TITLE 4
JUVENILE PROCEDURE
(As redesignated July 1, 1989)

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TITLE 4
TABLE OF REVISIONS

The following table is included in this title as a guide for determining whether each article properly reflects the current version. This table will be updated with the revision of each article.

Through usage and supplementation, pages in bound titles can be inserted and removed when sections are revised on an article-by-article basis. This table should be placed before the Table of Contents in the title.

The "Article" column lists each article, and the "Section" column lists any corresponding sections that have been revised, in sequence. The "Revised Date" column reflects the effective date of the revision (e.g., "6/20/15"). If an article is not listed in the table, it has not been revised since the December 2015 Winnebago Tribal Code update and distribution.

Article	**Section**	**Revised Date**

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4-100 Citation. This Act may be cited as the Juvenile Procedure Act. [TCR 86-79]

4-101 Purpose. The purposes of this Act are to:

1. Secure for each child subject to this Act such care and guidance, preferably in his/her own home, as will best serve his/her welfare and the interests of the Tribe and society in general;
2. Preserve and strengthen the ties between the child and his/her Tribe whenever possible;
3. Preserve and strengthen family ties whenever possible and to strengthen and improve the home and its environment when necessary;
4. Remove a child from the custody of his/her parents and traditional custodians only when his/her welfare and safety or the protection of the public would otherwise be endangered;
5. Secure for any child removed from the custody of his/her parents the necessary care, guidance and discipline to assist him/her in becoming a responsible and productive member of his/her Tribe and society in general;
6. To discourage delinquent acts and to protect the community's interest by providing supervision, care and rehabilitation; and
7. To ensure that off-reservation courts will be willing to return Tribal children to the reservation by establishing juvenile court rules and procedures. In order to carry out these purposes, the provisions of this Act shall be liberally construed. [TCR 86-79]

4-102 Definitions. Unless the context otherwise requires, as used in this Act, the following words mean as follows:

1. "Abandon" means that a parent leaves a child without adequate communication or fails to support a child and there is no indication of the parent(s) willingness to assume his/her parental roles for a period exceeding two years.
2. "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition alleging a child to be neglected, deprived, in need of supervision, in need of care or delinquent filed pursuant to this Act are supported by the evidence.
3. "Adult" means a person nineteen years of age or over; except that any person alleged to have committed a delinquent act before he/she became nineteen years of age shall be considered a child under this Act for the purpose of adjudication and disposition of the delinquent act, or concerning a child for whom a petition has been filed for his/her adoption other than under this Title, shall be referred to as a child.
4. "Aunt" Means those female relatives referred to in the Winnebago kinship system as Cuwi, which are the sisters of the child's father. (See Winnebago Kinship System chart in 4-135)
5. "Biological Parent" means the natural mother (Nani) or father (Jagi) of the child. A biological parent will have preference over an "extended family" parent which are also termed Nani and Jagi under the Winnebago Kinship System. See chart in 4-135.
6. "Brother" means:
   A. Any male child of the biological mother and father;
   B. Any male child of the child's Nani (mother's sister);
   C. Any male child of the child's Jaji (father's brother); or
   D. Any other male person, who, by virtue of an adoption either of themselves or of a member of their family pursuant to the laws of any Indian tribe or state, would hold the relationship of a sibling with the person in question. (See Winnebago Kinship System chart in 4-135).
7. "Brother-in-law" means the husband of a sister by blood or marriage.
8. "Child" means a person under nineteen years of age.
9. "Child care institution" means a facility designed for the care of children licensed or approved pursuant to Tribal law, or, if outside the Tribal jurisdiction, by the law of the jurisdiction in which such facility is physically located, and which accommodates no more than 25 children.
10. "Child-in-need-of-supervision" means any child:
    A. Who has repeatedly disobeyed reasonable and lawful commands or directives of his/her parent, legal guardian, or other custodian; or
    B. Who is willfully and voluntarily absent from his/her home without the consent of his/her parent, guardian, or legal custodian for a substantial period of time, or without intent to return; or
    C. Who deports him/herself so as to injure or endanger seriously the morals or health of him/herself or others; or
    D. Who, being subject to compulsory school attendance, is willfully, voluntarily, and habitually absent from school in violation of law.
11. "Child placement agency" means an agency designed for the care or placement of law of the jurisdiction in which such facility is physically located or both children licensed or approved pursuant to Tribal law, or, if outside the Tribal jurisdiction, by the law of the jurisdiction in which such facility is physically located, or both.
12. "Commit" means to transfer legal custody.
13. "Cousin" is not a term used in the Winnebago kinship system. (See Winnebago Kinship System chart in 4-135).
14. "Custody" means guardianship of the person.

15. "Custodian" means a person, other than a parent or guardian, to whom legal custody of the child has been given but does not include the person who has only physical custody.
16. "Court" means the Winnebago Tribal Juvenile Court when exercising jurisdiction under this Code.
17. "Court judge" means any duly appointed judge of the Winnebago Tribal Juvenile Court when exercising jurisdiction under this Code.
18. "Delinquent child" means a child who:
    A. Has violated any federal, tribal, or state law, excepting traffic statutes or ordinances, hunting or fishing statutes or ordinances, or any lawful order of the Court made pursuant to this Act; or
    B. Has habitually violated any traffic, hunting or fishing statutes or ordinances, or lawful orders of the Court made under this Act.
19. "Delinquent act" means an act, which, if committed by an adult, is designated a crime under the Winnebago Tribal Law and Order Code.
20. "Department" means the tribal child and family services department.
21. "Deprivation of custody" means the transfer of legal custody by the Court from a parent or previous legal custodian to another person, agency, or institution.
22. "Detention" means the placement of a minor in a physically restrictive facility.
23. "Dispositional hearing" means a hearing held after an adjudication hearing has found a child to be deprived, neglected, in-need-of-care, in-need-of-supervision, or delinquent, in which the Court must determine what treatment should be ordered for the family and the child, and what placement of the child should be made during the period of treatment. Such hearing may be part of the proceeding which includes the adjudication hearing or it may be held at a time subsequent to the adjudication hearing.
24. "Extended family" (for placement options) means a Tribal member who has reached the age of nineteen and who is the minor's grandparent (Coka, Gaga), kinship parent, Nani (sister of the child's mother) or Jagi (Brother of the child's father), aunt or uncle,(Cuwi, pronounced "Chu wee", is the sister of the child's father and Tega is the brother of the child's mother), brother or sister, brother-in-law or sister-in-law, niece or nephew, or stepparent, or is recognized by Tribal custom as an extended family member. For a complete description of who may be considered "Extended Family" see Winnebago Kinship Chart contained in Section 4-135..
25. "Father" includes the biological father of the child or any other person in the Winnebago kinship system referred to as Jagi. (See Winnebago Kinship System chart in 4-135).
26. "Foster family home" means an individual or family facility for the care of not more than ten children in a family-type setting, licensed or approved pursuant to the Tribal law, or, if outside the Tribal jurisdiction, by the law of the jurisdiction in which such facility is physically located or both, or a group care or group home facility, licensed or approved pursuant to the Tribal law, or, if outside the Tribal jurisdiction, by the law of the jurisdiction in which such facility is physically located or both.
27. "Grandparent" means:
    A. A biological grandparent referred to in the Winnebago kinship system as Coka (grandfather) or Gaga (grandmother);
    B. The brothers and sisters of a biological grandparent, and their spouses;
    C. Any other person, who, by virtue of an adoption either of themselves or a member of their family pursuant to the laws of any Indian Tribe or state, would come within the terms of subparagraphs (A) or (B) of this subsection. (See Winnebago Kinship System chart in 4-135).
28. "Guardian" means a person other than the minor's parent who is by law responsible for that minor (but not for the minor's property).
29. "Guardian ad litem" means an adult appointed by the Court to prosecute or defend for a minor in any proceeding to which he/she may be a party.

30. "Guardianship of the person" means legal custody or the duty and authority vested by law to make major decisions affecting a child including, but not limited to:
    A. The authority to consent to marriage, to enlistment in the Armed Forces, and to extraordinary medical and surgical treatment; and
    B. The authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning a child; and
    C. The authority to consent to the adoption of a child when the parent-child relationship has been terminated by judicial decree or the death of the parents; and
    D. The rights and responsibilities of the physical and legal care, custody, and control of a child when legal custody has not been vested in another person, or agency, or institution; and
    E. The duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for the child. Guardianship of the person or a child, or legal custody of a child, may be taken from its parents only by Court action.
31. "Halfway house" means group care facilities for children who have been placed on probation or parole by virtue of being adjudicated delinquent, or in need of supervision under this Title.
32. "Indian custodian" means an adult Tribal member to whom temporary physical care, custody, and control has been transferred by the parent of such minor.

33. "Juvenile Court" or "Court" means the juvenile division of the Tribal Court or the Juvenile Court or C.F.R. court established for other Indian tribes, or a state Juvenile Court as is appropriate from the context.
34. "Juvenile offender" means a person who commits a delinquent act prior to his/her nineteenth birthday.
35. "Least restrictive alternative." This term directs the Court to select the least drastic method of achieving its goal; the restrictions placed on the child must be reasonably related to the Court's objectives and must be the least restrictive way of achieving the objective that any person held in detention before trial is held only to insure that the person will not leave the area; therefore, the only restraint which should be imposed for that purpose is the restriction on his/her freedom of movement. If the person will appear, he/she should be released from custody until the hearing. No other restriction, such as mail censorship or being placed in solitary confinement, is related to the stated purpose of pretrial detention.
36. "Legal custody" means the right to the care, custody, and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for a child and, in an emergency, to authorize surgery or other extraordinary care. Legal custody may be taken from a parent only by Court action.
37. "Minor" means:
    A. A person under nineteen years of age.
    B. A person nineteen years of age or older concerning whom proceedings are commenced in Juvenile Court prior to his/her nineteenth (19th) birthday.
    C. A person nineteen years of age or older who is under the continuing jurisdiction of the Juvenile Court.
    D. A person who has not been legally emancipated.
38. "Mother" means the biological mother of the child or any person referred to as Nani in the Winnebago kinship system. (See Winnebago Kinship System chart in 4-135).
39.
40. "Neglected child" or "dependent child" or "minor-in-need-of-care," means a child:
    A. Whose parent, guardian, or legal custodian has subjected him/her to mistreatment or abuse, or whose parent, guardian, or legal custodian has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and prevent it from recurring; or

B. Who lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian; or
C. Whose environment is injurious to his/her welfare; or
D. Whose parent, guardian, or legal custodian fails or refuses to provide proper or necessary subsistence, education, medical care, or any other care necessary for his/her health, guidance, or well-being, whether because of the fault of the parent, guardian, or legal custodian, or because the parent, guardian or legal custodian does not have the ability or resources to provide for the child; or
E. Who is homeless, without proper care, or not domiciled with his/her parent, guardian, or legal custodian, due to, or without the fault of his/her parent, guardian, or legal custodian; or
F. Whose parent, guardian, or legal custodian has abandoned him/her without apparent intent to return, or who has placed him/her informally with any other person, and has not contributed to the support of the child or established personal contact with the child for a period in excess of six months; or
G. Has no parent(s), guardian(s), or custodian(s) available and willing to care for him/her; or
H. Has been sexually abused; or
I. Has committed delinquent acts as a result of parental pressure, guidance, or approval; or
J. Has been emotionally abused or neglected.

41. "Nephew" means the male child of a Cuwi (father's sister), whether by blood, marriage, or adoption. In a non-Winnebago setting this person would be considered a cousin to the child. (See Winnebago Kinship System chart in 4-135).
42. "Niece" means the female child of Cuwi (father's sister), whether by blood, marriage, or adoption. In a non-Winnebago setting this person would be considered a cousin to the child. (See Winnebago Kinship System chart in 4-135).
43. "Parent" includes a biological or adoptive parent and any person designated a Nani or Jaji under the Winnebago kinship system, but does not include persons whose parental rights have been terminated, however, it does include an unwed father whose paternity has been acknowledged and accepted under the Tribe's enrollment standards. If a reference in this Code is specific to biological parent, the term "biological parent" will be used.
44. "Protective supervision" means a legal status created by Court order under which the child is permitted to remain in his/her own home under the supervision of the Juvenile Court through the Tribal social services department during the period during which treatment is being provided to the family by the Tribal social services department or other agencies designated by the Court.
45. "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after legal custody, or guardianship of the person of said child has been vested in another person, agency, or institution, but where parental rights have not been terminated, including, but not necessarily limited to, the responsibility for support, the right to consent to adoption, the right to inherit from the child, the right to determine the child's religious affiliation, and the right to reasonable visitation with the child unless restricted by the Court.
46. "Shelter" means a facility for the temporary care of a child in physically unrestricting facilities pending Court disposition, or execution of a Court order for emergency or temporary placement.
47. "Sibling" means any "sister" or "brother". (See Winnebago Kinship System chart in 4-135).
48. "Sister" means:
    A. Any female child of the biological mother or father,
    B. Any female child of the child's Nani (mother's sister(s)),
    C. Any female child of the child's Jaji (father's brother(s)), or
    D. Any other female person, who, by virtue of an adoption either of themselves or of a member of their family pursuant to this Act or the laws of any Indian tribe or state, would have the relationship of a sibling with the person in question. (See Winnebago Kinship System chart in 4-135).

49. "Sister-in-law" means the wife of a brother by blood or marriage.
50. "Stepparent" means a person married to a person termed as a Nani or a Jagi under the Winnebago kinship system. (See Winnebago Kinship System chart in 4-135).

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51. "Termination of parental rights" or "termination of the parent-child legal relationship" means the permanent elimination by Court order of all parental rights and duties, including residual parental rights and duties, but not including the child's right to inherit from the parents whose rights have been terminated.
52. "Toto" means the older brother of the child.
53. "Traditional custodian" means those relatives of the child other than the parents, who, by force of the traditions, customs, and common law of the Tribe have the rights, duties, and responsibilities of assisting the parents in rearing the child and providing for his/her support.
54. "Transfer proceeding" means any proceeding in the Tribal Court to grant, accept, or decline transfer of any children's case from or to the courts of any Indian tribe or state whenever such transfer is authorized by tribal, federal, or state law.
55. "Tribal Court" means the adult court for the Winnebago Tribe of Nebraska.
56. "Winnebago Kinship System" means the traditional family system of the Winnebago people as illustrated in the Winnebago Kinship System chart contained within the 4-135 of this Title 4. [TCR 86-79, 15-127]

4-103 Place of sitting. The juvenile division of the Tribal Court shall maintain offices and sit in the same place the Tribal Court sits, provided, that the juvenile division, in a transfer proceeding or where otherwise necessary and expedient in the interest of justice and economy, with the approval of the Chief Judge, may sit anywhere within the territorial limits of the United States. [TCR 86-79]

4-104 Juvenile Court established. There is hereby created and established within the Tribal Court, a Juvenile Court whose powers and duties are set forth in this Act. Any judge of the Tribal Court may be assigned by the Chief Judge to hear cases in the juvenile division of the Court. [TCR 86-79]

4-105 Jurisdiction.

1. Except as otherwise provided by law, the Juvenile Court shall have exclusive jurisdiction in proceedings:
   A. Concerning any child in need of supervision.
   B. Concerning any child who is delinquent, neglected or dependent, or in need of care.
   C. Concerning any transfer proceeding to or from a court of another sovereign in a children's case.
   D. To determine the legal custody of any child or to appoint a guardian of the person or legal custodian of any child who comes within the Juvenile Court's jurisdiction.
   E. For the issuance of orders of support of minor children.
   F. To determine the parentage of a child and to make an order of support in connection therewith.
   G. For adoptions as set forth in Section 4-701.
   H. For judicial consent to the marriage, employment or enlistment of a child, when such consent is required by law.
   I. For the treatment or commitment of a mentally ill or developmentally disabled child who comes within the Court's jurisdiction.
2. The Court may issue temporary orders providing for protection, support, or medical or surgical treatment as it deems in the best interest of any child concerning whom a petition has been filed prior to adjudication or disposition of his/her case.

3. Nothing in this Section shall deprive the Tribal Court of jurisdiction to appoint a guardian for a child nor of jurisdiction to determine the legal custody of a child upon writ of habeas corpus or when the question of legal custody is incidental to the determination of a case in the Tribal Court except that:
   A. If a petition involving the same child is pending in Juvenile Court or if continuous jurisdiction has been previously acquired by the Juvenile Court, the Tribal Court shall certify the question of legal custody to the Juvenile Court; and
   B. The Tribal Court at any time may request the Juvenile Court to make recommendations pertaining to guardianship or legal custody.
4. Where a custody award has been made in the Tribal Court in a dissolution of marriage action or another proceeding and the jurisdiction of the Tribal Court has been established, the Juvenile Court may take jurisdiction in a case involving the same child if he/she is dependent or neglected or otherwise comes within the jurisdiction set forth herein.
5. Except as otherwise provided by law, the Juvenile Court shall have jurisdiction in proceedings concerning any adult:
   A. Who induces, aids or encourages a child to violate any federal, Tribal or state law; or
   B. Who abuses, ill-treats, neglects, or abandons a child who comes within the Court's jurisdiction; or
   C. Who violates any duly-served order of the Court.
6. The Court's jurisdiction extends to any juvenile offender, unless the Court transfers jurisdiction to the Tribal Court pursuant to the tribal transfer proceedings. [TCR 86-79, 15-127]

4-106 Court authority.

1. Cooperation and Grants. The Court is authorized to cooperate fully with any federal, state, or Tribal public or private agency in order to participate in any diversion, rehabilitation or training programs and to receive grants-in-aid to carry out the purposes of this Code.
2. Social Services. The 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).
3. Contracts. The Court may negotiate a contract with Tribal, federal or state agencies and departments on behalf of the Tribal Council for the care and placement of minors whose status is adjudicated under this Court.
4. Transfer from State Courts. The Court may accept or decline state court transfers of child custody proceedings. [TCR 86-79]

4-107 Indian child welfare transfers from Tribal Courts.

1. Any Tribal Court may transfer to the Juvenile Court herein any children's case concerning any child who is a member or eligible for membership in the Tribe, or whose parents or guardian reside within the jurisdiction of the Tribe, if the Juvenile Court finds that the transfer would not be detrimental to the best interest of the child.
2. The Juvenile Court shall determine whether the transfer to the Tribe's jurisdiction would be detrimental to the best interest of the child in a transfer hearing initiated by the Tribe after an order of transfer is received by the court clerk. In making such determination, the Court may consider:
   A. Whether the child or its family will be in need of special services for physical or mental disease or defect which the Tribe and its resources are unable to adequately provide; and
   B. If transfer is tendered prior to adjudication whether the witnesses necessary to adjudicate the case will be available. If the witnesses will probably not appear, the Court should decline to accept the transfer until after the adjudication is completed; and

C. Any other matters which may adversely affect the Tribe's ability to provide treatment or necessary services to the family.

3. A Tribal Court transferring a case to the Tribe's jurisdiction under subsection (1) of this Section shall transmit all documents and legal and social records, or certified copies thereof, pertaining to the case to the Tribal Juvenile Court, which shall proceed with the case as if a petition has been originally filed or the adjudication originally made in the Tribal Court. [TCR 86-79]

4-108 Child welfare transfers to tribal or state courts.

1. The Tribal Juvenile Court, in its discretion, is authorized to transfer any children's case arising within the Tribal jurisdiction, said child not being a member or eligible for membership in the Tribe, to the court of the child's Indian tribe, or if the child is a non-Indian, to the courts of the state where the child is a resident, or domiciled, upon the petition of the Tribal prosecutor, either parent, a custodian or guardian, the child's tribe, or an appropriate official of the child's state.
2. In making such transfers, the Tribal Court may consider:
   A. The best interests of the child; and
   B. Any special needs or mental or physical disease or defects of the child and family and the ability of the Tribe and the receiving jurisdiction to meet those needs; and
   C. If transfer is requested prior to adjudication, whether witnesses necessary to the adjudication can attend in the receiving jurisdiction; and
   D. Emotional, cultural, and social ties of the child and its family; and
   E. The likelihood that the same child and family would return to the Tribal jurisdiction within reasonable time and come before the Juvenile Court again.
3. Upon entering an order transferring a case as provided in this Section, the Court shall serve a certified copy of the order of transfer, the legal case file, and any social or police reports concerning the child's case to the court clerk of the receiving jurisdiction by certified mail, return receipt requested. The Juvenile Court may retain physical custody of the child pending an order or notice of acceptance from the receiving jurisdiction, and upon receiving such order on notice, may close the case file and dismiss the case subject to any necessary order for the protection of the child until completion of physical transfer to the receiving jurisdiction. [TCR 86-79]

4-109 Court support staff.

1. Child welfare workers' duties shall include but not be limited to:
   A. Identifying and developing resources on the reservation designed to enhance each Tribal minor's potential as a viable member of the Tribal community;
   B. Make investigations as provided in this Code or as directed by the Court;
   C. Make reports to the Court as provided in this Code or as directed by the Court;
   D. Place a minor in detention or shelter care as provided in this Code;
   E. Perform such other duties in connection with the care, custody or transportation of minors as the Court may require.
2. Presenting officer's duties shall include, but not be limited to:
   A. Make investigations as provided in this Code or as directed by the Court;
   B. File petitions with the Court as provided in this Code;
   C. Represent the Tribe in all proceedings under this Code; and
   D. Perform such other duties as the Court may order. [TCR 86-79]

4-110 Notice of legal rights.

1. At his/her first appearance before the Court, the child and his/her parents, guardian or other legal custodian shall be fully advised by the Court of their legal rights, including:

A. Their right to a jury trial upon demand where available;
B. Their right to be represented by an attorney, at their own expense at every stage of the proceeding;
C. Their right to see, hear, and cross-examine all witnesses against them;
D. Their right to call witnesses on their own behalf and to have court process compel the attendance of witnesses for them;
E. In juvenile delinquency proceedings, the right of the child not to be compelled to testify against him/herself.

2. If the child or his/her parents, guardian, or other legal custodian requests an attorney and is found to be without sufficient financial means, counsel to the extent such are available at no fee, shall be appointed by the Court in proceedings wherein the Tribe is a party, and termination of the parent/child legal relationship is stated as a possible remedy in the summons.
3. The Court may appoint counsel without such request if it deems representation by counsel necessary to protect the interest of the child or other parties. [TCR 86-79]

4-111 Basic rights.

1. Custody. At the time a minor is taken into custody as a juvenile offender, the arresting officer shall give the following warnings:
   A. The minor has a right to remain silent;
   B. Anything the minor says can be used against the minor in Court;
   C. The minor has a right to the presence of an attorney during questioning; and
   D. If he/she cannot afford an attorney, the Court is not required to provide free legal service.
2. Detention and Shelter Care. A minor alleged to be a juvenile offender who is taken into custody and placed in detention or shelter care shall not be questioned except in the presence of his/her parent(s), guardian, custodian, or attorney except to determine identity.
3. Fingerprints and Photographs. An alleged juvenile offender shall not be fingerprinted or photographed without the consent of the Court.
4. Minors-in-Need-of-Care; Right to an Attorney. In minor-in-need-of-care proceedings, the parent(s), guardian, or custodian shall be informed of their right to an attorney.
5. Guardian ad Litem. The Court, at any stage of a proceeding may appoint a guardian ad litem for a minor who is a party, if the minor has no parent, guardian, or custodian appearing on behalf of the minor or if their interests conflict with those of the minor.
6. Hearings: Explanation of Rights at First Appearance. At his/her first appearance before the Court, the minor, who is alleged to be a juvenile offender; the parent(s), guardian or custodian, when a minor is alleged to be a minor-in-need-of-care; and the parent(s), in a termination of parental rights proceeding shall be informed by the Court of:
   A. The allegations against him/her;
   B. The right to an attorney at his/her own expense;
   C. The tight to testify or remain silent and that any statement made by him/her may be used against him/her;
   D. The right to cross-examine witnesses;
   E. The right to subpoena witnesses on his/her own behalf; and
   F. The possible consequences if the allegations of the petition are found to be true.

   [TCR 86-79]

4-112 Warrants and custody orders.

1. Juvenile offenders.

A. Custodial Warrant. The Court may issue a warrant directing that a minor be taken into custody if the Court finds probable cause to believe the minor has committed the acts alleged in the complaint.

B. Search Warrant:

i. The Court may issue a warrant authorizing a police officer to search for a minor if there is probable cause to believe that the minor is within the Court's jurisdiction and a custodial warrant has been issued for the alleged juvenile offender; or

ii. The Court may issue a warrant authorizing a police officer to search for and seize property when the property has been obtained or is possessed in a manner which constitutes a delinquent act; or is designed or intended for use or which is or has been used as a means of committing a delinquent act; or would be material evidence in a juvenile offender proceeding.

2. Minors-in-need-of-care.

A. Emergency Custody Order (Ex Parte Custody Order). The Court may issue an emergency custody order (ex parte custody order) upon a sworn written statement of facts, showing probable cause exists to believe that a minor is a minor-in-need-of-care; or

B. Search Warrant. The Court may issue a warrant authorizing a police officer to search for a minor if there is probable cause to believe that the minor is within the Court's jurisdiction and an emergency custody order has been issued for the alleged minor-in-need-of-care.

3. Bench Warrant. The Court may issue a warrant for a person's arrest for contempt of Court immediately upon the failure to appear in Court as directed, either in person or by counsel.

