

**WHITE EARTH BAND OF OJIBWE
CHILD/FAMILY PROTECTION CODE**

TITLE 4: CHILDREN AND FAMILIES
CHAPTER I
SHORT TITLE, PURPOSE AND DEFINITIONS

Section 1. Short Title.

Title 4 shall be entitled “The Child/Family Protection Code”.

Section 2. Purpose.

The Child/Family Protection Code shall be liberally interpreted and construed to fulfill the following expressed purposes:

- (a) To provide for the welfare, care and protection of the children and families on the White Earth Reservation;
- (b) To preserve unity of the family, preferably by separating the child from his or her parents only when necessary;
- (c) To take such actions as may be necessary and feasible to prevent the abuse, neglect or abandonment of children;
- (d) To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community-based alternatives;
- (e) To secure the rights of and ensure fairness to the children, parents, guardians, custodians or other parties who come before the children’s court under the provisions of this code;
- (f) To ensure that off-reservation courts will be willing to return tribal children to the reservation by establishing this code;
- (g) To recognize and acknowledge the tribal customs and traditions of the White Earth Band of Ojibwe with regard to child-rearing.

Section 3. Definitions.

As used in this code:

- (a) “Abandon”: The failure of the parent, guardian or custodian to provide reasonable support and to maintain regular contact with a child. Failure to maintain a normal parental relationship with the child without just cause for a

period of six (6) months shall constitute prima facie evidence of abandonment. Custody with extended family members or voluntary consent to placement does not constitute abandonment.

- (b) “Abuse”: The infliction of physical, emotional or mental injury on a child, or sexual abuse or sexual exploitation of a child and shall include failing to maintain reasonable care and treatment or exploiting or overworking a child to such an extent that his or her health, moods or emotional well-being is endangered.
- (c) “Adult”: A person eighteen (18) years of age or older, or otherwise emancipated by order of a court of competent jurisdiction.
- (d) “Child”: A person who is less than eighteen (18) years old and has not been emancipated by order of a court of competent jurisdiction.
- (e) “Child Protection Team”: A team established to involve and coordinate the child protection services of various agencies as set forth in Chapter VII of this code.
- (f) “Closed Adoption”: An adoption which is intended to sever all ties between the child and his/her biological family.
- (g) “Court” or “Children’s Court”: The Children’s Court of the White Earth Band.
- (h) “Custodian”: A person, other than a parent or guardian, to whom legal custody of the child has been given.
- (i) “Domicile”: A person’s permanent home, legal home or main residence. The domicile of a child is generally that of the custodial parent or guardian. Domicile includes the intent to establish a permanent home or where the parent or guardian consider to be their permanent home.
- (j) “Emergency Foster Home”: Placement with a family whose home has been licensed to accept emergency placements of children at any hour of the day or night (see “Foster Home”).
- (k) “Extended Family”: Defined according to the tribal customs and traditions of the child’s tribe.
- (l) “Foster Home”: Placement with a family whose home has been licensed under Chapter XXIV of this code.
- (m) “Foster Care Program Coordinator”: A person appointed by the tribal council or their delegate to inspect and license foster homes under Chapter XXIV of this code.

- (n) “Guardian”: A person assigned by a court of law, other than a parent, having the duty and authority to provide care and control of a child (see “Permanent Guardian,” “Temporary Guardian,” “Guardian Ad Litem,” and “Guardian of Property”).
- (o) “Guardian Ad Litem”: A person appointed by the court to represent the child’s interests before the court.
- (p) “Guardian of Property”: A person appointed by the court to manage the property of a child or incompetent person as set forth in Chapter XXV of this code.
- (q) “He/His”: The use of his or her, and singular includes plural.
- (r) “Incompetent”: An insane person or person who is for any cause mentally incompetent to take care of themselves and to manage their property.
- (s) “Indian”: Any person who is a member or is eligible to become a member of a federally recognized Indian tribe, band or community, or Alaska Natives, or a person considered by the community to be Indian.
- (t) “Indian Custodian”: An Indian person who has custody of a child under tribal law or custom.
- (u) “Juvenile Counselor”: The juvenile counselor or juvenile probation officer or other appropriately titled person who performs the duties and responsibilities set forth in Chapter V, Section 2 of this code.
- (v) “Juvenile Offender”: A child who commits a “juvenile offense” prior to the child’s eighteenth (18th) birthday (see Juvenile Justice Code).
- (w) “Juvenile Offense”: A criminal violation of the Tribal Code of the White Earth Tribe which is committed by a person who is under the age of eighteen (18) at the time the offense was committed (see Juvenile Justice Code).
- (x) “Juvenile Presenter”: The juvenile presenter or juvenile presenting officer or any other person who performs the duties and responsibilities set forth in Chapter V, Section 3 of this code.
- (y) “Kin”: A person with a significant relationship with a child as defined by tribal custom.
- (z) “Neglect”: The failure of the parent, guardian or custodian to provide adequate food, clothing, shelter, medical care, education or supervision for the child’s health and well-being. “Neglect” shall include “abandoned” children.

- (aa) “Parent”: Includes a natural or adoptive parent, but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.
- (bb) “Open Adoption”: An adoption which is intended not to permanently deprive the child of connections to, or knowledge of, his or her natural family.
- (cc) “Permanent Guardian”: A guardian who has been granted long term guardianship status as set forth in Chapter XXV, Section 4 of this code.
- (dd) “Child Protection Worker”: The child protection worker, social services worker, law enforcement personnel or any person who performs the duties and responsibilities set forth in Chapter VI of this code.
- (ee) “Reservation”: The White Earth Reservation in Minnesota.
- (ff) “Temporary Guardianship”: A guardian who has been granted temporary guardianship status as set forth in Chapter XXV, Section 5 of this code.
- (gg) “Tribal Council”: The tribal council of the White Earth Band of Ojibwe Indians.
- (hh) “Tribal Court”: The tribal court of the White Earth Band of Ojibwe Indians.
- (ii) “Tribe”: The White Earth Band of Ojibwe Indians.

CHAPTER II
JURISDICTION OF THE CHILDREN’S COURT

Section 1. General Jurisdiction.

There is hereby established for the White Earth Band of Ojibwe a court to be known as the White Earth Children’s Court. The jurisdiction of the children’s court shall be civil in nature and shall include the right to issue all orders necessary to insure the safety of children and incompetents within the boundaries of the reservation, as well as other children who have been declared to be wards of the children’s court. The children’s court shall also have the power to enforce subpoenas and orders of restriction, fines, contempt, confinement and other orders as are deemed appropriate.

The children's court shall have jurisdiction over the following persons:

- (a) Members of a tribe under the age of eighteen (18) years;
- (b) Persons under the age of eighteen (18) who are eligible for membership in an Indian tribe;
- (c) Indians, as defined in Chapter I, Section 3 of this code, who are under the age of eighteen (18) years and who are residing within the exterior boundaries of the reservation;
- (d) Children of enrolled members of the tribe or other Indians, as defined in Chapter I, Section 3 of this code, including adopted children, who reside within the exterior boundaries of the reservation;
- (e) Children residing within the exterior boundaries of the reservation, for whatever reason, in the home of an enrolled member of the tribe or other Indians, as defined in Chapter I, Section 3 of this code, as long as the parents, guardians, or custodians have consented to the jurisdiction of the children's court. Such consent, once given, may be revoked only with the permission of the children's court; and
- (f) Incompetent persons residing or domiciled within the exterior boundaries of the reservation.
- (g) Any child whose family may wish to make itself subject to the jurisdiction of the White Earth Band of Ojibwe's Children's Court.

Section 2. Jurisdiction Over Extended Family.

Where the children's court asserts jurisdiction over a person under Chapter II, Section 1 above, the court shall also have jurisdiction over the person's extended family whenever the court deems it appropriate.

Section 3. Continuing Jurisdiction.

Where the children's court deems it appropriate, the court may retain jurisdiction over children and their extended families who leave the exterior boundaries of the reservation.

CHAPTER III
TRANSFER OF JURISDICTION

Section 1. Application of the Indian Child Welfare Act.

