LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS

CHILDREN'S CODE II

CHILDREN'S CODE

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Section 1 SHORT TITLE, PURPOSE AND DEFINITIONS

A. Short Title

This code shall be entitled "The Children's Code".

B. Purpose

The Children's Code shall be liberally interpreted and construed to fulfill the following purposes:

- 1. To provide for the welfare, care and protection of the children and families within the jurisdiction of the Lac Vieux Desert Band of Lake Superior Chippewa Indians, (hereinafter referred to as "tribe");
- 2. To preserve the unity of the family, preferably by separating the child from his parents only when necessary;
- 3. To take such actions that will best serve the spiritual, emotional, mental and physical welfare of the child and the best interest of the tribe to prevent the abuse, neglect and abandonment of children;
- 4. To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community based alternatives;
- 5. To secure the rights of and ensure fairness to the children, parents, guardians, custodians and other parties who come before the Children's Court under the provisions of this Code;
- 6. To provide procedures for intervention in state court procedures regarding Indian children and for transfer of jurisdiction over Indian children from state and other tribal courts to this tribal court;
- 7. To recognize and acknowledge the tribal customs and traditions of the tribe regarding child rearing;

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8. To preserve and strengthen the child's cultural and ethnic identity whenever possible.

C. Definitions

As used in this Code:

- 1. "Adult": A person eighteen (18) years of age or older, or otherwise emancipated by order of a court of competent jurisdiction.
- 2. "Child": A person who is less than eighteen (18) years old and has not been emancipated by order of a court of competent jurisdiction.
- 3. "Child Born Out of Wedlock": A child conceived and born to a woman who is unmarried from the conception to the birth of the child, or a child determined by judicial notice or otherwise to have been conceived or born during a marriage but who is not the issue of that marriage.

4. "Child-in-Need-of-Care": A child:

a. Who has no parent(s), guardian, or custodian available and willing to care for him;

b. Who has suffered or is likely to suffer a physical injury, inflicted upon by him by other than accidental means, which causes or creates a substantial risk of death, disfigurement, or impairment of bodily function;

(c. Whose parent(s), guardian or custodian has not provided adequate food, clothing, shelter, medical care, education, or supervision necessary for his health and well being;

- d. Who has been sexually abused;
- e. Who has committed delinquent acts as a result of parental pressure, guidance, approval or failure to properly supervise; or
- f. Who has been emotionally abused or emotionally neglected;
- g. Who is born addicted to alcohol or exposed to a controlled substance.
- 5. "Child Protection Team": A team established to involve and coordinate the child protection services of various agencies as set forth in Section 8 of this Code.
- 6. "Indian Child Welfare Act Committee": A committee appointed by the Tribal Council to protect the best interests of the children of the tribe and promote the stability and security of the tribe.
- 7. "Controlled Substance": Cocaine, heroine, phencyclidine, methamphetamine, or amphetamine or their derivatives.

- 8. "Court" or "Children's Court": The Children's Court of the tribe.
- 9. "Court Appointed Special Advocate" (CASA): A person appointed by the Court to represent the interests of a child who is before the Court.
- 10. "Custodian": A person, other than a parent or guardian, to whom legal custody of the child has been given.
- 11. "Domicile": A person's permanent home, legal home or main residence. The domicile of a child is generally that of the custodial parent, guardian, or custodian. Domicile includes the intent to establish a permanent home or the place where the parent, guardian or custodian considers to be his permanent home.
- 12. "Extended Family": A person who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, the first or second cousin, or stepparent.
- 13. "Father": Means:
 - a. A man married to the mother at any time from a minor's conception to the minor's birth unless the minor is determined to be a child born out of wedlock;
 - b. A man who legally adopts the minor, or
 - c. A man whose paternity is established in one of the following ways within time limits, when applicable, set by the Court pursuant to this subchapter:
 - i. The man and the mother of the minor acknowledge that he is the minor's father in a writing executed and notarized and filed in the Tribal or Probate Court.
 - ii. The man and the mother file a joint written request for a correction of the certificate of birth pertaining to the minor that results in issuance of a substituted certificate recording the birth.
 - iii. The man acknowledges the minor, without the acknowledgment of the mother, with the approval of the Court; or
 - iv. A man who by order of filiation or by judgment of paternity is determined to be the father of the minor.

- 14. "Guardian": A person assigned by a court of law, other than a parent, having the duty and authority to provide care and control of a child as set forth in chapter 2-25 of this Code.
- 15. "He/His": The use of he/his means he or she, his or her, and singular includes plural.
- 16. "Indian": Any member of a federally recognized Indian tribe, band or community, or Alaska natives, any member of a historic tribe or band recognized by the Michigan State Indian Commission, or a person considered by the community to be Indian.
- 17. "Indian Child": A child who is a member of a tribe or band that is acknowledged to exist as a tribe or band by the United States Secretary of the Interior or a historic tribe or band recognized by the Michigan State Indian Commission, or a child who is eligible for such membership who is the natural child of at least one parent who is a member or eligible for membership in such tribe or band.
- 18. "Least Restrictive Alternative": The placement alternative which is the least restrictive method, in terms of restrictions to be placed upon the child and family, of obtaining the objectives of the Court and this Code.
- 19. "Parent": A person who is legally responsible for the control and care of the minor, including a mother, father, guardian, or custodian, including a natural or adoptive parent, but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.
- 20. "Protective Services Worker": The Protective Services worker, Social Services worker, Law Enforcement personnel or any person who performs the duties and responsibilities set forth in Section 7 of this Code.
- 21. "Tribe": The Lac Vieux Desert Band of Lake Superior Chippewa Indians.

22. "Tribal Council": The Tribal Council of the tribe.

23. "Tribal Court": The Tribal Court of the tribe.

Section 2 JURISDICTION OF THE CHILDREN'S COURT

A. Creation of Children's Court

There is hereby established for the tribe of the Lac Vieux Desert Reservation a Court to be known as the Lac Vieux Desert Children's Court. The jurisdiction of the Children's Court shall be civil in nature and shall include the right to issue all orders necessary to insure the safety and well-being of children who have been declared to be wards of the Children's Court. The Children's Court shall also have the power to enforce subpoenas and orders of restriction, fines, contempt, confinement and other orders as appropriate.

B. General Jurisdiction

The Children's Court shall have jurisdiction over the following persons:

- 1. An enrolled member of the tribe under the age of eighteen (18) years.
- 2. A person under the age of eighteen (18) years who is eligible for enrollment in the tribe.
- 3. A child of enrolled members of the tribe or other Indians, as defined in Section 1(C) (19) of this Code, including adopted children.
- 4. A non-Indian child residing within the exterior boundaries of the reservation in the home of an enrolled member of either the Lac Vieux Desert tribe or any other Indian tribe.
- 5. Any person causing a child to come within the jurisdiction of this Code.
- An Indian or non-Indian residing on the reservation who is pregnant and abusing alcohol or controlled substances.

C. Jurisdiction Over Extended Family

- 1. Where the Children's Court asserts jurisdiction over a person under Section 2(A) or (b) above, the Court shall also have jurisdiction over the person's extended family residing in the household whenever that Court deems it appropriate.
- 2. The Children's Court shall have jurisdiction over any adult whose behavior causes or tends to cause the child to come within or remain within the jurisdiction of the Court. Jurisdiction requires that such person be provided notice and opportunity for hearing.

D. Continuing Jurisdiction

Once the Court asserts jurisdiction over a person under Section 2(A)(B) or (C), the Court may retain jurisdiction over that person even if he leaves the physical boundaries of the reservation.

Section 3 TRANSFER OF JURISDICTION

A. Application of the Indian Child Welfare Act

The Children's Court may apply the policies of the Indian Child Welfare Act, 25 U.S.C. 1091-1963, where they do not conflict with the provisions of this Code. The procedures for state courts in the Indian Child Welfare Act shall not be binding upon the Children's Court except where specifically provided for in this Code.

B. Transfer to State Court or Other Tribal Court

In any proceeding before the Children's Court, the Court may transfer the proceedings to an appropriate state court or another tribal court where the state or the other Indian tribe has a significant interest in the child and the transfer would be in the best interest of the child.

C. Transfer from Other Courts

The Children's Court may accept or decline, under the procedures set forth in this Code, transfers of child welfare cases from other federal, state or tribal courts.

D. Procedures for Transfer from State Court

- 1. Receipt of Notice: The tribal agent for service of notice of state court child custody proceedings, as required by the Indian Child Welfare Act, shall be the Tribal Social Service Department and the Chair of the Indian Child Welfare Committee.
- 2. Intervention: The Tribal Social Services Department shall cause a motion to intervene to be filed with the state court within five days of receipt of notice.
- **3.** Investigation and Pre-Transfer Report by the Court Counselor: The Tribal Social Services Department shall conduct an investigation and file a written report with the Indian Child Welfare Act Committee.
- 4. Decision to Transfer: The Indian Child Welfare Act Committee shall make written recommendations to the tribal attorney on whether or not the tribe should petition for transfer from the state court. The Indian Child Welfare Act Committee shall consider these factors:

- a. The best interests of the child,
- b. The best interests of the tribe,
- c. Availability of services for the child and his family, and
- d. The prospects for permanent placement for the child.
- 5. Petition for Transfer: The tribal petition for transfer shall be filed by the tribal attorney within 5 days of receipt of recommendations from the Indian Child Welfare Act Committee with a copy sent to the Tribal Court. If there is no tribal attorney, the Indian Child Welfare Act Committee shall file the petition for transfer.
- 6. Acceptance of Transfer: The Children's Court has discretion whether to accept or deny transfer and may accept a transfer from state court if:
 - a. A parent or Indian custodian's petition to state court for transfer is granted, or;
 - b. The tribe's petition to state court for transfer is granted.
- 7. Hearing(s): Upon receipt of transfer jurisdiction from state court, the Tribal Court shall hold appropriate hearings in accordance with this Code.

E. Full Faith and Credit; Conflict of Laws

- 1. State Court Orders: State child custody orders involving children over whom the Children's Court could take jurisdiction may be recognized by the Children's Court only after a full independent review of such state proceedings has determined:
 - a. The state court had jurisdiction over the child, and;
 - b. The provisions of the Indian Child Welfare Act, 25 U.S.C. 1091-1963, were properly followed, and;
 - c. Due process was provided to all interested persons participating in the state proceeding, and;
 - d. The state court proceeding does not violate the public policies, customs, or common law of the tribe.
- 2. Court Orders of Other Tribal Courts: Court orders of other Tribal Courts involving children over whom the Children's Court could take jurisdiction shall be recognized by the Children's Court after the Court has determined:

- a. that the other tribal court exercised proper subject matter and personal jurisdiction over the parties, and;
- b. due process was accorded to all interested parties participating in the other tribal court proceeding.
- 3. Tribal Interest: Because of the vital interest of the tribe in its children and those children who may become members of the tribe, the statutes, regulations, public policies, customs and common law of the tribe shall control in any proceeding involving a child who is a member of the tribe.

Section 4. PROCEDURES AND AUTHORIZATIONS

A. Rules of Procedure

The procedures in the children's court shall be governed by the rules of procedure for the tribal court which are not in conflict with this Code.

B. Cooperation and Grants

The Children's Court is authorized to cooperate fully with any federal, state, tribal, public or private agency in order to participate in any foster care, shelter care, treatment or training program(s) and to receive grants-in-aid to carry out the purposes of this Code. This authority is subject to the approval of the tribal council if it involves an expenditure of tribal funds.

C. Social Services

The children's court shall utilize such social services as may be furnished by any tribal, federal, or state agency provided that it is economically administered without unnecessary duplication and expense.

D. Contracts

The Children's Court may negotiate contracts with tribal, federal or state agencies and/or departments on behalf of the Tribal Council for the care and placement of children before the Children's Court subject to the approval of the Tribal Council before the expenditure of tribal funds.

Section 5. CHILDREN'S COURT PERSONNEL

Children's Court Judge

1. Appointment

A.

The Children's Court Judge(s) shall be the Tribal Court Judge or Tribal Magistrate.

2. Qualifications

The general qualifications for the Children's Court judge shall be the same as the qualifications for Tribal Court judge or magistrates.

3. Powers and Duties

In carrying out the duties and powers specifically enumerated under this child/family protection code, judges of the Children's Court shall have the same duties and powers as judge of the Tribal Court, including, but not limited to, the contempt power, the power to issue arrest or custody warrants, and the power to issue search warrants.

4. Disqualification or Disability

The rules on disqualification or disability of a Children's Court judge shall be the same as those rules that govern tribal court judges.

B. [Reserved]

C. Counsel for Parents

Parents may be represented at each stage of proceedings under this act by an attorney or lay advocate at their own expense. It is prudent and advisable for the parents to have representation.

D. Child Advocate

1. At every stage of the proceedings conducted under this Code the Children's Court may appoint an advocate for the child who may be a lawyer or a Court Appointed Special Advocate (CASA). A person may serve as a CASA only if certified by the Indian Child Welfare Act Committee.

- 2. The duty of the child's advocate, both CASA and child's lawyer, is to represent the interests of the child. A child, fourteen years of age or older is presumed capable of determining what is in his or her best interests. It is the duty of the child's advocate to represent the child's wishes in such cases. For children less than fourteen years of age, the child's advocate shall make a determination as to the best interests of the child regardless of whether that determination reflects the wishes of the child. However, the wishes of the child are always relevant to the determination of best interests and shall be weighed according to the competence and maturity of the child.
- 3. The child's advocate shall perform the following duties. When a child's attorney and a CASA are appointed to represent a child together, each shall be jointly and severally responsible for discharging the duties.
 - a. Appear at all hearings to represent competently the interests of the child in proceedings before the Court.
 - b. Conduct an independent investigation, including interviewing the child, parents, social workers, and other persons to properly ascertain the facts and circumstances underlying the allegation that the child is a minor in need of care within the jurisdiction of the Court.
 - c. Ascertain the interests of the child, taking into consideration the child's wishes according to the competence and maturity of the child.
 - d. Provide a written report of findings and recommendations to the court at each hearing held before the court.
 - e. Urge that specific and clear orders are entered for evaluation assessment, services and treatment for the child and his family.
 - f. Monitor implementation of case plans and dispositional orders to determine whether services ordered by the Court are actually provided, are provided in a timely manner, and are accomplishing their desired goal.
 - g. Inform the Court if the services are not being made available to the child and/or family, if the family fails to take advantage of such services, or if such services are not achieving their purposes.
 - h. Identify the common interests among the parties and, to the extent possible, act as mediator to promote a cooperative resolution of the matter.
 - i. Consult with other professionals liberally in identifying the child's interests, current and future placements and necessary services.

