

**Lac Vieux Desert Band of Lake Superior Chippewa Indians
Children's Code**

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1.01 Title.

- A. This Code shall be known as the Lac Vieux Desert Band of Lake Superior Chippewa Indians Children's Code and may be alternately referred to throughout this document as the "Children's Code" or "Code."

1.02 Purpose.

- A. The Children's Code shall be liberally interpreted and construed to fulfill the following expressed purpose:
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 ("Tribe");
 2. To preserve the unity of the family, preferably by separating the Child from his or her Parent or Parents only when necessary;
 3. To take such actions that will best serve the spiritual, emotional, mental and physical well-being 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 treatment, with emphasis whenever possible on prevention, early intervention and community-based alternatives;
 5. To set forth the rights of the Child, Parents, Guardians, and Custodians who come before the Children's Court under the provisions of this Code;
 6. To provide procedures for intervention in state proceedings involving Indian children and for transfer of jurisdiction over Indian children from state and other tribal courts to this Children's Court;
 7. To recognize and acknowledge the Tribe's customs and traditions regarding Child rearing;
 8. To preserve and strengthen the Child's cultural and ethnic identity whenever possible; and
 9. To preserve and protect the stability and longevity of the Tribe.

1.03 Code Construction.

- A. All personal pronouns used in this Code, whether used in the masculine, feminine or neuter gender, shall include all other genders.
- B. All references in this Code to the singular shall be read to include the plural, where applicable.

1.04 Definitions. As used in this Code:

- A. “Adult”: A person eighteen (18) years of age or older, or otherwise emancipated by order of a court of competent jurisdiction.
- B. “Child”: A person who is less than eighteen (18) years old and has not been emancipated by order of a court of competent jurisdiction.
- C. “Child Advocate”: The attorney (guardian ad litem) or lay advocate with specialized training appointed to the Children’s Court to advocate on a Child’s behalf.
- D. “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.
- E. “Child Custody Proceeding”: A proceeding in either the State or Tribal Court, initiated by Child protection law, which has the potential to remove a Child from the care of the Parent or Guardian.
- F. “Child in Need of Care”: A child:
 - 1. Who has no Parent, Guardian, or Custodian available and willing to care for him; or
 - 2. Whose Parent, Guardian, or Custodian had the opportunity to prevent physical injury, physical abuse, or sexual abuse, and failed to do so; or
 - 3. Who has suffered or is likely to suffer a physical injury, inflicted upon him other than by accidental means, which causes or creates a substantial risk of death, disfigurement, or impairment of bodily function; or
 - 4. Whose Parent, Guardian, or Custodian has not provided adequate food, clothing, shelter, medical care, education, or supervision necessary for his health and well-being; or
 - 5. Who has been sexually abused or sexually exploited by a Parent, Guardian or Custodian; or

6. Who has committed delinquent acts as a result of parental pressure, guidance, approval or failure to properly supervise; or
 7. Who has been emotionally or psychologically abused or neglected by a Parent, Guardian, or Custodian; or
 8. Who is born addicted to alcohol, or exposed to a Controlled Substance; or
 9. Whose Parent has had his or her parental rights to a sibling of the Child involuntarily terminated; or
 10. Whose Parent, Guardian, or Custodian has been convicted of a violent offense or sexual offense against the other Parent, Guardian, or Custodian or sibling of the Child.
- G. “Child Protection Team” or “Multi Disciplinary Team”: A team of professional service providers established to involve and coordinate the Child protection services of various agencies as set forth in Chapter 9 of this Code.
- H. “Children’s Court”: The Children’s division of the Tribal Court.
- I. “Controlled Substance”: A drug, substance, or immediate precursor listed in schedules I through V of Section 54 of the Tribe’s Criminal Code.
- J. “Custodian”: A person, other than a Parent or Guardian, to whom legal custody of the Child has been given.
- K. “Custodial Interference”: Taking or keeping a Child from his or her Parent with the intent to interfere with that Parent’s physical custody of the Child.
- L. “Department”: The Lac Vieux Desert Social Services Department.
- M. “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, including a home that the Parent, Guardian, or Custodian intends to establish as a permanent home or the place that the Parent, Guardian or Custodian considers to be his or her permanent home.
- N. “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, first or second cousin, or stepparent.
- O. “Father”: A person who is:
1. A man married to the mother at any time from a Child’s conception to the child’s birth unless the Child is determined to be a Child Born out of Wedlock; or

2. A man who legally adopts the **Child**; or
3. A man whose paternity is established in one of the following ways within time limits, when applicable, set by the **Children's Court**:
- a. The man and the mother of the **Child** acknowledge that he is the **Child's** Father in a writing executed, notarized and filed in the Tribal Court or **other court of competent jurisdiction**; or
 - b. A man who by order of filiation or by judgment of paternity is determined to be the Father of the **Child**.
- p. "Guardian": A person assigned by a court of **competent jurisdiction**, other than a Parent, having the duty and authority to provide care and control of a **Child**.
- Q. "Indian": Any member of a federally recognized Indian tribe, band or community; or Alaskan Native **Community**; or any member of a historic tribe or band recognized by the Michigan State Indian Commission.⁰
- R. "Indian Child": A **Child** who is a member of a **federally recognized Indian** tribe, **band or community**; or **Alaskan Native community**; or of a historic tribe or band recognized by the Michigan State Indian Commission; or a **Child** who is eligible for such membership **as the** natural **Child** of at least one Parent who is a member or is eligible for membership in such a tribe or band.
- S. "Indian Child Welfare Committee": A committee made up of Tribal members appointed by the Tribal Council to act in an advisory capacity to the Department, the Presenting Officer and the **Children's Court** to ensure the inclusion of culture and traditional **Child** rearing practices in all **Child** protection matters in order to protect the best interests of the children of the Tribe and promote the stability and security of the Tribe.
- T. "Lac Vieux Desert **Child**": A **Child** who is an enrolled member of the Lac Vieux Desert Band of Lake Superior Chippewa Indians or eligible to be a member of the Tribe.
- U. "Least Restrictive Alternatives": The placement **option** that puts the fewest restrictions upon the **Child** and family, while still obtaining the objectives of the **Children's Court** and this Code.
- V. "Parent": A Person who is legally responsible for the control and care of the **Child**, including a mother, Father, Guardian, or Custodian. **This definition includes natural** adoptive Parents, but does not include persons whose parental rights have been terminated, nor does it include an unwed Father whose paternity has not been acknowledged or established.

- W. “Presenting Officer”: The legal representative appointed by the Tribe to represent the Department and the interests of the Tribe before the Children’s Court in all proceedings under this Code.
- X. “Protective Services Worker”: An employee of the Department charged with carrying out responsibilities under this Code.
- Y. “Putative Father”: A man who is alleged to be or claims to be the biological father of a Child who is born to a woman to whom he is not married at the time of the Child’s birth.
- Z. “Respondent”: The Parent, Guardian or Custodian named in a Child welfare proceeding under this Code who is the responsible party for a Child in Need of Care.
- AA. “Tribe or Tribal”: The Lac Vieux Desert Band of Lake Superior Chippewa Indians.
- BB. “Tribal Council”: The Lac Vieux Desert Tribal Council.
- CC. “Tribal Court”: The court created under Article V of the Tribal Constitution.

Chapter 2. Jurisdiction of the Children's Court.

2.01. Creation of the Children's Court. Pursuant to the Tribal Constitution, the authority vested in the Tribal Council through Article IV (1)(b) and Article V(1), there is hereby established, for the Lac Vieux Desert Reservation, a court to be known as the Children's Court.

2.02 General Subject Matter Jurisdiction.

- A. The jurisdiction of the Children's Court shall be civil in nature and shall include the right to issue all orders necessary to ensure the safety and well-being of children who fall within the territorial and personal jurisdiction of the Children's Court.
- B. The Children's Court shall:
 - 1. Have and exercise jurisdiction over all proceedings under this Code in which an Indian Child including but not limited to guardianships, and adoptions held is alleged to be a Child in Need of Care or otherwise involving children, .
 - 2. Have the power to enforce subpoenas and orders of restriction, fine, contempt, confinement and other orders as appropriate.

2.03 Personal Jurisdiction.

- A. The Children's Court shall have and exercise jurisdiction over the following persons in cases involving a Child in Need of Care:
 - 1. Any enrolled member of the Tribe under the age of eighteen (18) years.
 - 2. Any Lac Vieux Desert Child residing within the exterior boundaries of the reservation and any members of that child's household.
 - 3. Any Child Custody Proceeding transferred to the Children's Court or in which the Tribe has intervened or asserted rights pursuant to the Indian Child Welfare Act or state law.
 - 4. Any Indian Child residing within the exterior boundaries of the reservation, and any members of that child's household.
 - 5. Any adult who is alleged to have caused an Indian Child to become a Child in Need of Care.

6. Any Indian or non-Indian who is pregnant with a Lac Vieux Desert Child and is actively abusing alcohol or controlled substances.

2.04 Continuing Jurisdiction.

- A. Jurisdiction once exercised by the Children's Court is continuing and exclusive unless terminated by the Children's Court, the child becomes an adult, or the case is transferred by the Children's Court to another court of competent jurisdiction.
- B. The Children's Court retains jurisdiction even if the person leaves the physical boundaries of the reservation.

2.05 Concurrent Jurisdiction.

- A. Concurrent jurisdiction may exist when a prior action has been commenced in a court of competent jurisdiction involving the same child before the Children's Court.
- B. In such cases, the Children's Court shall determine based on the allegations in the petition and by testimony, whether a prior action has in fact been commenced in another court of competent jurisdiction involving the same Child.
 1. In the event such a proceeding has commenced to the point of adjudication in another jurisdiction, the Children's Court shall decline a petition to assert original jurisdiction, but may direct the Presenting Officer to seek a transfer of the case to the Children's Court pursuant to the transfer provisions in Section 3 of the Code.
 2. If no proceedings in another court of competent jurisdiction have been commenced, the Children's Court shall proceed within its exclusive and original jurisdiction, provided personal jurisdiction exists under Section 2.03 of this Code.

2.06 Tribal Interest. Because of the vital interest of the Tribe in its children and those children who may become members of the Tribe, the statute, regulations, public policies, customs and common law of the Tribe shall control in any proceedings involving a Lac Vieux Desert Child.

Chapter 3. Transfer of Jurisdiction

3.01 Application of the Indian Child Welfare Act. The procedures for the state court under the Indian Child Welfare Act shall not be binding upon the Children's Court.

3.02 Transfer to State Court or Other Tribal Court. Unless otherwise provided for herein, in any proceeding before the Children's Court, the Children's Court may, following a proper motion to transfer and hearing on the same, transfer the proceedings to an appropriate state court or another tribal court where the state or the Indian tribe has a significant interest in the Child and the transfer would be in the best interest of the Child.

3.03 Procedures for Transfer to the Children's Court from Other Courts. Unless otherwise provided for herein, the following must occur to create an adequate record supporting transfer of a Lac Vieux Desert Child or other Indian Child to the Children's Court:

- A. Receipt of Notice. The Department is the agent for service of notice of all Child Custody Proceedings whether state court Child Custody Proceedings ("State Court Notice") or Tribal Court Child Custody Proceedings ("Tribal Court Notice") involving an Indian Child.
- B. Intervention. The Department shall determine, in cooperation with the Enrollment Office, whether the Child, who is the subject of the State Court Notice or Tribal Court Notice, is a Lac Vieux Desert Child. If the Child is a Lac Vieux Desert Child, the Department shall:
 1. Forward the State Court Notice or Tribal Court Notice along with proof of enrollment or eligibility for enrollment to the Presenting Officer or other legal representative authorized by the Tribal Council to represent the interests of the Tribe in state court or other tribal court ("Legal Representative").
 2. The Presenting Officer or other Legal Representative, after review of the State Court Notice or Tribal Court Notice and proof of enrollment or eligibility for enrollment, shall draft and file or cause to be filed a notice to intervene in the state or tribal court where Child Custody Proceedings have commenced within seven (7) business days of receipt of the State Court Notice or Tribal Court Notice and proof of eligibility from the Department or within a reasonable time which is practicable after receipt of that notice.

3.04 Investigation and Pre-Transfer Report by the Children's Court Counselor. Upon receipt of the State Court Notice or Tribal Court Notice, the Department shall open an investigation, gather information and file a written report with the Presenting Officer or Legal

Representative within fifteen (15) business days related to the child who is the subject of the State Court Notice or Tribal Court Notice, including but not limited to:

- A. family resources available;
- B. tribal foster care availability (if applicable);
- C. services available in the child's current location to the child, Parent, Guardian, or Custodian as well as services available upon transfer to the Children's Court;
- D. the distance of the child from the Tribe;
- E. tribal resources necessary and available to manage the matter if transferred from state court; and
- F. a recommendation on whether to transfer the case to the Children's Court.

3.05. Consideration of Transfer Report. Upon receipt of the written report from the Department described in Section 3.04, the Presenting Officer or Legal Representative shall consider the following factors to determine whether to proceed with filing a petition to transfer the state or tribal court Child Custody Proceeding to the Children's Court:

- A. The best interests of the Child;
- B. The best interests of the Tribe;
- C. Availability of services for the Child and his or her family;
- D. The recommendation of the Indian Child Welfare Committee; and
- D. The prospects for permanent placement of the Child within the Tribal community.

3.06 Petition to Transfer. If a decision to transfer the state or tribal court Child Custody Proceeding is made by the Presenting Officer or Legal Representative, a petition to transfer shall be drafted and filed by the Presenting Officer or Legal Representative in the state or tribal court exercising jurisdiction.