The children's court may apply the policies of the Indian Child Welfare Act, 25 U.S.C. §1901-1963, where they do not conflict with the provisions of this code. The procedures for state courts in the Indian Child Welfare Act shall not be binding upon the children's court unless specifically provided for in this code.

Section 2. Transfer to State Court or Other Tribal Court.

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

Section 3. Transfer from Other Courts.

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

Section 4. Procedures for Transfer from State Court.

- (a) Receipt of Notice: The tribal agent for service of notice of state court child custody proceedings, as defined by the Indian Child Welfare Act, shall be the tribal social service department.
- (b) Investigation and Pre-Transfer Report by the Court Counselor: The tribal social services department shall conduct an investigation and file a written report with the court when transfer to tribal court is being sought.
- (c) Petition for Transfer: The tribe, through its attorney, social workers, or child protection workers, may, in their discretion, file a written request with the tribal court to accept a transfer of jurisdiction from any state, tribal or other court.
- (d) Acceptance of Transfer: The court will not accept a transfer from state court unless:
 - (1) A parent or Indian custodian's petition to state court for transfer is granted; or
 - (2) The tribe's petition to state court for transfer is granted; and
 - (3) The tribal social services department and/or tribal attorney recommends the acceptance of transfer.

- (e) Hearing(s): Upon receipt of transfer jurisdiction from state court, the juvenile counselor, tribal social worker or tribal attorney shall file a child/family protection petition, and appropriate hearing(s) shall be held in accordance with this code.

Section 5. Full Faith and Credit; Conflict of Laws.

- (a) State Court Orders: State child custody orders involving children over whom the children's court could take jurisdiction may be recognized by the children's court only after a full independent review of such state proceedings has determined:
 - (1) the state court properly asserted jurisdiction over the child, and;
 - (2) the provisions of the Indian Child Welfare Act, 25 U.S.C. §1901-1963, were properly followed, and;
 - (3) due process was provided to all interested persons participating in the state 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 shall be recognized by the children's court after the court has determined:
 - (1) that the other tribal court properly asserted jurisdiction over the child, and
 - (2) due process was accorded to all interested parties participating in the other tribal court proceeding.
- (c) Tribal Interest: Because of the vital interest of the tribe in its children and those children who may become members of the tribe, the statutes, regulations, public policies, customs and common law of the White Earth Band of Ojibwe tribe shall control in any proceeding involving a child who is a member of the tribe.

CHAPTER IV
PROCEDURES AND AUTHORIZATIONS

Section 1. Rules of Procedure.

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

Section 2. 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.

Section 3. 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.

Section 4. Contracts.

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

CHAPTER V
CHILDREN'S COURT PERSONNEL

Section 1. Children's Court Judge.

- (a) Appointment: The Chief Judge of the White Earth Tribal Court or his or her designated replacement shall serve as Children's Court Judge.
- (b) Powers and Duties: In carrying out duties and powers specifically enumerated under this child/family protection code, judges of the children's court shall have the same duties and powers as judges 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.
- (c) Disqualification or Disability: The rules on disqualification or disability of a children's court judge shall be the same as those rules that govern tribal court judges in the White Earth Judicial Code.

Section 2. Juvenile Counselor/Juvenile Probation Officer.

- (a) Appointment: The Children's Court Judge may appoint juvenile counselor(s) or juvenile probation officer(s) to carry out the duties and responsibilities set forth in this code. The person(s) carrying out the duties and responsibilities set forth in this section may be labeled "juvenile counselors" or "juvenile probation officers" or any other title which the court finds appropriate so long as they perform the duties and responsibilities set forth in this section.

- (b) **Qualifications:** The juvenile counselor must have an educational background and/or prior experience in the field of delivering social services to Indian youth.
- (c) **Children's Services:** The juvenile court counselor shall identify and develop resources on the reservation, in conjunction with the children's court and the tribal council, to enhance each tribal child's potential as a viable member of the tribal community.
- (d) **Duties:**
 - (1) Make investigations as provided in this code or as directed by the court;
 - (2) Make reports to the court as provided in this code or as directed by the children's court;
 - (3) Provide counseling services, if appropriate; and
 - (4) Perform such other duties in connection with the care, custody or transportation of children as the court may require.

Section 3. Juvenile Presenter.

- (a) **Appointment:** The court may appoint juvenile presenter(s) to carry out the duties and responsibilities set forth in this code. The person(s) carrying out the duties and responsibilities set forth in this section may be labeled "juvenile presenters" or "juvenile presenting officers" or "juvenile petitioners" or any other title which the court finds appropriate so long as they perform the duties and responsibilities set forth in this section.
- (b) **Qualifications:** The qualifications of the juvenile presenter(s) shall be:
 - (1) Knowledge of child protection systems; and
 - (2) Knowledge of tribal customs and traditions; and
 - (3) Knowledge of tribal court procedures.

(c) Duties:

- (1) File petitions with the court as provided in this code;
- (2) Represent the tribe in all proceedings under this code; and
- (3) Perform such other duties as the court may order.

Section 4. Guardian Ad Litem.

At any stage of the proceedings conducted under this code the children's court may appoint separate counsel or spokesperson for the child, without affecting the right to counsel of the parents, guardians or other legal custodians, to act as guardian ad litem representing the child's best interests.

Section 5. Additional Court Personnel.

The court may set qualifications and appoint additional juvenile court personnel such as guardians ad litem, court appointed special advocates (CASAs), children's court advocates, and/or referees whenever the court decides that it is appropriate to do so.

CHAPTER VI
CHILD PROTECTION WORKERS

Section 1. Power and Duties.

- (a) Child protection workers may be employed by the tribal social services department and/or the tribal law enforcement department.
- (b) The department(s) may cooperate with such state and community agencies as are necessary to achieve the purposes of this code. The department(s) may negotiate working agreements with other jurisdictions. Such agreements shall be subject to ratification by the tribal council or its designate.
- (c) A child protection worker shall:
 - (1) Receive reports of neglected, abused or abandoned children and be prepared to provide temporary foster care for such children on a twenty-four (24) hour basis; and
 - (2) Receive from any source, oral or written information regarding a child who may be in need of protective services;
 - (3) Upon receipt of any report or information that a child is in imminent danger or harm, tribal social services shall immediately:

- (i) notify the appropriate law enforcement agency, and;
 - (ii) make prompt and thorough investigation which shall include a determination of the nature, extent, and cause of any condition which is contrary to the child's best interests and the name, age, and condition of other children in the home.
- (4) Take a child into temporary custody if there are reasonable grounds to believe that child is suffering from illness or injury or is in immediate danger from his or her surroundings and that his or her removal is necessary. Law enforcement officials shall cooperate with social services personnel to remove a child from the custody of his or her parents, guardian, or custodian when necessary.
- (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 subjected to the existing home environment, and all other facts or matters found to be pertinent. They shall determine whether any of such children is a child in need of protective services. Every effort shall be made to provide services to the family to ensure the safety of the child while remaining in the home.
- (6) Offer to the family of any child found to be a child in need of protective services appropriate services which may include, but shall not be restricted to, protective services.
- (7) Within thirty (30) days after a referral of a juvenile assessed as a child in need of protective services, submit a written report of his or her investigation and evaluation to the juvenile presenting officer and to a central registry maintained by the department(s).
- (8) No child shall remain in temporary custody for a period exceeding seventy-two (72) hours, excluding Saturdays, Sundays and holidays, unless a child/family protection petition is filed.

Section 2. Limitations of Authority; Duty to Inform.

- (a) Before offering protective services to a family, a worker shall inform the family that he or she has no legal authority to compel the family to receive such services and of his or her authority to initiate a petition in the children's court.
- (b) If the family declines the offered services, the worker may initiate a child/family protection petition in the children's court alleging a child in need of protective services if he or she believes it is to be in the child's best interest.

CHAPTER VII

CHILD PROTECTION TEAM

The tribe may establish a child protection team. Establishment of the child protection team is an attempt, through the involvement and coordination of various agencies, to prevent Indian children from being abused or neglected. In cases where children have been abused or neglected, efficient and effective protective services shall be provided so as to immediately secure the children's safety and health. Follow-up actions shall then to be taken to stabilize the circumstances for the long-term benefit of the children and, to the extent possible, their family members.

