

SB 562 Tribal Customary Adoption Report to the Interim Committees of the Legislative Assembly related to the Judiciary

March 15, 2024

Child Welfare
Oregon Department of Human Services



Executive Summary

In accordance with Senate Bill 562 (2021), Oregon Department of Human Services (ODHS) hereby submits a report to the interim committees of the Legislative Assembly related to the judiciary describing the department's implementation of tribal customary adoption (TCA)¹ as an alternative permanency option for wards who are Indian² children, as well as the department's recommendations for proposed legislation to improve the TCA process.

As described below, TCA implementation has to date included establishing related training opportunities for Child Welfare staff, providing specific training for Regional ICWA Specialists to build their capacity for consultation and guidance to caseworkers and supervisors, and enacting key changes to administrative rules and business processes. Through the processing of the four TCAs that have been finalized in Oregon since January 2022, several barriers were identified and are discussed below as recommended areas of focus for improving the state's TCA process.

Background

Senate Bill 562 (2021) directs the Department of Human Services to submit a report by March 15, 2024, to the interim committees of the Legislative Assembly related to the judiciary describing the department's implementation of tribal customary adoption (TCA) as an alternative permanency option for wards who are Indian children, as well as the department's recommendations for proposed legislation to improve the TCA process.

After the passage of the [Oregon Indian Child Welfare Act](#) (ORICWA) in 2020, ODHS established an ORICWA Implementation Team. Comprised of Tribal representatives and staff from the ODHS Child Welfare Division, ODHS Office of Tribal Affairs (OTA), the Department of Justice Child Advocacy and Protection Division, and the Oregon Judicial Department, the team's primary aim was to establish a comprehensive implementation plan³ and oversee implementation of the technical fixes made by SB 562, including TCA.

¹ "Tribal customary adoption" means the adoption of an Indian child, by and through the Tribal custom, traditions or law of the child's tribe, and which may be affected without the termination of parental rights.

² The term "Indian" is a legal term of art used in the Indian Child Welfare Act (ICWA) and the Oregon Indian Child Welfare Act (ORICWA) as well as other federal and state statutes, executive orders and court decisions. Pursuant to ICWA and ORICWA, whether a child is an "Indian child" is a determination made by the juvenile court. This report therefore uses the term "Indian" when referring to rights, policies, procedures and practices specifically conferred or relating to "Indian children" as defined by ICWA and ORICWA.

³ For information on ODHS and Oregon Judicial Department efforts to implement other ORICWA requirements, please see the [2022 ORICWA Report](#).

Implementation of Tribal Customary Adoption

Training and consultation

ODHS and the DOJ developed a series of on-demand web-based trainings to expand the knowledge and understanding of ICWA/ORICWA's key legislative requirements. Training topics include the following:

- Who 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, and
- American Indian/Alaskan Native Inquiry.

These training opportunities are available to all Child Welfare staff through the Workday system and have been highlighted in Office of Tribal Affairs email newsletters to staff and partners. Each training module was updated after the passage of SB 562 to include the important technical fixes made by that legislation. Child Welfare staff were asked to complete the updated series no later than May 31, 2022.

In August 2023, the ODHS Adoptions Program and DOJ provided training for Regional ICWA Specialists to support their consultation and guidance to caseworkers and supervisors regarding the TCA requirements and case planning. Today, Regional ICWA Specialists provide critical guidance for cases involving Indian children and help establish consistent connections with Tribes. The 12 Regional ICWA Specialist positions are stationed in Child Welfare offices across the state. Every Child Welfare office except for District 1 (Clatsop, Astoria, Tillamook), District 9 (Hood River, Wasco, Sherman, Gilliam, Wheeler), and District 13 (Wallowa, Union, Baker) has an assigned Regional ICWA Specialist. The offices that do not have an assigned Regional ICWA Specialist are served by two Central Office ICWA Consultants.

Rules and business processes

In January 2022, Child Welfare issued a policy transmittal (Attachment 1) informing staff of changes to administrative rules related to TCA. The following rules were amended to meet the new requirements:

- 413-040-0165 – Documentation Requirement for Reports Submitted to the Court Regarding an Indian Child Who is a Ward of the Court: Any report ODHS submits to the court when the court has wardship of an Indian child must identify that TCA is a permanency plan option. This includes home studies and other documents required by statute or rule to be submitted to the court. OAR 413-040-0165 was implemented as a temporary rule on 01/03/2022 and made effective on 07/01/2022.

