



OREGON JUDICIAL DEPARTMENT
Office of the State Court Administrator

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HB 4214 and SB 562 (ORICWA) Report to the Interim Committees of the Legislative Assembly

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We are pleased to be submitting the first ORICWA Report to the Interim Committees of the Legislative Assembly relating to children. This report offers a unique opportunity for the Oregon Department of Human Services (ODHS) and the Oregon Judicial Department (OJD) to cooperatively report on their individual and combined efforts to ensure our systems meet the requirements of ORICWA and to improve outcomes for Indian children and Tribal families.

The term “Indian” is a legal term of art used in the Indian Child Welfare Act (ICWA) and ORICWA as well as other federal and state law relating to treaties, 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. Therefore, we use the term “Indian” in this report when referring to rights, policies, procedures, and practices specifically conferred or relating to “Indian children” as defined by ICWA and ORICWA¹.

ORICWA Reporting Requirements

ORICWA Oregon Laws 2020, ch. 14 § 61, as amended by Oregon Laws 2021, ch. 398 § 79, requires that, no later than September 15 of every even-numbered year, the Department of Human Services and the Judicial Department shall report to the interim committees of the Legislative Assembly relating to children regarding:

- (1) The number of Indian children involved in dependency proceedings during the prior two-year period.
- (2) The average duration Indian children were in protective custody.
- (3) The ratio of Indian children to non-Indian children in protective custody.
- (4) Which tribes the Indian children in protective custody were members of or of which they were eligible for membership.
- (5) The number of Indian children in foster care who are in each of the placement preference categories described in section 23 of this 2020 special session Act and the number of those placements that have Indian parents in the home.
- (6) The number of Indian children placed in adoptive homes in each of the placement preference categories described in section 23 of this 2020 special session Act and the number of those placements that have Indian parents in the home.
- (7) The number of available placements and common barriers to recruitment and retention of appropriate placements.

¹ ICWA and ORICWA define an “Indian child” as any unmarried person who has not attained 18 years of age and: (a) Is a member or citizen of an Indian tribe; or (b) Is eligible for membership or citizenship in an Indian tribe and is the biological child of a member of an Indian tribe.

(8) The number of times the court determined that good cause existed to deviate from the statutory placement preferences under section 23 of this 2020 special session Act.

(9) The number of cases that were transferred to tribal court under section 14 of this 2020 special session Act.

(10) The number of times the court found good cause to decline to transfer jurisdiction of a case to tribal court upon request and the most common reasons the court found good cause to decline a transfer petition.

(11) The efforts the Department of Human Services and the Judicial Department have taken to ensure compliance with the provisions of sections 1 to 23 of this 2020 special session Act and the amendments to statutes by sections 24 to 60 of this 2020 special session Act.

(12) The number of ICWA compliance reports, as defined in ORS 109.304², in which the department reported the petitioner's documentation was insufficient for the court to make a finding regarding whether the petitioner complied with the inquiry or notice requirements under section 15 (2) or 16 (2), chapter 14, Oregon Laws 2020 (first special session).

(13) The total number and the ratio of all ICWA compliance reports that indicated there was a reason to know that the child was an Indian child.

History

Our country has a centuries-long history of state-sanctioned and perpetrated harm against American Indian/Alaska Native families and Tribes, including deliberate attempts to exterminate, assimilate, and separate Tribal children from their parents and culture. Our government's Indian Boarding School Policy and the Child Welfare League of America's Indian Adoption Project resulted in profound physical, spiritual, and cultural neglect and abuse and lasting, intergenerational trauma in American Indian/Alaska Native families and communities.³

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.⁴

Despite notable improvement and significant effort both nationally and in Oregon, the need for ICWA remains. American Indian/Alaska Native children continue to be overrepresented in Oregon's child welfare system. In FFY 2021, American Indian/Alaska Native children made up

² ORS 109.304, which is cited in the statute, is now ORS 109.266.

³ Child Welfare Information Gateway. (2021). *The Indian Child Welfare Act: A primer for child welfare professionals*. U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. <https://www.childwelfare.gov/pubs/factsheets/ICWA/>

⁴ <https://www.nicwa.org/about-icwa/>

1.5% of Oregon’s children and 4.7% of children in foster care. Moreover, while the total number of children in foster care decreased over between FFY 2019 and FFY 2021, the disproportionality index of American Indian/Alaska Native children increased.⁵ ORICWA is an important step toward remedying the disproportionate impact of our system on American Indian/Alaska Native children.

Introduction

In November 2020, Child Welfare finalized a Vision for Transformation, which seeks to create a Child Welfare Division that supports the individual needs of families and best serves Oregon's children and young people. The process for developing the Vision for Transformation began in January 2020 with internal discussions with the Child Welfare Division workforce at all levels, followed by a series of discussions with Tribes, community members, families and children with lived experience and expertise, resource and birth parents, service providers, policy makers and judges. These conversations and meetings formed the basis for the Vision for Transformation. The Vision for Transformation includes specific [guiding principles](#), strategies and measurable outcomes that center equity and diversity in all that we do. It recognizes that the child welfare system has done significant harm to communities of color, Tribes and other marginalized communities, and is committed to doing no further harm.

ODHS’s Tribal Affairs Unit (TAU) is found within the ODHS Director’s Office. The TAU is a diverse team committed to raising the level of health and wellness of all Tribal communities. Two TAU ICWA Consultants are assigned to Child Welfare Programs and actively engage with Child Welfare Program and Tribes in the development and implementation of Department programs that affect Tribes.

The OJD’s mission is to provide fair and accessible justice services that protect the rights of individuals, preserve community welfare, and inspire public trust and confidence. Through its [2020-2022 Strategic Campaign](#), OJD renewed its commitment to join with community partners to improve services and outcomes for people who are underserved, vulnerable, or marginalized; and to develop effective, supportive, and creative solutions to respond to their legal needs.