- A. A copy of the petition to transfer and the complete case file must be sent to the Children's Court. Upon receipt of the petition to transfer and complete case file, the Children's Court shall make a determination on acceptance of the matter within five (5) days in accordance with applicable Court Rules.

1. The Children's Court has discretion whether to accept or deny transfer and may accept a transfer from any state court based on the following criteria:
 - a. The best interests of the Child;
 - b. The best interests of the Tribe;

- c. Availability of services for the Child and his or her family; and
 - d. The prospects for permanent placement of the Child within the Tribal community.
2. The decision to accept or deny transfer shall include findings of fact based on the evidence presented for each of the four criteria located in Section 3.07(A) above.

3.07 Transfer by Request of Parent or Indian Custodian. A Parent or Indian Custodian's request to transfer jurisdiction to the Children's Court shall not require the actions in paragraphs A-E below, if the Parent or Indian Custodian has petitioned the state or other tribal court to transfer jurisdiction to the Children's Court:

- A. The Parent or Indian Custodian shall file a written request to accept transfer with the Children's Court.
- B. The request to accept transfer shall include:
 - 1. The name(s) of the Child(ren) in the case.
 - 2. The jurisdiction where the case is currently heard, along with the case number.
 - 3. A plain statement of why the transfer would be in the best interest of the Child and the Tribe.
- C. The request need not be formal but must be written and understandable by the Children's Court.
- D. Upon receipt of a request to transfer, the Children's Court shall cause the Department to initiate a pre-transfer report in accordance with Section 3.04 and serve a copy of the request and the report upon the Presenting Officer along with a Notice of Hearing to decide the Parent or Indian Custodians request to transfer in accordance with Section 3.06 and applicable Court Rules.
 - 1. If the request of the Parent or Indian Custodian is granted, the Presenting Officer or Legal Representative shall file the petition to transfer with the state or tribal court as directed by the Children's Court.

3.08 Full Faith and Credit; Conflict of Laws.

- A. State Court Order. State court orders involving children over whom the Children's Court could take jurisdiction pursuant to this Code may be recognized by the Children's Court only after the Children's Court finds:
 - 1. The state court had jurisdiction over the Child and subject matter;

2. The provisions of the Indian Child Welfare Act, 25 U.S.C. 1901-1963, were properly followed (if applicable);
 3. Due process was afforded to all interested persons participating in the state court proceeding; and
 4. The state court proceeding does not violate the public policies, customs, or common law of the Tribe.
- B. Court Orders of Other Tribal Courts. Court orders of other tribal courts involving children over whom the Children's Court could take jurisdiction pursuant to this Code shall be recognized by the Children's Court after the Children's Court has determined:
1. The other tribal court exercised proper subject matter and personal jurisdiction over the parties; and
 2. Due process was afforded to all interested parties participating in the other tribal court proceeding.

Chapter 4. Parental Responsibilities.

4.01 Parental Responsibilities. The Parent, Guardian or Custodian of any Child coming within the jurisdiction of the Children's Court shall have the following responsibilities:

- A. to attend all court hearings involving the Child, or to show cause before the Children's Court why they should be excused from any hearing they are unable to attend;
- B. to bring the Child before the Children's Court when so ordered; and

- C. to monitor the Child's compliance with all orders entered or conditions imposed by the Children's Court, and to make all reasonable efforts to ensure that the Child complies with such orders or conditions.

4.02 Excuse from Parental Responsibilities.

- A. The Child's Parent shall be excused from the responsibilities imposed by Section 4.01 above, if the Child is under the care and control of a Guardian or Custodian as the result of a court order.
- B. The Child's Parent, Guardian or Custodian may be excused from the responsibilities imposed by Section 4.01 if it appears to the Court that there may be a conflict of interest between the Child and the Child's Parent, Guardian or Custodian.
- C. A showing that the Child's Parent, Guardian or Custodian has voluntarily transferred physical custody of the Child to another person shall not excuse the Child's Parent, Guardian or Custodian from the responsibilities imposed by 4.01 above, absent a court order.

4.03 Parental Non-Compliance. Any Parent, Guardian, or Custodian who fails to comply with the requirements of section 4.01 above, may be ordered to appear before the Children's Court to show cause why they should not be held in contempt.

Chapter 5. Procedures and Authorizations.

5.01 Rules of Procedure.

- A. The procedures in the Children's Court shall be governed by the rules of procedure for the Children's Court promulgated by the Tribal Court, which are not in conflict with this Code.
- B. In the absence of Children's Court promulgated rules of procedure, Lac Vieux Desert Tribal Court Rules and the Michigan Rules of Civil Procedure may be instructive.

5.02 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.

5.03 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.

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

Chapter 6. Children's Court Personnel

6.01 Children's Court Judge

- A. Appointment. The Children's Court judge(s) shall be the Tribal Court Chief Judge or Associate Judge as assigned by the Chief Judge.
- B. Qualifications. The general qualifications for the Children's Court judge shall be the same as the qualifications for a member of the Tribal Judiciary as defined in Article V.

Section 5 of the Tribe's Constitution. In addition, the Children's Court judge should possess an understanding related to or receive training related to:

1. Child development, parental bonding, child protection, and permanency planning principles;
2. The Tribe's customs as they relate to traditional child welfare and child rearing;
3. The child welfare agencies and service providers who offer services during the life of a child welfare case;
4. A familiarity with the local attorney bar and other legal/lay advocate resources to ensure appropriate appointment of guardian ad litem services and child advocates as provided for in this Code;
5. The state child protection and foster care services as well as the funding and payment systems for those services; and
6. The overall outlay of the child welfare system as it relates to Indian Children and Indian tribes, including but not limited to the Indian Child Welfare Act, the Michigan Indian Family Preservation Act and other state and federal laws affecting Indian Children.

C. Powers and Duties. In carrying out the duties and powers specifically enumerated under this Code, a judge 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. The Children's Court judge shall retain the power to delegate certain administrative duties of the Children's Court to appropriate court personnel and officers.

D. Disqualification and 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.

6.02 (Reserved)

6.03 Counsel for Parents. Parents, Guardians, or Custodians who become a respondent in a Child Custody proceeding may be represented at each stage of proceedings under this Code by an attorney or law advocate at their own expense.

6.0 Child Advocate.

A. Appointment and Qualifications. At every stage of the proceedings conducted under this Code the Children's Court may appoint by order of the Children's Court, an advocate for the child who may be an attorney, otherwise known as a guardian ad litem, or lay

advocate with special training related to Child Custody Proceedings to represent the interests of the Child.

1. An attorney may represent the Child only if admitted to practice before the Children's Court.
2. A person may serve as a lay advocate in Child Custody Proceedings in accordance with criteria, training, rules and procedures developed by the Tribal Court.

B. Role of Child Advocate. The role of the Child Advocate is to represent the Child in Child Custody Proceedings in accordance with this Code.

C. Duties of the Child Advocate. The Child Advocate shall perform the following duties:

1. Appear at all hearings to competently represent the interests of the Child in proceedings before the Children's Court;
2. Conduct an independent investigation, including interviewing the Child, Parents, Guardians, Custodian, social workers and other person to properly ascertain the facts and circumstances underlying the allegations that the Child is a Child in Need of Care and within the jurisdiction of the Children's Court.
3. Ascertain the best interests of the Child, taking into consideration the Child's wishes according to the competence and maturity of the Child:
 - a. A Child fourteen (14) years of age or older is presumed to be capable of determining what is in his or her best interests, within reason. It is the duty of the Child Advocate to represent the Child's wishes in such cases.
 - b. For children less than fourteen (14) years of age, the Child Advocate shall make a determination as to the best interests of the Child, regardless of whether that determination reflects the wishes of the Child.
 - c. The wishes of the Child are always relevant to the determination of the Child's best interests, however, and shall be taken into consideration and weighed according to the competence and maturity of the Child.
4. Provide written reports of findings and recommendations related to the Child's best interest to the Children's Court at each hearing held before the Children's Court.
5. Urge that specific and clear orders are entered for evaluation, assessment, services and treatment for the Child and his or her Parent, Guardian, or Custodian.

6. Monitor implementation of case plans and dispositional orders to determine whether services ordered by the Children's Court are actually provided, are provided in a timely manner, and are accomplishing their desired goal;
 7. Inform the Children's Court if the services are not being made available to the Child and Parent, Guardian or Custodian, if there is any failure of such services, or if such services are not achieving their purpose;
 8. Identify the common interest among the parties and, to the extent possible, act as mediator to promote a cooperative resolution of the matter;
 9. Consult with other professionals in identifying the Child's interests, current and future placements and necessary services;
 10. Advocate for the interests of the Child in mental health, education, juvenile justice, and other community systems when applicable to circumstances causing the Child to come within the jurisdiction of the Children's Court;
 11. Attend training programs as prescribed by the Children's Court to maintain their status as a Child Advocate in good standing.
- D. 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.

Chapter 7. Indian Child Welfare Committee

7.01 Purpose. The Indian Child Welfare Committee is made up of individuals appointed by the Tribal Council to act in an advisory capacity to the Department, the Presenting Officer, and the Children's Court to make recommendations as to the inclusion of culture and traditional child rearing practices in all child protection matters.

7.02. Composition and Qualifications. The Indian Child Welfare Committee shall be made up of five (5) members, appointed by the Tribal Council. To be eligible for appointment to the Indian Child Welfare Committee, a person must:

- A. Be a member of the Tribe, or another federally recognized tribe with significant ties to the community;
- B. Possess knowledge of the culture, customs, and traditions of the Tribe related to child rearing;
- C. Have some experience and/or knowledge of child protection systems, laws and techniques.
- D. Not have been found guilty of or entered a plea of nolo contendere (no contest) to any felonious offense, or two or more misdemeanor offenses, under Federal, State, or tribal law involving crimes of violence, sexual assault, molestation, exploitation, contact or prostitution, crimes against persons, or offenses committed against children (see Indian Child Protection and Family Violence Protection Act, Public Law 101-630).¹ The terms used in this subsection (7.02(D)) shall have the definitions given in the Indian Child Protection and Family Violence Protection Act.
- E. Submit to background checks as required by the Indian Child Protection and Family Violence Protection Act, Public Law 101-630.

7.03 Role of Committee. The Indian Child Welfare Committee shall make recommendations to the Presenting Officer, Legal Representative, the Department, and the Children's Court related to cultural and customary child rearing traditions, values and norms to be incorporated into case management plans developed pursuant to this Code.

7.04 Meetings. The Indian Child Welfare Committee shall meet on a monthly basis to review ongoing child welfare issues within the Community as well as address any new issues brought to the attention of the Committee. On an as-needed basis, the Department or the Presenting Officer may call an Indian Child Welfare Committee meeting to consult regarding specific cases at which time the Committee may provide recommendations related to cultural child rearing traditions.

7.05 Limits on Information Gathering and Sharing.

- A. Committee Members are not Investigators. The Indian Child Welfare Committee members have no authority to gather information related to any matter coming before the Children's Court.
- B. Committee members shall have no access to confidential information, including but not limited to case files, police reports, psychological and drug and alcohol assessments, etc., unless deemed appropriate by the Department and the Presenting Officer.

¹ All convictions or pleas of nolo contendere or guilty should be considered in making a determination unless a pardon, expungement, set aside or other court order reaches the plea of guilty, plea of nolo contendere, or the finding of guilt. There is no time limit as to these convictions.

- C. Inquiries received related to case specific related matters shall be referred to the Department or the Presenting Officer. The Committee may, however, request that further information be provided or that further investigation be conducted by the social worker or other appropriate authority.

7.06 Conflicts of Interest.

- A. Indian Child Welfare Committee members must recuse themselves from any discussion of issues arising from the review of a Child who is in their custodial care.
- B. Indian Child Welfare Committee members may participate in the discussion of issues involving their extended families.

7.07 Confidentiality.

- A. Meetings of the Indian Child Welfare Committee shall not be open to the public.
- B. If a community member wishes to address the Indian Child Welfare Committee, they must address the Committee in writing and be granted permission to speak to the Committee in accordance with Indian Child Welfare Committee rules.
- C. Confidentiality of case information and other Indian Child Welfare Committee records shall be maintained by the Department. Indian Child Welfare Committee members are subject to the same standards of confidentiality as other Children's Court personnel, the Department and other professional working in the child welfare system.
- D. Violation of Standards of Confidentiality. A violation of the duty to maintain confidentiality under this Code may, in addition to removal from the Committee in accordance with the Committee bylaws, result in criminal prosecution.

Chapter 8. Social Services Department and Protective Service Workers.

8.01 Authorized Activities Intended to Further Code's Intent.

- A. The Department shall cooperate with all tribal, state and community agencies necessary to achieve the purpose of this Code.
- B. The Department may negotiate working agreements with other tribal, state and community agencies to ensure the effective delivery of services under this Code. Such agreements shall be subject to approval of the Tribal Council.

- C. The Department shall employ Protective Service Worker(s) to carry out the functions of this Code.
- D. The Department shall develop policies and procedures to address child protection investigations conducted by the Department.