4. Retake (arrest) Warrant. The Court may issue a retake (arrest) warrant directing that a minor be taken into custody if the Court finds probable cause to believe the minor has violated the terms of his/her probation. [TCR 86-79]

4-113 Full faith and credit. The Court shall give fair faith and credit to state and other Tribe's child custody court orders, as defined by the Indian Child Welfare Act, 25 U.S.C. & 1911(d). [TCR 86-79]

4-114 Admissibility of evidence in other proceedings. No adjudication upon the status of any child in the jurisdiction of the Court shall be deemed criminal or a conviction of a crime, unless the Court refers the matter to the Tribal Court. Therefore the disposition of a child or of evidence given shall not be admissible as evidence against the child in any proceedings in another court. [TCR 86-79]

4-115 Expungement. When a minor, who has been the subject of any proceeding before the Court, attains his/her twenty-first birthday, the Chief Judge of the Tribal Court shall order the clerk of the Court to destroy both the Court records and the law enforcement records. [TCR 86-79]

4-116 Contempt of Court.

1. Definition. Any willful disobedience or interference with any order of the Court constitutes contempt of Court.
2. Punishment. The Court may punish an adult for contempt of Court in accordance with the Tribal Code. [TCR 86-79]

4-117 Medical examination. The Court may order a medical examination for a minor who is alleged to be a juvenile offender or minor-in-need-of-care. [TCR 86-79]

4-118 Fingerprints. If latent fingerprints are found during the investigation of an offense and a law enforcement officer has reasonable grounds to believe that the fingerprints are those of a minor in

custody, he/she may fingerprint the minor for the purpose of immediate comparison with the latent fingerprints only with the consent of the Court. Copies of the fingerprints shall be immediately destroyed if the comparison is negative or if the minor is not referred to the Court. [TCR 86-79]

4-119 Rules of procedure. The Court will follow the rules of procedure adopted for the Juvenile Court. [TCR 86-79]

4-120 Expenditure of funds. The Chief Judge is authorized to receive and expend any funds which may become available from the federal or state governments or any subdivisions thereof to carry out any of the purposes of this Code; and to this end, the judge may meet any lawful federal or state requirements not in conflict with this Code or contrary to the jurisdictional rights and sovereign status of the Winnebago Tribal Court which may be conditions precedent to receiving such funds. [TCR 86-79]

4-121 Procedure.

1. The Rules of Juvenile Procedure herein set forth shall apply in all proceedings under this Title. To the extent that any procedure is not specifically set forth herein, the general rules of civil procedure shall apply.
2. In cases involving an allegation of delinquency by means of commission of an offense, the adjudicatory hearing shall be held in conformity with the rules of criminal procedure, and the child shall be entitled to all rights, privileges, and immunities of an accused in a criminal case.
3. The Tribal Court shall have the authority by written Court rule not inconsistent with this Act or the Rules of Civil Procedure and filed of record in the Court clerk's office and tribal secretary's office to provide for any procedure or form necessary for the efficient, orderly and just resolution of cases under this Title. [TCR 86-79]

4-122 Prosecution; criminal charge or Juvenile Court petition; determination; considerations. In cases where a child may be charged, when the juvenile is under the age of sixteen years, the prosecutor shall, in making the determination whether to file a criminal charge or Juvenile Court petition, consider:

1. The type of treatment such juvenile would most likely be amenable to;
2. Whether there is evidence that the alleged offense included violence or was committed in an aggressive and premeditated manner;
3. The motivation for the commission of the offense;
4. The age of the juvenile and the ages and circumstances of any others involved in the offense;
5. The previous history of the juvenile, including whether he/she had been convicted of any previous offenses or adjudicated in Juvenile Court, and, if so, whether such offenses were crimes against the person or relating to property, and other previous history of antisocial behavior, if any, including any patterns of physical violence;
6. The sophistication and maturity of the juvenile as determined by consideration of his/her home, school activities, emotional attitude and desire to be treated as an adult, pattern of living, and whether he/she has had previous contact with law enforcement agencies and courts and the nature thereof;
7. Whether there are facilities particularly available to the Juvenile Court for treatment or rehabilitations of the juvenile;
8. Whether the best interests of the juvenile and the security of the public may require that the juvenile continue in custody or under supervision for a period extending beyond his/her minority and, if so, the available alternatives best suited to this purpose; and
9. Such other matters as the prosecutor deems relevant to his/her decision. [TCR 86-79]

4-123 Juvenile charged in court other than Juvenile Court; transfer to Juvenile Court; procedure. Before the plea is entered, or in case an offense is charged, at any time prior to or at the preliminary hearing, the Court shall advise any person who was juvenile at the time of the commission of the alleged act charged in any court other than a Juvenile Court, that such juvenile may orally or in writing move the Court in which the charge is pending to waive jurisdiction to the Juvenile Court for further proceedings. If an offense is charged, such motion shall be filed in the Tribal Court and the hearings shall be held before a commencement of trial or acceptance of a plea of guilty or no contest by the Court. The Court shall schedule a hearing on the motion within fifteen days. The customary rules of evidence shall not be followed at such hearing. The prosecutor shall present the evidence and reasons why the case should be retained, and the defendant shall present evidence and reasons why the case should be transferred. The Court shall give due consideration to the criteria set forth in Section 4-122. In deciding the motion, the Court shall, after considering the evidence and the reasons presented by the parties and the matters required to be considered by the prosecutor, transfer the case unless a sound basis exists for retaining jurisdiction. Nothing in this Section shall prohibit the prosecutor from waiving any objection to such a transfer even when a complaint is filed. In such cases it shall be sufficient for the Court to sustain the motion of the juvenile without entering a finding. The Court shall set forth findings for the reason for its decision, which shall not be a final order for the purpose of enabling an appeal. If the Court determines that the juvenile should be transferred to the Juvenile Court, the complaint may be filed in place of a Petition therein. The Court making such transfer shall order the juvenile to be taken forthwith to the Juvenile Court and designate where the juvenile shall be kept pending determination of the Juvenile Court. Nothing in this Section shall be construed to require more than one transfer proceeding. [TCR 86-79]

4-124 Pre-transfer report. Prior to the transfer hearing, a study and a report in writing shall be submitted to the Winnebago Juvenile Court by child and family services. Such report shall be relevant to those factors included in Section 4-122.

1. In any criminal case in which the offense charged is designed to protect children, and the Tribal Court certifies the case to the Juvenile Court for disposition, the trial of the adult in the Juvenile Court shall be handled according to the Tribal rules of criminal procedure, and the Court may sentence the convicted adult in any manner available to the Tribal Court. Certification of such cases shall occur only when it is made to appear to the Tribal Court that some interest of the Juvenile Court in a matter pending before it will be served thereby.
2. In any case in which a child has come within the jurisdiction of the Juvenile Court, that court shall have authority to exercise jurisdiction over adults to the extent necessary or reasonably believed to be necessary to make a proper disposition of each case, including authority to punish for contempt committed either in or out of the Court's presence. [TCR 86-79]

4-125 Orders for support.

1. Whenever a child is removed from the custody of its parent, guardian, or other custodian, the parent or other person shall be ordered by the Court to contribute a reasonable amount within their means, or to do labor for the Tribe, or take other reasonable action to provide support for the child.
2. In cases of necessity, the Court may order a traditional custodian to assist in providing the necessities of life within that custodian's means after a hearing, whether the child has been placed in his/her own home or elsewhere.
3. When the Tribe, or some other agency is paying for foster care for such child, the contribution of the parent shall be paid to the Court clerk and dispensed by Court order to that agency or the Tribe as may be necessary by law or appropriate in the circumstances. In any cases of placement

with a particular family, the contribution shall be paid to that family by the Court clerk subject to the supervision of the Court to prevent waste or misuse of such funds. [TCR 86-79]

4-126 Prosecutor's duties. The tribal prosecutor shall represent the Tribe in the interest of the child in all proceedings subject to this Act in which the Tribe is a party. In proceedings subject to this Act in which the Tribe is not a party, the Tribal prosecutor, upon request of the Court, shall intervene on behalf of the Tribe in the interest of the child and, thereafter, shall act as the guardian of the child. [TCR 86-79]

4-127 Inspection of court records. The following inspection rules shall apply to court records under this Title unless such inspection rights would compromise the safety and well-being of the child, parents, and family.

1. Records of court proceedings shall be open to inspection by the parents or guardian, attorneys and other parties in proceedings before the Court, and to any agency to which legal custody of the child has been transferred, except records of court proceedings in formal adoption and formal relinquishment shall be confidential and open to inspection only by Court order.
2. With consent of the Court, records of court proceedings may be inspected by the child, by persons having a legitimate interest in the proceedings, and by persons conducting pertinent research studies, except in formal relinquishment and formal adoption proceedings.
3. Probation counselor's records and all other reports of social and clinical studies shall not be open to inspection, except by consent of the Court. [TCR 86-79, 15-127]

4-128 Law enforcement records.

1. The records of law enforcement officers concerning all children's cases or children taken into temporary custody or issued a summons under the provisions of this Title shall be maintained separately from the records of arrest and may not be inspected by or disclosed to the public, including the names of children taken into temporary custody or issued a summons, except:
   A. To the victim in each case when the child is found guilty of a delinquent act;
   B. When the child has escaped from an institution to which he/she has been committed;
   C. By order of the Court;
   D. When the Court orders the child to be held for criminal proceedings; or
   E. When there has been a criminal conviction and a pre-sentence investigation is being made on an application for probation; or
   F. When the disclosure is to a Tribal, federal, or state officer, employee, or agency in their official capacity who shows a bona fide need for the information requested to assist in apprehension, to conduct a current investigation, or as otherwise provided by Tribal law. [TCR 86-79]

4-129 Child and family services. The records of child and family services concerning all children's cases under the provisions of this Title may not be inspected or disclosed to the public, including the names of children taken into custody or issued a summons, except:

1. To the victim in each case when the child is found guilty of a delinquent act;
2. When the child has escaped from an institution to which he/she has been committed;
3. By order of the Court;
4. When the Court orders the child to be held for criminal proceedings;
5. When there has been a criminal conviction and a pre-sentence investigation is being made on an application for probation;

6. When the disclosure is to a Tribal, federal, or state officer, employee, or agency in their official capacity who shows a bona fide need for the information requested to assist in apprehension, to conduct a current investigation, or as otherwise provided by Tribal law. [TCR 86-79]

4-130 Identity confidential. No fingerprint, photograph, name, address, or other information concerning the identity of a child taken into temporary custody or issued a summons under the provisions of this Article may be transmitted to the Federal Bureau of Investigation or any other person or agency except a local law enforcement agency when necessary to assist in apprehension or to conduct a current investigation, or when the Court orders the child to be held for criminal proceedings. [TCR 86-79]

4-131 Exclusion of certain statement by alleged delinquent.

1. No statements or admissions of a child made as a result of interrogation of the child by a law enforcement official concerning acts alleged to have been committed by the child which would constitute a crime if committed by an adult shall be admissible in evidence against that child unless a parent, guardian, or legal custodian of the child was present at such interrogation and the child and his/her parent, guardian, or legal custodian were advised of the child's rights to remain silent, that any statements made may be used against him/her in a court of law, the right of the presence of an attorney during such interrogation, and the right to have counsel appointed if so requested at the time of the interrogation if available at no fee except that, if, to the extent such counsel is available at no fee, legal counsel representing the child is present at such interrogation, such statements or admissions may be admissible in evidence even though the child's parent, guardian, or legal custodian was not present.
2. Notwithstanding the provisions of subsection (1) of this Section, statements or admissions of a child shall not be inadmissible in evidence by reason of the absence of a parent, guardian, or legal custodian if the child is emancipated from the parent, guardian, or legal custodian or if the child is a runaway from outside the Court's jurisdiction and is of sufficient age and understanding. [TCR 86-79]

4-132 Voluntary foster care authorized. In order to provide better treatment for a family's problems and to better protect children, the department is authorized to accept a child for foster care when:

1. The parent, guardian, or other physical or legal custodian has consented to such foster care in writing before a judge of a court of competent jurisdiction by the judge's certificate that the terms and conditions, and consequences of such consent were fully explained in detail and fully understood in English, or that it was interpreted into a language that was understood.
2. A consent to foster care placement may be withdrawn by the person giving same, the parent or other legal guardian having legal custody, or a traditional custodian at any time and the child shall be returned to the authorized person requesting the child's release within forty-eight hours. [TCR 86-79]

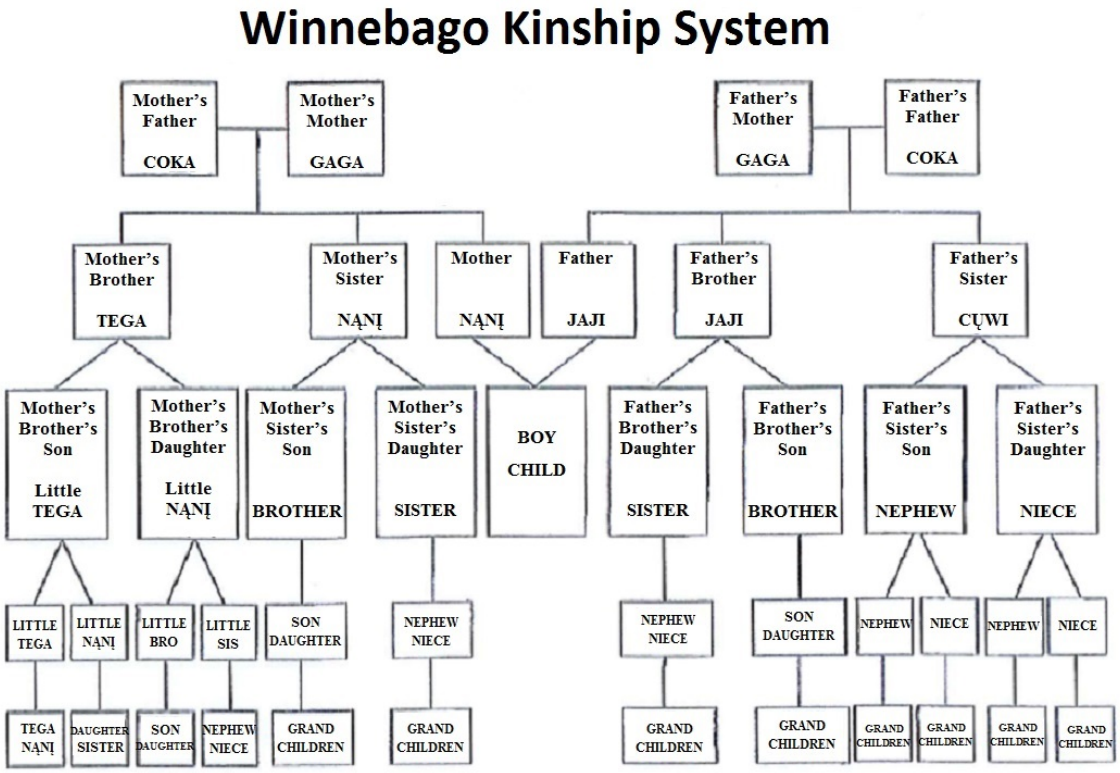
4-133 Required Findings by a Court for Removal. An order removing a child from the home under this Title, including orders for temporary or emergency removal, shall only be entered upon the Court making the following determinations:

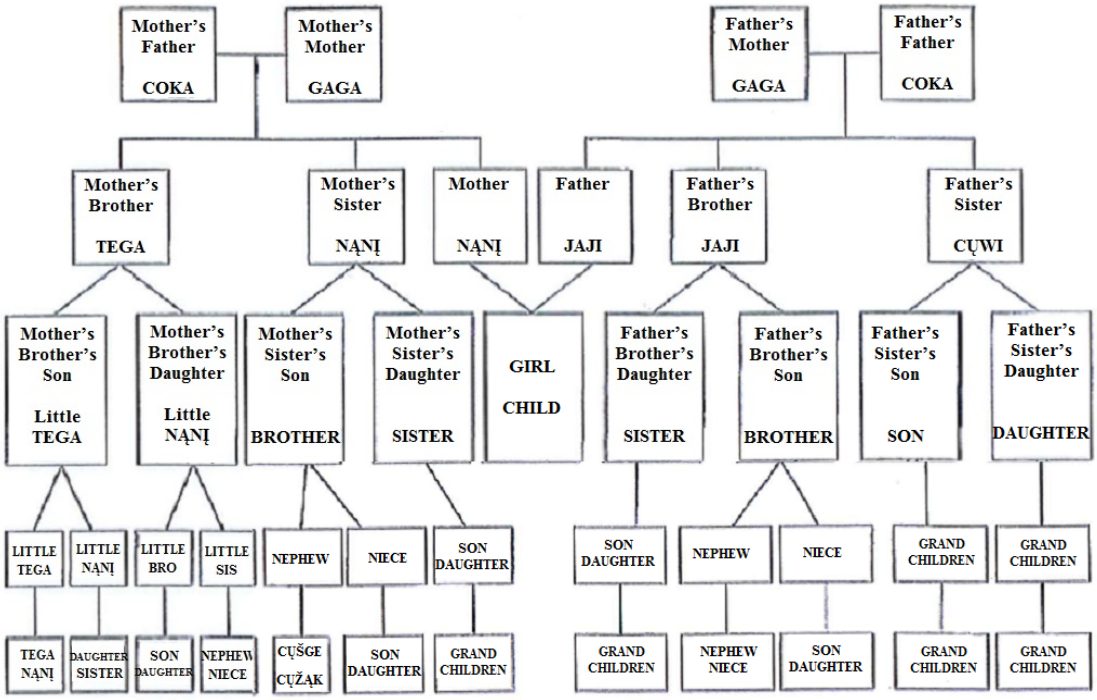
i. That an imminent safety threat exists and continuation in the home of the minor is contrary to the welfare of the minor; and either
ii. Reasonable efforts have been made to prevent removal of the minor from the minor's home; or
iii. Reasonable efforts are not required for a reason set forth in Section 4-134(4). [TCR 15-127]

4-134 Reasonable Efforts.

1. The Department shall make reasonable efforts to do the following:
   A. maintain the family unit and prevent the unnecessary removal of a child from his or her home, as long as the child's safety is assured;
   B. effect the safe reunification of the child and family if temporary out-of-home placement is necessary to ensure the immediate safety of the child; and
   C. make and finalize alternate permanency plans in a timely manner when reunification is not appropriate or possible.
2. In determining reasonable efforts, the child's health and safety is the paramount concern.
3. If continuation of reasonable efforts is determined to be inconsistent with the permanency plan for the child, reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan including, if appropriate, through an interstate placement, and to complete whatever steps are necessary to finalize the permanent placement of the child.
4. Reasonable efforts to prevent a child's removal from his home or reunify the child with his family are not required if the Court makes a judicial determination that such efforts are not required for any of the following reasons:
   A. A court of competent jurisdiction has determined that the child's parent, guardian, or legal custodian has subjected the child to abandonment, torture, chronic abuse, sexual abuse, or circumstances making it necessary for an Emergency Custody Order.
   B. A court of competent jurisdiction has determined that the child's parent, guardian, or legal custodian has:
      i. committed murder of another child of that parent;
      ii. committed voluntary manslaughter of another child of that parent;
      iii. aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or
      iv. committed a felony assault that results in serious bodily injury to the child or to another child of the parent.
   C. The parental rights of the parent to a sibling of the child have been terminated involuntarily. [15-127]

4-135 Winnebago Kinship System.





[TCR 15-127]

TITLE 4
ARTICLE 2
EMERGENCY CUSTODY

4-201 Taking a minor into custody.
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4-201 Taking a minor into custody.

1. A child may be taken into temporary custody by a law enforcement officer without order of the Court when there are reasonable grounds to believe that:
   A. He/she has committed an act which would be a major crime, misdemeanor, or Tribal ordinance violation if committed by an adult; except that wildlife, parks, outdoor recreation, and traffic violations shall be handled as otherwise provided by laws pursuant to the law of arrest;
   B. He/she is abandoned, lost or seriously endangered in his/her surroundings or seriously endangers others and immediate removal appears to be necessary for his/her protection or the protection of others; or
   C. He/she has run away or escaped from his/her parents, guardian, or legal custodian; or
   D. He/she has violated the conditions of probation and he/she is under the continuing jurisdiction of the Juvenile Court.
2. A child may be detained temporarily without an order of the Court by an adult other than a law enforcement officer if the child has committed or is committing an act in the presence of such adult which would be a violation of any federal or Tribal law, other than a violation of traffic and game and fish laws or regulations, if committed by an adult. Any person detaining a child shall notify, without unnecessary delay, a law enforcement officer, who shall assume custody of said child.
3. A medical doctor, physician, or similar licensed practitioner of medicine may temporarily detain without an order of the Court a child brought before him/her for treatment whom he/she reasonably suspects to be the victim of child abuse. Any person detaining a child due to possible child abuse shall notify, without unnecessary delay, a law enforcement officer who shall assume custody of the child. The law enforcement officer assuming custody shall have the authority to consent to the admission of the child to a medical facility and to consent to emergency medical treatment necessary to protect the life or health of the child from danger of imminent harm. The opinion of two or more licensed medical doctors that treatment for a condition could not reasonably be delayed for a period long enough to contact a judge for an emergency medical treatment order shall create a presumption that the law enforcement officer properly gave his/her consent to treatment of the child.
4. A juvenile probation officer may take a child into temporary custody under any of the circumstances stated in subsection (1)(A) or (1)(D).
5. In all other cases, a child may be taken into custody only upon an order of the Court.
6. The taking of a child into temporary custody under this Section is not an arrest nor does it constitute a police record. [TCR 86-79, 15-127]

4-202 Notification of parents. When a child is taken into temporary custody, the officer shall notify a parent, guardian, or legal custodian without unnecessary delay and inform him/her that, if the child is placed in detention, all parties have a right to a prompt hearing to determine whether the child is to be detained further. Such notification may be made to a person with whom the child is residing if a parent, guardian, or legal custodian cannot be located. If the officer taking the child into custody is unable to make such notification, it may be made by any other law enforcement officer, probation counselor, detention center counselor, or jailer in whose physical custody the child is placed. [TCR 86-79]

4-203 Notification of Court officers. Whenever an officer or other person takes a child to a detention or shelter facility, or admits a child to a medical facility pursuant to this Article and determines not to release said child pursuant to this Article, the officer or other person who took the child to a detention or shelter facility shall notify the Tribal prosecutor, the department and any agency or persons so designated by the Court at the earliest opportunity that the child has been taken into custody and where he/she has been taken. He/she shall also promptly file a brief written report with the Tribal prosecutor, the department, and any agency or person so designated by the Court stating the facts which led to the child being taken into custody and the reason why the child was not released. This report shall be filed within twenty-four (24) hours excluding Saturdays, Sundays, and legal holidays. [TCR 86-79]

4-204 Release of detained child.

1. Except as provided in subsection (2) of this Section, a child shall not be detained by law enforcement officials any longer than is reasonably necessary to obtain his/her name, age, residence and other necessary information and to contact his/her parents, guardian, or legal custodian. The child shall be given the warnings listed at Section 4-110 to any minor taken into custody.
2. The child shall be released to the care of his/her parents or other responsible adult, unless his/her immediate welfare or the protection of the community requires that he/she be detained. The parent or other person to whom the child is released may be required to sign a written promise, on forms supplied by the Court, to bring the child to the Court at a time set or to be set by the Court.
3. If he/she is not released as provided in subsection (2) of this Section, he/she shall be taken directly to the Court or to the place of detention or shelter approved by the department and designated by the Court without unnecessary delay unless admitted to a facility for medical treatment pursuant to Section 4-201(3) of this Title.
4. No child shall be detained pursuant to subsection (2) for a period exceeding seventy-two hours exclusive of Saturdays, Sundays, and legal holidays without an order of the Court. If no Court order is issued within such time, the child must be released.
5. Notwithstanding the provisions of subsection (4) of this Section, a child who is alleged to be a runaway from another Tribal jurisdiction or a state may be held in a detention facility or jail up to seven days, during which time arrangements shall be made for returning the child to his/her parent or legal custodian. [TCR 86-79]

4-205 Special release rule for major offenses.

1. No child taken to a detention or shelter facility without a Court order as the result of an allegedly delinquent act which would constitute major crime if committed by an adult shall be released from such facility unless, in writing, a law enforcement agency has requested that a detention hearing be held to determine whether the child's immediate welfare or the protection of the community requires that he/she be detained. No such child shall thereafter be released from detention except for a hearing, reasonable advanced notice of which has been given to the Tribal prosecutor alleging new circumstances concerning the further detention of the child.

2. When, following a detention hearing as provided for by subsection (1) of this Section, the Court orders further detention of a child, a petition alleging the child to be delinquent shall be filed with the Court without unnecessary delay if one has not been previously filed, and the child shall be held in detention pending a hearing on the petition.
3. Nothing herein shall be construed as depriving a child of the right to bail under the same circumstances as an adult. [TCR 86- 79]

4-206 Court ordered release. At any time prior to the filing of a petition and entry of an emergency custody order on that petition, the Court may order the release of any child from detention or shelter care without holding a hearing, either without restriction or upon written promise of the parent, guardian, or legal custodian to bring the child to the Court at a time set or to be set by the Court. [TCR 86-79]

4-207 Extension of detention period. For good cause shown, the Court may extend the time period during which a child may be detained without a petition and Court order for a period not exceeding five working days. Such extension shall be in writing or may be made verbally and reduced to writing within twenty-four hours. [TCR 86-79]

4-208 Detention and shelter.