- j. Advocate for the interests of the child in mental health, educational, juvenile justice, and other community systems when related to the circumstances causing the child to come within the minor need of care jurisdiction of the Children's Court.
- k. Attend training programs as prescribed by the Indian Child Welfare Act Committee.

All records and information acquired or reviewed by a Child Advocate and all reports prepared by the Child Advocate are confidential and shall be disclosed only pursuant to this Code and other tribal law.

The court may appoint a guardian ad litem for a party if the Court finds that the welfare of the party requires it.

4.

INDIAN CHILD WELFARE ACT COMMITTEE

In addition to other powers and duties under the tribal code, the tribe may confer upon said committee. The Indian Child Welfare Act Committee shall:

- 1. Advise the tribal government on child welfare matters and recommend policies and procedures for implementing federal and tribal child welfare law.
- 2. Monitor child welfare proceedings involving tribal members in the state or tribal courts.
- 3. Receive notifications of pending state court proceedings as provided in the Indian Child Welfare Act and make recommendations regarding intervention in such proceedings and transfer of jurisdiction from state court to the tribal court.
- 4. Conduct informal adjustment conferences with a child and the child's parent(s), guardian, or custodian, as provided in this Code, to discuss alternatives to formal Court jurisdiction for resolving concerns about the proper care and supervision of a child.
- 5. Authorize the filing of child-in-need-of-care petitions in the Tribal Court pursuant to this Code.
- 6. Make case management recommendations to the tribal social services workers, placement agency workers and the tribal prosecuting attorney regarding the care, custody and supervision of tribal children under court jurisdiction, including recommendations as to case plan, guardianship, termination of parental rights and guardianship.
- 7. License and supervise group, shelter, foster and adoptive homes and child placing agencies.
- 8. Engage in further activities as to protect and improve the welfare of the children of the tribe of the Indians.
- 9. Certify persons to serve as Court Appointed Special Advocates (CASAs).

Voting

B.

C.

Section 6

A.

Actions of the Indian Child Welfare Act Committee shall be decided by a majority vote of those present at the meeting. The chair is entitled to vote on this matter.

Committee Members are not Investigators

Indian Child Welfare Act Committee members shall not initiate on their own, the gathering of information regarding the matter under review.

All members shall have access to the same information. If Indian Child Welfare Act Committee members are contacted outside of a review by an interested party, he or she shall refer the party to the caseworker, social worker, client advocate, or the Foster Care Program office as appropriate. The committee may, however, request that further information be provided or that further investigation be conducted by the social worker or other appropriate authority.

Conflicts of Interest

D.

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А.

- 1. Indian Child Welfare Act Committee members who are foster parents or child advocates may not participate as committee members in the review of children who are in their own care.
- 2. An Indian Child Welfare Act Committee member may participate in the discussion but need not vote on actions involving the committee member's extended family.

Confidentiality

- 1. Meetings of the Indian Child Welfare Act Committee shall not be open to the public, except for persons authorized to attend by the Indian Child Welfare Act Committee.
- 2. Confidentiality of case information and other Indian Child Welfare Act Committee records shall be maintained. Indian Child Welfare Act Committee members are subject to the same standards of confidentiality as other court personnel, Department of Social Service workers and other professions working in the foster care system.
- 3. Case materials and all other Indian Child Welfare Act Committee records shall be kept in a secure area. The chair shall collect case plan packets at the conclusion of Indian Child Welfare Act Committee hearings so that no reports leave the meeting and all written reports are maintained in confidence. Written material may be provided to committee members in advance of meetings, however.

Section 7 PROTECTIVE SERVICES WORKERS

Power and Duties:

- 1. Protective Services workers shall be employed by the Tribal Social Services Department.
- 2. The department shall cooperate with such state and community agencies as are necessary to achieve the purposes of this Code. The department may negotiate working agreements with other jurisdictions. Such agreements shall be subject to ratification by the Tribal Council or its designate.

- 3. A Protective Services worker shall:
 - a. Receive from any source, oral or written, information regarding a child who may be a child-in-need-of-care.
 - b. Upon receipt of any report or information under subsection 3(a), within 24 hours initiate a prompt and thorough investigation which shall include a determination of the nature, extent, and cause of any condition which is contrary to the child's best interests and the name, age, and condition of other children in the home.
 - c. In conducting its investigation, the Protective Service worker shall seek the assistance of and cooperate with law enforcement officials within 24 hours after becoming aware that 1 or more of the following conditions exist.
 - i. Abuse or neglect is the suspected cause of a child's death.
 - ii. The child is the victim of suspected sexual abuse or sexual exploitation.
 - iii. Abuse or neglect resulting in severe physical injury to the child requires medical treatment or hospitalization. For purposes of this subsection "severe physical injury" means brain damage, skull or bone fracture, subdural hematoma, dislocation, sprains, internal injuries, poisoning, burns, scalds, severe cuts, or any other physical injury that seriously impairs the health or physical well-being of a child.
 - iv. Law enforcement intervention is necessary for the protection of the child, the Protective Services worker, or another person involved in the investigation.
 - v. The alleged perpetrator of the child's injury is not a person responsible for the child's health or welfare.

- d. Take a child into temporary custody if necessary pursuant to Section 11. Law enforcement officials shall cooperate with Social Services personnel to remove a child from the custody of his parents, guardian, or custodian when necessary.
- e. After investigation, evaluate and assess the home environment of the child or children in the same home and the risk to such children if they continue to be subjected to the existing home environment and all other facts or matters found to be pertinent.
- f. Substantiate whether there is probable cause to believe that the child is a child-in-need-of-care.
- g. Offer to the family of any child found to be a child-in-need-of-care appropriate services which may include, but shall not be restricted to, Protective Services.
- h. Within 30 days after a referral of a potential child-in-need-of-care, submit a written report of his investigation and evaluation which shall be included in the files maintained by the Tribal Social Service Department and shall include a determination as to whether the report was substantiated or unsubstantiated.
- i. Upon completion of the investigation by the local law enforcement agency or the Protective Services worker, the law enforcement agency or Protective Services worker may inform the person who made the report as to the disposition of the report.
- 4. Law enforcement officials shall cooperate with the Protective Services worker and the Tribal Social Services Department in conducting investigations pursuant to this section.
- 5. If Protective Services receives a report which alleges a pregnant woman's abuse of alcohol or a controlled substance, Protective Services shall arrange an appropriate assessment and offer services indicated under the circumstances. Services offered may include, but are not limited to, a referral for chemical dependency-assessment, a referral for chemical dependency treatment if recommended, and a referral for prenatal care. Protective Services may also seek court-ordered services under Section 10. Protective Services shall seek court-ordered treatment under Section 10 if the pregnant woman refuses recommended voluntary services or fails recommended treatment.

B. Limitations of Authority; Duty to Inform

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- 1. Before offering protective services to a family, a worker shall inform the family that he has no legal authority to compel the family to receive such services.
- 2. If the family declines the offered services, the worker may request authorization of the Child Welfare Committee to initiate a child protection petition in Children's Court alleging that the child is a child-in-need-of-care.
- 3. Nothing in this section limits the authority of the Protective Services worker to act in emergency situations pursuant to Section 11 or to obtain a medical evaluation of the child pursuant to Section 9.

Section 8 CHILD PROTECTION TEAM

A. Purpose

The child protection team is technical and advisory in nature, and is not intended to replace the authority and responsibility of the Indian Child Welfare Act Committee, individual agencies or the court. It is designed to promote cooperation, communication, and consistency among agencies. The child protection team shall facilitate the decision making process. Confidentiality shall be maintained by all child protection team members.

B. Duties

The child protection team shall:

- 1. Monitor child abuse and neglect activities to ensure that adequate preventative, protective and corrective services are provided.
- 2. Review and track all child abuse and neglect cases which have been referred.
- 3. If requested by the Indian Child Welfare Act Committee, a Protective Services worker or the Court, investigate cases to determine whether the best interests of the child are being met.
- 4. If requested by the Indian Child Welfare Act Committee, review case plans for their adequacy.
- 5. Maintain confidentiality of information.
- 6. Send local child protection team data to area child protection teams.

C. Facilitating Services

- 1. Identify available community resources, programs and services.
- 2. Provide recommendations to various pertinent agencies.
- 3. Promote cooperation, communication and consistency among agencies.
- 4. Provide a forum for debating what actions would best promote the well-being of Indian children.

5. Respond to inquires from the community, area child protection teams, and other individuals and groups.

Providing Technical Assistance

D.

- 1. Develop procedures to provide effective and efficient preventive, protective, and corrective child abuse and neglect services.
- 2. Provide information and technical recommendations to decision making agencies.
- 3. Educate communities about child abuse and neglect problems and solutions.
- 4. Identify danger signs which prompt intervention and/or preventive actions.
- 5. Assist in the development and implementation of plans to promote the long term well-being of children and their families.
- 6. Assist in the development and implementation of strategies by communities to create environments which provide opportunities for community members to lead meaningful, productive, self fulfilling and rewarding lives. These environments should promote the dignity, self-worth, self-respect, and self-sufficiency of community members.

Section 9 Duty to Report Child Abuse and Neglect

A. Duty to Report

Any person who has a reasonable cause to suspect that a child is a child-in-need-of-care shall immediately make a report to the Tribal Social Services Department or the Tribal Law Enforcement Department. Those persons reporting, except those specified in Section B below, may remain anonymous.

B. Persons Specifically Required to Report

1. Any physician, nurse, dentist, optometrist, or any other medical or mental health professional including a community health representative; volunteers working with families; school principal, school teacher, or other school official; social worker; child day care center worker or other child care staff including foster parents, residential care or institutional personnel; counselor, peace officer or other law enforcement official; member of the Child Welfare Committee, member of the Child Protection Team; who has reasonable cause to suspect that a child may be a child-in-need-of-care shall make immediately, by phone or otherwise, an oral report, or cause an oral report to be made, of the suspected condition to the Tribal Social Services Department or Tribal Law Enforcement Department.

- 2. A person mandated to report under S9(B)(1) shall immediately report to the Tribal Social Services Department if the person knows or has reason to suspect that a woman is pregnant and has abused alcohol or used a controlled substance for a nonmedical purpose during the pregnancy.
- 3. Within 72 hours after making the oral report, the reporting person mandated to report under this section shall file a written report as required in this Code. If the reporting person is a member of the staff of a hospital, agency, or school, the reporting personnel shall notify the person in charge of the hospital, agency, or school of his or her finding and that the report has been made, and shall make a copy of the written report available to the person in charge. One report from a hospital, agency, or school shall be considered adequate to meet the reporting requirement. A member of the staff of a hospital, agency, or school shall be considered adequate to meet the reporting requirement. A member of the staff of a hospital, agency, or school shall be to the staff of a hospital, agency, or school shall be considered adequate to meet the reporting requirement. A member of the staff of a hospital, agency, or school shall not be dismissed or otherwise penalized for making a report required by this act or for cooperating in an investigation.

C. Immunity from Liability

All persons or agencies complying in good faith with the provisions of this act shall be immune from civil liability and criminal prosecution.

D. Abrogation of Privilege

Any legally recognized privileged communication except that between attorney and client is abrogated and shall neither constitute grounds for excusing a report otherwise required to be made for excluding evidence in a civil child protective proceeding resulting from a report made pursuant to this act.

E. Penalty for Not Reporting

Any person mandated to report under S9(B) who knowingly fails to do so or willfully prevent someone else from doing so shall be subject to a charge of civil contempt with a penalty of up to 60 days in jail and/or a fine of up to \$500.00.

F. Abuse and Neglect Reports

- 1. Form of Report: Those persons mandated to report under Section 9(B) above shall include the following information in the written report:
 - a. Names, addresses, and tribal affiliation of the child and his parents, guardian or custodian.
 - b. The child's age.
 - c. The nature and content of the child's abuse or neglect.
 - d. Previous abuse or neglect of the child or his siblings.
 - e. The name, age, and address of the person alleged to be responsible for the child's abuse or neglect.
 - f. The name and address of the person or agency making the report.

G. Medical Examinations

- 1. The Tribal Social Services Department may request a court order for a medical evaluation of a child pursuant to Section 11 of this Code. The department shall have a medical evaluation done without a court order if the child's health is seriously endangered and a court order cannot be obtained.
- 2. When a child suspected of being a child-in-need-of-care is seen by a physician, the physician shall make the necessary examinations, which may include physical examinations, x-rays, photographs, laboratory studies, and other pertinent studies.
- 3. The physician shall immediately report the results of the evaluation to the department, Law Enforcement and the Court, if requested to do so. The physician's written report to the department shall contain summaries of the evaluation.

Section 10. DRUG ABUSE DURING PREGNANCY

- A. The Children's Court may take jurisdiction of a pregnant woman who has engaged in abuse of alcohol or a controlled substance upon a showing of preponderance of the evidence that the woman is pregnant and abusing alcohol or controlled substances.
- B. Upon assuming jurisdiction, the Court may enter orders regarding such person requiring her to refrain from drug abuse, submit to reasonable measures to assure her nonuse, and comply with community based or in-patient treatment programs. Such court orders may be enforced through the court's civil contempt power.
- C. Information made available pursuant to a Children's Court order regarding a woman's drug use during pregnancy may not be used in a criminal prosecution against the woman.

