Oregon Indian Child Welfare Act

Brief Legislation History & Related Implementation

***ICWA***

The [Indian Child Welfare Act of 1978 (ICWA)](https://www.congress.gov/bill/95th-congress/senate-bill/1214) is a United States federal law that provides guidance to States regarding the handling of child abuse and neglect and adoption cases involving Native children and sets minimum standards for the handling of these cases.

The federal government passed the Indian Child Welfare Act over forty years ago to remedy the
widespread and unwarranted practice of separating American Indian/Alaska Native children
from their families and Tribes. Prior to its passage, as many as 25-35% of American
Indian/Alaska Native children nationally were removed from their homes, with 85-90% of those
children placed outside of culturally appropriate homes by state courts, child welfare agencies,
and private adoption agencies.[[1]](#footnote-1)

Despite improvements since its passage disparities have continued to persist both nationally and in Oregon. Oregon’s data showed in 2021 that while American Indian/Alaska Native children represented 1.5% of Oregon’s children, American Indian/Alaska Native represented 4.7% of Oregon’s children in foster care.[[2]](#footnote-2) Highlighting a continued need for ICWA and an overall need to continue to address this disparity.

Pursuant to [25 USC § 1921](https://uscode.house.gov/view.xhtml;jsessionid=8C699E46539C2C5E863DACC3B4F4F464?path=&req=granuleid%3AUSC-prelim-title25-section1921&f=&fq=&num=0&hl=false&edition=prelim), states may provide more protection to Indian families, and that is what [Oregon Indian Child Welfare Act (ORICWA)](https://olis.oregonlegislature.gov/liz/2020S1/Measures/Overview/HB4214) set out to do.

***ORICWA Legislative History***

*Oregon Department of Human Services (ODHS) ICWA Compliance Committee*

In response to continued reports of noncompliance and the disproportionate placement of American Indian/Alaska Native children in foster care, and at the request the Oregon tribes, ODHS' Tribal Affairs Unit formed an ICWA compliance committee in 2018.The committee had three subcommittees:

1. Staff training
2. Case evaluation and review
3. State ICWA legislation

During the 2019-2020 interim ODHS, in partnership with the Legislative Assembly, then began to transition the State ICWA Legislation subcommittee of the compliance committee into a work group hosted by the interim House Judiciary Committee.[[3]](#footnote-3) This shift saw increased involvement of a key partner in the creation and passage of the eventual ORICWA legislation, [Representative Tawna Sanchez](https://www.oregonlegislature.gov/sanchez).

*The Oregon ICWA Interim Judiciary Work Group*

The Oregon ICWA interim Judiciary work group brought together key state agencies, tribal partners, national experts, and other relevant stakeholders in a series of meetings with the goal of drafting a comprehensive state law which would imbed the national child welfare standards of ICWA into Oregon statute in a manner that honors tribal sovereignty, promotes the safety of American Indian/Alaska children, preserves tribal families, and supports compliance with ICWA in courtrooms and at ODHS offices throughout the state. The workgroup reviewed federal laws, regulations and guidelines related to Indian child welfare and discussed key data and relevant best practice to draft the legislation that would become ORICWA.

*HB4148, HB4214 and SB562 (ORICWA)*

It is important and relevant to note that ORICWA was originally introduced in the 2020 regular session as [House Bill 4148](https://olis.oregonlegislature.gov/liz/2020R1/Measures/Overview/HB4148) this legislation passed the house chamber but died in committee at adjournment primarily due to a walkout by Senate Republicans in 2020.

Partially due to the walkout during the 2020 regular session, multiple special sessions were held in 2020 and in the first special session of 2020, the Oregon Legislative Assembly unanimously passed [HB 4214](https://olis.oregonlegislature.gov/liz/2020S1/Measures/Overview/HB4214) now known as the Oregon Indian Child Welfare Act. ORICWA enhances and clarifies the federal law, by embedding it into state law and providing additional guidance to Oregon courts making decisions about Indian children and their families. It was followed up with enhancements relating to the original bill with [SB 562](https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB562) in the 2021 regular session. [SB 562](https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB562) did not alter the intent of the original bill but instead built upon the previous legislation particularly by providing enhancements supporting cultural connections and traditions during adoptions including recognizing customary tribal adoptions and making several technical corrections and adjustments.

***Implementation Efforts***

After the passage of the Oregon Indian Child Welfare Act in 2020, ODHS established an ORICWA Implementation Team that brought together Child Welfare Program, The Tribal Affairs (TAU) Unit, Oregon Department of Justice (DOJ), Tribal representatives and Oregon Judicial Department (OJD) to establish a comprehensive implementation plan that embodied the spirit of ORICWA in practice, policy, relationships, and purpose. This group has largely guided the key implementation across the state agencies related to ORICWA.

