



# Literature Review

Oregon Judicial Department Indian Child  
Welfare Act (ICWA) Court Evaluation Project

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## Introduction

The Oregon Judicial Department (OJD) contracted with the National Center for State Courts (NCSC) to develop a replicable research plan informed by existing guidance and research for the Indian Child Welfare Act (ICWA) Courts in Oregon. The research plan will be guided by ICWA court principles, promising practices in ICWA research and evaluation, existing national guidance on measures in child welfare, and culturally responsive frameworks. The plan will be designed to enhance what Oregon has established in ICWA case processing requirements and provide effective ways to evaluate new and existing ICWA Courts and courts processing ICWA cases.

**Figure 1.** Principles, Practices, Models, and Measures to Inform Formal Research Plan



## *ICWA Court Principles*

ICWA Courts are designed to ensure that child welfare cases involving American Indian and Alaska Native children are handled respecting cultural values, Tribal sovereignty, and the best interest of the child and promote stability and security of Indian Tribes and families (National Indian Child Welfare Association, 2021). Currently, there are 25 ICWA Courts in the United States, with two active programs in Oregon—Klamath and Marion counties (National Council of Juvenile and Family Court Judges, 2025). Multnomah County is working towards opening an ICWA Court in 2025.

ICWA Courts follow five (5) principles: Judicial leadership, ICWA data collection, ICWA training (spirit and letter of law), Tribal stakeholder collaboration, and Gold Standard lawyering and social work (National Council of Juvenile and Family Court Judges, 2025).

1. **Judicial leadership**—ICWA Court judges lead off-the-bench in coordination with the ICWA partners (attorneys, agency social workers, and Tribal ICWA representatives) to achieve the spirit of ICWA.
2. **ICWA data collection**—data collection informs practice and can measure the impact of ICWA Courts.
3. **ICWA training (spirit and letter of law)**—families can expect engagement that is delivered with cultural humility, is solution-oriented, and most-importantly with humanity.
4. **Tribal stakeholder collaboration**—authentic Tribal collaboration and partnership to foster better outcomes for ICWA families, including decreased time Indian children are in-care.
5. **Gold-standard lawyering and social work**—ICWA Courts are home to “gold standard” attorneys, judges, social workers, and Tribal representatives. The community of ICWA participants have more focused education and skill-development of the relevant laws. Tribal partner engagement and focused education allows for a culture that is committed to the spirit of ICWA, and increased capacity for the legal side of ICWA practice.

Gardner-Vandy & Scalice (2020) discuss that data are often extracted without community input, spiritual permission, or reciprocity. Acknowledging the United States' negative historical Indigenous research practices, Gardner-Vandy & Scalice (2020) also emphasize the importance of focusing on Tribal relationships when collecting data or conducting research. Inclusion of cultural frameworks that respect Indigenous perspectives, learning from and reflecting on prior evaluations and studies with Tribal collaboration and input in their processes, and honoring Tribal communities are and should be prioritized when working with Indigenous Communities (National Center for Education Statistics, n.d.).

### *ICWA Court Data Collection Challenges and Promising Practices*

Data collection is a principle of ICWA Courts. However, there are challenges with existing tools, traditional research methods, and a lack of standardization in data collection. For example, there are additional limitations from other studies in the field when measuring outcomes from data sets. Gatowski et al (2023) found that due to the number of verbal findings from judges on the record, information was limited in reviewing case files alone. Both Summers & Wood (2014) and Williams (2016) both suggest supplementing with additional, qualitative evaluation practices for ICWA Courts.

Williams et al (2016) state 'what is measured is what is done' and that stronger tools and efforts will provide additional adherence to the ICWA model overall, citing barriers such as lack

of federal oversight, states' attempts to interpret and apply ICWA, and interpreting active efforts differently.

National Indian Child Welfare Association (2023) reports that Oregon is joined by Arizona, California, Idaho, Minnesota, Montana, Utah, and Washington in codifying ICWA into state law, which may lead to statewide standards for data collection. The National Council of Juvenile and Family Court Judges (NCJFCJ) building resources such as toolkits to address a lack of standardized data systems and limited training and technical support among ICWA Courts (Summers & Wood, 2014).

With limits to data oversight, standardization, and capacity to inform the full picture of ICWA Court practices, evaluators recommend qualitative data collection (focus groups, interviews, surveys, court observation, etc.) and promising tools to help with this limitation.