Section 11 INVESTIGATION AND EMERGENCY REMOVAL

A. Investigative Orders; Orders for Examination

Upon a showing of probable cause to believe that a child is a child-in-need-of-care, which may be done ex parte, the Court may order further investigation and discovery including but not limited to taking of photographs, gathering physical evidence, and examinations or evaluations of a child, parent, guardian or custodian, by a physician, dentist, psychologist, or psychiatrist.

B. Authority to Remove

- 1. Upon application by any person which may be ex parte, if the Court finds probable cause to believe the minor is a child-in-need-of-care and that the conditions in which the child is found present a substantial risk of harm to the child's life, physical health or mental well-being, the Court may order the child be taken into custody. The Court may include in such an order:
 - a. an authorization to enter specified premises to remove the child, and
 - b. a directive to place the child in protective custody pending preliminary hearing.

C. Emergency Removal Without A Court Order

1. A child may be taken into protective custody without a court order by a Law Enforcement officer or the Tribe's Protective Services worker if such person has probable

cause to believe the child is a child-in-need-of-care, and

- a. Failure to remove the child may result in a substantial risk of death, serious injury, or serious emotional harm, or;
- b. The parent, guardian or custodian is absent and it appears, from the circumstances, that the child is unable to provide for his own basic necessities of life, and, no satisfactory arrangements have been made by the parent, guardian or custodian to provide for such necessities and no alternative arrangements except removal are available to protect the child.
- 2. If grounds for removal are corrected, the child may be returned to the parent by the person originally authorizing removal or by the Protective Services worker.

Section 12 NOTICE OF REMOVAL

A. Notice to the Children's Court

After a child is removed from his home, the person who removed the child shall attempt to contact the Children's Court within six (6) hours. The attempt to contact the court shall be documented. Actual notice to the court shall be made, by the removing person no later than 12:00 p.m. (noon) the next court working day.

B. Notice to the Parent, Guardian or Custodian

The person removing the child shall make all reasonable efforts to notify the parents, guardian or custodian, within 12 hours of the child's removal. Reasonable efforts shall include personal, telephone and written contacts at their residence, place of employment, or other location where the parent, guardian or custodian is known to frequent with regularity. If the parent, guardian or custodian cannot be found, notice shall be given to members of the extended family of the parent, guardian or custodian and/or the extended family of the child.

C. Notice to Child's Tribe If Different From Tribe Whose Court is Exercising Jurisdiction

If the Tribal Court asserts jurisdiction over a person who is a member of an Indian tribe or historic band other than the tribe, the Tribal Court shall notify the Tribal Court of the non-Tribal member that jurisdiction has been asserted.

Section 13. PLACEMENT OF CHILDREN

A. Restrictions

A child alleged to be a child-in-need-of-care shall not be placed in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be juvenile offenders.

B. Placement Priorities

A child may be placed in the following community based shelter-care facilities listed in order of preference:

- 1. Members of the child's extended family.
- 2. An Indian family of the same tribe as the child which is licensed as a foster home or an Indian family otherwise authorized by law to provide care for the child.
- 3. A facility operated by a licensed child welfare services agency, or
- 4. Any other suitable placement which meets the standard for shelter care facilities established by the Tribal government.

C. Least Restrictive Setting

If a child cannot be returned to his parents, the child shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed in reasonable proximity to his home, taking into account any special needs of the child.

Section 14. CHILD WELFARE COMMITTEE INFORMAL ADJUSTMENT CONFERENCE

A. Before and/or after the filing of a petition, the Indian Child Welfare Act Committee or its designee may hold an informal conference with the minor and the minor's parent(s), guardian, or custodian to discuss alternatives to the filing of a petition if:

- 1. An informal adjustment of the matter would be in the best interest of the minor and the tribe; and
- 2. The minor and the minor's parent(s), guardian, or custodian consent to an informal adjustment conference after they have received an explanation of their rights.
- **B.** This section does not authorize the Indian Child Welfare Act Committee or its designee to compel any involuntary action of the parties involved.
- C. At the informal adjustment conference, the Indian Child Welfare Committee or its designee, (with the voluntary agreement of the parties), may:
 - 1. Refer the child and the child's parent(s), guardian or custodian to a community agency for assistance; or
 - 2. Define terms of supervision calculated to assist and benefit the child, which regulate the child's activities and are within the ability of the child to perform.
- **D.** The Indian Child Welfare Act Committee or its designee shall set forth in writing, conference findings and the disposition agreed to by the parties. The report shall be made available to and signed by the child, child's parent, guardian, or custodian. The child advocate, parent's attorney and the Court, if a petition has been filed, shall also receive copies of the report.
- E. If an informal adjustment is agreed to, the Indian Child Welfare Act Committee may decline to authorize filing a petition, hold its petition in abeyance or withdraw a petition and refile at a later date without prejudice.
- **F.** Any disposition arranged through the informal adjustment procedure of this section shall be concluded within six (6) months.
- G. The Indian Child Welfare Act Committee or its designee shall review the minor's progress every thirty (30) days. If, at any time after the initial thirty (30) day period, the Committee concludes that positive results are not being achieved, the Committee shall direct the Protective Service worker to file a petition for a formal adjudicatory hearing.
- **H.** No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing or any other proceeding involving the minor under this Code.

Section 15. FILING CHILD PROTECTION PETITION

Authorization to File Petition

- 1. Upon authorization by the Indian Child Welfare Act Committee, the prosecutor or child Protective Services worker shall initiate formal child protection proceedings by filing a child protection petition on behalf of the tribe and in the best interests of the child.
- 2. Any person may file a petition with the Children's Court alleging that a child is a child-in-need-of-care.
- 3. Nothing in this section shall preclude Law Enforcement or Protective Services personnel from taking emergency action under Section 11 of this Code.

B. Time Limitations

If a child has been removed from the home, then a child protection petition shall be filed with the Children's Court no later than 12:00 p.m. (noon) of the second court working day following the removal.

C. Contents of Petition

The child protection petition shall set forth the following with specificity:

- 1. The name, birth date, sex, residence and tribal affiliation of the child;
- 2. The basis for the court's jurisdiction;
- 3. The specific allegations which cause the child to be a child-in-need-of-care;
- 4. A plain and concise statement of the facts upon which the allegations of child-in-need-of-care are based, including the date, time and location at which the alleged facts occurred;
- 5. The names, residences and tribal affiliation of the child's parents, guardians or custodians, if known;
- 6. The names, relationship and residences of all known members of the child's extended family and all former care givers, if known, and;
- 7. If the child is placed outside of the home, where the child is placed, the facts necessitating the placement and the date and time of the placement.

Section 16. NOTICE AND SERVICE OF SUMMONS

A. General

Unless a party must be summoned as provided in subsection (B), a party shall be given notice of a proceeding in Children's Court in any manner authorized by this Children's Code or the laws of the Tribal Court.

B. Summons

- 1. In a Children's Court proceeding, the summons shall be issued and served on the parent, and the person with whom the child resides, if other than a parent or a court-ordered custodian, directing such person to appear with the child for trial. The Court may direct that the child's appearance in Court is unnecessary.
- 2. In a proceeding for termination of parental rights, the summons must be issued and served on the parent and the person with whom the child resides, if other than the parent or a courtordered custodian, for a hearing on a petition seeking the termination of parental rights. The court may direct that the child's appearance in Court is unnecessary.
- 3. Contents. The summons shall direct the person to whom it is addressed to appear with the child (unless the child's appearance has been excused) at a time and place specified by the Court and must:
 - (a) Identify the nature of hearing;
 - (b) Include a prominent notice that the hearings could result in termination of parental rights; and
 - (c) Have a copy of the petition attached to the summons.
- 4. Manner of Serving Summons
 - (a) Except as provided in subrules (B)(4)(b) and (c), a summons required under this section must be served by delivering the summons to the party personally.
 - (b) If personal service of the summons is impracticable or cannot be achieved, the Court may direct that it be served by registered or certified mail addressed to the last known address of the party, return receipt requested, and restricted to the addressee.

- (c) If the Court finds service cannot be made because the whereabouts of the person to be summoned has not been determined after reasonable effort, the Court may direct any manner of substituted service, including publication.
- (d) If personal service of the summons is impracticable or cannot be achieved the Court may direct that it be served in a manner reasonably calculated to provide notice.
- 5. Time of Service
 - (a) A summons shall be served at least:
 - (i) 7 days before adjudication,
 - (ii) 14 days before hearing on a petition to terminate parental rights.
 - (b) If the summons is served by registered mail, it must be sent at least 7 days earlier than subsection (a) requires for personal service of a summons.
 - (c) If service is by publication, the published notice, which does not require publication of the petition itself, shall appear in a newspaper in the county where the party resides, if known, and, if not, in the county where the action is pending. The published notice must appear one or more times 14 days before the hearing.

C. Notice of Hearing

- 1. Persons Entitled to Notice. The Court shall insure that the following persons are notified of each hearing:
 - (a) the parent or parents,
 - (b) the attorney for the parent,
 - (c) the child or the advocate for the child,
 - (d) the legal guardian or custodian other than the parent, if any,
 - (e) the petitioner,
 - (f) the responsible child placing agency, if different from the petitioner,
 - (g) the guardian ad litem of a party appointed pursuant to this Code,
 - (h) any other person the Court may direct to be notified.

- General. Notice of hearing must be given in writing which may be on the record or mailed to the last known address at least 7 days prior to the hearing except as provided in subsections (C)(3) and (C)(4), or as otherwise provided in these rules.
- 3. Preliminary hearing. When a child is placed, reasonable efforts shall be made to notify the parents of the child or extended family pursuant to Section 11(B) as soon as the hearing is scheduled, and the notice may be in person, in writing, on the record, or by telephone.
- 4. Termination proceedings. Notice of a hearing on a petition to terminate parental rights must be given in writing or on the record at least 14 days before the hearing.
- 5. When a party fails to appear in response to a notice of hearing, the Court may order the party's appearance by summons or subpoena.

D. Subpoenas.

- 1. The attorney or advocate for a party or the Court on its own motion may cause a subpoena to be served on a person whose testimony or appearance is desired.
- 2. It is not necessary to tender advance fees to the person served a subpoena in order to compel attendance.
- **E.** Waiver of service. A person may waive notice of hearing or service of process. The waiver shall be in writing. When a party waives service of a summons required by subsection (B), the party must be advised as set forth in (B)(3).
- F. Subsequent notices. After a party's first appearance before the Court, subsequent notice of proceedings and pleadings shall be served on that party or, if the party has an attorney or advocate, on the attorney or advocate for the party, either personally or by ordinary mail, except that a summons must be served before trial or termination hearing as provided in subsection (B) unless a prior Court appearance of the party in the case was in response to service by summons.
- G. Putative fathers. If the Court determines that the minor has no father as defined in Section 1(C)(12), the Court shall take appropriate action as described in this subsection.

- 1. The Court shall take initial testimony on the tentative identity and address of the natural father. If the Court finds probable cause to believe that an identifiable person is the natural father of the minor, the Court shall direct that notice be served on that person in the manner as provided in this section. The notice shall include the following information:
 - a. that a petition has been filed with the Court;
 - b. the time and place of hearing at which the natural father is to appear to express his interest, if any, in the minor; and
 - c. a statement that failure to attend the hearing will constitute a denial of interest in the minor, a waiver of notice for all subsequent hearings, a waiver of a right to appointment of an attorney, and could result in termination of any parental rights.
- 2. After notice to the putative father the Court may conduct a hearing and determine that:
 - a. the putative father has been personally served or served in some other manner which the Court finds to be reasonable calculated to provide notice to the putative father. If so, the Court may proceed in the absence of the putative father.
 - b. a preponderance of the evidence establishes that the putative father is the natural father of the minor and justice requires that he be allowed 14 days to establish his relationship according to Section 1(C)(12); provided that if the Court decides the interests of justice so require, it shall not be necessary for the mother of the minor to join in an acknowledgement. The Court may extend the time for good cause shown.
 - c. there is probable cause to believe that another identifiable person is the natural father of the minor. If so, the Court shall proceed with respect to the other person in accord with this subsection (G).
 - d. after diligent inquiry, the identity of the natural father cannot be determined. If so, the Court shall publish notice at least once in a manner calculated to alert a person who may be the father of the child. If no person comes forward the Court shall terminate the parental rights of the unknown father and proceed without further notice or Court appointed attorney for the unidentified person.

3. The Court may find that the natural father waives all rights to further notice, including the right to notice of termination of parental rights, and the right to legal counsel if:

a. he fails to appear after proper notice, or

b. he appears, but fails to establish paternity within the time set by the Court.

Section 17. PRELIMINARY HEARING

- A. If the child has been released to his/her parent, guardian, or custodian, the Court shall conduct a preliminary hearing within seven (7) days after filing of the petition.
- **B**. If the child is placed in out of home placement, the Court shall conduct a preliminary hearing by 12:00 p.m. (noon) of the second Court working day following the placement for the purpose of determining:
 - 1. whether probable cause exists to believe the child is a child-in-need-of-care; and
 - 2. whether the home conditions continue to present a substantial risk of harm to the child's life, physical health or mental well-being and whether any alternatives except removal of the child is reasonably available to adequately safeguard the child from such risk.
- C. If the child's parent, guardian, or custodian is not present at the preliminary hearing, the Court shall make an inquiry into what efforts have been made to notify and to obtain the presence of the parent, guardian, or custodian. If it appears that further efforts are likely to produce the child's parent, guardian, or custodian, the Court shall recess for not more than 24 hours and direct the petitioner to make continued efforts to obtain the presence of the child's parent, guardian. The preliminary hearing may be conducted in the parent's absence.
- **D.** The Court shall read the allegations in the petition in open court, unless waived and shall advise the parent of the right to have counsel represent them, at their own expense, and their right to a trial on the allegations in the petition. After advising the parent of the right to remain silent, the Court shall allow the parent an opportunity to deny or admit the allegations and make a statement of explanation.

