

**TITLE III  
CHILDREN AND WELFARE**

**CHAPTER 1  
GENERAL PROVISIONS**

**Section 3-1-1. Purpose.** The purpose of this Title is to provide for the protection and welfare of children and other individuals under the jurisdiction of the Tribe and to secure the care and guidance, preferably in his or her own home, which will serve the spiritual, emotional, mental, and physical welfare of such persons and the best interests of the Tribe. The primary objectives of this Title are:

1. To provide for the welfare, care and protection of the members, children, and families of the Tribe and others within the jurisdiction of the Tribe;

2. To preserve unity of the family, preferably by separating the child from his or her parents only when necessary;

3. To strengthen family ties;

4. To preserve and strengthen the cultural and Tribal identity of Ponca children;

5. To secure for every child removed from his or her home that care, control, and guidance as nearly equivalent to that which he or she should be given by his or her parents to help the child develop into a responsible, well-adjusted adult;

6. To improve any conditions or home environment which may be contributing to any danger or problem with the child's welfare;

7. To secure the rights of and ensure fairness to the children, wards, parents, guardians, custodians or other parties who come before the Court under the provisions of this Title;

8. To protect the peace and security of the Tribal community and its individual residents from child abuse and neglect; and

9. To provide procedures for securing the Tribe's jurisdiction over children who are members or eligible to be members in the Tribe and who are the subject of a child custody proceeding in another jurisdiction.

**Section 3-1-2. Definitions.** Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Abandoned" means the failure of the parent or legal custodian of a child, while being able, to provide reasonable support and maintain regular contact with his or her child, including providing normal supervision when such failure is intended by the parent or legal custodian to continue for an indefinite period in the future. Either voluntarily surrendering a child in accordance with Section 3-6-4 of this Title or failing to provide reasonable support and maintain regular contact with a child without just cause for a period of six (6) consecutive months shall constitute prima facie evidence of abandonment. For purposes of abandonment, "provide reasonable support and maintain regular contact" includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to provide reasonable support and maintain regular contact with a child. Physical custody with relatives or voluntary consent to placement does not constitute abandonment.

2. "Adoption" means:

a. An adoption completed pursuant to Chapter 10 of this Title;

b. An adoption completed pursuant to the laws of another jurisdiction; or

c. An adoption in accordance with the customs and traditions of the Tribe which gives a child a permanent parent-child relationship with someone other than the child's biological parents without any Court involvement, regardless of whether the parental rights of the biological parents have been terminated and regardless of whether a decree recognizing the adoption has been issued under Chapter 10 of this Title.

3. "Child in need of assistance" means a child as defined in Chapter 6 of this Title.

4. "Child offender" means a child as defined in Chapter 7 of this Title.

5. "Child's tribe" means the federally recognized Indian tribe in which a child is a member or eligible to be a member.

6. "Clear and convincing evidence" means evidence that produces a firm belief or conviction as to the truth of the allegations sought to be established; evidence so clear, direct, weighty and convincing as to enable a person to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. Evidence may be uncontroverted, and yet not be clear and convincing. Conversely, evidence may be clear and convincing despite the fact that it has been contradicted.

7. "Court" means the Ponca Tribe of Nebraska Tribal Court, including the Court acting as the juvenile court of the Tribe.

8. "Custodian" means any person who has legal custody of a child or to whom temporary physical custody, care, and control has been transferred by the child's parent or guardian.

9. "Department" means the Ponca Tribe of Nebraska Department of Social Services.

10. "Extended family" and "relative" mean a person who is, whether by blood, marriage, foster care, adoption or recognition as such by Tribal custom or tradition, another person's:

- a. Parent;
- b. Step-parent;
- c. Grandparent;
- d. Aunt or uncle;
- e. Brother or sister, whether by the half or the whole blood;
- f. Brother-in-law or sister-in-law;
- g. Niece or nephew;
- h. Cousin;
- i. Parent of the person's brother or sister, whether by the half or the whole blood;

j. Significant family friend identified by the family or the Tribe; or

k. Extended family member or relative recognized as such by Tribal custom or tradition.

11. "Foster care" means any action removing a child from his or her parents or custodian for temporary placement in a foster home or institution or in the home of a guardian or where the parent or custodian cannot have the child returned upon demand, but where parental rights have not been terminated.

12. "Good cause" means adequate or substantial grounds or reason to take or fail to take an action.

13. "Guardian" means a person who is by law responsible for an adult or a minor, other than the minor's parent, and includes a person appointed as a guardian for a minor or adult.

14. "Least restrictive," "least restrictive placement" and "least restrictive setting" mean the least drastic method of achieving the best interests of a child; the restrictions placed on the child must be reasonably related to the Court's objectives and must be the least restrictive way of feasibly achieving that objective.

15. "Parent" means a person who has a legal parent-child relationship with another person and includes a biological parent of a person, a person for who parentage is presumed or established pursuant to the laws of the Tribe, and a person who has lawfully adopted another person, including adoptions under the laws of the Tribe.

16. "Placement" means the temporary placement of a child in the physical, but not legal, custody of an individual or agency pending a final determination of where the child shall reside on a permanent basis. A placement is considered involuntary if it is done without the consent of the child's parent, guardian or custodian.

17. "Preponderance of the evidence" means evidence that is just enough to make it more likely than not that the allegations sought to be established are true; the preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence.

18. "Reasonable and active efforts" means the exercise of reasonable and active diligence and care by the Department or other responsible agency to use and provide services to accomplish the goal required that are:

- a. Culturally appropriate;
- b. Accessible to the family;
- c. Consistent and timely;
- d. Realistic under the circumstances;
- e. Relevant to the problems of the family and safety and protection of the child;
- f. Adequate to meet the needs of the child and family;  
and
- g. Available or could be made available within the resources of the Department and without undue financial burden on the Department.

19. "Termination of parental rights" means any action resulting in the termination of the parent-child relationship, whether voluntary or involuntary.

20. "Tribal Attorney" means an attorney employed by the Tribe to handle legal matters in the Court on behalf of the Tribe.

21. "Voluntary placement" means the placement of a child in the physical, but not legal, custody of an individual or agency with consent of the child's parent, guardian or custodian.

## CHAPTER 2 DEPARTMENT OF SOCIAL SERVICES

### **Section 3-2-1. Establishment.**

1. There is hereby established a Department of Social Services as an agency of the Tribe, under the authority of the Tribe, and delegated the powers, duties, and responsibilities set forth in this Title and as otherwise provided by the laws of the Tribe.

2. The Department shall consist of a Director and such other personnel and employees as may be required.

**Section 3-2-2. General Authority.** The Department shall have the following powers, duties and responsibilities:

1. To assist in the enforcement of all laws of the Tribe relating to the welfare of children, families and others, including laws related to abuse and neglect and all other laws of the Tribe designed to protect and assist children, families and others, and take the initiative in securing enforcement of laws for the protection of children and others where no adequate provision is made for such enforcement;

2. To work with families in a way that is characteristic of the Tribe's cultural traditions, customs, and values and address the well-being and protection of children, families and communities of the Tribe and the Tribe itself as well as others within the territory of the Tribe;

3. To make resources available for Tribal members to make decisions and choices affecting their present and future economic and social stability;

4. To promote family unity and well-being through protection of children, families, other persons, communities and the Tribe;

5. To take temporary or permanent custody of a child when ordered to do so by a court exercising jurisdiction over the child; and

6. To collaborate and cooperate with such other agencies of the Tribe, other tribes, the United States and the states as are necessary to achieve the purposes of this Title and other laws of the Tribe administered by the Department.

**Section 3-2-3. Child Services Workers.** The Department may employ case managers and other child services workers who shall have the authority, within and subject to the resources of the Department, to:

1. Receive reports of neglected, abused or abandoned children and adults;

2. Receive from any source, oral or written information regarding a child who may be in need of services;

3. Immediately conduct or have conducted an investigation in accordance with the provisions of this Title upon receipt of any report or information that a child is in imminent danger or harm;

4. Evaluate and assess the home environment of children and the risk to such children if they continue to be subjected to the existing home environment, and all other facts or matters found to be pertinent;

5. Determine whether any child is a child in need of assistance or child offender;

6. Make every effort to provide services to families to ensure the safety of children and others in their home;

7. Offer to the family of any child found to be a child in need of assistance or child offender appropriate services which may include, but shall not be restricted to, protective services;

8. Conduct such investigations and provide services as provided in this Title; and

9. Perform such other duties and responsibilities designated by the Director of the Department.

**Section 3-2-4. Rules and Regulations.** The Department shall promulgate rules and regulations for the enforcement of child welfare laws including, but not limited to:

1. Standards for child care agencies;
2. Foster care standards and licensing requirements;
3. Group home standards and licensing requirements;
4. Adoption services;
5. Substance abuse counseling services;
6. Foster care payments;
7. Confidentiality and requests for information; and

8. Any other rules, consistent with the laws of the Tribe, which are necessary for carrying out the purposes of this Title or any other law administered by the Department.

**Section 3-2-5. Foster Care Licensing.** The Department may issue licenses for foster care homes in accordance with the rules and regulations of the Department governing the same. The Department's licensing requirements and standards shall, at a minimum, include:

1. Cleanliness standards;
2. Water and light standards;
3. Health standards;
4. Occupancy standards;
5. Provisions for medical, dental, psychological, psychiatric, and pharmaceutical care;
6. Provisions for food, furnishings, clothing, and necessities;
7. Standards for individuals licensed as foster care parents, which shall include appropriate background checks;
8. Fire and safety standards;
9. Emergency standards;
10. Ponca cultural standards; and
11. Educational standards.

**Section 3-2-6. Group Home Licensing.** The Department may issue licenses for group homes for the care of children in accordance with the rules and regulations of the Department governing the same. The Department's licensing requirements and standards shall, at a minimum, include:

1. Cleanliness standards;
2. Water and light standards;
3. Health standards;
4. Occupancy standards;



5. Provisions for medical and dental care;
6. Provisions for food, furnishings, clothing, and necessities;
7. Employee records standards;
8. Standards for quantity and sufficiency of personnel;
9. Living space standards;
10. Fire and safety standards;
11. Emergency standards;
12. Discipline and behavior management standards;
13. Ponca cultural standards; and
14. Educational standards.

**Section 3-2-7. Confidentiality.**

1. Except where expressly provided otherwise in the laws of the Tribe, names, records and other information concerning persons applying for or receiving services from the Department shall be held confidential and shall not be provided or open to inspection to any but the following:

a. The person applying for or receiving services and their legal counsel or, in the case of a child, the child's parent, guardian or custodian and guardian ad litem or legal counsel;

b. Persons directly connected with the administration of the Department or the services applied for or provided to the person;

c. Other Tribal departments and agencies, the Tribal Attorney, agencies of other governments, and private agencies directly involved in the services applied for or provided to the person;

d. Institutions and agencies that have legal responsibility or authorization to care for, treat or

supervise the person applying for or receiving services and have a need for the information; and

e. To others when the person applying for or receiving services has authorized the release of information or otherwise waived confidentiality expressly in writing.

2. Nothing in this Section shall prevent the Department from releasing information:

a. To the Tribal Attorney for purposes of assisting or representing the Department;

b. In a proceeding in a court to which the Department is a party, participating, or representing the Tribe;

c. To the Tribal Attorney, law enforcement agencies, protective service workers, other Tribal departments and agencies, agencies of other governments, and others as necessary in order to protect a person from abuse or neglect or self-harm;

d. For the purpose of assisting in finding a placement or home for a child, including a child in need of assistance or child offender, provided that such release of information is limited to the minimal information necessary to find such placement or home; or

e. When a person applying for or receiving services authorizes the release of information or otherwise waives confidentiality expressly in writing.

**Section 3-2-8. Voluntary Placement Agreements.** The Department may enter into agreements providing for the voluntary placement of children with individuals approved by the Department, subject to the following:

1. The Department shall promulgate standards and minimum requirements for such agreements;

2. The Department shall use its best efforts to ensure that voluntary placements are in accordance with the placement preferences set forth in this Title; and

3. No voluntary placement under this Section may be for more than 180 days unless the Department determines that continued placement after 180 days is in the best interests of the child.

When necessary, the Department may file a petition in the Court to confirm that continued placement after 180 days is in the best interests of the child and the Court shall confirm the Department's determination unless that determination is unreasonable or arbitrary.