OJD’s Office of Engagement, Equity, and Inclusion led the development and implementation of a comprehensive, strategic, and programmatic vision that advances and promotes equity, diversity, inclusion, racial justice, and access to justice for all. This includes a commitment to ensuring that juvenile courts have the educational resources, tools, and supports needed to fairly and effectively navigate cases related to the safety and welfare of Oregon’s children and families.

⁵ The disproportionality index trend from FFY 2019 to FFY 2021 increased from 2.9 to 3.3. 2021 OHDS Child Welfare Data Book, available at <https://www.oregon.gov/dhs/CHILDREN/CHILD-ABUSE/Documents/2021-cw-data-book.pdf>

The Juvenile Court Improvement Program's (JCIP) vision is to raise the profile and priority of child abuse and neglect cases in Oregon. JCIP is dedicated to the continuous quality improvement of juvenile courts' handling of dependency cases and maintains a particular focus on cases involving ICWA. JCIP's Advisory Committee, which includes representatives from ODHS Child Welfare and its Office of Tribal Affairs, designs and implements system improvements, including those centered on ICWA/ORICWA compliance. JCIP also has a dedicated ICWA Analyst to provide subject matter expertise to judges and court staff, collaborate and build bridges with each of the nine Oregon Tribes, and participate in partner efforts to improve Oregon's handling of cases involving children and families.

The Nine Federally Recognized Tribes in Oregon

ODHS and OJD are responsible for ensuring implementation of and compliance with the provisions of the ICWA, and now the ORICWA. Successful implementation, however, is directly correlated to the partnerships and collaboration with each of the nine federally recognized Tribes in Oregon. Effective implementation of ORICWA requires an informed understanding of the unique culture, location, and resources of each Tribe. Included below is a brief introduction to each of them.

Confederated Tribes of Siletz Indians:

The Confederated Tribes of Siletz is a federally recognized confederation of 27 bands, originating from Northern California to Southern Washington. In 1992, they achieved self-governance, which allows them to compact directly with the US Government. The Tribe occupies and manages a 3,666-acre reservation located in Lincoln County. They manage several resources, including water, timber and fish.

Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians:

The Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians are made up of three tribes (four Bands): two bands of Coos Tribes: Hanis Coos (Coos Proper), Miluk Coos; Lower Umpqua Tribe; and Siuslaw Tribe. Their five-county service area is made up of Coos, Curry, Lincoln, Douglas, and Lane counties. Their Tribal Government is headquartered in Coos Bay with 2 additional outreach offices located in Florence and Eugene. The Tribe provides Education, Housing, Culture, Natural Resources, Law Enforcement and Judicial services, Health Care, Elder Care, and Social Services to their members.

Confederated Tribes of The Grand Ronde:

The Confederated Tribes of the Grand Ronde Community of Oregon includes over 30 Tribes and bands from western Oregon, northern California, and southwest Washington. These include Tribal bands from the Kalapuya, Molalla, Chasta, Shasta, Umpqua, Rogue River, Chinook, and Tillamook. The Tribe is active throughout its ancestral homelands while its government seat is on the more than 11,500-acre Grand Ronde Indian Reservation in western Yamhill and Polk

Counties. The Tribe has approximately 5,400 enrolled Tribal members, the Tribe is governed by a nine-member Tribal Council that is elected by the Tribe's membership.

Confederated Tribes of the Umatilla Indian Reservation:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) is a union of three Tribes: the Cayuse, Umatilla, and Walla Walla. In 1855, those Tribes and the U.S. Government negotiated a treaty in which 6.4 million acres were ceded in exchange for a reservation homeland of 250,000 acres. CTUIR then adopted its own constitution in 1949. The CTUIR has over 3,100 Tribal members. Nearly half of those Tribal members live on or near the Umatilla Reservation and about 30% are children under age 18. The Umatilla Reservation is also home to another roughly 300 Indians who are members of other Tribes. About 1,500 non-Indians also live on the Reservation.

Confederated Tribes of Warm Springs Reservation:

The Confederated Tribes of Warm Springs of Oregon were established by treaty in 1855 and politically organized and chartered in 1938 under the Reorganization Act of 1934 and currently operates under a constitution and corporate charter. The Tribal Council is composed of eight elected members and a Chief from each of the three tribes that form the Confederated Tribes: Warm Springs, Wasco, and Paiute. As a sovereign reservation, the Tribal Council exercises broad governing powers to assure the health and welfare of all tribal members. The Warm Springs Reservation encompasses 640,000 acres in North Central Oregon.

Coquille Indian Tribe:

Comprising a people whose ancestors lived in the lands of the Coquille River watershed and lower Coos Bay, the Coquille Indian Tribe today has over 1000 members and a land base of 7,043 acres. The Coquille Tribal government created an administrative program that now provides housing, health care, education, elder care, law enforcement and judicial services to its members. Approximately 572 Tribal members and their families live in the Tribe's five county service area covering Coos, Curry, Douglas, Jackson, and Lane counties.

The Klamath Tribes:

The Klamath Tribes is comprised of three tribes – the Klamath, the Modoc, and the Yahooskin Band of Snake Indians Paiute people. The Klamath Tribes Treaty was signed in 1864. The Klamath Tribes were Terminated by act of Congress in 1954. The Klamath Tribes regained federal recognition status in 1986. Within the last 36 years, The Klamath Tribes has overcome immense trauma; and has accomplished incredible growth by creating and expand services to its membership. Today, there are a total of 5,789 enrolled members worldwide. There are a total of 3,906 members living in Oregon. The Klamath Tribes is proud to be one of the largest

employers in its homelands – The Klamath Basin – where nearly 40% or 2,234 of its members continues to call home.