Prevention of child abuse and neglect is to be emphasized. The child protection team is intended to facilitate the identification of danger signs which will prompt immediate intervention and/or preventive actions to be taken. However, when a child's well-being is found to be endangered, the child protection team should initiate protective services as promptly, efficiently, and effectively as possible. These services are to be provided so as to ensure the child's immediate safety and health. Once attained, to the extent possible, actions are to be taken to correct the problems which caused the abuse or neglect and prevent it from occurring again. The child protection team should facilitate the development and implementation of a plan to promote the long-term well-being of the child and the appropriate family members.

The child protection team is technical and advisory in nature. In no way is it intended to undermine the authorities and responsibilities of individual agencies. It is designed to promote cooperation, communication, and consistency among agencies. It is appropriate for the child protection team to debate what actions would best promote the well-being of a child and provide relevant information and advice to decision-making agencies. The child protection team shall facilitate (not hinder) the decision-making process. Confidentiality shall be maintained by all child protection team members.

The duties of the child protection team may include the development and implementation of procedures for:

Section 1. Providing Oversight.

- (a) Monitor child abuse and neglect activities to ensure that adequate preventive, protective, and corrective services are provided.
- (b) Review and track all child abuse and neglect cases which have been referred.
- (c) Investigate cases to determine whether the best interests of the child are being met.
- (d) Review case plans for their adequacy.
- (e) Maintain confidentiality of information.
- (f) Send local child protection team data to area child protection teams.

Section 2. Facilitating Provision of Services.

- (a) Receive child abuse and neglect referrals. Assign case managers to track cases.
- (b) Identify available community resources, programs and services.
- (c) Provide recommendations to various pertinent agencies.
- (d) Promote cooperation, communication, and consistency among agencies.
- (e) Provide a forum for debating what actions would best promote the well-being of Indian children.
- (f) Respond to inquiries from the community, area child protection teams, and other individuals and groups.

Section 3. Providing Technical Assistance.

- (a) Develop procedures to provide efficient preventive, protective, and corrective child abuse and neglect services.
- (b) Develop standards to determine which cases are to be investigated.
- (c) Provide information and technical recommendations to decision-making agencies.
- (d) Educate communities about child abuse and neglect problems and solutions.
- (e) Identify danger signs which prompt intervention and/or preventive actions.
- (f) Assist in the development and implementation of plans to promote the long-term well-being of children and their families.
- (g) Assist in the development and implementation of strategies by communities to create environments which provide opportunities for community members to lead meaningful, productive, self-fulfilling, and rewarding lives. These environments should promote the dignity, self-worth, self-respect, and self-sufficiency of community members.

CHAPTER VIII
DUTY TO REPORT CHILD ABUSE AND NEGLECT

Section 1. Duty to Report.

Any person who has a reasonable cause to suspect that a child has been abused, neglected or abandoned shall immediately report the abuse, neglect or abandonment to the tribal social services department and/or tribal law enforcement department.

Section 2. Persons Specifically Required to Report.

Those persons who are mandated to report suspected abuse or neglect include any physician, nurse, dentist, optometrist, or any other medical or mental health professional; school principal; school teacher, or other school official; social worker; child day care center worker or other child care staff including foster parents, residential care or institutional personnel, counselor; peace officer or other law enforcement official; judge, attorney, court counselor, clerk of the court, or other judicial system official.

Section 3. Anonymous Reports.

Any person who has a reasonable cause to suspect that a child has been abused, neglected or abandoned shall report the abuse, neglect or abandonment. Those persons reporting, except those specified in Chapter VIII, Section 2 above, may remain anonymous.

Section 4. Immunity from Liability.

All persons or agencies reporting, in good faith, known or suspected instances of abuse or neglect shall be immune from civil liability and criminal prosecution.

Section 5. Penalty for Not Reporting.

Those persons mandated to report a case of known or suspected abuse or neglect who knowingly fail to do so or willfully prevent someone else from doing so may be subject to a civil cause of action proceeding in tribal court.

Section 6. Abuse and Neglect Reports.

- (a) Form of Report: Those persons mandated to report under Chapter VIII, Section 2 above shall promptly make an oral report to the tribal social services department and then follow with a written report within 72 hours, not including Saturday, Sunday and holidays.

- (b) Contents of Report: The following information shall be included in the written report:
- (1) Names, addresses, and tribal affiliation of the child and his or her parents, guardian, or custodian.
 - (2) The child's age.
 - (3) The nature and content of the child's abuse or neglect.
 - (4) Previous abuse or neglect of the child or his or her siblings, if known.
 - (5) The name, age, and address of the person alleged to be responsible for the child's abuse or neglect, if known.
 - (6) The name and address of the person of agency making the report.
- (c) Photograph of Visible Trauma: Persons reporting suspected abuse or neglect may photograph or cause x-rays to be taken of the child suspected of abuse, and such photographs or x-rays may be introduced into evidence at a hearing.

Section 7. Central Registry.

The department of social services and/or the law enforcement department shall maintain a central registry of reports, investigations and evaluations made under this code. The registry shall contain the information furnished by tribal personnel throughout the reservation, including protective service workers, probation officers, caseworkers and Indian Child Welfare Program employees. Data shall be kept in the central registry until the child concerned reaches the age of eighteen (18) years (unless the children's court orders that individual records shall be kept on file beyond that date in order to protect other siblings). Data and information in the central registry shall be confidential and shall be made available only with the approval of the director of the department to the children's court, social service agencies, public health and law enforcement agencies, licensed health practitioners, and health and educational institutions licensed or regulated by the tribe. A request for the release of information must be submitted in writing, and such request and its approval shall be made a part of the child's file.

CHAPTER IX
INVESTIGATION AND REMOVAL

Section 1. Investigation.

The child abuse or neglect report which meets screening criteria shall be investigated within three (3) court working days by the social services department or other appropriate agency, unless the children's court directs otherwise.

Section 2. Authority to Remove.

If the person investigating a report of child abuse or neglect finds that the grounds for removal, listed in Chapter IX, Section 3 below, have been met, such person may remove the child from the home in which the child is residing and place the child in a temporary receiving home or other appropriate placement.

Section 3. Grounds for Emergency Removal.

No child shall be removed from the home of the child's parent, guardian or custodian without the consent of the parent, guardian or custodian absent a specific order of the children's court, except as follows:

- (a) When failure to remove the child may result in a substantial risk of death, permanent injury, or serious emotional harm, or;
- (b) When the parent, guardian or custodian is absent and it appears, from the circumstances, that the child is unable to provide for her/his own basic necessities of life, and that no satisfactory arrangements have been made by the parent, guardian or custodian to provide for such necessities.

Section 4. Power to Remove.

Tribal law enforcement and/or social services workers shall have the power to remove a child pursuant to this section provided that:

- (a) Reasonable grounds existed at the time of the removal to believe the removal was necessary, and;
- (b) The person removing the child ensures the safety and well-being of the child, until such time as the children's court assumes control over the matter, and;
- (c) The person removing the child complies with the notice provisions contained in Chapter X of this code.

CHAPTER X
NOTICE OF REMOVAL

Section 1. Notice to the Children's Court.

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

Section 2 Notice to the Parent, Guardian or Custodian.

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

CHAPTER XI RESTRICTIONS ON PLACEMENT OF CHILDREN

A child alleged to be neglected or abused shall not be detained in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be juvenile offenders, but may be detained in the following community-based sheltercare facilities:

Section 1. Licensed Foster Home.

A licensed foster home or a home otherwise authorized under the law to provide foster care, group care, protective residence, or;

Section 2. Other Licensed Facility.

A facility operated by a licensed child welfare services agency, or;

Section 3. Relatives.

With a relative of the child who is willing to guarantee to the court that the child will not be returned to the alleged abusive or neglectful parent, guardian or custodian without the prior approval of the court, or;

Section 4. Other Suitable Place.

Any other suitable place, other than a facility for the care and rehabilitation of juvenile offenders to which children adjudicated as juvenile offenders may be confined and which meets the standards for sheltercare facilities established by the department.

CHAPTER XII FILING CHILD/FAMILY PROTECTION PETITION

Section 1. Authorization to File Petition.

Formal child/family protection proceedings shall be instituted by a child/family protection petition filed by the juvenile presenter on behalf of the tribe and in the best interests of the child.