In an NCJFCJ toolkit, Summers & Wood (2014) discuss specific strengths from ICWA case review and court observation data collection approaches. Case review obtains substantial amounts of objective data, such as dates of hearings, placement of the child at hearings, and case closure dates. Court observations allow researchers to see what is occurring in the courtroom for judicial engagement with guardians, whether ICWA applicability was discussed, and how Tribes are engaged in case planning. Focus groups are used to retrieve qualitative data for better contextualization of the case review data and to identify areas that need further exploration.

Williams (2016) also discusses the strengths and weaknesses of types of evaluation, including the use of a promising in-person observational tool receiving ongoing revisions—the QUICWA Performance Checklist. The checklist can be used during initial, adjudication, review, and permanency hearings “to identify five (5) basic definitions of compliance:

1. There was qualified expert witness testimony presented at this hearing.
2. The judge made a finding of clear and convincing evidence that the child was likely to suffer emotional or physical damage if continued in the custody of the parent.
3. The judge made an ‘active efforts’ finding.
4. There was discussion of how the Tribe has been involved in case planning.
5. There was discussion of culturally appropriate services for the family. (p. 529)”

Two (2) recent studies conducted by 1) Hunter et al. (2022) and 2a) Korthase et al (2021) and 2b) Gatowski et al (2023), use structured methodologies to examine the impact of ICWA Court practices on ICWA guidelines and child welfare outcomes. While each study had unique features, both shared a focus on comparing outcomes before and after ICWA Court implementation, emphasizing compliance with the Indian Child Welfare Act and engagement of Tribal and family rightsholders.

#### *Study 1- Pima County, Arizona*

Hunter et al. (2022) conducted an evaluation in Pima County, Arizona, comparing ICWA and non-ICWA dependency cases before and after the launch of the ICWA Court in 2020. The evaluation assessed the outcomes of: Time to case closure, Tribal intervention and time to case closure, placement with parents at case closure, time to first finding of dependency, time to first

permanency hearing, and parental and Tribal engagement at ICWA hearings. Evaluation methodology included structured case file review to examine all outcomes except parental and tribal engagement, where court hearing minute entry reviews were used to assess the presence of parents and Tribal representatives at hearings. Analyses were conducted in three (3) parts: comparing ICWA and non-ICWA cases pre-implementation, comparing outcomes of ICWA and non-ICWA cases post-implementation, and examining only ICWA cases pre and post ICWA court implementation.

*Study 2a- St. Louis, Minnesota*

Korthase et al. (2021) also evaluated the ICWA Court in St. Louis County but used a mixed-methods approach that combined structured case file review with courtroom observations, and feedback from key rightsholders. This evaluation sought to examine the impact of ICWA Court on case process and outcomes and provide baseline data to assist with continuous quality improvement. Specifically, the evaluation looked to assess the protocols and practices developed by the Court to promote effective and timely:

- Identification of Indian children
- Notice to and engagement of tribes in matters involving Indian children
- Tribal participation in hearings involving Indian children
- Tribal intervention in state court child abuse and neglect cases
- Transfer of ICWA cases to tribal courts
- Placement of Indian children according to ICWA and tribal placement preferences.

This evaluation design also used case file review of pre and post ICWA Court cases but opted to collect hearing data through structured observations of recorded court hearings.

#### *Study 2b- St. Louis, Minnesota*

Gatowski et al. (2023) implemented a quasi-experimental design to examine the St. Louis County, Minnesota ICWA Court to determine if the Court improved the application of ICWA requirements, the case process, and permanency outcomes in ICWA cases. The study involved the use of structured case file reviews of pre and post ICWA Court cases by sampling closed ICWA cases across two timeframes, to answer two (2) broad research questions:

- 1) Is ICWA Court implementation related to improved compliance with ICWA? Compared to pre implementation?
- 2) Is ICWA Court implementation related to better outcomes for Indian youth? Compared to pre implementation?

Consistent data collection was ensured through a codebook and case file review instrument designed to capture data on ICWA compliance and performance measures, including inquiry and notice, tribal intervention and transfer, parties' presence at hearings, use of qualified expert witnesses (QEWs), required ICWA findings, child placement, case processing timelines, and permanency outcomes.

Across all three (3) evaluations, the methodologies captured both compliance with ICWA and the qualitative aspects of practice change. Common elements included a structured review

of pre and post implementation cases, attention to ICWA-specific legal requirements, and efforts to assess meaningful tribal and family engagement in court processes.