**Section 3-2-9. Permanency Planning.**

1. The Department shall set a permanency goal for the Tribe of the maximum number or percentage of children in the custody of the Department and placed in foster care who will remain in foster care for twenty-four (24) months or more. The Department may modify such goal on an annual basis.

2. In working to achieve the permanency goal for the Tribe, the Department will strive to:

a. Locate a permanent home for any child who has been in its custody and placed in foster care for more than one (1) year;

b. Identify priorities in placement alternatives;

c. Develop strategies to place children in permanent homes; and

d. Work to eliminate barriers to its identified strategies.

**Section 3-2-10. Use of Other Resources.** In carrying out its duties and responsibilities:

1. The Department shall use psychiatric, psychological, and therapeutic counseling and other services available to the Tribe, both from internal and external;

2. The Department may refer matters, including reports of abuse and neglect, for investigation to state or federal authorities or other appropriate professionals or authorities and the Department may adopt and treat the results of any such referred investigation, including any determinations therein, as its own, which the Court shall then treat as though conducted directly by the Department; and

3. The Department may rely upon and adopt an investigation, including any determinations therein, made by another investigating agency or authority, including investigations of

abuse and neglect, as its own and the Court shall treat such investigation as though conducted directly by the Department.

### **CHAPTER 3 TRIBAL COURT**

#### **Section 3-3-1. Subject Matter Jurisdiction.**

1. The Court shall act as the juvenile court and probate court of the Tribe and, subject to any limitations on the Court's general subject matter jurisdiction in the laws of the Tribe, shall have original subject matter jurisdiction over all matters under this Title.

2. In any matter arising under this Title, if a prior action on the same matter has been commenced in the court of another jurisdiction involving the same individual, the Court shall decline to assert original subject matter jurisdiction unless and until the prior action is dismissed. But, if the matter is subject to transfer to the Court, the Court may direct the appropriate parties to determine whether the case may or should be transferred to the Court in accordance with the provisions of this Title.

3. In any matter arising under this Title which requires the participation of the Department and involves an individual subject of the matter that is not a member or eligible to be a member of the Tribe and is not a child of an enrolled member of the Tribe, the Court shall only exercise jurisdiction over the matter if:

a. The Department determines that it has the resources and capability to serve the individual and family involved;  
or

b. There is an agreement between the Tribe and a state where the Tribe agrees to exercise jurisdiction over individuals who are not members or eligible to be members of the Tribe.

**Section 3-3-2. Personal Jurisdiction.** Except for limitations, restrictions, or exceptions imposed by or under the authority of the Constitution or laws of the United States or the Constitution of the Tribe, the Court shall have jurisdiction over the following persons under this Title:

1. Individuals who are members or eligible to be members of the Tribe regardless of residence or domicile;

2. Children of enrolled members of the Tribe, including adopted children, regardless of residence or domicile;

3. Individuals who are members of another federally recognized Indian tribe and who are residing or domiciled within the territory of the Tribe;

4. Children of members of another federally recognized Indian tribe:

a. Who are not members or eligible to be members of a federally recognized Indian tribe;

b. Who reside or are domiciled within the territory of the Tribe; and

c. When the parents, guardian or custodian consent to the jurisdiction of the Court, provided that such consent, once given, may be revoked only with the permission of the Court;

5. Subject to any limitations on the Court's general subject matter jurisdiction in the laws of the Tribe, any other individual who resides or is domiciled within the territory of the Tribe who consents to the jurisdiction of the Court, provided that such consent, once given, may be revoked only with the permission of the Court;

6. Where the Court asserts jurisdiction over a parent under this Section, the parent's child whenever the Court deems it necessary or appropriate for the purpose of the proceedings;

7. Where the Court asserts jurisdiction over a child under this Section, the parents, guardian or custodian of the child; and

8. Where the Court asserts jurisdiction over an individual under this Section, the individual's extended family whenever the Court deems it necessary or appropriate for the purpose of the proceedings.

**Section 3-3-3. Transfer from Other Courts.** The Court may accept or decline, under the procedures set forth in Chapter 4 of this Title, transfers of proceedings subject to this Title from other federal, state or tribal courts or tribunals.

**Section 3-3-4. Transfer to Other Court.**

1. The Tribe, the child's tribe or the child's parents may move the Court to transfer any proceeding before the Court under this Title involving a child who is not a member or eligible to be a member of the Tribe where such child:

a. Is an alleged or adjudicated child in need of assistance;

b. May or will be subject to an involuntary foster care placement;

c. May or will be subject to an involuntary termination of parental rights to such child; or

d. Is not an incapacitated person and may or will be subject to an involuntary guardianship.

2. In the case of a child who is not a member or eligible to be a member of the Tribe and is a member or eligible to be a member of another federally recognized Indian tribe, the Court shall transfer the proceedings involving that child to the jurisdiction of that child's tribe unless:

a. A parent, guardian or custodian of the child objects to the transfer;

b. A party objecting to the transfer demonstrates that the evidence necessary to decide the case cannot be presented in the jurisdiction of the child's tribe without undue hardship to the parties or the witnesses and the child's tribe is unable to mitigate the hardship;

c. A party objecting to the transfer demonstrates good cause not to transfer, provided that good cause shall not include:

i. Whether the case is at an advanced stage;

ii. Whether transfer would result in a change in placement of the child;

iii. The child's contacts with his or her tribe;

iv. The socio-economic conditions or any perceived inadequacy of the tribe's social services; or

v. The tribe's prospective placement for the child;

d. The federally recognized Indian tribe lacks a court or other tribunal which can hear the proceeding; or

e. The federally recognized Indian tribe which would exercise jurisdiction over the proceeding, or its court or other tribunal, declines the transfer.

3. In the case of any other child who is not a member or eligible to be a member of the Tribe, the Court may transfer the proceedings to an appropriate state court or court or other tribunal of another federally recognized Indian tribe where:

a. The state or other tribe has a significant interest in the child;

b. The transfer would be in the best interest of the child;

c. No party objecting to the transfer demonstrates good cause not to transfer; and

d. The state or other tribe, or their court or other tribunal, accepts the transfer of the proceedings.

4. Jurisdiction of the Court over a proceeding transferred pursuant this Section shall be terminated when the other court accepts the transfer.

**Section 3-3-5. Proceedings in Best Interests.** Proceedings under this Title shall be in the best interests of the child or the ward, as the case may be, but with due regard for the purposes of this Title and the child's or ward's parents, guardian or custodian and others directly interested in the proceedings.

**Section 3-3-6. Procedure.**

1. The procedures in the Court under this Title shall be governed by the rules of procedure for the Court which are not in conflict with this Title.

2. The Court may issue orders under this Title by telephone, facsimile, or other electronic means and such orders shall have the same force and effect as original written orders. Order issued by telephone shall be followed by a written order as soon thereafter as possible.

**Section 3-3-7. Rights of Parties.**

1. Every party to a proceeding under this Title has the following rights:

- a. To be represented by legal counsel at their own expense in all proceedings in the matter;
- b. To introduce evidence;
- c. To be heard on his or her own behalf;
- d. To have the Court compel the attendance of a witness on his or her behalf as permitted in this Chapter;
- e. To examine witnesses; and
- f. To be informed of any possible consequences if the allegations of a petition filed under this Title are found to be true.

2. All parties shall be entitled to advance copies of court documents, including petitions and reports, unless deemed inappropriate by the Court.

**Section 3-3-8. Conduct of Hearings.** All hearings involving proceedings under this Title shall be conducted in accordance with the following:

1. Hearings shall be informal in nature, but orderly;
2. Concerned parties shall be provided an opportunity to introduce evidence, be heard in their own behalf, and examine witnesses;
3. Any matter or information relevant and material to the subject matter of the hearing is admissible and may be received in evidence;
4. Written reports and other material and information relating to a party's mental, physical and social history may be



received and considered by the Court, provided that the Court may require the person who prepared the reports or material to appear as a witness and be subject to direct and cross-examination if:

a. Requested by the party, a parent, guardian or custodian of the party, or other interested party in the proceeding; or

b. The Court finds that the interests of the party, the parents, guardian or custodian of the party, or any other party to the proceedings so require;

5. A verbatim record shall be taken of all hearings;

6. The general public shall be excluded from all hearings;

7. Only the parties, their legal counsel, and witnesses shall be allowed to be present in the hearings;

8. The extended family of a child or ward subject of the proceedings and other persons determined to be appropriate by the Court, in its discretion, may be allowed to be present in the hearings; and

9. A child or ward may be temporarily excluded from any hearing if the Court finds it is in the best interests of the child or ward.

**Section 3-3-9. Continuance.**

1. Upon request of a child or ward subject of a proceeding under this Title, the Court may continue any hearing under this Title beyond the time limit within which the hearing is otherwise required to be held.

2. Upon request of the Tribe, a parent, guardian or custodian of a child or ward subject of a proceeding under this Title, or any other party to a proceeding under this Title, the Court may for good cause continue any hearing under this Title for such period of time as is necessary.

3. In no event may any hearing under this Title be postponed or continued for more than one hundred eighty (180) days.

**Section 3-3-10. Witness Lists and Subpoenas.**

1. In a proceeding under this Title, each party shall provide to each other party in the proceeding or their respective legal counsel, including the child or ward subject of a proceeding under this Title, with a list of names of all witnesses that will be called at any hearing under this Title. Such list shall be provided as soon as possible and in no event later than five (5) days prior to the hearing date set.

2. Upon request of the Tribe, the child or the child's parent, guardian or custodian, or on the Court's own motion, the Court shall issue subpoenas requiring attendance and testimony of witnesses and production of papers or other things at any hearing under the provisions of this Title.

3. The name, picture, place of residence or identity of any person appearing as a witness in proceedings under this Title shall not be published or broadcast in any news media or given any other publicity.

**Section 3-3-11. Notices of Hearings.**

1. The Court shall ensure that the following persons are notified of each hearing in a proceeding under this Title:

a. Any party to the proceedings, including the petitioner, or their legal counsel;

b. Any person issued a summons who makes an appearance in the proceedings;

c. The parents, guardian or custodian of any child subject of the proceedings or their legal counsel;

d. Legal counsel, guardian ad litem or advocate for a child subject of the proceedings, if any;

e. Foster parents and relatives providing care for a child subject of the proceedings;

f. A ward subject of the proceedings or his or her legal counsel, guardian ad litem or advocate, if any;

g. The Tribal Attorney, if the Tribe is a party to the proceedings or he or she is representing the Department in the proceedings;

h. The Department, if it is involved in the proceedings or acting on behalf of the Tribe in the proceedings; and

i. Any other person the Court may direct to be notified.

2. Any person required to be notified under this Section who is a minor and not represented by legal counsel, guardian ad litem, or advocate shall be notified by providing notice to the parent, guardian, or custodian of the minor.

3. When a party fails to appear in response to a notice of hearing, the Court may order the party's appearance by summons or subpoena.

**Section 3-3-12. Use of Social Services.** The Court may utilize such services as may be furnished by any tribal, federal, or state agency, provided that it is economically administered without unnecessary duplication and expense and that, in the case of the an agency of the Tribe, the agency determines that it has the resources and authority to furnish such services to the parties in the matter.

**Section 3-3-13. Appointment of Personnel for Children and Wards.**

1. At any stage of proceedings conducted under this Title, the Court may appoint separate legal counsel or spokesperson for a child or ward subject of the proceedings to act as guardian ad litem representing the child's or ward's best interests, without affecting the right to legal counsel of the parents, guardian or custodian of the child. The guardian ad litem shall be an officer of the Court for the purpose of representing the child's or ward's best interests and shall investigate the circumstances of each case where the guardian ad litem is appointed, including contacting family members, school officials, and other individuals having pertinent information regarding the child or ward.

2. At any stage of proceedings conducted under this Title, the Court may also appoint additional personnel such as court appointed special advocates (CASAs), juvenile court advocates, and/or referees whenever the Court decides that it is appropriate to do so.

**Section 3-3-14. Confidentiality of Court Records.**

1. The Court record of proceedings under this Title shall include transcripts, recordings of hearings, complaints, petitions, motions, memoranda, briefs, reports, findings of the Court, Court orders, and any other reports or papers filed in the action, whether maintained in paper form, electronically, or otherwise.