1. A child who must be taken from his/her home but who does not require physical restriction shall be given temporary care in a shelter facility approved by the department and designated by the Court or the Tribal or Bureau of Indian Affairs Department of Social Services and shall not be placed in detention.
2. No child under the age of fourteen and, except upon the order of the Court, no child fourteen years of age or older and under sixteen years of age shall be detained in a jail, lockup, or other place used for confinement of adult offenders or persons charged with crime. The exception shall be used by the Court only if no other suitable place of confinement is available.
3. A child fourteen years of age or older shall be detained separately from adult offenders or persons charged with crime, including any child ordered by the Court to be held for criminal proceedings.
4. The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the Court and Tribal prosecutor immediately when a child who is or appears to be under the age of nineteen is received at the facility, except for a child ordered by the Court to be held for criminal proceedings. [TCR 86-79]

4-209 Emergency shelter in child's home.

1. Upon application of the Bureau of Indian Affairs Social Services Department, or of the Department, the Court may find that it is not necessary to remove a child from his/her home to a temporary shelter facility and may provide temporary shelter in the child's home by authorizing a representative of the Bureau of Indian Affairs Department of Social Services or the department, which has emergency caretaker services available, to remain in the child's home with the child until a parent, or legal guardian, or relative of the child enters the home and expresses willingness and has the apparent ability, as determined by the Bureau of Indian Affairs Department of Social Services, or the department, to resume charge of the child, but in no event shall such period of time exceed seventy-two hours. In the case of a relative, the relative is to assume charge of the child until a parent or legal guardian enters the home and expresses willingness and has the apparent ability, as determined by the Bureau of Indian Affairs Department of Social Services or the department, to resume charge of the child.
2. The director of the Bureau of Indian Affairs Department of Social Services, or the department shall designate in writing the representatives of these departments authorized to perform such duties.

3. The Court order allowing emergency shelter in the child's home may be written or oral provided that if consent is given verbally, the judge shall reduce the consent given to writing within twenty-four hours. [TCR 86-79]

4-210 Court ordered medical treatment.

1. At any time after a child is taken into custody with or without a Court order and prior to adjudication on the merits:
   A. When the Court finds that emergency medical surgical, or dental treatment is required for a child in Tribal custody, it may authorize such treatment or care if the parents, guardian, or legal custodian are not immediately available to give their consent or to show cause why such treatment should not be ordered. The power to consent to emergency medical care may be delegated by the Court to the agency or person having physical custody of the child pursuant to this Title or pursuant to Court order.
   B. After making a reasonable effort to obtain the consent of the parent, guardian, or other legal custodian, and after a hearing on notice, the Court may authorize or consent to non-emergency medical, surgical, or dental treatment or care for a child in Tribal custody.
2. After a child has been adjudicated a ward of the Court, the Court may consent to any necessary emergency, preventive or general medical surgical or dental treatment or care, or may delegate the authority to consent thereto to the agency or person having custody of the child. [TCR 86-79]

4-211 Court ordered commitment for observation. If it appears that any child being held in detention or shelter may be mentally ill, developmentally disabled, or has sustained any trauma which may result in a delayed medical danger or injury, the Court shall place the child in a designated facility approved by the Court for seventy-two hour treatment and evaluation. Upon the advice of a physician, the treatment and evaluation period may be extended for a period not exceeding ten days. [TCR 86-79]

4-212 Search warrants for the protection of children.

1. A search warrant may be issued by the Juvenile Court to search any place for the recovery of any child within the jurisdiction of the Court believed to be a child in need of supervision, or a neglected or dependent child or a child-in-need-of-care.
2. Such warrant shall be issued only on the conditions that the application for the warrant shall:
   A. Be in writing and supported by affidavit sworn to or affirmed before the Court;
   B. Name or describe with particularity the child sought;
   C. State that the child is believed to be a child in need of supervision, or a neglected or dependent child and the reasons upon which such belief is based;
   D. State the address or legal description of the place to be searched;
   E. State the reasons why it is necessary to proceed pursuant to this Section instead of proceeding by petition or summons.
3. If the Court is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, it shall issue a search warrant identifying by name or describing with particularity the child sought and the place to be searched.
4. The search warrant shall be directed to any officer authorized by law to execute it wherein the place to be searched is located.
5. The warrant shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof.
6. The warrant shall be served in the daytime unless the application for the warrant alleges that it is necessary to conduct the search at some time, in which case the Court may so direct.
7. A copy of the warrant, the application therefore, and the supporting affidavit shall be served upon the person in possession of the place to be searched and where the child is to be sought.

8. If the child is found, the child may be taken into custody in conformance with the provisions of Section 4-201.
9. The warrant shall be returned to the issuing court. [TCR 86-79]

4-213 Preliminary inquiry: criteria for detention or shelter care. If a minor is placed in detention or shelter care pursuant to Section 4-201, the Court shall conduct a preliminary inquiry within forty-eight hours for the purpose of determining if criteria for detention or shelter care exists.

1. Criteria for detention or shelter care for a juvenile offender exists if the Court finds:
   A. Probable cause exists to believe the minor committed the alleged delinquent act; and
   B. The act is serious enough to warrant continued detention or shelter care;
   C. There is reasonable cause to believe the minor will run away so that he/she will be unavailable for further proceedings; or
   D. There is reasonable cause to believe that the minor will commit a serious act causing damage to person or property.
2. Criteria for shelter care for neglected or dependent or minor-in-need-of-care exists if the Court finds:
   A. Probable cause exists to believe the minor is a minor-in-need-of-care or neglected and;
   B. The minor is suffering from an illness or injury and no parent, guardian, custodian, or other person is providing adequate care of him/her;
   C. The minor is in immediate danger from his/her surroundings, and removal is necessary for his/her safety or well-being;
   D. The minor will be subject to injury by others if not placed in the custody of the Court;
   E. The minor will be subject to injury by him/herself if not placed in the custody of the court;
   F. No parent, guardian, custodian or other person is able or willing to provide adequate supervision and care for the minor; or
   G. The minor will run away so that he/she will be unavailable for further proceedings. [TCR 86-79]

4-214 Place of detention or shelter care.

1. A minor alleged to be a juvenile offender may be detained, pending a Court hearing, in the following places:
   A. A foster care facility licensed or approved by the Tribe;
   B. A detention home approved by the Tribe; or
   C. A private family home approved by the Tribe.
2. A minor alleged to be a minor-in-need-of-care may be detained, pending a Court hearing, in the following places:
   A. A foster care facility licensed or approved by the Tribe;
   B. A private family name approved by the Tribe; or
   C. A shelter care facility approved by the Tribe.
3. An alleged juvenile offender who is sixteen years of age or older may be detained in a jail or facility used for the detention of adults only if:
   A. A facility in subsection (1) of this Section is not available or would not assure adequate supervision of the minor;
   B. Detention is in a cell separate but not removed from sight and sound of adults whenever possible; and
   C. Adequate supervision is provided twenty-four hours a day. [TCR 86-79]

4-215 Standards for shelter care and detention facilities.

1. The Chief Judge of the Tribal Court shall adopt written rules and regulations governing the operation of detention and shelter care facilities. The Chief Judge of the Tribal Court may assign the responsibility to another qualified tribal agency.
2. The rules and regulations shall include but are not limited to the following:
   A. Cleanliness standards;
   B. Heat, water, and light standards;
   C. Personnel standards;
   D. Visiting privileges;
   E. Occupancy standards;
   F. Provisions for medical and dental care; and
   G. Provisions for food, clothing and other personal items.
3. The Chief Judge of the Tribal Court shall prescribe and enforce policies and procedures governing the administration of detention and shelter care facilities.
4. Such policies and procedures shall include but are not limited to the following:
   A. A minor shall not be punished, ridiculed, or criticized for expressing through speech, custom or dress the minor's Indian or Tribal heritage;
   B. A minor shall be allowed to wear his/her hair according to his/her personal taste. The minor shall not be punished, ridiculed, or criticized for the hairstyle he/she selects;
   C. A minor may wear his/her own clothes rather than clothes supplied by the detention facility so long as they comply with minimum standards of cleanliness;
   D. Incoming and outgoing mail may be inspected for contraband, but shall not be read;
   E. Whenever possible, the minor shall be allowed to attend the school in which he/she is enrolled. School work and educational assistance at the minor's level of development shall be provided for the minor in detention facilities;
   F. A minor shall be allowed to attend traditional ceremonials provided that he/she is accompanied by a parent, guardian, or custodian; has received consent to do so by the Juvenile Court judge; and returns immediately to the detention or shelter care facility;
   G. A minor shall be allowed to attend the funeral and any related activities of his/her extended family, whether they be natural or adopted, provided that:
      i. He/she has received consent to do so by the Juvenile Court judge;
      ii. He/she is accompanied by a parent, guardian, or custodian; and
      iii. His/her parent, guardian, or custodian agree to return the child;
   H. A minor shall be given the opportunity to engage in physical exercise every day;
   I. A minor shall not be locked alone in a room unless there exists a reasonable belief that he/she may cause physical injury to him/herself or others if not locked alone. While the minor is locked alone in a room, he/she must be visited at least once every thirty minutes. The confinement shall not continue unnecessarily;
   J. A minor shall not be punished by physical force, solitary confinement, or deprivation of meals or family visits;
   K. A minor shall not be required to perform unreasonable work duties not commensurate with his/her age, physical or mental abilities; and
   L. A minor shall be required to perform reasonable work duties such as maintenance of his/her bunk and personal property. [TCR 86-79]

TITLE 4
ARTICLE 3
ADJUDICATION

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4-301 Court intake.

1. Whenever it appears to a law enforcement officer or any other person that a child is or appears to be within the Court's jurisdiction, by reason of delinquency, need of supervision, neglect, or deprivation, or in need of care, the law enforcement officer or other person may refer the matter conferring or appearing to confer jurisdiction to the Tribal juvenile probation officer or the department worker, who shall determine whether the interest of the child or of the community require that further action be taken.
2. If the department worker determines that the interests of the child or of the community require that Court action be taken, he/she shall request in writing the Tribal prosecuting or presenting officer to file a petition and deliver a copy of the entire case file to the prosecuting or presenting officer.
3. If the prosecutor or presenting officer is unable to determine from information available to him/her whether the interests of the child or of the Tribe require that Court action be taken, he/she may refer the matter to the department or Bureau of Indian Affairs Department of Social Services or a Tribal or Bureau of Indian Affairs law enforcement agency or other agency designated by the Court for a preliminary investigation and recommendations as to filing a petition or as to initiating an informal adjustment pursuant to this Title.
4. If the department worker determines that the interest of the child or of the Tribe do not require Court action, the department may offer such social services and make such referrals to other agencies as may be feasible to help the family with any problems they may have. [TCR 86-79]

4-302 Prosecutor's (presenting officer's) intake.

1. Upon receiving a request to file a petition and the accompanying reports and files from the department worker, the prosecutor (presenting officer) shall review the case file, reports, and any witness statements to determine if there is sufficient evidence which will be admissible under the Winnebago Rules of Evidence to establish the jurisdiction of the Tribal Juvenile Court over the child.
2. If the prosecutor (presenting officer) determines that there is not sufficient evidence available to establish the jurisdiction of the Tribal Juvenile Court over the child, he/she shall, in writing, refuse to file the requested petition, or, in his/her discretion, may request the department or the Bureau of Indian Affairs Social Services Department or law enforcement agency to conduct a further investigation into the matter.
3. If the prosecutor (presenting officer) determines that sufficient evidence is available to establish the jurisdiction of the Tribal Juvenile Court over the child, he/she shall file a petition concerning the child. [TCR 86-79]

4-303 Diversion by contract.

1. Prior to the filing of a petition, either the department worker or the prosecutor (presenting officer) with the consent of the department worker may divert any children's case, except a case subject to Section 4-205 or Section 4-306 of this Title from the Court process.
2. Diversion shall be made by entering into a contract with the child's parents, guardian, or other custodian whereby the parent, guardian or other custodian agrees to undergo specified treatment for the condition noticed, including an agreement to do or refrain from doing certain acts and the Child and Family Services worker or prosecutor (presenting officer) on behalf of the Tribe agrees not to file a petition in the case so long as the parent, guardian, or other custodian comply with the contract. The contract shall contain:
   A. The specific facts or allegation, including dates, which gave rise to the condition addressed by the contract.
   B. The specific treatment program(s) the parent(s), guardian, or custodian agree to successfully complete and their duration.
   C. The specific facts which the parent(s), guardian, or custodian agree to do or to refrain from doing.
   D. The specific treatment or other social services to be offered by the Tribe or the Bureau of Indian Affairs or such other agency whose services may be used and accepted by the family.
   E. A fixed, limited time for the contract to run, not exceeding one year.
   F. That the Tribe will not file a petition on the subject of the contract for the facts or allegations stated if the parents, guardian, or custodian comply with the contract terms for the full term in the contract.
   G. That each party has received a copy of the contract.
3. No diversion contract may place physical custody in any person or agency other than the parents, guardian, or other legal custodian unless it bears the approval in writing of a judge of the Juvenile Court. [TCR 86-79]

4-304 Diversion contract inadmissible. The diversion contract and any statements or admissions of the parties made in negotiating or fulfilling the terms of the contract are inadmissible as evidence except, that the parents, guardian, or custodian may prove the contract and show their compliance with the terms thereof as a defense to a petition filed concerning the matter of the contract. Upon a showing of compliance with the terms of the contract, the Court shall dismiss the petition unless it determines by evidence beyond a reasonable doubt that the child is in imminent danger of severe physical or mental harm. Proof of the contract shall not be an admission of the parents, guardian, or custodian of any of the facts alleged therein. [TCR 86-79]

4-305 Diversion by consent decree.

1. After filing of a petition, the prosecutor (presenting officer) with the consent of the department worker may divert any children's case, except a case subject to Section 4-205 or Section 4-306 of this Title from the adjudicatory process with the consent of the respondents and the Court by obtaining a consent decree if:
   A. The Court has informed the child and his/her parents, guardian, or legal custodian of their rights to:
      i. Deny the allegations of the petition and require the Tribe to prove each allegation by admissible evidence;
      ii. Confront and cross-examine the witnesses against them and to call witnesses on their own behalf;
      iii. Refuse to testify against themselves or each other in delinquency cases;

iv. A trial by jury of six (6) persons at the adjudicatory stage, where a jury trial is available;

v. Be represented by counsel at their own expense at each stage of the proceedings, and, to the extent counsel is available at no fee, to have counsel appointed for them if they cannot afford private counsel; and

vi. The Court believed they understood their rights.

B. Written consent to the decree is obtained from the parents, guardian, or legal custodian and the child if of sufficient age and understanding. The consent given for a consent decree does not constitute an admission for purposes of adjudication.

C. The department or the Bureau of Indian Affairs Social Services Department has prepared a treatment plan for the family to be incorporated into the consent decree which distinctly states:

i. The specific treatment programs the parents, guardian, or custodian, or child agree to successfully complete and their duration;

ii. The specific treatment or other social services to be offered by the Tribe or Bureau of Indian Affairs or other agency and accepted by the family;

iii. The specific acts which the parents, guardian, or custodian or child agree to do or to refrain from doing;

iv. The person or agency to be vested with custody of the child if the child cannot remain in his/her own home, the specific provisions of (i), (ii), (iii) above which must be completed or accomplished for a specific duration before the child is returned to his/her own home, and the period of supervision of the child in his/her own home.

2. After all parties have consented, the Court shall review the treatment plan, and if the Court agrees that the plan is satisfactory, shall order all parties to the consent decree to abide by the provisions of the treatment plan. The consent decree shall be monitored and modified as in other dispositions, provided that if the family fails to comply with the treatment plan, the Court, on motion of the prosecutor (presenting officer) shall proceed with adjudication.

3. A consent decree shall remain in effect for not exceeding one year, provided, that upon decree for an additional term of one year with the notice of hearing, the Court may extend the force of the decree and consent of the parties. The adjudication shall be continued during the term of the consent decree thereafter dismissed if the decree is complied with. [TCR 86-79]

4-306 Limitations on diversions. No child shall be handled by informal adjustment where the child referred to the Court by any person has had any sustained petition for delinquency in the preceding twelve months or has been handled by informal adjustment for a delinquent act in the preceding twelve months. [TCR 86-79]

4-307 Guardian ad litem appointments.

1. In all neglect, dependency and child-in-need-of-care cases in which the child has been in foster care for one year or longer or termination of parental rights is imminent, a guardian ad litem shall be appointed to represent that child's best interest.

2. The Court may appoint a guardian ad litem to protect the interest of a child when:

A. No parent, guardian, legal custodian, or relative of the child appears at the first or any subsequent hearing in the case; or

B. The Court finds that there may be a conflict of interest between the child and his/her parent, guardian, or other legal custodian; or

C. The Court finds that it is in the child's interest and necessary for his/her welfare, whether or not a parent, guardian, or other legal custodian is present.

3. The Court may appoint a guardian ad litem for any parent in proceedings who has been determined to be mentally ill by a court of competent jurisdiction, or is developmentally disabled; except that, if a conservator has been appointed, the conservator may serve as the guardian ad litem. If the conservator does not serve as guardian ad litem, he/she shall be informed that a guardian ad litem has been appointed.
4. At the time any child first appears in Court, if it is determined that he/she has no guardian of his/her person, the Court shall appoint a guardian of the child before proceeding with the matter.
5. In all proceedings brought for the protection of a child suffering from abuse or non-accidental injury, a guardian ad litem shall be appointed for said child. Said guardian shall have the power to represent the child in the legal proceedings.
6. All guardian ad litems shall, whenever practical, be required to personally visit the place of residence of the child. [TCR 86-79]

4-308 Guardian ad litem duties. In the course of discharging duties as guardian ad litem, the person so appointed shall consider, but not be limited to, the criteria provided in this Section. The guardian ad litem:

1. Is appointed to stand in lieu of a parent for a protected juvenile who is the subject of a Juvenile Court petition and shall be present at all hearings before the Court in such matter unless expressly excused by the Court, and may enter into such stipulations and agreements concerning adjudication and disposition deemed by him/her to be in the juvenile's best interests.
2. Is not appointed to prosecute or defend the parents or other custodian of the protected juvenile, but shall defend the legal and social interests of such juvenile. Social interest shall be defined generally as the usual and reasonable expectations of society for the appropriate parental custody and protection and quality of life for juveniles without regard to the socioeconomic status of the parents or other custodians of the juvenile.
3. May at any time after the filing of the petition move the Court of jurisdiction to provide medical or psychological treatment or evaluation that may be needed. The guardian ad litem shall have access to all reports resulting from any examination ordered and such reports shall be used for evaluating the status of the protected juvenile.
4. Shall make every reasonable effort to become familiar with the needs of the protected juvenile which may include:
   A. Visitation with the juvenile within two weeks after the appointment and once every six months thereafter; and
   B. Consultation with caseworkers, physicians, psychologists, foster parents or other custodians, teachers, clergy members, and others directly involved with the juvenile or who may have information or knowledge about the circumstances which brought the Juvenile Court action or related cases, and the development of the juvenile.
5. May present evidence and witnesses and cross-examine witnesses at all evidentiary hearings.
6. Shall be responsible for making recommendations to the Court regarding the temporary and permanent placement of the protected juvenile.
7. Shall consider such other information as is warranted by the nature and circumstances of a particular case.
8. May file a petition in the Juvenile Court on behalf of the juvenile. [TCR 86-79]

4-309 Adjudicatory hearing.

1. At the adjudicatory hearing, which shall be conducted as provided in the rules of juvenile procedure, except that the rules of criminal procedure shall apply in delinquency cases, the Court shall consider whether the allegations of the petition are supported by evidence beyond a reasonable doubt in cases concerning delinquent children or children in need of supervision or by

a preponderance of the evidence in cases concerning neglected or dependent children or children-in-need-of-care; except that jurisdictional matters of the age and residence of the child shall be deemed admitted by or on behalf of the child unless specifically denied prior to the adjudicatory hearing.

2. When it appears that the evidence presented at the hearing discloses issues not raised in the petition, the Court may proceed immediately to consider the additional or different matters raised by the evidence if the parties consent.
3. In such event, the Court, on the motion of any interested party or on its own motion, shall order the petition to be amended to conform to the evidence.
4. If the amendment results in a substantial departure from the original allegations in the petition, the Court shall continue the hearing on the motion of any interested party, or the Court may grant a continuance on its own motion if it finds it to be in the best interests of the child or any other party to the proceeding.
5. An adjudicatory hearing shall be held within ten days of receipt of the petition by the Court. The Court shall conduct the hearing for the sole purpose of determining the guilt or innocence of a juvenile offender or for determining if a minor is a minor-in-need-of-care, dependent or neglected.
6. If it appears from the evidence that the child may be mentally ill or developmentally disabled the Court shall proceed under Section 4-310.
7. Before making an adjudication, the Court may continue the hearing from time to time, allowing the child to remain in his/her own home or in the temporary custody of another person or agency subject to such conditions of conduct and of visitation or supervision by the department or Bureau of Indian Affairs Social Services Department as the Court may prescribe, if:
   A. Consent is given by the child and his/her parent, guardian, or other legal custodian after being fully informed by the Court of their rights in the proceeding, including their right to have an adjudication made either dismissing or sustaining the petition;
   B. Such continuation shall extend no longer than six months without review by the Court. Upon review, the Court may continue the case for any additional period not to exceed six months, after which the petition shall be either dismissed or sustained.
8. When the Court finds that the allegations of the petition are not supported by evidence beyond a reasonable doubt in cases concerning children-in-need-of-supervision or by a preponderance of the evidence in cases concerning neglected or dependent children, the Court shall order the petition dismissed and the child discharged from any detention or restriction previously ordered. His/her parents, guardian, or other legal custodian shall also be discharged from any restriction or other previous temporary order.
9. When the Court finds that the allegations of the petition are supported by evidence beyond a reasonable doubt in cases concerning children-in-need-of-supervision or juvenile delinquency or by a preponderance of the evidence in cases concerning neglected or dependent child, the Court shall:
   A. Sustain the petition and shall make an order of adjudication setting forth whether the child is in need of supervision, or neglected or dependent. In cases concerning neglected or dependent children, evidence that child abuse or non-accidental injury has occurred shall constitute prima facie evidence that such child is neglected or dependent and such evidence shall be sufficient to support an adjudication under this Section;
   B. The Court shall then hold the dispositional hearing but such hearing may be continued on the motion of any interested party or on the motion of the Court. [TCR 86-79]

4-310 Mentally ill and developmentally disabled children.

1. If it appears from the evidence presented at an adjudicatory hearing or otherwise that the child may be mentally ill or developmentally disabled, as these terms are defined in this Section, the

Court shall order that the child be examined by a physician, psychiatrist, or psychologist and may place the child in a hospital or other suitable facility for the purpose of examination for a period not to exceed thirty days.

2. A suitable facility for the purpose of examination shall be a facility designated by the Court for treatment and evaluation, but neither a Tribal, city or county jail nor a detention facility shall be considered a suitable facility under any circumstances.
3. If the report of the examination made pursuant to subsection (1) of this Section states that the child is mentally ill to the extent that hospitalization or institutional confinement and treatment is required, the Court may order such hospitalization, institutional confinement, or treatment prior to or after adjudication.
4. The Court may dismiss the original petition when a child who has been ordered to receive treatment is no longer receiving treatment.
5. The Court shall set a time for resuming the hearing on the original petition when:
   A. The report of the examination made pursuant to subsection (1) of this Section states that the child is not mentally ill to the extent that hospitalization or institutional confinement and treatment are required;
   B. The child is found not to be mentally ill;
   C. The report of the examination made pursuant to subsection (1) of this Section states that the child is developmentally disabled but not mentally ill.
6. "Mentally ill person" means a person who is of such mental condition that he/she is in need of supervision, treatment, care, or restraint.
7. "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or a neurological impairment, which may have originated during the first nineteen (19) years of life which can be expected to continue indefinitely, and which constitutes a substantial handicap.
8. "Mentally retarded person" means a person whose intellectual functions have been deficient since birth or whose intellectual development has been arrested or impaired by disease or physical injury to such an extent that he/she lacks sufficient control, judgment, and discretion to manage his/her property or affairs or who, by reason of this deficiency and for his/her own welfare or the welfare or safety of others, requires protection, supervision, guidance, training, control, or care. [TCR 86-79-15-127]

4-311 Consent decree. At any time during the adjudicatory process, but prior to the entry of an order sustaining the petition or provided in Section 4-302 of this Title, a consent decree may be entered as provided in Section 4-305 of this Title. [TCR 86-79]

4-312 Dismissal of petition. When the Court finds that the allegations of the petition are not supported by evidence beyond a reasonable doubt in cases concerning delinquent children or children in need of supervision or by clear and convincing evidence in cases concerning neglected or dependent children, the Court shall order the petition dismissed and the child discharged from any detention or restriction previously ordered. His/her parents, guardian, or other legal custodian shall also be discharged from any restriction on the previous temporary order. [TCR 86-79]

4-313 Sustaining petition. When the Court finds that the allegations of the petition are supported by evidence beyond a reasonable doubt in cases concerning delinquent children or children-in-need-of-supervision or by clear and convincing evidence in cases concerning neglected or dependent children, the Court shall sustain the petition and make an order of adjudication setting forth whether the child is delinquent, in need of supervision, or neglected or dependent and making the child a ward of the Court. In cases concerning neglected or dependent children, evidence that child abuse or non-accidental injury has occurred shall constitute prima facie evidence that such child is neglected or dependent and such evidence shall be sufficient to support an adjudication under this Section. [TCR 86-79]

4-314 Temporary orders. Upon sustaining a petition, the Court shall make such dispositional orders as may be necessary to protect the child prior to the dispositional hearing which shall be held without undue delay. [TCR 86-79]

TITLE 4
ARTICLE 4
DISPOSITION

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4-418 Permanency Hearings.
4-419 Guardianships as Recommended by the Department for permanence.