8.02 Power and Duties of Protective Service Worker.

A. The Protective Service Worker shall:

1. Be the designated person to receive from any source, oral or written, information regarding a child who may be a Child in Need of Care;
2. Report any information received related to a child who may be a Child in Need of Care within twenty-four (24) hours to the Presenting Officer, initiate a prompt and thorough investigation which shall include determination of the nature, extent, and cause of any condition which would fall under the definition of a Child in Need of Care within this Code the name, age, and condition of other children, if any, in the home.
3. Seek the assistance of, and cooperate with, tribal, state or other law enforcement officials within twenty-four (24) hours of having probable cause to believe that:
 - a. Abuse or neglect is the suspected cause of a Child's death;
 - b. The Child is the victim of sexual abuse or sexual exploitation;
 - c. Abuse or neglect resulting in severe physical injury to the Child that 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;
 - d. Law enforcement intervention is necessary for the protection of the Child, the protective services worker, or another person involved in the investigation; or
 - e. The alleged perpetrator of the Child's injury is not a person responsible for the Child's health or welfare.
4. Take a Child into temporary custody if necessary pursuant to Chapter 17 – Investigation and Emergency Removal.
5. 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

subject to the existing home environment, and all other facts or matters found to be pertinent.

6. Maintain a written record of the investigation that includes, at a minimum, specific facts, dates and witnesses to substantiate whether there is probable cause to believe that a Child is a Child in Need of Care.
7. 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; and
8. Upon completion of the investigation by the protective services worker, protective services worker may inform the person who made the report whether the allegations have been substantiated or not. No other information may be imparted to the reporting party.
- 9.
10. If the Department or a Protective Services Worker receives a report which alleges a pregnant woman's abuse of alcohol or a controlled substance, the Department shall arrange an appropriate assessment and offer services suitable 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. The Department is required to seek Children's Court ordered treatment under Chapter 13 if the pregnant woman refuses recommended voluntary services or fails recommended treatment.
11. If a report of Child abuse or neglect cannot be substantiated, the Protective Services Worker may meet informally with all interested parties to discuss concerns and remedies with the intent of preventing further intervention pursuant to Chapter 16 of this Code.

8.03 Department Responsibilities for Children under the Care and Supervision of the Department due to Abuse, Neglect, or Delinquency. The Department has the following non-exhaustive list of responsibilities:

- A. When a Child is placed under the care and supervision of the Department, the Department must ensure the Child receives ongoing primary care and periodic reassessments of their health, development, and emotional well-being to determine if any changes to their care is necessary or whether there is a need for additional services and interventions.
- B. When a Child is placed in out-of-home care, the Department shall involve, so far as it is practicable and in the Child's best interest, the birth parents or legal guardians in the Child's medical, dental, developmental, and mental health care.
- C. The Department will assist and engage the parent or legal guardian's participation in the Child's health care by:

- (1) Notifying parents of all health care appointments scheduled or managed by the Department.
- (2) As practicable, and if not contrary to the mental, physical or emotional health of the child, inviting Parents to attend Child's health care appointments.
- (3) Assisting with and resolving barriers that may prevent Parent's attendance in Child's health care appointments.
- (4) Consulting with Parents regarding medical decisions and treatment planning.

Chapter 9. Multi Disciplinary Team (MDT) / Child Protection Team

9.01 Department Duties. The Department shall develop, in coordination with the Tribal Prosecutor's Office and other relevant agencies, a Multi-Disciplinary Team (MDT) Protocol (Protocol) which shall be included as an addendum to this Code.

9.02 Purpose. To provide a Child-focused, best practice and evidence based, multi-disciplinary approach to matters involving severe physical abuse and sexual abuse investigations.

9.03 MDT Members. To provide a more consistent and appropriate response to matters involving severe physical or sexual abuse investigations, the following departments shall be designated as members of the multi-disciplinary team:

- A. Lac Vieux Desert Tribal Prosecutor's Office or other Legal Representative;
- B. Lac Vieux Desert Victim Advocate;
- C. Lac Vieux Desert Social Services Department;

D. Lac Vieux Desert Tribal Police;

E. Lac Vieux Desert Behavioral Health Department; and

F. Lac Vieux Desert Health Center.

9.04 Duties. The responsibilities and duties of the MDT shall be outlined within the Protocol.

Chapter 10. Duty to Report Child Abuse and Neglect

10.01 Duty to Report. Any person identified in Section 10.02 (“Mandated Reporter”) below who has a reasonable cause to suspect that a Child is a Child in Need of Care shall immediately make a report to the appropriate social service department or the law enforcement department as defined herein. The identity of Mandated Reporters shall be subject to disclosure only by consent of that person or in the instance where judicial process compels such disclosure.

- A. Child In Need of Care On Reservation. If the suspected Child In Need of Care is located on the Tribe’s Reservation, the Mandated Reporter shall make a report to the Tribal Social Services Department and/or the Tribal Law Enforcement Department. The notified department shall immediately notify the other when such a report is made.
- B. Child In Need of Care Off Reservation. If the suspected Child In Need of Care is located outside of the Tribe’s Reservation, the Mandated Reporter shall make a report to the appropriate State Social Services Department as well as the Tribal Social Services Department.

10.02 Persons Specifically Required to Report.

- A. **Abuse or Neglect.** Any of the following persons who have reasonable cause to suspect that a Child may be a Child in Need of Care shall immediately make, or cause to be made, an oral report of the suspected condition as required by 10.01:
1. Any physician, nurse, dentist, optometrist, or any other medical or mental health professional including a community health representative; volunteers working with families;
 2. Any Court staff;
 3. Any school principal, school teacher, school administrators, or other school official;
 4. Any social worker;
 5. Any child day care worker or other child care staff including foster parents, residential care or institutional personnel;
 6. Any counselor;
 7. Any peace officer or other law enforcement official; and
 8. Any member of the Multi-Disciplinary Team/Child Protection Team as defined in Chapter 9.
- B. **Pregnant Woman Abusing Drugs or Alcohol.** Mandated Reporters shall immediately report to the Tribal Social Services Department if the person knows or has reason to suspect a woman is pregnant and has abused alcohol or used a controlled substance for a nonmedical purpose during the pregnancy.
- C. **Written Report.** Within seventy-two (72) hours after making an oral report, the reporting person mandated to report under Section 10.02(A) shall file a written report.
1. The written report shall include as much detail about the following information as known to the mandated reporter:
 - a. Names, addresses, and tribal affiliations of the Child and his or her Parents, Guardian or Custodian;
 - b. The name and ages for all members of the Child's household;
 - c. The Child's age;

- d. The nature of the actual or suspected Child abuse or neglect;
 - e. Name and age of the alleged perpetrator(s);
 - f. Whether the alleged perpetrator lives with the Child;
 - g. Address where the alleged abuse or neglect occurred;
 - h. Previous abuse or neglect of the Child or his or her siblings;
 - i. Name and address of the person or agency making the report
2. If the reporting person is a member of the staff of a hospital, agency, or school, the reporting person 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.
 3. One report from a hospital, agency, or school shall be considered adequate to meet the reporting requirement (i.e. meet the standard of reasonable suspicion). A member of the staff of a hospital, agency or school shall be considered adequate to meet the reporting requirement.
 3. A member of the staff of a hospital, agency, or school shall not be dismissed or otherwise penalized in the workplace for making a report required by this Code or for cooperating in an investigation.

10.03 Non-Mandated Reporters. Any person who has a reasonable cause to suspect that a Child is a Child in Need of Care may make a report to the appropriate social service department or law enforcement department.

10.04 Immunity from Liability. All persons or agencies complying in good faith with the provisions of this Code shall be immune from civil liability.

10.05 Abrogation of Privilege. The physician-patient privilege, spousal privileges, or any other legally recognized privilege except the attorney-client privilege, as they relate to the witness and to the exclusions of confidential communications, shall be abrogated in any judicial proceeding in which a Child's status as abused, abandoned, or Child in Need of Care is an issue.

10.06 Penalty for not Reporting. Any Mandated Reporter who knowingly fails to do so or willfully prevents someone else from doing so shall be subject to a charge of civil contempt with a penalty of up to sixty (60) days in jail and/or a fine of up to five hundred dollars (\$500.00).

Chapter 11. Service of Summons; Notice of Hearings

11.01 General. Unless a party must be summoned as provided in Section 11.02 below, a party shall be given notice of a proceeding in Children's Court in any manner authorized by this Code or the Rules of the Children's Court.

11.02 Summons, generally.

- A. A summons and petition shall be issued and served upon each Parent, Guardian or Custodian and any adult person with whom the Child resides, if other than a Parent or a Children's Court ordered Custodian, directing such person(s) to appear before the Children's Court on a specified date. The Children's Court may direct that the Child's appearance in Children's Court is necessary.
- B. Contents. If the Child's appearance is ordered, the summons shall direct the person to whom it is addressed to appear with the child at a time and place specified by the Children's Court and must:
 - 1. Identify the nature of the hearing;
 - 2. Include a prominent notice that the hearings could result in termination of parental rights, if applicable; and
 - 3. Have a copy of the petition attached to the summons.
- C. Manner of Serving Summons. The summons shall be served as follows:
 - 1. Except as provided in subsections 11.02(C)(2) and (3) below, a summons required under this Chapter must be personally served to a named party and verified by affidavit or acknowledgement of acceptance of service.
 - 2. If personal service of the summons is impracticable, or cannot be achieved, the Children's 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.
 - 3. If the Children's Court finds service cannot be made because the whereabouts of the person to be summoned has not been determined after reasonable efforts, the Children's Court may direct any manner of substituted service, including publication.

11.03 Summons, Petition to Terminate Parental Rights.

- A. Proceeding to Terminate Parental Rights, Summons. A summons and petition shall be served within seven (7) calendar days after filing of a petition, and at least fourteen (14) calendar days before a hearing on a petition to terminate parental rights:

1. If a summons is served by registered mail, it must be sent no more than fourteen (14) calendar days after the filing of the petition and at least twenty-one (21) days before a hearing on a petition to terminate parental rights.
2. 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 at least fourteen (14) days before any hearing.

11.04 Notice of Hearing.

- A. Persons Entitled to Notice. The Children's Court shall ensure that the following persons are notified of each hearing:
 1. The Parent or Parents;
 2. The attorney for the Parent;
 3. The Child or advocate for the Child;
 4. The legal Guardian or Custodian other than the Parent, if any;
 5. The petitioner;
 6. The responsible Child placing agency, if different from the petitioner;
 7. The special advocate of a party appointed pursuant to this Code;
 8. Any other person the Children's Court may direct to be notified.
- B. General. Notice of hearing must be given in writing at least seven (7) days prior to the hearing except as provided in subsections 11.04(C) and (D), or otherwise provided by this Code.
- C. Preliminary Hearing. When a Child is placed outside of the family home pursuant to this Code, reasonable efforts shall be made to notify the Parents of the Child or Extended Family pursuant to Chapter 17 as soon as the hearing is scheduled, and the notice must be in writing.
- D. Termination Proceedings. Notice of a hearing on a petition to terminate parental rights must be given in writing at least fourteen (14) days before the hearing.
- E. When a party fails to appear in response to a notice of hearing, the Children's Court may order the party's appearance by summons, subpoena, or by order to show cause.

11.05 Subpoenas.

- A. The attorney or advocate for a party or the **Children's** Court on its own motion may cause a subpoena to be served on a person whose testimony or appearance is desired.
- B. It is not necessary to tender advance fees to the person served a subpoena to compel attendance.

11.05 Waiver of Service. A person may waive notice of hearing or service of process. The waiver shall be in writing.

11.06 Subsequent Notices. After a party's first appearance before the **Children's** 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 **11.03**.

11.07 Notice to the Putative Fathers

- A. If the **Children's** Court determines that the **Child** has no Father as defined in section **1.04(O)**, the **Children's** Court shall take appropriate action as described in this subsection.
- B. The **Children's** Court shall take initial testimony on the tentative identity and address of the **natural** Father. If the **Children's** Court finds probable cause to believe that an identifiable person is the natural Father of the **Child**, the **Children's** 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:
 - 1. That a petition has been filed with the **Children's** Court;
 - 2. The time and place of hearing at which the natural Father is to appear to express his interest, if any, in the **Child**; and
 - 3. A statement that failure to attend the hearing will constitute a denial of interest in the **Child**, a waiver of notice for all subsequent hearings, a waiver of **rights** to appointment of an attorney, and could result in termination of any parental rights.
- C. After notice to the Putative Father the **Children's** Court may conduct a hearing and determine that:
 - 1. The Putative Father has been personally served or served in some other manner which the **Children's** Court finds to be **reasonably** calculated to provide notice to the Putative Father. If so, the **Children's** Court may proceed in the absence of the Putative Father.

2. A preponderance of the evidence establishes that the Putative Father is the natural Father of the Child and justice requires that he be allowed **fourteen** (14) days to establish his relationship according to section **1.04(0)(3)**; provided that if the **Children's** Court decides the interests of justice so requires, it shall not be necessary for the mother of the child to join in an acknowledgement. The Children's Court may extend the time for good cause shown.
 3. There is probable cause to believe that another identifiable person is the natural Father of the **Child**. If so, the **Children's** Court shall proceed with respect to **both** prospective Fathers in accord with this this section until one is found, by a preponderance of evidence to be the Child's Putative Father.
 4. After diligent inquiry, the identity of the natural Father cannot be determined. If so, the **Children's** 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 **Children's** Court shall terminate the parental rights of the unknown Father and proceed without further notice or **Children's** Court appointed attorney for the unidentified person.
- D. The **Children's** 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:
1. He fails to appear after proper notice; or
 2. He appears, but fails to establish paternity within the time set by the Children's Court, requests continuance or an extension of time, for good cause shown

Chapter 12. Authorization for Medical Treatment and Medical Examinations.

12.01 Court Order for Medical Examination. The Department may, upon a showing of good cause, request a Children's Court order for a medical evaluation of a Child pursuant to Chapter 17, Section 17.01 of this Code.