2. Except where expressly provided otherwise in this Title, the Court record of proceedings under this Title involving a child as well as fingerprints, photograph, name, address or other information concerning the identity of a child shall be held confidential and shall not be provided or open to inspection to any but the following:

- a. The child;
- b. The child's parent, guardian or custodian;
- c. The prospective adoptive parents of the child;
- d. The child's legal counsel or guardian ad litem;
- e. Personnel appointed by the Court in the case, such as court appointed special advocates;
- f. The Department;
- g. The Tribal Attorney;
- h. Any department or agency having custody of the child; or
- i. Any other person, by order of the Court, having legitimate interest in the particular case or the work of the Court, provided the Court may place appropriate restrictions on such access to ensure the confidentiality of records.

**CHAPTER 4  
INDIAN CHILD WELFARE ACT REQUIREMENTS**

**Section 3-4-1. Purpose.** The purpose of this Chapter is:

1. To ensure that the requirements and purposes of the Indian Child Welfare Act are followed whenever a Ponca child is the subject of a state court child custody proceeding;

2. To ensure that the Tribe's rights under the Indian Child Welfare Act are protected and carried into effect;

3. To set forth the manners and procedures the Tribe will follow in the handling of state court child custody proceedings involving Ponca children and subject to the Indian Child Welfare Act; and

4. To set forth and specify the Tribe's specific standards and preferences to be applied in state court child custody proceedings involving Ponca children and subject to the Indian Child Welfare Act.

**Section 3-4-2. Definitions.** Unless the context requires otherwise, in this Chapter:

1. "ICWA Specialist" means the staff member of the Department responsible for the monitoring and handling of state court proceedings subject to the Indian Child Welfare Act.

2. "State court child custody proceeding" means a child custody proceeding as defined in the Indian Child Welfare Act which has been filed in or is otherwise being heard in a state court.

**Section 3-4-3. Enforcement.**

1. Enforcement of this chapter will be the responsibility of the Tribal Attorney, the Department, and the Tribe.

2. Any person responsible for enforcement of this Chapter shall follow the laws of the Tribe, the Indian Child Welfare Act and any of its implementing regulations, including provisions therein governing notice, motions, transfers, and intervention requirements.

**Section 3-4-4. Receipt of ICWA Notices.** The ICWA Specialist shall be the official of the Tribe to whom notices of Indian Child Welfare Act proceedings shall be provided.

**Section 3-4-5. Indian Child Welfare Advisory Board.**

1. There is hereby established an Indian Child Welfare Advisory Board which shall consist of eight (8) members appointed by the Tribal Council as follows:

- a. One (1) individual from staff of the Department;
- b. One (1) individual from staff of the behavioral health program of the Health Department;
- c. One (1) individual from staff of the Culture Department;
- d. One (1) individual who is the director or deputy director of Tribal administration;
- e. Two (2) individuals who are members of the Tribe, preferably who have received services from the Department's Indian Child Welfare Act program or are otherwise determined to be qualified, who will serve for a term of two (2) years; and
- f. Two (2) Tribal Council members, who will serve for a term of two (2) years.

2. Any member of the Board may resign from his or her position by delivering a written resignation to the Tribal Council. Any member of the Board serving based on their position or office in the Tribe shall automatically be removed from the Board upon the member's resignation or removal from the position or office which causes them to serve on the Board. The Tribal Council may, by majority vote, remove any member of the Board at any time either with or without cause or reason.

3. The duties of the Board shall be as follows:

- a. To advise the Department on how it should proceed in state court child custody proceedings involving children who are members or eligible to be members of the Tribe, including determining whether to intervene or seek transfer in accordance with the provisions of this Chapter;
- b. To advise the Tribal Council and provide the Tribal Council input and a recommendation to determine whether extraordinary circumstances exist to not intervene in a state

court child custody proceeding involving a child who is a member or eligible to be a member of the Tribe;

c. To assist the Department in identifying services that the Tribe can provide or make available or should request that the state provide or make available to children and families subject of state court child custody proceedings where the Tribe has intervened;

d. Report to the Tribal Council on the Board's advice and determinations to the Department;

e. To hear complaints and grievances regarding how state court child custody proceedings involving children who are members or eligible to be members of the Tribe in accordance with the rules and regulations of the Department setting forth procedures for the same; and

f. Such other duties as the Tribal Council may from time to time assign the Board.

**Section 3-4-6. Qualified Expert Witnesses.** The Department shall maintain a list of qualified expert witnesses, subject to approval of the Tribal Council, to be used in Indian Child Welfare Act proceedings and provide training to such qualified expert witnesses.

**Section 3-4-7. Placement Preferences.** In any state court child custody proceeding, preference for foster care placement of the child shall be in accordance with the preferences established in Chapter 6 of this Title and preference for adoptive placement of the child shall be in accordance with the preferences established in Chapter 10 of this Title.

**Section 3-4-8. Release of Information for Placement.**

1. Notwithstanding any other provision of the laws of the Tribe and without any other authorization to release information or waiver of confidentiality, for the purpose of assisting in finding a placement for a child subject of a state court child custody proceeding, the Department shall have the authority to release to other social service agencies involved in the proceeding:

a. The names and contact information of relatives of the child;

b. The names and contact information of other members of the Tribe who may be considered as a placement for the child; and

c. The names and contact information of foster homes licensed by the Tribe.

2. Notwithstanding any other provision of the laws of the Tribe and without any other authorization to release information or waiver of confidentiality, for the purpose of assisting in finding a placement for a child subject of a state court child custody proceeding, the Department shall have the authority to release to relatives of such child, other members who may be considered as a placement for such child, and foster homes licensed by the Tribe:

a. The name of the child;

b. The name of the child's parent, guardian or custodian; and

c. Such other minimum amount of information necessary for such relative or member to identify the child subject of such proceeding and understand any needs of the child.

3. The Department shall have the authority to release information pursuant to this Section regardless of the original source of the information, including enrollment records.

#### **Section 3-4-9. Intervention.**

1. Whenever a child who is a member or eligible to be a member of the Tribe or is the biological child of a member of the Tribe is the subject of a state court child custody proceeding or a child custody proceeding in another court where the Tribe has the right to intervene and the case is not transferred to the Court, the Tribe may file a motion to intervene in the state court proceeding.

2. The motion to intervene shall be filed on behalf of the Tribe by the Department's ICWA Specialist, other staff member of the Department or the Tribal Attorney, as the Department may direct, and such designated individual shall have the authority to fully participate and otherwise represent the Tribe in the state child custody proceeding.



3. The purposes of the Tribe's intervention include, but are not limited to:

a. Protecting the Tribe's rights and interests in the case and the child;

b. Ensuring that the placement preferences of this Chapter and the Indian Child Welfare Act are followed;

c. To monitor the proceedings and ensure compliance with the Indian Child Welfare Act; and

d. To ensure that any disposition of the child is culturally and socially appropriate for the child's needs and in the best interests of the child and the Tribe.

4. The Tribe may choose not to intervene under this Section if extraordinary circumstances exist advising against such intervention. Extraordinary circumstances include, but are not limited to, excessive costs to the Tribe in intervening. The Tribal Council shall determine when such extraordinary circumstances exist based on the input and recommendation from the Indian Child Welfare Advisory Board established in this Chapter.

**Section 3-4-10. Seeking Transfer from Other Court.**

1. Whenever a child who is a member or eligible to be a member of the Tribe or is the biological child of a member of the Tribe is the subject of a state court child custody proceeding or a child custody proceeding in another court where the Tribe has the ability to request transfer, the Tribe may file a motion to transfer jurisdiction to the Court. If the motion is denied, the case may be appealed at the discretion of the Tribal Council.

2. The guidelines for determining whether to file a motion to transfer jurisdiction may include, but are not limited to:

a. The child's ties, if any, with the Tribe;

b. Whether the child is a resident or domiciled within the territory of the Tribe or was previously a resident within the territory of the Tribe;

c. Whether the child has been abandoned by his or her parents, guardian or custodian;

d. Whether the parents have requested or objected to a transfer of jurisdiction to Court;

e. Whether the child, if of sufficient age or maturity, has requested or objected to a transfer of jurisdiction to Court;

f. Whether the child has family residing within the territory of the Tribe and the stability of that family;

g. The ability of the Department to provide services that may be needed for the family and the child, including an appropriate placement, if needed;

h. Whether there would be excessive costs to the Tribe in transferring the case to Court;

i. Whether it is in the best interests of the Tribe and the child to transfer jurisdiction to Court;

j. Whether the child is receiving Ponca culturally appropriate services from the State Court;

k. Whether the State is complying with the Indian Child Welfare Act, including its placement preferences.

**Section 3-4-11. Transfer from Other Court.** The Court shall have the authority to accept or decline, under the procedures set forth in this Chapter, the transfer of any child custody proceeding from any state court or other court or tribunal.

**Section 3-4-12. Procedures for Transfer from Other Court.** Whenever transfer of a case to the Court is being sought:

1. If the Court receives an order of transfer or notice of request for transfer or that a request for transfer has been filed, the Court shall forward the order or notice to the Department and the Tribal Attorney for action in accordance with this Chapter;

2. The Department shall conduct a review of the case, in consultation with the Tribal Attorney and, if necessary, the Indian Child Welfare Advisory Board and Tribal Council, and determine whether the Tribe should recommend accepting or declining the transfer;

3. Based on the Department's review, the Department or the Tribal Attorney, as the Department may direct, on behalf of the

Tribe and the Department, shall file with the Court a petition to accept transfer or a recommendation to decline transfer; and

4. The Court shall enter an order accepting or declining transfer of jurisdiction, provided that the Court shall not accept a transfer unless the Tribe recommends acceptance of the transfer.

**Section 3-4-13. Contents of Petitions to Accept Transfer.** A petition to accept transfer of jurisdiction from another court shall be filed in accordance with the requirements of a petition alleging a child in need of assistance under Chapter 6 of this Title and shall also include, to the extent known or available:

1. The membership status of the child and his or her parents;

2. A summary of the grounds for the child custody proceeding in the transferring court;

3. The manner in which transfer was initiated from the transferring court, such as the filing of a motion to transfer;

4. The party who sought transfer in the transferring court;

5. Whether any party objected to the transfer in the transferring court;

6. The entry of any order of transfer from the transferring court and, if such order has been made, a copy of the order attached as an exhibit to the petition;

7. The current custody and placement status of the child;

8. The recommended custody and placement of the child upon acceptance of transfer, including whether the child will be made a ward of the Court or remain a ward of the transferring court;

9. The current and recommended permanency and case plans for the child, if available;

10. A statement that acceptance of the transfer is in the best interests of the child;

11. Whether any orders of the transferring court should be modified by the Court in its order accepting transfer; and

12. Any other pertinent or necessary information related to the transfer and the Tribe's recommendation.

**Section 3-4-14. Contents of Recommendation to Decline Transfer.**

A recommendation to decline transfer of jurisdiction from another court shall include, to the extent known or available:

1. The membership status of the child and his or her parents;
2. A summary of the grounds for the child custody proceeding in the transferring court;
3. The manner in which transfer was initiated from the transferring court, such as the filing of a motion to transfer;
4. The party who sought transfer in the transferring court;
5. Whether any party objected to the transfer in the transferring court;
6. The entry of any order of transfer from the transferring court and, if such order has been made, a copy of the order attached as an exhibit to the petition;
7. The current custody and placement status of the child;
8. The Tribe's basis for recommending declining the transfer; and
9. Any other pertinent or necessary information related to declining the transfer.

**Section 3-4-15. Order Accepting Transfer.**

1. In addition to any other matters necessary for an order of the Court, an order accepting transfer of jurisdiction from another court shall include:

- a. A finding regarding the membership status of the child and that the child has been returned to the jurisdiction of the Court;
- b. A finding regarding the membership status of the child's parents;

c. A determination of the Court's subject matter and personal jurisdiction;

d. A determination of whether the child is a child in need of assistance as defined by the laws of the Tribe;

e. A determination of whether it is in the best interests of the child that the Court accept transfer of jurisdiction;

f. An order accepting jurisdiction over the child custody proceeding;

g. An order regarding the legal custody and physical placement of the child until a hearing can be conducted to further determine custody;

h. Any modifications or exceptions to the transferring court's orders; and

i. Any other findings or orders the Court deems necessary or desirable.

2. Unless the Court's order accepting transfer provides otherwise and to the extent not inconsistent with such order, all orders of the transferring court which were effective as of the date of transfer shall remain in effect and shall be treated as if issued by the Court until the issuance of an order from the first hearing on the petition to transfer.

3. Upon entry of an order accepting transfer, the Court shall proceed with the case under the procedures provided in Chapter 6 of this Title.