- E. The Court shall hear testimony concerning:
 - 1. the circumstances that gave rise to the petition; and,
 - 2. the need for continued placement.
- F. If probable cause to believe the child is a child-in-need-of-care is not found, the petition shall be dismissed and the child shall be released.
- **G.** If the Court finds that probable cause exists to believe the child is a child-in-need-of-care the Court:
 - 1. shall order the parent, guardian or custodian to appear at an adjudicatory hearing on a date and time set by the Court; and
 - 2. may release the child in the custody of either of the child's parents, guardian or custodian under such reasonable terms and conditions as are necessary for either the physical or mental well-being of the child; or
 - 3. may order placement of the child with someone other than a parent, guardian or custodian if the Court, after hearing, determines that both of the following conditions exist:
 - a. Custody of the child with a parent, guardian, or custodian presents a substantial risk of harm to the child's life, physical health or mental well-being and no provision of service or other arrangement except removal of the child is reasonable available to adequately safeguard the child from such risk.
 - b. Conditions of custody of the child away from a parent, guardian or custodian are adequate to safeguard the child's health and welfare.
- **H**. The Court may at any time after conducting a preliminary hearing at which probable cause to proceed upon a petition is found, order any involved child, parent or guardian to undergo a physical, mental or psychological examination by a qualified professional.

Section 18. ADJUDICATORY HEARING

- A. The Court shall conduct an adjudicatory hearing for the purpose of determining whether the child is a child-in-need-of-care.
- **B.** The adjudicatory hearing shall commence as soon as possible, but not later than 45 days after the petition is filed with the Court.
- C. Continuances of an adjudicatory hearing may be granted by the Court but only:
 - 1. Upon stipulation of the parties;
 - 2. Where process cannot be completed;
 - 3. The Court finds that the testimony of a presently unavailable witness is needed; or
 - 4. One time only for up to 14 days at a parent's request for parents to obtain counsel.
 - 5. For good cause shown.
- **D**. The general public shall be excluded from the proceedings and only the parties, their counsel or advocate, witnesses, the child advocate and other persons determined necessary or useful to the proceedings by the Court shall be admitted.
- E. Evidence.

F.

- 1. The formal rules of evidence shall not apply at these proceedings. All relevant and material evidence which is reliable and trustworthy may be admitted at the trial and may be relied upon by the Court to the extent of its probative value.
- 2. The parties shall be afforded an opportunity to examine and controvert written reports received by the Court and shall be allowed to cross-examine individuals who made the reports when those individuals are reasonably available.
- 3. The Court may rely upon conference telephone or other electronic devices that permit all those appearing or participating to hear and speak to each other.
- If the allegations of the petition are sustained by a preponderance of the evidence, the Court shall find the child to be a child-in-need-of-care and schedule a dispositional hearing. The Court may also enter orders of further discovery, evaluation and assessment and other orders to protect the child.

G. If the allegations of the petition are not sustained, the Court shall dismiss the matter and release the minor.

Section 19. DISPOSITIONAL HEARING

- A. A dispositional hearing is conducted to determine measures to be taken by the Court with respect to the minor properly within its jurisdiction and, when applicable, against any adult, once the Court has determined following trial, plea of admission or no contest that the minor comes within its jurisdiction.
- **B.** The dispositional hearing may be held immediately after the adjudication. The interval, if any, between the adjudicatory hearing and the dispositional hearing is within the discretion of the Court. When the child is in placement, the interval may not be more than 35 days except for good cause. If the dispositional hearing is not held immediately after the adjudication, notice of hearing may be given by scheduling it on the record in the presence of the parties or in accordance with Section 16, notice and service of summons.

C. Proposed case plan.

- 1. The Indian Child Welfare Act Committee, or its delegate, shall prepare a written report describing all reasonable and appropriate alternative dispositions, including reports of the Child Protection Team and Protective Service worker. The report shall contain a specific plan for the care of and assistance to, the minor and/or the minor's parent(s), guardian, or custodian designed to resolve the problems presented in the petition.
- 2. The report shall contain a detailed explanation of the necessity for the proposed disposition plan and its benefits to the minor.
- 3. If the report recommends placement of the child somewhere other than with the child's parent, guardian, or custodian, it shall state the specific reasons underlying its placement recommendation.
- 4. The Indian Child Welfare Act Committee, or its delegate shall present the case plan to the Court, the child advocate, and the presenting officer, at least three (3) days before the dispositional hearing.

D. Evidence.

- 1. All relevant and material evidence, including oral and written reports may be received and may be relied on to the extent of its probative value, even though such evidence may not be admissible at trial. The Court shall consider the case service plan and any report by an agency responsible for the care and supervision of the child concerning effort to prevent removal, or to rectify conditions that caused removal, of the minor from the home.
- 2. The parties shall be given an opportunity to examine and controvert written reports so received and may be allowed to cross-examine individuals making reports when such individuals are reasonably available.
- 3. No assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at the Dispositional Phase, of materials prepared pursuant to a court ordered examination, interview or course of treatment.

E. Disposition Orders

- The court shall enter an order of disposition after considering the case service plan and other evidence offered bearing on Disposition. The Court shall approve a case service plan and may order compliance with all or part of the case service plan and may enter such orders as it considers necessary in the interest of the child. The order of disposition shall state whether reasonable efforts have been made to prevent the child's removal from his home or to rectify the conditions that caused the child's removal from his home.
- 2. If a child has been found to be a child-in-need-of-care, the Court may make the following dispositions which are listed by priority:
 - a. permit the child to remain with his/her parent(s), guardian, or custodian, subject to such conditions as the Court may prescribe;
 - b. place the child with a relative within the primary service area of the tribe, subject to such conditions as the Court may prescribe;
 - c. place the child in a licensed foster home within the primary service area of the tribe, subject to such conditions as the Court may prescribe;

- d. place the child in a foster home, or home of a relative, outside of the primary service area of the tribe, subject to such conditions as the Court may prescribe; or
- e. place the child in a group home or residential care facility designated by the Court;
- f. direct the presenting officer to file a petition to terminate parental rights under this Code.
- If a child remains under the jurisdiction of the Court, an order may be amended or supplemented within the authority granted to the Court in this Code at any time as the Court considers necessary and proper and in the best interests of the child.

Section 20. DISPOSITION REVIEW HEARING

3.

- A. The Disposition Order is to be reviewed at the discretion of the Court but at least once every six (6) months.
- **B**. Notice of the Review Hearing shall be provided on the record or by ordinary mail as provided in Section 16(C).
- **C.** At a Review Hearing the Court shall review on the record the compliance with the case service plan prepared pursuant to Section 20 and the previous orders of the Court including:
 - 1. Services provided or offered to the child and his or her parent, guardian or custodian and whether the parent, guardian, or custodian has complied with and benefited from those services.
 - 2. Visitation with the child. If visitation did not occur or was infrequent, the Court shall determine why visitation did not occur or was infrequent.
- **D.** After review of the case service plan, the Court shall determine the extent of progress made toward alleviating or mitigating the conditions that caused the child to become and to remain a child-in-need-of-care. The Court may modify any part of the case plan including, but not limited to, the following:
 - 1. Prescribing additional services that are necessary to rectify the conditions that caused the child to become or to remain a child-in-need-of-care.

- 2. Prescribing additional actions to be taken by the parent, guardian, or custodian to rectify the conditions that caused the child to become or remain a child-in-need-of-care.
- **E.** At a reviewing hearing the Court shall determine the continuing necessity and appropriateness of the child's placement and shall order the return of the child to the custody of the parent, continue the dispositional order, modify the dispositional order, or enter a new dispositional order.
- **F**. If the child remains in placement, the Court shall determine at the dispositional hearing and at each review hearing whether the cause should be reviewed before the next review hearing required under this section. In making this determination, the Court shall consider, but not be limited to, both of the following:
 - 1. The parent's ability and motivation to make necessary changes to provide a suitable environment for the child.
 - 2. Whether there is a reasonable likelihood that the child may be returned to his or her home prior to the next review hearing required by this section.
- **G.** Unless waived, if not less than 7 days notice is given to all parties prior to the return of a child to his or her home, and no party requires a hearing within the 7 days, the Court may issue an order without a hearing permitting the agency to return the child to his home.
- **H.** An agency report filed with the Court shall be accessible to all parties to the action and shall be offered into evidence.

Section 21. PERMANENCY PLANNING HEARING

A. If a child remains adjudicated a child-in-need-of-care and parental rights to the child have not been terminated, the Court shall conduct a permanency planning hearing not more than eighteen months after entry of the order of disposition and every eighteen months thereafter, so long as the child remains a child-in-need-of-care. A permanency planning hearing may be combined with a disposition review hearing under Section 20 of this Code.

B. A permanency planning hearing shall be conducted to review the status of the child and the progress being made toward the child's return to his natural parents or to some other permanent home.

C. If parental rights to the child have not been terminated and the Court determines at a permanency planning hearing that the return of the child would not cause a substantial risk of harm to the child's life, physical health, or mental well-being, the Court shall order the child returned to his or her parent. In determining whether the return of the child would cause a substantial risk of harm to the child, the Court shall view the failure of the parent to substantially comply with the terms and conditions of the case service plan and dispositional orders of the Court as evidence that return of the child to his or her parent would cause a substantial risk of harm to the child's life, physical health, or mental well-being.

D. If the Court determines at a permanency planning hearing that the child should not be returned to his or her parent, the Tribal Social Service shall propose one of the following alternative permanent placement plans:

1. The child is placed permanently with a relative within the primary service area of the tribe.

2. The child be placed permanently with a relative who is outside the primary service area of the tribe.

- 3. The child remain a long-term foster or residential care.
- 4. A petition for Guardianship under this Code be filed by the current caretaker of the child, the child, or the Tribal Social Services.
- 5. A petition to terminate parental rights under this Code be filed by the Tribal Social Services.
- E. If the Court determines that the child should not be returned to his or her parents, the Court shall order permanent placement with a relative, long term foster or residential care under subsection (D)(1), (2) or (3), or continue the child in placement for a limited period so that petitions under subsections (D)(4)&(5) may be filed.

Section 22 TERMINATION OF PARENTAL RIGHTS

A. Purpose

The purpose of this section is to provide for the voluntary and involuntary termination of the parent-child relationship and for the substitution of parental care and supervision by judicial process. This chapter shall be construed in a manner consistent with the philosophy that the family unit is of most value to the community and the individual family members when that unit remains united and together, and that termination of the parent-child relationship is of such vital importance that it should be used only as a last resort when, in the opinion of the Court, all efforts have failed to avoid termination and it is in the best interests of the child concerned to proceed under this chapter.

B. Grounds for Involuntary Termination. The Court may terminate the parental rights of a parent to a child adjudicated a child-in-need-of-care if the Court finds, beyond a reasonable doubt, 1 or more of the following:

1. The child has been abandoned under either of the following circumstances:

a. The parent of a child is unidentifiable and has deserted the child for 28 or more days and has not sought custody of the child during that period. For purposes of this section, a parent is unidentifiable if the parent's identity cannot be ascertained after reasonable efforts have been made to locate and identify the parent.

b. The parent of the child has abandoned the child without provision for his support or without communication for a period of at least 6 months. The failure to provide support or to communicate for a period of at least 6 months shall be presumptive evidence of the parent's intent to abandon the child.

The child or a sibling of the child has suffered physical injury or physical or sexual abuse under either of the following circumstances:

2.

- a. A parent's act caused the physical injury or physical or sexual abuse and the Court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.
- b. A parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the Court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.
- 3. The parent was a respondent in a proceeding brought under this Children's Code, 12 or more months have elapsed since the issuance of an initial dispositional order, and the Court, beyond a reasonable doubt, finds either of the following:
 - a. The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child.
 - b. Other conditions exist that cause a child to be a child-in-need-of-care. The parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice, a hearing, and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child.

- A parent is unable to provide proper care and custody for a period in excess of one year because of a mental deficiency or mental illness, without a reasonable expectation that the parent will be able to assume care and custody of the child within a reasonable length of time considering the age of the child.
- 5. The parent of the child is convicted of a felony of a nature as to prove the unfitness of the parent to have future custody of the child or if the parent is imprisoned for over two years and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child.
- 6. Parental rights t 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.
- **C.** Termination at Initial Disposition. If a petition to terminate parental rights to a child is filed, the Court may enter an order terminating parental rights under subsection (B) at the initial dispositional hearing.
- **D. Quality of Evidence**. The same rules of evidence which apply at adjudication under subsection 18 (E) shall apply in termination of parental rights proceedings.

4.

E. Termination of Parental Rights Order. An order terminating parental rights under this Code may not be entered unless the Court makes findings of fact, states, its conclusions of law, and includes the statutory basis for the order. Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient. The Court may state the finds and conclusions on the record or include them in a written opinion. If the Court does not issue a decision on the record following hearing, it shall file its decision within 28 days after the taking of final proofs.

F. Voluntary Relinquishment of Parental Rights

Parental rights may be voluntarily terminated by a parent in writing, if signed by the parent in the presence and with approval of the Court. Relinquishment shall not be accepted or acknowledged by the Court prior to ten (10) days after birth of the child. The Court shall ensure that the parent understands the consequences of the voluntary termination prior to approving it. A parent who wishes to relinquish his parental rights shall be provided an interpreter if he does not understand English.

G. Child's Continued Right to Benefits

An order terminating the parent-child relationship shall not disentitle a child to any benefit due the child from any third person, agencies, state or the United States, nor shall any action under this Code be deemed to affect any rights and benefits that the child derives from the child's descent from a member of a federally recognized Indian tribe.

H. Advise of Right to Appeal

Immediately upon entry of an order terminating parental rights, the Court shall advise the respondent parent orally or in writing that the parent is entitled to appellate review of the order. Appellate review shall be by right. The clearly erroneous standard shall be used in reviewing the findings of the Children's Court on appeal from an order terminating parental rights.

I. Post Termination Review Hearings

If a child remains a ward of the Court following the termination of parental rights to the child, the Court shall conduct a review hearing, at least every 12 months to review the progress toward permanent placement of the child. The Court shall make findings on whether reasonable efforts have been made to establish permanent placement for the child and may enter such orders as it considers necessary in the best interests of the child.