4-401 Pre-dispositional report.

1. The department shall prepare and present a written report to the Court at least one day before a dispositional hearing. The report shall contain a specific plan for the care and assistance to the minor or his/her parents, guardian, or custodian which is calculated to resolve the problems presented in the petition.
2. The Court may order any agency within its jurisdiction and request any other agency to prepare and submit to the Court after the adjudication and prior to disposition a social study, home study, family or medical history or other reports which may be helpful in determining proper treatment and disposition for the family.
3. After adjudication, the Court may order or request, as appropriate, any agency to submit any pre-adjudicatory social studies or reports helpful in determining proper treatment and disposition for the family. [TCR 86-79]

4-402 Treatment plan.

1. In every case, the Court shall order the department and/or the Bureau of Indian Affairs Social Services Department to prepare a detailed treatment plan for the treatment and disposition of the problems identified in the adjudication.
2. The treatment plan shall contain at a minimum:
   A. A brief social and family history;
   B. A brief statement of the Court's jurisdiction in this matter;
   C. The specific actions the parents, guardian, legal custodian or child should be ordered to do or refrain from doing and the reasons therefore;
   D. The specific treatment or other social services offered by the Tribe or Bureau of Indian Affairs which the family should be required to accept;
   E. The person or agency to be vested with custody of the child if the child cannot remain in his/her own home, and a detailed plan describing how and when the child will be returned to his/her home under supervision and when Court supervision should cease.
3. The treatment plan shall be filed with the Court and a copy delivered to the parties at least five days prior to the dispositional hearing. [TCR 86-79]

4-403 Dispositional hearing. After making an order of adjudication, finding the child to be a ward of the Court, the Court shall hear evidence on the question of the proper disposition best serving the interests of the child and the Tribe at a hearing scheduled for that purpose. [TCR 86-79]

4-404 Hearing purpose.

4-405 Hearing informal. The dispositional hearing shall be informal and the general rules of procedure and evidence shall not apply so that all pertinent information may be considered in determining treatment and disposition. However, when feasible, the Court shall order the writer of any report or study to appear and answer questions regarding that report if it be challenged by any party. [TCR 86-79]

4-406 Medical examination. The Court may have the child examined by a physician, psychiatrist, or psychologist, and the Court may place the child in a hospital or other suitable facility for this purpose. [TCR 86-79]

4-407 Continuance.

1. The Court may continue the dispositional hearing, either on its own motion or on the motion of any interested party, for a reasonable period to receive reports or other evidence, but the Court shall continue the hearing for good cause on the motion of any interested party in any case where the termination of the parent-child legal relationship is a possible remedy.
2. If the hearing is continued, the Court shall make an appropriate order for detention of the child or for his/her release to the custody of his/her parents, guardian, or other responsible person or agency under such conditions of supervision as the Court may impose during the continuance.
3. In scheduling investigations and hearings, the Court shall give priority to proceedings concerning a child who is in detention or who has otherwise been removed from his/her home before an order of disposition has been made. [TCR 86-79]

4-408 Order of protection.

1. The Court may make an order of protection in assistance of, or as a condition of, any decree of disposition authorized by this Article. The order of protection may set forth reasonable conditions of behavior to be observed for a specified period by the parent, guardian, or any other person who is a party to the proceeding.
2. The order of protection may require any such person:
   - A. To stay away from a child or his/her residence;
   - B. To permit a parent to visit a child at stated periods;
   - C. To abstain from offensive conduct against a child, his/her parent or parents, guardian, or any other person to whom legal custody of a child has been given;
   - D. To give proper attention to the care of the home;
   - E. To cooperate in good faith with an agency:
     - i. Which has been given the legal custody of a child.
     - ii. Which is providing protective supervision of a child by Court order; or
     - iii. To which the child has been referred by the Court;
   - F. To refrain from acts of commission or omission that tend to make a home an improper place for a child; or
   - G. To perform any legal obligation of support.
3. When such an order of protection is made applicable to a parent or guardian, it may specifically require his/her active participation in the rehabilitation process and may impose specific requirements upon such parent or guardian, subject to the penalty of contempt for failure to comply with such order without good cause, as provided in subsection (5) of this Section.

4. After notice and opportunity for hearing is given to a person subject to an order of protection, the order may be terminated, modified, or extended for a specified period of time if the Court finds that the best interests of the child and the Tribe will be served thereby.
5. A person failing to comply with an order of protection without good cause may be found in contempt of Court. [TCR 86-79]

4-409 Placement preferences.

1. In making a placement of or committing legal custody of a child to some person in the dispositional process whether for foster care or adoption, the Court shall place the child, in the following descending order of preference (For Winnebago kinship references see chart at Section 4-135):
    i. The biological parents.
    ii. The child's grandparent which are those persons designated as Coka or Gaga under the Winnebago traditional kinship system.
    iii. Any person with the title of Nani (sister of the biological mother) or Jagi (brother of the biological father) in the Winnebago kinship system.
    iv. Any person designated as Cuwi (pronounced "Chu wee", the sister of the biological father) or Tega (brother of the biological mother).
    v. Any other person who is a member of the child's family, not limited to brother (Toto) or sister (Nunu), brother in law or sister in law, niece or nephew or Little Tega or Little Nani.
    vi. A traditional custodian who is a member of the Tribe.
    vii. A traditional custodian who is a member of another Indian tribe.
    viii. An Indian foster family home licensed by the department.
    ix. A foster family home licensed by any other licensing authority within the state or an Indian foster home licensed by some other tribe.
    x. Any other member of the Tribe.
    xi. Any other Indian person.
    xii. A child care institution licensed or approved by the department with a program suitable to meet the child's needs.

2. The Court shall make every effort to place the child on-reservation but done in accordance with the placement preferences above and any placement shall take into consideration, on-reservation resources or the resources of another tribe and that any placement is in the best interests of the child and the tribe.
3. In a case where a child has exceptional therapeutic, psychological, emotional, or behavioral needs, the Court may, upon the recommendation of the placement authority, deviate from these preferences in order to meet the special needs of that particular child.
4. Where appropriate, the Court may consider the preference of the parents and the proximity of the prospective foster family home to the child's home in applying these preferences.
5. For each possible placement, the Court shall consider the willingness, fitness, ability, suitability, and availability of each person in a placement category before considering the next lower level of placement preference.
6. The Court may place the child with the department or a child placement agency approved by the department or the Tribal Council for further placement in lieu of a direct placement pursuant to subsection (1) of this Section. When the Court does so, the agency shall place said child in accordance with the preferences described above, and any person having a prior preference may petition the Court to review the placement of a lower preference made by that agency.
7. State courts shall follow the placement preference rules outlined herein. [TCR 86-79, 04-11, 15-127]

4-410 Neglected or dependent child or in-need-of-care; disposition.

1. When a child has been adjudicated to be neglected or dependent or in-need-of-care, the Court shall enter a decree of disposition. When the decree does not terminate the parent-child legal relationship, it shall include one or more of the following provisions which the Court finds appropriate:
   A. The Court may place the child in the legal custody of one or both parents or the guardian, with or without protective supervision, under such conditions as the Court may impose.
   B. The Court may place the child in the legal custody of a relative or other suitable person, with or without protective supervision, under such conditions as the Court may impose, in accordance with Section 4-409 of this Title.
   C. The Court may place custody in the department or a child placement agency for placement in a foster family home or child care institution in accordance with Section 4-409.
   D. The Court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that he/she receive other special care and may place the child in a hospital or other suitable facility for such purposes.
2. The Court may enter a decree terminating the parent-child legal relationship of one or both parents when all reasonable efforts to treat the family have failed.
3. Upon the entry of a decree terminating the parent-child legal relationship of both parents, of the sole surviving parent, or of the mother of a child born out of wedlock, the Court may:
   A. Vest the department or child placement agency with the custody and guardianship of the child for the purpose of placing the child for adoption according to the placement preferences; or
   B. Make any other disposition that the Court finds appropriate.
4. Upon the entry of a decree terminating the parent-child legal relationship of one parent, the Court may:
   A. Leave the child in the legal custody of the other parent and discharge the proceedings; or
   B. Make any other disposition that the Court finds appropriate.
5. When a child has been adjudicated neglected because he/she has been abandoned by his/her parent, or parents, the Court may enter a decree terminating the parent-child legal relationship if it finds:
   A. That the parent or parents having legal custody have willfully surrendered physical custody for a period of six months and during this period have not manifested to the child or the person having physical custody a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or
   B. That the identity of the parent or parents of the child is unknown and has been unknown for a period of ninety days and that reasonable efforts to identify and locate the parents have failed.
6. In placing the legal custody or guardianship of the person of a child with an individual or a private agency, the Court shall give primary consideration to the welfare of the child, but shall take into consideration the religious preferences of the child or of his/her parents whenever practicable.
   A. When a child has been placed in the legal custody of CFS under this section, CFS may recommend that a guardianship with a relative or other appropriate individual be put in place after reasonable efforts have been made to work with the parent or parent(s) of the child. A guardianship under this section shall follow the requirements of 4-419. [TCR 86-79, 90-24, 15-127]

4-411 Child-in-need-of-supervision; disposition. When a child has been as being in-need-of-supervision, the Court shall enter a decree of disposition containing one or more of the following provisions which the Court finds appropriate:

1. The Court may place the child on probation or under protective supervision in the legal custody of one or both parents or the guardian under such conditions as the Court may impose.
2. The Court may place the child in the legal custody of a relative or other suitable person under such conditions as the Court may impose, which may include placing the child on probation or under protective supervision in accordance with Section 4-409 of this Title.
3. The Court may require as a condition of probation that the child report for assignment to a supervised work program or place such child in a child care facility which shall provide a supervised work program, if:
   A. The child is not deprived of the schooling which is appropriate to his/her age, needs, and specific rehabilitative goals;
   B. The supervised work program is of a constructive nature designed to promote rehabilitation, is appropriate to the age level and physical ability of the child, and is combined with counseling from guidance personnel;
   C. The supervised work program assignment is made for a period of time consistent with the child's best interest, but not exceeding one hundred eighty (180) days.
4. The Court may place custody in the department or a child placement agency for placement in a foster family home or child care institutions.
5. The Court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist, or that he/she receive other special care, and may place the child in a hospital or other suitable facility for such purposes.
6. The Court may commit the child to any institution or group care facility designated by the Court. [TCR 86-79, 90-24, 15-127]

4-412 Delinquent child; disposition. If a child has been adjudicated as being delinquent, the Court shall transmit, with the commitment order, a copy of the petition, the order of adjudication, copies of the social study, any clinical or educational reports, and other information pertinent for the care and treatment of the child, to an institution designated by the Court.

1. The designated institution shall provide the Court with any information concerning a child committed to its care which the Court at any time may require.
2. A commitment of a child to a designated institution under Section 4-411 or Section 4-412 shall be for an indeterminate period not to exceed two years.
3. The department may petition the committing court to extend the commitment for an additional period not to exceed two years. The petition shall set forth the reasons why it would be in the best interest of the child or the public to extend the commitment. Upon filing the petition, the Court shall set a hearing to determine whether the petition should be granted or denied and shall notify all interested parties.
4. Each commitment to a designated institution shall be reviewed no later than six months after it is entered and each six months thereafter. [TCR 86-79]

4-413 Legal custody; guardianship.

1. Any individual, agency, or institution vested by the Court with legal custody of a child shall have the rights and duties defined in Article 1, Section 4-102(29).
2. Any individual, agency, or institution vested by the Court with guardianship of the person of a child shall have rights and duties of custody; except that no guardian of the person may consent to the adoption of a child unless that authority is expressly given him/her by the Court.

3. If legal custody or guardianship of the person is vested in an agency or institution, the Court shall transmit, with the Court order, copies of the social study, any clinical reports, and other information concerning the care and treatment of the child.
4. An individual, agency, or institution having legal custody or guardianship of the person of a child shall give the Court any information concerning the child which the Court at any time may require.
5. Any agency vested by the Court with legal custody of a child shall have the right, subject to the approval of the Court, to determine where and with whom the child shall live.
6. No individual vested by the Court with legal custody of a child shall remove the child from the State for more than thirty days without Court approval.
7. A decree vesting legal custody of a child in an individual, institution, or agency shall be for an indeterminate period, not to exceed two years from the date it was entered. Such decree shall be reviewed by the Court no later than six months after it is entered.
8. The individual, institution, or agency vested with the legal custody of a child may petition the Court for renewal of the decree. The Court, after notice and hearing, may renew the decree for such additional period as the Court may determine, if it finds such renewal to be in the best interest of the child. The findings of the Court and the reasons therefore shall be entered with the order renewing or denying renewal of the decree.
9. No legal custodian or guardian of the person may be removed without his/her consent until given notice and an opportunity to be heard by the Court if he/she so requests. [TCR 86-79]

4-414 Probation for delinquents and children in need of supervision.

1. The terms and conditions of probation shall be specified by rules or orders of the Court. The Court, as a condition of probation for a child who is fourteen years of age or older but less than nineteen years of age on the date of the dispositional hearing, has the power to impose a commitment, placement, or detention, whether continuous or at designated intervals, which shall not exceed forty five days. Each child placed on probation shall be given written statement of the terms and conditions of his/her probation and shall have such terms and conditions fully explained to him/her.
2. The Court shall review the terms and conditions of probation and the progress of each child placed on probation at least once every six months.
3. The Court may release a child from probation or modify the terms and conditions of his/her probation at any time, but any child who has complied satisfactorily with the terms and conditions of his/her probation for a period of two years shall be released from probation, and the jurisdiction of the Court shall be terminated. [TCR 86-79, 15-127]

4-415 Violation of probation.

1. When it is alleged that a child has violated the terms and conditions of his/her probation, the Court shall set a hearing on the alleged violation and shall give notice to the child and his/her parents, guardian or other legal custodian, and any other parties to the proceeding.
2. The child, his/her parents, guardian, or other legal custodian shall be given a written statement concerning the alleged violation and shall have the right to be represented by counsel at the hearing, at his/her or their own cost, and shall be entitled to the issuance of compulsory process for the attendance of witnesses.
3. The hearing on the alleged violation shall be conducted as soon as possible.
4. If the Court finds that the child violated the terms and conditions of probation, it may modify the terms and conditions of probation, revoke probation, or make such other action as permitted by this Article which is in the best interest of the child and the Tribe.

5. If the Court finds that the child did not violate the terms and conditions of his/her probation as alleged, it shall dismiss the proceedings and continue the child on probation under the terms and conditions previously described.
6. If the Court revokes the probation of a person over nineteen years of age, in addition to other action permitted by this Article, the Court may sentence him/her to the Tribal jail for a period not to exceed one hundred eighty days during which he/she may be released during the day for school attendance, job training, or employment, as ordered by the Court. [TCR 86-79, 15-127]

4-416 New hearing authorized.

1. A parent, guardian, custodian, or next friend of any child adjudicated under this Article, or any person affected by a decree in a proceeding under this Article, may petition the Court for a new hearing on the following grounds:
   A. That new evidence, which was not known or could not with due diligence have been made available at the original hearing and which might affect the decree, has been discovered;
   B. That irregularities in the proceedings prevented a fair hearing.
2. If it appears to the Court that the motion should be granted, it shall order a new hearing and shall make such disposition of the case as warranted by all the facts and circumstances and the best interest of the child. [TCR 86-79, 15-127]

4-417 Continuing jurisdiction. Except as otherwise provided in this Article, the jurisdiction of the Court over any child adjudicated as neglected or dependent or in-need-of-care, or in-need-of-supervision, or delinquent shall continue until he/she becomes nineteen years of age unless terminated by Court order. [TCR 86-79, 15-127]

4-418 Permanency Hearings

1. The Court shall hold a permanency hearing to determine the permanent plan for the child. The permanency hearing may be combined with the periodic review hearing. The permanency hearing shall be held within twelve (12) months from the date that a child enters foster care, or within thirty (30) days after the Court finds that reasonable efforts to reunite the family are no longer required. A child shall be considered to have entered foster care on the earlier of the following two (2) dates: (1) The date of the adjudicatory hearing finding that the child is a child-in-need-of-care; or (2) The date that is sixty (60) days after the date the child was removed from the home.
2. At least 2 days prior to the permanency hearing, the Department will develop and submit to the Court a report that recommends and justifies a permanent placement option for the child. The report will consider the appropriateness of parental reunification, adoption, legal guardianship, permanent placement with fit relative, or an alternate planned permanent living arrangement. The Department shall make its placement recommendations based upon the best interests of the child.
3. For any child who continues to be in an out-of-home placement, subsequent permanency hearings shall be held at least every six (6) months from the date of the previous permanency hearing until jurisdiction over the child terminates.
4. At each permanency hearing, the Court shall consult with the child in an age-appropriate manner regarding the proposed permanency plan and include the following in its orders:
   A. whether the current permanency plan for the child remains the appropriate plan to meet the health, safety, welfare, and best interests of the child;
   B. the extent of compliance with the permanency plan for the child;
   C. the adequacy of services provided to the child and the child's parent(s), guardian or legal custodian to reunite the family within a reasonable period of time and to find a permanent home for the child in the event that reunification is not possible; and

D. whether additional services are necessary to support the permanent plan, including services needed to assist the child to make a transition from foster care to successful adulthood for any child that has attained age 14.

5. In addition to the foregoing requirements in this section, for any child for whom another planned permanent living arrangement is the permanency plan determined for the child:
   A. the Department shall document in its report
      i. the intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts made by the agency to return the child home or secure a placement for the child with a fit and willing relative (including adult siblings), a legal guardian, or an adoptive parent, including through efforts that utilize search technology (including social media) to find biological family members for the children; and
      ii. the steps the Department is taking to ensure that:
         a. the child's foster family home or child care institution is following the reasonable and prudent parent standard; and
         b. the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities (including by consulting with the child in an age-appropriate manner about the opportunities of the child to participate in the activities).
   B. at the permanency hearing, the Tribal Court shall:
      i. ask the child about the desired permanency outcome for the child; and
      ii. make a judicial determination explaining why, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child and provide compelling reasons why it continues to not be in the best interests of the child to return home; be placed for adoption; be placed with a legal guardian; or be placed with a fit and willing relative. [TCR 15-127]

4-419 Guardianships as Recommended by CFS for permanence. CFS does not recommend the termination of parental rights of children except in extreme circumstances as outlined in Section 4-601. The preferred method of providing permanence for a child is a guardianship in accordance with the placement preferences listed in Section 4-409.

The potential guardians(s) of the child shall file, with assistance from CFS if requested, for a guardianship of the child following the procedures in Title 18 of this Code. However, if a guardianship is brought under this Title 4, CFS, as the current legal custodian of the child, shall be a party to the case.

The guardianship order under this section shall confer upon the guardian the ability to not only act as a guardian but as a conservator as well.

Guardianship Report.

1. Upon being served with a Guardianship Petition involving a minor under the legal custody of CFS pursuant to Title 4 of this Code, CFS shall prepare a Guardianship Report on the proposed guardian(s), and child.
2. The Guardianship Report shall contain all pertinent information necessary to assist the Court in determining the best interests of the child.
3. No determination may be made on a Guardianship Petition involving a minor under the legal custody of CFS pursuant to Title 4 of this Code until the report has been completed and submitted to and considered by the Court.
4. CFS shall appear at the Guardianship Hearing to answer any questions the Court may have involving the Guardianship Report.
5. The Court may order additional reports as it deems necessary.

Procedure. The procedure involving guardianships shall follow Title 18 of this Code unless such procedure is contradicted by this Section in which case this Section shall govern.

The underlying protection case shall not be dismissed until after a guardianship brought under this section is granted. [TCR 15-127]

TITLE 4
ARTICLE 5
CHILD ABUSE

4-501 Legislative purpose.
4-502 Definitions.
4-503 Persons required to report child abuse or neglect.
4-504 Required report of postmortem investigation.
4-505 Evidence of abuse.
4-506 Temporary protective custody.
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4-508 Action upon receipt of report.
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4-512 Evidence not privileged.
4-513 Court proceedings; guardian ad litem.
4-514 Central registry.
4-515 Confidentiality of records.

4-501 Legislative purpose. The Tribal Council hereby declares that the complete reporting of child abuse is a matter of Tribal concern and that in enacting this Article it is the intent of the Tribe to protect the children within the jurisdiction of the Tribe and to offer protective services in order to prevent any further harm to a child suffering from abuse. It is the further intent of the Tribe that the various federal, state and Tribal medical, mental health, education and social services agencies impacting on child welfare matters find a common purpose through cooperative participation in the child protection teams created in this Article. [TCR 86-79]

4-502 Definitions. As used in this Article, unless the context otherwise requires:

1. "Abuse" or "child abuse or neglect" means an act or omission in one of the following categories which seriously threatens the health or welfare of a child:
   A. Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death, and such condition or death is not justifiably explained, or where the history given concerning such condition or death is at variance with the degree or type of such condition or death, or circumstances indicate that such condition or death may not be the product of an accidental occurrence;
   B. Any case in which a child is subject to sexual assault or molestation;
   C. Any case in which the child's parents, legal guardians, or custodians fail to take the same actions to provide adequate food, clothing, shelter, or supervision that a prudent parent would take.
   D. In all cases, those investigating reports of child abuse shall take into account accepted child-rearing practices of the culture in which the child participates. Nothing in this subsection shall refer to acts which could be construed to be a reasonable exercise of parental discipline.
2. "Child protection team" means a multidisciplinary team consisting, where possible, of a physician, a representative of the Juvenile Court, a representative of the Tribal law enforcement agency, a representative of a non-tribal law enforcement agency, a representative of the Tribal Child and Family Services or Bureau of Indian Affairs Social Services Department, a representative of the state social services department, an attorney, a representative of the local school district, and one or more representative of the lay community. Each agency may have more than one participating member on the team; except that, in voting on procedural or policy matters, each agency shall have only one vote. In no event shall an attorney member of the child protection team be appointed as guardian for the child or as counsel for the parents at any

subsequent court proceedings, nor shall the child protection team be composed of fewer than three persons. The role of the child protection team shall be advisory only.

3. "Tribal department" means the Tribal, or, where appropriate, the Bureau of Indian affairs, police department or social services, or Tribal Child and Family Services.
4. "Law enforcement agency" means a Tribal or Bureau of Indian Affairs police department, or a law enforcement officer of the state.
5. "Neglect" means acts which can reasonably be construed to fall under the definition of "child abuse or neglect" as defined in subsection (1) of this Section.
6. "Receiving agency" means the department or law enforcement agency first receiving a report of alleged child abuse.
7. "Responsible person" means a child's parent, legal guardian, or custodian or any other person responsible for the child's health and welfare.
8. "Unfounded report" means any report made pursuant to this Article which is not supported by some credible evidence. [TCR 86-79]

4-503 Persons required to report child abuse or neglect.

1. Any person who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions which would reasonably result in abuse or neglect shall immediately report or cause a report to be made of such fact to the Tribal department or appropriate law enforcement agency.
2. Person required to report such abuse or neglect or circumstances or conditions shall include any:
   A. Physician or surgeon, including a physician in training;
   B. Child health associate or community health representative (CHR);
   C. Medical examiner or coroner;
   D. Dentist;
   E. Osteopath;
   F. Optometrist;
   G. Chiropractor;
   H. Chiropodist or podiatrist;
   I. Registered nurse or licensed practical nurse;
   J. Hospital personnel engaged in the admission, care or treatment of patients;
   K. School official or employee, including preschool and Head Start programs;
   L. Social worker or worker in a foster family home or child care institution;
   M. Mental health professional;
   N. Any law enforcement personnel;
   O. The Tribal prosecutor or his assistants.
3. In addition to those persons specifically required by this Section to report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in abuse or neglect, any other person may report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in child abuse or neglect to the Tribal law enforcement agency or the Tribal department.
4. Any person who willfully violates the provisions of this Section:
   A. Shall be subject to a civil penalty not to exceed five hundred dollars ($500.00); and
   B. Shall be liable for damages approximately caused thereby; and
   C. May be prosecuted criminally pursuant to the criminal Code of this Tribe. [TCR 86-79, 15-127]

4-504 Required report of postmortem investigation.

1. Any person who is required to report known or suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report such fact immediately to the appropriate law enforcement agency and to the appropriate coroner or medical examiner. The law enforcement agency and the coroner or medical examiner shall accept such report for investigation and shall report their findings to the Tribal law enforcement agency, the Tribal prosecutor, and the Tribal department.
2. The Tribal department shall forward a copy of such report to the central registry. [TCR 86-79]

4-505 Evidence of abuse.