Section 2. Time Limitations.

If a child has been removed from the home, then a child/family protection petition shall be filed with the court no later than 12:00 p.m. (noon) of the third working day following the removal if such a petition is deemed necessary by the child protection worker.

Section 3. Contents of Petition.

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

- (a) The name, birthdate, sex, residence and tribal affiliation of the child;
- (b) The basis for the court's jurisdiction;
- (c) The specific allegations of abuse, neglect or abandonment;
- (d) A plain and concise statement of the facts upon which the allegations of abuse, neglect or abandonment are based, including the date, time and location at which the alleged facts occurred;
- (e) The names, residences and tribal affiliation of the child's parents, guardians or custodians, if known;
- (f) The names, relationship and residences of all known members of the child's extended family and all former care givers, if known, and;

CHAPTER XIII
INITIAL HEARING

Section 1. Hearing Date.

An initial hearing shall be held regarding the removal of a child before the end of the second working day following the filing of the child/family protection petition.

Section 2. Purpose.

The purpose of the initial hearing is to determine whether it is reasonable to believe that continued absence from the home is necessary to protect the well-being of the child.

Section 3. Advise of Rights.

During the hearing, the court shall advise the party(s) of the reason for the hearing and of their basic rights as provided for in Chapter XIV of this code.

Section 4. Nature of Hearing.

The hearing shall be informal in nature. Concerned parties may present evidence relating to the situation. Hearsay evidence will not be excluded at this hearing as long as it is otherwise

admissible. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's extended family and other persons determined to be appropriate by the court shall be admitted.

Section 5. Possible Outcomes of the Initial Hearing.

- (a) The child/family protection petition may be dismissed and the child returned to the home.
- (b) The child may be returned to the home of the parents, guardian or custodian under the supervision of the court and other hearings held within thirty (30) days.
- (c) The child may be continued in the child's out-of-home placement and a thirty (30) day hearing will be held.

Section 6. Notice of Initial Hearing.

The court shall make all reasonable efforts to advise the parents, guardian or custodian of the time and place of the initial hearing. The court shall request that the parent, guardian or custodian be present for the hearing. Reasonable efforts shall include personal, telephone and written contacts at their residence, place of employment or other location where the person is known to frequent with regularity. If the court is unable to contact the parent, guardian or custodian, notice shall be given to members of the extended family of the parent, guardian or custodian and/or the extended family of the child.

Section 7. Unresolved Issues.

If the problems are not resolved at the initial hearing or the thirty (30) day hearing, the court will set a date for a formal hearing on the issues. Such date will be no later than sixty (60) days after the filing of the child/family protection petition.

CHAPTER XIV
NOTIFICATION OF RIGHTS

All parties have a right to be represented by an advocate/attorney at their own expense in all proceedings under this code, to introduce evidence, to be heard on his or her own behalf, to examine witnesses, and to be informed of possible consequences if the allegations of the petition are found to be true. All parties shall be entitled to advance copies of court documents, including petitions and reports, unless deemed inappropriate by the court.

CHAPTER XV
THIRTY (30) DAY HEARING

Section 1. Purpose.

A second hearing will be held within thirty (30) days following the initial hearing. The purpose of this hearing is for the court to reassess whether continuing court intervention is necessary to protect the well-being of the child.

Section 2. Hearing Procedure.

The thirty (30) day hearing shall be held according to Chapter XIII, Sections 3 through 7 of this code.

CHAPTER XVI
FORMAL TRIAL ON THE ISSUES

Section 1. Time Limitation.

The formal trial on the issues will be set for no later than sixty (60) days following the filing of the child/family protection petition.

Section 2. Admissibility.

The records of the initial hearing and the thirty (30) day hearing shall not be admissible at the formal trial. This shall not be construed to prevent the admissibility of any evidence that was presented at these hearings which would normally be admissible under the court's rules of evidence.

Section 3. Closed Hearing.

The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's extended family, and other persons determined to be appropriate by the court shall be admitted.

Section 4. Advise of Rights.

During the hearing, the court shall advise the party(s) of the reason for the hearing and of their basic rights as provided for in Chapter XIV of this code.

Section 5. Child Witnesses.

If the court determines that it is in the best interests of the child and does not violate the rights of a party, the court may allow the child to testify by means of a videotape deposition, closed circuit television or other appropriate method. If the court does allow these methods to be utilized, the court shall specifically set out the reasons for this determination on the record.

Section 6. Burden of Proof.

The burden of proof lies with the petitioner. The petitioner must prove that the allegations raised in the child/family protective petition are more likely true than not, that is, by the preponderance of the evidence, and that the best interests of the child will be served by continued court intervention.

Section 7. Outcome of Hearing.

The court will either find the allegations of the child/family protection petition to be true or dismiss the child/family protection petition, unless the hearing shall be continued to a date certain to allow for the presentation of further evidence.

Section 8. Return to Home.

The court may find the allegations of the child/family protection petition to be true, but that out-of-home placement is not needed to protect the child. The court may, however, due to unresolved problems in the home, continue court intervention and supervision as appropriate.

Section 9. Grounds for Continuing Removal from the Home.

The court may find the allegations of the child/family protection petition to be true and order that the child remain out of the home. The grounds for continuing removal from the home of a parent, guardian or custodian are that:

- (a) A child has no parent, guardian or custodian available, willing and capable to care for the child.
- (b) The child has suffered, or is likely to suffer, a physical injury inflicted upon him by other than accidental means, which causes or creates a substantial risk of death, disfigurement or impairment of bodily functions.
- (c) The child has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his/her parent, guardian or custodian, which is necessary for the child's health and well-being.
- (d) The child has been sexually abused or sexually exploited.
- (e) The child has committed juvenile offenses as a result of parental pressure, guidance or approval.
- (f) The child has been emotionally abused or neglected.
- (g) The child has suffered, or is likely to suffer, emotional damage which causes or creates a substantial risk of impaired development.

Section 10. Court Order for Continuing Removal.

The court shall specify in its order the necessary intervention and appropriate steps, if any, the parent, guardian or custodian must follow to correct the underlying problem.

Section 11. Return of Child to Parent, Guardian or Custodian.

The court may find the allegations of the child/family protection petition to be true and out-of-home placement necessary, but with the accomplishment of specified actions by the parent, guardian or custodian, the child may be returned absent good cause to the contrary. The order of the court will specify actions, and the time frames for such actions, that parents, guardians or custodians must accomplish before the child is returned. The order will also specify the responsibilities of any support agency or personnel to be involved.

Section 12. Out-Of-Home Placement.

The court may find the allegations of the child/family protection team petition to be true and that out-of-home placement continues to be necessary and further that the child may not be returned to the home, absent specific order of this court. The court shall specify what steps the parents shall take to demonstrate their abilities to care for their child, and specify to the parties what factors the court will consider at a subsequent hearing to determine whether or not the child should be returned.

Section 13. Written Order.

The court shall specify in writing the facts, grounds, and code sections upon which it relied to make its decisions.

CHAPTER XVII
NOTICE OF FORMAL TRIAL ON THE ISSUES

Section 1. Summons.

The court shall issue a summons to the parent, guardian or custodian and such other persons as appear to the court to be proper or necessary parties to the proceedings. The summons shall require them to appear personally before the court at the time set for the formal trial.

Section 2. Attachments to Summons.

A copy of the child/family protection petition shall be attached to each summons. The court shall also attach a notice to the parent, guardian or custodian which advises them of their rights under Chapter XIV of this code.

Section 3. Personal Service.

If the parties to be served with a summons can be found within the exterior boundaries of the reservation, the summons, a copy of the child/family protection petition and the notice of rights shall be personally served upon them at least fifteen (15) court days before the formal trial on the issues.

Section 4. Mail Service.

If the parties are within the exterior boundaries of the reservation but cannot be personally served, and if their address is known, the summons, petition and notice of rights may be served by registered mail with a return receipt requested, at least ten (10) days before the formal trial.

Section 5. Notice to Extended Family.

If the court cannot accomplish personal service or mail service, the court shall attempt to notify the parent, guardian or custodian by contacting members of the extended family of the parent, guardian or custodian, and/or the extended family of the child.