### *Statistical Models for ICWA Courts*

Existing literature did not produce a wide variety of applicable statistical modeling for use in ICWA Courts, resulting in just two (2) publicly available articles applying regression models.

#### *Model 1*

Summers (2023) investigates research questions related to three ICWA outcomes: time to return to parents, reunification, and time to permanency. For each research question, independent variables' relationships to time to return to parent and time to permanency are assessed using linear regression models. Reunification is assessed in each research question using a logistic regression model. The logistic regression models are the only ones to include a control variable (presence of the parents across the life of the case or at the initial hearing). The research questions ask whether these outcomes are related to (1) level of ICWA implementation, (2) specific ICWA implementation factors (and if so, which factors), or (3) early implementation of case factors.

*Research Question 1: "Implementation level" is a construct created for the study and includes five variables describing the implementation factors in each case: yes/no – the court provided notice to the Tribe; yes/no – the court made an active efforts finding; yes/no – the court provided documentation of qualified expert witness (QEW) testimony; yes/no – a Tribal representative was ever present for the hearings, and ; yes/no – the courts followed placement*

preferences. The placement preference variables were determined by ranking the placement preferences on a scale based on ICWA preferences where 1=parent, 2=relative, 3=Tribal foster home, 4=Indian foster home, 5=Other foster care, 6=Group home, and 7=Institution. Cases with an average placement of 3 or lower were denoted "yes" for the placement variable. The author found that, at  $\alpha = .10$  the average level of ICWA implementation is not related to time to return to parent or to reunification. The average level of implementation is related to time to permanency, with higher implementation rates associated with longer times to achievement of permanency  $R^2=.055$ ,  $F(1,131) = 7.60$ ,  $p = .007$ .

*Research Question 2:* Assessed the individual impact of several specific ICWA implementation factors, including the presence of QEW testimony, the average number of active efforts findings, how often the Tribe was present across the life of the case, and whether placement preferences were followed. Like research question 1, the author found that, at  $\alpha=.10$  these specific ICWA implementation factors are not related to time to return to parent or to reunification. Two specific ICWA practices were associated with a longer time to permanency  $R^2 = .07$   $F(4, 113) = 2.13$ ,  $p = .08$ : the average amount of time a Tribal representative was present  $\beta = .19$ ,  $p = .07$ , and any testimony by a QEW  $\beta = .17$ ,  $p = .08$ .

*Research Question 3:* Examines the impact on outcomes of early implementation of case factors, including the presence of Tribal members at the initial hearing, a parent attorney present at the initial hearing, the time from removal to validation of ICWA status, and the time from petition filing to notice. The author found a significant relationship between time to return to parent and early implementation variables,  $R^2 = .89$   $F(4,10) = 12.44$ ,  $p = .005$ . Specifically, presence of the Tribe  $\beta = -.49$ ,  $p = .03$ , time to notice  $\beta = -.36$ ,  $p = .06$ , and time to ICWA status confirmation  $\beta = -.63$ ,  $p = .005$

Summers (2023) noted that most of the existing research on ICWA implementation or compliance are strictly descriptive in nature and comprise publicly available or totally unavailable evaluations of individual or statewide programs. Finding only one published journal article that examined ICWA compliance through a statistical approach. Limb et al.,

(2004) provides a basis for ICWA compliance variables that can be used for regression analysis, but the article includes only descriptive analyses. Summers (2023) explains that Limb et al. (2004) do not examine relationships between outcomes and practices, and that her work helps to fill in this gap in the ICWA literature. Limb et al. (2004) assessed the prevalence of three areas of ICWA compliance through case file reviews. They defined the three (3) areas in the following ways:

*Placement Type:* As defined by the Indian Child Welfare Act of 1978 (2000):

- (1) A member of the child's extended family,
- (2) a foster home licensed or approved by the Indian child's tribe,
- (3) an Indian foster home licensed by a non-Indian licensing authority, or
- (4) an institution approved by an Indian tribe or an institution operated by an Indian organization which has a program suitable to meet the child's needs.

*Use of QEWs:* As rank ordered by the Bureau of Indian Affairs, Department of Interior (1970):

- (1) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in Tribal customs as they pertain to family organization and child rearing practices,
- (2) a lay expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's Tribe, or
- (3) a professional person having substantial education/experience in his/her specialty area.