A. Grounds for Medical Treatment.

1. The Children's Court may authorize medical or surgical care for a Child when:
 - a. A Parent, Guardian or Custodian is not immediately available and cannot be found after reasonable effort under the circumstances; or
 - b. A physician informs the Children's Court in writing that in his or her professional opinion, the life, limb, or eyesight of the Child would be greatly endangered

without certain treatment, and the Parent, Guardian, or other Custodian refuses or fails to consent.

2. The Children's Court shall cause every effort to be made to grant the Parent, Guardian, or Custodian an immediate informal hearing.
 3. This hearing shall not be allowed to further jeopardize the Child's life or health.
- B. Process for Requesting Medical Treatment. In cases that meet the criteria detailed above, the Department shall prepare an Emergency Petition for Medical Treatment/Care seeking an order from the Court authorizing emergency medical care, which includes examination and treatment of the Child. The Presenting Officer will assist the Social Services Department as needed.
- C. Court Order.
1. In making its order, the Children's 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, traditions, or religions, 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.
 2. After entering any authorization under this Chapter, the Children's Court shall issue a written order containing findings and legal authority to treat and shall cause a copy of the Order to be given to the appropriate physician, hospital or both.
 3. Oral authorization by the Children's 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 Children's Court for performance of care or treatment in reliance on the Children's Court authorization, and any function performed there under shall be regarded as if it were performed with the Child's and the Parent's authorization.

12.02 Emergency Medical Treatment. Notwithstanding Section 12.01, the Department is authorized to obtain an emergency evaluation and treatment without a Children's Court order under any circumstances where a child's life, limb, or eyesight is seriously endangered, and a Children's Court order cannot reasonably be obtained or a Child's parent cannot be reasonably located to immediately treat the child's injuries.

12.03 Sexual Assault Examination. In all matters in which the sexual assault of a Child is suspected, Aa sexual assault examination shall be sought by the Department in coordination with Tribal Law Enforcement in which an examination is medically and/or evidentially warranted as determined by the Tribal Presenting Officer or the Court.

12.04 Provider Authorization and Findings. When a Child suspected of being a Child in Need of Care is seen by a physician as a result of a Children's Court order, the physician shall make the necessary medical findings, which may include physical or psychological examinations, x-rays, photographs, laboratory studies, and other pertinent tests and diagnostic evaluations. The Children's Court order shall authorize the physician to report the results of the evaluation to the Department and the Children's Court.

Chapter 13. Drug Abuse During Pregnancy.

13.01 The Children's Court may assume jurisdiction over a pregnant woman who resides within the boundaries of the Tribe's reservation who is or has been abusing alcohol or controlled substances during her pregnancy. The use of alcohol or controlled substances must be shown by a preponderance of the evidence.

13.02 The procedures outlined in Chapters 20, 21, 22, 23, and 24 shall apply to this Chapter.

13.03 Upon assuming jurisdiction, the Children's Court may enter orders requiring such person to refrain from substance abuse, submit to reasonable measures to assure her non-use, and comply with community based or in-patient treatment programs and pre-natal care. Such Children's Court orders may be enforced through the Children's Court civil contempt power.

13.04 Information made available pursuant to a Children's Court order regarding a woman's drug or substance use during pregnancy may not be used in a criminal prosecution against the woman.

Chapter 14. Substance Abuse Risk Assessment.

14.01 Reasonable suspicion of a Parent, Guardian, Custodian, or other adult in a Child's household using or being in possession of illegal drugs, abusing prescription medication, or abusing alcohol may result in the Department requesting an order from the Court to require an assessment to determine whether the Child is at risk.

14.02 Risk Assessment. This assessment may include, but is not limited to, home visit(s) from the Department, participation by the Parent, Guardian, Custodian or other adult in the Child's household in an addiction assessment with a mental health evaluation, and utilization of a structured decision-making tool to determine the safety of the Child and risk of future harm and any needs of the family.

14.03 Option for Preventive Services. If the assessment determines that the Child is at risk, preventative services pursuant to Chapter 16 may be offered to the Parent, Guardian, Custodian, or other adult living in the Child's household. If the preventative services are rejected, the Department shall consult with the Tribal Presenting Officer to determine whether the matter meets the criteria for filing a Child in Need of Care petition.

Chapter 15. Drug Positive Home.

15.01 Notice of Positive Drug Test. If the Lac Vieux Desert Housing Department ("Housing Department") has conducted methamphetamine or other drug testing in a Tribal housing unit in which children reside and receive a positive result, the Housing Department shall notify social services within twenty-four (24) hours of receiving the positive test.

15.02 Department Responsibilities. Upon receiving information related to a positive test result from the Housing Department, the Department shall:

- A. Seek an order from the Court to have any Child in the home assessed for drug exposure;
- B. Conduct a Substance Abuse Risk Assessment pursuant to Chapter 14 above; and
- C. Offer to the Parent, Guardian, Custodian or other adult living in the Child's household preventative services pursuant to Chapter 16.

15.03 Rejection of Preventative Services. If preventative services are rejected, the Department shall consult with the Tribal Presenting Officer to determine whether the matter meets the criteria for filing a Child in Need of Care petition.

Chapter 16. Preventative Services.

16.01 Limitations of Authority; Duty to Inform.

- A. Before offering preventative services to a family, the Department shall inform the family that he or she has no legal authority to compel the family to receive such services and that participation in preventative services is voluntary.
- B. Prior to conducting the initial consultation, the Department shall inform the Child and the Child's Parent, Guardian or Custodian of the nature and purpose of the initial consultation which is outlined in Section 16.02 below.
- C. If the Child declines to attend or participate in the initial consultation, the Department may, with the concurrence of the Child's Parent, Guardian or Custodian, conduct the initial consultation without the participation of the Child.

- D. The Department may not conduct an initial consultation without the voluntary participation of the Child's Parent, Guardian or Custodian.
- E. If the family declines the offered preventative services, the Department may request the Tribal Presenting Officer initiate a Child protection petition alleging that the Child is a Child in Need of Care. If a family accepts the offer for preventative services, the Department shall schedule an Initial Consultation in accordance with Section 16.02 below.
- F. Nothing in this section limits the authority of the Department to act in emergency situations pursuant to Chapter 17 below or to obtain a medical evaluation of the Child pursuant to Chapter 12.
- G. The Department shall keep all communications received during an investigation confidential, such obligation does not mitigate the duty to report Child abuse and neglect as prescribed by Chapter 10.

16.02 Initial Consultation – Purpose and Conduct.

- A. If a family accepts the offer of preventative services, the Department shall schedule an Initial Consultation with the Child, Child's Parent, Guardian, or Custodian as soon as practicable. The purpose of the initial consultation shall be:
 - 1. to review with the Child and the Child's Parent, Guardian or Custodian the contents of the request for services;
 - 2. to identify and discuss:
 - a. the circumstances that brought the family to the Department's attention;
 - b. any additional issues or concerns raised during the initial consultation;
 - c. the particular needs and circumstances of the Child and the Child's family;
 - d. services and resources available to address those needs, issues and concerns.
 - 4. If, at the conclusion of the initial consultation, it does not appear to the Department that the Child and the Child's Parent, Guardian, or Custodian is in need of preventative services, the Department shall make note of the meeting, the determination and shall take no further action in the matter.
 - 5. If, at the conclusion of the initial consultation, it appears to the Department that the Child and the Child's Parent, Guardian or Custodian is in need of preventative services, the Department shall together with the Child and the Child's Parent,

Guardian or Custodian, develop a voluntary plan for services in accordance with the provisions of Section 16.04 below.

6. If the family terminates the initial consultation or, following the initial consultation, declines the offered preventative services, the Department may request the Presenting Officer initiate a child protection petition alleging that the child is a Child in Need of Care.

16.04 Voluntary Plan for Services.

A. Voluntary Plan for Services – Contents and Requirements.

1. A voluntary plan for services developed pursuant to the provisions of this Chapter shall set forth, in writing:
 - a. the rights of the Child and the Child's Parent, Guardian or Custodian under the provisions of this Code;
 - b. an acknowledgment that participation in the plan for services is voluntary, and neither the Child nor the Child's Parent, Guardian or Custodian is obligated to comply with the plan for services;
 - c. the anticipated course of action to be taken if:
 - i. the Child or the Child's Parent, Guardian or Custodian does not comply with the plan for services; or
 - ii. the outcomes and goals set forth in the plan for services are not accomplished within a reasonable period of time, to be specified in accordance with the provisions of subsection (A)(1)(i) below;
 - d. the specific conduct and circumstances upon which the voluntary plan for services is based;
 - e. the specific services and resources available to address:
 - i. the particular needs of the Child and the Child's Parent, Guardian or Custodian; and
 - ii. any additional issues or concerns raised during the initial consultation;

- f. a comprehensive plan for ensuring that the Child and the Child's Parent, Guardian or Custodian obtain the services and resources needed;
- g. the specific actions to be taken by the Child and the Child's Parent, Guardian or Custodian in accordance with the plan, including the frequency and location of appointments for services and contact with the Department ;
- h. the anticipated outcomes of the plan and its implementation, including measurable, individualized goals for the Child and the Child's Parent, Guardian or Custodian;
- i. an estimate of the time which will be needed to accomplish the anticipated outcomes, which shall initially not exceed twelve (12) months. Subsequent six (6) month extensions are permitted upon agreement of the Department, the Child, and the Child's Parent, Guardian, and Custodian;
- j. a schedule for reviewing the effectiveness of the plan and the progress of the Child and the Child's Parent, Guardian or Custodian toward achieving the anticipated outcomes.

2. The Department shall provide a copy of the voluntary plan for services to the Child and the Child's Parent, Guardian or Custodian.

16.05 Voluntary Plan for Services – Monitoring and Review

- A. The Department shall periodically review the progress of the Child and the Child's Parent, Guardian or Custodian toward accomplishing the anticipated outcomes of the voluntary plan for services.
- B. The periodic review required under this subsection:
 1. shall include regular, scheduled contact between the Department, the Child, and the Child's Parent, Guardian or Custodian; and
 2. where appropriate given the circumstances and needs of the Child and the Child's Parent, Guardian or Custodian, may include:
 - a. home visits at times and intervals set forth in the voluntary plan for services and agreed to by the Child's Parent, Guardian or Custodian; and
 - b. subject to written consent by the Child and the Child's Parent, Guardian or Custodian, as may be necessary, communication between the Department and:
 - i. any person or agency providing services to the Child or the Child's Parent, Guardian or Custodian in accordance with the voluntary plan for services; and
 - ii. school officials or support staff responsible for meeting the Child's educational needs and monitoring the Child's educational progress.

16.06 Termination of Proceedings.

- A. The Department shall terminate all proceedings initiated pursuant to the provisions of this Chapter upon determining that:
 1. the outcomes and goals of the voluntary plan for services have been accomplished;
 2. it otherwise appears that the child is no longer a Child in Need of Services; or,

3. The outcomes and goals of the voluntary plan for services have not been accomplished.

B. Upon terminating the proceedings pursuant to the provisions of this section, the Department:

1. shall refer the Child and the Child's Parent, Guardian or Custodian to any social, community, or tribal services or resources from which they may continue to benefit;

2. shall inform the Tribal Presenting Officer that the outcome and goals of the voluntary plan for services have not been accomplished, and provide all necessary information to allow a determination of whether it is appropriate to file a Child in Need of Care petition.

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Chapter 17. **Child in Need of Care** - Investigation and Emergency Removal.

17.01 Investigative Orders; Orders for Examination. Upon a showing of probable cause that a Child is a Child in Need of Care, which may be done *ex parte*, the **Children's** 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.

17.02 Authority to Remove.

- A. If the **Children's** Court finds probable cause to believe the **Child** 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 **Children's** Court may order the Child to be taken into custody. The **Children's** Court may include in such an order:
1. **An affidavit in support of the existence of probable cause that a Child within the specific location meets the definition of a Child in Need of Care;**
 2. **An authorization to enter specified premises to remove the Child and to gather further evidence;** and
 3. **A directive to place the Child in protective custody pending preliminary hearing.**

17.03 Emergency Removal Without a Children's Court Order.

- A. A child may be taken into protective custody without a **Children's** 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:
1. **Failure to remove the Child may result in a substantial risk of death, serious injury, or serious emotional or developmental harm; or**
 2. **The Parent, Guardian or Custodian is absent and it appears, from the circumstances, that the child is unable to provide for his or her own basic necessities and no alternative arrangements except removal are available to protect the child.**
- B. If grounds for removal are corrected, the Child may be returned to the Parent by the person **or Department that** originally authorized removal or by the protective services worker.
- C. **Report of Removal. Within twenty-four (24) hours of removing a Child without a Tribal Court order, the removing agency (i.e. the LVD Police Department and/or the Social Services Department) must prepare a written report concerning the removal of the Child. This report must include all relevant facts and conclusions relied upon to support the decision to remove the Child, information concerning what problems, if any, were**

encountered in removing the Child, who has custody of the Child, and where the Child is presently located unless there is reason to believe that revealing such information to the Parents, Guardian, Custodian, or other interested parties would create an undue risk of harm to the Child. If a state social services agency was involved in the removal, the Department will be responsible for obtaining a report from the state agency in compliance with this provision.

17.04 Law Enforcement Cooperation.

- A. Tribal Law Enforcement Officers shall cooperate with the Protective Services Worker and the Department in conducting investigations authorized by this Code. Tribal Law Enforcement Officers shall be responsible for identifying and securing evidence, maintaining police procedures and the chain of custody of such evidence.
- B. Tribal Law Enforcement Officers shall cooperate with the Protective Services Worker to remove a Child from the custody of his Parents, Guardian, or Custodian when necessary.

