

Module 5: Adjudication of Involuntary Proceedings

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- Overview
- Active Efforts Requirement
- Active Efforts Examples
- Standards of Evidence
- Causal Relationship
- Qualified Expert Witness

This module is important because it includes protections in involuntary proceedings that are aimed at preventing many of the circumstances that led to the passage of ICWA.

Module 5: Adjudication of Involuntary Proceedings Overview

- The court must make certain findings / follow certain procedures before ordering an involuntary foster-care placement or TPR:
 - Active Efforts
 - Standard of Evidence
 - Causal Relationship
 - Qualified Expert Witness

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Active Efforts Requirement

- Active Efforts
 - Before ordering an involuntary foster care placement or TPR, the court must conclude that:
 - Active efforts have been made to prevent the breakup of the Indian family; and
 - Those efforts have been unsuccessful
 - Active efforts must be documented in detail in the record.
 - What are active efforts?
 - Affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family

Module 5: Adjudication of Involuntary Proceeding Active Efforts Requirement

- What are active efforts? (cont'd)
 - Must involve assisting the parent or parents or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan.
 - Should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's Tribe
 - Should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and Tribe
 - Must be tailored to the facts and circumstances of the case

Module 5: Adjudication of Involuntary Proceeding Active Efforts Examples

- Examples of active efforts
 - Conducting a comprehensive assessment of the family's circumstances, with a focus on safe reunification as the most desirable goal;
 - Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;
 - Identifying, notifying, and inviting representatives of the Indian child's Tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues;...

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Active Efforts

- Examples of active efforts (cont'd)
 - Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents;
 - Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's Tribe;
 - Taking steps to keep siblings together whenever possible;...

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Active Efforts Examples

- Examples of active efforts (cont'd)
 - Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;
 - Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources;
 - Monitoring progress and participation in services;...

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Active Efforts Examples

- Examples of active efforts (cont'd)
 - Considering alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available;
 - Providing post-reunification services and monitoring.

Module 5: Adjudications of Involuntary Proceedings Standards of Evidence

- Standards of Evidence
 - Foster-care placement
 - (1) **Clear and convincing evidence,**
 - (2) Including the testimony of qualified expert witness(es),
 - (3) That the child's *continued custody* by the child's parent or Indian custodian is likely to result in "serious emotional or physical damage" to the child
 - TPR
 - (1) **Evidence beyond a reasonable doubt,**
 - (2) Including the testimony of qualified expert witness(es),
 - (3) That the child's *continued custody* by the child's parent or Indian custodian is likely to result in "serious emotional or physical damage" to the child

Module 5: Adjudications of Involuntary Proceedings Standards of Evidence

- Standards of Evidence (cont'd)
 - “Continued Custody” means:
 - Physical custody or legal custody or both,
 - Under any applicable Tribal law or Tribal custom or State law,
 - That a parent or Indian custodian already has or had at any point in the past
 - The biological mother of a child has had custody of a child

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Causal Relationship

- Causal Relationship
 - For a foster-care placement or TPR, the evidence must show a causal relationship between:
 - The particular conditions in the home and
 - The likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child who is the subject of the child-custody proceeding
 - Without a causal relationship, evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself meet the standard of evidence

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Qualified Expert Witness

- Qualified Expert Witness
 - Must be qualified to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child
 - Should be qualified to testify as to the prevailing social and cultural standards of the Indian child's Tribe
 - A person may be designated by the Tribe as being qualified to testify to the prevailing social and cultural standards
 - Court or any party may request the Tribe or BIA's assistance in locating qualified expert witnesses
 - Must not be the social worker regularly assigned to the Indian child

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Key Points to Remember

- Before the court will order a foster-care placement or TPR, the agency must show that it made active efforts to prevent the breakup of the family and that those efforts were unsuccessful
 - Active efforts are affirmative, active, thorough, and timely
 - Should involve partnering with the parents, extended family, and Tribe
- The court must find certain standards of evidence are met before ordering foster-care placement or TPR, and that there is a causal connection between the conditions and the home and likelihood of damage to the child
- A qualified expert witness, who is not the social worker assigned to the child, must testify