*Incorporation of Indian Culture and Resources:* "Active efforts" to provide rehabilitative programs and remedial services to prevent family breakup in all foster care and TPR proceedings. In this study, "active efforts" were identified by a case file review where the reviewer identified the use of "best practices" on the case record review instrument.

## Model 2

Hunter (2022) utilizes a multi-pronged approach to evaluate the efficacy of the ICWA Court at Pima County Juvenile Court Center. The following dependent variables were used in three separate analyses, looking at the outcomes of the ICWA Court from three distinct lenses.

1. Time to Case Closure
2. Tribal Intervention and Time to Case Closure
3. Placement with Parents at Case Closure
4. Time to First Finding of Dependency
5. Time to First Permanency Hearing
6. Parental and Tribal Engagement at ICWA Hearings

The analytical approaches used the type or timing of dependency cases as the only non-control independent variable.

*Analysis 1:* Establishing a baseline for the difference between ICWA and non-ICWA cases *before* ICWA Court implementation.

*Analysis 2:* A comparison of outcomes for ICWA versus non-ICWA cases *after* the implementation of the ICWA Court.

*Analysis 3:* A pre-post design assessing changes in ICWA dependencies *only*, before and after the implementation of the ICWA Court.

Hunter (2022) uses a range of analyses as appropriate for the type of dependent variable (i.e., logistic regression for binary variables, linear regression for days, a discrete variable, with bootstrapping for non-normalized distributions). The author also employs statistical tests, including t-tests and chi-square tests.

Of note in this study is the inclusion of the following control variables:

1. Substance abuse allegations on dependency petition (1=yes; 0=no)
2. Domestic abuse allegations on dependency petition (1=yes; 0=no)
3. Criminal activity/history allegations on dependency petition (1=yes; 0=no)
4. Reactivation (1=yes; 0=no)
5. Age of child at petition date

One supplemental analysis included parental and Tribal presence at ICWA hearings as independent variables. These variables were disaggregated by person present, and included mother, father, Tribal caseworker, and tribal attorney. While the change in parental and Tribal presence was analyzed using a *t*-test, these variables are possible candidates for inclusion in a regression model. The evaluation found that implementation of the ICWA Court model led to meaningful improvements, specifically: improved documentation of requirement, active efforts, and proper notice to Tribes; increased Tribal participation through presence at hearings and case planning; improved placement outcomes; respectful collaborative and culturally informed environment; and some improvements in timeliness, varying case-by-case.

Although these studies alone do not provide a clear blueprint for Oregon to apply to their own data, the variables used in these studies and the way they were operationalized provide a good starting place for the development of a statistical model that meets Oregon's needs.

### *Well-being*

According to Child Welfare Information Gateway (n.d.), "An emphasis on well-being should be integrated into all aspects of child welfare services, with a focus on engaging the whole

family to reduce child abuse and neglect risk factors and increase safety and protective factors. Well-being encompasses mental, behavioral, emotional, and social functioning as well as physical health and development.”

Wexler (2009) found that cultural orientation and historic foundation provides purpose, self-worth, and social connectedness to Indigenous youth that explains strong associations between cultural affiliation and Indigenous youth well-being. Further expounding that “When young people have a clear understanding of their cultural past, present, and future, it is easier for them to sustain a sense of connectedness and commitment to their future” p. 271.

ICWA’s active efforts have informed the child welfare field in the promotion and focus of well-being to children and families (Briar-Lawson, et al., 2025). Casey Family Programs (2011) report large-scale, longitudinal studies using the NSCAW-II can be an effective way to measure well-being of children. However, longitudinal studies, indices, standardized scales (i.e., Child and Adolescent Well-Being Scales (CAWS)), and surveys can be cumbersome for courts to implement, fund, and maintain and are not specific to ICWA populations (Purvis, et, al. (2025).

Based on the limited research available in this area, the primary areas of focus will be cultural affiliation, social connectedness, and emotional and physical health.

## *Child Welfare Performance Measures*

With a limited number of ICWA-specific measures available, nationally recognized court performance measures for child abuse and neglect cases are included to provide a comprehensive review of the literature.

