

ORICWA Technical Fix

Why it matters

Currently, when the Oregon Department of Human Services (ODHS) files a dependency petition in a child custody proceeding involving an Indian child who has not been removed from a parent or Indian custodian, only the child, parents, any Indian custodian, and the Indian child's Tribe are parties. As a result, the juvenile court lacks authority to order ODHS to take any actions in the case. In addition, even though ODHS is the petitioner, it cannot appear in hearings set on the petition, request temporary custody of the child, or move the court to take any other legal actions in the case.

SB 815 aims to ensure that ODHS is a party in all juvenile dependency cases in which it is the petitioner. This change will enable the department to effectively communicate with the court and parties and litigate petitions for all Oregon children, both Tribal and non-Tribal.

Background

During the 2023 legislative session, ORS 419B.875 was amended to clarify that the ODHS is a party in juvenile dependency proceedings not only when it has temporary custody of a child, but also when it has protective custody. This change was crucial because the previous wording could be interpreted to mean that ODHS was not considered a party during shelter hearings, despite being the petitioner, until it was granted temporary custody. This meant that ODHS could not appear in court, request temporary custody, or adjudicate the petition because it lacked party status.

However, since the enactment of this amendment, another technical gap has become apparent. Specifically, when ODHS files a petition involving an Indian child, but does not remove the child from a parent or Indian custodian, ODHS is not considered a party and cannot appear in court. This is true even though ODHS is the petitioner and for the Tribe may support juvenile court involvement.

When ORICWA was drafted, the legislative workgroup amended the juvenile dependency code to clarify and distinguish between emergency proceedings and child custody proceedings, as all ICWA cases in Oregon historically began with emergency removal proceedings contrary to ICWA's intent that emergency proceedings are only to be utilized when necessary to prevent imminent physical damage or harm. While procedures for both were incorporated into state law, the party status issue was inadvertently overlooked. This was unintentional, and there was never an intent to prevent the court from having the authority to make orders of ODHS, or to prevent ODHS from fully participating in the case or disclosing information to and collaborating with the tribe and other parties in child custody proceedings.

Risk

Because ODHS is not a party to the case when it has filed a petition regarding an Indian child and ODHS has not removed the child from a parent or Indian custodian, the court has no authority to order ODHS to take any actions in the juvenile dependency case. Also, ODHS' ability to communicate, share information, and collaborate with the Tribe and other parties to avoid the need for removal of the Indian child is also hampered. These circumstances may unnecessarily heighten safety risks for the child and lead to otherwise avoidable emergency removals, resulting in additional unnecessary trauma for children and families.

Solution

To address these issues and ensure ongoing compliance with ORICWA, ODHS recommends further amending the statute to grant it party status at the time it files a dependency petition, rather than only when it has protective or temporary custody of the child.

Contact information:

Michelle Pfeiffer, Child Welfare Legislative Coordinator
Michelle.h.pfeiffer@odhsosha.oregon.gov or 503-339-6087.



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DRAFT

SUMMARY

Digest: The Act makes changes to when DHS is a party in a dependency case. (Flesch Readability Score: 77.8).

Modifies juvenile dependency procedures regarding when the Department of Human Services is recognized as a party in a proceeding.

A BILL FOR AN ACT

Relating to the Department of Human Services as a party in dependency proceedings; amending ORS 419B.646 and 419B.875.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 419B.875 is amended to read:

419B.875. (1)(a) Parties to proceedings in the juvenile court under ORS 419B.100 and 419B.500 are:

(A) The child or ward;

(B) The parents or guardian of the child or ward;

(C) A putative father of the child or ward who has demonstrated a direct and significant commitment to the child or ward by assuming, or attempting to assume, responsibilities normally associated with parenthood, including but not limited to:

(i) Residing with the child or ward;

(ii) Contributing to the financial support of the child or ward; or

(iii) Establishing psychological ties with the child or ward;

(D) The state;

(E) The juvenile department;

(F) A court appointed special advocate, if appointed;

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

(G) The Department of Human Services [*or other child-caring agency if the department*] **if:**

(i) The department is the petitioner;

(ii) The department has taken the child or ward into protective custody [*or if the department or agency has temporary custody of the child or ward*];

(iii) The court has granted the department temporary custody of the child under ORS 419B.809 (5); or

(iv) The ward has been committed to the legal custody of the department for care, placement and supervision under ORS 419B.337;

(H) A child-caring agency if the agency has temporary custody of the child or ward; and

[(H)] **(I)** If the child or ward is an Indian child:

(i) The Indian child's tribe; and

(ii) The Indian child's Indian custodian.

(b) An intervenor who is granted intervention under ORS 419B.116 is a party to a proceeding under ORS 419B.100. An intervenor under this paragraph is not a party to a proceeding under ORS 419B.500.