Burns Paiute Tribe:

The Burns Paiute Reservation is located north of Burns in Harney County. The current Tribal members are primarily the descendants of the "Wadatika" band of Paiute Indians that roamed in central and southern Oregon. The Tribe currently has 437 enrolled members of which 142 people call the Reservation their home. They are a relatively "young" community with over 50% of the population being under the age of 18. Financial resources to protect their cultural resources and preserve their heritage are scarce. The Culture and Heritage Department has a strong presence in the community and is working to offer classes to revitalize the language in the community as well as cultural traditions. The Tribe is focused on sustainability and acquiring resources to ensure Tribal history, land, language, and cultural traditions are preserved and sustained.

Cow Creek Band of Umpqua Tribe of Indians:

The Cow Creek Band of Umpqua Tribe of Indians is located in Southern Oregon. Their 1853 Treaty ceded more than 800 square miles of territory to the United States. The Treaty called for establishment of a permanent reservation that never materialized and the tribe was ignored by the federal government until 1982 when the tribe regained federal recognition. Following federal recognition, the tribe was able to purchase a land base of 29 acres in Canyonville, Oregon in 1985. Since that time, the tribe acquired more than 15,000 acres of their homeland through purchase and in 2018 was able to secure an additional 17,500 acres from the federal government toward meeting the treaty obligation. The tribal government operates two health clinics, a preschool, a tribal court system, police department as well as several Education, Housing, Social Service and Natural Resource programs.

Tribal Partnerships and Agreements

Tribal, State, and Federal Court Forum

In 2015, Oregon Supreme Court Justice Martha Walters and Confederated Tribes of Warm Springs Tribal Court Judge Lisa Lomas convened a planning committee of state and Tribal court judges, representatives of the Tribal Law and Policy Institute, and Casey Family Programs to discuss Tribal court and state court issues directly affecting their jurisdictions. The group identified the need for ongoing Tribal court and state court collaboration to bridge the gaps between these jurisdictions and, in 2016, the Oregon Judicial Department entered a memorandum of understanding with the nine federally recognized Tribes in Oregon to establish the Tribal, State, and Federal Court (TSFC) Forum.

The purpose of the TSFC Forum is to create and institutionalize a collaborative relationship between judicial systems in Oregon; identify cross-jurisdictional legal issues affecting the

people served by those systems and improve the administration of justice of all our peoples. Every year since its inception, nine state court judges and nine Tribal court judges have come together to discuss issues that impact Oregonians and Tribe members alike. In 2021, a federal court judge was added to the TSFC Forum. The current co-chairs of the TSFC Forum are Chief Justice Martha Walters and Chief Judge William Johnson from the CTUIR.

The TSFC Forum has focused on issues related to ICWA, including drafting a proposed rule change to UTCR 3.170 (pro hac vice) to permit greater Tribal participation in ICWA cases and facilitating collaborative discussions to improve transfer of juvenile cases to Tribal courts. The TSFC's annual meeting has additionally included training on ORICWA, and topics related to ICWA.

Title IV-E

Since 1980, Title IV-E has been an open-ended federal entitlement program, governed by the Social Security Act and monitored by the Administration for Children and Families (ACF). Title IV-E provides federal reimbursement for the costs of eligible children in foster care, adoption assistance and guardianship assistance. It covers food, clothing, shelter, daily supervision, school supplies, reasonable travel for visitation and related administrative costs, but does not cover the costs of treatment services. All Title IV-E eligible children are to receive medical coverage under Title XIX (Medicaid).

In 2018, the Family First Prevention Services Act was signed into law to reform the federal Title IV-E funding streams to provide services to families at risk of entering the child welfare system. ODHS's Title IV-E Prevention Program 5-Year Plan was approved in October 2020. Development of that plan included leadership from several Oregon Tribes, Child Welfare staff, TAU staff, Self Sufficiency and many partners, including those with lived experience and expertise. The Child Welfare, Federal Policy and Resources (FPR) team is working with the five Tribes who currently have Title IV-E Agreements with ODHS in documenting each Tribe's prevention plan and where the Tribe's plan aligns with Oregon's approved plan.

FPR works closely with all nine Oregon Tribes. FPR's mission is to maximize federal reimbursement for the operations of the Child Welfare programs, which includes the Tribal Child Welfare programs. The FPR program manager, and policy analyst dedicated to collaborating with Tribes, have a long-standing relationship with Tribal leaders. FPR offers Title IV-E policy guidance and consultation to maximize federal reimbursement to each Tribe.

Title IV-B Sub-part 2

The primary goals of Title IV-B Sub-part 2 - Promoting Safe and Stable Families (PSSF) are to prevent the unnecessary separation of children from their families, improve the quality of care and services to children and their families and ensure permanency for children by reuniting them with their parents, by adoption or by another permanent living arrangement. States are to spend most of the funding for services that address family support, family preservation,

time-limited family reunification, and adoption promotion and support. The services are designed to help state child welfare agencies and Tribes establish and operate combined, preventive family preservation services and community-based family support services for families at risk. All nine of the federally recognized Tribes in Oregon receive Title IV-B Sub-part 2 funds.

ODHS Tribal/State Agreements

These agreements are developed between ODHS and Tribes and are intended to establish a cooperative delivery of child welfare services to Indian children in this state. This includes services provided by ODHS, and to the extent available, services provided by the Tribe or an organization whose mission is to serve the American Indian/Alaska Native population to implement the terms of the Tribal-state agreement. If services provided by the Tribe or an organization whose mission is to serve the American Indian/Alaska Native population are unavailable, the agreements may provide for the department's use of community services and resources developed specifically for Indian families and that have the demonstrated experience and capacity to provide culturally relevant and effective services to Indian children.

