

Date of Hearing: May 1, 2024

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Buffy Wicks, Chair

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

Policy Committee:	Human Services	Vote:	6 - 0
	Judiciary		12 - 0

Urgency: No            State Mandated Local Program: Yes            Reimbursable: No

**SUMMARY:**

This bill 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, as a qualifying circumstance to meet AAP eligibility.

**FISCAL EFFECT:**

The California Department of Social Services (CDSS) anticipates no costs. Tribal adoptions represent only about 1% of all adoptions statewide. Indian children are already eligible for AAP under federal law. This bill modifies state law to clarify this eligibility.

**COMMENTS:**

1) **Purpose.** According to the author, under existing law:

A child is eligible for 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 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 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.

2) **Background.** The 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 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.

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% to 35% 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% 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 (Ducheny), Chapter 838, Statutes of 2006, and declared that Native American children's best interests are served by protecting and encouraging connection to their tribal community.

The Legislature created the state AAP 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 bill addresses this issue 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, thereby allowing dependent Indian children adopted through tribal courts to access AAP.

- 3) **Related Legislation.** AB 2255 (Joe Patterson), of this legislative session, expands the eligibility for AAP benefits to include youth up to 26 years of age, among other changes. AB 2255 is pending in this committee.

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