rights. However, tribal courts, consistent with the Indian Child Welfare Act (ICWA), do not usually terminate parental rights. Therefore, children transferring from state foster care jurisdiction to tribal courts may not meet all criteria for AAP benefits. This non-controversial bill would correct this inconsistency in existing law by allowing dependent Indian children adopted through tribal courts to access the AAP. Specifically, the bill does this by adding the issuance of a final order of adoption by the tribal court as a condition that meets AAP eligibility. In short, when it comes to the adoption of Native American children through a tribal court, there is not the usual need for a termination of parental rights.

ARGUMENTS IN SUPPORT: According to the California Alliance of Child and Family Services (California Alliance), this bill will usefully "clarify that former dependent Indian children who were adopted via proceedings in a Tribal Court may receive AAP benefits." As explained by the California Alliance:

Under existing law, a child is eligible for AAP benefits if they meet specific criteria, including, among others, that the possibility for adoption without financial assistance is unlikely because they are of special needs. However, 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 termination of parental rights petition. Tribes typically do not terminate parental rights as part of the Tribal adoption process, as recognized by the Indian Child Welfare Act (ICWA). Therefore, children transferring from state jurisdiction to Tribal jurisdiction may not meet all elements of the Three-part Special Needs Determination required to receive AAP benefits.

AB 2948 would prevent Tribal children from remaining under state jurisdiction and promote adoptions through Tribal Courts. This would allow Tribal Courts to conduct the adoption process and preserve cultural identity among potential adoptive families. AB 2948 would clarify that all children under Tribal jurisdiction may receive AAP payments from the county regardless of court placement, effectively addressing existing disparities."

REGISTERED SUPPORT / OPPOSITION:

Support

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

Opposition

None on file

Analysis Prepared by: Tom Clark / JUD. / (916) 319-2334