### *OJJDP Court Performance Measures in Child Abuse and Neglect Cases*

There are three primary and established goals for the child welfare system: safety, permanency, and well-being. In 2008, the Office of Juvenile Justice and Delinquency Prevention released a toolkit of 30 court performance measures that represent expectations for courts to measure their ability to address the needs of abused and neglected children. The toolkit highlights four areas of operation for courts to evaluate: child safety, child permanency, due process, and timeliness.

#### **Child safety (2 measures)**

Measure 1A: Child Safety While Under Court Jurisdiction

Measure 1B: Child Safety After Release from Court Jurisdiction

#### **Child Permanency (5 measures)**

Measure 2A: Achievement of Child Permanency

Measure 2B: Children Not Reaching Permanency

Measure 2C: Children Moved While Under Court Jurisdiction

Measure 2D: Reentry Into Foster Care After Return Home

Measure 2E: Reentry Into Foster Care After Adoption or Guardianship

**Due Process (10 measures)**

- Measure 3A: Number of Judges Per Case
- Measure 3B: Service of Process to Parties
- Measure 3C: Early Appointment of Advocates for Children
- Measure 3D: Early Appointment of Counsel for Parents
- Measure 3E: Advance Notice of Hearings to Parties
- Measure 3F: Advance Written Notice of Hearings to Foster Parents, Preadoptive Parents, and Relative Caregivers
- Measure 3G: Presence of Advocates During Hearings
- Measure 3H: Presence of Parties During Hearings
- Measure 3I: Continuity of Advocates for Children
- Measure 3J: Continuity of Counsel for Parents

**Timeliness (13 measures)**

- Measure 4A: Time to Permanent Placement
- Measure 4B: Time to Adjudication
- Measure 4C: Timeliness of Adjudication
- Measure 4D: Time to Disposition Hearing
- Measure 4E: Timeliness of Disposition Hearing
- Measure 4F: Timeliness of Case Review Hearings
- Measure 4G: Time to First Permanency Hearing
- Measure 4H: Time to Termination of Parental Rights Petition
- Measure 4I: Time to Termination of Parental Rights
- Measure 4J: Timeliness of Termination of Parental Rights Proceedings
- Measure 4K: Time From Disposition Hearing to Termination of Parental Rights Petition
- Measure 4L: Timeliness of Adoption Petition
- Measure 4M: Timeliness of Adoption Proceedings

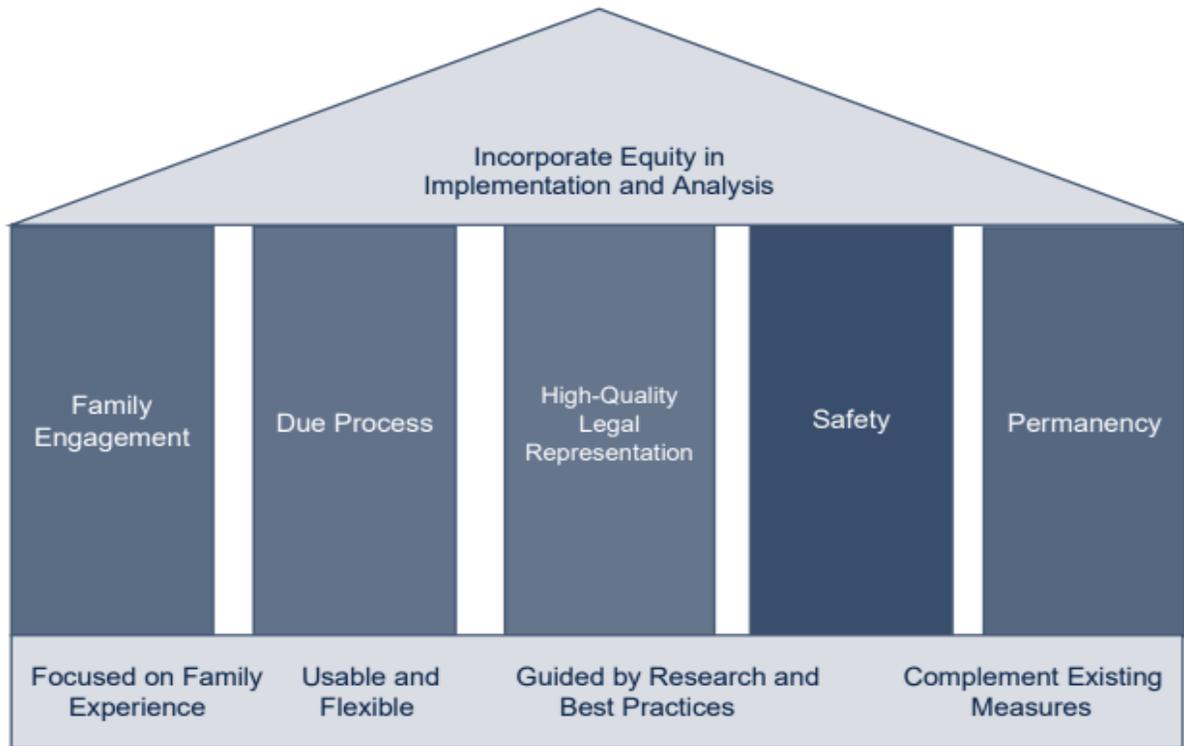
### *Judicial, Court, and Attorney Measures of Performance (JCAMP)*

