

ICWA Compliance Review Report & Cost Estimation



Introduction

In March 2019, the Oregon Department of Human Services Indian Child Welfare Act (ICWA) Compliance Committee formed the Case Mapping Subcommittee to identify and address compliance with the federal ICWA, Oregon ICWA rules and Tribal-State agreements. This work began with the creation of a case map that included every point where the ICWA explicitly directs case practice. With the ICWA process identified, there was an interest in measuring ICWA compliance at the identified points with a statistically significant sample size. Given the current resources, and the novelty of an ICWA compliance evaluation, a smaller population was chosen to develop and test the tool. The results of this sample size were to be used to estimate the necessary time and resources to complete the full sample size. Those findings are presented here.

Methodology

The case review tool, developed by the Office of Reporting, Research, Analytics, and Implementation (ORRAI), was developed based on the decisions identified in the case map created by the Case Mapping Subcommittee. The case map divided the life of a case into five stages based on case practice and specific questions were drawn from the language of the Indian Child Welfare Act, the Bureau of Indian Affairs Regulations and Guidelines, and Oregon ICWA rule. The tool was reviewed by leadership from Oregon Child Welfare, as well as Tribal representatives serving on the ICWA Compliance Committee and Case Mapping Subcommittee.

There was a team of four reviewers, three from ORRAI and one from the Tribal Affairs unit. The review team trained together by reviewing one case from each stage, to clarify tool meaning and create consistency in interpretation. Then, each reviewer was assigned 4 or 5 confirmed ICWA cases in each stage, and each case was reviewed by 2 reviewers, for a total of 9 cases and 18 observations for each stage. Cases were reviewed using the electronic case management system, OR-Kids, and only the documentation contained therein. Reviewers recorded the length of time taken for each review, to allow for estimation of total time required.

Upon completing a review, the research team entered the de-identified information into SurveyGizmo. It was then downloaded and cleaned by a researcher and results were calculated using Excel. Compliance was determined by averaging percent compliance by observation for the 18 observations within a given stage.

Initial Findings

The initial findings indicate that, for the most part, Oregon is 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. Areas of particular struggle appear to be the provision of active efforts¹² and documentation of ongoing collaboration with the Tribe.

Limitations

With any reporting of initial results, we must be clear in acknowledging the limitations of these findings. There were a number of constraints that impacted this research, namely: limited sample set based on identification of ICWA, a culture of limited documentation, the lack of structure around ICWA in the case management system OR-Kids, and the degree of professional discretion required in determining compliance with each metric.

The initial limitation is one that cannot be mitigated by our current system. In order to evaluate a case for ICWA compliance, it needed to be identified as an ICWA case in our case management system. However, if case practice was not compliant with ICWA at the time of assessment, it is possible that a case that is in actuality ICWA-eligible was never identified as ICWA-eligible and therefore, would not be included in this case sample set. The results from this effort could lead to an overestimation of ICWA compliance.

The secondary limitation is one that has been noted as a limitation in several previous Child Welfare projects. Given the nature of the work and the limited time and resources available to case workers, priority is often given to doing work over documentation. It is not uncommon for work to have occurred, but for there to be no record in the case management system. However, for the purpose of conducting these reviews, we needed to make the assumption that if it was not documented, it did not happen. This decision was made out of practicality and to uphold the ICWA requirements. With this working premise, we acknowledge that it is possible that some of the metrics could be underestimations of actual ICWA compliance.

The lack of structure around ICWA in our case management system impacts not just our estimations of compliance, but also the areas of a case we were able to review. For example, this research did not evaluate the highly critical ICWA search process, because there is no standard documentation across the state, nor any infrastructure in OR-Kids to document this process. In addition, this lack of structure also creates challenges for reviewers, who are attempting to find information in non-standard files, which can lead to reviewers missing information that might have been completed and documented, if not

¹ “Active efforts means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family.” 25 CFR § 23.2

² “active efforts are different from “reasonable efforts.” For example, reasonable efforts might be only a referral for services, but active efforts would be to arrange for the best-fitting, culturally appropriate services; helping families overcome obstacles to engage in those services (such as by arranging transportation); and following up on the family’s impression of whether those services were successful or how services may need to change” National Indian Child Welfare Association, [Frequently Asked Questions](#)

stored in a typical location. This lack of organization specific to ICWA could lead to an underestimation of ICWA compliance.

Finally, the necessity of professional discretion in the evaluation of ICWA Compliance is a limitation inherent in the ICWA Regulations. The Act was written to be intentionally vague, to allow for the particularities of each family served under it. However, this creates the necessity of professional discretion to determine compliance, particularly around Active Efforts. There were efforts made by the reviewers to mitigate this through training and consultation. However, we found in this initial sample that based on the same facts, there are often disagreements about whether or not a case was compliant with ICWA. This too could lead to an over- or under-estimation of ICWA Compliance depending on the point of view of the evaluator.

Resources Needed for Further Study

Given the range of compliance in these initial reviews, in order to expand this research to a statistically significant sample size that would allow for the evaluation of change over time, a new population of 550 cases would need to be reviewed³. To preserve inter-rater reliability, 10 cases from each stage would need to be double-reviewed, bringing the total number of reviews to 610. Assuming, like with this initial study, we have 4 reviewers, and each are able to dedicate half days to this project, it would take 27-30 days to complete reviews. Along with the actual review process, there is pre and post work associated with these reviews, which adds another 50 hours in project management. This brings the total number of Implementation hours required to 483, and total cost to \$25,673⁴. There is an additional 45 hours needed for research on the front and back end of the reviews, which has a total cost of \$2,759. This brings the total cost for the labor involved to \$28,432. With this configuration, anticipating a few days of delay that inevitably occur, this process would take approximately 11 weeks from initiation to report-out.

This methodology is designed to be able to evaluate for change over time. A methodology designed to measure the statistical significance of a compliance deviation from 100% would require fewer observations but would not be usable for ongoing compliance monitoring. Due to the extensive nature of this project, it is recommended that upon completion of the baseline statistically significant sample, that baseline should be used as a functional reference point, until such point that major changes have been made to address the limitations outlined here. As noted throughout this report, compliance is at such a low level and the limitations create such a high level of noise in the variables and outcomes, getting consistent data that tells a story would be unlikely unless there are specific changes to practice and/or the OR-Kids database that warrant a re-evaluation. As time goes on, and practice improvements are implemented, subsequent evaluations will necessitate larger sample sizes to determine the change in compliance at a statistically significant level.

³ Full calculations are attached in Appendix 1

⁴ This assumes the high end of cost, for both the Implementation and Research staff

