

Module 11: Consequences of Violating ICWA

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- Improper Removal
- Vacating Adoption
- Invalidating for ICWA Violations

This module is important to understand some of the legal consequences of failing to comply with the Act.

Module 11: Consequences of Violating ICWA Improper Removal

- If, in the course of any child-custody proceeding:
 - Any party asserts or the court has reason to believe that:
 - The Indian child may have been improperly removed from the custody of his or her parent or Indian custodian, **or**
 - The Indian child has been improperly retained (such as after a visit or other temporary relinquishment of custody)
 - Then the court must expeditiously determine whether there was improper removal or retention

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- If the court finds that the Indian child was improperly removed or retained:
 - Then the court must terminate the proceeding **and**
 - The child must be returned immediately to his or her parent or Indian custodian
 - Unless returning the child to his parent or Indian custodian would subject the child to substantial and immediate danger or threat of such danger

Module 11: Consequences of Violating ICWA Vacating Adoption

- Vacating an adoption because consent was obtained through fraud or duress
 - If a parent files a petition to vacate the final decree of adoption, the court must:
 - Give notice to all parties to the adoption proceedings and the Indian child's Tribe; and
 - Hold a hearing on the petition

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- Vacating an adoption because consent was obtained through fraud or duress (cont'd)
 - If the State court finds the parent's consent was obtained through fraud or duress, and
 - It is within 2 years after a final decree of adoption (or any longer period of time permitted by State law), then:
 - The court must:
 - Vacate the final decree of adoption;
 - Order the consent revoked; and
 - Order that the child be returned to the parent

Module 11: Consequences of Violating ICWA Invalidating for ICWA Violations

- Invalidating for ICWA violations
 - The following may petition any court of competent jurisdiction to invalidate an action for foster-care placement or TPR under state law where it is alleged that 25 U.S.C. 1911, 1912, or 1913 has been violated:
 - An Indian child who is or was the subject of any action for foster-care placement or termination of parental rights;
 - A parent or Indian custodian from whose custody such child was removed; and
 - The Indian child's Tribe

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- Invalidating for ICWA violations (cont'd)
 - Any of these parties may challenge the action based on any violations of 25 U.S.C. 1911, 1912, or 1913 during the course of the child-custody proceeding **even if** that party's rights were not violated
 - Upon a showing that an action for foster-care placement or TPR violated any provision of 25 U.S.C. 1911, 1912, or 1913, the court must determine whether it is appropriate to invalidate the action

Module 11: Consequences of Violating ICWA Key Points to Remember

[Key Points to Remember being
developed]

Module 11: Consequences of Violating ICWA

- A court may terminate a proceeding if the child was improperly removed
- A court may vacate an adoption if consent was obtained through fraud or duress
- The child, parent (or Indian custodian), or Tribe may challenge the action based on any violations of 25 U.S.C. 1911, 1912, or 1913 even if that party's rights were not violated