*On Demand Training Modules*

ODHS and the DOJ developed a series of on-demand web-based trainings to expand the
knowledge and understanding of the key legislative requirements of ICWA/ORICWA and each module was updated following the passage of [SB 562](https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB562).

The on-demand training modules topics included:

* What is an Indian Child/Reason to Know
* Tribal Customary Adoption
* Qualified Expert Witness
* Protective Action Plans and Safety Plans
* Emergency Removal & Child Custody Proceedings
* Definition of Parent
* American Indian/Alaskan Native Inquiry

*Foster and Adoptive Parent Training and Orientation*

In spring of 2022 a new training curriculum was launched to include the key components of ORICWA. This training is an adapted version of the National Training and Development Curriculum for Foster/Adoptive Parents, adapted in partnership with the TAU and ORICWA Advisory partners to ensuring that all current or new training initiatives provide up-to- date information regarding the requirements of ORICWA, Tribal identity, customs, and culture. In these trainings there is there is significant emphasis in the current and future training offerings for resource parents to support partnership with the child, the child’s family, community, and Tribe to better celebrate the child’s identity and sense of belonging (e.g., cultural, Tribal, sexual orientation, and gender identity and expression)[[4]](#footnote-4)

*Data updates*

Of note In March 2019, the ODHS ICWA Compliance Committee formed another subcommittee, the Case Mapping Subcommittee, to identify and address compliance with the federal ICWA, Oregon ICWA rules and Tribal-State agreements. The initial findings indicated that, for the most part, Oregon was not in compliance with the ICWA requirements. The cases reviewed in the Assessment, Removal, Permanency, Guardianship, and Adoption stages were on average less than 25% compliant Screening was slightly higher and fell in the range between 50-75% compliant and that there is there is no standard documentation across the state, nor any infrastructure in OR-Kids to document this process resulting in a clear problem documenting active efforts and ongoing collaboration with tribes.[[5]](#footnote-5)

As a part of efforts to begin addressing these issues with data In April 2022, Child Welfare Division hired a program manager to build a new Child Welfare Continuous Quality Improvement (CQI) team. The individuals in these positions are working directly with local sites to facilitate discussions with Child Welfare staff, community partners, Tribes, persons with lived experience, legal partners, and resource providers to impact how children and families are experiencing that specific community’s service provision system. This has already resulted in Updates to the Placement Entry and Service Entry page in the OR-Kids database which assist Child Welfare in the gathering of data for Indian children in cases where the placement aligns with the child/youth’s Tribal Placement Preferences. This team has also been involved with creating a new Provider File Cabinet type of Tribal Documents under the ICWA category provides a consistent location in the electronic case record to save and locate documentation of enrollment eligibility. Prior to ORICWA, ODHS did not track the enrollment status of foster and adoption resource parents

*Court Improvements*

n 2020, OJD retained a consultant to spearhead the creation of an [ORICWA Benchbook](https://www.courts.oregon.gov/programs/jcip/Documents/ORICWA%20Benchbook%20011222.pdf) through a workgroup that included Casey Family Programs, ODHS Tribal Affairs, DOJ, attorneys for several of the nine Oregon Tribes, and attorneys representing parents and children in ICWA cases. The [ORICWA Benchbook](https://www.courts.oregon.gov/programs/jcip/Documents/ORICWA%20Benchbook%20011222.pdf) provides a comprehensive overview of ORICWA and its application to each type of dependency hearing. Feedback received so far indicates that it is a highly valuable resource for judicial officers, attorneys, and other practitioners across the child welfare system. In 2021, the workgroup reconvened to update the [ORICWA Benchbook](https://www.courts.oregon.gov/programs/jcip/Documents/ORICWA%20Benchbook%20011222.pdf) to reflect changes from [SB 562](https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB562).[[6]](#footnote-6)

*Developing a Joint ODHS/OHA Tribal Consultation Policy*

Tribal consultation with Oregon’s Nine Federally Recognized Tribes, ensures programming, services​ and policies meet the needs of Oregon tribal communities.​​​ However a clear need was identified to create a joint Tribal Consultation Policy that included the Oregon Health Authority and ODHS to facilitate meaningful consultation between tribal leadership and these two state agencies that respects the government-to-government relationship between the State and the nine federally recognized Tribes of Oregon. ODHS created the Tribal Consultation Core Implementation Team to develop a draft joint policy and finalization of that policy work is ongoing.