While the court performance measures are valuable, many courts are limited in their ability to attain them, and the court data in isolation often misses context provided by qualitative information. To address these limitations, the Children’s Bureau funded the Capacity Building Center for Courts to develop Judicial, Court, Attorney Measures of Performance (JCAMP). JCAMP focuses on improving child welfare court practices through these focus areas:

- **Court process measures**—what happens in the court process, including before, during, and after court.
- **Professional practice measures**—activities judges and attorneys perform.
- **Family experience measures**—how families experience and perceive the child welfare court system.
- **Centering equity**—defining family, access to resources (transportation, phone, video) incarceration status or timely rural notice to parents, SOGIE (sexual orientation, gender identity, and expression of children), access to high-quality legal representation, prioritizing racial equity, and creating and maintaining equity-focused policies.
- **Collaboration with Tribes**—internal and external partners, providing data and learning from others, and acknowledging historical data collection trauma.

JCAMP measures task welfare courts to incorporate equity in the implementation and analysis of the five (5) categories outlined in Figure 2, while also keeping a focus on family experience, usability, and flexibility, guided by research and best practices, and complement existing measures.

**Figure 2.** Model of JCAMP Performance Measures (Summers & Fromknecht, 2022, p. 3).



JCAMP outlines how to measure family engagement (14), due process (11), high-quality legal representation (10), safety (14), and permanency (22). Judicial, Court, and Attorney Measures of Performance (JCAMP) Volume I: Measures includes an exhaustive list on page 9. The guide also includes the importance of why each measure is valuable in context. While JCAMP measures focus on *all* child welfare cases, these measures go one step further to assess if courts inquire about ICWA applicability and Tribe collaboration.

### *Culturally Responsive Framework*

The American Indian Higher Education Consortium (AIHEC) published the Indigenous Evaluation Framework in 2009 to guide evaluation of programs relevant to Indigenous people and hold at its core includes Tribal values and principles (AIHEC, 2009). With a goal to ensure evaluation processes respect Indigenous perspectives while maintaining rigor and effectiveness, the Indigenous Evaluation Framework identifies four (4) essential elements of evaluation practice when evaluating Indigenous communities: Creating the Story, Building the Scaffolding and Planning, Implementing and Celebrating, and Engaging Community and Building Capacity. These elements are further guided by Indigenous ways of knowing (Indigenous Knowledge, Keen Observation, Multiple Perspectives, and Communal and Individual Experience), as well as through core cultural values (Place, Gifts, Community, and Sovereignty).

**Figure 3.** Model for the Indigenous Evaluation Framework (AIHEC, 2009, p. 7).



## *Oregon's Work in ICWA Cases*

According to the U.S. Census Bureau (n.d.), the American Indian and Alaska Native population in Oregon makes up 1.9% of the state's population. Oregon Indian Child Welfare Act (ORICWA) codifies the national standards of the Indian Child Welfare Act (ICWA) into Oregon statute. This mandate requires that if the Oregon Department of Human Services (ODHS) seeks to remove an Indian child from a home, it must first establish that remedial or rehabilitative services have been provided to the family to avoid removal of the child from their parent or Indian custodian (Indian Child Welfare Act, 1978, Oregon Revised Statutes, 2023).

OJD has developed advisory groups and committees that focus some or all of their efforts on ICWA/ORICWA (Oregon Department of Human Services & Oregon Judicial Department, 2024).

*Tribal, State, and Federal Court (TSFC) Forum*—to create and institutionalize a collaborative relationship among the 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.