4. An order issued under this Section may be made contingent upon receipt or entry of an order of transfer from the transferring court if such order was not made or entered at the time of the filing of the petition to accept transfer.

#### **Section 3-4-16. Order Declining Transfer.**

1. In addition to any other matters necessary for an order of the Court, an order declining transfer of jurisdiction from another court shall include:

a. The basis for declining jurisdiction as provided in the Tribe's recommendation to decline transfer;

b. An order declining jurisdiction over the child custody proceeding; and

c. Any other findings or orders the Court deems necessary or desirable.

2. Unless the Court's order declining transfer provides otherwise based on specific findings therefore, a declination of transfer shall not preclude transfer of the same proceeding later in the transferring court's proceedings.

3. A declination of transfer shall not have any relevance, force or effect regarding the transfer of any other child custody proceeding to the Court.

#### **Section 3-4-17. Recognition of Transferring Court Proceedings.**

1. If the transferring court is the court of another federally recognized Indian tribe, the Court shall give full faith and credit to the findings, orders and other proceedings of the transferring court applicable to the transferred child custody proceeding and recognize and enforce the same provided that:

a. The transferring court properly asserted jurisdiction over the child; and

b. The finding or order at issue was not obtained fraudulently or dishonestly.

2. If the transferring court is not a court of another federally recognized Indian tribe, the Court may accept any adjudication, disposition or finding of the transferring court, including any plea of the parents, guardian or custodian of the child, and adopt such adjudication or disposition as its own and proceed accordingly, provided that the Court shall not accept any adjudication, disposition or finding that is repugnant to the laws of the Tribe or the Indian Child Welfare Act.

### **CHAPTER 5 REPORTING AND INVESTIGATING ABUSE AND NEGLECT**

#### **Section 3-5-1. Reporting of Abuse or Neglect.**

1. The following persons are mandated to report abuse and neglect under the circumstances set forth in this Section:

a. Physicians, hospital interns or residents, surgeons, physician's assistants, religious practitioners, osteopaths, chiropractors, and podiatrists;

b. Registered nurses, licensed practical nurses, nurse practitioners, nurse's aides, and midwives;

c. Dentists, dental assistants, and hygienists;

d. Coroners;

e. Psychiatrists and other mental health professionals or counselors;

f. Social workers and substance abuse counselors;

g. Teachers, school counselors or other school personnel;

h. Law enforcement officers;

i. Licensed or registered child care providers and residential care or institutional personnel; and

j. Any other person having substantial responsibility for the care of children.

2. Any person who is mandated to report under this Section whose observation or examination of any child discloses evidence of injury, sexual molestation, abuse, or physical neglect which appears to have been inflicted upon such child by other than accidental means or which is not explained by the available medical history as being accidental in nature, shall immediately report or cause reports to be made of such information to the Tribal Attorney, the Department, law enforcement officials, or such other agency of the Tribe with jurisdiction over child abuse and neglect.

3. Any other person who has knowledge of or observes a child whom he or she reasonably suspects has been a victim of child abuse or neglect may report such suspected instances of child abuse or neglect in the manner provided in this Section. Persons reporting under this subsection, except those mandated to report under subsection 1 of this Section, may remain anonymous.

4. A report under this Section shall be made by telephone or in person, and shall be followed by a written report. The report shall include:

a. The names, addresses and tribal affiliation, if any, of the child and his or her parents or the person having custody of such child, if known;

b. The child's age and sex;

c. The nature and extent of the child's abuse or neglect;

d. Previous abuse or neglect of the child or his or her siblings, if known;

e. The name, age, and address of the person alleged to be responsible for the child's abuse or neglect, if known;

f. The name and address of the person or agency making the report, unless anonymous as permitted in this Section; and

g. Any other information that such person believes might be helpful in establishing the cause of the injury, molestation, abuse or physical neglect.

5. Any person making a report pursuant to this Section may take or cause to be taken photographs or x-rays of the child and the vicinity involved and such photographs or x-rays may be introduced into evidence at a hearing.

6. The reporting duties under this Section are individual, and no supervisor or administrator may impede or inhibit such reporting duties and no person making such report shall be subject to any sanction for making such report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established, provided that they are not inconsistent with the provisions of this Chapter.

#### **Section 3-5-2. Immunity From Liability.**

1. Any person making a report or providing information pursuant to this Chapter, including the submission of copies of medical examination, treatment or hospitalization records, pursuant to this Chapter shall be immune from any civil or criminal



liability by reason of such action unless such person acted with malice and without reasonable cause.

2. Any person involved in the investigation or treatment of child abuse or neglect or who makes a temporary placement of a child pursuant to this Title or who in good faith cooperates with the Department or other agency or official in investigation, placement or treatment plan shall also be immune from any civil or criminal liability by reason of such action.

3. The provisions of this Section shall not extend to any person alleged to have committed an act or acts of child abuse or neglect which is the subject of the report or investigation.

**Section 3-5-3. Fine for Not Reporting.**

1. Any person mandated to report a case of known or suspected abuse or neglect under this Chapter who knowingly fails to do so or willfully prevents someone else from doing so shall be subject to a civil fine not to exceed \$500.00.

2. Any person who refuses to provide any information which is required to be furnished under this Chapter shall be subject to civil fines not to exceed \$500.00 per day for each day that such information is not furnished after it is first requested.

**Section 3-5-4. Central Registry.**

1. The Department shall maintain a central registry of reports, investigations and evaluations made under this Chapter.

2. The registry shall contain the information furnished by all persons. Data shall be kept in the central registry until the child concerned reaches the age of eighteen (18) years (unless the Court orders that individual records shall be kept on file beyond that date in order to protect other siblings).

3. Data and information in the central registry shall be confidential and shall be made available only with the approval of the Director of the Department to the Court, other social service agencies, public health and law enforcement agencies, licensed health practitioners, and health and educational institutions licensed or regulated by the Tribe. A request for the release of information must be submitted in writing, and such request and its approval shall be made a part of the child's file.

4. The Department may enter into agreements with other jurisdictions to share and aggregate data and information in the central registry.

**Section 3-5-5. Investigation of Reports.**

1. Within thirty (30) days of receiving a report under this Chapter or any other notice or report of child abuse or neglect, the Department and law enforcement officers shall complete an investigation of the report or refer the report to other appropriate authorities for investigation.

2. Investigating personnel shall have the authority, without the consent of or advanced notice to and out of the presence of the parent, guardian or custodian, to:

a. Interview a child;

b. Take photographs of the areas of trauma visible on the child; and

c. Conduct or have conducted medical and psychological examinations or testing of the child.

3. Upon completion of an investigation, including a referred investigation, the Department shall make a determination as to whether evidence exists to substantiate the allegation of abuse or neglect. If the report is substantiated, the information shall be added to the central registry for child abuse and neglect and forwarded to the Tribal Attorney for appropriate action. If the allegations are not substantiated by the evidence, the Department shall close the case and it will not be recorded into any child abuse or neglect registry. If the Department is unsure whether the allegations are substantiated, it may request the input of the Tribal Attorney or other appropriate professionals or authorities to attempt to make a determination.

4. Upon receipt of a report and investigation from the Department, the Tribal Attorney shall make a determination, based on the report and investigation, whether further action is warranted, including whether to pursue an action under this Title or to refer the matter to other social services or law enforcement agencies.

**Section 3-5-6. Confidentiality.**

1. All records, files and information relating to reports of child abuse or neglect, including investigations thereof, shall be confidential and shall not be disclosed except as expressly authorized in this Title.

2. Any party receiving records, files and information relating to a report of abuse or neglect, including investigations thereof, shall hold such records, files and information confidential and not disclose the same to any third party unless the Court orders the release of the information or a portion of such information when necessary for determination of an issue before the Court.

3. No person may claim any privilege of confidentiality in any judicial proceeding involving an alleged abused or neglected child or resulting from the giving of, or causing the giving of, a report pursuant to this Chapter.

4. Any person who knowingly violates this Section shall be subject to a civil fine not to exceed \$500.00.

**Section 3-5-7. Release of Information.** The Department shall release records, files or other information relating to a report of child abuse or neglect, including investigations thereof to the following parties upon receipt by the Department of a request for such information and a showing that it is necessary for the person to have such information in the performance of the person's official functions related to child abuse or neglect:

1. The Tribal Attorney, law enforcement agencies, protective service workers, and others investigating reports of known or suspected child abuse or neglect;

2. The legal counsel or guardian ad litem of the child who is the subject of the information;

3. Institutions and agencies that have legal responsibility or authorization to care for, treat or supervise the child who is the subject of the information or report;

4. A licensed psychiatrist, psychologist or mental health counselor treating the child who is the subject of the information or report; and

5. A physician who has before him or her the child who is the subject of the information or report.

## **CHAPTER 6 CHILDREN IN NEED OF ASSISTANCE**

**Section 3-6-1. Purpose.** The purpose of this Chapter is to protect children from abuse and neglect and otherwise assist children and families who need services or assistance. Adjudication of a child as a child in need of assistance is an adjudication of the status or condition of the child.

**Section 3-6-2. Child in Need of Assistance Defined.** For purposes of this Chapter, a child in need of assistance shall include, but not be limited to, a child:

1. Whose parent, guardian or custodian has abandoned the child or has subjected the child to mistreatment or physical battering;
2. Who lacks proper parental care through the actions or omissions of the child's parent, guardian or custodian;
3. Whose environment is injurious to the child's welfare;
4. Whose parent, guardian or custodian fails or refuses to provide necessary subsistence, supervision, education, medical care or any other care necessary for the child's health, guidance or well-being;
5. Who is homeless, without proper care or not domiciled with the child's parent, guardian or custodian through no fault of the child's parent, guardian or custodian;
6. Who is threatened with substantial harm;
7. Who has sustained emotional harm or mental injury as indicated by the child's intellectual or psychological capacity evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, with due regard to the child's culture;
8. Who is subject to sexual abuse, sexual molestation or sexual exploitation by the child's parent, guardian, custodian or any other person;

9. Who is left unattended or unsupervised for extended periods of time in circumstances that pose a risk of substantial harm to the child;

10. Who is absent from attendance at school without valid excuse:

a. If the child is in elementary school, for seven (7) school days per school year; or

b. If the child is in middle school, junior high school, or high school, for one (1) or more class periods on seven (7) school days per school year;

11. Who has run away from home or is otherwise absent from home for an unreasonable period of time without permission of a parent, guardian or custodian;

12. Who is otherwise beyond the control of his or her parents, guardian or custodian; or

13. Whose behavior or condition endangers the child's own welfare or the welfare of others.

**Section 3-6-3. Best Interests of Child Defined.** For purposes of this Chapter, the best interests of a child shall be determined in accordance with the following principles:

1. A child must have a sense of belonging with the child's family and tribe;

2. A child must develop self-identity and awareness of his or her unique role within the larger community, including the child's cultural community by participation in cultural activities, speaking one's native language, and having opportunities and encouragement to pursue education and enrichment;

3. A child must establish, develop, and maintain political, cultural, social, and spiritual relationships with the child's tribe and tribal community;

4. A child must have connection to loving family members for guidance and nurturing;

5. A child must have a safe and nurturing home environment offering emotional support and comfort, the basic needs of food,

clothing and shelter, reasonable medical care and protection from danger, violence, or exposure to harmful conduct including drug or alcohol abuse; and

6. A child cannot be happy unless his or her primary needs are met, but a child also needs opportunities for play and recreation, leisure time and other activities the child enjoys, and possession of toys and other personal items of importance to the child.

**Section 3-6-4. Voluntary Surrender of Infant Child.**

1. A child shall not be considered a child in need of assistance under this Chapter and it otherwise shall not be a violation of this Chapter for a parent to leave a child who is ninety (90) days of age or younger at a Ponca Tribal Office during operating hours or at a hospital.

2. Should a child be left with personnel at a Ponca Tribal Office or a hospital, the Department or other appropriate Tribal or state authorities will be notified for proper care of the child.

**Section 3-6-5. Child Protection Teams.**

1. The Department may establish a child protection team whose goal shall be, through the involvement and coordination of various agencies, to prevent children from being abused or neglected or otherwise becoming children in need of assistance under this Chapter. The child protection team may include licensed or certified medical and health professionals, representatives of the Department, representatives of the Culture Department, mental health professionals, representatives of public schools, attorneys and lay counsel, and representatives of the Tribal community.

2. The child protection team shall be technical and advisory in nature. It shall in no manner undermine the authorities and responsibilities of individual agencies.