ODHS has developed agreements with all nine Oregon Tribes. Due to changes in leadership and significant impacts of the pandemic, several tribes have been unable to update expired agreements. However, the updated 2-year agreement between ODHS and the Burns Paiute Tribe was effective in on June 30, 2022.

ODHS and OJD's Ongoing Efforts to Ensure Compliance with ICWA

Congress passed the Indian Child Welfare Act (ICWA) in 1978 in response to the alarmingly high rate of Indian children being separated from their parents, extended families, and Tribal communities and placed in non-Tribal homes. The purpose of the Indian Child Welfare Act (ICWA) is "...to protect the best interest of Indian children and to promote the stability and security of Indian Tribes and families by the establishment of minimum Federal standards for the removal of Indian children and placement of such children in homes which will reflect the unique values of Indian culture..." (25 U.S. C. 1902).

ODHS, OJD, and the nine Oregon Tribes have a long, successful history of collaboration and jointly pursuing initiatives and strategies for stronger ICWA compliance and better outcomes for Tribal children and families in Oregon. ODHS and OJD also work closely together to meet our shared and respective responsibilities conferred by ICWA. Several of these efforts and initiatives are discussed below.

ODHS

Advisory Committees:

The Indian Child Welfare Act (ICWA) Advisory Committee was formed to advise, consult with, and make recommendations to ODHS leadership regarding policy, programs, practice, and data that impact Indian children who are involved or at risk of involvement in the child welfare system in the State. Participants include leadership from each Tribe, ODHS leadership, Child Welfare leadership and program staff.

The Qualified Expert Witness (QEW) Committee was formed in 2014. The QEW Committee is comprised of representatives from the TAU, JCIP, Confederated Tribes of Umatilla Indian Reservation (CTUIR), and the Cow Creek Band of Umpqua Tribe of Indians (CCBUTI), the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (CTCLUSI). Since its development, the QEW Committee has worked diligently on strengthening ICWA compliance specifically through QEW testimony. The Committee developed procedures and protocols for proper utilization of QEWs under the ICWA. The DOJ Child Advocacy Section developed training materials and facilitated QEW training for Tribal members on testifying in court. Five trainings were held initially, with representatives from all nine Oregon Tribes and eight out-of-state Tribes. In 2021, the training was expanded to a partnership with Washington state. Trainings were held in 2021 and 2022, with outreach across the country targeting states and Tribes with higher numbers of Tribal children in ICWA cases in Oregon.

Workforce:

Management of the Regional ICWA Specialists, who guide and support Child Welfare case management at the local office level regarding ICWA/ORICWA, were centralized under the Office of Tribal Affairs' Senior ICWA Manager in the Fall 2021. Centralizing this team of 11 Regional ICWA Specialists has enhanced team collaboration and established more consistency in the development and implementation of ICWA/ORICWA policy and procedure across the state. In addition, the connection, partnership and collaboration with Oregon Tribes and out-of-state Tribes has expanded beyond staffing individual cases and provides ample opportunities for broader shared learning.

Education:

ICWA education and coaching for Child Welfare caseworkers has been provided through ad-hoc information sharing and consultation with Regional ICWA Specialists, ICWA Consultants, and with the Senior ICWA Manager.

Foundations Training through Portland State University is required for all new Social Service Specialists 1/caseworkers. The training is delivered over several days and modules, in which the requirements of ORICWA/ICWA have been incorporated.

Regional ICWA Quarterly Meetings bring together Child Welfare Program, Self-Sufficiency Program, and Tribes. These meetings facilitate relationship building and discussions regarding approaches to strengthening service delivery to Tribal communities and improve ICWA/ORICWA practice. In 2021, Regional ICWA Quarterlies were hosted via virtual platform

with one being hosted as a hybrid of in-person and virtual. As a result, more than 1,100 ODHS staff, Tribal partners and community partners were able to participate.

Business Processes, Rules and Resources:

Since the passage of the ICWA, ODHS has implemented a number of policy and practice changes to ensure compliance with each ORICWA statutory provision.

Revisions to Chapter 413, Division 115 – Application of the Indian Child Welfare Act and Oregon Indian Child Welfare Act, were finalized in November 2021. Revisions to 413-015-0432 – Develop Safety Plans, added the requirement to partner with an Indian child’s Tribe when a child is involved in a protective action plan.

Revisions to the Guardianship Assistance and Adoption Assistance forms were made to include documentation of placement preferences. In March 2022, the new ICWA Compliance Report was implemented to meet the ORICWA requirements for documenting whether a petitioner had provided sufficient information for the court to determine whether there is reason to know the involved child is an Indian child.

OJD

Advisory Committees:

The Juvenile Court Improvement Program’s Advisory Committee and its staff have long focused on issues related to juvenile courts’ compliance with ICWA through education and system improvement efforts. In 2010, JCIP established the multi-disciplinary State Court Compliance with ICWA workgroup. The workgroup implemented the Quality Uniform ICWA Collection, a national court monitoring project developed by the Minneapolis American Indian Center, to measure juvenile courts’ compliance with ICWA. The workgroup developed Oregon QUICWA court observation tools in collaboration with ODHS and the nine Oregon Tribes and trained volunteers to observe dependency hearings and collect information on the court discussion and findings related to ICWA. JCIP gathered data from the four counties in which QUICWA was implemented and used the data to determine where to focus needed training and support.

In 2013, JCIP coordinated five Tribal court visits for state court judges. Visits consisted of presentations on the history of the Tribes and their court systems, the nature of Tribal court cases, observations of non-juvenile hearings, a tour of Tribes’ reservations, cultural presentations, and meetings with Tribal child welfare staff. Two additional visits were scheduled in 2019 upon request of the state court judges. The opportunity to learn about the nine Oregon Tribes and their court systems was aimed at enhancing collaboration and cooperation across systems as well as at improving compliance with ICWA.