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SUBCHAPTER 7.4000 ADOPTION PROCEDURES

RULE 7.401 INTENT OF TRIBE

(A) Whereas the Lac Vieux Desert Tribal Council is the duly elected governing body of the Lac Vieux Desert Band of Lake Superior Chippewa Indians.

(B) Whereas the Lac Vieux Desert Tribal Council enjoys the authority under the Constitution to pass laws and policies that are in the best interest of the community.

(C) Whereas the Lac Vieux Desert Tribal Court is the supreme Court of the Tribe and is independent and separate from the Tribal Council.

(D) Whereas both the Tribal Council and the Tribal Court firmly believes that the children of the Tribe are the Tribe's greatest natural resource and both the Tribal Council and the Tribal Court will take every step possible to protect this natural resource.

(E) Whereas the Tribal Council and the Tribal Court strongly support the proposition that a child shall remain with its' Tribal member parent(s) unless good cause exists otherwise.

(F) Whereas the Tribal Council and the Tribal Court recognize that extreme situations may arise whereby removal of a Tribal child(ren) may be necessary and the minor child(ren) must be placed for adoption.

(G) Whereas Tribal Council and Tribal Court firmly believe that alternatives to adoptions shall be pursued to their full extent prior to seeking an adoption proceeding.

(H) Whereas when an adoption proceeding is necessary first preference for the adoption shall be an extended family member followed by a Tribal Member, then a non-tribal member of Native American status and finally all others.

(I) Whereas the Tribal Council by enacting these adoption procedures desires that the Tribal Court consider the intentions of the Tribal Council in adopting these provisions.

RULE 7.402 GUARDIANSHIP PREFERRED ADOPTION DISCOURAGED

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The Tribal Court shall encourage guardianship proceedings in all matters rather than adoptions. Adoptions shall only be considered upon a showing, on the record, that a guardianship proceeding will not be a workable alternative.

RULE 7.403 WHO MAY ADOPT

- (A) The following are eligible to adopt a child:
 - (1) A husband and wife jointly, or either if the other spouse is a parent of the child.
 - (2) An unmarried person who is at least 18 years of age.
 - (3) In cases where a child's parents are unmarried, the child's natural father.
 - (4) Two unmarried persons cohabiting for a substantial period of time as a married couple.
- (B) Consistent with (A) above the Court shall give preference in the order listed for the adoption:
 - (1) An extended family member, currently enrolled or eligible for enrollment with the Tribe, of the child.
 - (2) An enrolled member of the Tribe or an individual or couple eligible for enrollment.
 - (3) An extended family member not enrolled or eligible for enrollment with the Tribe.
 - (4) A Native American from another federally recognized Native American Tribe.
 - (5) All other individuals.

RULE 7.404 ADOPTION PROCEDURE

(A) Petition for Adoption. Upon receipt of a petition for adoption, the Clerk of Courts shall set a date for a hearing not later than sixty (60) days from the date of filing and serve notice of hearing on the following:

(1) the Petitioners;

(2) the child's guardian, custodian or foster care provider;

(3) the natural parents;

(4) the extended family of the minor child;

(5) the Indian Child Welfare Act Committee;

(6) the Tribal Council.

(B) Consent

(1) The consent of the following are required for adoption:

(a) The child if the child is 13 years or older;

(b) The parent or parents if living, including the adjudicated or acknowledged father of a child born out of wedlock;

(c) Material and Paternal Grandparents of the child and the brothers and sisters, if living of the Paternal and Maternal parents of the child, submitted in writing to the Indian Child Welfare Department;

(d) The written agreement of the Lac Vieux Desert Indian Child Welfare Department;

(e) A resolution in support of the adoption by the Tribal Council.

(2) All issuance of consent must be in writing and presented to the Court. The consent decrees become part of the record upon receipt by the Court.

(3) The consent decrees shall be considered incorporated in the petition for the adoption.

(4) The Court shall upon acceptance of the consent decrees, explain to the parties of the consequences of an adoption.

(5) No adoption shall be official if any of the above named parties fails to submit a written consent decree to the adoption.

(C) Initial Investigation of the Indian Child Welfare Department. The Indian Child Welfare Department shall do an initial investigation of the prospective adoptive parent(s) and issue a determination as to whether it would be in the best interest of the child to be placed in the adoptive parent(s) household. The Indian Child Welfare Department shall submit a copy of this report to the Court. The report shall be submitted to the Court after the petition is filed but prior to the initial hearing. No adoption shall be final unless this report is submitted.

(D) Initial Hearing.

(1) The Court shall set a date for an initial hearing within 60 days of the filing of the petition for an adoption for an initial hearing.

(2) The child, if over the age of 13, shall be present at the hearing unless the Court considers otherwise, A child under the age of 13 may be invited to attend the initial hearing if the Court so decides.

(C) Final Hearing: The court shall receive all reports, consent decrees, resolutions, or other such material on the record at the final hearing. The Court shall permit any party served with notice of such hearing an opportunity to be heard. Upon a presentation of all the information the Court shall issue a finding as to whether an adoption of the child(ren) is granted.

(D) Final Order of Adoption. The final order of adoption shall contain the following.

(1) To whom the new parent(s) of the child(ren) are;

(2) The new name of the child if one is so requested;

(3) Expressed notation of the explanation of the legal rights and consequences surrounding an adoption as well as the affirmation of all parties understanding these rights.

(4) Reference to the consent decrees of the family as well as any concerns that the family may have with the adoption;

(5) A copy of the final recommendation of the Indian Child Welfare Department if the Court rules consistent with the recommendations;

(6) An expressed statement as to why the Court is rejecting the recommendations of the Indian Child Welfare Department or other such parties;

(7) Express affirmation of the child's enrollment with the Tribe;

(8) An expressed finding that the adoption is in the best interest of all the parties and the evidence relied upon to reach this conclusion;

(9) If the adoptive parent(s) is not an enrolled member of the Tribe the reason for selecting that party rather than a member of the Tribe;

(10) Provisions for visitation with the extended family or the Tribe if necessary;

(11) Any other related information specific to the adoption proceedings.

(E) Effect of Final Order. The Final Order of the Court serves to officially terminate the Courts jurisdiction over the matter and officially declare to the World that the adoptive parent(s) of the minor child(ren) are the only true parent(s) of the minor child(ren).

(F) Effect of Final Order on Extended Family. A Final Order of adoption does not serve to terminate the relationship nor the rights of the child(ren) and the extended family.

(3) During the hearing the Court shall issue a determination as to whether the requirements of this Code and the Indian Child Welfare Act have been met and shall determine from the report to the Court and any evidence presented by the petitioners or the child's guardian whether the petitioners are suitable adoptive parents.

(4) The Court shall set a date for final determination of the adoption petition at a time greater than 60 days of the initial hearing. The Court shall order that the minor child(ren) be placed in the custody of the prospective adoptive parent(s) during this probationary period.

(E) Probationary period of adoption. During the time period between the initial hearing and the date set by the Court for final determination, the following events shall occur:

(1) If not already enrolled, the minor child shall be enrolled with the Tribe;

(2) The Indian Child Welfare Department shall conduct an in-home investigation of the prospective parent(s) and the child and issue a determination as to whether it will be in the best interest of the child(ren) to be placed in this family setting;

(3) A final explanation, in writing, by the Court shall be sent to all interested parties explaining legal consequences of an adoption.

RULE 7.405 FINAL ORDER OF ADOPTION

(A) Date for final Hearing. The Court shall set a date greater than 60 days after the initial hearing, to consider the petition for adoption.

(B) Notice of final Hearing. The Court shall serve notice of the final hearing on the petition of adoption to the following:

(1) the Petitioners;

(2) the child's guardian, custodian, or foster care provider;

(3) the natural parent(s) of the child;

(4) The child's extended family;

(5) the guardian ad litem of the child if one has been appointed;

(6) the Indian Child Welfare Department;

(7) the Tribal Chairman.

Section 23. ADOPTION

Effect of Order of Adoption. Upon entry of the order of adoption, the relationship of parent А. and child together with all the rights, duties, and other legal consequences and obligations of the natural relationship of parent and child exist between the adoptive parent(s) and adopted child.

B. Who May Adopt a Child. The following are eligible to adopt a child:

1. A husband and wife jointly, or either if the other spouse is a parent of the child.

An unmarried person who is at least 18 years of age.
In the case of a child whose parents are not married, its natural father.

4. Two unmarried persons cohabiting for a substantial period of time as a married couple.

С. Consent.

1. The consent of the following are required for adoption:

(a) The child if 13 years or older.

(b) The parent or parents if living, including the adjudicated or acknowledged father of a child born out of wedlock, unless parental rights have been terminated.

2. Consent to adoption shall be given in writing before the judge, who shall accept consent only after explaining the consequences of consent and adoption to the consenting parent.

D. **Procedure.**

- 1. Upon receipt of a petition for adoption, the Clerk of Court shall set a date for hearing not later than 60 days from the date of filing and serve notice of hearing on the petitioners, the child's guardian, or custodian, the natural parents if their parental rights have not been terminated, and the Indian Child Welfare Act Committee. The Indian Child Welfare Act Committee shall prepare a report and recommendation for the Court.
- 2. At a hearing, the presence of the petitioners and the minor if over 13, shall be required unless the Court orders otherwise. The Court shall ascertain whether the requirements of this Code and the Indian Child Welfare Act have been met and shall determine from the report to the Court and any evidence presented by the petitioners or the child's guardian whether the petitioners are suitable adoptive parents.

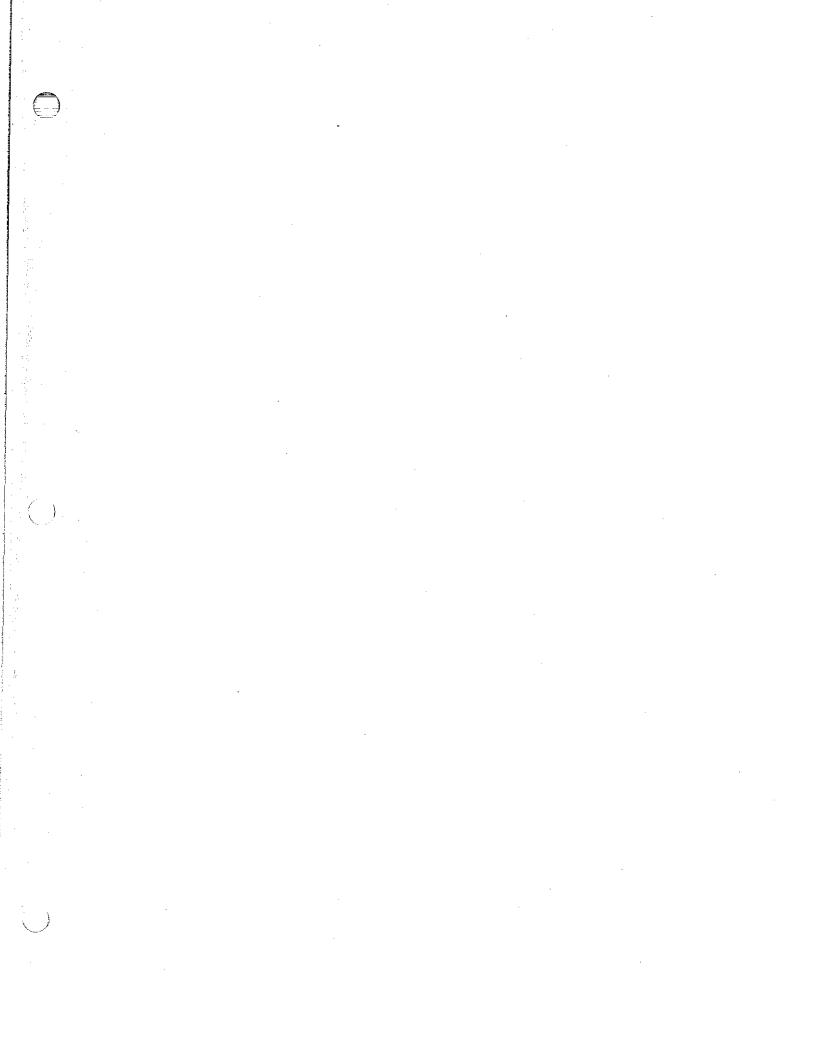
Temporary Order: Final Judgment

E.

- 1. The Court may issue a temporary order giving the care and custody of the child to the petitioners pending the further order of the Court, provided that if the child is a close blood relative of one of the petitioners, or is a stepchild of a petitioner or has been living in the home of the petitioner for more than 1 year preceding the date of filing the petition for adoption, the Court may waive the entry of a temporary order and immediately enter a final judgment for adoption.
- 2. Where a temporary order is entered, a representative of the Indian Child Welfare Act Committee may observe the child in his home and report to the Court within 6 months on any circumstances or conditions which may have a bearing on his/her adoption or custody.
- 3. Upon application by the petitioner after 6 months from the date of the temporary order, or upon the Court's motion at any time, the Court shall set a time and place for additional hearing. Notice of the time and place of the hearing shall be served on the Indian Child Welfare Act Committee, the child, and the petitioners. The Indian Child Welfare Act Committee may file with the Court, a written report of its findings and recommendations and certify that the required investigation has been made since the granting of the temporary order. After such hearing, if satisfied that the adoption is in the best interest of the child, the Court may enter a final judgment of adoption.
- 4. The final order shall include a provision ordering the adoptive parents to maintain the child's relationship to the tribe.

Section 24. AUTHORIZATION OF MEDICAL TREATMENT

- A. At any time, regardless of whether a child is under the authority of the Court, the Court may authorize medical or surgical care for a child when:
 - 1. A parent, legal guardian or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case, or;
 - 2. A physician informs the Court orally or in writing that in his professional opinion, the life of the child would be greatly endangered without certain treatment and the parent, guardian or other custodian refuses or fails to consent. If time allows in a situation of this type, the Court shall cause every effort to be made to grant the parent, guardian, or custodian an immediate informal hearing, but this hearing shall not be allowed to further jeopardize the child's life or health.