3. The child protection team shall conduct its activities in accordance with the following:

a. Emphasizing the prevention of child abuse and neglect;

b. The promotion of cooperation, communication, and consistency among agencies;

c. The facilitation of the identification of danger signs which will prompt immediate intervention and/or preventive actions to be taken;

d. Debating what actions would best promote the well-being of a child and provide relevant information and advice to decision-making agencies;

e. The facilitation and not hindrance of the decision-making process; and

f. The maintenance of confidentiality by all child protection team members.

4. The Department may refer any case involving a child in need of assistance to the child protection team. When a child whose welfare is before the child protection team is found to be endangered or abused or neglected, the child protection team should:

a. Initiate protective services as promptly, efficiently, and effectively as possible so as to ensure the child's immediate safety and health;

b. To the extent possible, correct the problems which caused the abuse or neglect and prevent it from occurring again;

c. Facilitate the development and implementation of a plan to promote the long-term well-being of a child in need of assistance and the appropriate family members; and

d. Stabilize the circumstances for the long-term benefit of the children and, to the extent possible, their family members.

5. The child protection team may develop and implement procedures and standards for:

a. Reviewing and tracking all child in need of assistance cases which the Department refers to it;

b. Monitoring child in need of assistance activities to ensure that adequate preventive, protective, and corrective services are provided;

- c. Investigating cases the Department refers to it to determine whether the best interests of the child are being met;
- d. Reviewing case plans for their adequacy;
- e. Maintaining confidentiality of information;
- f. Preventing and handling conflicts of interest involving members of the child protection team;
- g. Receiving child in need of assistance referrals from the Department, provided that the determination of which cases should be referred to the child protection team shall at all times remain with the Department;
- h. Identifying available community resources, programs and services;
- i. Providing recommendations to various pertinent agencies;
- j. Promoting cooperation, communication, and consistency among agencies;
- k. Providing a forum for debating what actions would best promote the well-being of children;
- l. Responding to inquiries from the community and other individuals and groups consistent with the requirements of confidentiality of matters involving children and families;
- m. Providing efficient preventive, protective, and corrective child abuse and neglect services;
- n. Providing information and technical recommendations to decision-making agencies;
- o. Educating communities about child abuse and neglect problems and solutions;
- p. Identifying danger signs which prompt intervention and/or preventive actions;



q. Assisting in the development and implementation of plans to promote the long-term well-being of children and their families; and

r. Assisting in the development and implementation of strategies by communities to create environments which provide opportunities for community members to lead meaningful, productive, self-fulfilling, and rewarding lives which promote the dignity, self-worth, self-respect, and self-sufficiency of community members.

6. The Department may promulgate rules and regulations for the development and operation of the child protection team.

**Section 3-6-6. Tribal Attorney to Represent the Tribe.** The Tribal Attorney shall represent the Tribe and the Department in all proceedings brought under this Chapter.

**Section 3-6-7. Proceedings of a Civil Nature.**

1. Proceedings in cases under this Chapter shall be regarded as civil proceedings, with the Court exercising both legal and equitable powers.

2. Nothing in this Chapter shall preclude or prevent a child in need of assistance from also being the subject of a child offender proceeding under Chapter 7 of this Title if the circumstances warrant.

**Section 3-6-8. Continuing Jurisdiction.**

1. Jurisdiction of the Court over a child under this Chapter is retained until terminated by any of the following situations:

a. The child becomes an adult;

b. The case is transferred by the Court to another court and the other court accepts the transfer; or

c. The Court dismisses a petition or enters an order closing the matter.

2. Where the Court deems it appropriate, the Court may retain jurisdiction under this Section over children and their extended family members who leave the territory of the Tribe.

**Section 3-6-9. Proceedings Involving Child of Another Tribe.** In any proceeding under this Chapter involving a child who is not a member of the Tribe and is a member or eligible to be a member of another federally recognized Indian tribe:

1. The Court shall provide notice of the proceedings to the child's tribe as soon as possible, and preferably prior to the next hearing, after the Court knows or has reason to know that the child is not a member of the Tribe and is a member or eligible to be a member of another federally recognized Indian tribe, which shall include:

a. The nature of the proceedings;

b. Notification of the tribe's right to intervene in the proceedings; and

c. Notification of the tribe's right to request transfer of the proceedings involving that child to it;

2. The child's tribe shall have a right to intervene at any point in the proceedings; and

3. No foster care placement or termination of parental rights proceeding shall be held until at least ten (10) days after receipt of notice of the proceedings by the child's tribe.

**Section 3-6-10. Standards for Involuntary Removal.**

1. Except for emergency removal as provided in this Chapter, no child shall be removed from the physical custody of his or her parents, guardian or custodian unless the Court finds by clear and convincing evidence that:

a. Remaining in the home is contrary to the welfare of the child; and

b. Except as provided in this Section, reasonable and active efforts have been made to prevent or eliminate the need for removal of the child.

2. Reasonable and active efforts to prevent or eliminate the need for removal of the child shall not be required when:

a. The child has been abandoned by the parents, guardian or custodian;

b. The parent, guardian or custodian is unwilling to have physical custody of the child;

c. The child has been subject to chronic abuse or sexual abuse by the parents, guardian or custodian;

d. The parents previously had parental rights involuntarily terminated to a sibling of the child;

e. The parents, guardian or custodian has committed or aided, abetted, attempted, conspired or solicited to commit murder or voluntary manslaughter of the child or another child of the parent, guardian or custodian; or

f. The parents, guardian or custodian has committed a felony assault that resulted in serious bodily injury to the child or another child of the parent, guardian or custodian.

3. Whenever the Court orders a child removed from the physical custody of his or her parents, guardian or custodian under this Chapter, the Court shall include in the order a written determination establishing that the standards of this Section have been met.

### **Section 3-6-11. Placement Preferences.**

1. In any foster care, guardianship, or pre-adoptive placement, temporary or permanent, preference shall be given to placement in the following order:

a. A relative or extended family member of the child who is a member of the child's tribe;

b. A relative or extended family member of the child who is not a member of the child's tribe;

c. A non-relative member of the child's tribe and approved by the Tribe or the child's tribe;

d. A member of a federally recognized Indian tribe approved by the Tribe or the child's tribe;

e. An Indian home approved by the Tribe or the child's tribe;

f. A foster home of a member of the child's tribe licensed by the Tribe or by a state;

- g. A non-Indian foster home licensed by the Tribe;
- h. A foster home specially licensed by a state for Indian children;
- i. A non-Indian foster home licensed by a state within whose geographical boundaries the territory of the Tribe may lie; or
- j. An institution for children approved by the Tribe.

2. If a child who is a member or eligible to be a member of the Tribe is placed with a non-Ponca family, the following placement conditions, when reasonable, should be imposed:

a. The child should have reasonable access to Ponca family members, including, but not limited to, visitation, phone calls, and correspondence;

b. If the child wishes to observe or participate in the Tribe's cultural and religious ceremonies and activities, the Department must be notified so that appropriate arrangements can be made;

c. The child's name cannot be changed;

d. All correspondence from the Tribe (such as the Tribal Newsletter, special mailings, etc.) must be accepted;

e. The Tribe must be kept informed of all address changes;

f. The Department must be allowed to conduct reviews at least two (2) times per year, upon adequate advance notice from the Tribe; and

g. If the non-Ponca family placement or parental rights are at risk, the Department must be notified immediately.

3. Notwithstanding anything in this Section, the Court, with good cause shown, may place the child in a placement that serves the best interests of the child.

**Section 3-6-12. Placement of Children Outside of Home.**

1. Subject to the preferences in Section 3-6-11, when any child is placed outside of the home of his or her parents, guardian or custodian, the child shall be placed in a home:

a. Which is the least restrictive placement which most approximates a family;

b. In which the child's needs may be met;

c. That facilitates and encourages visitation and reunification; and

d. That is in close proximity to the home of the child's parents, guardian or custodian, unless the best interests or special needs of the child require otherwise.

2. Siblings shall be placed together whenever possible, unless it is contrary to their best interests.

#### **Section 3-6-13. Emergency Removal of Children.**

1. No child shall be removed from the home of the child's parent, guardian or custodian absent a specific order of the Court, except as follows:

a. When the child has been relinquished to the Department or the parent, guardian or custodian has consented to such removal;

b. When failure to remove the child may result in a substantial risk of death, permanent injury, or serious emotional harm to the child; or

c. When the parent, guardian or custodian is absent and it appears, from the circumstances, that the child is unable to provide for his or her own basic necessities of life, and that no satisfactory arrangements have been made by the parent, guardian or custodian to provide for such necessities.

2. If a person investigating a report of child abuse or neglect under Chapter 5 finds that grounds for removal as provided in this Section have been met, such person may remove or direct Tribal law enforcement or the Department to remove the child from the home in which the child is residing and place the child in a temporary home or other appropriate placement.

3. Tribal law enforcement officers and/or authorized personnel from the Department shall have the power to remove a child pursuant to this Section provided that:

a. Reasonable grounds existed at the time of the removal to believe the removal was necessary;

b. The person removing the child ensures the safety and well-being of the child until such time as the Court assumes control over the matter; and

c. The person removing the child complies with the notice provisions of this Section.

4. If a child is removed from his or her home pursuant to this Section, the person who removed the child shall:

a. Attempt to contact the Court within six (6) hours of the removal and document the attempt to contact the Court;

b. Provide actual notice to the Court no later than 12:00 p.m. (noon) the next business day after the removal;

c. Make all reasonable efforts to notify the parents, guardian or custodian within twelve (12) hours of the removal, including by personal, telephone and written contacts at their residence, place of employment, or other location where the parent, guardian or custodian is known to frequent with regularity;

d. If the parent, guardian or custodian cannot be found, give notice to adult members of the extended family of the parent, guardian or custodian and/or the adult extended family of the child;

e. If the Tribal Attorney was not involved or notified of the removal, notify the Tribal Attorney of the removal within twenty-four (24) hours of the removal and provide the Tribal Attorney with all necessary information to file an application for temporary custody and a petition under this Chapter.

#### **Section 3-6-14. Hearings on Emergency Removal.**

1. When a child has been removed pursuant to Section 3-6-13, the Tribal Attorney shall file an application for a temporary

custody order with the Court approving the removal no later than 12:00 p.m. (noon) of the third business day following the removal.

2. The Court may issue a temporary custody order under this Section ex parte without a hearing if it appears from the face of the application and any supporting affidavits or sworn oral testimony communicated by telephone or other appropriate means that:

a. The removal complied with Section 3-6-13, including the notice provisions thereof;

b. There is good cause to believe that the removal of the child was permissible as provided under Section 3-6-13; and

c. There is probable cause to believe that continued removal from the custody of the parent, guardian or custodian is in the best interest of the child.

3. A temporary custody order issued under this Section shall:

a. Retroactively approve of the removal;

b. Order the continued removal of the child, if appropriate;

c. If the child is not returned to his or her parents, guardian or custodian, grant temporary legal custody of the child to the Department and authorize the Department to place the child in foster care in accordance with the placement preferences set forth in this Chapter; and

d. Require the Department to promptly notify the Tribal Attorney of the child's placement.

4. No child may be held in temporary custody pursuant to this Section longer than forty-eight (48) hours, excluding Saturdays and legal holidays, unless:

a. The parents, guardian or custodian from whom the child was removed voluntarily consent in writing to extend the temporary custody; or

b. A petition has been filed under this Chapter and the Court orders longer custody during a hearing where all parties are provided an opportunity to appear and be heard.

5. The Court may at any time order the release of a child from temporary custody under this Section, with or without restriction regarding the care and protection of the child.

**Section 3-6-15. Initiation of Proceedings.**

1. Proceedings in the Court to declare a child in need of assistance shall be initiated by the filing of a petition.

2. Petitions may be filed by the Tribal Attorney, or in the absence of the Tribal Attorney, the Department and shall be captioned: "In Re the Matter of (child's or children's name(s)), [A] Child[ren] in Need of Assistance".

3. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. The child's name, sex, date and place of birth, current residence and tribal membership or the reasons such information is unavailable;

b. The names, last known addresses and tribal membership of the child's parents, guardian or custodians or the reasons that such information is unavailable;

c. The names, last know addresses and tribal membership of the child's extended family members, former care givers and others who have or may have a direct or substantial interest in the child, or the reasons such information is unavailable;

d. The basis for the Court's jurisdiction;

e. An allegation that the child is a child in need of assistance along with a specific reference to one or more of the definitions of a child in need of assistance given in this Chapter;

f. A plain and concise statement of facts upon which the allegations of a child in need of assistance are based, including the dates and locations of the alleged acts; and



g. A request that the Court adjudicate the child to be a child in need of assistance.