In 2021, JCIP established a Tribal Collaboration Subcommittee focused on increasing the uniform application of ICWA and improving juvenile court practices and outcomes for American

Indian/Alaska Native families' dependency cases. The subcommittee is comprised of judges, OJD staff, representatives from several of the nine Oregon Tribes, ODHS Child Welfare and Office of Tribal Affairs, and other partners from the child welfare system. Utilizing a continuous quality improvement framework, the group has identified several areas in need of improvement and is currently developing and implementing statewide and local projects to address those needs.

Workforce:

Since 2009, OJD has had a dedicated ICWA Analyst within JCIP to support courts through on-demand technical assistance, education, and collaboration with the nine Oregon Tribes. Between 2020 and 2022, OJD reorganized its juvenile law staff, which now includes a juvenile law program manager and a dedicated juvenile law staff counsel. This structure allows OJD to better meet system needs and enhances the support we provide to courts in complying with ICWA and ORICWA.

Education:

Education and training are core to OJD's efforts to ensure compliance with ICWA. OJD has provided regular training and education on ICWA to both courts and court partners. A few examples of more recent educational opportunities and resources on ICWA include:

- In 2015 and 2016, JCIP partnered with Oregon Tribes, ODHS, DOJ, and other child welfare partners to develop and deliver regional multidisciplinary trainings across the state on ICWA and the 2015 Bureau of Indian Affairs Guidelines (BIA).
- In 2018 and 2019, JCIP delivered comprehensive trainings on ICWA and implementation of the BIA Guidelines at its statewide judicial conference and its statewide multidisciplinary summit. Materials from these trainings remain available on JCIP's website.
- JCIP has developed and maintains numerous additional educational resources on its website, including benchbooks and benchcards specific to ICWA.

Business Processes, Rules and Resources:

To ensure compliance with ICWA, JCIP has designed and implemented a series of business processes to capture essential data elements and continues to monitor for necessary updates to its case management system, Odyssey.

Odyssey has a flag available to identify cases in which ICWA has been determined to apply. This flag allows OJD to identify the total number of ICWA cases and, at times, to aggregate/disaggregate data specific to ICWA cases. Over time, OJD has continued to expand its ability to track ICWA cases, including additional business processes and codes for court staff to enter that capture more nuanced data such as the transfer of a case to Tribal court or voluntary placement for Indian children.

JCIP also provides ICWA-specific model court forms for key hearings within dependency, guardianship, and termination of parental rights cases to support uniform application of ICWA by our juvenile courts. These ICWA forms are important to ensure courts understand and make the many unique findings required in ICWA cases.

ODHS and OJD’s Efforts to Ensure Compliance with ORICWA

The Oregon Legislature passed the Oregon Indian Child Welfare Act (ORICWA) in 2020, declaring, “It is the policy of the State of Oregon to protect the health and safety of Indian children and the stability and security of Indian Tribes and families by promoting practices designed to prevent the removal of Indian children from their families and, if removal is necessary and lawful, to prioritize the placement of an Indian child with the Indian child’s extended family and Tribal community. The state recognizes the inherent jurisdiction of Indian Tribes to make decisions regarding the custody of Indian children. The state also recognizes the importance of ensuring that Indian children and Indian families receive appropriate services to obviate the need to remove an Indian child from the Indian child’s home and, if removal is necessary and lawful, to effect the child’s safe return home.”

To fulfill its goals, ORICWA “create[s] additional safeguards for Indian children to address disproportionate rates of removal, to improve the treatment of and services provided to Indian children and Indian families in the child welfare system and to ensure that Indian children who must be removed are placed with Indian families, communities and cultures.”

This landmark legislation placed Oregon as the seventh state to adopt a state-based ICWA in alignment with the federal act. As the United States Supreme Court prepares to hear a case that challenges the constitutionality of some provisions of federal ICWA regulations, the passage of ORICWA and the efforts of ODHS and OJD to ensure ORICWA compliance are even more important to our common goal of protecting the best interest of Indian children and their families.⁶

ODHS

After the passage of the Oregon Indian Child Welfare Act in 2020, ODHS established an ORICWA Implementation Team that brought together Child Welfare Program, TAU, DOJ, Tribal representatives and OJD to establish a comprehensive implementation plan that embodied the spirit of ICWA in practice, policy, relationships, and purpose.

In December 2020, virtual meetings were coordinated by TAU and Child Welfare Program to provide Social Service Specialists, Supervisors and Program Managers an overview of each new

⁶ *Haaland v. Brackeen*, which is currently pending adjudication before U.S. Supreme Court, involves a challenge to the constitutionality of ICWA and the implementing regulations promulgated by the BIA. Oregon, twenty-three other states, and the District of Columbia filed a joint amicus brief in support of the federal and Tribal parties. Argument is scheduled on November 9, 2022.

ORICWA requirement and the plan for full implementation. These conversations were video recorded and made available to those who missed the opportunity.

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. Training topics include: 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. These training opportunities are available to all Child Welfare staff through the Workday system and were highlighted through the Tribal Affairs Director's Messages. Each training module was updated after the passage of SB 562 to include the important technical fixes made by that legislation.

A significant redesign of orientation and pre-certification training for resource parents and families launched in Spring of 2022. The new series is based on content from a national curriculum, National Training and Development Curriculum for Foster/Adoptive Parents (NTDC) and was adapted in partnership with consultation from Tribal Affairs and ICWA Advisory partners to include the key components of ORICWA.

Child Welfare is mindful of ensuring that all current or new training initiatives provide up-to-date information regarding the requirements of ICWA and ORICWA, Tribal identity, customs and culture. 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).