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17.05 Notice of Removal.

- A. Notice to the Children's Court. After a Child is removed from the custody of his Parents, Guardian or Custodian with or without a Tribal Court order, the person who removed the Child shall attempt to contact the Children's Court within six (6) hours. The attempt to contact the Children's Court shall be documented. Actual notice to the Children's Court shall be made by the Department no later than 12:00 p.m. (noon) the next Children's Court working day.
- B. Notice to the Parent, Guardian or Custodian. The Department shall make all reasonable efforts to notify the Parents, Guardian or Custodian, within twelve (12) hours of the Child's removal if the Parent, Guardian, or Custodian is not present during 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 and/or the Extended Family of the Child. A notice to the Parent Guardian or Custodian shall advise the Parent, Guardian, or Custodian of their rights under this Code.
- C. Notice to Child's Tribe if the Child is not an Lac Vieux Desert Child. If the Children's Court asserts jurisdiction over a Person who is a member of another federally recognized Indian tribe or eligible for enrollment in an Indian tribe other than the Tribe, the Children's Court shall notify the other tribal court that jurisdiction as been asserted over a Child in their tribe.

Chapter 18. Child in Need of Care – Placement of Children.

18.01 Restrictions. A Child alleged to be a Child in Need of Care shall not be placed in jail or any 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 nor may a Child be placed in a facility for psychiatric care, homelessness, domestic violence victims or substance abusers unless such services are clearly indicated as an immediate need of the Child.

18.02 Placement Priorities. In placing a Child removed from the custody of his Parents, Guardian or Custodian, efforts shall be made to place the Child within reasonable proximity to his or her community with access to his or her Indian culture.

- A. Preference shall be given to the following placements, which are listed in order of preference.
1. The home of an adult member of the Child's immediate family, whose household is separate from that of the Child;
 2. The home of an adult member of the Child's Extended Family, whose household is separate from that of the Child;
 3. A licensed foster home, or other home otherwise authorized by law to provide care for the Child;
 4. A facility operated by a licensed Indian Child Welfare services agency; or
 5. Any other suitable placement which meets the standards for shelter care facilities established by the Tribal Government.
- B. Subject to the preferences stated in section 18.02(A) above, priority shall be given to placements in homes of the following persons, which are listed in order of priority:
1. An enrolled member of the Lac Vieux Desert Band of Lake Superior Chippewa Indians;
 2. An enrolled member of a Chippewa tribe other than the Lac Vieux Desert Band;
 3. An enrolled member of any other Indian tribe.
 4. The home of any other person.

18.03 Least Restrictive Alternative Setting. If a Child cannot be returned to his Parents, the Child shall be placed in the Least Restrictive Alternative setting which most approximates a family setting and in which his or her special needs, if any, may be met. The Child shall also be

placed in a reasonable proximity to his community, taking into account any special needs of the Child and where contact with his or her Indian culture will be maintained.

Chapter 19. Child in Need of Care - Informal Adjustment Conference.

19.01 Prior to or after the filing of a Child in Need of Care Petition, the Department and the Presenting Officer may hold an informal conference with the Child and the Child's Parent, Guardian, or Custodian to discuss alternatives to proceeding with a petition if:

- A. An informal adjustment of the matter would be in the best interest of the Child and the Tribe; and
- B. The Child's Parent, Guardian, or Custodian may consent to an informal adjustment conference after they have received an explanation of their rights.

19.02 This section does not authorize the Department or the Presenting Officer to compel the Child, the Child's Parent, Guardian, or Custodian to participate in an informal adjustment conference or compel a Child, the Child's Parent, Guardian, or Custodian to enter into an informal adjustment agreement.

19.03 Following an informal adjustment conference, the Department shall set forth in writing, conference findings and the disposition agreed to by the parties.

- A. If an informal adjustment is agreed to, the report shall detail the terms agreed to by the parties which may include, but are not limited to, referring the Child and the Child's Parent, Guardian, or Custodian to a community agency for assistance; substance abuse assessment and mental health evaluation for the Child, the Child's Parent, Guardian, or Custodian; and defining the term of supervision calculated to assist and benefit the Child.
- B. If an informal adjustment agreement is not reached, the report shall indicate that no agreement could be reached and that the matter will be evaluated for appropriateness for filing of a Child in Need of Care petition or scheduled for an adjudicatory hearing.
- C. Regardless of whether an agreement is reached, 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, if a petition has been filed, the Children's Court, shall also receive a copy of the report.

19.04 If an informal adjustment is agreed to, the Presenting Officer may decline to authorize filing a petition, hold its petition in abeyance or withdraw a petition and refile at a later date without prejudice.

19.05 Any disposition arranged through the informal adjustment procedure detailed in this Chapter shall be concluded within six (6) months unless the parties to the agreement renew the agreement for a subsequent six (6) months.

19.06 The Presenting Officer shall review the Child's progress every thirty (30) days. If, at any time after the initial thirty (30) day period, the Presenting Officer and assigned Child Protection Worker conclude that positive results are not being achieved, a petition may be filed or proceedings held in abeyance be resumed.

19.07 No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing or any other proceeding involving the Child under this Code.

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Chapter 20. Child in Need of Care - Filing a Child In Need of Care Petition.

20.01 Authorization to File Petition.

- A. The Presenting Officer on behalf of the Social Services Department shall initiate formal Child protection proceedings by filing a Child in Need of Care petition.

20.02

- A. Nothing in this section shall preclude law enforcement or protective services personnel from taking emergency action under Chapter 17 – Investigation and Emergency Removal - of this Code.

20.03 Time Limitations. If a Child has been removed from the home, ~~then~~ a Child in Need of Care petition shall be filed with the Children’s Court no later than 12:00 p.m. (noon) of the second Children’s Court working day after removal.

20.04 Contents of Petition. The Child in Need of Care petition shall set for the following with specificity:

- A. The facts necessary to invoke the jurisdiction of the Children’s Court together with a statement that the Child is a Child in Need of Care;
- B. The name, birth date, sex, address and tribal affiliation of the Child;
- C. A plain and concise statement of facts upon which the allegations are based including the dates and location at which the alleged actions occurred;
- D. The names, residence and tribal affiliation of the Child’s Parents, Guardians or Custodians, if known;
- E. The name and signature of the Presenting Officer who approved the petition and the date of the approval;
- F. The names, relationship and residence of all known members of the Child’s Extended Family and all former care givers, if known;
- G. 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; and
- H. The type of relief requested, including whether temporary or permanent custody is sought.

20.05 Amendment to Petition. When it appears during the course of any proceeding under this Chapter that an issue has been omitted from the petition and appears from the facts to be appropriate, the Children's Court may on a motion by the Presenting Officer amend the petition and proceed to hearing and determine the additional or other issues, as though originally and properly brought.

20.06 Discovery in Child in Need of Care Proceeding

A. Request for Discovery. Upon written request, the Respondent shall have the right to inspect, copy and photograph social, psychiatric, psychological, medical, and school reports and records concerning the Child if:

1. The item is within Presenting Officer's possession, custody, or control, or the Presenting Officer knows – or has reason to know – that the item exists; and
2. the item is material to preparing the Respondent's defense or the Presenting Officer intends to use the item in its case at the Adjudicatory or Dispositional Hearing.

B. Respondent's Duty to Disclosure.

1. If a Respondent requests disclosure pursuant to this Section and the Presenting Officer complies, then the Respondent must permit the Presenting Officer, upon request, to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items if:
 - a. the item is within the Respondent's possession, custody, or control; and
 - b. the Respondent intends to use the item in the Respondent's case at the Adjudicatory or Dispositional Hearing.
2. If a request for discovery is refused, application may be made to the Children's Court for an order granting discovery. Motions for discovery shall certify that a request for discovery has been made and refused. Absent manifest injustice, no motion for discovery will be granted unless the moving party has requested and has not been provided the materials or evidence sought through a written request to the opposing party.
3. If a party upon whom the request for discovery is made shows that granting discovery violates a privileged communication, the Children's Court may deny, in whole or in part, or otherwise limit or set conditions on the discovery authorized.

Chapter 21. Child in Need of Care – Initial Hearing and Preliminary Inquiry.

21.01 If the Child has been released to **or remains in the care and custody of** his or her Parent, Guardian, or Custodian, the **Children's** Court shall conduct an **Initial Hearing and Preliminary Inquiry** within seven (7) days after the filing of the petition for **the purpose of:**

- A. **Advising the Respondent of the information contained in Section 21.04 below;**
- B. Give the Respondent an opportunity to plea to the allegations in the petition in accordance with Section 21.05 below;
- C. Determining whether probable cause exists to believe that the Child is a Child in Need of Care based on the allegations contained in the petition.
- D. Determining whether further services will be provided.

21.02 If the Child has been removed from the home, the **Children's** Court shall conduct an **Initial Hearing and Preliminary Inquiry** by 12 p.m. of the second **Children's** Court working day **following the removal** for the purpose of:

- A. **Advising the Respondent of the information contained in Section 21.04 below;**
- B. Give the Respondent an opportunity to plea to the allegations in the petition in accordance with Section 21.05 below;
- C. Determining whether there is probable cause to believe that the Child is a Child in Need of Care based on the allegations contained in the petition; and
- D. **Determining** 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.

21.03 If the Child's Parent, Guardian, or Custodian is not present at the **initial hearing and preliminary inquiry**, the **Children's** Court shall inquire **about the adequacy of the** efforts made to notify and 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 **Children's** Court shall recess for not more than **twenty-four** (24) hours and direct the petitioner to make continued efforts to obtain the presence of the Child's Parent, Guardian, or Custodian. The preliminary hearing may be conducted in the Parent's absence.

21.04 Advisement.

- A. **At the Initial Hearing and Preliminary Inquiry, the Children's Court shall advise the Respondent of the following:**
 - 1. **The nature and purpose of the proceedings;**

2. The contents of the Petition. This shall be done by reading all allegations in the petition in open Court, unless a reading of the petition is waived;
3. The right to assistance of counsel, at their own expense;
4. The privilege against self-incrimination;
5. The right to an Adjudicatory Hearing in accordance with the provisions of this Code;
6. The right to cross-examine witnesses, the right to testify, the right to subpoena witnesses, and the right to introduce evidence on their own behalf at an Adjudicatory Hearing;
7. The right to appeal any final order of the Children's Court.

21.05 Entry of Plea. After advising the Respondent of the rights outlined above, the Children's Court shall allow the Respondent an opportunity to plead responsible, not responsible, no contest or stand mute as to the allegations in the petition. Upon an entry of a plea of responsible or no contest in accordance with Section 21.06 below, by any or all Respondents, the Children's Court shall set a time and date for a Dispositional Hearing regarding the pleading parties.

21.06 Plea of Responsible or No Contest.

- A. A plea may be taken at any time after the filing of the petition. The Children's Court has discretion to allow a Respondent to enter a plea of responsible or a plea of no contest.
- B. Advice of Rights and Possible Disposition. Before accepting a plea of responsible or no contest, the Children's Court must advise the Respondent on the record:
 1. Of the allegations in the petition;
 2. That by pleading responsible or no contest they give up the right to:
 - a. an Adjudicatory Hearing;
 - b. to have the petitioner prove the allegations by clear and convincing evidence;
 - c. to have witnesses against them appear and testify under oath at the Adjudicatory Hearing;
 - d. To cross-examine witnesses;
 - e. to have witnesses testify on their behalf at trial;

f. Of the consequences of the plea including that the plea can later be used to terminate parental rights.

- C. Voluntary Plea. The Children's Court shall not accept a plea of responsible or no contest without satisfying itself that the plea is knowingly and voluntarily made.
- D. Accurate Plea. The Children's Court shall not accept a plea of responsible or no contest without establishing support for a finding that the Child comes within the jurisdiction of the Tribal Court, preferably by questioning the Respondent unless the offer is to plead no contest. If the plea is no contest, the Children's Court shall not question the Respondent, but, by some other means, shall obtain support for establishing a factual basis of responsibility.

21.07 Hearing following Plea of Not Responsible or Standing Mute.

- A. If the Respondent enters a plea of not responsible or stands mute, the Children's Court shall hold a preliminary inquiry at which time the court shall hear testimony concerning:
 - 1. The circumstances that gave rise to the petition; and
 - 2. The need for continued placement or removal of the Child from the custody of the Parent, Guardian or Custodian.
- B. If the Children's Court finds that probable cause does not exist, the petition shall be dismissed, and the child shall be released to the care and custody of the Respondent.
- C. If the Children's Court finds that probable cause exists to believe the Child is a Child in Need of Care, the Children's Court:
 - 1. Shall order the Parent, Guardian, or Custodian who has pled not responsible or has stood mute, to appear at an Adjudicatory Hearing on a date and time set by the Children's Court; and
 - 2. May release the Child into the custody of Respondent under such reasonable terms and conditions as are necessary for the physical and mental well-being of the Child; or
 - 3. May order the placement of the Child with someone other than the Respondent if the Children's Court, during the preliminary inquiry, determines that both of the following conditions exist:
 - a. Custody of the Child with the Respondent presents a substantial risk of harm to the Child's life, physical health or mental well-being and no provisions of service or other arrangements except removal of the Child is reasonably available to adequately safeguard the Child from such risk; and

b. Conditions of custody of the Child away from the Respondent are an adequate safeguard for the Child's health and welfare.

- D. Closed Hearing. 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 Children's Court shall be admitted.
- E. Evidence. 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 hearing and may be relied upon by the Children's Court to the extent of its probative value.
- F. The Children's Court may rely upon conference telephone, video conferencing or other electronic devices that permit all those appearing or participating to hear and speak to each other.
- G. Medical and Mental Health Examination. The Children's Court may at any time after conducting a preliminary inquiry 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.