4. The petition shall be brought by the Tribe on behalf of the child and the child's parents, guardian or custodian, as applicable, shall be included as named respondents.

5. Affidavits of staff of the Department or law enforcement officers may be incorporated by reference as part of the petition.

6. Two (2) or more children having one (1) or more common parent, guardian or custodian and a common home environment may be included in the same petition.

7. When it appears during the course of any proceeding under this Chapter that an issue has been omitted from the petition and appears from the facts to be appropriate, the Court may on a motion by the Tribal Attorney or legal counsel for the child amend the petition and proceed to hear and determine the additional or other issues as though originally and properly brought.

8. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

**Section 3-6-16. Summons and Service of Process.**

1. Upon the filing of a petition, a summons shall be issued to all named respondents to the petition in accordance with the general rules governing the issuance of summons by the Court, except that, if the petition declares the parties are unknown, the summons shall be issued to "All Whom it May Concern" and shall be deemed sufficient to authorize the Court to hear and determine the action as though the parties had been described by their proper names.

2. In addition to all other requirements of a summons issued by the Court, the summons shall also state that:

a. The respondents and the child who is the subject of the petition have the right to legal counsel at their own expense at all stages in the proceedings; and

b. Termination of parental rights is a possible remedy under the proceedings.

3. The summons shall be served in accordance with the Tribal Rules of Civil Procedure and shall be made at least ten (10) days before the first hearing on the petition.

**Section 3-6-17. Responsive Pleading.**

1. Any respondent may file a responsive pleading.

2. Any responsive pleading shall be filed with the Court and served on all parties within the time period provided in the rules of procedure for the Court for answering or responding to a claim or at least seven (7) business days before the adjudicatory hearing, whichever is earlier.

3. Failure to file a responsive pleading shall not constitute an admission of any allegation contained in the petition.

**Section 3-6-18. Support for Child Placed Outside of Home.**

Whenever a child is placed outside of the home of his or her parents, guardian or custodian, the Court may order the child's parent, guardian or custodian to contribute to the financial support of the child where it appears the child's parents, guardian or custodian is financially able to do so.

**Section 3-6-19. Testimonial Privileges Abrogated.** The physician-patient privilege, spousal privileges, or any other privilege except the attorney-client privilege, both as they relate to witnesses and to the exclusion of confidential communications, shall not pertain in any proceeding in which a child's status as a child in need of assistance is an issue.

**Section 3-6-20. Orders for Examinations.**

1. In any proceeding under this Chapter, on motion of the Tribe, the child, any interested party or on the Court's own motion, the Court may order:

a. A child subject of the proceeding to be examined by a physician or qualified mental health professional, provided that such physician or mental health professional is able to make evaluations grounded in the cultural context of the child;

b. The child's parents, guardian, custodian or any individual who has or is being considered as a placement for the child to submit to a psychological, psychiatric or mental

examination and evaluation by a qualified mental health professional and follow any recommendations of such examination and evaluation;

c. The child's parents, guardian, custodian or any individual who has or is being considered as a placement for the child to submit to a substance abuse evaluation if there is good cause to believe the individual is abusing or dependent upon alcohol or drugs and follow any recommendations of such evaluation; and

d. Homestudy investigations of the home of the child's parents, guardian, custodian or any individual who has or is being considered as a placement for the child.

2. An order issued under this Section may provide that the results of any ordered evaluation, examination or investigation be submitted to the Court, the Department, legal counsel of record for the parties, and any representatives of the child.

3. The Court shall treat any written report resulting from an evaluation, examination or investigation ordered under this Section as it would consider all other evidence regardless of whether the report, any matter contained therein, or any exhibit attached thereto is formally introduced as evidence.

4. If the individual being ordered to submit to an evaluation or examination is eligible for services from the Health Services Department and the Health Services Department possesses the capability to perform or have performed such evaluation or examination, the exam may be conducted by the Health Services Department and, unless otherwise ordered by the Court, the Tribe may bear the costs of the examination unless otherwise ordered by the Court.

#### **Section 3-6-21. Protective Orders.**

1. The Court may issue a protective order in any proceeding under this Chapter if:

a. A child, previously placed by an order of the Court, runs from his or her placement;

b. If the Court finds that such order is necessary to prevent violent or threatening acts or harassment against the child or the individual with whom the child is placed; or

c. If the Court otherwise determines such order is necessary.

2. A protective order issued under this Chapter shall set forth reasonable conditions of behavior to be observed for a specified period by any person who is a party to such proceedings and may require any person or party:

a. To stay away from the child or the child's home;

b. To permit a parent or other person to visit a child at stated periods and places, with or without supervision;

c. To abstain from offensive conduct against a child or the child's parents, guardian, custodian or other person having custody or temporary care of the child;

d. To give proper care and maintenance of the child's home;

e. To refrain from any acts that tend to make a home an improper place for a child; or

f. To cooperate with and participate in any physical or mental examination and evaluation, counseling, treatment, therapy or childcare or parenting classes considered necessary by the Court for the benefit of the child.

3. After a scheduled hearing where the parties subject to the order appear or are provided notice to appear, a protective order may be terminated, modified, or extended if the Court finds it in the best interests of the child.

**Section 3-6-22. Proceeding on Petition.** Except as otherwise provided in this Title, the Court may adopt any mode of proceeding on a petition filed under this Chapter as it deems appropriate in its discretion that will best serve the purposes of this Title and assist in an amicable resolution that assists the child and family and promotes reunification and avoids termination of parental rights, including, by way of example but not limitation:

1. Informal resolution or problem-solving practices;

2. Adjudication by trial;

3. Adjudication by stipulation with or without admission of grounds;

4. Conducting a dispositional hearing without adjudication of the merits of the petition;
5. Informal court review; or
6. Voluntary permanent or temporary transfer of custody.

**Section 3-6-23. Reports to Court.**

1. To aid the Court in its decision, prior to any hearing in a proceeding under this Chapter except for an adjudicatory hearing or hearing to terminate parental rights, the Tribe shall file a report to the court on behalf of the Department and the Tribe consisting of a written evaluation of matters relevant to the resolution of the case.

2. The Tribe's report to the court shall include:

a. A summary of the immediately preceding hearing and order, if any;

b. If appropriate, a summary of the status and progress of the child and family since the last hearing, including:

i. Compliance with prior orders of the Court;

ii. What steps, if any, the child's parent, guardian or custodian or Department personnel have taken to correct the problems which lead to the filing of the petition;

iii. What services could be of benefit to the parent, guardian or custodian; and

iv. A summary of how the child is doing in his or her current placement and, if there have been any changes in placement, the reason for such changes;

c. Any other information the Tribe deems appropriate; and

d. Recommendations for the child, family and proceedings to be included in an order of the Court.

3. The Tribe's report to the court shall be based upon reports and input from the Department, including any contacts with the child and his or her parents, guardian or custodian. The Tribe may attach the Department's report to its report to the court as an exhibit or may include the necessary information from the Department's report directly in the Tribe's report to the court. The Tribe may also attach any homestudy investigations or other reports and documents as exhibits to its report to the court. Subject to objection from any party, the Court shall receive and accept any exhibit attached to the Tribe's report to the court and consider such exhibit as it would any other evidence presented.

4. In addition to the Tribe's report to the court, a foster parent, relative or other individual providing care for a child may also submit a report to the court regarding the child's adjustment, progress, and condition.

5. The Tribe's and any other report to the court, including any exhibits, shall be filed with the Court and served on the child, if represented, and all other parties at least five (5) days prior to the date set for the hearing. The Tribe and any other person who files a timely report to the court may also file and serve a supplement or modification to their report to the court based on new information within three (3) calendar days prior to the hearing. Any other supplementation or modification shall be made during the hearing.

6. During any hearing where a report to the court has been filed, any party to the proceedings shall be permitted to object or request modification or addition to the report to the court. Objections or requests for modification or addition may be made by filing the same with the Court or orally during the hearing. If the person who filed the report does not agree to any such objection, modification or addition, the Court shall determine whether the objection, modification or addition will be accepted. The Court shall accept the report to the court as altered due to any accepted objection, modification or addition.

7. The Court shall review and consider reports to the court, any information contained therein, and any attached exhibits as it would consider all other evidence regardless of whether the report to the court, any matter therein or any exhibit attached thereto is formally introduced as evidence.

**Section 3-6-24. Advisory Hearing.**

1. An advisory hearing shall be held as soon as practicably possible following the filing of a petition under this Chapter.

2. The primary purpose of the advisory hearing is to inform the parties of the allegations of the petition and the possible consequences if the allegations are admitted or proven true as well as to receive the response of the respondents to the petition.

3. During the advisory hearing, the Court shall first:

a. Ascertain the need for any joinder or deletion of parties;

b. Determine the true names, addresses and tribal affiliation of the parties and their relationship to the child;

c. Determine the true name, date and place of birth, address, tribal affiliation and custodial status of the child;

d. Advise the parties of the reason for the hearing, the nature of the proceedings, the allegations contained in the petition, and the burden of proof of the Tribe; and

e. Advise the parties of their basic rights under Section 3-3-7 of this Title.

4. The Court shall then receive the answer, response, denial or admission of the respondents. The respondents may admit or plead no contest to any or all of the allegations contained in the petition and the Court may accept the admission if the Court is satisfied there is a factual basis for the allegations. If the parties do not admit or plead no contest to any of the allegations contained in the petition, such allegations shall be deemed denied.

5. If any party who received actual notice of the advisory hearing fails to appear or fails to answer or otherwise respond to the petition, the party shall be deemed by the Court to be in default and the petition shall be taken as admitted to by that party.

**Section 3-6-25. Order After Advisory Hearing.** After an advisory hearing, the Court shall enter a written order based on the results of said hearing. The order shall:

1. State the appearances of all parties and failures to appear;

2. If the advisory hearing is continued, set a new date for the advisory hearing;

3. If all respondents admit the allegations contained in the petition and the Court accepts the admission:

a. Declare the child to be in need of assistance as admitted to by the respondents; and

b. Set the matter for a dispositional hearing and prescribe for the provision of notice of the hearing;

4. If one or more of the respondents deny one or more of the allegations contained in the petition, set the matter for an adjudicatory hearing as to those respondents who deny the allegations of the petition for those allegations denied and prescribe for the provision of notice of the hearing;

5. Provide for the custody, care and placement of the child pending the next hearing;

6. Make any appointments of guardians ad litem or other personnel pursuant to Chapter 3 of this Title; and

7. Order any other matters the Court deems necessary or appropriate.

**Section 3-6-26. Adjudicatory Hearing.**

1. Following the advisory hearing where any of the respondents deny any of the allegations of the petition, an adjudicatory hearing shall be held for those respondents that denied any allegations of the petition on such denied allegations.

2. The primary purpose of the adjudicatory hearing is to determine whether the child is a child in need of assistance under this Chapter.

3. The Court shall consider any and all reports required by this Chapter or ordered by the Court, and any additional relevant testimony or evidence presented at the hearing.



4. The allegations of the petition must be supported by clear and convincing evidence, provided that evidence that child abuse has occurred shall be prima facie evidence that the child is a child in need of assistance regardless of the allegations in the petition and such evidence shall be sufficient by itself to support a determination that the child is a child in need of assistance.

**Section 3-6-27. Order After Adjudicatory Hearing.**

1. After an adjudicatory hearing, the Court shall enter written findings of fact, conclusions of law and an order based on the results of said hearing. The order shall:

a. If the Court determines that the child is a child in need of assistance under this Chapter:

i. State that the child is a child in need of assistance by clear and convincing evidence;

ii. Set the matter for a dispositional hearing approximately thirty (30) days from the date of the adjudicatory hearing and prescribe for the provision of notice of the hearing; and

iii. Provide for the custody, care and placement of the child pending the next hearing;

b. If the Court determines that the allegations of the petition are not supported by clear and convincing evidence or otherwise that the child is not a child in need of assistance under this Chapter:

i. Release the child, the child's parents, guardian or custodian, and other respondents from any restrictions, custody or placement orders previously entered;

ii. Return the child to the custody and placement of the child's parents, guardian or custodian from whom the child was removed or identify who will have the legal and physical custody of the child until such order is modified by further order of the Court; and

iii. Dismiss the action; and

c. Order any other matters the Court deems necessary or appropriate.

