



HB 3182: Finalizing the Oregon Indian Child Welfare Act

In the first special session of 2020 the Oregon legislature unanimously passed HB 4214, the Oregon Indian Child Welfare Act (ORICWA), to promote the safety of Native children, preserve tribal families and communities, recognize tribal sovereignty, and support compliance with federal ICWA standards in courtrooms and DHS offices throughout the state. The bill codified national standards of the Indian Child Welfare Act (ICWA) into Oregon statute. However, due to capacity constraints of the Judiciary ICWA work group and of the 2020 session, national ICWA standards on adoption were not included. Some important technical fixes to HB 4214 have also been identified.

The Confederated Tribes of the Umatilla, along with other federally recognized Indian tribes in Oregon, are proposing 2021 legislation to finalize ORICWA.

House Bill 3182 would:

Includes adoption, including customary adoption, in ORICWA:

The bill would codify, and make explicit, national ICWA requirements for adoption into Oregon's existing adoption statutes. It will also ensure that private adoptions comply with federal law and regulations and meet similar requirements of agency adoptions. In conjunction with HB 4214, this will ensure that the question of whether a child is an Indian child for the purposes of ICWA compliance comes up much earlier in the child welfare process and that an Indian child has the opportunity to stay connected with their tribe.

The bill also recognizes customary adoptions, which are adoptions that align with traditional tribal child-rearing practices and the importance of tribal families. Customary adoption means that a child's grandparents, aunts and uncles would have the ability to take over or share legal parenting responsibilities so that a child can be safe, cared for and connected.

Provides technical fixes to ORICWA:

- Clarifies various provisions of the bill to provide more clarity to Oregon judges and practitioners and ensure ICWA's full application in Oregon courts.
- Clarifies tribe's jurisdiction in ICWA cases and promotes tribal decision making.
- Ensures all Indian children receive ICWA's protections at shelter care proceedings whether taken into temporary or protective custody.



Additional Background on ICWA:

U.S. Senator Mark Hatfield (R-OR) was instrumental in the development of ICWA in 1978 in response to a crisis affecting Native children, families, and tribes.

- 25%–35% of all Native children were being removed from their families and communities;
- 85% of those children were placed outside of their families and communities—even when fit and willing relatives were available.

ICWA sets federal requirements that apply to state child custody proceedings involving a Native child who is a member of, or eligible for membership in, a federally recognized tribe.

- Although progress has been made as a result of ICWA, Native children are placed in foster care at the highest rate of any children in Oregon.
 - Native children’s disproportionately rate is 3.25 compared to the next highest, African American children, at 1.86 and Caucasian children at 1.02).
 - Native children are 2.3 times as likely as Caucasian children to be in foster care, and 1.2 times as likely to be adopted out.

To improve implementation of ICWA, the Bureau of Indian Affairs (BIA) provided additional federal guidance, some for the first time since enactment of the law. Oregon has not yet codified the 2016 federal ICWA regulations.