1. Any child health associate, person licensed to practice medicine, registered nurse or licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of patients, medical examiner, coroner, social worker, or local law enforcement officer who has before him/her a child he/she reasonably believes has been abused or neglected may take or cause to be taken color photographs of the areas of trauma visible on the child. If medically indicated, such person may take or cause to be taken X-rays of the child.
2. Any color photographs or X-rays which show evidence of child abuse shall be immediately forwarded to a receiving agency. [TCR 86-79]

4-506 Temporary protective custody. The Chief Judge of the Tribal Court shall be responsible for making available a person appointed by the Chief Judge, who may be the juvenile judge, a magistrate, referee, or any other officer of the Court, to be available by telephone at all times to act with the authorization and authority of the juvenile division of the Court when no judicial officer is present in the Court, to issue written or verbal temporary protective custody orders, or in the alternative or in addition thereto, the Chief Judge may enter his/her general order detailing the procedure to be used in taking children into custody on an emergency basis when no judge or magistrate is present at the Court. These orders may be requested by the Tribal department, a Tribal law enforcement officer, an administrator of a hospital in which a child is reasonably believed to have been abused or neglected or is being treated, or any physician who has before him/her a child he/she reasonably believes has been abused or neglected, whether or not additional medical treatment is required, if the belief that circumstance or the condition of the child is such that continuing in his/her place of residence or in the care and custody of the person responsible for his/her care and custody would present an imminent danger to that child's life or health. The Tribal department shall be notified of such action immediately by the Court-appointed official in order that child protective proceedings may be initiated. In any case, such temporary custody under this Section shall not exceed seventy-two hours notwithstanding any provision of law to the contrary.
[TCR 86-79]

4-507 Reporting procedures.

1. Report of known or suspected child abuse or neglect made pursuant to this Article shall be made immediately to the Tribal department or law enforcement agency and shall be followed promptly by a written report prepared by those persons required to report. The receiving agency shall forward a copy of its own report to the central registry on forms supplied by the Tribal department.
2. Such reports, when possible, shall include the following information:
   A. The name, address, age, sex, and race of the child;
   B. The name and address of the responsible person;
   C. The nature and extent of the child's injuries, including any evidence of previous known or suspected abuse or neglect to the child or the child's siblings;

D. The names and addresses of the persons responsible for the suspected abuse and neglect, if known;
E. The family composition;
F. The source of the report and the name, address, and occupation of the person making the report;
G. Any action taken by the reporting source;
H. Any other information that the person making the report believes may be helpful in furthering the purposes of this Section.

3. A copy of the report of known or suspected child abuse or neglect shall be transmitted immediately by the receiving agency to the Tribal prosecutor's office and to the Tribal law enforcement agency.
4. A written report from persons or officials required by this Article to report known or suspected child abuse or neglect shall be admissible as evidence in any proceeding related to child abuse. [TCR 86-79]

4-508 Action upon receipt of report.

1. The receiving agency shall make a thorough investigation immediately upon receipt of any report of known or suspected child abuse or neglect. The immediate concern of such investigation shall be the protection of the child.
2. The investigation, to the extent that it is reasonably possible, shall include:
   A. The nature, extent, and cause of the abuse or neglect;
   B. The identity of the person responsible for such abuse or neglect;
   C. The names and conditions of any other children living in the same place;
   D. The environment and the relationship of any children therein to the person responsible for the suspected abuse or neglect;
   E. All other data deemed pertinent.
3. The investigation shall, at a minimum, include a visit to the child's place of residence or place of custody and to the location of the alleged abuse or neglect and an interview with or observance of the child reportedly having been abused or neglected. If admission to the child's place of residence cannot be obtained, the Juvenile Court, upon good cause, shall order the responsible person to allow the interview, examination and investigation.
4. The Tribal department shall be the receiving agency responsible for the coordination of all investigations of all reports of known or suspected child abuse or neglect. The Tribal department shall arrange for such investigations to be conducted by persons trained to conduct either the complete investigation or such parts thereof as may be assigned. The Tribal department may conduct the investigation independently or in conjunction with another appropriate agency or may arrange for the initial investigation to be conducted by another agency with personnel having appropriate training and skill. The Tribal department shall provide for persons to be continuously available to respond to such reports. Tribal and state and federal agencies may cooperate to fulfill the requirements of this subsection. As used in this subsection, "continuously available" means the assignment of a person to be near an operable telephone not necessarily located in the premises ordinarily used for business by the Tribal department or to have such arrangements made through agreements with local law enforcement agencies.
5. Upon receipt of a report, if the Tribal department reasonably believes abuse or neglect has occurred, it shall immediately offer social services to the child who is the subject of the report and his/her family. If, before the investigation is completed, the opinion of the investigators is that assistance of the Tribal law enforcement agency is necessary for the protection of the child or other children under the same care, the Tribal law enforcement agency and the Tribal prosecutor shall be notified. If immediate removal is necessary to protect the child or other children under

the same case from further abuse, the child or children may be placed in protective custody in accordance with Tribal law.

6. If a local law enforcement agency receives a report of known or suspected child abuse or neglect, it shall first attempt to contact the Tribal department in order to refer the case for investigation. If the local law enforcement agency is unable to contact the Tribal department, it shall make a complete investigation and may request the Tribal prosecutor to institute appropriate legal proceedings on behalf of the subject child or other children under the same care. The Tribal law enforcement agency, upon receipt of a report and upon completion of any investigation it may undertake, shall immediately forward a summary of the investigatory data plus all relevant documents to the Tribal department. [TCR 86-79]

4-509 Child protection teams. It is the intent of this legislation to encourage the creation of one or more child protection teams. The Chief Judge of the Court shall have responsibility for inaugurating the child protection team.

1. The child protection team shall review the files and other records of the case, including the diagnostic, prognostic, and treatment services being offered to the family in connection with the reported abuse.
2. At each meeting, each member of the child protection team shall be provided with all available records and report on each case to be considered.
3. The public, in a non-participatory role, shall be permitted to attend those portions of child protection team meetings concerned with mandatory team discussions of public and private agencies' responses to each report of child abuse and neglect being considered by the team, as well as the team's recommendations related to pubic-agency responses. In all its public discussions, the team shall not publicly disclose the names or addresses and identifying information relating to the children, families or informants in those cases.
4. At the beginning of the public discussion of each case, a designated team member shall publicly state the following information, arrived at by consensus of the team: Whether the case involves mild, moderate, or severe abuse or neglect or no abuse or neglect; whether the child is an infant, a toddler, a preschool or school-aged child, or a teenager and the sex of the child; the date of the initial report and the specific agency to which the report was made; and the dates of subsequent reports to specific social service agencies, law enforcement agencies, or other agencies. In no case shall the informant's name or other identifying information about the informant be publicly revealed. The team shall also state publicly whether the child was hospitalized and whether the child's medical records were checked.
5. At this public session, and immediately after any executive sessions at which a child abuse or neglect case is discussed, the child protection team shall publicly review the responses of public and private agencies to each report of child abuse or neglect, shall publicly state whether such responses were timely, adequate, and in compliance with provisions of this Article, and shall publicly report non-identifying information relating to any inadequate responses, specifically indicating the public and private agencies involved.
6. After this mandatory public discussion to consider identifying details go into executive session upon the vote of a majority of the team of the case being discussed, to discuss confidential reports, including but not limited to the reports of physicians and psychiatrist, or when the members of the team desire to act as an advisory body concerning the details of treatment or evaluation programs. The team shall state publicly, before going into executive session, its reasons for doing so. Any recommendation based on information presented in the executive sessions shall be discussed and formulated at the immediately succeeding public session of the team, without publicly revealing identifying details of the case.

7. At the team's next regularly scheduled meeting, or at the earliest possible time, the team shall publicly report whether the lapses and inadequacies discovered earlier in the child protection system have been corrected.
8. The team shall make a report of its recommendations to the Tribal department with suggestions for further action or stating that the team has no recommendations or suggestions. Tribal and state and federal agencies may cooperate in meeting the requirements of this subsection.
9. Each member of the team shall be appointed by the agency he/she represents, and each team member shall serve at the pleasure of the appointing agency; except that the director of the Tribal department shall appoint the representatives of the lay community, and shall actively recruit all interested individuals and consider their applications for appointment as lay-community representatives on the team.
10. The director of the Tribal department or his/her designee shall be deemed to be the coordinator of the child protection team.
11. The coordinator shall forward a copy of all reports of child abuse to the child protection team. The coordinator shall forward a copy of the investigatory report and all relevant materials to the child protection team as soon as they become available. The child protection team shall meet no later than one week after receipt of a report to evaluate such report of child abuse. The coordinator shall make and complete, within ninety days of receipt of a report initiating an investigation of a case of child abuse, a follow-up report, including services offered and accepted and any recommendations of the child protection team, to the central registry on forms supplied by the Tribal department for that purpose. [TCR 86-79]

4-510 Immunity from liability. Any person participating in good faith in the making of a report or in a judicial proceeding held pursuant to this Title, the taking of color photographs or X-rays, or the placing in temporary custody of a child pursuant to this Article or otherwise performing his/her duties or acting pursuant to this Act shall be immune from any liability, civil or criminal, that otherwise might result by reason of such reporting. For the purpose of any proceedings, civil or criminal, the good faith of any person reporting child abuse, any person taking color photographs or X-rays and any person who has legal authority to place a child in protective custody shall be presumed. [TCR 86-79]

4-511 Child abuse and child neglect diversion program.

1. The Tribal prosecutor, upon recommendation of the Tribal department or any person, may withhold filing a case against any person accused or suspected of child abuse or neglect and refer that person to a non-judicial source of treatment or assistance, upon conditions set forth by the Tribal department and the Tribal prosecutor. If a person is so diverted from the criminal justice system, the Tribal prosecutor shall not file charges in connection with the case if the person participates to the satisfaction of the Tribal department and the Tribal prosecutor in the diversion program offered.
2. The initial diversion shall be for a period not to exceed two years. This diversion period may be extended for one additional one year period by the Tribal prosecutor if necessary. Decisions regarding extending diversion time periods shall be made following review of the person diverted by the Tribal prosecutor and the Tribal department.
3. If the person diverted successfully completes the diversion program to the satisfaction of the Tribal department and the Tribal prosecutor, he/she shall be released from the terms and conditions of the program, and no criminal filing of the case shall be made against him/her.
4. Participation by a person accused or suspected of child abuse in any diversion program shall be voluntary. [TCR 86-79]

4-512 Evidence not privileged. The privileged communication between patient and physician and between husband and wife shall not be a ground for excluding evidence in any judicial proceedings resulting from a report pursuant to this Article. [TCR 86-79]

4-513 Court proceedings; guardian ad litem.

1. In any proceeding initiated pursuant to this Section, the Court shall name as respondents all persons alleged by the petition to be the legal or actual physical custodians or guardian of the child. In every such case, the responsible person shall be named as respondent. Summons shall be issued for all named respondents.
2. The Court in every case filed under this Article shall appoint, at no fee, a guardian ad litem at the first appearance of the case in Court. The guardian ad litem shall be provided with all reports relevant to the case made to or by any agency or person pursuant to this Title and with reports of any examination of the responsible person made pursuant to this Section. The Court or the social services worker assigned to the case shall advise the guardian ad litem of significant developments in the case, particularly any further abuse or neglect of the child involved. The guardian ad litem shall be charged in general with the representation of the child's interest. To that end, he/she shall make such further investigations as he/she deems necessary to ascertain the facts, talk with or observe the child involved, interview witnesses in both the adjudicatory and dispositional hearings and may introduce and examine his/her own witnesses, make recommendations to the Court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the child.
3. If the prayer of the petition is granted, the costs of this proceeding, including guardian ad litem and expert witness fees, may be charged by the Court against the respondent.
4. It is not necessary that the guardian ad litem be an attorney. [TCR 86-79]

4-514 Central registry.

1. There shall be established a central registry of child protection in the Tribal department for the purpose of maintaining a registry of information concerning each case of child abuse reported under this Title.
2. The central registry shall contain but not be limited to:
   A. All information in any written report received under this Title;
   B. Record of the final disposition of the report, including services offered and services accepted;
   C. The plan for rehabilitative treatment;
   D. The name and identifying data, date, and circumstance of any person requesting or receiving information from the central registry;
   E. Any other information which might be helpful in furthering the purposes of this Title.
3. The director of the Tribal department shall appoint a director of the central registry who shall have charge of said registry. Subject to available appropriations, the director shall equip his/her office so that data in the central registry may be made available during non-business hours through the use of computer technology. Such computerized records shall be password coded and only department personnel, judges, justices and law enforcement personnel shall have access to the password.
4. After a child who is the subject of a report reaches the age of nineteen years, access to his/her record under this Section shall be permitted only if a sibling or offspring of such child is before any person mentioned in Section 4-503(2) and is a suspected victim of child abuse. The amount and type of information released shall depend upon the source of the report and shall be determined by regulations established by the director of the central registry. However, under no circumstances shall the information be released unless the person requesting such information is

entitled thereto as confirmed by the director of the central registry and the information released states whether or not the report is founded or unfounded. A person given access to the names or other information identifying the subject of a report shall not divulge or make public any identifying information unless he/she is a Tribal prosecutor or other law enforcement official and the purpose is to initiate Court action or unless he/she is the subject of a report.

5. Unless an investigation of a report conducted pursuant to this Article determines there is some credible evidence of alleged abuse, all information identifying the subject of the report shall be expunged from the central registry forthwith. The decision to expunge the record shall be made by the director of the central registry based upon the investigation made by the Tribal department or the Tribal law enforcement agency.
6. In all other cases, the record of the reports to the central registry shall be sealed no later than ten years after the child's nineteenth birthday. Once sealed, the record shall not otherwise be available unless the director of the central registry, pursuant to rules promulgated by the department and upon notice to the subject of the report, gives his/her personal approval for an appropriate reason. In any case and at any time, the director may amend, seal, or expunge any record upon good cause shown and notice to the subject of the report.
7. At any time the subject of a report may receive, upon request, a report of all information pertinent to the subject's case contained in the central registry, but the director of the central registry is authorized to prohibit the release of data that would identify the person who made the report or who cooperated in a subsequent investigation which he/she reasonably finds to be detrimental to the safety or interest of such person.
8. At any time subsequent to the completion of the investigation, a subject of the report may request the director to amend, seal, or expunge the record of the report. If the director refuses and does not act within a reasonable time, but in no event later than thirty days after such request, the subject shall have the right to a fair hearing before the Tribal Court to determine whether the record of the report in the central registry should be amended, sealed, or expunged on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this Article. The Tribal department shall be given notice of the hearing. The burden in such a hearing shall be on the Tribal department. In such hearings the fact that there was such a finding of child abuse or neglect shall be presumptive evidence that the report was substantiated.
9. Written notice of any amendment, sealing, or expungement made pursuant to the provision of this Act shall be given to the subject of such report and to the Tribal department. The latter, upon receipt of such notice, shall take similar action regarding such information in its files.
10. Any person who willfully permits or who encourages the release of data or information contained in the central registry to persons not permitted access to such information by this Article shall be subject to a civil penalty not in excess of five hundred dollars ($500.00) and any actual damages sustained. Persons who willfully permit or who encourage the release of this information may also be charged with a criminal offense.
11. The central registry shall adopt such rules and regulations as may be necessary to encourage cooperation with other tribes or states and the National Center on Child Abuse and Neglect. [TCR 86-79, 15-127]

4-515 Confidentiality of records.

1. Except as provided in this Section, reports of child abuse or neglect and the name and address of any child, family or informant or any other identifying information contained in such reports shall be confidential and shall not be public information.
   A. Disclosure of the name and address of the child and family and other identifying information involved in such reports shall be permitted only when authorized by a court for good cause. Such disclosure shall not be prohibited when there is a death of a suspected victim of child abuse or neglect and the death becomes a matter of public

record, the subject of an arrest by a law enforcement agency, and the subject of the filing of a formal charge by a law enforcement agency.

B. Any person who violates any provision of this subsection (1) shall be subject to a civil penalty of not more than five hundred dollars ($500.00).

2. Only the following persons or agencies shall be given access to child abuse or neglect records and reports:

A. The law enforcement agency or department investigating a report of known or suspected child abuse or neglect or treating a child or family which is the subject of the report;

B. A physician who has before him/her a child whom he/she reasonably suspects to be abused or neglected;

C. An agency having the legal responsibility or authorization to care for, treat, or supervise a child who is the subject of a report or record or a parent, guardian, legal custodian, or other person who is responsible for the child's health or welfare;

D. Any person named in the report or record who was alleged as a child to be abused or neglected or, if the child named in the report or record is a minor or is otherwise incompetent at the time of the request, his/her guardian ad litem;

E. A parent, guardian, legal custodian, or other person responsible for the health or welfare of a child named in a report, with protection for the identity of reporters and other appropriate persons;

F. A court, upon its finding that access to such records may be necessary for determination of an issue before such court, but such access shall be limited to in-camera inspection unless the Court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it;

G. The central registry of child protection;

H. All members of a child protection team;

1. Such other persons as the Court may determine, for good cause.

2. After a child who is the subject of a report to the central registry reaches the age of nineteen years, access to that report shall be permitted only if a sibling or offspring of such child is before any person mentioned in subsection of this Section and is a suspected victim of child abuse or neglect. The amount and type of information released shall depend upon the source of the report and shall be determined by regulations established by the director of the central registry. However, under no circumstances shall the information be released unless the person requesting such information is entitled thereto as confirmed by the director of the central registry and the information released states whether the report is founded or unfounded. A person giving access to the names or other information identifying the subject of a report shall not divulge or make public any identifying information unless he/she is a prosecuting attorney or other law enforcement official and the purpose is to initiate Court action or unless he/she is the subject of the report. [TCR 86-79, 90-24, 15-127]

TITLE 4
ARTICLE 6
TERMINATION OF PARENTAL RIGHTS

4-601 Motion for termination of parental rights.
4-602 Appointment of counsel.
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4-604 Abandonment.
4-605 Criteria for termination.
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4-607 Voluntary termination of parental rights.
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4-601 Motion for termination of parental rights.

1. Termination of a parent-child legal relationship shall be considered only after the filing of a written motion alleging the factual grounds for termination, and termination of a parent-child legal relationship shall be considered at a separate hearing following an adjudication of a child as dependent or neglected or in-need-of-care. Such motion shall be filed at least thirty days before such hearing.
2. The Department shall
   A. The PSW will file a petition to terminate parental rights when a child has been in foster care under the Tribe's responsibility for 15 of the most recent 22 months. The petition will be filed by the end of the child's 15th month in foster care using as a start date the day the child entered foster care. Trial home visits or runaway episodes are excluded from the 15 month calculation.
   B. The PSW will file a petition to terminate parental rights within 60 days of a finding by a court of competent jurisdiction that the child is an abandoned infant,
   C. The PSW will file a petition to terminate parental rights when a parent has been convicted of one of the following: a) murder of another child of the parent; b) voluntary manslaughter of another child of the parent; c) aiding, abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter; or d) a felony assault that results in serious bodily injury to the child or another child of the parent. In these circumstances, the petition to terminate parental rights will be made within 60 days of a determination that reasonable efforts to reunify the child and parent [based on a) through d) above] are not required.

   CFS may elect **not** to file a petition to terminate parental right if at the option of CFS the child is being cared for by a relative; or if CFS has documented in the case plan a compelling reason that termination of parental rights would not be in the child's best interest; or if services deemed necessary to safely return the child to parental care (reasonable efforts) have not been provided.
   [TCR 86-79, 86-109, 15-127]

4-602 Appointment of counsel.

1. After a motion for termination of a parent-child legal relationship is filed pursuant to this Article, the parent or parents shall be advised of the right to counsel, at their own expense, and counsel shall be appointed whenever counsel is available at no fee or whenever the Court fund has sufficient unobligated funds to pay an attorney a maximum of five hundred dollars ($500.00) per case.

2. An attorney**,** who shall be the child's previously appointed guardian ad litem whenever possible, shall be appointed to represent the child's best interest in any hearing determining the involuntary termination of the parent-child legal relationship. Additionally, said attorney shall be experienced, whenever possible, in juvenile law. Such representation shall continue until an appropriate permanent placement of the child is effected or until the Court's jurisdiction is terminated. If a respondent parent is a minor, a guardian ad litem shall be appointed and shall serve in addition to any counsel requested by the parent. [TCR 86-79, 86-109]

4-603 No jury trial. There shall be no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship. [TCR 86-79, 86-109]

4-604 Abandonment. Before a termination of the parent-child legal relationship based on abandonment can be ordered, the petitioner shall file an affidavit stating what efforts have been made to locate the parent or parents of the child subject to the motion for termination. Such affidavit shall be filed not later than ten days prior to the hearing. [TCR 86-79, 86-109]

4-605 Criteria for termination.

1. The Court may order a termination of the parent-child legal relationship upon the finding of either of the following:
   A. That the child has been abandoned by his/her parent or parents;
   B. That the child is adjudicated dependent or neglected or in-need-of-care and all of the following exist:
      i. That an appropriate treatment plan approved by the Court has not been reasonably complied with by the parent or parents or has not been successful;
      ii. That the parent is unfit;
      iii. That the conduct or condition of the parent or parents is unlikely to change within a reasonable time.
2. In determining unfitness, conduct, or condition, the Court shall find that continuation of the legal relationship between parent and child is likely to result in grave risk of death or serious injury to the child or that the conduct or condition of the parent or parents renders the parent or parents unable or unwilling to give the child reasonable parental care. In making such determinations, the Court shall consider, but not be limited to, the following:
   A. Emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely within a reasonable time to care for the ongoing physical, mental, and emotional needs of the child;
   B. Conduct towards the child of a physically or sexually abusive nature;
   C. History of violent behavior;
   D. A single incident of life-threatening or gravely disabling injury or disfigurement of the child;
   E. Excessive use of intoxicating liquors or narcotics or dangerous drugs which affects the ability to care and provide for the child;
   F. Neglect of the child;
   G. Long-term confinement of the parent;
   H. Injury or death of a sibling due to proven parental abuse or neglect;
   I. Reasonable efforts by child-caring agencies which have been unable to rehabilitate the parent or parents.
3. In considering any of the factors in subsection (2) of this Section in terminating the parent-child legal relationship, the Court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The Court shall review and order, if necessary, an evaluation of the child's physical, mental, and emotional conditions. [TCR 86-79, 86-109]

4-606 Standard of proof. The Court shall order termination of parental rights if it finds by clear and convincing evidence that termination of parental rights and a permanent placement with another person is in the best interest of the child. [TCR 86-79, 86-109]

4-607 Voluntary termination of parental rights. Parental rights may be relinquished voluntarily by a parent in writing, if signed by the parent in the presence and with approval of the Court. Relinquishment shall not be accepted or acknowledged by the Court prior to ten days after birth of the child. An interpreter shall be provided if required by the Court pursuant to Section 4-608. [TCR 86-79, 86-109]

4-608 Interpreter for relinquishment of parental rights and consent to adoption. Parents who want to relinquish their parental rights or to consent to adoption shall be provided an interpreter if they do not understand English. [TCR 86-79, 86-109]

4-609 Review of child's disposition following termination of the parent-child legal relationship.

1. The Court, at the conclusion of a hearing in which it ordered the termination of a parent-child legal relationship, shall order that a review hearing be held not later than ninety days following the date of the termination. At such hearing, the agency or individual vested with custody of the child shall report to the Court what disposition of the child, if any, has occurred, and the guardian ad litem shall submit a written report with recommendations to the Court, based upon an independent investigation, for the best disposition of the child.
2. If no adoption has taken place within a reasonable time and the Court determines that adoption is not immediately feasible or appropriate, the Court may order that provisions be made immediately for long-term foster placement of the child. [TCR 86-79]

4-610 Expert testimony.

1. Subject to the availability of funds, an indigent parent has the right to have appointed one expert witness of his/her own choosing whose reasonable fees and expenses, subject to the Court's prior review and approval, shall be paid from the Court funds.
2. All ordered evaluations shall be made available to counsel at least fifteen days prior to the hearing. [TCR 86-79]

4-611 Effect of decree.

1. An order for the termination of the parent-child legal relationships divests the child and the parent of all legal rights, powers, privileges, immunities, duties, and obligations with respect to each other, except for the right of the child to inherit from the parent.
2. No order or decree entered pursuant to this Article shall disentitle a child to any benefit due him/her from any third person, including, but not limited to, any Indian tribe, any agency, any State, or the United States.
3. After the termination of a parent-child legal relationship, the former parent is not entitled to any notice of proceedings for the adoption of the child by another, nor has he/she any right to object to the adoption or to otherwise participate in such proceedings. [TCR 86-79]

4-612 Appeals.

1. Whenever an appeal is made concerning termination of parental rights, an indigent parent, upon request, subject to the availability of funds, may be provided a transcript of the trial proceeding for the appeal at the expense of the Tribe to be paid from the Court fund.

2. Appeals shall be made pursuant to the provisions of the appeals Article of this Code. [TCR 86-79]

4-613 Traditional custodians' and grandparents' rights.

1. No dispositional order or decree including termination of parental rights and adoption shall divest the child's traditional custodians or grandparents of their right to reasonable visitation with the child and their duty to provide instruction and training to the child regarding Tribal customs and traditions or their duty to provide the necessities of life for the child should the parents be unable to do so, unless those rights and duties have been extinguished in a proceeding in which the individual was a party, provided, that adoptive traditional custodians shall also succeed to these rights and duties.
2. The rights and duties of the traditional custodians and grandparents may be enforced by Court order whenever it appears in the child's best interest to do so, provided that all interested parties shall be given notice and an opportunity to be heard. [TCR 86-79]

TITLE 4
ARTICLE 7
ADOPTIONS

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4-701 Jurisdiction over adoptions.