2. An order of adjudication is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

**Section 3-6-28. Dispositional Report.** After the entry of the Court's order after the advisory hearing where all allegations of the petition are admitted or after the adjudicatory hearing where the allegations of the petition are proven and prior to the dispositional hearing:

1. The Department shall prepare a written report describing all reasonably appropriate alternative dispositions of the child. The report shall contain:

a. A plan for care of and assistance to the child which is calculated to resolve the problems presented in the petition;

b. An explanation showing the necessity for the proposed plan of disposition and the benefits to the child under the proposed plan;

c. If placement with the child's parents, guardian or custodian is not recommended, specific and detailed reasons why such recommendation is not made and a specific plan for reunification or an explanation for the lack of such plan;

d. Whether an action to terminate parental rights appears to be advisable; and

e. Such other information the Department determines relevant to the disposition of the child;

2. The Tribe's report to the court filed for the dispositional hearing shall be based on the dispositional report required by this Section. In addition to any other matters generally included in the Tribe's report to the court, the Tribe shall state its recommended disposition of the child.

**Section 3-6-29. Dispositional Hearing.**

1. Following the adjudicatory hearing and entry of an order from said hearing, a dispositional hearing shall be held.

2. The primary purpose of the dispositional hearing is to determine whether the child needs assistance and, if so, what services will be provided to the child and family.

3. The disposition of the child shall be made in accordance with the following:

a. The disposition shall be consistent with the allegations of the petition and the problems or issues that resulted in the filing of the petition and the basis for adjudication of the child as a child in need of assistance;

b. The child's placement shall be the least restrictive placement that meets the needs of the child;

c. The disposition shall be consistent with the best interests of the child;

d. The disposition shall give due regard to the rights and interests of the child's parents, guardian, custodian, other respondents, and the Tribe.

4. If the disposition of a child includes the involuntary placement of the child out of the physical custody of his or her parents, guardian or custodian, the Court shall ensure that the standards under Section 3-6-10 of this Chapter have been met.

**Section 3-6-30. Order After Dispositional Hearing.**

1. After a dispositional hearing, the Court shall enter written findings of fact, conclusions of law and an order based on the results of said hearing. The order shall:

a. State the disposition of the child, including any terms, conditions, and limitations of the disposition;

b. State the permanency plan for the child and the services to be provided to achieve the permanency plan;

c. When appropriate, provide for the stability and appropriateness of the child's education;

d. When appropriate, address the child's needs concerning health care and disability, if any, and if parental consent cannot be obtained, authorize evaluations and treatments needed;

e. Provide for the custody, care and placement of the child by:

i. Placing the child in the custody of one or both parents, guardian or custodian of the child;

ii. Placing the child in the custody or guardianship of another individual, including for long term foster care, according to the placement preferences set forth in this Chapter; or

iii. Placing the child in the custody of the Department for placement in accordance with the placement preferences set forth in this Chapter;

f. Provide for any visitation by the child's parents, guardian or custodian and extended family members, including a visitation schedule and any limitations, if necessary;

g. Require any evaluations, tests, counseling, or treatments the Court finds necessary; and

h. Set the matter for a review hearing no more than six (6) months from the date of the dispositional hearing and prescribe for the provision of notice of the hearing; and

i. Order any other matters the Court deems necessary or appropriate.

2. A dispositional order is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

### **Section 3-6-31. Review Hearings.**

1. Following the dispositional hearing, a review hearing shall be held no less than every six (6) months after entry of the dispositional order until the jurisdiction of the Court over the child is terminated.

2. The primary purpose of a review hearing is to evaluate the progress of the child and family and determine whether court intervention should continue.

3. The Court shall consider the efforts or progress demonstrated by the child's parents, guardian or custodian and the extent to which they cooperated and availed themselves of services

provided and, based on the Court's findings, do any of the following:

a. If there has been no material change of circumstances, continue the dispositional order in effect;

b. Order removal of the child from the physical custody of his or her parents, guardian or custodian if current facts justify such a removal under the standards set forth in Section 3-6-10 of this Chapter;

c. Order any additional services reasonably believed to be necessary;

d. Modify the dispositional order in effect, including revising the permanency plan for the child;

e. Order a child returned to the physical custody of his or her parents, guardian or custodian with any limitations, conditions or supervision the Court finds appropriate;

f. If the conduct of the child or the basis for finding the child to be a child in need of assistance may also make the child a child offender under Chapter 7 of this Title, refer the matter to the appropriate officials for consideration of initiating proceedings under Chapter 7 of this Title;

g. Provide for the permanent placement of the child or set the matter for a permanency hearing; or

h. Terminate the child's status as a child in need of assistance and order the child immediately returned to the legal and physical custody of his or her parents, guardian or custodian.

**Section 3-6-32. Order After Review Hearing.** After an adjudicatory hearing, the Court shall enter written findings of fact, conclusions of law and an order based on the results of said hearing. The order shall:

1. State whether the permanency plan is best suited to the safety, protection, and physical, mental, and moral welfare of the child;

2. Reflect the determination made pursuant to Section 3-6-31;

3. If the Court decides to transfer custody or placement of the child:

a. State the name of the person who will have custody or with whom the child will be placed, unless disclosure is prohibited by order of the Court; and

b. Provide for any visitation by the child's parents, guardian or custodian and any extended family members, including a visitation schedule and any limitations, if necessary; and

4. Order any other matters the Court deems necessary or appropriate.

**Section 3-6-33. Permanency Hearing.**

1. In any proceeding where a child has been involuntarily removed from the home of the child's parents, guardian or custodian and placed in foster care, a permanency hearing shall be held no less than every twelve (12) months from the date the child is first placed in foster care until the jurisdiction of the Court over the child is terminated, provided that, in proceedings where the Court has determined that reasonable and active efforts to prevent the breakup of the family are not required, the first permanency hearing shall be held within thirty (30) days from the date the child is first placed in foster care. A permanency hearing may be combined with a review hearing conducted under this Chapter.

2. The primary purpose of a permanency hearing is to review the status of the child and the progress being made toward the child's return to his or her parents, guardian or custodian or to some other permanent home.

3. In conducting a permanency hearing, the Court shall determine:

a. Whether the current permanency plan is in the best interests of the child;

b. Whether the Department has made reasonable and active efforts to finalize the permanency plan, including making reasonable and active efforts toward reunification, if reunification is part of the permanency plan;

c. Other steps the Department needs to take to effectuate the terms of the permanency plan; and

d. Whether termination of parental rights is in the best interests of the child and justifiable in accordance with the provisions of this Title.

4. A child shall be considered in a permanent placement and no hearing under this Section shall be required if:

a. The child is returned to his or her parents, guardian or custodian;

b. A guardian, other than a respondent, is appointed for the child;

c. The child is adopted;

d. The child is placed with a relative of the child and is intended to remain with the relative; or

e. The Tribe has identified another planned permanent living situation for the child.

**Section 3-6-34. Order After Permanency Hearing.**

1. After a permanency hearing, the Court shall enter written findings of fact, conclusions of law and an order based on the results of said hearing.

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

**Section 3-6-35. Modification or Setting Aside Order or Decree.**

1. A child, his or her parents, guardian or custodian or any other person having a legitimate interest in the child may, by motion in the same action in which the child was declared to be in need of assistance, request the Court to change or set aside any previous order, including an order removing custody from the parents, guardian or custodian, or to terminate the child's status as a ward of the Court or a child in need of assistance on the grounds of change of circumstances or new evidence.

2. A motion made under this Section shall identify the person making the motion and his or her relationship to or interest in the child and shall set forth in clear and concise terms any change of circumstances or new evidence which is alleged as grounds for such change or order or termination of status.

3. The Court shall hold a hearing on all motions filed under this Section upon notice given to the child, the Tribe, and the child's parents, guardian or custodian.

4. The Court may grant a motion made under this Section if it is in the best interests of the child and the Tribe and otherwise justified, except that, if the motion is based upon new evidence related to adjudication or disposition, the Court shall order a new adjudicatory or dispositional hearing, as appropriate, unless the Tribe agrees to the relief requested in the motion or the parties agree to alternative relief without a new hearing.

## **CHAPTER 7 CHILD OFFENDERS**

**Section 3-7-1. Purpose.** The purpose of this Chapter is to establish an effective system for child offenders that removes the legal consequences of criminal behavior from children committing juvenile offenses and to substitute a program of supervision, care, and rehabilitation consistent with the protection of the Tribe.

**Section 3-7-2. Definition of Child Offender.**

1. For purposes of this Chapter, a child offender shall be a child:

a. Who commits an act which, if committed by an adult, would be a crime under the laws of the Tribe, the laws of the state within whose boundaries the act was committed, or the laws of the United States; or



b. Who commits a status offense as defined in Section 3-7-3 of this Chapter.

2. To the extent possible, a child offender shall be treated as a child in need of assistance under Chapter 6 of this Title when:

a. The child has committed a status offense as defined in Section 3-7-3 of this Chapter; or

b. The child is under the age of ten (10) years.

**Section 3-7-3. Status Offenses.**

1. A child commits habitual truancy if he or she is required to attend middle school, junior high school, or high school and is absent from attendance at such school without valid excuse for one (1) or more class periods on seven (7) school days per school year.

2. A child commits running away if he or she is absent from home for an unreasonable period of time without a compelling reason or without permission of a parent, guardian or custodian.

3. A child commits underage consumption of alcohol if he or she consumes any alcoholic beverage unless the child consumed the alcoholic beverage in the household of his or her parent, guardian or custodian and with the consent of the parent, guardian or custodian.

4. A child commits underage possession of alcohol if he or she possesses any alcoholic beverage with the intent to consume it at a place other than the household of the child's parent, guardian or custodian.

**Section 3-7-4. Tribal Attorney to Represent the Tribe.** The Tribal Attorney shall represent the Tribe and the Department in all proceedings brought under this Chapter, unless the Tribe hires a separate prosecutor to conduct proceedings under this Chapter.

**Section 3-7-5. Proceedings of a Civil Nature.**

1. Proceedings in cases under this Chapter shall be regarded as civil proceedings, with the Court exercising both legal and equitable powers.

2. Nothing in this Chapter shall preclude or prevent a child offender from also being the subject of a child in need of assistance proceeding under Chapter 6 of this Title.

**Section 3-7-6. Continuing Jurisdiction.**

1. Jurisdiction of the Court over a child under this Chapter is retained until the Court dismisses a petition or enters an order closing the matter.

2. Where the Court deems it appropriate, the Court may retain jurisdiction under this Section over children and their extended family members who leave the territory of the Tribe.

**Section 3-7-7. Standards for Involuntary Removal.**

1. No child shall be removed from the physical custody of his or her parents, guardian or custodian under this Chapter unless the Court finds by clear and convincing evidence that:

a. There is a substantial danger to the physical or emotional health of the child and there are no acceptable and reasonable means by which the child's well-being can be protected without removal of the child from the physical custody of the parent, guardian or custodian;

b. The child poses a substantial threat of danger to the persons or property of others and there are no acceptable and reasonable means by which such threat can be guarded against without removal of the child from the physical custody of the parent, guardian or custodian;

c. The child is unwilling to return to the home of his or her parents, guardian or custodian;

d. The parent, guardian or custodian is unavailable, unwilling, or unable to have physical custody of the child;

e. The parent, guardian or custodian is incapable of providing or has failed or neglected to provide proper supervision and care for the child;

f. The child has demonstrated a propensity to run away from the home of his or her parents, guardian or custodian;  
or

g. The child has in the past been placed under supervision in his or her home and rehabilitation has failed.

2. A child may be referred to a shelter or halfway house for the care and treatment of children with regard to alcohol and/or substance abuse problems only if the basis for the child being found to be a child offender is related to an alcohol or substance abuse offense.

