



## JCIP Model Dependency Forms

### Summary of Changes Effective January 2022

The model forms for dependency cases have been revised to address changes to the Oregon Indian Child Welfare Act (ORICWA) by Senate Bill 562 (2021) ([Oregon Laws 2021, ch. 398](#)), as described in more detail below. The permanency judgment was also revised to combine the two reasonable/active efforts findings related to reunification and finalization of the child's permanent placement.

#### **New ORICWA Requirements**

The changes necessitated by the amendments to ORICWA include the following.

##### (1) Court evaluation of ODHS inquiry.

A new finding is required about whether the Oregon Department of Human Services (ODHS) has made a good faith effort to determine whether the child is an Indian child under ORICWA. Or Laws 2021, ch. 398, §14(4)(a). In an emergency proceeding (protective custody and shelter), the law requires the person to make a good faith effort to "...[d]etermine whether the person has reason to know that the child is an Indian child..." After the shelter hearing, the good faith effort includes, at a minimum, consulting with:

- The child;
- The child's parent or parents;
- Any person having custody of the child or with whom the child resides;
- Extended family members of the child;
- Any other person who may reasonably be expected to have information about the child's membership or eligibility for membership; and
- Any Indian tribe of which the child may be a member or may be eligible for membership in.

Or Laws 2021, ch. 398 §14(1) & (2).

##### (2) Conditions for removal in emergency proceeding.

In an emergency proceeding (request for protective custody order or shelter hearing), the court may not place the child in protective custody (place the child out of home):

- if it finds that ODHS *has not* made a good faith effort to determine whether the child is an Indian child.
- If, when the court has found there is reason to know the child is an Indian child, ODHS *has not* provided notice to the tribe according the ORICWA notice requirements. Or Laws 2021, ch. 398, §§54(7); 56(5)(a)(A). The notice is required to be provided *if the nature of the emergency allows*, by telephone, e-mail, fax or other means of immediate communication, and must include the basis for the child's removal, the time, date and place of the initial hearing and a statement that the tribe has the right to participate in the proceeding as a party or in an advisory capacity. Or Laws 2021, ch. 398, §15(1).

(3) Standard for removal at shelter hearing.

The standard for ordering removal of the child from the home at the time of the shelter hearing has been clarified by SB 562: the court must find by a preponderance of the evidence that protective custody is necessary to prevent imminent physical damage or harm to the child. Consequently, the option to remove the child based on the lesser standard of risk of serious emotional or physical damage to the child has been removed as an option from the shelter order. Or Laws 2021, ch. 398, §56(5)(b)(B).

(4) Tribal customary adoption.

Findings and orders have been added to the permanency judgment to address the new permanency plan option of tribal customary adoption. These include:

- If the plan is something other than reunification, the court must determine whether tribal customary adoption is an appropriate permanent placement for the child (after consulting with the tribe if they are present at the hearing) if reunification is unsuccessful. Or Laws 2021, ch. 398, §65b(2)(e).
- If the court determines that the permanency plan should be adoption, the court's determination that tribal customary adoption is not an appropriate plan for the child. Or Laws 2021, ch. 398, §65b(5)(d).
- If the court determines that the permanency plan should be tribal customary adoption, the court's determination of whether one of the circumstances in ORS 419B.498(2) is applicable. Or Laws 2021, ch. 398, §65b(5)(g).
- If the court determines that tribal customary adoption is an appropriate placement, a place to request the tribe to submit the tribal customary adoption order or judgment. Or Laws 2021, ch. 398, §65b(7)(d).

The revised forms are posted on the [JCIP website](#). A revised version of the ORICWA Benchbook will also be released by the end of January.

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