Section 6. Service of Summons.

Service of summons may be made under the direction of the court by any person eighteen (18) years of age or older who is not a party to the proceedings.

Section 7. Publication.

In a child/family protection case where it appears within the body of the petition or within an accompanying statement that the parent, guardian or custodian is a non-resident of the reservation, or that their name, place of residence or whereabouts is unknown, as well as in all cases where after due personal service or service by registered mail has been unable to be effected, the court shall direct the clerk to publish legal notice in a newspaper, printed in the county or on the reservation, qualified to publish summons once a week for three consecutive weeks with the first publication of the notice to be at least twenty-one (21) days prior to the date fixed for the hearing. Such notice shall be directed to the parent, guardian or custodian if their names are known, or if unknown a phrase "to whom it may concern", be used and applied to and be binding upon any such person whose names are unknown. The name of the court, name of the child, the date of the filing of the petition, the date of the hearing, and the object of the proceeding in general terms, shall be set forth. There shall be filed with the clerk an affidavit showing publication of the notice. The publication of the notice shall be paid by the tribe. The

publication of the notice shall be deemed equivalent to personal service upon all persons known or unknown who have been designated as provided in this section.

Section 8. Contempt Warning.

The summons issued by the court shall conspicuously display the words:

NOTICE: VIOLATION OF THIS ORDER IS SUBJECT TO PROCEEDINGS FOR CONTEMPT OF COURT PURSUANT TO CHAPTER VI OF THE WHITE EARTH BAND OF CHIPPEWA JUDICIAL CODE. THE COURT MAY FIND THE PARENT, GUARDIAN OR CUSTODIAN IN CONTEMPT FOR FAILURE TO APPEAR AT A COURT HEARING OR FOR FAILURE TO FOLLOW COURT ORDERS.

**CHAPTER XVIII
DEFAULT JUDGMENT**

Section 1. When Appropriate.

If the parent, guardian or custodian fails to appear for the formal trial, the court may find the parent, guardian or custodian in default, and enter a default order of child/family protection and order necessary intervention and appropriate steps the parents, guardian or custodian must follow to correct the underlying problem.

Section 2. Notice Determination.

Prior to finding a parent, guardian or custodian in default, the court must be satisfied actual notice has been given or that all reasonable possible steps have been taken to provide notice of the formal trial to the parent, guardian or custodian. The court must also find that the petitioner can prove the elements of the child/family protection petition.

Section 3. Written Order.

If the parent, guardian or custodian is found in default, the court shall specify the facts, grounds, and code sections upon which it relied to make the decision.

**CHAPTER XIX
SIX (6) MONTH REVIEW**

Section 1. Review Requirement.

The status of all children subject to a child/family protection code shall be reviewed by the court at least every six (6) months at a hearing to determine whether court supervision shall continue, except that the first review following a formal trial on the issues shall be held within sixty (60) days of the formal trial on the issues.

Section 2. Return to Home.

A child shall be returned home at the review hearing unless the court finds that a reason for removal as set forth in Chapter XVI, Section 9 of this code still exists. The court may, however, due to unresolved problems in the home, continue court intervention and supervision as appropriate.

Section 3. Written Order.

If continued court intervention is determined to be necessary, the court shall set forth the following in a written order:

- (a) What services have been provided or offered to the parent, guardian or custodian, to help correct the underlying problem(s).
- (b) The extent to which the parent, guardian or custodian has visited or contacted the child, any reason why such visitation and/or contact has been infrequent or not otherwise occurred.
- (c) Whether the parent, guardian or custodian is cooperative with the court.
- (d) Whether additional services should be offered to the parent, guardian or custodian.
- (e) Whether the parent, guardian or custodian should be required to participate in any additional programs to help correct the underlying problem(s).
- (f) When the return of the child can be expected.

Section 4. Additional Steps.

The court at the review hearing may order that a transfer of legal custody or guardianship petition be filed.

CHAPTER XX
SOCIAL SERVICE REPORT

Section 1. Requirement of a Social Service Report.

To aid the court in its decision, a social service report consisting of a written evaluation of matters relevant to the disposition of the case shall be made by the person or agencies filing the petition.

Section 2. Contents of a Social Service Report.

The social service report shall include the following points, and be made available to the court, and the parties as deemed appropriate by the court, three (3) days prior to a child/family protection petition review hearing:

- (a) A summary of the problem(s).
- (b) What steps, if any, have the parent, guardian or custodian or social services personnel already taken to correct the problem(s).
- (c) What services could be of benefit to the parent, guardian or custodian, but are not available in the community.
- (d) A report on how the child is doing in his/her current placement(s) since the last hearing. If there have been any changes in placement, the report will contain the reason for such changes in placement.
- (e) Dates of contact with parent, guardian or custodian and the child since the first hearing was held, method of contact, duration and subjects discussed.
- (f) If there have been no contacts with the parent, guardian or custodian or social worker, what efforts have been made to contact such parties.
- (g) An assessment of when the child is expected to return home.
- (h) A list of extended family members and a list of contacts, or attempts to contact such family members regarding placement of a child.
- (i) The social services personnel shall develop a case plan and shall make recommendations for the next six (6) months. Such recommendations will include:
 - (1) A treatment plan for the parents.
 - (2) Future placement of the child.
 - (3) What services should be provided for the child, if services are needed.

CHAPTER XXI
PLACEMENT PREFERENCES

Section 1. Least Restrictive Setting.

If a child cannot be returned home, the child shall be placed in the least restrictive setting which most approximates a family and in which his or her special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. The placement restrictions set forth in Chapter XI of this code shall be followed.

Section 2. Order of Preferences.

Whenever appropriate, a child shall be placed in a home with the following characteristics, which shall be given preference in the following order:

- (a) Members of child's extended family pursuant to tribal custom.
- (b) An Indian family of the same tribe as the child.
- (c) Persons who have a relationship with the child, but who are not related to the child.
- (d) An Indian family.

CHAPTER XXII
EMANCIPATION

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

CHAPTER XXIII
AUTHORIZATION OF MEDICAL TREATMENT

At any time whether or not a child is under the authority of the court, the court may authorize medical or surgical care for a child when:

Section 1. Unavailability of Parent, Guardian or Custodian.

A parent, legal guardian or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case, or;

Section 2. Life Endangerment.

A physician informs the court orally or in writing that in his or her professional opinion, the life of a child would be greatly endangered without certain treatment and the parent, guardian or custodian refuses or fails to consent. If time allows in a situation of this type, the court shall make every effort to be made to grant the parent(s), guardian or custodian an immediate informal hearing, but this hearing shall not be allowed to further jeopardize the child's life.

After entering any authorization under this section, the court shall reduce the circumstances, finding and authorization in writing and enter it in the records of the court and shall cause a copy of the authorization to be given to the physician or hospital, or both, that was involved.

Oral authorization by the court is sufficient for care or treatment to be given and shall be accepted by any physician or hospital. No physician or hospital nor any nurse, technician or other person under the direction of such physician or hospital shall be subject to criminal or civil liability in the court for performance of care or treatment in reliance on the court's authorization, and any function performed thereunder shall be regarded as if it were performed with the child's and the parent's authorization.

CHAPTER XXIV
FOSTER HOME LICENSING PROCEDURES

Section 1. Inspection and Licensing Procedures.

- (a) The White Earth Social Services Department shall be responsible for licensing all tribal foster homes according to the standards approved by the White Earth Tribal Council.

CHAPTER XXV
GUARDIANSHIP

Section 1. Purpose.

The children's court, when it appears necessary or convenient, may appoint guardians for the persons and/or property of either children under the court's jurisdiction or incompetents who have no guardian legally appointed by will or deed. Such appointment may be made on the petition of a relative or other person on behalf of the child or incompetent, or a petition of the child if at least fourteen (14) years of age. Before making such appointment, the court must cause such notice as the court deems reasonable to be given on any person having the care of the child, and to such other relatives of the child residing on the reservation as the court may deem proper, and in cases of adult incompetents, the court may cause notice to be given to the incompetent at least five (5) days before hearing the petition.