Chapter 22. Child in Need of Care – Adjudicatory Hearing.

22.01 Timing of Hearing; Burden of Proof.

- A. When a Respondent has pled not responsible or stood mute during the Initial Hearing and Preliminary Inquiry, the Children's 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 forty-five (45) days after the Preliminary Inquiry is conducted by the Children's Court.
- C. Continuances of an Adjudicatory Hearing may be granted by the Children's Court, but only:
 - 1. Upon stipulation by the parties;
 - 2. Where process cannot be completed;
 - 3. Where the Children's Court finds that the testimony of a presently unavailable witness is needed;
 - 4. One time only for up to fourteen (14) days at a Parent's request to obtain counsel; or
 - 5. For good cause shown.
- D. The Presenting Officer has the burden of proving the allegations in a petition by clear and convincing evidence:
 - 1. If the Children's Court finds that the Presenting Officer has met its burden of proof, the Children's Court shall make findings as to the specific grounds for adjudicating a Child to be a Child in Need of Care and for the assumption of continued jurisdiction by the Children's Court. The Children's Court shall then schedule a Dispositional Hearing. The Children's Court may also enter orders of further discovery, evaluation and assessment, and other orders to protect the Child.
 - 2. If the Children's Court finds that the Presenting Officer failed to meet its burden of proof, the Children's Court shall dismiss the allegations and release the Child into the care and custody of his or her Parents, Guardian, or Custodian.

22.02 The general public shall be excluded from the proceedings and only the parties, their counsel or advocate, the Child Advocate and other persons determined necessary or useful to the proceedings by the Children's Court shall be admitted.

22.03 Evidence.

- A. 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 hearing and may be relied upon by the Children's Court to the extent of its probative value.
- B. The parties shall be afforded an opportunity to examine and controvert written reports received by the Children's Court and shall be allowed to cross-examine individuals who made the reports.
- C. A separate hearing may be scheduled upon request to allow for direct examination and cross-examination of individuals who made reports when those individuals are not available at the Adjudicatory Hearing.
- D. The Children's Court may rely upon conference telephone, video conferencing, or other electronic devices that permit all those appearing or participating to hear and speak to each other.

Chapter 23. Child in Need of Care - Dispositional Hearing.

23.01 A Dispositional Hearing shall be held following the Children's Court finding that the Child is a Child in Need of Care, or following the entry of a plea of responsible or no contest, and shall be conducted to determine a plan of remedial measures designed to achieve the reunification of the family or, concurrently a preliminary permanency plan for termination of parental rights.

23.02 The Dispositional Hearing may be held immediately after the Adjudication Hearing. The interval, if any, between the Adjudicatory Hearing and the Dispositional Hearing is within the discretion of the Children's Court. When the Child is in placement, the interval may not be more than thirty-five (35) days except for good cause. If the Dispositional Hearing is not held immediately after the adjudication, notice of hearing may be given in accordance with Chapter 11.

23.03 Proposed Case Plan.

- A.** Prior to the Disposition Hearing, the Department shall prepare a written Disposition Report setting forth recommendations concerning the disposition of the case, including a specific plan for services to meet the needs of the Child and the Child's Parent, guardian or custodian. The report shall include, but not be limited to:
1. a description of the Child's home environment, family relationships, and background;
 2. information regarding the Child's maturity, cognitive and emotional development, and emotional and mental health;
 3. the results and recommendations of any relevant medical, psychological, psychiatric, or other examinations or evaluations conducted by a qualified professional;
 4. a discussion of the Child's educational status, including, but not limited to, the Child's strengths, abilities, and special educational needs;
 5. the identification of appropriate educational and vocational goals for the Child, examples of which may include:

- a. regular school attendance and completion of the Child's current grade;
 - b. attainment of a high school diploma or its equivalent;
 - c. successful completion of literacy or vocational courses; or
 - d. enrollment in an apprenticeship, internship or similar program;
- 6. a summary of the Child's prior contacts with the juvenile justice system.
- 7. a concise description of all reasonable and appropriate alternative dispositions;
- 8. a specific plan for the care of and assistance to the Child and/or the Child's Parent, Guardian, or Custodian designed to resolve the problems presented in the Child in Need of Care petition, taking into account the particular needs of the Child and the Child's Parent, Guardian or Custodian, and reunification requirements for all parties.
- B. 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.
- C. The proposed case plan must be presented to the Indian Child Welfare Committee for review and input related to cultural and customary child rearing traditions, values and norms that may be relevant to the matter before being presented to the Children's Court.
- D. The Tribal Social Service Department shall present the case plan to the Children's Court, the Child's Advocate, and the Presenting Officer, at least three (3) days before the Dispositional Hearing.

23.04 Disposition Reports – Confidentiality. Any reports prepared and the results of any examinations ordered in accordance with the provisions of this Chapter shall be confidential.

23.05 Predisposition Reports – Filing and Service.

- A. Any reports or examination results to be considered by the Children's Court at any hearing, including the Dispositional Hearing, conducted pursuant to the provisions of this Chapter shall be filed in the Children's Court and served upon the Presenting Officer, Department, the Child's Advocate, and the Child's Parent, Guardian or Custodian, at least three (3) days prior to the hearing.

- B. The time limit imposed by Section (A) above, may be waived upon the agreement of the parties and the Children's Court.

23.06 Dispositional Hearing – Evidence.

- A. 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 Children's Court shall consider the case service plan and any report by an agency responsible for the care and supervision of the Child concerning efforts to prevent removal or to rectify conditions that caused removal of the Child from the custody of the Parent, Guardian or Custodian.
- B. The parties shall be given an opportunity to examine and refute written reports so received and may be allowed to cross-examine individuals making reports.
- C. A separate hearing may be scheduled upon request to allow for direct examination and cross-examination of individuals who made reports when those individuals are not available at the Dispositional Hearing.
- D. 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 material prepared pursuant to the Children's Court ordered examination, interview or course of treatment.

23.07 Dispositional Order.

- A. The Children's Court shall enter an Order of Disposition after considering the case Dispositional Report and other evidence offered bearing on Disposition. The Children's Court shall approve a case service plan and may order compliance with all or part of the Dispositional Report and may enter such orders as it considers necessary in the best interests of the Child.
- B. If a Child has been found to be a Child in Need of Care, the Children's Court may make the following dispositions which are listed by priority:
1. Permit the Child to remain in the custody of his or her Parent, Guardian, or Custodian, subject to such conditions as the Children's Court may prescribe;
 2. Place the Child with a relative within the primary service area of the Tribe, subject to such conditions as the Children's Court may prescribe;
 3. Place the Child in a licensed foster home within the primary service area of the Tribe, subject to such conditions as the Children's Court may prescribe;
 4. Place the Child in a foster home, or home of a relative, outside the primary service area of the Tribe, subject to such conditions as the Children's Court may prescribe;

5. Place the Child in a group home or residential care facility designated by the Children's Court; or
6. Direct the Presenting Officer to file a petition to terminate parental rights under this Code.

C. Child Support. A Parent, Guardian, or Custodian may be ordered to make child support payments for children, who are not Title IV-E eligible, when placed with persons who are not eligible for foster care payments or when the foster care payments will not cover the reasonable cost of caring for the children.

Chapter 24. Child in Need of Care - Dispositional Review Hearing.

24.01 The Order of Disposition is to be reviewed at the discretion of the Children's Court but at least once every six (6) months.

24.02 Notice of the Dispositional Review Hearing shall be provided in writing in accordance with Chapter 11.

24.03 At a Dispositional Review Hearing, the Children's Court shall review, on the record the following for compliance with the case service plan and the previous orders of the Children's Court:

- A. 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 benefitted from those services.
- B. The adequacy and effectiveness of the services being provided to the family and the likelihood that specific services will result in improvement in the circumstances which led to removal of the Child and eventual reunification.
- C. Visitation with the Child. If visitation did not occur or was infrequent, the Children's Court shall determine why visitation did not occur or was infrequent.
- D. The extent to which the respondent has complied with each provision of the Order of Disposition, prior orders of the Court and the likelihood that compliance will continue.

24.04 After review of the case service plan, the Children's 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 Children's Court may modify any part of the case plan including, but not limited to, the following:

- A. Prescribing additional services that are necessary to rectify the conditions that caused the Child to become or remain a Child in Need of Care.
- B. 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.

24.05 At a Dispositional Review Hearing the Children's Court shall determine the continuing necessity and appropriateness of the Child's placement. If continued placement is not necessary, the Children's Court shall order the return of the Child to the custody of his or her Parent, Guardian or Custodian.

24.06 If the Child remains in placement, the Children's Court shall determine the continuing necessity and appropriateness of the Child's placement. In making this determination, the Children's Court shall consider, but not be limited to, both of the following:

- A. The Parent, Guardian or Custodian's ability and motivation to make necessary changes to provide a suitable environment for the Child.
- B. Whether there is a reasonable likelihood that the Child may be returning to the custody of his or her Parent, Guardian or Custodian prior to the next Dispositional Review Hearing required by this Chapter.

24.07 Unless waived, at least seven (7) days notice shall be given to all parties prior to the return of a Child to his or her Parent, Guardian or Custodian. If no party requests a hearing within the seven (7) days, the Children's Court may issue an order without a hearing permitting the agency to return the Child to his or her Parent, Guardian or Custodian.

24.08 An agency report filed with the Children's Court shall be accessible to all parties to the action and shall be offered into evidence.

Chapter 25. Permanency Planning Review.

25.01 A Permanency Planning Hearing shall be conducted to review the status of the Child adjudicated as a Child in Need of Care and the progress being made toward the Child's return to the custody of his or her Parent, Guardian or Custodian. The Children's Court shall conduct a Permanency Planning Hearing not more than eighteen (18) months after entry of the Order of Disposition and every eighteen (18) months thereafter, so long as the Child remains a Child in Need of Care. A Permanency Planning Review Hearing may be combined with a Disposition Review Hearing under Chapter 24 of the Code.

25.02 The Department shall file a proposed final permanency plan at least ten (10) days prior to the Permanency Planning Review Hearing. Copies of the proposed plan shall be served upon all parties at least seven (7) days prior to the hearing.

25.03 If parental rights to the Child have not been terminated and the Children's Court determines 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 Children's Court shall order the Child returned to the custody of his or her Parent, Guardian or Custodian. In determining whether the return of the Child would cause a substantial risk of harm to the Child, the Children's Court shall view the failure of the Parent, Guardian or Custodian to substantially comply with the term and conditions of the case service plan and orders of disposition of the Children's Court as evidence that return of the Child to the custody of his or her Parent, Guardian or Custodian would cause a substantial risk of harm to the Child's life, physical health, or mental well-being.

25.04 If the Children's Court determines at a Permanency Planning Hearing that the Child should not be returned to the custody of his or her Parent, Guardian or Custodian, the Department shall propose one of the following alternative placement plans:

- A. The Child be placed permanently with a relative within the primary service area of the Tribe.
- B. The Child be placed permanently with a relative who is outside the primary service area of the Tribe.
- C. The Child remain in long-term foster or residential care.

- D. A petition for Guardianship under this Code be filed by the current caretaker of the Child or the Department.
- E. A petition to terminate parental rights under this Code be filed by the Department.

25.05 If the Children's Court determines that the Child should not be returned to the custody of his or her Parent, Guardian or Custodian, the Children's Court shall order permanent placement with a relative, long term foster or residential care under Section 25.04(A), (B) or (C), or continue the Child in placement for a limited time period so that petitions under Section 25.04(D) or (E) may be filed. The priority scheme contained in Chapter 18 should be followed when placing the Child.

Chapter 26. Termination of Parental Rights.

26.01 Purpose. The purpose of this Chapter 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 custom that the family unit is of the most value to the Tribe and the Tribe will preserve the family whenever possible. When the breakup of the family is required to ensure the health, safety and wellbeing of the Child and it has been clearly demonstrated that those charged with the rights and responsibilities of parenthood are unable to adequately provide a safe and nurturing environment in which children may grow into functioning and contributing adults, those rights of parenthood will be terminated and the responsibilities vested in those persons or entities who may adequately provide for the Child. The Parent-Child relationship is of such vital importance that termination of it should be used only as a last resort when, in the opinion of the Children's Court, all efforts have failed to avoid termination.

26.02 Grounds for Involuntary Termination.

- A. The **Children's** Court may terminate the parental rights of a Parent to a Child adjudicated as a Child in Need of Care if the **Children's** Court finds, beyond a reasonable doubt, **one** (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 **twenty-eight** (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 **or her** support or without communication for a period of at least **six** (6) months. The failure to provide support or to communicate for a period of at least **six** (6) months shall be presumptive evidence of the Parent's intent to abandon the Child.
 2. The Child or sibling of the Child has suffered physical injury or severe or prolonged physical or sexual abuse under either of the following circumstances:
 - a. A Parent's act **or failure to act** caused the physical injury or physical or sexual abuse and the **Children's** Court finds that there is a high **probability** that the Child will suffer from injury or abuse in the foreseeable future if placed in the Parent's home.
 - b. A Parent who has or had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so, and the **Children's** Court finds that there is a **high probability** 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 Code, **twelve** (12) or more months have elapsed since the issuance of an initial Order **of Disposition**, and the **Children's** 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; or
 - b. Other conditions exist that cause the 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 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.