***Related Efforts***

*Vision For Transformation*

In November 2020, Child Welfare finalized a [Vision for Transformation](https://www.oregon.gov/dhs/CHILDREN/CWTransformation/Pages/index.aspx), after much collaboration with partners, Tribal Nations, and those with lived experience in the child welfare system. Key to the development of this has vision is that racial equity and diversity must be at the center of the
transformation, along with recognition that child welfare systems have harmed communities of color, Tribal Nations, and other marginalized communities, and that Oregon Child Welfare must be committed to doing no further harm.

*Equity Tool*

As a part of this transformational work to achieve racial equity the child welfare division implemented in 2021 an Equity Tool for staff to use in reviewing policies, procedures, and systems to remove racial bias. It provides support in decision-making about unintended consequences regarding policy, procedure, and system change. It also raises the voice of those most affected by decision-making. Thirty new policies were reviewed with the tool in 2021, with plans to use the tool to review all standing policies, rules and procedures.

*Acknowledging History*

This commitment to transformation includes recognizing, acknowledging, and education on the past harm caused by child welfare. In August 2021, ODHS hosted a public event with Every Child Matters that included renowned Indigenous speakers from Canada and the U.S who, highlighted the importance of each child, including adult survivors still healing from the trauma of Indian Residential Schools. These schools systematically undermined Indigenous people and Tribes, disrupting families for generations by cutting their ties to culture and language.

*Family Preservation*

Oregon was one of the first states to receive approval for its Family First Five-Year Prevention Plan (FFY 2020-2024) from the United States Department of Health and Human Services. Implementation began in 2021 and has been an important tool for the [Vision for Transformation](https://www.oregon.gov/dhs/CHILDREN/CWTransformation/Pages/index.aspx) and addressing inequity in Oregon’s children identified as American Indian/Alaska Native.

As part of that work Oregon has been working with Oregon’s Tribal Nations to create their own Foster Care Prevention Plans. With a rollout of Child Welfare demonstration sites across the state including in March of 2022 of demonstration sites in partnership with the Confederated Tribes of Grand Ronde and Confederated Tribes of the Umatilla Indian Reservation.

There are some early examples of successful family preservation efforts the ODHS Child Welfare Program has in partnership with the Klamath Tribes in Klamath and Lake counties. These initiatives included a Tribal family coach, peer-parent mentors, and a Child Welfare Tribal Certifier. The Tribal family coach is within the ODHS Self-Sufficiency Programs and provides preventive services before Child Welfare involvement. The peer-parent mentors help families navigate the Self-Sufficency and Child Welfare systems through the transformations wellness center. The Child Welfare Tribal certifier position works to recertify and retain family and Tribal homes according to the placement preferences of the Tribe.

Early data indicates these may have been successful efforts as the number of Klamath Tribal children
with open child welfare cases decreased from 54 in 2017 to 22 in 2021.

1. National Indian Child Welfare Association. 2016. “About ICWA» NICWA.” NICWA. 2016. Accessed April 13, 2023. https://www.nicwa.org/about-icwa/. [↑](#footnote-ref-1)
2. Oregon Department of Human Services “2021 Child Welfare Data Book.” 2022. Accessed April 13, 2023. https://www.oregon.gov/dhs/CHILDREN/CHILD-ABUSE/Documents/2021-cw-data-book.pdf. [↑](#footnote-ref-2)
3. Oregon State Legislature. “HB 4214 a STAFF MEASURE SUMMARY Joint Committee on the First Special Session of 2020.” Accessed April 13, 2023. https://olis.oregonlegislature.gov/liz/2020S1/Downloads/MeasureAnalysisDocument/53967. [↑](#footnote-ref-3)
4. Oregon Department of Human Services “HB 4214 and SB 562 (ORICWA) Report to the Interim Committees of the Legislative Assembly.” n.d. www.oregon.gov. Accessed April 14, 2023. https://www.oregon.gov/dhs/ABOUTDHS/LegislativeInformation/ODHS%20OJD%20HB%204214%20and%20SB%20562%20ORICWA%20Report%20September%202022.pdf. [↑](#footnote-ref-4)
5. “State of Oregon: Oregon Department of Human Services - ICWA Compliance Review Report &
Cost Estimation” n.d. www.oregon.gov. Accessed April 13, 2023. https://www.oregon.gov/dhs/CHILDREN/Documents/27%20-%20ICWAComplianceReport\_5.12.20.pdf. [↑](#footnote-ref-5)
6. Oregon Department of Human Services “HB 4214 and SB 562 (ORICWA) Report to the Interim Committees of the Legislative Assembly.” n.d. www.oregon.gov. Accessed April 14, 2023. https://www.oregon.gov/dhs/ABOUTDHS/LegislativeInformation/ODHS%20OJD%20HB%204214%20and%20SB%20562%20ORICWA%20Report%20September%202022.pdf. [↑](#footnote-ref-6)