If a child is under the age of fourteen (14) years, the court may nominate or appoint his or her guardian. If he or she is fourteen (14) years of age or older, he or she may nominate his or her own guardian who, if approved by the court, must be appointed accordingly. If the guardian

nominated by the child is not approved by the court, or if the child resides outside of the reservation, or if, after being duly cited by the court, he or she neglects for ten (10) days to nominate a suitable person, the court may nominate and appoint the guardian in the same manner as if the child were under the age of fourteen (14) years.

When a guardian has been appointed by the court for a child under the age of fourteen (14) years, the child, at any time after he or she attains that age, may nominate his or her own guardian, subject to approval of the court. A guardian appointed may as specified by the court have the custody and care of the education of the child and the care and management of his or her property until such child arrives at the age of eighteen (18), marries, is emancipated by the court under Chapter XXII of this code, or until the guardian is legally discharged, provided, however, that said guardian shall not have the authority, without express written consent of the court, to dispose of any real or personal property of the child in any manner, including, but not limited to, the child's Individual Indian Money Account. Said guardian shall also have the authority to consent to the medical care and treatment of the child.

The court may order that the court disburse monthly reimbursement payments to the person or agency to whom custody is granted under this code, provided sufficient funds have been appropriated by the tribal council. Said disbursements must be used by the person or agency with custody of the child for the sole purpose of covering expenses incurred in the care and custody of said child and shall not be used for any other purpose. The use of said funds for any purpose other than that described in this section shall subject said person or agency to contempt of court and to any criminal and civil penalties or remedies provided by the tribal code.

Section 2. Types of Guardianship.

The types of guardianship shall include guardianship of property and/or guardianship of the person. Guardianship of the person shall include both temporary guardianship and permanent guardianship.

Section 3. Guardianship of Property.

The court may appoint a guardian of the property of a child or incompetent person under such terms and conditions as the court sets forth in the written order. The guardianship may cover all property until the child reaches eighteen (18) years of age or until the incompetent person becomes competent or it may be limited to only specific property or a specific legal action as set forth in the written order. A temporary or permanent guardianship of the person may also include guardianship of the child's property if set forth in the written order.

Section 4. Permanent Guardianship.

The court may appoint a permanent guardian for the child under such terms and conditions as the court sets forth in the written order. Permanent guardianship provides for permanent custody of a child to someone other than the parent(s), although there is no termination of the parental rights of the parents. There shall be a presumption of continued permanent guardianship in order to

provide stability for the child. The parent(s) and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the court.

Section 5. Temporary Guardianship.

The court may appoint a temporary guardian under such terms and conditions as the court sets forth in the written order. A temporary guardianship may be terminated if the court determines that is in the best interests of the child to change custody from the temporary guardian to a new guardian or to return the child to the parent, guardian or custodian. The parent(s) and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the court.

Section 6. Who May File Guardianship Petition.

Any person may file a petition for guardianship. The petition shall be initiated either by the proposed guardian or by the child if at least fourteen (14) years of age.

Section 7. Contents of Guardianship Petition.

The petition for guardianship shall include the following, to the best information and belief of the petitioner:

- (a) The full name, address and tribal affiliation of the petitioner;
- (b) The full name, sex, date and place of birth, residence and tribal affiliation of the proposed ward;
- (c) The basis for the court's jurisdiction;
- (d) The relationship of the proposed guardian to the proposed ward;
- (e) The name and address of the person or agency having legal or temporary custody of the proposed ward;
- (f) The type of guardianship requested;
- (g) In the case of alleged incompetent persons, the grounds for incompetency under Chapter XXV, Section 11; and
- (h) A full description and statement of value of all property owned, possessed, or in which the proposed ward has an interest (if guardianship of property is requested).

All petitions must be signed and dated by the petitioners, and must be notarized or witnessed by a clerk of the court.

Section 8. Guardianship Report.

Upon the filing of a guardianship petition, the court shall immediately request that the social services department or other qualified agency conduct a guardianship report on the proposed guardian and report on the proposed ward. The guardianship report shall contain all pertinent information necessary to assist the court in determining the best interests of the proposed ward.

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

Section 9. Guardianship Procedures.

The procedures for guardianship hearings shall be in accordance with Chapter XIII, Sections 3, 4, and 6, Chapter XIV, Chapter XX, and Chapter XXI of this code.

Section 10. Management of Property.

In the event that any guardian shall receive any money or funds of any child or incompetent person during his or her term as guardian, before taking and receiving into custody such money or funds, the court must require of such person a bond with sufficient surety to be approved by the court and in such sum as he or she shall order, conditioned that the guardian will faithfully execute the duties of his or her trust, and the following conditions shall form the part of such bond without being expressed therein:

- (a) To make an inventory of all the estate of the ward that comes into his or her possession or knowledge and to return the same within such time as the court may order, and;
- (b) To dispose of and manage the estate according to laws and for the best interests of the ward, and faithfully to discharge his or her trust in relation thereto, and also in relation to the care, custody and education of the ward, and;
- (c) To render an account on oath of property, estate and money of the ward in his or her hands and all the proceeds or interests derived therefor, and of the management and disposition of the same, within three (3) months after the appointment, and at such other times as the court directs, and at the expiration of the trust, to settle all accounts with the court or judge or with the ward if he or she be of full age, or the legal representative, and to pay over and deliver all the estate, monies and effects remaining in his or her hands, or due on such settlement to the person who is legally entitled thereto.

The funds of any child or incompetent must be used by his or her guardian solely for the support and education of such child and for the support of such incompetent, and shall be expended by the guardian in a reasonable manner according to the circumstances and station in life of such

ward, and in such manner as can reasonably be afforded according to the income and estate of said ward.

If determined to be appropriate by the court, the written order may set forth that the child's property may not be used for the child's care, but rather to be managed for the child until the child reaches the age of eighteen (18) or is emancipated by the court.

Section 11. Incompetent Persons.

In case of incompetent persons, if after a full hearing and examination upon such petition, and upon further proof by the certificates of at least two qualified physicians showing that any person is incompetent as defined in this code, it appears to the court that the person in question is not capable of taking care of him or herself nor of managing his or her property, such court must appoint a guardian of the person and estate within the powers and duties specified in this chapter.

Every guardian of an incompetent person appointed as provided herein has the care and custody of the person of the ward and the management of his or her estate until such guardian is legally discharged; the guardian must give bond to such ward in like manner and with like conditions as before specified with respect to the guardianship of a child.

A person who has been declared insane or incompetent or the guardian, or any relative of such person within the third degree or any friend, may apply by petition to the court in which he or she was declared insane, to have the fact of his or her restoration to capacity judicially determined. The petition shall be verified and shall state that such person is then sane or competent. The court shall require notice to be given of a hearing upon said petition at some date after said petition has been filed; and at the hearing upon said petition, witnesses shall be examined and a determination made by the court as to whether the petition should be granted and the insane or incompetent person be declared of sound mind and capable of taking care of himself and his or her property, his or her restoration to capacity shall be adjudged and the guardianship of such person, if such person shall not be a child, shall cease.

CHAPTER XXVI TERMINATION OF PARENTAL RIGHTS

Section 1. 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 philosophy that all parties shall be secured their rights as enumerated in the Indian Civil Rights Act of 1968 and that the family unit is of most value to the community and the individual family members when that unit remains united and together, and that the parent-child relationship is of such vital importance that it should be terminated only as a last resort when, in the opinion of the court, all efforts have failed to avoid termination and it is in the best interests of the child concerned to proceed under this chapter.

Section 2. Grounds for Involuntary Termination.

Involuntary terminations of parental rights shall be considered only as a matter of last resort in the most egregious situations.

- (a) Physical Injuries. Willful physical injuries.
- (b) Sexual Abuse. Willful acts of sexual abuse or sexual exploitation.
- (c) Abandonment: Willful failure to maintain a normal parental relationship with child. Custody with extended family members or voluntary consent to placement does not constitute abandonment.

Section 3. Pre-Filing Requirements.

