
SENATE COMMITTEE ON HUMAN SERVICES

Senator Alvarado-Gil, Chair

2023 - 2024 Regular

Bill No: AB 2948
Author: Ramos
Version: February 16, 2024
Urgency: No
Consultant: Heather Hopkins

Hearing Date: June 3, 2024
Fiscal: Yes

Subject: Adoption Assistance Program: tribal court order

SUMMARY

This bill adds a final order of adoption issued by a tribal court as a qualifying circumstance to make children eligible for the Adoption Assistance Program (AAP).

ABSTRACT

Existing Law:

- 1) Establishes eligibility for AAP benefits and specifies that a child is eligible for AAP benefits if all of the following conditions 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. (*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 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)*)

This Bill:

- 1) Provides that, 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, a final order of adoption issued by the trial court of the child's tribe will be a qualifying circumstance to make that child eligible for AAP.

FISCAL IMPACT

According to the Assembly Appropriations Committee analysis, "The California Department of Social Services 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."

BACKGROUND AND DISCUSSION**Purpose of the Bill:**

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. AB 2948 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 be adopted."

Adoption Assistance Program

The AAP is an entitlement program providing financial and medical coverage to encourage the adoption of children who otherwise would remain in long-term foster care. The Adoption Assistance and Child Welfare Act of 1980 created federal incentives to encourage the adoption of special needs children. The California State Legislature created the AAP with the intent to provide the security and stability of a permanent home through adoption. AAP eligible children may receive federally funded benefits or non-federally funded benefits per state guidelines. The request for AAP benefits, the eligibility determination, benefit negotiation and execution of the AAP agreement must be completed prior to the adoption finalization.

The benefits an AAP eligible child may receive include: monthly negotiated rate; medical coverage (Medicaid/Medi-Cal); reimbursement of nonrecurring adoption expenses (up to \$400 per child per adoption); payment for an eligible out of home placement; and payment for eligible wraparound services. These benefits may continue in a subsequent adoption and continues regardless of the adoptive family's state or country of residence. These benefits may continue until age 21.

According to the CDSS website, "The negotiated AAP benefits are based on the child's needs and the circumstances of the family which may not exceed the rate the child would have received had they remained in foster care. The intent of AAP benefits is to assist adoptive parents with their child's lifelong needs and not the short-term monetary needs that may occur during a crisis. If the child's needs require a higher level of care and supervision, they may be eligible to

receive a Special Care Increment in addition to the AAP basic rate. A child who is developmentally delayed and eligible to receive California Regional Center services may receive the dual agency rate plus eligible supplemental rate.”

Regulations (22 CCR 35326) set forth the criteria for eligibility for AAP. This three-part special needs determination requires all three of the following be met: evidence in the file that the child cannot or should not be returned to the home of their parents; a specific factor or condition makes it reasonable to conclude that the child cannot be adopted without providing AAP payments, and an effort to place the child for adoption with appropriate parents without providing adoption assistance unless it is against the best interest of the child.

Tribal Children

When dependency cases are transferred to Tribal Courts, the adoption of a Native American child involves additional requirements and special procedures than non-Indian children in dependency court. Further, tribal customary adoption is defined as adoption by and through the tribal customs, traditions or law of a Native American child’s tribe, with termination of parental rights not being required (*WIC 366.24(a)*). Current law does not explicitly state that children adopted through the Tribal Courts are eligible to receive AAP benefits. This bill would clarify the law to ensure all children eligible for AAP can receive that assistance.

Related/Prior Legislation:

AB 2255 (Joe Patterson, 2024) expands the eligibility for AAP benefits to include youth up to 26 years of age, among other changes. AB 2255 was held in Assembly Appropriations Committee.

COMMENTS

The AAP is an entitlement program providing financial and medical coverage to encourage the adoption of children who otherwise would remain in long-term foster care. One of the determinations for receiving AAP is that the child cannot be adopted without providing AAP payments. Children of color are disproportionately represented in the foster care system. Clearly stating adoptions of children through the Tribal Courts are eligible for AAP may well increase the adoption rate of these children and provide them with stable, loving homes.

PRIOR VOTES

Assembly Floor:	65 - 0
Assembly Appropriations Committee:	14 - 0
Assembly Human Services Committee:	6 - 0

POSITIONS

Support:

California Alliance of Child and Family Services

Oppose:

None

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