1. Except as otherwise provided by law, the juvenile division of the Tribal Court shall have exclusive jurisdiction regarding the adoption of any child who resides or is domiciled within the jurisdiction of the Court, is unmarried, less than nineteen years of age, and either:
   A. Is a member of an Indian tribe; or
   B. Is eligible for membership in an Indian tribe, and is the biological child of a member of an Indian tribe; or
   C. Whose case has been transferred to the juvenile division of the Tribal Court from the courts of a state or tribe which has assumed jurisdiction over said child;

   and the adoption of any adult Indian who resides or is domiciled within the jurisdiction of the Court.
2. The juvenile division of the Tribal Court shall have concurrent jurisdiction with the courts of any other sovereign having lawful authority regarding the adoption by or of any other child or adult who is:
   A. A bona fide resident of or domiciled within the jurisdiction of the Court; or
   B. Between two adults who submit to the jurisdiction of the Court regardless of residence or domicile; or
   C. A member of the Tribe. [TCR 86-79, 90-24, 15-127]

4-702 Purpose of adoptions. The purpose of an adoption is to establish a formal and legal family relationship between two or more persons which after adoption, shall exist as if the parties were born into the adoptive relationship by blood. Adoptions pursuant to this Act shall be so recognized by every agency and level of the government except in eligibility for enrollment determinations which shall continue to be based upon biological parentage. [TCR 86-79]

4-703 Types of adoptions. There shall be three types of adoptions recognized by this Tribe, namely:

1. Statutory adoptions under Tribal law entered into pursuant to Article 7 of this Title.
2. Statutory adoptions under the laws of some other tribe, state, or nation having jurisdiction over the parties and the subject matter.

3. Traditional adoptions which may be for the purpose of establishing any traditional allowed family relationship between any persons, and which shall be governed by Section 4-723 of this Code. Unless otherwise specifically provided by Tribal statute, traditional adoptions create a particular stated family relationship between persons for all purposes other than enrollment and the probate of decedents' estates. [TCR 86-79, 15-127]

4-704 In-camera determination of enrollment eligibility. Whenever a parent, whether biological or adoptive, has expressed a desire that the name of the parent or the original or adoptive name of the child and the child's relationship to themselves or others remain confidential, and a question arises as to the eligibility of the child for enrollment as a citizen and member of the Tribe, the Court is authorized to receive from any source such information as may be necessary for a determination of the eligibility of such child for enrollment, to review such information in-camera, and to enter its order declaring whether or not the child is eligible for enrollment and the child's blood quantum or other necessary non-identifying enrollment eligibility criteria. In doing so, the Court shall be provided with a complete Tribal roll for the necessary period(s), and shall seal all records received to maintain the confidentiality of the parties. If the Court determines that such child is eligible for enrollment, it shall enter its order declaring said fact and the Tribal enrollment officers shall accept such order as conclusive proof of the eligibility of the child for enrollment and enroll the child accordingly. If the Court determines that such child is not eligible for enrollment, it shall enter its order accordingly, and the Tribal enrollment officers shall accept such order as proof of the ineligibility of said child and refuse to enroll the child unless other or further qualifications for enrollment are shown. [TCR 86-79]

4-705 Eligibility for statutory adoption. Every child within the jurisdiction of the juvenile division of the Tribal Court at the time a petition for adoption is filed, may be adopted subject to the terms and conditions of this Article. [TCR 86-79]

4-706 Eligibility to adopt by statutory process. The following persons are eligible to adopt a child pursuant to this Article, and subject to the placement preferences of this Title:

1. A husband and wife jointly;
2. Either the husband or wife if the other spouse is a parent of the child;
3. An unmarried person who is at least twenty-one years old;
4. A married person who is legally separated from the other spouse and at least twenty-one years old.
5. In the case of a child born out-of-wedlock, his/her unmarried father or mother. [TCR 86-79]

4-707 Consent to statutory adoption.

1. Adoption of a child may be decreed only if consent to such adoption has been executed and filed in the juvenile division of the Tribal Court by:
   A. Both parents, if living, or the surviving parent, unless their parental rights have been terminated by judicial decree, or in the case of divorce, if one parent gets the consent of the other parent an adoption can be heard without termination of parental rights.
   B. A parent less than sixteen years of age may give his/her consent only with the written consent of one of that minor's parents, legal guardian, or a guardian ad litem of the minor parent appointed by the Court.
   C. If both parents be deceased, or if their parental rights have been terminated by judicial decree, then the traditional custodian having physical custody of said child for the preceding six month period, or a person or the executive head of an agency having custody of the child by judicial decree with the specific authority, granted by the Court, to consent to the adoption of the child.

2. Where any parent or Indian custodian voluntarily consents to an adoption, or termination of parental rights, such consent shall not be valid unless executed before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The Court shall certify that the parent or Indian custodian either fully understood the explanation in English, or that it was interpreted into a language that the parent or Indian custodian understood.
3. Any consent given prior to or written ten days after the birth of a child shall not be valid.
4. Any consent given for the adoption of, or termination of parental rights to a child may be withdrawn at any time prior to the entry of a final decree of adoption or termination as the case may be and the child shall be returned to the parent. [TCR 86-79]

4-708 Voluntary relinquishment. A parent, legal custodian, traditional custodian, or other guardian of a child may relinquish, subject to the terms of Sections 4-707(2), (3), and (4) of this Article, any rights they may have to the care, custody, and control of a child. A relinquishment shall be made by filing a petition in the juvenile division of the Court with notice to the Tribal department, Tribal prosecutor, traditional custodians, and the parent(s) not a petitioner. The traditional custodians may intervene in said action. The petition may relinquish generally in which case the Court shall assume jurisdiction over the child, or specially to a particular person for adoption. A relinquishment shall be valid only upon approval and decree of the Court. [TCR 86-79]

4-709 When consent of parents unnecessary. Adoption of a child may be decreed without the consent required by Section 4-707 of this Article only if the parents, or the traditional custodians having custody if the parents be deceased, have:

1. Had their parental or custodial rights terminated by a decree of a court of competent jurisdiction; or
2. Been adjudicated incompetent by reason of mental disease, defect, or injury, or by abuse of alcohol or drugs, and it appears by a preponderance of the evidence that such person will be unable to provide the necessary care and control of said child for a significant period of time prior to the child reaching majority; or
3. For a period of twelve (12) months immediately preceding the filing of the petition for adoption, willfully failed, refused, or neglected to provide and contribute to the support of their child either:
   A. In substantial compliance with any decree of a court of competent jurisdiction ordering certain support to be contributed; or
   B. If no Court order has been made ordering certain support, then within their available means through contribution of financial support, physical necessities such as food, clothing, and shelter contributions, or by performing labor or other services for and at the request of the person or agency having custody.
4. Been finally adjudicated guilty of a felony and sentenced to death or a term of imprisonment which is likely to prevent release of the parent for a period such that the parent will be unable to provide the necessary care and control of said child for a significant period of time prior to the child reaching majority. In such cases, it shall not be necessary to obtain the consent of such parent, or to terminate the parental rights of such parent prior to adoption of the child.
   [TCR 86-79]

4-710 Notice of hearing for adoption without consent. Before the Court hears a petition for adoption without the consent of the parents as provided by Section 4-709(l), the person having authority to consent to the adoption, or the person petitioning for the adoption shall file an application for adoption without consent setting out the reason the consent of the other person is not necessary. The application shall be set for hearing at a date and time certain, and the application shall contain the name of the child to be

adopted, the time, date, and place of the hearing, the reason that the child is eligible for adoption without the consent of the parent, guardian, or custodian, and a notice that the adoption may be ordered if the parent, guardian, or custodian does not appear at the hearing and show cause why their consent is necessary. The application and notice shall be served on the parent, guardian, or custodian whose consent is alleged to be unnecessary in the same manner that civil summons is served. The hearing on the application shall be at least twenty-four hours prior to the hearing on the adoption. [TCR 86-79]

4-711 Consent of child. Whenever a child be of sufficient maturity and understanding the Court may, and in every case of a child over ten years of age the Court shall, require the consent of the child, expressed in such form as the Court shall direct, prior to the entry of a decree of adoption. Whenever possible, the Court should interview such child in private concerning the adoption prior to approving the child's consent. [TCR 86-79]

4-712 Petition. The petition shall conform with the requirements of the Rules of Juvenile Procedure. [TCR 86-79]

4-713 Investigation.

1. Upon the filing of a petition for adoption, the Court shall order an investigation to be made:
   A. By the agency having custody or legal guardianship of the child; or
   B. In other cases, by the State, Bureau of Indian Affairs, or Tribal department; or
   C. By a person qualified by training or experience, designated by the Court, and shall further order that a report of such investigation shall be filed with the Court by the designated investigator within the time fixed by the Court and in no event more than sixty days from the issuance of the order for investigation, unless time therefor is extended by the Court.
2. Such investigation shall include the conditions and antecedents of the child for the purpose of determining whether he/she is a proper subject for adoption; appropriate inquiry to determine whether the proposed home is a suitable one for the child; and any other circumstances and conditions which may have bearing on the adoption and of which the Court should have knowledge; and in this entire matter of investigation, the Court is specifically authorized to exercise judicial knowledge.
3. The Court may order agencies named in subsection 1 of this Section located in one or more counties to make separate investigations on separate parts of the inquiry, as may be appropriate.
4. Where the adopting parent is the spouse of parent, or in the event that a report, as outlined above deemed adequate for the purpose by the Court, has been made within the six months next preceding the filing of the petition for adoption, the Court, in its discretion, may waive the making of an investigation and the filing of a report.
5. Upon the filing of the report, the investigator shall serve written notice upon the petitioners that the report has been filed with the Court, provided, that the report shall remain confidential and the contents of the report shall not be divulged to the petitioners except upon the consent of the investigating officer and the Court, and except to the Tribal department and the prosecutor.
   [TCR 86-79]

4-714 Adoption hearing. The adoption hearing shall conform with the requirement as set out in the Rules of Juvenile Procedure. [TCR 86-79]

4-715 Report and final decree of adoption. If the Court does not enter a final decree of adoption at the time of the hearing for adoption, but places the child in the legal custody of the petitioners, within six months after the child has been in the custody of the petitioner, the Court shall request a supplementary written report as to the welfare of the child, the current situation and conditions of the adoptive home and the adoptive parents. If the Court is satisfied that the interests of the child are best served by the proposed

adoption, a final decree of adoption may be entered. No final order shall be entered by the Court unless it appears to the Court that the adoption is in the best interests of the child. In any case where the Court finds that the best interest of the child will not be served by the adoption, a guardian shall be appointed and suitable arrangements for the care of the child shall be made and the Court may request Tribal agencies or federal agencies or other agencies authorized to provide services to assist in the placement and the care of the child. [TCR 86-79]

4-716 Contents of adoption order. The final order of adoption shall include such facts as are necessary to establish that the child is within the jurisdiction of the Court and eligible for adoption and that the adoptive parents and home are adequate and capable for the proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence adduced at the hearings, the new name of the child, if any, and that the relationship of parent and child exists between the petitioners and the child. [TCR 86-79]

4-717 Effect of final decree of statutory adoption.

1. After a final decree of adoption pursuant to this Article is entered, the relationship of parent and child, and all the rights, duties, and other legal consequences of the natural relation of a child and parent shall thereafter exist between such adopted child, the adopting parents, and the kindred of the adopting parents. The adopted child shall inherit real and personal property from the adopting family and the adopting family shall inherit from the child in accordance with law as if such child were the natural child of the adopting parent(s).
2. After a final decree of adoption pursuant to this Article is entered, the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent, shall be relieved and terminated from all parental rights and responsibilities for said child, including the right to inherit from the child, provided, that the child shall remain eligible to inherit from said natural parents, and retain all rights to membership in the Tribe by virtue of his/her birth to said natural parents.
3. Unless the traditional custodians and grandparents of a child have given their consent to the adoption of the child, or have had their custodial rights terminated in the same manner that a parent consents or has their rights terminated, the Court, at any time within two years after the final decree of adoption or refusal of the adoptive parents to allow visitation, whichever is later, may, upon application of a natural traditional custodian or a natural grandparent, order reasonable visitation rights in favor of said person if the Court deems such visitation in the best interest of the child. The Court may enforce such visitation rights and make orders thereto at any time after timely filing of an application therefor. Notice of such application shall be served upon the adoptive parents as a summons is served. [TCR 86-79]

4-718 Records and hearings confidential. Unless the Court shall otherwise order:

1. All hearings held in proceedings under this Article shall be confidential and shall be held in closed Court without admittance of any person other than the interested parties, including traditional custodians, representatives of the Court, persons whose presence is requested by the parties in private before the Court after the exclusion of all other persons, and the counsel for the parties, traditional custodians, and the Tribal department.
2. All papers, records, and files pertaining to the adoption shall be kept as a permanent record of the Court and withheld from inspection. No person shall have access to such records except:
   A. Upon order of the Court for good cause shown.
   B. Upon the adopted person reaching the age of nineteen, the adopted person may review the records unless the natural parents have by affidavit requested anonymity in which case their names and identifying characteristics, not including Tribal membership and

degree of blood, shall be deleted prior to allowing the adopted person access to the records.

C. The traditional custodians and natural grandparents shall have access to the records unless the natural parents have, by affidavit, requested anonymity, in which case, the names and identifying characteristics shall be deleted prior to allowing them access to the records as in the preceding paragraph. If the adopting parents request anonymity, by affidavit, the traditional custodians, and natural grandparents may have access to the records only by order of the Court for good cause shown, and then only if the Court deems such request in the best interest of the child.

D. For the purpose of obtaining the enrollment of the child with another Indian tribe, the Court may upon request of an enrollment officer of that tribe, certify to that officer pertinent facts to enable that officer to determine the eligibility of the child for membership in that tribe subject to the written guarantee, with an understanding if deemed necessary by the Court, that such facts will remain confidential and be divulged only to those persons who must know the facts to obtain the enrollment of the child. In the alternative, and in cases where the natural or adoptive parents have, by affidavit, requested anonymity, the Court may certify a copy of the record of the case to a judge of the court of the other tribe for an in camera review only, or allow such judge to review the record in the Tribal Court, in camera, for the purpose of said judge certifying to his/her tribe that the child is eligible for membership in that tribe. [TCR 86-79, 15-127]

4-719 Certificates of adoption.

1. For each adoption or annulment of adoption, the Court shall prepare, within thirty days after the decree becomes final, a certificate of such decree on a form furnished by the registrar of vital statistics of the state or other jurisdiction having issued the copies of the petition and decree of adoption, and any other information required by law by the registrar.
2. Such form and certified copies, along with any other pertinent information requested by the jurisdiction having issued the birth certificate, shall be forwarded forthwith to the registrar of vital statistics of the jurisdiction.
3. One certified copy of the form, certificate, petition, and decree of adoption shall be forwarded to the Secretary of the Interior. The material forwarded to the Secretary shall also contain a judge's certificate showing:
   A. The original and adoptive name and tribal affiliation of the child;
   B. The names, addresses, tribal affiliation and degree of blood when known of the biological parents;
   C. The names and addresses of the adoptive parents;
   D. The identity of any agency having files or information relating to the adoptive placement;
   E. Any affidavit of the biological parent requesting that their identity remain confidential. [TCR 86-79]

4-720 Foreign decree. When the relationship of parent and child has been created by a decree of adoption of any court of competent jurisdiction of any other nation, or its political subdivisions having authority to enter such decrees, the rights and obligations of the parties as to matters within the jurisdiction of this Nation shall be determined by the Rules of Civil Procedure as found elsewhere in this Code. [TCR 86-79]

4-721 Adoption of adults.

1. An adult person may be adopted by any other adult person with the consent of the person to be adopted, or his/her guardian, if the Court shall approve, and with the consent of the spouse of the

adopting parent, if any, filed in writing with the Court. The consent of the adopted adult's parents shall not be necessary unless said adult has been adjudicated incompetent, nor shall an investigation be made. Such adoption shall create the relationship of parent and child between the parties, but shall not destroy the parent-child relationship with the biological parents, unless specifically requested by the adopted adult in writing in open Court. Unless so requested, the legal effect of such decree, for all purposes, including inheritance, but not including tribal enrollment eligibility, shall be that the adopted person is the child of both sets of parents equally.

2. Proceedings and records relating to the adoption of an adult shall be open to the public as are the records of other civil cases. [TCR 86-79]

4-722 Appeals. An appeal to the Appeals Court may be taken from any final order, judgment, or decree rendered hereunder by any person aggrieved thereby in the manner provided for civil appeals. [TCR 86-79]

4-723 Customary Adoptions. It is the fundamental belief of the Winnebago Tribe of Nebraska that its children are the sacred responsibility of the Tribe. One of the Tribe's basic inherent sovereign rights is the right to make decisions regarding the best interests of its children including who should provide for the care, custody and control of its children. As an exercise of its inherent sovereignty the Winnebago Tribe of Nebraska has the authority and the jurisdiction to formally delegate the authority to the Tribal Court to adjudicate its own customary practices regarding child rearing and child custody.

1. These provisions governing customary adoptions shall be interpreted liberally to provide what is in the best interest of the child and the Tribe and to provide a sense of permanency and belonging to children throughout their lives and at the same time provide them with knowledge about their unique cultural heritage including their tribal customs, history, language, religion and values.
2. Definitions

   As used in this provision:

   A. "Adoptee" is defined as the individual, child or adult who is adopted or it to be adopted.
   B. "Adoptive Parent" is defined as the person establishing or seeking to establish a permanent parent-child relationship with a child who is not their biological child.
   C. "Best Interests of the Child" is defined as a variety of factors including: the ability of the Tribe and Reservation community to provide for the care of the child; the wishes of the Tribe, parents, party or parties; the preference of the child if the child is of sufficient age to express a preference; the intimacy of the relationship between the parties and the child; the child's adjustment to home, school and tribal community; the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity; the permanence, as a family unit, of the existing or proposed adoptive home; the mental and physical health of all individuals involved; the capacity and disposition of the parties to give the child love, affection, guidance and to continue educating the child in the child's tribal culture and heritage.
   D. "Best Interests of the Tribe" is defined as a variety of factors including but not limited to the ability of the Tribe and its members to provide for the child; the ability of the Tribe and its members to provide for the continuations of the Tribe's culture, language, history, religion, traditions and values through its children if those children are take away and not taught these things throughout their daily lives. The ability of the Tribe to continue as a viable cultural entity will be hindered by the loss of its children. Every child is a gift from the creator and is viewed by the Tribe as crucial to the future of the Tribe as a whole.
   E. "Birth Parent" is defined as the biological parent.
   F. "Customary Adoption" means a traditional tribal practice recognized by the community and Tribe which gives a child a permanent parent-child relationship with someone other than the child's birth parent(s).

G. "Court" means the Winnebago Tribal Court.

H. "Child" is defined as a person under the age of nineteen (19) years of age.

I. "Family Member" is defined as a person related by blood or marriage who maintains some form of significant contact with the child. The term includes spouses, parents, children, siblings, aunts, uncles, grandparents, grandchildren and any other person who might be considered a family member or relative under tribal law or custom.

J. "Final Decree of Customary Adoption" is defined as the final court order which establishes the permanent legal relationship between the child and the adoptive parent(s) and establishes any contact which may be allowed with the biological parent.

K. "Final Order Suspending Parental Rights" means a final order of the court which permanently suspends the rights of a biological parent to provide for the care, custody and control of their child. Said order may establish the parameters of contact between the birth parent and the child is said contact is in the child's best interests.

"Suspension of Parental Rights" is defined as the permanent suspension of the rights of biological parents to provide for the care, custody and control of their child. The suspension of parental rights does not sever or affect in any way a child's relationship to his/her Tribe or any rights of inheritance from the biological parent(s).

L. "Tribe" means the Winnebago Tribe of Nebraska.

3. Rights of Parties

In addition to any other rights afforded under the Indian Civil Rights Act, 25. U.S.C. §1301-03 (1968), as amended or provided within this Code, petitioners and other parties to a customary adoption have the following rights:

A. A biological parent has the right to refuse services provided by any social services agency, however, their refusal to accept services may have a significant impact of their ability to have contact with their child;

B. The petitioner and respondent have the right to have reasonable notice and to attend any hearing arising out of the filing of a petition pursuant to this Code. The biological parents and the petitioner have the right to be represented by counsel at their own expense at all proceedings;

C. The biological parents and petitioner have the right to summon and cross-examine witnesses.

D. The biological parents and the petitioner have the right to seek independent medical, psychological or psychiatric evaluations of the child at their own expense.

4. Petition to Suspend Parental Rights

A. Any adult or agency possessing custody of a minor child may file a petition with the Court seeking an order for the permanent suspension of the parental right of a parent and child. The petition shall contain the following information:

i. The name, address and telephone number of the child's tribe;

ii. The name, address, telephone number and age of the child's parent(s) whose parental rights are to be suspended;

iii. The name, address, and telephone number of the petitioner and the petitioner's relationship, if any, to the child;

iv. The name. address, and telephone number of any other relatives who may have an interest in the care, custody and control of the minor child;

v. A statement as to why an order for the suspension of parental rights of the parent is in the best interests of the child and the child's tribe;

vi. A statement as to the basis for the request for the suspension of parental rights, supported by medical, psychiatric, child protection worker, family member and/or psychological reports or testimony;

vii. A statement that no similar action is pending in a state or other tribal court having jurisdiction over the child.

B. The petitioner shall sign the petition in the presence of the Clerk of Court or a notary public and shall affirm under oath that the contents are true and correct except as to those matters based upon belief and, as to those matters, the petitioner reasonably believes them to be true.

5. Notice of Hearing of Petition to Suspend Parental Rights

A. Upon the filing of a petition seeking an order for the suspension of parental rights, the Court shall schedule a hearing to be held thereon and shall cause written notice of such hearing to be served upon the petitioner; the child's tribe; the child's parent(s); family members; caretaker, if any; and appropriate agencies of the Tribe which may either have an interest in the proceedings or be of assistance to the Court in adjudicating the matter. Such notice shall be served in the manner provided for in the Rules of Civil Procedure.

6. Hearing

A. Attendance at Hearing

i. The parent, family members, agencies and petitioner shall be present at the hearing in person or by telephone unless he or she has waived the right to appear in a notarized writing and filed with the court or unless the parent is unable to attend by reason of a medical condition as evidenced by a written statement from a licensed physician or other appropriate professional.

ii. The petitioner shall be present at the hearing. The petitioner's failure to appear shall be grounds for dismissal of the petition.

iii. The parent(s) named in the petition shall also be present. The parent(s) failure to appear shall not prevent the issuance of an order for suspension of parental rights.

B. Conduct of the Hearing

i. The Court shall inform the parent of their rights under this Code and of the nature and consequences of the proceedings.

ii. The Court shall further inform all other parties of their rights under this Code and pursuant to the Indian Civil Rights Act, including the right to summon and cross-examine witnesses.

iii. The rules of evidence of the Tribal Court shall apply.

iv. The burden of proving the allegations of the petition shall be upon the petitioner and the standard of proof shall be clear and convincing evidence. There shall be a legal presumption of the parent's ability to parent until proven otherwise.

v. The Court may continue the hearing, upon a showing of good cause, at the request of any party to the proceeding and enter such temporary orders, if any, as may be deemed just and reasonable to carry out the purposes of this 4-418.

C. Record of Proceedings

i. In all proceedings the Court shall take and preserve an accurate stenographic or recording of the proceedings.

D. Findings.

i. In all cases, the Court shall make specific written findings of fact, state separately its conclusions of law, and enter an appropriate judgment or order.

ii. The Court may make findings that it is in the child's best interests that a final order suspending the parental rights be entered and the Court shall specify the basis of those findings.

7. Final Order for Suspension of Parental Rights

A. If the Court determines that it is in the best interests of the child and the child's tribe, it shall issue a final order for a suspension of parental rights. Such an order for the suspension of parental rights may include, but is not limited to, the following:

i. A permanent suspension of the parental rights of the parent including the suspension of the right to the care, custody and control of the minor child and allowing the child to be adopted.

ii. A permanent suspension of the right of the parent to have contact with the minor child including contact in person, by mail, by telephone or through third parties or the order may allow for a contact agreement agreed upon by the parties to be ordered by the Court;

iii. Restraining a parent from contacting the minor child, the child's foster parent, the child's adoptive parent and/or the social services agency or agencies possessing information regarding the minor child;

iv. Ordering that the biological parents' obligation to pay child support, except for arrearages, is hereby terminated;

v. Ordering that any prior court order for custody, visitation or contact with the minor child is hereby terminated.

B. Copies of any order for suspension of parental rights shall be served upon the parent and the agency or agencies having legal custody of the child and any other parties as directed by the court.

C. Final orders for the suspension of parental rights may be reviewed by the Court at the request of the parent, the agency or agencies possessing custody of the child only if one of the following occurs: the child is not adopted after a period of one (1) year after the entry of the final order suspending parental rights; the adoption of the child fails; or the adoptive parent is deceased. Notice of this review shall be provided to all parties to the hearing at which the final order was issued.

