

Module 7: Voluntary Proceedings

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- Requirements (Inquiry, Verification, Placement Preferences)
- Consent
- Contents of Consent Document
- Withdrawal of Consent to Foster Care
- Withdrawal of Consent to TPR or Adoption

This module is important make sure that the parents/Indian custodians know all of their rights before voluntarily giving up a child and to ensure that these proceedings are truly voluntary, and not just being labeled as voluntary when they are really involuntary.

Module 7: Voluntary Proceedings Requirements

- Requirements in Voluntary Proceedings
 - Inquiry
 - The State court must require the participants in a voluntary proceeding to state on the record whether the child is an Indian child, or whether there is reason to believe the child is an Indian child
 - Verification
 - If there is reason to believe the child is an Indian child, the State court must ensure that the party seeking placement has taken all reasonable steps to verify the child's status with the Tribe

Module 7: Voluntary Proceedings Requirements

- Requirements in Voluntary Proceedings
 - Verification (cont'd)
 - Reasonable steps to verify the child's status
 - Contacting the Tribe of which it is believed the child is a member (or eligible for membership and of which the biological parent is a member) to verify the child's status
 - Where a consenting parent requests anonymity, a Tribe receiving such information must keep relevant documents and information confidential
 - Placement preferences
 - State courts must ensure that the placement for the Indian child complies with §§ 23.129 - 23.132

Module 7: Voluntary Proceedings

Consent

- A parent's or Indian custodian's consent to a voluntary TPR or to a foster-care, preadoptive, or adoptive placement must be executed in writing and recorded before a court of competent jurisdiction
 - Where confidentiality is requested or indicated, execution of consent need not be made in a session of court open to the public but still must be made before a court of competent jurisdiction in compliance with this section
 - A consent given prior to, or within 10 days after, the birth of an Indian child is not valid

Module 7: Voluntary Proceedings Consent

- Prior to accepting the consent, the court must explain to the parent or Indian custodian:
 - (1) The terms and consequences of the consent in detail; and
 - (2) Limitations on withdrawal of consent applicable to the type of child-custody proceeding for which consent is given (see 23.125)
 - Certify that the terms and consequences of the consent were explained on the record in detail in English (or the language of the parent or Indian custodian, if English is not the primary language) and were fully understood by the parent or Indian custodian

Module 7: Voluntary Proceedings

Contents of Consent Document

- If there are any conditions to the consent, the written consent must clearly set out the conditions
- A written consent to foster-care placement should also contain:
 - The name and birthdate of the Indian child;
 - The name of the Indian child's Tribe;
 - The Tribal enrollment number for the parent and for the Indian child, where known, or some other indication of the child's membership in the Tribe;
 - The name, address, and other identifying information of the consenting parent or Indian custodian;
 - The name and address of the person or entity, if any, who arranged the placement; and
 - The name and address of the prospective foster parents, if known at the time

Module 7: Voluntary Proceedings Withdrawal of Consent to Foster Care

- The parent or Indian custodian may withdraw consent to voluntary foster-care placement at any time
 - To withdraw consent, the parent or Indian custodian must file a written document with the court or otherwise testify before the court
 - Additional methods of withdrawing consent may be available under State law
- The court must ensure that the Indian child is returned to that parent or Indian custodian as soon as practicable

Module 7: Voluntary Proceedings

Withdrawal of Consent to TPR or Adoption

- A parent may withdraw consent to voluntary termination of parental rights at any time prior to the entry of a final decree of termination
- A parent or Indian custodian may withdraw consent to voluntary adoption at any time prior to the entry of a final decree of adoption
 - The parent or Indian custodian must file a written document with the court or otherwise testify before the court
 - Additional methods of withdrawing consent may be available under State law
- The court in which the withdrawal of consent is filed must promptly notify the person or entity who arranged any voluntary preadoptive or adoptive placement of such filing, and the Indian child must be returned to the parent or Indian custodian as soon as practicable

Module 7: Voluntary Proceedings

Key Points to Remember

- ICWA does apply to voluntary proceedings
 - Court must ask whether the child is an “Indian child”
 - Court must ensure the agency took all reasonable steps to verify the child’s status with the Tribe
 - The court must apply ICWA’s (or the Tribe’s) placement preferences
 - The parent’s consent may be accepted only if certain protections are in place
 - There are provisions that allow a parent to withdraw consent under certain circumstances