A petition seeking involuntary termination of the parent-child relationship must establish the following:

- (a) The court has entered an order which states what the parent was required to accomplish to correct their underlying problem(s);
- (b) The social service agency involved has made a good faith attempt to offer or provide all court ordered and/or necessary services that are reasonably available in the community and which are capable of helping the parent resolve his or her underlying problem(s);
- (c) There is little likelihood the conditions will be remedied so that the child can be returned to the parents in the near future;
- (d) Continuation of the parent-child relationship clearly diminishes the child's prospects for successful placement into a permanent and stable home; and
- (e) Not returning the child to the parent is the least detrimental alternative that can be taken.
- (f) Returning the child to either parent will result in serious emotional or physical harm to the child.

Section 4. Who May File Termination Petition.

A petition may be filed by:

- (a) Either parent when termination is sought with respect to the other parent.
- (b) Tribal social services.
- (c) Any other person possessing an legitimate interest in the matter.
- (d) A parent may file a petition for the voluntary termination of his or her parental rights.

No parental rights may be terminated unless a petition has first been filed, notice has been given, and a hearing held in accordance with the provisions of this chapter.

Section 5. Contents of Termination Petition.

The petition for termination of parental rights shall include the following to the best information and belief of the petitioner:

- (a) The name, place of residence and tribal affiliation of the petitioner;
- (b) The full name, sex, date and place of birth, residence and tribal affiliation of the child;
- (c) The basis for the court's jurisdiction;
- (d) The relationship of the petitioner to the child, or the fact that no relationship exists;
- (e) The names, addresses, tribal affiliation, and dates of birth of the child's parents;
- (f) Where the child's parent is also a child, the names and addresses of the parent's parents or guardian; and where the parent has no parent or guardian, the members of the parent's extended family.
- (g) The name and address of the person or agency having legal or temporary custody of the child;
- (h) The grounds on which the termination is sought under Chapter XXVI, Section 2 of this code (unless voluntary termination);
- (i) A statement that the pre-filing requirements set forth in Chapter XXVI, Section 3 of this code have been met (unless involuntary termination), and;

- (j) A list of the assets of the child together with a statement of the value thereof.

When any of the facts required by this section are unknown, the petition shall so state. The petitioner shall sign and date the petition.

Section 6. Notice.

After a petition for the involuntary termination of parental rights has been filed, the court shall set the time and place for hearing and shall cause notice thereof to be given to the petitioner, the parents of the child, the guardian of the person of the child, the person having legal custody of the child, and the child's extended family as determined by the court.

Where the child's parent is also a child, notice shall also be given to the parent's parents or guardian of the person unless the court is satisfied, in exercise of its discretion, that said notice is not in the best interest of the parent and that it would serve no useful purpose.

Notice shall be given by personal service. If service cannot be made personally, the court may authorize service by registered mail at the last known address of the person to be served. If notice cannot be served by registered mail, the court may authorize service by publication in either the tribal newspaper of the reservation, or a newspaper of general circulation in the county where the court is located, once a week for three (3) consecutive weeks. All notices served whether personally or by registered mail shall be received by the person named therein no less than ten (10) days prior to the date set for the hearing. No hearing can be held sooner than ten (10) days after the last publication where service is made.

Notice and appearance may be waived by a parent in writing before the court in the presence of, and witnessed by, a clerk of the court, provided that such parent has been apprised by the court of the meaning and consequences of the termination action. The parent who has executed such a waiver shall not be required to appear at the hearing. Where the parent is a minor, the waiver shall be effective only upon approval by the court.

Section 7. Pre-Termination Report.

Upon the filing of a petition under this chapter for the involuntary termination of parental rights, the court shall request that the social services department or other qualified agency prepare and submit to the court a report in writing. The report shall be submitted to the court no later than ten (10) days before the hearing with copies given to the parents. The purpose of the report is to aid the court in making a determination on the petition and shall be considered by the court prior thereto. The court may request additional reports where it deems necessary.

The report shall include the circumstances of the petition, the investigation, the present condition of the child and parents, proposed plans for the child, and other such facts as may be pertinent to the parent and child relationship, and the report submitted shall include a recommendation and the reasons therefor as to whether or not the parent and child relationship should be terminated.

Section 8. Relinquishment of Parental Rights.

(Voluntary Termination of Parental Rights)

Parental rights may be relinquished (voluntarily terminated) by a parent in writing, if signed by the parent in the presence and with approval of the court. Relinquishment shall not be accepted or acknowledged by the court prior to thirty (30) days after birth of the child. The court shall ensure that the parent understands the consequences of the voluntary termination prior to approving it. A parent who wishes to relinquish his or her parental rights shall be provided an interpreter if he or she does not understand English.

Section 9. Hearing Procedures.

The procedures for termination of parental rights hearings shall be in accordance with Chapter XVI, Sections 2 through 5 of this code.

Section 10. Burden of Proof.

The burden of proof lies with the petitioner to prove that the allegations in the termination petition are supported by clear, cogent, and convincing evidence, and that the best interests of the child will be served by termination of parental rights.

Section 11. Findings of Fact and Conclusions of Law.

The court will make formal findings of fact and conclusions of law as a basis for the written order terminating the parent-child relationship.

Section 12. Result of Termination Order.

Upon the termination of parental rights, all rights, powers, privileges, immunities, duties and obligations including any rights to custody, control, visitation or support existing between the child and the parent shall be severed and terminated unless otherwise directed by the court. The parent shall have no standing to appear at any future legal proceeding concerning the child. Any support obligation existing prior to the effective date of the order terminating parental rights shall not be severed or terminated. The rights of one parent may be terminated without affecting the rights of the other parent. A termination order shall not prevent a child from inheriting property or interest in the same manner as any other natural child from the natural parent. A natural parent may not, however, inherit from a natural child after termination.

Section 13. Child's Continued Right to Benefits.

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

Section 14. Custody After Termination Order.

If upon entering an order terminating the parental rights of a parent there remains no parent having parental rights, the court shall commit the child to the custody of a social services agency for the purpose of placing the child for adoption, or in the absence of an adoptive home the agency may place the child in a licensed foster home or with a relative, or take other suitable measures for the care and welfare of the child. The custodian shall have the authority to consent to the adoption of the child, the marriage of the child, the enlistment of the child in the armed forces of the United States, necessary surgical and other medical treatment for the child and consent to such matters as might normally be required of the child's parent.

Section 15. Future Review Hearings.

If a child has not been adopted or permanently placed within six (6) months of the termination order, another six (6) month review hearing will be held. Such six (6) month hearings will continue until the child is adopted or permanently placed.

CHAPTER XXVII
ADOPTIONS

Section 1. Open Adoptions.

Most adoptions under this code shall be in the nature of "Open Adoptions." The purpose of such open adoptions is not to permanently deprive the child of connections to, or knowledge of, the child's natural family. The purpose of adoptions shall be to give the adoptive child a permanent home. To this and the following shall apply and be contained in all adoptive orders and decrees:

- (a) The adoptive parents and adoptive child shall be treated under the laws as if the relationship was that of a natural child and parent, except as set forth herein.
- (b) The adoptive child shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his or her natural family and his or her tribal heritage.
- (c) The adoptive child and members of the child's natural extended family (including biological parents) shall have a right of reasonable visitation with each other, subject to reasonable controls of the adoptive parents unless it is a closed adoption.
- (d) Adoption shall not serve to prevent an adoptive child from inheriting from a natural parent in the same manner as any other natural child. The natural parents shall not be entitled to inherit from an adoptive child in the same manner as parents would otherwise be entitled to inherit. An adoptive child shall be entitled to inherit from adoptive parents, and vice versa, in the same manner as if natural parents and child.

Section 2. Closed Adoptions.

In some situations, at the request of any party, adoption proceedings may be closed if deemed reasonable by the court. In closed adoptions, the child shall be entitled to information regarding his or her biological family upon reaching the age of majority. The child's biological family shall not be entitled to or have access to any information regarding said child.

Section 3. Consent to Adoption.

- (a) When not required: Written consent to an adoption is not required if:
 - (1) The parent has abandoned his or her child;
 - (2) The parent's rights have been terminated;
 - (3) The parent has relinquished his or her parental rights;
 - (4) The parent has been declared incompetent.

- (b) When required: Written consent to an adoption is required of:
 - (1) The biological or adoptive mother;
 - (2) The biological, adoptive, or acknowledged father;
 - (3) The custodian, if empowered to consent;
 - (4) The court, if the custodian is not empowered to consent;
 - (5) The child, if he or she is over twelve (12) years of age.