4. A Parent is unable to provide proper care and custody for a period in excess of one (1) year because of a mental deficiency, mental illness, or chronic substance abuse 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.
6. The Parent is imprisoned for over two (2) 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.
7. The Parent has been convicted of a felony level violent offense or a felony level sexual offense in which a family member or another Child was a victim.
8. Parental rights to one (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.
9. A Parent has absconded with a Child from Children's Court ordered placement or has engaged in custodial interference with the Children's Court's placement of a Child in Need of Care.

26.03 Termination at Initial Disposition. If a petition to terminate parental rights to a Child is filed, the Children's Court may enter an order terminating parental rights pursuant to Section 26.02 at the initial Dispositional Hearing under Chapter 23.

26.04 Evidence. The same rules of evidence which apply at an Adjudicatory Hearing under Chapter 22 shall apply in a termination of parental rights proceeding.

26.05 Termination of Parental Rights Order. An order terminating parental rights under this Code may not be entered unless the Children's 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 matter are sufficient. The Children's Court must state the findings and conclusions on the record or include them in a written opinion. If the Children's Court does not issue a decision on the record following the dispositional hearing, it shall file its decision within twenty-eight (28) days after taking of final proofs.

26.06 Voluntary Relinquishment of Parental Rights During a Child in Need of Care Investigation or Case.

- A. Voluntary Relinquishment of Parental Rights. A Parent may voluntarily relinquish his or her parental rights by either executing a release and termination of parental rights as part of an adoption conducted pursuant to this Code or admitting to a ground for involuntary termination under Chapter 26 of this Code.
- B. Voluntary relinquishment may be initiated by the Parent who wishes to relinquish his or her rights by filing a motion with the Children's Court. The motion shall be in such form as the Court Rules prescribe.
- C. The Court shall hold a hearing on the motion not more than 21 days after filing. At the hearing the Court shall ensure that the request for relinquishment of parental rights is being made knowingly and voluntarily.
- D. A motion for voluntary relinquishment of parental rights shall not be heard (or acted on) by the Court prior to ten (10) days after the birth of the child.
- E. Prior to the entry of an order of voluntary relinquishment, the Court shall, in writing, find by clear and convincing evidence that:
 - 1. grounds exist under Chapter 26 of this Code for termination,
 - 2. the parent understands the consequences of relinquishment of parental rights,
 - 3. the parent is relinquishing his or her rights voluntarily, and
 - 4. entry of such an order is in the best interests of the child(ren).
- F. Withdrawal of Relinquishment of Parental Rights. A parent may withdraw his or her relinquishment of parental rights for any reason prior to the entry of a final order of termination. To be valid, a motion withdrawing relinquishment must be filed by the parent in question prior to the date on which the Court files its final order of termination.
 - 1. If the Court receives a motion withdrawing relinquishment, it shall schedule a hearing within 7 days of receipt to confirm the relinquishment. If withdraw is confirmed, the Court shall dismiss the initial motion to relinquish parental rights.

26.07 Child's Continued Right to Benefit. An order terminating the Parent-Child relationship shall not **bar entitlement of** a child to any benefit due to the Child from any third person, agencies, state or the United States, nor shall any action under this Code be deemed to **impact** any rights and benefits that the Child derives from the Child's descent from a member of a federally recognized Indian Tribe.

26.08 Advise of Right to Appeal. Immediately upon entry of an Order of Termination, the Children's Court shall advise the respondent parent orally and 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 of Termination.

26.09 Post Termination Review Hearing. If a Child remains a ward of the Children's Court following the termination of parental rights to the Child, the Children's Court shall conduct a review hearing, at least every twelve (12) months to review the progress toward permanent placement of the Child. The Children's 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.

Chapter 27. Adoption.

27.01 The purpose of this Chapter is to protect the rights and welfare of the Indian Child, natural Parents, and the adoptive Parents. It is the policy of the Tribe and Tribal Council to promote the adoption of Indian children by members of the Tribe to maintain the culture of the Tribe.

27.02 The Children's Court shall have jurisdiction over all adoptions in which the Child to be adopted ("adoptive") is an enrolled member of, or eligible for enrollment, in the Lac Vieux Desert Band of Lake Superior Chippewa Indians or other federally recognized tribe who lives within the exterior boundaries of the Lac Vieux Desert reservation.

27.03 Effect of an Order of Adoption. Upon entry of the Order of Adoption, the relationship of Parent 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 and adopted Child.

27.04 Who May Adopt a Child.

- A. Subject to approval of a licensed child placement agency if applicable, any of the following persons are eligible to adopt a Child.
1. A husband and wife jointly, **unless** either spouse is a Parent of the Child.
 2. An unmarried person who is at least 18 years of age.
 3. Two unmarried persons cohabitating for a substantial period of time in a domestic partnership.

27.05 Consent Required.

- A. The consent of the following are required for adoption:
1. The child if thirteen (13) years or older; and
 2. The Parent or Parents if living, including the Father of a Child Born out of Wedlock, unless parental rights have previously been terminated.

- B. Consent to adoption shall be given in writing before the Children's Court at a hearing scheduled by the Court following the filing of a Petition for Adoption. The Court shall accept a Parent's consent to termination of parental rights for purposes of adoptive placement have been informed of the nature and consequences of their actions and that the consent is voluntary and knowing.
- C. The parental rights of non-consenting Parents may be involuntarily terminated pursuant to Chapter 26.
- D. Consent to voluntary termination of parental rights for the purposes of adoption may be withdrawn by a Parent at any time before the entry of the Final Order of Adoption.

27.06 Filing of Petition; Notice; Scheduling of Hearing.

- A. The Petition for Adoption shall be filed with the Children's Court by the adopting parties. It shall be verified by each petitioner and the petition shall contain:
 - 1. The full name, residence, documentary proof of the date and place of birth, social security number, and the tribal affiliation of the adoptee of the Child and of the petitioner;
 - 2. The date, if applicable, when the Child was first placed or lived with the petitioner;
 - 3. Proof of parental consent to the adoption and notice of grandparents, if applicable;
 - 4. A full description and statement of the value of all property owned or possessed by the Child, if known by the petitioner;
 - 5. A full description of any fees or anything of value given or paid in connection with the adoption of the Child; and
 - 6. Statement that it is the desire of the petitioner to adopt the Child, and approved by the spouse or domestic partner of the petitioner, if applicable.
- B. Upon receipt of a petition for adoption, the clerk of the Children's Court shall set a date for an adoption hearing no later than sixty (60) days from the date of filing and serve notice of hearing on the petitioners, the Child's Guardian or Custodian, the Parents if their parental rights have not been terminated, and the Tribal Social Services Department. A protective services worker shall prepare a report and recommendation to the Children's Court.

27.07 Investigation. The protective services worker shall inquire into, investigate, and report to the Children's Court the stability of the adoptee for adoption, the financial ability, moral and

physical fitness, and general background of the adopting Parents(s); and make recommendations on the proposed adoption.

27.08 Adoption Hearing.

A. Attendance at Hearing.

1. The Parent(s) shall be present at the hearing in person unless he or she has waived the right to appear. Such waiver shall be in writing executed before the court clerk or a notary and filed with the court.
2. The adoptee, if over thirteen (13) shall appear in person.
3. The petitioner shall be present in person. The petitioner's failure to appear shall be grounds for dismissal of the petition.
4. The Social Services Department and any other agency shall, with the Court's permission appear telephonically or by video conference.

B. Hearing Conduct.

1. The Children's Court shall inform the Parent(s) of their rights under this Code and of the nature and consequences of the proceeding.
2. The Children's Court shall ascertain whether the requirements of this Code have been met and shall determine from the report to the Children's Court and any evidence presented by the petitioners or the Child's guardian whether the petitioners are suitable adoptive Parents.

27.09 Temporary Order; Final Judgment.

- A. Before a Final Adoption Order is entered, the Children's Court may issue a temporary order giving the care and custody of the Child to the petitioners pending the further order of the Children's Court. Not less than ninety (90) days and no more than one hundred twenty (120) days after the adoptee has been in the custody of the adoptive Parent, the adoptee and adoptive Parent shall appear before the Children's Court. They shall report to the Children's Court about the welfare of the adoptee, the current status of their home, and the desire for the adoptive Parent to finalize the adoption.
- B. If the adoptee is a blood relative or is a stepchild of the petitioner or has been in the custody of the adoptive Parent for more than one (1) year and the protective services worker recommends adoption, the Children's Court, upon a motion by the adoptive Parent, may waive the temporary order and enter a Final Adoption Order.
- C. Upon application by the petitioner after six (6) months from the date of the temporary order, or upon the Children's Court's motion at any time, the Children's Court shall set a time and place of the final adoption hearing. The protective services worker may file

with the Children's Court a written report of its findings and recommendations and certify that the required investigation under Section 27.01 has been made since the granting of the temporary order. After such hearing, if the Children's Court is satisfied that the adoption is in the best interest of the Child, the Children's Court may enter a final judgment of adoption.

- D. The Final Adoption Order shall include a provision ordering the adoptive Parents to maintain the child's relationship to the Tribe.

27.10 Right of Access to Records. The adoptee, upon reaching eighteen (18) years of age, and any other party deemed appropriate by the Court has the right to review the Court's file related to the Child's adoption, subject to redaction of names and federal or tribal confidentiality of law.

Chapter 28 Emancipation

28.01 Who May Seek Emancipation.

- A. A minor between the ages of sixteen (16) years of age and eighteen (18) years of age may seek emancipation.

28.02 Petition for Emancipation.

- A. The minor seeking emancipation shall file a Petition for Emancipation in the Tribal Court. The petition must be signed and sworn by the minor, and must include all of the following:
1. The full name and date of birth of the minor;
 2. The minor's present address, and length of residency at that address;
 3. A certified copy of the minor's birth certificate;
 4. The name and address of the minor's parents, guardian, or custodian;
 5. The reasons why emancipation would be in the best interests of the child;
 6. The purposes for which emancipation is sought;
 7. A declaration by the minor indicating that they have demonstrated the ability to manage their financial affairs;
 8. A declaration by the minor indicating that they have the ability to manage their personal and social affairs;
 9. The proposed plan for the child supporting himself/herself;
 10. The proposed educational plan; and
 11. An affidavit of an adult having personal knowledge of the Child's circumstances, who believes that under the circumstances emancipation is in the best interest of the Child.

28.03 Standard.

- A. A minor who petitions the court for emancipation shall have the burden of showing by clear and convincing evidence that emancipation should be ordered.

28.04 Powers of the Court.

- A. After a petition is filed, the court may do one (1) or more of the following:
 - 1. Order the Department to investigate the allegations contained in the petition and to report the results of the investigation to the Court;
 - 2. Appoint legal counsel for the minor;
 - 3. Appoint legal counsel for the minor's parents, guardian or custodian if they oppose the petition and are indigent.
 - 4. Refer the petitioner to services deemed appropriate by the Court to assist in deciding the petition or to assess the emotional capacity of the minor.

28.05 Service of Petition for Emancipation, Summons and Notice of Hearing.

- A. The Petition for Emancipation shall be personally served on the minor's parents, guardian or custodian. If, with reasonable diligence, personal service cannot be accomplished, service may be accomplished in accordance with applicable Court Rules.
- B. An initial hearing on the Petition for Emancipation shall be scheduled within 30 days of the filing of the petition. The initial hearing shall be conducted in accordance with applicable Court Rules.
- C. Final Hearing on Petition. A final hearing on a Petition for Emancipation shall be conducted in accordance with applicable Court Rules.
 - 1. Notice of the final hearing on the Petition for Emancipation shall be sent to the minor's parents, guardian or custodian and the Department by certified mail. Upon a proper showing by the petitioner that reasonable efforts were made to notify the parents, guardian or custodian of the final hearing, the final hearing may proceed.
- D. Waiver of Participation.
 - 1. A parent, guardian or custodian properly served may waive participation in open Court, or in a notarized writing filed with the Court.
 - 2. "Waiver" means that the parents, guardian or custodian will not be a party to the proceedings, which would have entitled them to receive a copy of the petition, an opportunity to respond, receive hearing notices, and participate in the proceedings.
 - 3. A parent, guardian or custodian shall have the right to withdraw the waiver, in writing, or in open Court at any time prior to or at the final hearing.

28.06 Emancipation Order and Appeal.

- A. The Court shall issue an emancipation order if it determines that emancipation is in the best interest of the minor and the minor establishes all the following:
 - 1. That the minor's parent or guardian does not object to the petition or if a parent or guardian objects to the petition, that the objecting parent or guardian is not providing the minor with support;
 - 2. That the minor is at least 16 years of age;
 - 3. That the minor is a tribal member or descendant;
 - 4. That the minor has demonstrated the ability to manage his or her financial affairs, including proof of employment or other means of support;
 - 5. That the minor can manage his or her personal and social affairs, including, but not limited to, proof of housing and educational plan;
 - 6. That the minor understands his or her rights and responsibilities under the Tribal Code as an emancipated minor.
- B. The minor or a parent or guardian of the minor may file an appeal from the Court's order granting or denying an emancipation petition.

28.07 Emancipated Minors Rights and Responsibilities.

- A. An emancipated minor shall be considered to have the rights and responsibilities of an adult, except for those specific constitutional and statutory age requirements such as voting and use of alcoholic beverages. A minor shall be considered emancipated for the purposes of, but not limited to, all the following:
 - 1. The right to enter enforceable contracts, including leases;
 - 2. The right to sue or be sued;
 - 3. The right to retain his or her own earnings;
 - 4. The right to establish a separate domicile;
 - 5. The right to act autonomously, and with the rights and responsibilities of an adult, in all business relationships;
 - 6. The right to earn a living, subject only to the health and safety regulations designed to protect those under the age of majority;
 - 7. The right to authorize health care, medical care, dental care, and mental health care, without parental knowledge or liability;
 - 8. The right to apply for a driver's or other licenses;
 - 9. The right to register for school;
 - 10. The right to marry;
 - 11. The right of a parent to make decisions and provide care for their own minor child.