8. Petition for Customary Adoption

A. Any adult may file a petition with the Court seeking an order for the customary adoption of a minor child. The petition shall contain the following information:

i. The name, address and telephone number of the child's tribe;

ii. The name, address, telephone number and age of the child to be adopted;

iii. The name, address, and telephone number of the petitioner and the petitioner's relationship, if any, to the child;

iv. The name, address, and telephone number of any other relatives who may have an interest in the care, custody and control of the minor child;

v. The proposed name of the adoptee after the entry of the final order of customary adoption;

vi. A statement or a copy of the final order suspending the parental rights of the biological parent(s);

vii. A statement as to why a final order for customary adoption is in the best interests of the child and the best interests of the child's tribe;

viii. A statement as to the basis for the customary adoption supported by a home study, medical, psychiatric, child protection worker, family member and/or psychological reports or testimony;

ix. A statement that no similar action is pending in a tribal or state court having jurisdiction over the child.

9. Notice of Hearing on Petition for Customary Adoption

A. Upon the filing of a petition seeking an order for a customary adoption of a minor child, the Court shall schedule a hearing to be held thereon and shall cause written notice of such hearing to be served upon the petitioner; the child's tribe; the child's parent(s); family members; caretaker, if any; and appropriate agencies of the Tribe which may either have an interest in the proceedings or be of assistance to the Court in adjudicating the matter. Such notice shall be served in the manner provided for in 4-119 and if not covered under that provision then in the Rules of Civil Procedure.

10. Hearing on Petition for Customary Adoption

A. Attendance at Hearing

i. The Child who is the subject of a petition for customary adoption, agencies, petitioner and any appropriate family members may be present at the hearing in person or by telephone.

ii. The petitioner shall be present at the hearing. The petitioner's failure to appear shall be grounds for dismissal of the petition.

B. Conduct of the Hearing

i. The court shall inform the parties of their rights under this Code and of the nature and consequences of the proceedings.

ii. The Court shall further inform all other parties of their rights under this Code and pursuant to the Indian Civil Rights Act, including the right to summon and cross-examine witnesses.

iii. The rules of evidence of the Tribal Court shall apply.

iv. The burden of proving the allegations of the petition shall be upon the petitioner and the standard of proof shall be clear and convincing evidence. There shall be a legal presumption of the parent's ability to parent until proven otherwise.

v. The Court may continue the hearing, upon a showing of good cause, at the request of any party to the proceeding and enter such temporary orders, if any, as may be deemed just and reasonable to carry out the purposes of this 4-723.

C. Record of Proceedings

i. In all proceedings the Court shall take and preserve an accurate stenographic or recording of the proceedings.

D. Findings.

i. In all cases, the Court shall make specific written findings of fact, state separately its conclusions of law, and enter an appropriate judgment or order.

ii. The Court may make findings that it is in the child's best interests that a final order suspending the parental rights be entered and the Court shall specify the basis of those findings.

11. Final Order for Customary Adoption

A. If the Court determines that it is in the best interests of the child and the child's tribe, it shall issue a final order for a customary adoption. Such an order may include, but is not limited to the following:

i. A statement that the child has been adopted by the petitioner(s) and that the parent-child bond is hereby established and that all of the rights and responsibilities of that relationship shall exist upon the entry of such a final order;

ii. A notice regarding the new name of the child, if any.

12. Certification of a Customary Adoption

A. A customary adoption, conducted in a manner that is long-established, continued, reasonable process and considered by the people of the Winnebago Tribe of Nebraska to be binding and authentic, based upon the testimony of an expert witness, may be certified by the Winnebago Tribal Court as having the same effect as an adoption order issued by this Court so long as it is in the best interests of the child and the child's tribe.

B. A decree certifying a customary adoption as the same effect as a decree or final order of statutory adoption issued by this Court.

13. Enforcement

A. Final orders for the suspension of parental rights or customary adoption may be enforced by utilizing the contempt power of the Court as set forth in 4-116_of this Code.

14. Appeals

A. Who Can Appeal

i. Any party to a petition to suspend the parental rights of a parent pursuant to this Code may appeal a final Court order.

B. Appeals Procedure

i. All appeals from proceedings under this Code shall be heard pursuant to the Winnebago Tribe of Nebraska Rules of Appellate Procedure, Title 1, Article 3 , except to the extent that any Rule of Procedure is in direct conflict with the express provisions of this Title 4. In such case the provisions of this Title shall apply.

15. Right of Access to Records

A. Any child who has been the subject of a suspension of parental rights proceeding or a customary adoption proceeding has the right, upon reaching the age of majority, to review all of the court's file on these matters subject to redaction of names or the rights of confidentiality of some documents under federal or tribal law.

16. Severability

A. If any provision of this Title, or the application thereof, to any person is held invalid, such invalidity shall not affect the provisions or applications of this Section which can be given effect without the invalid provisions, and to this end the provisions of this Title are declared severable. [TCR 15-127]

TITLE 4
ARTICLE 8
DEVELOPING FOSTER FAMILY HOMES

4-801 Responsibility.
4-802 Licensing foster family homes.
4-803 Basic standard for foster families.
4-804 Basic requirements of foster families.
4-805 Funding for foster children's needs.
4-806 Physical facilities.
4-807 Family composition.
4-808 Personal characteristics.
4-809 Foster parenting abilities.

4-801 Responsibility. It shall be the responsibility of the department to recruit, screen, and license foster family homes for children in accordance -with this Article. [TCR 86-79, 15-127]

4-802 Licensing foster family homes. The department, pursuant to rules not inconsistent with this Act, shall develop and file with the Tribal Court rules for licensing foster family homes and shall have the authority to license foster family homes for the care of children. [TCR 86-79, 15-127]

4-803 Basic standard for foster families. In considering Indian foster parents, the primary consideration should be the parents' capacity to provide love and understanding to a child or children in distress. [TCR 86-79]

4-804 Basic requirements of foster families. Foster families shall meet the following personal criteria:

1. The age of foster parent(s) shall be a consideration only as it affects their physical capability, flexibility, and ability to care for a specific child.
2. A written statement from a physician, regarding the foster parent(s)' and their children's general health, specific illnesses, or disabilities shall be a routine part of the study-evaluation process. Foster parent(s) and all other adults and the children present in the home shall submit a written report verifying that they have taken tuberculin tests and have been found free of disease; other tests may be required as indicated.
3. Physical handicaps of foster parent(s) shall be a consideration only as it affects their ability to provide adequate care to foster children or may affect an individual child's adjustment to the foster family. Cases shall be evaluated on an individual basis with the assistance of a medical consultant when indicated. [TCR 86-79]

4-805 Funding for foster children's needs.

1. If necessary, the department shall secure funding for the needs of children placed in foster care. The rates of funding shall be similar to the rates paid by the State of Nebraska.
2. Employment of foster parents outside the home:
   A. In two parent homes it is preferable, in most instances, that both foster parents shall not be employed outside the home so that one parent is available for the parenting that the child requires. The department shall make decisions regarding such situations on the basis of what is the best interest of the child.
   B. When both parents in a two parent home and when single parents are employed, it is preferable that the home be used for school age children, and only when there are suitable plans (approved by the department) for care and supervision of the child after school and during the summer while parent(s) are at work. [TCR 86-79, 90-24]

4-806 Physical facilities.

1. Physical facilities of the foster family home shall present no hazard to the safety of the foster child.
2. Foster family homes shall meet zoning and housing requirements and/or codes as set by the Tribal Council for individual family dwellings.
3. Physical standards for the foster family home shall be set according to individual living standards for the community in which the foster family home is located; these standards shall be sufficient to assure a degree of comfort which will provide for the well-being of the family and its self-respect in the community in which it resides.
4. Comfort and privacy:
   A. It is preferable that no more than two (2) children share a sleeping room.
   B. The sharing of sleeping rooms by children of opposite sexes is undesirable, especially for foster children who may be experiencing difficulties in the development of their sexual identities, attitudes, and behavior.
   C. Children, other than infants and during emergencies (illness), shall not share sleeping quarters with adults in the household.
   D. Individual space shall be provided for the child's personal possessions.
   E. In all instances when exceptions are necessary, they shall be for children under two years of age or when special cultural, ethnic, or socioeconomic circumstances create a situation in which such exceptions will not be to the detriment of the child.
5. Foster family homes shall be accessible to schools, recreation, churches, other community facilities, and special resources (such as medical clinics) as needed.
6. If the home is otherwise suitable, the foster family shall be provided with all available assistance in meeting the above requirements, standards, and/or codes. [TCR 86-79, 15-127]

4-807 Family composition.

1. Two parents shall be selected in most cases; however, a parent shall be selected when he/she can more effectively fulfill the needs of a particular child.
2. The presence of other children (either the foster parent(s') own or foster), and other adults (i.e., grandparents, aunts, etc.; or unrelated persons) shall be taken into consideration in terms of how they might be affected by or have an effect upon another child.
3. The number and ages of children in a home (both the foster parent(s)' own and foster) shall be considered on an individual basis, taking into account the foster parent(s)' ability to meet the needs of all children present in the home, physical accommodations of the home, and especially the effect which an additional child would have on the family as a unit. It is preferable that:
   A. Foster parent(s) shall care for not more than two infants (under two years of age), including the foster parent(s)' own children.
   B. Foster families should not have more than a total of six children, including foster children and foster parents(s)' own children, in the foster family home. Exceptions shall be made in order to keep siblings together.
   C. The age range of the children in a foster family home shall be similar to that in a "normal" family in order to lessen competition and comparisons.
   D. All placement situations shall consider the effect of having some children in the foster family home whose parent(s) visit them and other children whose parent(s) do not.
   E. A foster family home shall not provide placements for more than one agency at a time without a written agreement delineating the responsibilities of all parties involved. [TCR 86-79, 15-127]

4-808 Personal characteristics. Character and Ability: All adults providing foster care shall:

1. Be mentally and physically able to provide care and supervision;
2. Exercise reasonable judgment in caring for children;
3. Not engage in or have a history of behaviors which would injure or endanger the health or morals of children;
4. Be cleared with the State Central Registry of abused or neglected children and incompetent or disabled adults; and
5. Provide:
   A. Three favorable character references; and
   B. Health reports indicating persons are physically capable of caring for children. After licensing, a new self-certifying health report must be provided annually. [TCR 86-79, 93-74]

4-809 Foster parenting abilities. An assessment of prospective foster parent(s)' parenting ability regarding a specific child shall take into account the following:

1. Motivation for application at this time.
2. Characteristics and number of children best suited to the foster family.
3. Existing family relationships, attitudes, and expectations regarding their own children and parent-child relationships, especially where such existing attitudes and relationships might affect the foster child.
4. Attitudes of significant members of the extended family regarding child placement.
5. Ability to accept and love child as he/she is.
6. Capacity to absorb the child into family life functioning without undue disruption.
7. Capacity of parent(s) to provide for foster child's needs while giving proper consideration to their own children.
8. Own children's attitudes towards accepting foster child.
9. Realistic assessment of positive and negative aspects of foster parenthood.
10. Personal characteristics necessary to provide continuity of care throughout child's need for placement.
11. Flexibility to meet challenging needs over the course of placement.
12. Ability to accept child's relationship with own parent(s).
13. Ability to relate to neglecting and abusing natural parent(s).
14. Special ability to care for children with special needs (physical handicaps, emotional disturbances, etc.).
15. Knowledge of or ability to recognize areas in which ongoing social work assistance may be needed.
16. Ability to help a child return home or be placed for adoption and gain satisfaction from the experience. [TCR 86-79]

TITLE 4
ARTICLE 9
INCOME WITHHOLDING FOR CHILD SUPPORT ACT
(Repealed 2008) [TCR 08-79]

TITLE 4
ARTICLE 10
RULES OF JUVENILE PROCEDURE

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Rule 1 SCOPE. These Rules govern proceedings brought in the Juvenile Court of the Winnebago Tribe of Nebraska under Winnebago Tribal Code Title 4. These proceedings are civil in nature and where not governed by the procedures set forth in Title IV or these Rules, shall be conducted according to the Winnebago Rules of Civil Procedure. [TCR 86-79]

Rule 2 PURPOSE AND CONSTRUCTION. These Rules are intended to provide for the just determination of juvenile proceedings. They shall be construed to secure simplicity in procedure and fairness in administration. [TCR 86-79]

Rule 3 ATTORNEY OR ADVOCATE OF RECORD.

a. An attorney or advocate shall be deemed of record when he/she appears personally before the Court, files a written entry of appearance or other pleading, or has been appointed by the Court, in any particular matter.
b. The Court clerk shall notify an attorney or advocate appointed by the Court. A written notation of appointment shall appear in the file. [TCR 86-79]

Rule 4 NOTICE.

a. Any written motions or other pleadings filed by any party after the issuance of the summons and filing of the petition, except those that can be heard ex parte, shall be served together with the notice of the application to set the same for hearing upon each of the parties affected thereby. Service shall be made in accordance with the Winnebago Rules of Civil Procedure and notice of the application to set the same for hearing shall be served not later than twenty-four hours before the time specified in the notice.

b. Notice of the time, date, and place of any further proceedings, including continuance and adjournments, shall be either given in Court or mailed to each party by the Court. [TCR 86-79]

Rule 5 SERVICE OF SUMMONS.

a. Summons shall be served personally or by certified mail, return receipt requested.

b. If the parties, guardian, or other legal custodian of the child required to be summoned cannot be found within the Tribe's jurisdiction, the fact of the child's presence within the Tribe's jurisdiction shall confer jurisdiction on the Court as to any absent parent, guardian, or legal custodian if due notice has been given in the following manner:

   1. When the residence of the person to be served outside the Tribe's jurisdiction is known, a copy of the summons and petition shall be sent by certified mail with postage prepaid to such person at his/her place of residence with a return receipt requested. Service of summons shall be deemed complete upon return of the requested receipt.

   2. When the person to be served has no residence within the Tribe's jurisdiction and his/her place of residence is not known or when he/she cannot be found within the Tribe's jurisdiction after due diligence, service may be by publication. [TCR 86-79]

Rule 6 SUMMONS FORM. If necessary, the Court clerk shall issue a summons to the respondents and the child as in other civil cases. The summons shall be in substantially the following form:

IN THE TRIBAL COURT
JUVENILE DIVISION
WINNEBAGO TRIBE OF NEBRASKA
WINNEBAGO, NEBRASKA

The Winnebago Tribe of Nebraska
In The Interest of:

Case No JFJ

An Alleged Child,
And Concerning:

Respondent (s).

SUMMONS

THE WINNEBAGO TRIBE OF NEBRASKA to:
Respondents.

YOU ARE HEREBY NOTIFIED, that a petition has been filed in the Juvenile Court alleging that the above named _____is a (delinquent) (deprived or neglected or in-need-of-care) child (in-need-of-supervision) and that as the (parent) (guardian) (legal custodian) of said child you have been named as the Respondent, all as more fully set out in the attached petition.

YOU ARE THEREFORE ORDERED TO APPEAR at the Courtroom of the Tribal Court, Winnebago, Nebraska, on the____ day of _____, at the hour of _____ o'clock a.m./p.m. and to there remain subject to the call of the Court until discharged so that you may be advised of the allegations contained in the petition and may answer that you admit or deny the allegations of the petition.

YOU ARE FURTHER ORDERED, if the above named child is in your physical custody or subject to your control to bring the child to Court with you.

You may seek the advice of an attorney on any matter relating to this action at your own expense.

Court Clerk

(SEAL)
(Return as in other civil cases) [TCR 86-79]

Rule 7 WHEN SUMMONS UNNECESSARY. A summons need not issue or be served upon any respondent who appears voluntarily upon notice or who waives service in writing before a notary public or Court clerk, or who has promised to appear at the hearing in writing upon the release of a child from emergency custody or otherwise, by any such person shall be entitled to a copy of the petition and summons upon request. [TCR 86-79]

Rule 8 ADDITIONAL PARTIES TO BE SUMMONED. The Court on its own motion or on the motion of any party may join as a respondent or require the appearance of any person it deems necessary to the action and authorize the issuance of a summons directed to such person. [TCR 86-79]

Rule 9 FAILURE TO APPEAR.

a. Any person served with a summons who fails to appear without reasonable cause may be proceeded against for contempt of Court and a bench warrant may issue.
b. If after reasonable effort the summons cannot be served or if the welfare of the child requires that he/she be brought immediately into the custody of the Court, a bench warrant may be issued for the parents, guardian, or other legal custodian or for the child, or a search warrant may issue for the child as provided by law.
c. When a parent or other person who signed a written promise to appear and bring the child to Court, or who has waived or acknowledged service fails to appear with the child on the date set by the Court, a bench warrant may be issued for the parent or other person, the child, or both. [TCR 86-79]

Rule 10 PETITION CONTENTS.

a. The petition shall set forth plainly the facts which bring the child within the Court's jurisdiction. If the petition alleges that the child is delinquent, it shall cite the law which the child is alleged to have violated. The petition shall also state the name, age, and residence of the child and the names and residences of his/her parents, guardian, or other legal custodian or of his/her nearest known relative if no parent, guardian, or other legal custodian is known.
b. All petitions filed alleging the dependency or neglect or child-in-need-of-care of a child may include the following statement: "Termination of the parent-child legal relationship is a possible remedy available if this petition is sustained." Unless such statement is contained in the petition, no termination of parental rights can be obtained unless, upon the occurrence of new facts after the filing of the petition an amended petition be filed based upon the new facts and containing the above required statement.
c. If a petition is not filed within seven working days (excluding Saturdays, Sundays, and official Court holidays) after a child is taken into custody and not released, said child shall be released upon order of the Court; provided that upon application to the Court by the Tribal presenting officer or any interested party and for good cause shown, the above time period may, in the discretion of the Court, be extended for a reasonable period of time to be fixed by said Court. [TCR 86-79]

Rule 11 PETITION FORM. The Tribal prosecutor (presenting officer) shall sign and file all child welfare petitions alleging a child to be a juvenile offender, in-need-of-supervision, or deprived, neglected or in-need-of-care. Such petitions and all subsequent Court documents in such proceedings shall contain a heading and title in substantially the following form:

IN THE TRIBAL COURT
JUVENILE DIVISION
WINNEBAGO TRIBE OF NEBRASKA
WINNEBAGO, NEBRASKA

The Winnebago Tribe of Nebraska
In The Interest Of

CASE NO JFJ-

An Alleged Child,
And Concerning PETITION

Respondents.

a. The petition shall set forth plainly the facts which bring the child within the Court's jurisdiction. [TCR 86-79]

Rule 12 ADOPTION PETITION. A petition for adoption shall be filed in duplicate, verified by the petitioners, and shall specifically state:

a. The full names, ages, and places of residence of the petitioners, and, if married, the place and date of their marriage.
b. Their relationship with the child, if any, and their Tribal affiliation by blood and membership, if any.
c. When and from whom the petitioners acquired or intend to acquire physical custody of the child.
d. The names of the child's biological parents and their Tribal affiliation by blood and membership, including Tribal roll numbers, if known.
e. The date and place of birth of the child including the jurisdiction issuing the birth certificate for said child, the child's sex, race, and Tribal affiliation by blood and membership, including Tribal roll number, if known.
f. The name used for the child in the proceeding, and, if a change in name is desired, the new name.
g. That it is the desire of the petitioners that the relationship of parent and child be established between them and the child.
h. A full description and statement of the value of all property owned or possessed by the child.
i. The facts, if any, which excuse the consent of the parents or either of them to the adoption.
j. Any required consents to the adoption may be attached to the petition, or filed with the Court prior to entry of a decree of adoption.
k. The facts which bring the child within the jurisdiction of the Court. [TCR 86-79]

Rule 13 JUVENILE OFFENDER COMMENCEMENT OF ACTION PETITION.

a. Except as otherwise provided in paragraph (b) of this rule, proceedings against alleged juvenile offenders shall be commenced by the filing of a petition. A petition may be filed by a person who has knowledge of the facts alleged or by the prosecutor. The complaint shall be signed by the complainant or the prosecutor. The complaint shall contain:
    1. A citation to the specific statutory provisions of this Title which gives the Winnebago Juvenile Court jurisdiction of the proceedings; and
    2. A citation to the Tribal Code provision which the minor is alleged to have violated; and

3. The name, age and address of the minor who is the subject of the complaint, if known; and
4. A plain and concise statement of the facts upon which the allegations are based, including the date, time, and location at which the alleged facts occurred.

b. As an alternative to filing a petition, the Juvenile Court may, with the assistance of the Child and Family counselor or other designated individuals make such non-judicial adjustment of the case as is practicable without a petition and proceedings thereunder. Such adjustments shall be made only in cases in which the facts admit and establish prima facie jurisdiction in the Court. Efforts to effect a non-judicial adjustment may not extend for a period of more than two months without leave of the Juvenile Court judge who may extend the period for an additional two (2) months. [TCR 86-79]

Rule 14 RESPONSIVE PLEADINGS AND MOTIONS.

a. No responsive pleadings are required, nor is it necessary to deny any allegations of the petition except jurisdictional matters of age and residence of the child which shall be deemed admitted unless specifically denied.
b. Any defense or objection which is capable of determination without trial of the general issues may be raised by motion.
c. Defenses and objections based on defects in the institution of the action or in the petition, other than it fails to show jurisdiction in the Court, shall be raised only by motion filed prior to the entry of an admission or denial of the allegations of the petition. Failure thus to present any such defense or objection constitutes a waiver, but the Court for good cause shown may grant relief from the waiver. Lack of jurisdiction shall be noticed by the Court at any time during the proceedings.
d. All motions shall be in writing and signed by the moving party or his/her counsel, except those made orally by leave of Court.
e. Motions for new trial or rehearing or for arrest or modification of judgment shall be made within ten days of entry of the order of adjudication. [TCR 86-79]

Rule 15 PARTIES.

a. Juvenile Offender. In proceedings on petitions alleging a minor to be a juvenile offender, the parties to the action are the minor and the Tribe.
b. Minor-in-Need-of-Care or Neglected or Dependent and Termination of Parental Rights. In proceedings on petitions alleging a minor to be a minor-in-need-of-care or a neglected or dependent child, the parties to the action are the parents, guardian, custodian, the Tribe and the minor.
c. Adoption. In proceedings on petitions to adopt, the parties are the prospective parents, the Tribe, and the minor.
d. Guardian ad litem. In proceedings where the Court has appointed a guardian ad item, he/she shall become a party.
e. Intervention. Upon written motion, the Court may permit a person to intervene and become a party to the action as follows:
    1. The parent, guardian, or custodian may be permitted to intervene in juvenile offender proceedings;
    2. The parent, guardian, or custodian who is not alleged to have committed the offense against the minor may be permitted to intervene in minor-in-need-of-care or neglect or dependency or termination proceedings. [TCR 86-79]

Rule 16 DISCOVERY.

a. Mandatory Disclosures. Subject to the provisions of subsection (g) of this Rule, the Tribal presenting officer, upon request of the attorney or advocate for the respondents and child, shall disclose to counsel for the respondents and child:
   1. The names and addresses of persons whom the Tribal presenting officer intends to call as witnesses at the hearing or trial, together with their relevant written or recorded statements;
   2. Any written reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons;
   3. Any books, papers, documents, photographs, or tangible objects, which the Tribal presenting officer intends to use in the hearing or trial; and
   4. Any record of prior felony convictions of persons whom the tribal presenting officer intends to call as witnesses at the hearing or trial.

b. Discretionary Disclosures. The **C**ourt in its discretion may require disclosure to counsel for the respondents or child of relevant material and information upon a showing of materiality to the preparations of the defense, and if the request is reasonable. The Court shall issue suitable subpoenas or orders to cause such material or information to be made available to counsel for respondents and child.

c. Matters Not Subject to Disclosure. Disclosure shall not be required of legal research or of records, correspondence, reports, or memoranda conclusions of the Tribal presenting officer or members of his/her legal staff.

d. Disclosure by Counsel for Respondents and Child. Subject to the limitations contained in the Indian Civil Rights Act of 1968, the trial Court may require that the Tribal presenting officer be informed of the nature of any defense which counsel for the respondents and child intends to use at the trial and the names and address of persons whom counsel for the respondents and child intends to call as witnesses in support thereof. Upon receipt of the information required by this subsection, the Tribal presenting officer shall notify counsel for the respondents and child of any additional witnesses which he/she intends to call to rebut such defense within a reasonable time before trial after their identity becomes known.

e. Continuing Duty to Disclose. If, subsequent to compliance with these Rules or orders pursuant thereto, a party discovers additional material or information which is subject to disclosure, he/she shall promptly notify the other party or his/her counsel of the existence of such additional material.

f. Custody of Materials. Any material furnished to an attorney or advocate pursuant to these Rules shall remain in his/her exclusive custody or be used only for the purposes of conducting his/her side of the case, and shall be subject to such other terms and conditions as the Court may provide.

g. Protective Orders. When some parts of certain material are discoverable under the provisions of these Rules, and other parts are not discoverable, the non-discoverable material shall be excised and shall be sealed and preserved in the records of the Court and the remainder shall be made available in accordance with the applicable provisions of these Rules.

h. Failure to Comply; Sanctions. Failure to comply with this Rule or with an order brought to the attention of the Court that a party has failed to issue pursuant to this Rule, the Court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, prohibit the party from introducing in evidence the material not disclosed, or enter such other order as it deems just under the circumstances. [TCR 86-79]