Updates to the Placement Entry and Service Entry page in the OR-Kids database will 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. The data is required only for children and youth identified in the OR-Kids system as being an Indian child.

The addition of 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.

In March 2022, the OR-Kids business team, TAU and Child Welfare program staff developed a Statewide ICWA Search Business Process Map. As a result, new values were recommended to improve the ability to track and follow-up on efforts to contact Tribes regarding a child's enrollment or eligibility for enrollment. Three new values were added to the previous drop-down options.

By using a racial equity review process, ODHS is shifting current policy and practice and shaping policy and practice changes to support more equitable outcomes for all families involved with Child Welfare. At every opportunity, CW continues to reinforce the spirit and intent of ICWA

and ORICWA and embed attention to Active Efforts with every training delivered by CW and Portland State University training partners. A significant redesign of orientation and pre-certification training or prospective resource parents was completed in Spring of 2022. The new initial series is based on content from a national curriculum, National Training and Development Curriculum for Foster/Adoptive Parents (NTDC) and was developed and implemented in cooperation from Tribal Affairs and ICWA Advisory partners.

In April 2022, Child Welfare Division hired a program manager to build a new Child Welfare Continuous Quality Improvement (CQI) team. The team will be comprised of five OPA2-CW Quality Improvement Analysts and one OPA3-Tribal Analyst. The individuals in these positions will be 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.

OJD

Following passage of ORICWA, OJD updated and developed educational materials, business processes, and model court forms to support juvenile courts' compliance with ORICWA.

To implement the changes from both HB 4214 and SB 562, OJD issued comprehensive memorandums of law to judges and court staff regarding the new laws, necessary changes to practice, and updated or new business processes. For SB 562, OJD sent an additional memo specific to ORICWA's application to private adoptions, as this resulted in significant changes to business processes.

In 2020, OJD retained a consultant to spearhead the creation of an [ORICWA Benchbook](#) 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 provides a comprehensive overview of ORICWA and its application to each type of dependency hearing. Feedback we have received 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 to reflect changes from SB 562. Additionally, OJD's Family Law Benchbook is being updated and will include the application of ORICWA to private adoptions.

JCIP also facilitated several trainings on ORICWA for court partners across the child welfare system. JCIP's 2020 Model Court Summit provided a full day of multidisciplinary training on ICWA, ORICWA, and the history and culture of the nine Oregon Tribes. JCIP also facilitated a three-part webinar series on ORICWA in February and March 2021. Webinar recordings and accompanying materials from each of these events remain available on JCIP's website for all system partners. Additionally, an updated ORICWA webinar for judicial officers was held in Spring 2022 to review changes stemming from SB 562. This webinar and its materials remain available to judges and OJD staff.

JCIP additionally supported OJD's Citizen Review Board (CRB) in implementing ORICWA within its reviews. This included dedicated training and education for CRB staff and volunteers and updates to CRB forms.

OJD also updated several business processes to ensure proper application of ORICWA's provisions and to enhance OJD's ability to capture ICWA data. This included new codes and business processes for judicial findings of good cause to deviate from statutory placement preferences in dependency cases, business processes for ORICWA's application in private adoptions, and business processes to handle the newly created Tribal customary adoptions. Because these changes were significant, JCIP conducted additional training for judicial court staff in Spring 2022 reviewing all business processes related to ICWA and ORICWA and created a discussion board for judicial court staff to seek guidance and pose questions related to all business processes. JCIP's IWCA Analyst and Data Analyst also remain available to courts for on-demand assistance in understanding and utilizing these new codes and processes.

Finally, JCIP's ICWA model court forms were updated in both 2021 and 2022 to incorporate ORICWA.

Systemic Considerations

There are systemic considerations impacting and challenging the work ODHS and OJD do to ensure compliance with ICWA and ORICWA, many of which stem from internal barriers and lack of adequate resources across the system. Additionally, both ODHS and OJD are committed to developing policies and procedures that meet the overall requirements of ORICWA while also ensuring flexibility to address the unique culture and governmental structure of each Tribe. Doing so requires added resources.

Furthermore, significant work remains across state systems and local communities to remedy the ignorance, bias and systemic racism that produced the historical harms noted above and that continue to drive the disproportionality we see today. This work extends beyond our child welfare and judicial systems.

ODHS

A portion of the data gathered to meet the reporting requirements of ORICWA was gathered manually, because the data does not exist within the Child Welfare database (OR-Kids). Barriers related to workforce availability and competing demands for system changes across Child Welfare programs impact timely design of new system functionality that supports data and ORICWA related business processes. The team of business analysts dedicated to OR-Kids system changes needed across Child Welfare programs is small and able to manage only a few concurrent projects.

As described in this report, Regional ICWA Specialists provide critical guidance for cases involving Indian children and establishing consistent connection to Tribes. The 11 Regional

ICWA Specialist positions are stationed in Child Welfare offices across the state and although every 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, they are not stationed in every Child Welfare office. The offices that do not have an assigned Regional ICWA Specialist are served by the 2 ICWA Consultants. There are concerns that in locations where a Regional ICWA Specialist is not stationed, staff are less aware of ORICWA policy and less likely to reach out to their assigned Regional ICWA Specialist.

The ODHS Champions are a team of 16 staff dedicated to the recruitment and retention of resource parents in all 16 ODHS districts. They work directly with Child Welfare staff and Tribal partners to identify resources and provide ongoing support to resource families. Staff turnover and changes in management at both ODHS and Tribes interrupts established relationships and requires time to reestablish.

OJD

Juvenile cases are highly complex, involving a complicated overlay of international law, federal and state law and regulation, and interstate compact, as well as multifaceted and often co-occurring social issues like poverty, substance use disorder, domestic violence, and more. In cases in which ICWA applies, that complexity increases significantly. To competently handle these cases, judges, court staff, attorneys, and our other system partners require considerable training and education and the dedicated time to meaningfully participate in them, which our system lacks.