*OJD's State-Tribal Partnership (OSTP) Grant*— a five (5)-year grant (2023-2028) through the U.S. Department of Health and Human Services Administration for Children and Families to develop a state-Tribal partnership to implement best practices in ICWA dependency cases.

*Juvenile Court Improvement Program (JCIP)*—to discuss ICWA issues and review ICWA data at quarterly meetings.

*ICWA Court Committees*—ICWA court and court partners involved in the Klamath County Circuit Court's ICWA Court meet to discuss ways to improve practices in the court as needed. Marion County Circuit Court is currently implementing an ICWA Court, and those involved are meeting regularly to discuss how to best meet the needs of children and families in ICWA cases in Marion County.

*ICWA Advisory Committees*—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.

*Qualified Expert Witness (QEW) Committee*—work towards strengthening ICWA compliance specifically through QEW testimony. The Committee developed procedures and protocols for proper utilization of QEWs under the ICWA and is comprised of representatives from Office of Tribal Affairs (OTA), Juvenile Court Improvement Program (JCIP), Confederated Tribes of Umatilla Indian Reservation (CTUIR), the Cow Creek Band of Umpqua Tribe of Indians, and the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians.

*ORICWA Core Implementation Team (CIT)*—establish a comprehensive implementation plan that embodies the spirit of ICWA/ORICWA in practice, policy, relationships, and purpose and includes members from Child Welfare, OTA, Department of Justice (DOJ)/Child Advocacy and Protection Division, the Nine Federally Recognized Tribes of Oregon, and OJD.

### *Oregon Goals, Principles and Expectations for ICWA Cases*

Several studies have revealed that Native American children are overrepresented in the foster care system, particularly at higher rates in Oregon (Summers & Woods, 2014). In response to this information, the Oregon Judicial Department Citizen Review Board, Oregon DHS, and all nine recognized Tribes in Oregon developed ‘Active Efforts, Principles, and Expectations’ for Oregon’s Indian Child Welfare processes (Oregon Tribes, et al. 2010). The overarching goals of this publication are to ensure that...

Every effort made with an Indian child and family will be measured against:

1. Commitment to the requirements and the spirit of the Indian Child Welfare Act.
2. Early contact with and active engagement of the child's Tribe. Active efforts do not require or imply agreement on case issues but does create an expectation that the agency and Tribes will work closely together in an atmosphere of mutual respect and honesty to achieve understanding;
3. A more vigorous and higher level of effort than those that typically constitute reasonable efforts. Casework which goes beyond:
  - a. referring for services to arranging services, and helping families engage in those services;
  - b. managing a case to proactively engaging in diligent casework activity; and
  - c. meeting the minimum requirements set by policy to creatively meeting the needs of children and families; and finally,
4. Using methods and providing services that are culturally appropriate. (Oregon Tribes, et al. 2010, p. 3).

Further, the publication identifies ten (10) principles when handling ICWA cases:

1. The cornerstone of active efforts is active and early participation and consultation with the child's Tribe in all case planning decisions.
2. DHS should inquire about the applicability of the Indian Child Welfare Act immediately upon a child being taken into protective custody.
3. Active efforts cannot be excused under state law definitions for aggravated circumstances or extreme conduct.
4. Active efforts determinations apply to the entire time period covered by the Citizen Review Board (CRB) or court review.
5. In all ICWA cases, prior to the adjudication of the petition, DHS is obligated to provide active efforts to offer services to make it possible for the child to safely return home.

6. If DHS has made the effort to provide a service and another person or entity has not fulfilled their responsibility to provide the service, the active efforts should be made based on DHS's effort to provide the service in a more creative manner.
7. Utilizing Family Decision models (FDM), or other culturally relevant approaches, for case planning creates unique family specific service plans.
8. Given that a child's health and safety are the paramount concerns, DHS has an obligation, in consultation with the child's Tribe, to offer relevant services to all members of the household who will have responsibility to provide care for the child even if the person does not have legal rights to the child.
9. In making active efforts to reunify families, if services needed are not readily accessible, DHS will make active efforts to develop, modify, and coordinate services that will address the conditions and circumstances that are the basis for juvenile court jurisdiction.
10. Documentation of all casework activity is important.