- 413-070-0510 – Obligation to Seek Legal Permanency: This rule was updated to add TCA as a permanency plan option. 413-070-0510 was implemented as a temporary rule on 01/03/2022 and made effective on 07/01/2022.
- 413-070-0512 – Development and Review of the Permanency Plan and Concurrent Permanent Plan: Revisions to this rule added TCA in the order of preference for permanency planning, including how the plan is to be considered and implemented. The child’s permanency plan changes to TCA when the child’s tribe approves of the plan and the court determines that TCA is in the child’s best interests. OAR 413-070-0512 was implemented as a temporary rule on 01/03/2022 and made effective on 07/01/2022.
- 413-070-0516 Composition, Scheduling, Responsibilities, and Recommendations of the Permanency Committee: A permanency committee is not required to review a proposed plan of TCA. While ODHS provides assistance and support to the child’s Tribe, the implementation of a TCA is the primary responsibility of the child’s Tribe. OAR 413-070-0516 was implemented as a temporary rule on 01/03/2022 and made effective on 07/01/2022.

In consultation with OTA and the Department of Justice (DOJ), Child Welfare determined that three existing forms – CF421-Child Summary, CF246-Genetic and Medical History, and CE0963-Required Information for Adoption Workers and Adoptive Parents – fulfill the statutory requirement to provide the Indian child’s Tribe and proposed tribal customary adoptive parents with a written report on the Indian child, including, to the extent not otherwise prohibited by state or federal law:

- The medical background, if known, of the child’s parents, and
- The child’s education information, developmental history and medical background, including all known diagnostic information, current medical reports and any psychological evaluations.

In addition, the Child Welfare Post Adoption Services Program has developed data entry business processes that facilitate adoption assistance when it is requested by the TCA adoptive parent.

Forms

In accordance with SB 562 and OAR 413-040-0165 the Family Report (Attachment 2), a document used by Child Welfare to report to the court the status of case planning in individual cases; and the Expedited Placement Review Form (Attachment 3), a form used to notify the court of placement changes for children who are wards of the court; were revised to include the following customary adoption statement:

As required by Oregon law, ODHS is providing notice that TCA is a permanency plan option when a court has wardship of an Indian child.

The January 2022 policy transmittal (Attachment 1) notified all Child Welfare staff that when the statement is not incorporated as standard language, the caseworker or

individual completing the document must cut and paste the statement into the document prior to submitting to the court.

The Oregon SAFE Home Study is a uniform template designed by the Consortium for Children. ODHS is working with the Consortium to incorporate the customary adoptions statement into the Oregon specific template. In the interim, staff are instructed to follow the guidance of the policy transmittal (Attachment 1).

Systemic Considerations and Recommendations

Since January 2022, TCAs have been finalized for four children. While processing these cases, several barriers were identified and are put forward here as recommended areas of consideration for future legislation to improve the TCA process.

- **Filing of Tribe's Home Study and Order/Judgment:** ORS 419B.656(3)(a) provides that the Indian child's Tribe files the order or judgment for TCA. Many Tribes, particularly out-of-state Tribes, are unable to electronically file (e-file) documents in Oregon, which is a requirement of Oregon courts. As a short-term solution, ODHS/DOJ will file the order or judgment for TCA. However, this solution presents issues on appeal given that it does not strictly adhere to the specific statutory procedural requirements.
- **Filing of ASSIS & Exhibits:** ORS 419B.656(4)(a)(b) requires the TCA parent to file an Adoption Summary and Segregated Information Statement (ASSIS) with accompanying exhibits as provided in ORS 109.287. However, the TCA parent is not a legal party to the case and as such is unable to e-file documents. As a short-term solution, ODHS/DOJ will file the ASSIS and exhibits. However, doing so may create appellate issues as this solution does not strictly adhere to the specific statutory procedural requirements.
- **State Court Adoption Judgment:** ORICWA requires that the state court enter an ORS 109 adoption judgment, but several of the ORS 109 findings and orders are not appropriate or do not apply in an ICWA TCA. It would be helpful to amend ORICWA's ORS 109 provisions to specify the appropriate caption, findings and orders for a TCA adoption judgment.
- **Barrier to Setting Aside a TCA:** Because a TCA order or judgment is finalized by both the Tribe and state court, a party seeking to later vacate a TCA would likely need to do so first with the Tribe and then with the state court, however there is no statutory language in place describing a process for this action.



For additional information:

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