28.08 Petition for Rescission of Emancipation Order; Service of Summons; Determinations; Order.

- A. A parent of a minor emancipated by court order or a minor emancipated by court order or the Department may petition the Court that issued the order to rescind the order.

- B. A copy of the petition for rescission and a summons shall be served on the minor or the minor's parents.
- C. The court shall grant the petition and rescind the order of emancipation if it determines one (1) or more of the following:
 - 1. That the minor is indigent and has no means of support.
 - 2. That the minor and the minor's parents agree that the order should be rescinded.
 - 3. That there is a resumption of family relations inconsistent with the existing emancipation order.

28.09 Order.

- A. If a petition for rescission is granted, the court shall issue an order rescinding the emancipation order and retain a copy of the order until the minor becomes 25 years of age.

28.10 Effect of Rescission on Obligations, Rights, or Interests; Appeal.

- A. Rescission of an emancipation order does not alter any contractual obligations or rights or any property rights or interests that arose during the period of time that the emancipation order was in effect.
- B. The minor, a parent of the minor or the Depat may file an appeal from the court's grant or denial of a petition for rescission of an emancipation order. The appeal shall be filed in the court of appeals.
- C. If the Court determines that rescission of an emancipation order is appropriate but the minor's parents do not agree to resume parental responsibility over a minor, the Court shall:
 - 1. Appoint a temporary guardian for the minor;
 - 2. Refer the matter to the Department for an investigation under Chapter 17 of this Code.

Chapter 29 Power of Attorney.

29.01 A Parent, Custodian, or Guardian (including the Department), by a properly executed power of attorney, may delegate to another person for a period not exceeding **six** (6) months, any of the Parent's, Custodian's or Guardian's powers regarding care, custody, or property of the Child, except the power to consent to marriage, emancipation or adoption of a Child and the power to release a Child for adoption. **A person acting under a power of attorney may be referred to as an "attorney in fact," "agent" or "power of attorney."**

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Chapter 30 Temporary and Permanent Guardianship.

30.01 Purpose. The Children's Court may appoint a Guardian for the a child who falls within the Children's Court jurisdiction. Unless otherwise specified by the Children's Court, an appointed Guardian shall be responsible for the custody, care and educational needs of the Child ("Guardian of the Child"), and the care and management of his or her property ("Guardian of Property"), until such Child reaches the age of eighteen (18), marries, dies, is emancipated by the Children's Court under Chapter 28 of this Code, or until the Guardian is legally discharged.

30.02 Types of Guardianship. The types of guardianship are Guardian of Property and Guardian of the Child. Unless the Children's Court appoints a separate individual as Guardian of Property, the Guardian of the Child shall also be the Guardian of the Child's Property. The guardianship may be temporary or permanent.

30.03 Grounds.

- A. The Children's Court may appoint a Guardian for a Child if either of the following exist:
1. The parental rights of both Parents or of the surviving Parent have been terminated or suspended by prior Children's Court order by death, by judicial determination or mental incompetency, by abandonment, or by confinement in a place of detention.
 2. The appointment is necessary for the immediate physical, mental or developmental well-being of the Child.

30.04 Who May File.

- A. Any person, including the Department, may file a petition for guardianship of a Child.
- B. Before appointing the Guardian, the Children's Court must give reasonable notice to any person currently responsible for or acting on behalf of the Child, to the Child himself, and to other relatives of the Child, as the Children's Court may deem proper.

30.05 Contents of Guardianship Petition.

- A. The petition for guardianship shall include the following, to the best information and belief of the petitioner:
 - 1. The full name, sex, date and place of birth, residence and tribal affiliation of the child to be placed under the care and custody of the Guardian;
 - 2. The full name, address, tribal affiliation, relationship if any to the Child, and interest in the proceeding of the petitioner;
 - 3. The names and addresses of the Child'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 Child's deceased Parents;
 - 4. The basis for the Children's Court's jurisdiction;
 - 5. The existence of any Tribal Court Orders involving the Child or any other court;
 - 6. The name and address of the person or agency having legal or temporary custody of the proposed ward;
 - 7. A statement of the reason or reasons that the appointment of a guardianship is sought; whether the petitioner seeks the appointment of a Guardian of The Person, a Guardian of Property, or both; and whom the petitioner recommends or seeks to have appointed as such Guardian or Guardians; and
 - 8. A full description and statement of value of the Child'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 is proposed ward is entitled.
- B. All petitions must be signed and dated by the petitioner(s).

30.06 Guardianship Report.

- A. Upon the filing of a guardianship petition, the Children's Court shall immediately request that the Department or other qualified agency conduct a guardianship investigation and produce a report on the proposed guardianship and the proposed ward. The guardianship

report shall contain all pertinent information necessary to assist the Children's Court in determining the best interests of the Child.

- B. No determination can be made on a petition for guardianship until the report has been completed and submitted to and considered by the Children's Court. The guardianship report shall be submitted to the Children's Court no later than ten (10) days before the guardianship hearing. The Children's Court may order additional reports as it deems necessary.

30.07 Powers and Duties of Guardian of the Child.

- A. To the extent that it is not inconsistent with the terms of any order of the Children's Court, a Guardian of the Child has the following powers and duties:
1. The Guardian of the Child is entitled to custody of his or her ward and shall make provisions for the ward's care, comfort, and maintenance. The Guardian shall also, as appropriate to the ward's needs, consent to his or her training, development, education, and employment. The Guardian of the Child shall take reasonable care with the ward's clothing, furniture, vehicles, and other personal effects that are in the possession of and belong to the ward.
 2. Where the Department is the Guardian, in arranging for a place to live, the Guardian of the Child shall give preference to places within the tribal reservation over places outside the reservation, if both in-reservation and out-of-reservation places are substantially equivalent.
 3. The Guardian of the Child shall have authority to consent to any medical, legal, psychological, or other professional care, counsel, treatment, or service for the Child. The Guardian of the Child may give any other consent or approval on the ward's behalf that may be required or in the ward's best interests.
- B. The Children's Court may order reimbursement payments to the Guardian of the Child for the care of the ward from appropriate or available funding sources excluding any Minor Trust Fund managed by the Tribe. Such payments must be used by the Guardian of the Child for the sole purpose of covering expenses incurred in the care 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 Chapter shall subject the Guardian to contempt of court and any criminal and civil penalties or remedies provided by the Tribal law.
- D. A Guardian of the Child, 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:
1. 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

2. Authorizing medical treatment or surgery for his or her ward, if the Guardian acted in good faith and was not negligent.

30.08 Guardianship of Property.

- A. The Children's Court may appoint a Guardian of Property under such terms and conditions as the Children's Court sets forth in the written order. The Guardian of Property 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. Subject to an Order of the Children's Court, the Guardian of 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:

1. To take possession, for the Child's use, of all of the Child's estate.
2. To receive assets due to the Child from any source.
3. 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.
4. To abandon or relinquish all rights in any property when, in the Guardian's opinion, acting reasonably 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.
5. 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.
6. To insure the Child's assets against damage or loss, at the expense of the Child's estate.
7. To pay taxes, assessments, and other expenses incident to the collection, care, administration and protection of the Child's estate.

8. To **sell** 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 corporate or other business enterprise.
9. To expend estate income on the Child's behalf and to petition the **Children's** 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 may have to support and provide for the Child.
10. To pay from the Child's estate, necessary expenses of administering the Child's estate.
11. 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 Property.
12. 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.
13. 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 or 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.
14. Without a **Children's** Court order, to lease any of the Child's real estate for a term of not more than three **(3)** 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 **Children's** Court order shall not exceed five thousand dollars (\$5,000), a Guardian of Property may sell an item only as provided in **subsection (15) below**.
15. A Guardian who is required by subdivision **(14)** to do so, shall and any other Guardian who so desires may, by motion in the cause, request the **Children's** Court 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 a hearing thereon shall be served upon all parties of record and upon such other persons as the clerk may direct, and the **Children's** Court may issue the order after hearing and upon such conditions as the **Children's** Court may require, provided that the power granted in this **subsection** shall not affect the power of the Guardian to petition the **Children's** Court for prior approval of expenditures from estate principle under subsection **9 of this** Chapter.

16. 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.
17. To borrow money for such periods of time and upon such term and conditions as to rates, maturities, renewals, and security as the Guardian shall deem advisable, including the power of corporate Guardian to borrow from its own banking departments, 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.
18. To execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the Guardian.

31.09 Annual Guardianship Review. The Children's Court will hold a guardianship review at least annually. Prior to the review, the Guardian will submit a report regarding the status of the guardianship on a form developed by the Court for such purposes.

301.10 Resignation Petition.

- A. Any Guardian who wishes to resign may petition the Children's Court which must include a full accounting of the Child's property and the reasons for resignation. If the Children's Court is satisfied that the Guardian has fully accounted, the Children's Court may accept the resignation of the Guardian and discharge him or her and appoint a successor Guardian. The Guardian so discharged and his or her sureties are still liable in relation to all matters connected with the guardianship before the discharge.
- B. A Guardian of either Property or the Child who wishes to resign as Guardian of Property or of the Child but continue as Guardian of the Child or Property may apply for the partial resignation by petition as provide in subsection (A) of this section.

301.11 Appointment of Successor Guardian. Upon the removal, death, or resignation of a Guardian, the Children's Court shall appoint a successor Guardian following the same criteria that would apply to the initial appointment of a Guardian.

Chapter 31. Child Protection Records.

31.01 Records of Investigation and Court Proceedings.

- A. Tribal law enforcement records, Department records, and Court records concerning a child shall be kept separate from the records and files concerning adults.
- B. The Court shall make a record of all cases concerning a child. Such records shall be preserved in accordance with retention rules developed by the Court.
- C. All Children's Court records, Tribal law enforcement records, and Department records shall be confidential and shall not be open to inspection to anyone but the following:
 - 1. The Child who is the subject of the record;
 - a. The Court may release the information in a manner and setting that is appropriate for the age and maturity of the child, the nature of the information being sought, and the purpose of the request.
 - b. The Court may require that the information be released in a therapeutic setting,
 - c. This Section shall not be interpreted in such a way as to deny the child access to his or her Court record.
 - 2. The Child's Parent unless parental rights have been terminated, current guardian or Custodian;
- G
 - 3. The prospective adoptive Parent;
 - 4. The Children's Court personnel directly involved in the handling of the case;
 - 5. Department personnel for purposes of investigation;
 - 6. The Presenting Officer;

7.

- D. The Court shall have the authority to place records under protective seal for purposes of preserving anonymity or preventing unnecessary risk to the health, safety, or welfare of the child.
- E. If the Court determines that disclosure of confidential information in a child's record is necessary to ensure access to appropriate services for the child, the Court may approve the release of confidential records or information, provided that the party receiving the record or information is prohibited from further release of the information without further order of the Court.

B.

Chapter 36. Testimony of Child Witnesses.

36.01 If the Court determines that it is in the best interests of the Child, the Court may allow a Child to testify by closed circuit television, videotaped deposition, or other suitable method outside the courtroom and the presence of any parties regarding allegations of abuse or neglect. The decision by the Court to allow a Child to testify in a proceeding through the methods described in this Chapter shall be made by written order, which will set forth findings of fact and all reasons supporting the decision. Nothing in this Chapter shall affect the rights of any party from questioning the Child testifying.

Chapter 32. Rehearing.

32.01 Grounds for Rehearing.

- A. A party may motion the Court for rehearing or reconsideration of a decision of the Court in the following circumstances:
 - 1. When a party believes the Court has overlooked or misapprehended a material fact in the record or a material question of law in the case;
 - 2. When a party believes the Court has overlooked, misapplied, or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case; or
 - 3. When a party believes a new rule of law, directly controlling on the disposition of an issues in the case, has issued after the Court announced its order or opinion but within the time fixed for filing.
- B. A motion will not be considered unless it presents a matter not previously considered by the Children's Court, which, if true, would cause the Children's Court to reconsider the case.

32.02 Procedure.

- A. A party may seek a rehearing y filing a written motion stating the basis for relief sought within thirty (30) days after a final decision **in any matter under this Code.**

B.

The Children's Court may entertain an untimely motion for good cause shown.

C. Content of Petition. The petition must state with particularity the points of law or fact that the petitioner believes the Court has overlooked or misapprehended and contain argument in support of those points. Oral argument in support of the petition is not required.

D. Notice. All parties must be given notice of the motion in accordance with Chapter 11.

32.03

A. Response by Parties. Any response by parties must be in writing and filed with the Children's Court and opposing parties within seven (7) days after notice of the motion.

3.04

A. Stay of Order. The Children's Court may stay any order pending a ruling on the motion and the timeframe for appeal under Chapter 34 shall be tolled.

37.05

A. The Children's Court need not hold a hearing before ruling on a motion. Any hearing conducted shall be in accordance with the rules for the dispositional hearings. The Children's Court shall state the reasons for its decision on the motion on record or in writing.

B. The Court may affirm, modify, or vacate the decision previously made in whole or in part whichever the Children's Court, in its discretion, finds appropriate for the case.

F.

Chapter 38. Children's Court of Appeals.

38.01 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.

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

38.03 Review Standard. The standard of review in appeals of the Children's Court shall be the Clearly Erroneous for all factual findings and all matters of law shall be reviewed de novo .