Rule 17 PRE-TRIAL CONFERENCE.

a. Setting Pre-Trial Conference.
   1. If the allegations of a petition filed under Title IV are denied, the Court may on its own motion or at the timely request of either party set a time for and hold a pre-trial conference.
   2. In determining the date for the pre-trial conference, the Court shall allow counsel sufficient time to initiate and complete discovery required or authorized under Rule 16.

b. Pre-Trial Conference.
   1. If a pre-trial conference is held, the Court shall:
      i. Ascertain whether the parties have completed the discovery required by these Rules, and if not, make orders appropriate to expedite completion;
      ii. Ascertain whether there are requests for additional disclosures under these Rules;
      iii. Make rulings on any motions or other requests then pending, and ascertain whether any additional motions or requests will be made at the hearing or continued portions thereof;
      iv. Make rulings on any motions or other requests then pending, and ascertain whether any additional motions or requests will be made at the hearing or continued portions thereof;
      v. Ascertain whether there are any procedural or Indian Civil Rights Act issues which should be considered;
      vi. Ascertain whether the parties have entered into any stipulations concerning issues that will be raised during the trial.
   2. If a pre-trial conference is held, the Court may also consider such matters as will promote a fair and expeditious trial including, but not limited to the following:
      i. Marking for identification various documents and other exhibits of the parties;
      ii. Waivers of foundation to such exhibits;
      iii. Excision of inadmissible portions of otherwise admissible exhibits;
      iv. Severance of co-respondents or allegations for trial;
      v. Seating arrangements for respondents and counsel;
      vi. Availability of jury lists and other information concerning members of the jury panel;
      vii. Conduct at voir dire;
      viii. Number and use of pre-emptory challenges;
      ix. Procedure on objections where there are multiple counsel;
      x. Temporary absence of counsel during trial.
   3. Unless the Court otherwise directs, all motions and other requests prior to trial should be presented in writing or orally by leave of Court at the pre-trial conference. If discovery, investigation, preparation, or evidentiary hearing is necessary for a fair determination of any issue, the pre-trial conference may be continued until the disposition of such matters.
   4. Any pre-trial motions, request, or issue which is not raised at the pre-trial conference shall be deemed waived unless the Court for good cause shown grants relief from the waiver.
   5. At the conclusion of the pre-trial conference, a memorandum of the matters agreed upon should be signed by counsel, approved by the Court, and filed. Such memorandum shall be binding upon the parties at trial, on appeal, and in post-adjudication proceedings. [TCR 86-79]

Rule 18 EMERGENCY ORDERS.

a. On the basis of a report that a child's welfare or safety may be endangered, and if the Court believes action is reasonably necessary, the Court may issue ex parte emergency orders.

b. Where the need for emergency orders arise, and the Court is not in regular session, the judge or referee may give oral or telephone authorization to place a child in protective custody, which authorization shall have the same force and affect as if written, the same to be followed by a written order to enter on the first regular Court day thereafter.
c. If a child has been taken into protective custody by a law enforcement officer or other authorized person, said officer or persons shall promptly notify the Court.
d. Whenever a child is placed in protective custody, as above provided, the Court shall conduct a detention hearing within forty- eight (48) hours, exclusive of Saturdays, Sundays and Court holidays; and the parents, guardian, or other legal custodian, or person with whom the child was residing at the time the child was taken into protective custody, shall be so notified of the time and place of said detention hearing.
e. Whenever, pursuant to such detention hearing, protective custody is continued, the Court shall direct that a petition be filed without undue delay.
f. At any time when a child is subject to an emergency order of Court, as herein provided, and the child requires medical or hospital care, reasonable effort shall be made to notify the parents, guardian, or other legal custodian for the purpose of gaining consent for such care; provided, however, that if such consent cannot be secured and the child's welfare or safety so requires, the Court may authorize needed medical or hospital care. [TCR 86-79]

Rule 19 HEARINGS. Conduct of Hearings:

a. Private and Closed. All hearings shall be separate from other proceedings and shall be private and closed to the public. Only the parties, their attorneys, witnesses, and other persons requested by the parties and approved by the Court may be present at the hearing.
b. Denial of Allegations. If the allegations are denied, the Court shall hear the evidence and decide whether or not the allegations were committed.
c. Admission of Allegations. The Court must find that an admission is voluntarily and knowingly given.
d. Standard of Proof. The standard of proof for a juvenile offender's adjudicatory hearing shall be proof beyond a reasonable doubt, and for all other hearings, the standard of proof shall be clear and convincing evidence.
e. Dismissal or Disposition.
    1. The Court shall dismiss the petition if the allegations are not established by the required standard of proof; or
    2. The Court will proceed to the dispositional hearing if the allegations are established by a valid admission or by the required standard of proof.
f. Postponement (Continuance). On the Court's motion, or the motion of the minor, his/her parents, guardian, custodian, or attorney, the Court may postpone (continue) the hearing for a reasonable time. [TCR 86-79]

Rule 20 ADOPTION HEARING. At any time after the written investigation report has been filed, the Court, upon motion or request of the petitioners, or upon its own motion, shall fix a time for hearing the petition for adoption. The adoptive parent or parents and adoptive child shall appear personally at the hearing. All other persons whose consent is necessary to the adoption and who have not filed their written consents shall be duly notified and may appear or be represented by a member of the Bar of the Court, or by an unpaid personal representative at their request with the approval of the Court. The judge shall examine all persons appearing separately, and if satisfied as to the suitability of the child for adoption, the financial ability and moral and physical fitness and responsibility of the adoptive parents, and that the best interest of the child will be promoted by the adoption, may enter a final decree of adoption, or may place the child in the legal custody of the petitioners for a period of not more than six (6) months prior to entering a final decree of adoption, or if the Court is satisfied that the adoption will

not be in the best interests of the child, the petition shall be denied and the child's guardian instructed to arrange suitable care for the child, and the Court may request the Tribal agencies, federal agencies, or other agencies to provide services to assist in the placement and the care of the child, or in case of need, refer the matter to the department and prosecutor for the purpose of determining whether an involuntary juvenile petition should be filed. [TCR 86-79]

Rule 21 DEPENDENCY AND NEGLECT AND CHILD-IN-NEED-OF-CARE DISPOSITIONAL HEARING.

a. After an order adjudicating a child dependent and/or neglected and/or in-need-of-care, the Court shall make findings relative to disposition and enter its dispositional order. Such dispositions may be made immediately following the adjudicatory hearing, or the Court may continue the cause for a dispositional hearing and give notice of the date, time and place thereof to all parties not in default.

b. At the dispositional hearing, the Court may consider its own record in the subject cause, together with any other of the Court's records relating to the child or respondents.

c. When the Court deems it appropriate, the department may be requested to make a pre-disposition investigation and to submit a case plan which shall recommend:

   1. Whether parental rights of either or both parents should be preserved or terminated, and reasons therefor;
   2. Identification of the causes for the conditions which resulted in the Court's acquired jurisdiction;
   3. If the child is in protective custody, whether such custody should continue or revert to the parents or a parent, and the reasons for such recommendation;
   4. If it is recommended that the child remain in protective custody, the probable duration thereof and whether visits by parents should be allowed and under what conditions;
   5. A course of treatment or counseling to be followed by the parent(s), toward change needed to regain custody if the child is to remain with or is returned to the parent;
   6. A plan for monitoring and evaluating progress toward a conclusion of the proceeding, with a recommended date for termination of the Court's jurisdiction;
   7. Any other recommendations relating to the particular circumstances of the case.

d. Before adopting the dispositional recommendations and case plan, the Court may discuss the same fully with the respondents and their counsel, the child's guardian ad litem and any other interested parties. To the fullest extent possible, such discussion should reveal and resolve objections to the proposed plan so that the respondents commit themselves to follow the course of action agreed upon. The Court may designate one agency to be responsible for implementing the case plan. Once the dispositional terms are established, the same may be incorporated into the Court's dispositional order.

e. The Court shall review the case initially in six months, and thereafter may at any time review the case. Such review may be by written report; or, on the Court's own initiative, the matter may be set for hearing before the Court.

f. In all cases where the child has been adjudicated neglected or dependent, the Court may consider the financial ability of the parents to pay for, or contribute to, the cost of the child's care and may enter an appropriate order of support. [TCR 86-79]

Rule 22 JURY TRIAL.

a. There shall be no right to a jury trial at proceedings held to consider the termination of parent-child legal relationships, neglect, abuse, dependency, child-in-need-of-care or juvenile offender cases. [TCR 86-79]

Rule 23 TERMINATION OF PARENTAL RIGHTS HEARING. A termination of parental rights hearing shall be held within thirty days of receipt of a petition to terminate. The Court shall conduct the hearing for the purpose of determining whether parental rights should be terminated based upon a showing of:

a. Abandonment of the child.
b. Willful and repeated physical injuries which cause or create a substantial risk of death, disfigurement, or impairment of bodily functions.
c. Willful and repeated acts of sexual abuse.
d. Relinquishment of parental rights acknowledged before the Court. [TCR 86-79]

Rule 24 RECORD OF PROCEEDINGS.

a. A verbatim record shall be taken of all proceedings which might result in deprivation of custody. In all other proceedings such record shall be taken unless waived by the parties and so ordered by the Court.
b. Records of Court proceedings shall be open to inspection by the parents or guardian, attorneys or advocates, and other parties in proceedings before the Court, except as provided in other sections of the Juvenile Code. [TCR 86-79]

Rule 25 MOTIONS FOR A NEW TRIAL OR REHEARING.

a. Motion for new trial or rehearing shall be in writing and shall be made within ten (10) days of entry of the order or decree unless time is enlarged by the Court. It shall state the particulars in which the order or decree is in error and the grounds for such motion.
b. If the child and parent are not represented by counsel, the Court shall specifically inform them of this Rule at the time of entry of the order or decree.
c. The party claiming error in a trial or hearing must move the Court for a new trial. The Court may not dispense with the necessity of filing such a motion but may dispense with oral argument on the motion after it is filed, and only questions presented in such motion will considered by the appellate court on review. [TCR 86-79]

Rule 26 MOTIONS FOR ARREST OR MODIFICATION OF JUDGMENT. All such motions shall be in writing within ten days after entry of judgment or decree, except the motions on grounds of lack of jurisdiction may be made at any time. A motion on grounds of newly discovered evidence shall be made within six months of discovery. [TCR 86-79]

Rule 27 SHELTER AND DETENTION.

a. The Chief Judge of the Juvenile Court shall designate a person or persons as officers of the Court with authority to determine whether a child taken into temporary custody should be released to a parent, guardian, or other legal custodian, or admitted to a shelter facility pending notification to the Court and a detention hearing. Such person or persons may be employees of the judicial department, the department, or other appropriate department of the Tribe.
b. The Court shall maintain control over the admission, length of stay, and release of all children placed in shelter.
c. Shelter in a temporary case shall be in a physically unrestrictive facility, of those children whom the Court has determined must be removed from their homes, but for whom physical restriction is not required.
d. The person or persons designated by the Court pursuant to Section (a) of this Rule should be authorized to release any child for whom it is determined shelter is not necessary to parent,

guardian, or other legal custodian either without restriction, or upon a written promise of such person to whom the child is released to bring the child to the Court at a time set or to be set by the Court. If such person to whom the child is released fails to appear upon notice, a bench warrant may be issued for such person, the child or both. [TCR 86-79]

Rule 28 DISQUALIFICATION OR DISABILITY OF JUDGE. The rules on disqualification or disability of a judge shall be the same as those rules that govern the Tribal Court. [TCR 86-79]

Rule 29 EVIDENCE. Except as otherwise provided by these Rules, the Winnebago Tribal Court Rules of Evidence shall govern all proceedings in the Juvenile Court. [TCR 86-79]

Rule 30 CLERICAL MISTAKES. The Court at any time and after notice may correct clerical mistakes in judgments, orders or other parts of the record, or errors in the record arising from oversight or omission. [TCR 86-79]

Rule 31 EXPLANATION OF RIGHTS AT FIRST APPEARANCE (Juvenile Offenders); CHILD-IN-NEED-OF-SUPERVISION. At his/her first appearance, the respondent shall be informed by the Court of:

a. The allegations against him/her.
b. The right to an attorney at his/her own expense.
c. The right to testify or remain silent and that any statement made by him/her may be used against him/her.
d. The right to cross-examine witnesses.
e. The right to subpoena witnesses on his/her own behalf.
f. The possible consequences if the allegations of the petition are found to be true. [TCR 86-79]

Rule 32 INSANITY AT TIME OF COMMISSION OF JUVENILE OFFENSE.

a. Notice. Notice of the defense of insanity shall be given to the Court within five days after service of the petition.
b. Determination of Insanity. The issue of insanity shall be determined at the time of the adjudicatory hearing. If a determination is made, the petition will be dismissed with prejudice and any proceeding for commitment shall be made pursuant to the Code of Civil Commitment. [TCR 86-79]

Rule 33 DETERMINATION OF COMPETENCY OR CAPACITY TO STAND TRIAL.

a. How Raised. The issue of competency or capacity shall be raised by motion at any stage of the proceedings.
b. Determination. The issue of competency or capacity shall be determined by the Court judge.
c. Finding. If a respondent is found incompetent to stand trial:
    1. Further proceedings are stayed until respondent becomes competent to participate in the proceedings; and
    2. If appropriate, the Court judge may order treatment to enable the respondent to attain competency. [TCR 86-79]

Rule 34 FINGERPRINTING OR PHOTOGRAPHING OF MINOR. The Court may order the fingerprinting or photographing of a minor upon motion of the prosecuting officer if such fingerprinting or photographing is necessary for purposes of identification. [TCR 86-79]

Rule 35 MENTAL OR PHYSICAL EXAMINATION. Upon motion and a showing of good cause, the judge may order a mental or physical examination of a respondent. [TCR 86-79]

Rule 36 PROBATION REVOCATION HEARING. Proceedings to revoke probation shall be conducted in the same manner as juvenile offender proceedings, except that no preliminary inquiry shall be conducted. [TCR 86-79]

Rule 37 DISPOSITIONAL HEARING.

a. Access to Reports. Copies of all social, diagnostic or other pre-dispositional reports ordered by the Court shall be provided to the parties at least one day before the dispositional hearing, and counsel for the parties shall be permitted to subpoena and examine in Court the person who prepared the report.
b. Time Limits. The dispositional hearing shall be held within ten days of the adjudicatory hearing. [TCR 86-79]

Rule 38 APPEALS. An appeal will be from any final order, decree, or judgment entered by the Juvenile Court. Appellate procedure will be governed by the Winnebago Appellate Rules. Initials shall appear on the record on appeal in place of the name of the child and respondents. [TCR 86-79]

Rule 39 STAY PENDING APPEAL.

a. Filing. After notice of appeal is filed with the Tribal Court, a party may request that the judgment be stayed.
b. Form and Content. The form and content shall be that prescribed by the Tribal Court. [TCR 86-79]

TITLE 4
ARTICLE 11
GRANDPARENT RIGHTS
(As adopted August 28, 2015)

4-1101 Purpose.
4-1102 Application.
4-1103 Scope.
4-1104 Grandparent Notification.
4-1105 Grandparent Input.
4-1106 Grandparent Visitation.
4-1107 Change of Grandchild's Domicile; Notice to Grandparent.
4-1108 Emergency Medical Care and Grandparent Medical Consent.
4-1109 Grandparent Medical Consent Authorization Affidavit.

4-1101 Purpose.

The Winnebago Tribe of Nebraska values the elders of our community as they possess the knowledge of tribal history, culture, and traditions that are vital to the Tribe. As such, grandparents play an important role within our tribal structure, as the caretakers of our culture and traditions, to instill those values into the upbringing of their grandchildren. As tribal elders, grandparents are responsible for providing guidance, knowledge, wisdom, and sharing experiences with their grandchildren in order to teach them their roles and responsibilities as tribal members. Therefore, the Winnebago Tribe of Nebraska believes that grandparents should have certain rights in order to effectuate this purpose. [TCR 15-114]

4-1102 Application.

1. The provisions of this Article shall apply to all matters where the Tribal Court has jurisdiction.
2. For purposes of this Article, "grandparent" shall mean the biological or adopted parent of the child's adopted or biological parent. [TCR 15-114]

4-1103 Scope.

1. This Article applies to the rights of grandparents with respect to their grandchildren. The best interest of the child shall be considered and under no circumstance shall grandparent's rights be exercised to the detriment of the relationship between a fit parent and the child. [TCR 15-114]

4-1104 Grandparent Notification.

1. A grandparent shall be notified without unnecessary delay when any of the following occur:
   A. Any custody petition involving the grandchild is filed;
   B. The grandchild is taken into temporary custody pursuant to Section 4-201(1)(B) or 4-201(3) and the Court has been notified; or
   C. An adjudicatory hearing involving the grandchild is scheduled to determine if the grandchild is neglected or dependent or a minor-in-need-of-care.
   D. A dispositional hearing involving the grandchild is scheduled pursuant to Section 4-410.
2. The Court shall provide notification to the grandparent at his/her last known mailing address. [TCR 15-114]

4-1105 Grandparent input. A grandparent shall be permitted to provide input on custody or placement actions involving the grandchild. The Court shall take into consideration grandparent input wherever practicable. [TCR 15-114]

4-1106 Grandparent Visitation.

1. A grandparent may petition the Court for reasonable visitation rights with respect to his/her grandchild under this Section if:
   - A. The marital relationship between the parents of the grandchild has been severed by death, divorce or legal separation;
   - B. In good faith the grandparent believes that ordinary visitation has been unreasonably denied by an intact family.
   - C. The grandparent seeks a modification of a prior court visitation order, for which this court has jurisdiction, because of a material change in circumstance.
   - D. The grandchild becomes subject to the Court's jurisdiction for any reason under Title 4;
   - E. The grandchild is illegitimate and the grandparent is a maternal grandparent of the illegitimate child;
   - F. The grandchild is illegitimate, and the grandparent is a paternal grandparent of the illegitimate grandchild and paternity has been established by a court of competent jurisdiction; or
   - G. A court in another jurisdiction ordered grandparent visitation.
2. There is a rebuttable presumption that a fit parent's decision, with regard to visitation, is in the best interest of the grandchild.
   - A. The court may grant the grandparent reasonable rights of visitation if the court finds that the grandparent has rebutted the presumption by clear and convincing evidence based upon the following:
     - i. That the grandchild will suffer emotional or psychological harm if visitation is not permitted;
     - ii. The grandparent is a fit and proper person to have visitation with the grandchild; and
     - iii. Visitation by the grandparent with the grandchild has been denied or unreasonably limited.
   - B. The court may also consider as elements of rebutting the presumption, if applicable, that:
     - i. The grandparent's child who is the parent of the grandchild has died or has become a noncustodial parent through divorce or legal separation;
     - ii. Visitation arrangements between the grandparent and grandchild were in place prior to filing of the petition;
     - iii. The grandparent has acted as the grandchild's custodian or caregiver, or otherwise has had a substantial relationship with the grandchild;
     - iv. The grandparent had frequent or regular contact with the grandchild for at least twelve (12) consecutive months;
     - v. The grandparent has provided the grandchild with guidance, knowledge, and wisdom relating to tribal history, culture and traditions; or
     - vi. Any other facts that establish that the loss of the relationship between the grandparent and the grandchild is likely to harm the grandchild.
3. If the court finds that the grandparent have successfully rebutted the presumption, then the court shall consider whether it is in the best interests of the grandchild to enter an order for reasonable grandparent visitation with the grandchild. In determining the best interests of the grandchild, the court shall consider all relevant factors, including, but not limited to, the following:
   - A. The love, affection and other emotional ties existing between the grandparent and the grandchild.
   - B. The length and quality of the prior relationship between the grandchild and the grandparent, the role performed by the grandparent in such relationship and the existing emotional ties of the grandchild to the grandparent.
   - C. The mental and physical health of all parties.

D. The wishes and concerns of the grandchild, if age twelve (12) years or older.
E. The effect on the grandchild of hostility between the grandparent and the parent or parents of the grandchild.
F. The willingness of the grandparent, except in the case of abuse or neglect of the grandchild by the parent or parents of the grandchild, to encourage a close relationship between the grandchild and the parent or parents of the grandchild.
G. Any history of physical, emotional or sexual abuse or neglect of any child or grandchild by the parent or parents or grandparent.
H. Whether the parent's decision to deny, or fail to offer, visitation to the grandparent, is related to the grandchild's well-being or is for some other unrelated reason.
I. The willingness of the grandparent to encourage and educate the grandchild regarding tribal history, culture and traditions.
J. Any other factor relevant to the physical and psychological well-being of the grandchild.

4. The Court may order visitation rights to the grandparent if it finds that such an order would be in the best interests of the grandchild. [TCR 15-114]

4-1107 Change of a Grandchild's Domicile; Notice to Grandparent. When a grandparent is granted visitation pursuant to Section 4-1106, and the grandchild's custodian intends to relocate with the intention of changing that grandchild's domicile, the custodian shall:

1. Notify the grandparent of the intent to change the grandchild's domicile at least five (5) days prior to the grandchild's change of domicile;
2. Provide the grandparent with the address and telephone number for the grandchild;
3. Make reasonable arrangements in order for grandparent(s) to exercise their visitation rights; and
4. Send the notice required in this section to the grandparent at his/her last known mailing address on file with the Court and file a copy of the notice with the Court. [TCR 15-114]

4-1108 Emergency Medical Care and Grandparent Medical Consent.

1. Medical, dental, health and hospital services may be rendered to persons of any age without the consent of a parent or legal guardian when, in the physician's judgment, an emergency exists and the person is in immediate need of medical attention and an attempt to secure consent would result in delay of treatment which would increase the risk to the person's life or health.
2. Except as otherwise provided in Section 4-1109(2), if a grandchild is in the care of his/her grandparent who has made reasonable attempts to locate and contact the grandchild's parents, guardian or custodian, but has been unable to do so, the grandparent may obtain authority to consent to necessary medical, psychological, or dental treatment for the grandchild by executing a grandparent medical consent authorization affidavit in accordance with Section 4-1109.
   A. "Necessary" shall mean those medical, psychological, or dental services recommended by a physician that do not qualify as an emergency in need of immediate medical attention.
   B. A grandchild is deemed to be in the care of his/her grandparent if that grandchild is under the supervision of his/her grandparent with his/her parent's knowledge and consent. [TCR 15-114]

4-1109 Grandparent Medical Consent Authorization Affidavit.

1. The grandparent medical consent authorization affidavit must meet the following requirements:
   A. The grandparent's signature must be notarized.
   B. The grandparent who executed the affidavit must file it with the Court not later than five (5) days after its execution.

2. The grandparent may execute a grandparent medical consent authorization affidavit without attempting to locate:
   A. The child's father if paternity has not been established with regard to the child.
   B. If the child is the subject of a custody order, the following parent:
      i. A parent who is prohibited from receiving a notice of relocation; or
      ii. A parent whose parental rights have been terminated.
3. The affidavit does not affect the rights of the child's parents, guardian, or custodian regarding the care, physical custody, and control of the child, and does not give the grandparent legal custody of the child.
4. A person or entity that relies on the affidavit, in good faith, has no obligation to make any further inquiry or investigation.
5. The affidavit terminates on the occurrence of whichever of the following occurs first:
   A. One year elapses following the date the affidavit is notarized;
   B. The parent, guardian, or custodian of the child acts to negate, reverse, or otherwise disapprove an action or decision of the grandparent who signed this affidavit;
   C. The affidavit is terminated by court order;
   D. The death of the child who is the subject of the affidavit; or
   E. The death of the grandparent who executed the affidavit.
6. If the affidavit terminates for any reason other than the death of the grandparent, the grandparent shall, within one week of termination:
   A. Provide written notice to any health care provider or health care facility to which the grandparent provided the affidavit.
   B. Provide written notice to any other person or entity that has an ongoing relationship with the grandparent and the grandchild that would reasonably rely on the affidavit unless notified.
7. The affidavit shall contain the following:
   A. Name, age, date and year of birth, and social security number of the grandchild;
   B. Name, age, date and year of birth, address, and social security number or other identification number of the grandparent; and
   C. A statement that the grandparent has been unable to locate the grandchild's parents.
8. The affidavit shall be permitted to utilize the following format:

   I, _____, was born on [DATE OF BIRTH] and am at least 18 years of age. I reside at: _____. My [DRIVER'S LICENSE / IDENTIFICATION CARD] number is: _____.

   I am the [MATERNAL/PATERNAL] grandparent of _____, who is currently in my care. My grandchild was born on _____ and is _____ years old. My grandchild's social security number is _____.

   Despite having made reasonable attempts, I am:

   _____ Unable to locate or contact the child's parents, or the child's guardian or custodian; or
   _____ Unable to locate or contact one of the child's parents and I am not required to contact the other parent because paternity has not been established; or
   _____ Unable to locate or contact one of the child's parent and I am not required to contact the other parent because there is a custody order regarding the child and one of the following is the case:
      _____ The parent has been prohibited from received notice of a relocation; or
      _____ The parental rights of the parent have been terminated.

I understand that this document does not authorize a child support enforcement agency to redirect child support payments. I further understand that to have an existing child support order modified or a new child support payments. I further understand that to have an existing child support order modified or a new child support order issued administrative or judicial proceedings must be initiated.

I declare that the foregoing is true and correct. Dated this _____ day of _____, ____.

Signed: _____

[TCR 15-114]