- In making its order the Court shall give due consideration to any treatment being given the child by prayer through spiritual means alone or through other methods approved by tribal customs or traditions or religious, if the child or his parent, guardian or legal custodian are adherents of an established religious denomination that relies on this form of treatment in lieu of medical treatment, or practices the tribal customs, traditions or religion which is relied upon for such treatment of the child.
- C. After entering any authorization under this section, the Court shall reduce the circumstances, finding and authorization in writing and enter it in the records of the Court and shall cause a copy of the authorization to be given to the appropriate physician, hospital or both.
- D. Oral authorization by the Court is sufficient for care or treatment to be given and shall be accepted by any physician or hospital. No physician or hospital nor any nurse, technician or other person under the direction of such physician or hospital shall be subject to criminal or civil liability in the Court for performance of care or treatment in reliance on the Court's authorization, and any function performed thereunder shall be regarded as if it were performed with the child's and the parent's authorization.

Section 25. EMANCIPATION

B.

A child over the age of 16 may petition the Court for emancipation. The Court shall grant such status when the child proves to the Court that the child is capable of functioning as an independent and responsible member of the community.

Section 26. POWER OF ATTORNEY

A parent, legal custodian, or guardian (including Tribal Social Service agencies), by a properly executed power of attorney, may delegate to another person for a period not exceeding 6 months, any of the parent's legal custodian's or guardian's powers regarding care, custody, or property of the child, except the power to consent to marriage or adoption of a child and the power to release a child for adoption.

Section 27. LIMITED GUARDIANSHIP

The Court may appoint a temporary guardian under such terms and conditions as the Court set forth in the written order. A temporary guardianship may be terminated if the Court determines that it is in the best interests of the child to change custody from temporary guardian to a new guardian or to return the child to the parent, guardian or custodian. The parent and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the Court. A temporary guardianship shall be established by parental consent only, and shall be revocable by the Court upon parental request.

Section 28. FULL GUARDIANSHIP

A. Purpose

The Children's Court, when it appears necessary or convenient, may appoint guardians for the persons and/or property of children under the Court's jurisdiction. Unless otherwise specified by the Court, a guardian appointed shall have the custody and care of the education of the child and the care and management of his property until such child arrives at the age of eighteen (18), marries, dies, is emancipated by the Court under Section 24 of this Code, or until the guardian is legally discharged.

B. Types of Guardianship

The types of guardianship shall include guardianship of property and guardianship of the person. Unless the Court appoints a separate individual as guardian of property, the guardian of person shall also be the guardian of the child's property.

C. Grounds

The Court may appoint a guardian for a child if either of the following circumstances exist:

- 1. The parental rights of both parents or of the surviving parent have been terminated or suspended by prior Court Order, judgment of divorce or separate maintenance, by death, by judicial determination of mental incompetency, by disappearance, or by confinement in a place of detention.
- 2. The appointment is necessary for the immediate physical well-being of the minor.

D. Who May File

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- 1. Any person, including Tribal Human Resources and Social Services agencies, may file a petition for guardianship. The petition shall be initiated either by the proposed guardian or by the child if at least 14 years of age.
- 2. Before appointing a guardian, the Court must give reasonable notice to any person having the care of the child, to the child himself, and to other relatives of the child as the Court may deem proper.

Contents of Guardianship Petition

E.

- 1. The petition for guardianship shall include the following, to the best information and belief of the petitioner:
 - (a) The full name, sex, date and place of birth, residence and tribal affiliation of the proposed ward;
 - (b) The full name, address, tribal affiliation, relationship if any to the minor, and interest in the proceeding of the petitioner;
 - (c) The names and addresses of the minor's parents if living, and of other persons known to have an interest in the petition for appointment of guardian; the name and date of death of the minor's deceased parent or parents;
 - (d) The basis for the Court's jurisdiction;
 - (e) The name and address of the person or agency having legal or temporary custody of the proposed ward;
 - (f) A statement of the reason or reasons that the appointment of a guardian is sought; whether the petitioner seeks the appointment of a guardian of the person, a guardian of the estate, or both; and whom the petitioner recommends or seeks to have appointed as such guardian or guardians; and
 - (g) A full description and statement of value of the minor's assets and liabilities with an estimate of the value of any property owned, possessed, or in which the proposed ward has an interest, including any income and receivables to which the proposed ward is entitled.
- 2. All petitions must be signed and dated by the petitioners, and must be notarized or witnessed by a Clerk of Court.

F. Guardianship Report

- 1. Upon the filing of a guardianship petition, the Court shall immediately request that the Social Services Department or other qualified agency conduct a guardianship report on the proposed guardian and report on a proposed ward. The guardianship report shall contain all pertinent information necessary to assist the Court in determining the best interests of the proposed ward.
- 2. No determination can be made on a petition for guardianship until the report has been completed and submitted to and considered by the Court. The guardianship report shall be submitted to the Court no later than 10 days before the hearing. The Court may order additional reports as it deems necessary.

G. Powers and Duties of Guardian of the Person

- 1. To the extent that it is not inconsistent with the terms of any order of the Court, a guardian of the person has the following powers and duties:
 - (a) The guardian of the person is entitled to custody of the person of his or her ward and shall make provision for his or her ward's care, comfort, and maintenance, and shall, as appropriate to the ward's needs, arrange for his or her training, education, employment, rehabilitation or habilitation. The guardian of the person shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects that tare with the ward.
 - (b) In arranging for a place of abode, the guardian of the person shall give preference to places within the tribal reservation over places not in the reservation, if both in-reservation and out-of-reservation places are substantially equivalent. The guardian also shall give preference to places that are not treatment facilities. If the only available and appropriate places of domicile are treatment facilities, the guardian shall given preference to tribal-based treatment facilities, such as group homes, over treatment facilities that are not tribal-based.
 - (c) The guardian of the person shall have authority to consent to any medical, legal psychological, or other professional care, counsel, treatment, or service for the person. The guardian of the person may give any other consent or approval on the ward's behalf that may be required or in the ward's best interests. The guardian of the person may petition the Court for concurrence in the consent or approval.
- 2. A guardian of the person is entitled to be reimbursed out of the ward's estate for reasonable and proper expenditures incurred in the performance of his or her duties as guardian of the ward's person.
- 3. The Court may order monthly reimbursement payments to the person or agency to whom custody is granted under this Code, provided sufficient funds have been appropriated by the Tribal Council. Such payments must be used by the person or agency with custody of the child for the sole purpose of covering expenses incurred in the care and custody of said child and shall not be used for any other purpose. The use of such payments for any purpose other than that described in this section shall subject the guardian to contempt of court and any criminal and civil penalties or remedies provided by the tribal code.

- 4. A guardian of the person, if he or she has acted within the limits imposed on him or her by this Code or the order of appointment or both, shall not be liable for damages to the ward or the ward's estate, merely by reason of the guardian's:
 - (a) Authorizing or giving consent or approval necessary to enable the ward to receive legal, psychological, or other professional care, counsel, treatment, or service, in a situation where the damages result from the negligence or other acts of a third person; or
 - (b) Authorizing medical treatment or surgery for his or her ward, if the guardian acted in good faith and was not negligent.

H. Guardianship of Estate

- 1. The Court may appoint a guardian of property of a ward under such terms and conditions as the Court sets forth in the written order. The guardianship may cover all property or it may be limited to only specific property or a specific legal action as set forth in the written order. A limited guardianship of the person may also include guardianship of the ward's property if set forth in the written order. The guardian of the property has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the child's estate to accomplish the desired result of administering the child's property legally and in the child's best interest, including but not limited to the following specific powers:
 - (a) To take possession, for the child's use, of all the child's estate.
 - (b) To receive assets due the child from any source.
 - (c) To maintain any appropriate action or proceeding to obtain support to which the child is legally entitled, to recover possession of any of the child's property, to determine the title thereto, or to recover damages for any injury done to any of the child's property; also, to compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle any other claims in favor or against the child.
 - (d) To abandon or relinquish all rights in any property when, in the guardian's opinion, acting reasonable and in good faith, it is valueless, or is so encumbered or is otherwise in such condition that it is of no benefit or value to the child or his or her estate.

- (e) To vote shares of stock or other securities in person or by general or limited proxy, and to pay sums chargeable or accruing against or on account of securities owned by the child.
- (f) To insure the child's assets against damage or loss, at the expense of the child's estate.
- (g) To pay taxes, assessments, and other expenses incident to the collection, 'care administration and protection of the child's estate.
- (h) To see or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise.
- (i) To expend estate income on the child's behalf and to petition the Court for prior approval of expenditures from estate principal; provided neither the existence of the estate or guardian's authority to make expenditures therefrom shall be construed as affecting the legal duty that a parent or other person may have to support and provide for the child.
- (j) To pay from the child's estate, necessary expenses of administering the child's estate.
- (k) To employ persons, such as attorneys, auditors, investment advisors, appraisers, or agents to advise or assist the guardian in the performance of the guardian's duties as a guardian of the estate.
- To continue any business operation in which the child was engaged, where such continuation is reasonably necessary or desirable to preserve the value, including goodwill, of the child's interest in such business.
- (m) To acquire, retain and sell every kind of property and every kind of investment, including but not limited to bonds, debentures, and other corporate or governmental obligations; stock, preferred or common; real estate mortgages; shares in-building and loan associations or savings and loan associations; annual premium or single premium life, endowment, or annuity contracts; and securities of any management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as from time to time amended.

(n) Without a court order to lease any of the child's real estate for a term of not more than three years, or to sell, lease or exchange any of the child's personal property including securities, provided that the aggregate value of all items of the child's tangible personal property sold without court order over the duration of the estate shall not exceed five thousand dollars (\$5,000.00), a guardian may sell the item only as provided in subdivision (o).

- (o) A guardian who is required by subdivision (n) to do so, shall, and any other guardian who so desires may, by motion in the cause, request the Court to issue him or her an order to lease of the child's real estate or to sell any item or items of the child's personal property. Notice of the motion and of the date, time and place of hearing thereon shall be served upon all parties of records and upon such other persons as the clerk may direct, and the Court may issue the order after hearing and upon such conditions as the Court may require; provided that the power granted in this subdivision shall not affect the power of the guardian to petition the Court for prior approval of expenditures from estate principal under subdivision (i) of this section.
- (p) To foreclose, as an incident to the collection of any bond, note or other obligation, any mortgage, deed of trust, or other lien securing such bond, note or other obligation, and to bid in the property at such foreclosure sale, or to acquire the property by deed from the mortgagor or obligor without foreclosure; and to retain the property so bid in or taken over without foreclosure.
- (q) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the guardian shall deem advisable, including the power of a corporate guardian to borrow from its own banking department, for the purpose of paying debts, taxes, and other claims against the child, and to mortgage, pledge, or otherwise encumber such portion of the child's estate as may be required to secure such loan or loans.
- (r) To execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the guardian.

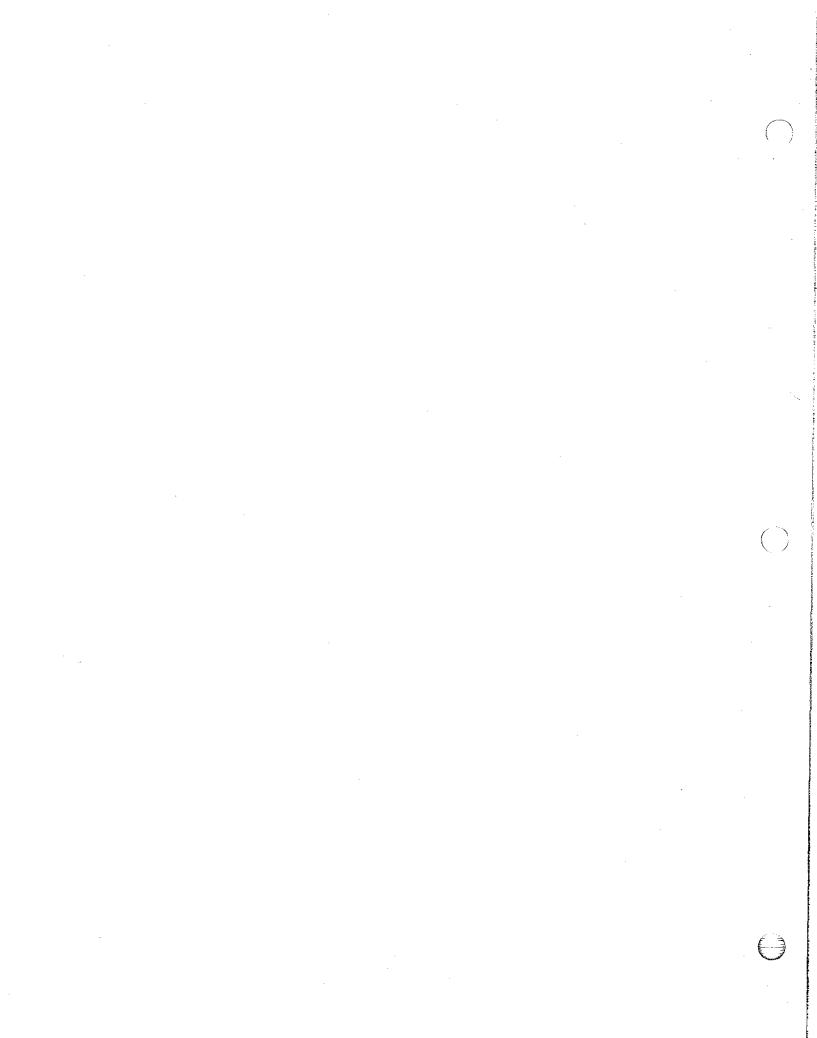
Resignation

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- 1. Any guardian who wishes to resign may apply in writing to the Court, setting forth the circumstances of the case. If a guardian of the estate or guardian both of the estate and of the person, at the time of making the application, also exhibits his or her final account for settlement, and if the Court is satisfied that the guardian has fully accounted, the Court may accept the resignation of the guardian and discharge him or her and appoint a successor guardian, but the guardian so discharged and his or her sureties are still liable in relation to all matters connected with the guardianship before the discharge.
- 2. A guardian of both the estate and of the person who wishes to resign as guardian of the estate of the ward but continue as guardian of the person of the ward may apply for the partial resignation by petition as provided in subsection (a) of this section.