Lastly, the publication outlines (12) expectations required under Oregon Administrative Rules (OAR 413-070-0160 & OAR 413-070-170) of early notification, proper and expeditious documentation, higher standards of proof for parental rights termination hearings with clear and convincing evidence with Tribal consultation for expert witnesses, prompt absent parent searches, Tribal placement preference considerations, services provided in client's primary language, use of family decision meetings, consultation with Tribes on service and visitation plans, service agreements, and letters of expectations, culturally appropriate assessment of child treatment needs within 60 days of placement while, making and document efforts to expedite receipt of assessment results, and workers shall have face-to-face contact with the family, the child and the provider (Oregon Tribes, et al. 2010).

*OJD's Current Performance Measures*

Table 1 highlights the current statewide performance measures collected for all ICWA cases in Oregon.

**Table 1.** Current Oregon State Database Performance Measures for ICWA Courts

ICWA Cases Filed	ICWA Cases filed by county and total for state. ICWA cases filed are the cases filed that have been flagged as ICWA cases. Cases Filed could be pending or closed cases.
Cases Pending	ICWA Cases pending by county and total for state. ICWA cases pending are cases that are still designated as pending, meaning they have not been closed. Same as Cases Filed these are cases that have been flagged as ICWA cases.
Time to ICWA Designation	Number of days between the initial petition filing and the ICWA flag (and associated event) are added to the case.
ICWA Length of Cases	Number of days the initial petition is filed until the case is closed. This includes guardianship cases which do not close even after permanency is established.
ICWA Time to Jurisdiction on Both Parents	Number of days an ICWA Case is assigned to jurisdiction by both parent (by 60 and 90-day measures).
ICWA Events <ul style="list-style-type: none"> <li>• Transfer to Tribal Court</li> <li>• Motion/Order</li> <li>• Deviate from Placement Preference Events Order/Motion</li> <li>• Active Efforts Findings (active efforts made/not made/aggravated circumstances exist and SCF is excused)</li> <li>• Petition to Invalidate (events deviate from placement preference/transfer to Tribal court events)</li> </ul>	Tracking the number of the specific events that occur between filing, designation, jurisdiction and the hearings/closing of case result).
ICWA Hearings	Number of hearings held. Number of hearings held with Tribe present.
ICWA Time in Care and Reason for Leaving Care	Number of days from children entering/leaving care.  ODHS data is also received to identify reasons for leaving care by county: guardianship, adoption, other, emancipation, transfer of custody, returned to parent).

### Overlapping Performance Measures and Goals

The above resources provide extensive information. However, there is a great deal of overlap between what Oregon Judicial Department has in place, national child welfare performance measures, ICWA principles, and Indigenous Evaluation Framework. Figure 4 shows the shared measures and goals that NCSC will work to incorporate for Oregon Courts working with ICWA cases.

**Figure 4.** Overlapping Performance Measures and Goals

ICWA Principles	Current OJD ICWA Measures and Practices	Child Welfare Measures	JCAMP Measures	Cultural Framework Elements
		Child Safety	Safety	
	Permanency	Child Permanency	Permanency	
Tribal Stakeholder Collaboration	Tribal attendance at hearings Engaged with all 9 Tribes Tracking reasons for leaving care	Engaging Community and Building Capacity	Family Engagement	
Gold Standard Lawyering and Social Work	Timeliness (days, length, time)	Timeliness	High Quality Legal Representation	
		Due Process	Due Process	
Judicial Leadership				Building the Scaffolding
ICWA Data Collection	Cases filed, Cases Pending, Events			Creating the Story
ICWA Training (spirit and letter of law)				Planning, Implementing, and Celebrating

### Key Focus Areas

When looking for overall replication, six (6) priority areas emerge for research and evaluation focus (Figure 5): Safety, Permanency, Legal Process, Programming, Engagement, and Well-being. In addition to these overlapping themes and All focus areas will surround a holistic approach to the children, families, and Tribes.

**Figure 5.** Key Focus Areas



## Conclusion

The NCSC team thoroughly reviewed existing child welfare and ICWA Court performance measures, research, and evaluative processes. Six (6) priority areas emerged across the research: Safety, Permanency, Legal Process, Programming, Engagement, and Well-being. NCSC will apply the American Indian Higher Education Consortium (AIHEC)'s Indigenous Evaluation Framework and incorporate the identified priority areas into a draft comprehensive research plan for Oregon's ICWA Courts. NCSC will test the feasibility, relevancy, and replicability of the research plan in Klamath County and provide a refined research plan to OJD.

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