While Oregon's judges and court staff make substantial efforts to comply with ORICWA, they do not have the dedicated time and resources necessary to do so adequately and uniformly. Additional time, outside of docket time in court, is necessary for judges to participate in training and education, to research ICWA and ORICWA's legal framework, and to prepare for these cases. Likewise, court staff need additional time to participate in trainings on business processes and proper data entry specific to ICWA and ORICWA. While the lack of time and resources is felt across our juvenile courts, it is especially acute in smaller judicial districts in which judges and court staff must handle most or even all case types.

ORICWA Data Report

Following the passage of ORICWA, ODHS Child Welfare Tribal Affairs, and OJD developed a workgroup to ensure our ability to meet the requirements of this Legislative Report. The workgroup met and collaborated regularly throughout 2021-2022 to identify available data across systems as well as gaps where updates or changes to business process and system functionality needed to be built to meet the data reporting requirements of ORICWA. The work ODHS and OJD did together to build systems to collect this data will serve as a building block for future collaboration and will be vital in our ongoing efforts to improve Oregon's compliance with ORICWA.

Data Elements 1-11 have a reporting period of from January 1, 2021, when ORICWA went into effect, through July 15, 2022, when OHDS and OJD pulled data in order to prepare this report.

Data Elements 12-13 have a reporting period of January 1, 2022, when SB 562 added new ORICWA reporting requirements, through July 15, 2022, when ODHS and OJD pulled data to prepare for this report.

Hereafter, the data in this biennial report will be provided from July 16 of the prior report to July 15 of the reporting year.

1. The number of Indian children involved in dependency proceedings: 649

The data in this field represents children with either a Tribal enrollment number entered on the Person Management page or an ICWA flag on their legal record, who also experienced dependency proceedings for any period during or overlapping the reporting period.

2. The average duration Indian children were in protective custody: 1061.44 days

The average duration was derived by: 1. Calculating the difference in days between every instance of an initial dependency hearing and either a final disposition (returned to family, guardianship, adoption finalized) or being by bounded by the report end date if the child is still experiencing State care; 2. Summing the total number of days of **dependency** calculated in step 1; 3. Dividing the calculation from step 2 by the total number of dependencies experienced during the reporting period.

In comparison, the average duration non-Indian children were in protective custody: 927.92 days.

3. The ratio of Indian children to non-Indian children in protective custody: 1:15.4

Indian children	Non-Indian children
649	9994

4. During the reporting period, Indian children in ODHS protective custody were members of or eligible for membership in one or more of the following 61 Tribes:

BLACKFEET TRIBE
 BURNS PAIUTE TRIBE
 CENTRAL COUNCIL TLINGIT & HAIDA INDIAN TRIBES
 CHEROKEE NATION OF OKLAHOMA
 CHICKASAW NATION
 CHOCTAW NATION OF OKLAHOMA
 CITIZEN POTAWATOMI NATION
 CONFEDERATED TRIBES OF SILETZ INDIANS
 CONFEDERATED TRIBES OF THE COOS, LOWER UMPQUA AND
 SIUSLAW INDIANS
 CONFEDERATED TRIBES OF THE GRAND RONDE
 CONFEDERATED TRIBES OF THE UMATILLA RESERVATION
 CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION
 COQUILLE INDIAN TRIBE
 COW CREEK BAND OF UMPQUA INDIANS
 COW CREEK TRIBE OF MONTANA
 ELY SHOSHONE TRIBE
 FORT MCDERMITT PAIUTE AND SHOSHONE TRIBE
 FORT PECK ASSINIBOINE AND SIOUX TRIBES
 HOOPA VALLEY TRIBE
 IOWA TRIBE OF KANSAS AND NEBRASKA
 JICARILLA APACHE NATION
 KARUK TRIBE OF CALIFORNIA
 KENAITZE INDIAN TRIBE
 KETCHIKAN INDIAN COMMUNITY
 KOOTENAI TRIBE OF IDAHO
 LOWER ELWHA TRIBAL COMMUNITY
 LUMMI TRIBE OF THE LUMMI RESERVATION
 MONACAN INDIAN NATION
 MUSCOGEE CREEK NATION
 NATIVE VILLAGE OF DEERING

NATIVE VILLAGE OF DIOMEDE
 NATIVE VILLAGE OF EYAK
 NATIVE VILLAGE OF SHISHMAREF
 NAVAJO NATION
 NENANA NATIVE ASSOCIATION
 NEZ PERCE TRIBE OF IDAHO
 NINILCHIK VILLAGE
 NORTHERN ARAPAHOE TRIBE OF THE WIND RIVER RESERVATION
 NORTHERN CHEYENNE TRIBE
 OGLALA SIOUX TRIBE
 OTTAWA TRIBE OF OKLAHOMA
 PICAYUNE RANCHERIA OF CHUKCHANSI INDIANS
 PIT RIVER TRIBE
 PUEBLO OF LAGUNA
 PUYALLUP TRIBE OF THE PUYALLUP RESERVATION
 PYRAMID LAKE PAIUTE TRIBE
 QUINULT INDIAN NATION BUSINESS COMMITTEE
 ROSEBUD SIOUX TRIBE
 ROUND VALLEY INDIAN TRIBES
 SAN CARLOS APACHE TRIBE
 SAN PASQUAL BAND OF MISSION INDIANS
 SANTO DOMINGO – KEWA
 SENECA NATION OF INDIANS
 SHOSHONE-BANNOCK TRIBES OF THE FORT HALL RESERVATION
 SITKA TRIBE OF ALASKA
 STANDING ROCK SIOUX TRIBE
 THE KLAMATH TRIBES
 TOLOWA DEE-NI' NATION
 WICHITA AND AFFILIATED TRIBES
 WYANDOTTE NATION
 YAKAMA INDIAN NATION, NAK NU WE SHA

The data in this field was derived by listing all Tribes which were identified in question 1 as the Tribe a child was either a verified member or citizen or was eligible to become a member or citizen as the result of Tribal Contact Search results conducted by CW staff.