J. Appointment of Successor Guardian

1. Upon the removal, death, or resignation of a guardian, the Court shall appoint a successor guardian following the same criteria that would apply to the initial appointment of a guardian.



Section 29. JUVENILE OFFENDER PROCEDURE

Definitions.

A.

- 1. "Delinquent Act": An act which, if committed by an adult, would be a crime under the tribal code.
- 2. "Detention": The placement of a minor in a physically restrictive facility.
- 3. "Juvenile Offender": A person who commits a delinquent act prior to his or her eighteenth (18th) birthday.
- **B. Complaint**. A complaint may be filed with the Court by a law enforcement officer or by a person who has knowledge of the facts alleged. The complaint shall be signed by the person who files the complaint. The complaint shall contain:
 - 1. Citation to the specific provision(s) of the Code which gives the Court jurisdiction over the proceedings;
 - 2. Citation to the tribal criminal code provision which the minor is alleged to have violated;
 - 3. Name, age, and address of the minor who is the subject of the complaint, if known;
 - 4. A concise statement of the facts upon which the allegations are based, including the date, time and location at which the alleged act(s) occurred; and
 - 5. A list of witnesses known to the person who files the complaint at the time the complaint is filed.
- **C. Petition.** Proceedings under this Code shall commence upon the filing of a petition on behalf of the tribe. The petition shall include:
 - 1. The name, birth date and address of the minor;
 - 2. The names and addresses of the minor's parent(s), guardian or custodian;
 - 3. Citation to the specific provision(s) of this Code which gives the Court jurisdiction of the proceedings;
 - 4. Citation to the tribal criminal code provision(s) which the minor is alleged to have violated;
 - 5. If the minor is in detention or shelter care, the place of detention or shelter care and the time he/she was taken into custody;

- 6. A statement of the facts which brings the minor within the jurisdiction of the court; and
- 7. A list of witnesses known to the tribe upon filing of the petition.
- **D.** Warrant. The Court may enter an order called a warrant, directing that a minor be taken into custody if:
 - 1. The court finds probable cause to believe the minor committed the delinquent act alleged in the complaint and there is probable cause to believe that the minor child will fail to appear for a hearing on the matter; or
 - 2. If the minor child is not taken into custody he/she is likely to endanger himself/herself or others.
- E. Custody. A minor may be taken into custody by a law enforcement officer if:
 - 1. The officer has reasonable grounds to believe a delinquent act has been committed and that the minor has committed the delinquent act; or
 - 2. A warrant pursuant to this Code has been issued for the minor.
- F. Law Enforcement Officer's Duties. A law enforcement officer, who takes a minor into custody, pursuant to this Code, shall proceed as follows:
 - 1. Explain the following rights to any minor taken into custody prior to questioning:
 - (a) The minor has a right to remain silent;
 - (b) Anything the minor says can be used against the minor in court; and
 - (c) The minor has the right to the presence of an attorney during questioning.
 - 2. Release the minor to the minor's parent(s), guardian, or custodian and give such counsel and guidance as may be appropriate, unless shelter care or detention is necessary because:
 - (a) The minor is in danger of injury;
 - (b) The minor is under the influence of alcohol or controlled substance; or
 - (c) The minor will not cease illegal conduct and release is likely to result in injury to the minor or others.

- 3. If the minor is not released, an officer shall make immediate and recurring efforts to notify the minor's parent(s), guardian, or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until a determination of the need for shelter care or detention is made by an Indian Child Welfare Act Committee member.
- 4. If the minor is not released, the minor shall be taken, as soon as is practicable, to the tribe's Indian Child Welfare Act caseworker for assistance with placement in detention of shelter.
- 5. Child Advocate. At all stages of proceedings hereunder, the minor shall have the services of the child advocate (Section 5c) if the minor so requests.
- **G.** Indian Child Welfare Act Committee Member's Duties. When an Indian Child Welfare Act Committee member has filed the complaint or is assisting a law enforcement officer, the member shall:
 - 1. Not place the minor in detention unless a complaint has been filed in accordance with Section 29b of this Code or unless the Court has ordered that a minor be taken into custody, pursuant to Section 29d of this code;
 - 2. If the minor's parent(s), guardian or custodian has not been contacted, make immediate and recurring efforts to inform them that the minor has been taken into custody and release the minor to the parent(s), guardian, or custodian unless detention or shelter care is immediately necessary to prevent injury to the minor or others, or to prevent illegal conduct which the parent(s), guardian or custodian cannot prevent;
 - 3. If the minor is not released to his/her parent(s), guardian, or custodian, place the minor in detention or shelter care pending the preliminary inquiry; and
 - 4. If the minor is not released to his/her parent(s), guardian, or custodian, explore alternative pre-adjudication custody arrangements, as soon as practicable, and prepare temporary care and custody recommendations for presentation at the preliminary inquiry.

H. Detention and Shelter Care.

- 1. A minor alleged to be a juvenile offender may be detained, pending a Court hearing, according to the following order of preference, in:
 - (a) A foster care home on the reservation that has been approved by the Indian Child Welfare Act Committee;

- (b) A foster care facility on the reservation that has been approved by the Indian Child Welfare Act Committee;
- (c) A private family home on the reservation that has been approved by the Indian Child Welfare Act Committee.
- (d) A licensed foster care home off the reservation that has been approved by the tribe;
- (e) A licensed foster care facility off the reservation that has been approved by the tribe;
- (f) A private family home off the reservation that has been approved by the tribe; or
- (g) A detention facility in Gogebic or any nearby county.

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A minor who is sixteen (16) years of age or older may be detained in a jail or other detention facility, on the reservation or a county used for the detention of adults only if:

- (a) A facility in Section H1 is not available or would not assure adequate supervision of the minor;
- (b) Detention is in a cell separate from adults; and
- (c) Adequate supervision is provided twenty-four (24) hours a day.

Preliminary Inquiry.

- 1. If a minor is placed in detention or shelter care, pursuant to Section G of this Code, the Court shall conduct a preliminary inquiry within forty-eight (48) hours for the purpose of determining:
 - (a) Whether probable cause exists to believe the minor committed the alleged delinquent act; and
 - (b) Whether continued detention or shelter care is necessary pending further proceedings.
- 2. If the minor has been released to his/her parent(s), guardian, or custodian, the Court shall conduct a preliminary inquiry within five (5) days after receipt of the complaint for the sole purpose to determine whether probable cause exists to believe the minor committed the alleged delinquent act.
- 3. If the minor's parent(s), guardian or custodian is not present at the preliminary inquiry, the Court shall make an inquiry into what efforts have been made to notify and to obtain the presence of the parent(s), guardian, or custodian. If it appears that further efforts are likely

to produce the appearance of the minor's parent(s), guardian, or custodian, the Court shall recess for not more than twenty-four (24) hours and direct the presenting officer to make continued efforts to obtain the presence of the minor's parent(s), guardian, or custodian. If it does not appear that further efforts are likely to produce the parent(s), guardian, or custodian, or if it appears that the parent(s), guardian, or custodian is/are unable or unwilling to provide effective support or guidance to the minor during the pendency of the juvenile offender proceedings, the Court shall appoint a guardian ad litem to serve until final adjudication and disposition of the complaint.

- 4. The Court shall hear testimony concerning:
 - (a) The circumstances that gave rise to the complaint or the taking of the minor into custody; and
 - (b) The need for detention or shelter care.
- 5. If the Court finds that probable cause exists to believe the minor committed the delinquent act, the minor shall be ordered to appear at an adjudicatory hearing on a date and at a time set by the Court. The minor shall be released to his/her parent(s), guardian or custodian unless the alleged act is serious enough to warrant detention or shelter care and:
 - (a) There is reasonable cause to believe that the minor will run away and/or be unavailable for further proceedings; or
 - (b) There is reasonable cause to believe that the minor will commit a serious act causing damage to person or property.
- 6. The Court may release a minor pursuant to Section 15 of this Code to a relative or other responsible adult tribal member, if the parent(s), guardian or custodian of the minor consents to the release. If the minor is ten (10) years of age or older, the minor and the minor's parent(s), guardian, or custodian must consent to the release.
- 7. Upon a finding that probable cause exists to believe that the minor committed the alleged delinquent act and that there is a need for detention or shelter care, the minor's detention or shelter care shall be continued. The Court shall consider recommendations prepared by the Indian Child Welfare Act Committee pursuant to this Code.
- 8. If probable cause to believe the minor committed the alleged delinquent act is not found, the complaint shall be dismissed and the minor released.

- Investigation by the Indian Child Welfare Act Committee or its Delegate. The Indian Child Welfare Act Committee or its delegate shall make an investigation within forty-eight (48) hours of the preliminary inquiry or the release of the minor to the minor's parent(s), guardian, or custodian, to determine whether the interests of the minor and the public require that further action be taken. Upon the basis of the investigation, the Indian Child Welfare Act Committee may:
- 1. If the allegations of the complaint are admitted, suggest to the minor and the minor's parent(s), guardian, or custodian that they appear for an informal conference pursuant to Section L of this Code and schedule such a conference.
- 2. Recommend that the tribe file a petition, pursuant to Section C of this Code, for a formal adjudicatory hearing. If the minor is in detention or shelter care, the petition shall be filed no later than 48 hours after the presenting officer receives the committee's recommendations. If the minor has been previously released to his/her parent(s), guardian, or custodian, relative or another responsible adult, the petition shall be filed within ten (10) days; or
- 3. Request the tribe transfer the proceedings to the adult division of the Court pursuant to Section K of this Code.

K. Transfer to the Adult Division of the Court.

J.

- 1. The tribe or the minor may file a petition requesting the Court to transfer the minor to the adult division of the Court if the minor is sixteen (16) years of age or older and is alleged to have committed an act that would have been considered a crime if committed by an adult.
- 2. The Court shall conduct a hearing to determine whether jurisdiction of the minor should be transferred to the adult division of the Court.
 - (a) The transfer hearing shall be held not more than ten (10) days after the petition is filed.
 - (b) Written notice of the transfer hearing shall be given to the minor and the minor's parent(s), guardian, or custodian at least seventy-two (72) hours prior to the hearing.
- 3. Prior to the hearing, the Indian Child Welfare Act Committee shall be responsible for an investigation and the preparation of a written report to be submitted to the Court.

- 4. The following factors shall be considered in determining whether to transfer jurisdiction of the minor to the adult division of the Court:
 - (a) The nature and seriousness of the offense allegedly committed by the minor; and
 - (b) The minor's age, mental and physical condition, past record of offenses, and responses to previous Court efforts at rehabilitation.
- 5. The Court may transfer jurisdiction of the minor to the adult division of the Court if the Court finds clear and convincing evidence that both of the following circumstances exist:
 - (a) There are no reasonable prospects for rehabilitating the minor through resources available to the Court; and
 - (b) The offense allegedly committed by the minor is serious and constitutes a substantial danger to the public.
- 6. When a minor is transferred to the adult division of the Court, the Court shall issue a written transfer order containing reasons for the order. The transfer order constitutes a final order for purposes of appeal.

L. Informal Adjustment Conference.

- 1. The Indian Child Welfare Act Committee or its designee, may hold an informal conference with the minor, the child advocate, and the minor's parent(s), guardian, or custodian to discuss alternatives to the filing of a petition if:
 - (a) The admitted facts bring the case within the jurisdiction of the Court:
 - (b) An informal adjustment of the matter would be in the best interests of the minor and the tribe; and
 - (c) The minor and the minor's parent(s), guardian, or custodian voluntarily consent to an informal adjustment conference after they have received an explanation of their rights.
- 2. This section does not authorize the Indian Child Welfare Act Committee or its designee to compel involuntary action of the parties involved.
- 3. At the informal adjustment conference, the Indian Child Welfare Act Committee or its designee, may recommend that the Court:
 - (a) Refer the minor and the minor's parent(s), guardian, or custodian to a community agency for assistance;

- (b) Order terms of supervision calculated to assist and benefit the minor, which regulate the minor's activities and are within the ability of the minor to perform; or
- (c) Accept an offer of restitution if voluntarily made by the minor.
- 4. The Indian Child Welfare Act Committee or its designee shall set forth in writing the conference finding and the disposition agreed to by the parties. The report shall be made available to the Court, the minor, child advocate, the minor's parent(s), guardian, guardian ad litem, custodian and the tribe.
- 5. Any disposition arranged through the informal adjustment procedure of this section shall be concluded within six (6) months.
- 6. The Indian Child Welfare Act Committee or its delegate shall review the minor's progress every thirty (30) days. If, at any time after the initial thirty (30) day period, the committee concludes that positive results are not being achieved, the committee shall recommend that the tribe file a petition pursuant to Section C of this Code.
- 7. No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing or any other proceeding against the minor under this Code.
- **M.** Adjudicatory Hearing. The Court shall conduct an adjudicatory hearing for the sole purpose of determining the guilt or innocence of a minor. Such hearings shall be closed to the public.
 - 1. If the minor admits the allegations of the petition, the Court shall proceed to the disposition hearing only if the Court finds:
 - (a) The minor fully understands his/her rights as set forth in this Code and fully understands the potential consequences of his/her admission(s);
 - (b) The minor voluntarily, intelligently and knowingly admits to all facts necessary to constitute a basis for Court jurisdiction; and
 - (c) The minor has not, in his/her admission to the allegations, set forth facts which, if found to be true constitute a defense to the allegations.
 - 2. The Court shall hear testimony concerning the circumstances which gave rise to the complaint.