(c) If an Indian child is a member of or is eligible for membership in more than one tribe, the court may, in its discretion, permit a tribe, in addition to the Indian child's tribe, to participate in a proceeding under this chapter involving the Indian child in an advisory capacity or as a party.

(2) The rights of the parties include, but are not limited to:

(a) The right to notice of the proceeding and copies of the petitions, answers, motions and other papers;

(b) The right to appear with counsel and, except for intervenors under subsection (1)(b) of this section, to have counsel appointed as otherwise provided by law;

(c) The right to call witnesses, cross-examine witnesses and participate in hearings;

(d) The right of appeal; and

(e) The right to request a hearing.

1 (3) A putative father who satisfies the criteria set out in subsection
2 (1)(a)(C) of this section shall be treated as a parent, as that term is used in
3 this chapter and ORS chapters 419A and 419C, until the court confirms his
4 parentage or finds that he is not the legal or biological parent of the child
5 or ward.

6 (4) If no appeal from the judgment or order is pending, a putative father
7 whom a court of competent jurisdiction has found not to be the child or
8 ward's legal or biological parent or who has filed a petition for filiation that
9 was dismissed is not a party under subsection (1) of this section.

10 (5)(a) A person granted rights of limited participation under ORS 419B.116
11 is not a party to a proceeding under ORS 419B.100 or 419B.500 but has only
12 those rights specified in the order granting rights of limited participation.

13 (b) Persons moving for or granted rights of limited participation are not
14 entitled to appointed counsel but may appear with retained counsel.

15 (6) If a foster parent, preadoptive parent or relative is currently providing
16 care for a child or ward, the Department of Human Services shall give the
17 foster parent, preadoptive parent or relative notice of a proceeding concern-
18 ing the child or ward. A foster parent, preadoptive parent or relative pro-
19 viding care for a child or ward has the right to be heard at the proceeding.
20 Except when allowed to intervene, the foster parent, preadoptive parent or
21 relative providing care for the child or ward is not considered a party to the
22 juvenile court proceeding solely because of notice and the right to be heard
23 at the proceeding.

24 (7)(a) The Department of Human Services shall make diligent efforts to
25 identify and obtain contact information for the grandparents of a child or
26 ward committed to the department's custody. Except as provided in para-
27 graph (b) of this subsection, when the department knows the identity of and
28 has contact information for a grandparent, the department shall give the
29 grandparent notice of a hearing concerning the child or ward. Upon a
30 showing of good cause, the court may relieve the department of its respon-
31 sibility to provide notice under this paragraph.

(b) If a grandparent of a child or ward is present at a hearing concerning the child or ward, and the court informs the grandparent of the date and time of a future hearing, the department is not required to give notice of the future hearing to the grandparent.

(c) If a grandparent is present at a hearing concerning a child or ward, the court shall give the grandparent an opportunity to be heard.

(d) The court's orders or judgments entered in proceedings under ORS 419B.185, 419B.310, 419B.325, 419B.449, 419B.476 and 419B.500 must include findings of the court as to whether the grandparent had notice of the hearing, attended the hearing and had an opportunity to be heard.

(e) Notwithstanding the provisions of this subsection, a grandparent is not a party to the juvenile court proceeding unless the grandparent has been granted rights of intervention under ORS 419B.116.

(f) As used in this subsection, "grandparent" means the legal parent of the child's or ward's legal parent, regardless of whether the parental rights of the child's or ward's legal parent have been terminated under ORS 419B.500 to 419B.524.

(8) Interpreters for parties and persons granted rights of limited participation shall be appointed in the manner specified by ORS 45.275 and 45.285.

SECTION 2. ORS 419B.646 is amended to read:

419B.646. (1) Notwithstanding ORS 9.160 and 9.320, a tribe that is a party to a proceeding under ORS 419B.875 [(1)(a)(H)] **(1)(a)(I)** may be represented by any individual, regardless of whether the individual is licensed to practice law.

(2) An attorney who is not barred from practicing law in this state may appear in any proceeding involving an Indian child without associating with local counsel if the attorney establishes to the satisfaction of the Oregon State Bar that:

(a) The attorney will appear in a court in this state for the limited purpose of participating in a proceeding under ORS chapter 419B subject to the provisions of ORS 419B.600 to 419B.654;

1 (b) The attorney represents an Indian child's parent, Indian custodian or
2 tribe; and

3 (c) The Indian child's tribe has affirmed the Indian child's membership
4 or eligibility for membership under tribal law.

5 (3) Notwithstanding ORS 419B.875 [(1)(a)(H)] **(1)(a)(I)**, an Indian custo-
6 dian or tribe may notify the court, orally on the record or in writing, that
7 the Indian custodian or tribe withdraws as a party to the proceeding.