5. The number of Indian children in foster care who are in each of the statutory placement preference categories and the number of those placements that have Indian parents in the home.

Part 1 – Placement Preferences:

Placement Preference Categories	Total
A member of the Indian child’s extended family	302
A foster home licensed, approved or specified by the Indian child’s Tribe	113

A foster home in which one or more parents is an Indian	39
A culturally appropriate institution approved or run by a Tribe	160
Placed outside placement preferences	238
Grand Total	852

Part 2 – Placements with Indian parents in the home: 49

The data in this field is derived in part 1 of the question by taking the universe of children who are in the Question 1 dataset and counting the placement preference categories for each placement they have experienced during the reporting period. Part 2 is derived by analyzing the Provider Participants who are associated to each Provider Organization providing in-home Foster Care services to determine if they have self-reported or verified Tribal affiliations.

6. The number of Indian children placed in adoptive homes in each of the placement preference categories and the number of those placements that have Indian parents in the home:

Part 1 – Placement Preferences:

Placement Preference Categories	Total
With a member of the Indian child’s extended family	0
With other members of the Indian child’s Tribe	10
With other Indian families	0
Placed outside Tribal preferences	4
Null	62
Grand Total	76

Null indicates placements where placement preferences were not entered in the OR-Kids database. System enhancements were implemented in May 2022 to ensure more accurate tracking of placement preferences for future reporting.

Part 2 – Indian parent in the home: 4

7. The number of available appropriate placements and common barriers to recruitment and retention of appropriate placements: 614

It is our understanding the meaning of “appropriate placements” to be the total number of preferred placements as indicated in Element 5 above, excluding the placements made outside of Tribal placement preferences. This data was gathered through a manual process of reviewing historical application materials for active resource parents. To improve identification of appropriate placement resources, the ODHS Application for Certification as a Resource Parent, Relative Resource Parent or Approval as a Potential Adoption Resource

is under revision to include new data fields that capture information regarding Tribal membership and eligibility for Tribal membership for all applicant types.

8. The number of times the court determined that good cause existed to deviate from the statutory placement preferences under section 23 of this 2020 special session Act: 3

To comply with this data element, OJD asked the Odyssey Change Control Workgroup for the creation of several new codes and developed new business processes to allow courts to properly track these data requirements. Because of this, OJD acknowledges that the initial reporting period will underestimate the total number of times the court determined good cause existed to deviate from the statutory placement preferences.

However, to facilitate faster implementation times, OJD developed a series of new statewide trainings designed specifically for court staff, to provide direct support in data entry. These trainings should increase the courts understanding and experience with entering these new ICWA data elements into Odyssey and provide more accurate and robust data for ongoing reporting.

9. The number of cases that were transferred to Tribal court under section 14 of this 2020 special session Act: 12

To comply with this data element, OJD asked the Odyssey Change Control Workgroup for the creation of a several new codes and developed new business processes to allow courts to properly track these data requirements. Because of this, OJD acknowledges that the initial reporting period may underestimate the total number of cases transferred to Tribal court.

However, to facilitate faster implementation times, OJD developed a series of new statewide trainings designed specifically for court staff, to provide direct support in data entry. These trainings should increase the courts understanding and experience with entering these new ICWA data elements into Odyssey and provide more accurate and robust data for ongoing reporting.

10. The number of times the court found good cause to decline to transfer jurisdiction of a case to Tribal court upon request and the most common reasons the court found good cause to decline a transfer petition: 0

OJD reviewed existing transfer codes within Odyssey, its data management system, to obtain this data. As the system did not indicate any instances in which the court declined transfer to Tribal court, OJD cannot provide common reasons to find good cause to decline transfer.

11. The efforts the Department of Human Services and the Judicial Department have taken to ensure compliance with the provisions of sections 1 to 23, chapter 14, Oregon Laws 2020

(first special session), and the amendments to statutes by sections 24 to 60, chapter 14, Oregon Laws 2020 (first special session), in dependency proceedings.

ODHS and OJD's collective and individual efforts to ensure compliance with ORICWA are addressed throughout this report.

12. The number of ICWA compliance reports, as defined in ORS 109.304, in which the department reported the petitioner's documentation was *insufficient* for the court to make a finding regarding whether the petitioner complied with the inquiry or notice requirements under section 15 (2) or 16 (2), chapter 14, Oregon Laws 2020 (first special session): 15

13. The total number and ratio of all ICWA compliance reports that indicated there was a reason to know the child was an Indian child:

During the reporting period, 12 ODHS ICWA Compliance Reports noted that the documentation submitted by petitioners in an adoption proceeding pursuant to ORS 109 indicated the child involved had potential American Indian/Alaska Native ancestry. The purpose of the ICWA Compliance Report is to provide the court, in adoption proceedings pursuant to ORS 109, with ODHS's assessment as to whether the Petitioner has provided sufficient information for the court to make its required findings. Only the court may make the finding as to whether there is reason to know that a child is an "Indian child" as defined in ORICWA. Therefore, none of OHDS' ICWA Compliance Reports found that there was reason to know the child was an Indian child.

Conclusion

ODHS and OJD have invested significant resources and have undertaken many collective and individual efforts to implement and ensure compliance with ORICWA. This process, however, also exposed unaddressed and under-addressed areas in need of additional work, which we remain committed to improving. We are also dedicated to preserving and strengthening the crucial partnerships we have with the nine Oregon Tribes by centering their voices in our work.