- 3. If the allegations of the petition are sustained by proof beyond a reasonable doubt, the Court shall find that the minor is a juvenile offender and schedule a disposition hearing.
- 4. A finding that a minor is a juvenile offender shall constitute a final order for purposes of appeal.
- **N.** Adjudicatory Hearing Continuances. Continuances of an adjudicatory hearing may be granted upon:
 - 1. Motion of the minor for good cause shown;
 - 2. Motion of the tribe that material evidence or witnesses are unavailable, a finding by the Court that the presenting officer has exercised due diligence to obtain the evidence or appearance of witnesses, and reasonable grounds exist to believe that the evidence will become available or that the witnesses will appear; or
 - 3. Order of the Court during a period of informal adjustment pursuant to Section L of this Code.

O. Predisposition Report.

- 1. The Indian Child Welfare Act Committee or its delegate shall prepare a written report describing all reasonable and appropriate alternative dispositions. The report shall contain a specific plan for the care of, and assistance to the minor, designed to resolve the problems presented in the petition.
- 2. The report shall contain a detailed explanation of the necessity for the proposed disposition plan and its benefits to the minor.
- 3. Preference shall be given to the disposition alternatives which are listed in Section Q of this Code. The alternative least restrictive of the minor's freedom, consistent with the interests of the tribe, shall be selected.
- 4. If the report recommends placement of the minor somewhere other than with the minor's parent(s), guardian, or custodian, it shall state the specific reasons underlying its placement recommendation.
- 5. The Indian Child Welfare Act Committee, or its delegate, shall present the predisposition report to the Court, the minor's representative, and the presenting officer, at least one (1) day before the disposition hearing.

P. Disposition Hearing.

- 1. A disposition hearing shall take place not more than sixty (60) days after the adjudicatory hearing.
- 2. The Court shall take testimony and receive evidence concerning proper disposition at the hearing.
- 3. The Court shall consider the predisposition report submitted by the Indian Child Welfare Act Committee, or its delegate. Prior to the hearing, the affected parties shall be given an opportunity to review all reports and supporting documentation. During the hearing the parties shall have the opportunity to controvert the factual contents and the conclusions of any reports. The Court shall also consider the alternative predisposition report prepared by the minor's counsel.
- 4. The disposition order constitutes a final order for purposes of appeal.
- Q. Disposition Alternatives. If a minor has been found to be a juvenile offender, the Court may make the following dispositions for any term until the minor reaches the age of eighteen (18):
 - 1. Place the minor on probation, subject to conditions set by the Court; or
 - 2. Place the minor in an institution or with an agency designated by the Court.

R. Modification of Disposition Order.

- 1. A disposition order of the Court may be modified, for good cause, upon a showing of a change of circumstances. The Court may modify a disposition order at any time, upon motion of the following:
 - (a) The minor;
 - (b) The minor's parent(s), guardian, or custodian; or
 - (c) The Indian Child Welfare Act Committee.
- 2. If the modification involves a change of custody, the Court shall conduct a hearing, pursuant to Section R(3), to review its disposition order.

- 3. A hearing to review a disposition order shall be conducted as follows:
 - (a) The Court shall review the performance of the minor, the minor's parent(s), guardian, or custodian; and the review reports of the tribe and other persons providing assistance to the minor and the minor's family;
 - (b) In determining whether to modify the disposition, the procedures prescribed in Section O and Section P of this Code shall apply; and

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(c) If the request for review of disposition is based upon an alleged violation of a Court Order, the Court shall not modify its disposition order unless it finds clear and convincing evidence of the violation.

Section 30. CHILD PROTECTION RECORDS

Children's Court Records

A record of all hearings under this Code shall be made and preserved. All Children's Court records shall be confidential and shall not be open to inspection to any but the following:

1. The child;

A.

- 2. The child's parent, guardian, or custodian;
- 3. The prospective adoptive parent(s);
- 4. The child's counsel or Court appointed special advocate;
- 5. The Children's Court personnel directly involved in the handling of the case;
- 6. Any other person by order of the Court, having legitimate interest in the particular case or the work of the Court.

B. Law Enforcement and Social Services Records.

Law Enforcement records and files concerning a child shall be kept separate from the records and files of adults. All Law Enforcement and Social Services records shall be confidential and shall not be open to inspection to any but the following:

1. The child;

- 2. The child's parents, guardian, or custodian;
- 3. The child's counsel or Court appointed special advocate;
- 4. Law Enforcement and Human Services personnel, including the Indian Child Welfare Act Committee and Child Protection Team, directly involved in the handling of the case;
- 5. The Children's Court personnel directly involved in the handling of the case;
- 6. Any other person by order of the Court, having legitimate interest in the particular case or the work of the Court.

Section 31. REHEARINGS

- A. Time and Grounds. A party may seek a rehearing or new trial by filing a written motion stating the basis for the relief sought within 30 days after decision of disposition or supplemental disposition. The Court may entertain an untimely motion for good cause shown. A motion will not be considered unless it presents a matter not previously presented to the Court, or presented but not previously considered by the Court, which, if true, would cause the Court to reconsider the case.
- B. Notice. All parties must be given notice of the motion in accordance with Section 16.
- C. Response by Parties. Any response by parties must be in writing and filed with the Court and opposing parties within 7 days after notice of the motion.
- **D. Procedure**. The judge may affirm, modify, or vacate the decision previously made in whole or in part, on the basis of the record, the memoranda prepared, or a hearing on the motion, whichever the Court in its discretion finds appropriate for the case.
- **E. Hearings**. The Court need not hold a hearing before ruling on a motion. Any hearing conducted shall be in accordance with the rules for dispositional hearings. The Court shall state the reasons for its decision on the motion on the record or in writing.
- **F.** Stay. The Court may stay any order pending a ruling on the motion.

Section 32. CHILDREN'S COURT APPEALS

A. Who Can Appeal.

Any party to a Children's Court hearing may appeal in writing a final Children's Court order to the appeals judge. An order terminating parental rights is appealable by right.

B. Time Limit for Appeal.

Any party seeking to appeal a final Children's Court order shall file a written notice of appeal with the Court within thirty (30) days of the final order.

C. Review Standard.

The Indian Child Welfare Act of 1978

United States Code Title 25, § 1901 - 1963

§ 1901. Congressional findings.

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

(1) that clause 3, section 8, article 1 of the United States Constitution provides that "The Congress shall have Power... To regulate Commerce... with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families. Pub.L. 95-608, § 2, Nov. 8, 1978, 92 Stat. 3069.

Short Title. Section 1 of Pub.L. 95-608 provided: "That this Act [which enacted this chapter] may be cited as the 'Indian Child Welfare Act of 1978'."

Legislative History. For legislative history and purpose of Pub.L. 95-608, see 1978 U.S. Code Cong. and Adm. News, p. 7530.

§ 1902. Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

Pub.L. 95-608, § 3, Nov. 8, 1978, 92 Stat. 3069.

Legislative History. For legislative history and purpose of Pub.L. 95-608, see 1978 U.S.Code Cong. and Adm.News, p. 7530.

§ 1903. Definitions

For the purposes of this chapter, except as may be specifically provided otherwise, the term—

(1) "child custody proceeding" shall mean and include-

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided*, That such transfer shall be subject to declination by the tribal court of such tribe.

State court proceedings; intervention

(c) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

Full faith and credit to public acts, records and judicial proceedings of Indian tribes

(d) The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

Pub.L. 95-608, Title I, § see 7530. Title I, §101, Nov. 8, 1978, 92 Stat. 3071.

Legislative History. For legislative history and purpose of Pub.L. 95-608, see 1978 U.S.Code Cong. and Adm.News, p. 7530.

§ 1912. Pending court proceedings—Notice; time for commencement of proceedings; additional time for preparation

(a) In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secre-. tary in like manner, who shall have fifteen days after . receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: Provided, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

Appointment of counsel

(b) In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.

Examination of reports or other documents

(c) Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

Remedial services and rehabilitative programs; preventive measures

(d) Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

Foster care placement orders; evidence; determination of damage to child

(e) No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Parental rights termination orders; evidence; determination of damage to child

(f) No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or

Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences

(c) In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: *Provided*, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

Social and cultural standards applicable

(d) The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

Record of placement; availability

(c) A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

Publ.L. 95-608, Title 1, § 105, Nov. 8, 1978, 92 Stat. 3073.

Legislative History. For legislative history and purpose of Pub.L. 95-608, see 1978 U.S Code Cong. and Adm.News, p. 7530.

¹§ 1916 Return of custody-Petition; best interests of child

(a) Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 1912 of this title, that such return or custody is not in the best interests of the child.

Removal from foster care home; placement procedure

(b) Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this chapter, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed. Pub.L. 95-608, Title I, § 106, Nov. 8, 1978, 92 Stat. 3073.

Legislative History. For legislative history and purpose of Pub.L. 95-608, see 1978 U.S. Code Cong. and Adm. News, p. 7530.

§ 1917. Tribal affiliation information and other information for protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court

Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

Pub.L. 95-608, Title I, § 107, Nov. 8, 1978, 92 Stat. 3073.

Legislative History. For legislative history and purpose of Pub.L. 95-608, see 1978 U.S. Code Cong. and Adm. News, p. 7530.

§ 1918. Reassumption jurisdiction over child custody proceedings—Petition; suitable plan; approval by Secretary

(a) Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by subchapter III of chapter 15 of this title, or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

Criteria applicable to consideration by Secretary; partial retrocession

(b)(1) In considering the petition and feasibility of the plan of a tribe under subsection (a) of this section, the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identify-

§ 1922. Emergency removal or placement of child; termination; appropriate action

Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

Pub.L. 95-608, Title I, § 112, Nov. 8, 1978, 92 Stat. 3075.

Legislative History. For legislative history and purpose of Pub.L. 95-608, see 1978 U.S.Code Cong. and Adm.News, p. 7530.

§ 1923. Effective date

None of the provisions of this subchapter, except sections 1911(a), 1918, and 1919 of this title, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after November 8, 1978, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

Pub.L. 95-608, Title I, § 113, Nov. 8, 1978, 92 Stat. 3075.

Legislative History. For legislative history and purpose of Pub.L. 95-608, see 1978 U.S.Code Cong. and Adm.News, p. 7530.

SUBCHAPTER II—INDIAN CHILD AND FAMILY PROGRAMS

§ 1931. Grants for on or near reservation programs and child welfare codes—Statement of purpose; scope of programs

(a) The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to—

(1) a system for licensing or otherwise regulating Indian foster and adoptive homes;

(2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care;

(4) home improvement programs;

(5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

(6) education and training of Indians, including. tribal court judges and staff, in skills relating to child and family assistance and service programs;

(7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and

(8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

Non-Federal matching funds for related Social Security or other Federal financial assistance programs; assistance for such programs unaffected; State licensing or approval for qualification for assistance under federally assisted program

(b) Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV-B and XX of the Social Security Act or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this chapter. The provision or possibility of assistance under this chapter shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV-B and XX of the Social Security Act or any other federally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensmay be necessary to show-

(1) the name and tribal affiliation of the child;

(2) the names and addresses of the biological parents;

(3) the names and addresses of the adoptive parents; and

(4) the identity of any agency having files or information relating to such adoptive placement.

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act, as amended.

Disclosure of information for enrollment of Indian child in tribe or for determination of member rights or

benefits; certification of entitlement to enrollment

(b) Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

Pub.L. 95-608, Title III, § 301, Nov. 8, 1978, 92 Stat. 3077.

References in Text. Freedom of Information Act, as amended, referred to in subsec. (a), is classified to section 552 of Title 5, Government Organization and Employees.

Legislative History. For legislative history and purpose of Pub.L. 95-608, see 1978 U.S.Code Cong. and Adm.News, p. 7530.

§ 1952. Rules and regulations

Within one hundred and eighty days after November 8, 1978, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter.

Pub.L. 95-608, Title III, § 302, Nov. 8, 1978, 92 Stat. 3077.

Legislative History. For legislative history and purpose of Pub.L. 95-608, see 1978 U.S.Code Cong. and Adm.News, p. 7530.

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

§ 1961. Education; day schools; report to congressional committees; particular consideration of elementary grade facilities

(a) It is the sense of Congress that the absence of

locally convenient day schools may contribute to the breakup of Indian families.

(b) The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health, Education and Welfare, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from November 8, 1978. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades.

Pub.L. 95-608, Title IV, § 401, Nov. 8, 1978, 92 Stat. 3078.

Change of Name. The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services, and the Secretary of Health, Education, and Welfare or any other official of the Department of Health, Education, and Welfare was redesignated the Secretary or official, as appropriate, of Health and Human Services, with any reference to the Department of Health, Education, and Welfare, the Secretary of Health, Education and Welfare, or any official of the Department of Health, Education, and Welfare, in any law, rule, regulation, certificate, directive, instruction, or other official paper in force on the effective date of Pub.L. 96-88, as prescribed by section 601 of Pub.L. 96-88, Title VI, Oct. 17, 1979, 93 Stat. 696, set out as a note under section 3401 of Title 20, Education, deemed to refer and apply to the Department of Health and Human Services or the Secretary of Health and Human Services, respectively, except to the extent such reference is to a function or office transferred to the Secretary of Education or the Department of Education under Pub.L. 96-88, Title III, §§ 301-307, Oct. 17, 1979, 93 Stat. 677-681. See sections 3441 to 3447 and 3508 of Title 20.

Legislative History. For legislative history and purpose of Pub.L. 95-608, see 1978 U.S.Code Cong. and Adm.News, p. 7530.

§ 1962. Copies to the States

Within sixty days after November 8, 1978, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this chapter, together with committee reports and an explanation of the provisions of this chapter.

Pub.L. 95-608, Title IV, § 402, Nov. 8, 1978, 92 Stat. 3078.

Legislative History. For legislative history and purpose of Pub.L. 95-608, see 1978 U.S.Code Cong. and Adm.News, p. 7530.

§ 1963. Severability of provisions

If any provision of this chapter or the applicability thereof is held invalid, the remaining provisions of this chapter shall not be affected thereby.

Pub.L. 95-608, Title IV, § 403, Nov. 8, 1978, 92 Stat. 3078.

Legislative History. For legislative history and purpose of Pub.L. 95-608, see 1978 U.S.Code Cong. and Adm.News, p. 7530.