Section 4. Execution of Consent to Adopt.

Written consent to an adoption shall be executed and acknowledged before the court. Consent shall not be accepted or acknowledged by the court prior to thirty (30) days after the birth of the child. An interpreter shall be provided if the person consenting to the adoption does not understand English. Consent of a child over the age of twelve (12) years shall be made orally either in open court, or in chambers with only the judge and any other person(s) he or she deems necessary, and the child present.

Section 5. Who May File An Adoption Petition.

Any person may file a petition for adoption. The petition shall be initiated by the person proposing to adopt. In the case of married persons maintaining a home together, the petition shall be the joint petition of husband and wife, except that if one of the spouses is the natural or adopted parent of the proposed adoptee, said parent shall not be required to join in the petition.

Section 6. Contents of Adoption Petition.

The petition for adoption shall include the following, to the best information and belief of the petitioner:

- (a) The full name, address, and tribal affiliation of the petitioner;
- (b) The full name, sex, residence, date and place of birth, and tribal affiliation of the proposed adoptee;
- (c) The name by which the proposed adoptee shall be known if the petition is granted;
- (d) The basis for the court's jurisdiction;
- (e) If the proposed adoptee is a child, a full description and statement of value of all property owned, possessed or in which the child has an interest;
- (f) The relationship of the petitioner to the proposed adoptee; and
- (g) The names and addresses of any person or agency whose consent to aid adoption is necessary.

Where there is more than one proposed adoptee, and these proposed adoptees are siblings, only one petition shall be required for the adoption of all or any combination of the siblings, provided that each sibling proposed to be adopted be named in the petition.

All petitions must be signed and dated by the petitioner, and must be notarized or witnessed by a clerk of the court.

Section 7. Notice.

Notice shall be provided in accordance with the notice procedures set forth in Chapter XXVI, Section 6 of this code except that the court may determine that it is unnecessary to give notice to specific individuals, including a parent whose parental rights have been terminated.

Section 8. Homestudies.

When a petition for the adoption of a child is filed with the court, the court shall immediately request that the social services department or other qualified agency conduct a homestudy on the petitioner and report on the child. The homestudy and report shall relate the circumstance of the home, the petitioner and his or her ability, both physical and mental, to assume the responsibilities of a parent of the child. The homestudy shall contain other pertinent information designed to assist the court in determining the best placement for the child. The homestudy will also address the issue of whether or not the home most closely resembles that of the child's culture, identity, and where applicable, his or her tribal affiliation. The homestudy or report shall not be required where the proposed adoptee is an adult.

No determination can be made on a petition for adoption until the homestudy and report has been completed and submitted to and considered by the court. The homestudy shall be submitted to the court no later than ten (10) days before the hearing. The homestudy and report may be consolidated into one document. The court may order additional homestudies or reports as it deems necessary.

Section 9. Withdrawal of Consent.

Any consent given under the provisions of this chapter may be withdrawn by the person or agency which gave the consent at any time prior to the entry of a final decree of adoption. No reason need be stated and no hearing need be held on such withdrawal.

All withdrawals must be in writing and notarized or witnessed by a clerk of the court, with the original being filed with the court.

Within two (2) years after the entry of a decree of adoption, said decree may be vacated upon a petition being filed and a showing that the consent which made the adoption possible was obtained through fraud or duress. Upon such a showing the court shall vacate the decree and return the adopted person to that status he or she had prior to entry of the decree.

Section 10. Adoption Preferences.

The preference of placement in adoption shall be in the following order unless the court determines that the child's best interests require deviation from the preferences:

- (a) Extended family member;
- (b) A tribal member or person eligible for tribal membership in the child's tribe;
- (c) Other Indian person(s), and;
- (d) If this order of preference cannot be met, then placement may be made with any person who has some knowledge of the child's tribal affiliation and his or her special needs, if any.

Section 11. Hearing Procedures.

An adoption hearing shall be held within ninety (90) days of receipt of an adoption petition from the prospective parent(s). The court shall conduct the hearing to determine if it is in the best interests of the child to be placed with the petitioner. In determining the best interests of the child, the court shall examine:

- (a) Validity of written consent;
- (b) Termination of parental rights order;
- (c) Length of time of the child's wardship by the court;
- (d) Special conditions of the child;
- (e) Parent communications with the child;
- (f) Minor's consent to adoption, if he or she is over twelve (12) years of age;
- (g) Homestudies or other reports, and;
- (h) Order of preference of placement.

The petitioner and the proposed adoptee shall appear personally at the hearing. During the hearing the court shall advise the party(s) of their basic rights as provided in Chapter XIV of this code. The judge shall examine all persons separately, and may, if satisfied that all other requirements of this chapter have been met, enter a final decree of adoption, or may place the person to be adopted, if a child, in the legal custody of the petitioner for a period of time not to exceed six (6) months prior to entering a final decree of adoption.

If the court is satisfied that the adoption will not be in the child's best interest, or finds that all of the requirements of this chapter have not been met, it may deny the petition and make any other order it deems necessary for the care and custody of the child not inconsistent with this code.

Proceedings for termination of the parent-child relationship and proceedings for adoption may be consolidated and determined at one (1) hearing provided that all the requirements of this chapter as well as Chapter XXVI of this code governing termination are complied with fully.

The hearing shall be informal in nature. Concerned parties may present evidence relating to the situation. Hearsay evidence will not be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's extended family and other persons determined to be appropriate by the court shall be admitted.

Section 12. Adoption Decree.

If the court finds that the requirements of this chapter have been met and that the child's best interests will be satisfied, a final decree of adoption may be entered.

A person, when adopted, may take the name of the person adopting, and the two shall thenceforth sustain toward each other the legal relation of parent and child, and shall have all the rights and shall be subject to all the duties of that relation, including all of the rights of a child of the whole blood to inherit from any person, in all respects, under the provisions of inheritance and succession of this code.

CHAPTER XXVIII MODIFICATION, REVOCATION OR EXTENSION OF COURT ORDERS

Section 1. Motion to Modify, Revoke or Extend Court Order.

The court may hold a hearing to modify, revoke or extend a court order under this code at any time upon the motion of:

- (a) the child;
- (b) the child's parent, guardian or custodian;
- (c) the prospective adoptive parent(s) upon court order;
- (d) the child's counsel or guardian ad litem;
- (e) the juvenile counselor;
- (f) the institution, agency, or person vested with the legal custody of the child or responsibility for protective supervision;
- (g) the court on its own motion; or,
- (h) tribal social services.

Section 2. Hearing Procedure.

Any hearing to modify, revoke or extend a court order shall be held in accordance with the procedures established for the order at issue.

CHAPTER XXIX
CHILD/FAMILY PROTECTION RECORDS

Section 1. Children's Court Records.

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

- (a) the child;
- (b) the child's parent, guardian or custodian;
- (c) the prospective adoptive parent(s);
- (d) the child's counsel or guardian ad litem;
- (e) the children's court personnel directly involved in the handling of the case;
- (f) any other person by order of the court, having legitimate interest in the particular case or the work of the court; or
- (g) tribal social services.

Section 2. Law Enforcement and Social Services Records.

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

- (a) the child;
- (b) the child's parent, guardian or custodian;
- (c) the child's counsel or guardian ad litem;
- (d) law enforcement and social services personnel directly involved in the handling of the case;
- (e) the children's court personnel directly involved in the handling of the case;
- (f) any other person by order of the court, having legitimate interest in the particular case or the work of the court.

CHAPTER XXX
CHILDREN'S COURT APPEALS

Section 1. Who Can Appeal.

Any party to a children's court hearing may appeal a final order of the children's court.

Section 2. Time Limit for Appeal.

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

Section 3. Record.

For purposes of appeal, a record of proceedings shall be made available to the child, his or her parent, guardian or custodian, and child's counsel and others upon court order. Costs of obtaining this record shall be paid by the party seeking the appeal.

Section 4. Stay of Appeal.

A court order may be stayed by such appeal upon specific request.

Section 5. Conduct of Proceedings.

All appeals shall be conducted in accordance with the tribal code and tribal court rules of procedure as long as those provisions are not in conflict with the provisions of the children's code.