### **Section 3-7-8. Placement Preferences.**

1. If a child is removed from the physical custody of his or her parents, guardian or custodian under this Chapter, preference shall be given to placement in the following order:

a. A relative of the child who is a member of the tribe in which the child is a member or eligible to be a member;

b. A relative of the child who is not a member of the tribe in which the child is a member or eligible to be a member;

c. A friend of the family;

d. A non-relative member of the tribe in which the child is a member or eligible to be a member and approved by the Tribe or the child's tribe;

e. A member of a federally recognized Indian tribe approved by the Tribe or the child's tribe;

f. An Indian home approved by the Tribe or the child's tribe;

g. An Indian foster home licensed by the Tribe or by a state;

h. A non-Indian foster home licensed by the Tribe;

i. A foster home specially licensed by a state for Indian children;

j. A non-Indian foster home licensed by a state within whose geographical boundaries the territory of the Tribe may lie;

k. A group boarding home; or

1. An institution for children approved by the Tribe.
2. If a child who is a member or eligible to be a member of the Tribe is placed with a non-Ponca family, the following placement conditions, when reasonable, should be imposed:
  - a. The child should have reasonable access to Ponca family members, including, but not limited to, visitation, phone calls, and correspondence;
  - b. If the child wishes to observe or participate in the Tribe's cultural and religious ceremonies and activities, the Department must be notified so that appropriate arrangements can be made;
  - c. The child's name cannot be changed;
  - d. All correspondence from the Tribe (such as the Tribal Newsletter, special mailings, etc.) must be accepted;
  - e. The Tribe must be kept informed of all address changes;
  - f. The Department must be allowed to conduct reviews at least two (2) times per year, upon adequate advance notice from the Tribe; and
  - g. If the non-Ponca family placement or parental rights are at risk, the Department must be notified immediately.
3. Notwithstanding anything in this Section, the Court, with good cause shown, may place the child in a placement that serves the best interests of the child.

**Section 3-7-9. Initiation of Proceedings.**

1. Proceedings in the Court to declare a child to be a child offender shall be initiated by the filing of a petition.
2. Petitions may be filed by the Tribal Attorney, or in the absence of the Tribal Attorney, the Department, and shall be captioned: "In Re the Matter of (child's or children's name(s)), [A] Child Offender[s]".

3. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. The child's name, sex, date and place of birth, current residence and tribal membership or the reasons such information is unavailable;

b. The names, last known addresses and tribal membership of the child's parents, guardian or custodians or the reasons that such information is unavailable;

c. The basis for the Court's jurisdiction;

d. An allegation that the child is a child offender along with a specific reference to one or more of the definitions of a child offender given in this Chapter and any criminal provisions of law alleged to have been violated;

e. A plain and concise statement of facts upon which the allegations of a child offender are based, including the dates and locations of the alleged acts; and

f. A request that the Court adjudicate the child to be a child offender.

4. The petition shall be brought by the Tribe and the child shall be the named respondent.

5. Affidavits of staff of the Department or law enforcement officers may be incorporated by reference as part of the petition.

6. When it appears during the course of any proceeding under this Chapter that an issue has been omitted from the petition and appears from the facts to be appropriate, the Court may on a motion by the Tribal Attorney amend the petition and proceed to hear and determine the additional or other issues, as though originally and properly brought.

7. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

#### **Section 3-7-10. Summons and Service of Process.**

1. Upon the filing of a petition, a summons shall be issued to the child as respondent to the petition and the child's parents,

guardian or custodian in accordance with the general rules governing the issuance of summons by the Court.

2. In addition to all other requirements of a summons issued by the Court, the summons shall also state that the child who is a respondent and the child's parents, guardian or custodian have the right to legal counsel at all stages in the proceedings.

3. The summons shall be served in accordance with the Tribal Rules of Civil Procedure and shall be made at least ten (10) days before the first hearing on the petition.

#### **Section 3-7-11. Responsive Pleading.**

1. The child, or the child's parents, guardian or custodian on behalf of the child, may file a responsive pleading admitting or denying allegations in the petition.

2. Any responsive pleading shall be filed with the Court and served on all parties within the time period provided in the rules of procedure for the Court for answering or responding to a claim or at least seven (7) business days before the adjudicatory hearing, whichever is earlier.

3. Failure to file a responsive pleading shall not constitute an admission of any allegation contained in the petition.

#### **Section 3-7-12. Support for Child Placed Outside of Home.**

Whenever a child is placed outside of the home of his or her parents, guardian or custodian, the Court may order the child's parent, guardian or custodian to contribute to the financial support of the child where it appears the child's parents, guardian or custodian is financially able to do so.

#### **Section 3-7-13. Orders for Examinations.**

1. In any proceeding under this Chapter, on motion of the Tribe, the child, any interested party or on the Court's own motion, the Court may order:

a. An alleged or adjudicated child offender to be examined by a physician or qualified mental health professional, provided that such physician or mental health professional is able to make evaluations grounded in the cultural context of the child;

b. An alleged or adjudicated child offender to submit to a substance abuse evaluation if there is good cause to believe the child is abusing or dependent upon alcohol or drugs and follow any recommendations of such evaluation; and

c. Homestudy investigations of the home of the child's parents, guardian or custodian.

2. An order issued under this Section may provide that the results of any ordered evaluation, examination or investigation be submitted to the Court, the Department, legal counsel of record for the parties, and any representatives of the child.

3. The Court shall treat any written report resulting from an evaluation, examination or investigation ordered under this Section as it would consider all other evidence regardless of whether the report, any matter therein or any exhibit attached thereto is formally introduced as evidence.

4. If the individual being ordered to submit to an evaluation or examination is eligible for services from the Health Services Department and the Health Services Department possesses the capability to perform or have performed such evaluation or examination, the exam may be conducted by the Health Services Department and, unless otherwise ordered by the Court, the Tribe may bear the costs of the examination unless otherwise ordered by the Court.

**Section 3-7-14. Proceeding on Petition.** Except as otherwise provided in this Title, the Court may adopt any mode of proceeding on a petition filed under this Chapter as it deems appropriate in its discretion that will best serve the purposes of this Title and assist in an amicable resolution that assists the child and family, including, by way of example but not limitation:

1. Informal resolution or problem-solving practices;
2. Adjudication by trial;
3. Adjudication by stipulation with or without admission of grounds;
4. Conducting a dispositional hearing without adjudication of the merits of the petition; or
5. Informal court review.

**Section 3-7-15. Informal Conference.**

1. The Tribal Attorney and/or the Department may, at any time before or after a petition is filed and prior to disposition, hold an informal conference with the child and the child's parents, guardian or custodian to discuss alternative courses of action in the particular case, or otherwise propose alternative courses of action to the child and the child's parents, guardian or custodian which may be accepted or rejected by the child and the child's parents.

2. Statements made by the child at an informal conference may or may not be used against the child in determining the truth of the allegations in the petition. The Court shall make the determination whether or not a statement is admissible.

3. At the informal conference or as a result of a proposal, the Tribe may enter into a written agreement with the child and the child's parents, guardian or custodian specifying particular conditions to be observed and/or programs to be completed. The agreement may also include a stipulated adjudication of the child as a child offender. The Court shall accept the agreement as a consent decree under this Chapter in lieu of a disposition of the child, subject to compliance with the agreement. The child and the child's parents, guardian or custodian shall enter into the agreement with the knowledge that consent is voluntary and that they may refuse to enter into the agreement and proceed through hearings in the proceeding before the Court.

4. The child may be represented by legal counsel at his or her own expense at any informal conference.

5. Upon the successful completion of the terms of a written agreement entered into under this Section, the case shall be dismissed and no further action taken in the case.

6. If the child fails to successfully complete the terms of the agreement, it shall be treated as a failure to fulfill the terms of a consent decree.

**Section 3-7-16. Consent Decree.**

1. At any time after the filing of a petition under this Chapter and before the entry of a judgment, the Court may, on motion of the Tribe or the child, suspend the proceedings under terms and conditions negotiated with the Tribe and agreed to by



all the parties affected. The Court's order continuing the child under this Section shall be known as a consent decree.

2. Upon the successful completion of the terms of a consent decree, the case shall be dismissed and no further action taken in the case.

3. If, either prior to a discharge by the Court or expiration of the consent decree, the child fails to fulfill the terms of the decree, the Tribe may file a motion to revoke the consent decree. If the child is found to have violated the terms of the consent decree, the Court may:

a. Extend the period of the consent decree; or

b. Proceed with further formal proceedings on the petition in accordance with this Chapter, except that if the consent decree included any admission or plea of no contest in lieu of adjudication, the Court may accept such admission or plea as though given at an advisory hearing on the petition.

#### **Section 3-7-17. Reports to Court.**

1. To aid the Court in its decision, prior to any hearing in a proceeding under this Chapter except for an adjudicatory hearing, the Tribe shall file a report to the court on behalf of the Department and the Tribe consisting of a written evaluation of matters relevant to the resolution of the case.

2. The Tribe's report to the court shall include:

a. A summary of the immediately preceding hearing and order, if any;

b. If appropriate, a summary of the status and progress of the child and family since the last hearing, including:

i. Compliance with prior orders of the Court;

ii. What steps, if any, the child and the child's parent, guardian or custodian or Department personnel have taken to correct the problems which lead to the filing of the petition; and

iii. What services could be of benefit to the child and his or her parent, guardian or custodian;

c. Any other information the Tribe deems appropriate; and

d. Recommendations for the child, family and proceedings to be included in an order of the Court.

3. The Tribe's report to the court shall be based upon reports and input from the Department, including any contacts with the child and his or her parents, guardian or custodian. The Tribe may attach the Department's report to its report to the court as an exhibit or may include the necessary information from the Department's report directly in the Tribe's report to the court. The Tribe may also attach any other reports and documents as exhibits to its report to the court. Subject to objection from any party, the Court shall receive and accept any exhibit attached to the Tribe's report to the court and consider such exhibit as it would any other evidence presented.

4. In addition to the Tribe's report to the court, the child and his or her parents, guardian or custodian may also submit a report to the court regarding the child's progress and condition.

5. The Tribe's and any other report to the court, including any exhibits, shall be filed with the Court and served on the child, if represented, and all other parties at least five (5) days prior to the date set for the hearing. The Tribe and any other person who files a timely report to the court may also file and serve a supplement or modification to their report to the court based on new information within three (3) calendar days prior to the hearing. Any other supplementation or modification shall be made during the hearing.

6. During any hearing where a report to the court has been filed, any party to the proceedings shall be permitted to object or request modification or addition to the report to the court. Objections or requests for modification or addition may be made by filing the same with the Court or orally during the hearing. If the person who filed the report does not agree to any such objection, modification or addition, the Court shall determine whether the objection, modification or addition will be accepted. The Court shall accept the report to the court as altered due to any accepted objection, modification or addition.

7. The Court shall review and consider reports to the court, any information contained therein, and any attached exhibits as it would consider all other evidence regardless of whether the report to the court, any matter therein or any exhibit attached thereto is formally introduced as evidence.

**Section 3-7-18. Advisory Hearing.**

1. An advisory hearing shall be held as soon as practicably possible following the filing of a petition under this Chapter.

2. The primary purpose of the advisory hearing is to inform the child and his or her parents, guardian or custodian of the allegations of the petition and the possible consequences if the allegations are admitted or proven true as well as to receive the response of the respondents to the petition.

3. During the advisory hearing, the Court shall first:

a. Ascertain the need for any joinder or deletion of parties;

b. Determine the true names, addresses and tribal affiliation of the parties and their relationship to the child;

c. Determine the true name, date and place of birth, address, tribal affiliation and custodial status of the child;

d. Advise the child and his or her parents, guardian or custodian of the reason for the hearing, the nature of the proceedings, the allegations contained in the petition, and the burden of proof of the Tribe; and

e. Advise the child and his or her parents, guardian or custodian of their basic rights under Section 3-3-7 of this Title.

4. The Court shall then receive the answer, response, denial or admission of the child. The child may admit or plead no contest to any or all of the allegations contained in the petition and the Court may accept the admission if the Court is satisfied there is a factual basis for the allegations. If the child does not admit or plead no contest to any of the allegations contained in the petition, such allegations shall be deemed denied.

5. If the child received actual notice of the advisory hearing and fails to appear or fails to answer or otherwise respond to the petition, the child shall be deemed by the Court to be in default and the petition shall be taken as admitted to by the child.

**Section 3-7-19. Order After Advisory Hearing.** After an advisory hearing, the Court shall enter a written order based on the results of said hearing. The order shall:

1. State the appearances of all parties and failures to appear;

2. If the advisory hearing is continued, set a new date for the advisory hearing;

3. If the child admits the allegations contained in the petition and the Court accepts the admission:

a. Declare the child to be a child offender as admitted to by the child; and

b. Set the matter for a dispositional hearing and prescribe for the provision of notice of the hearing;

4. If the child denies one or more of the allegations contained in the petition, set the matter for an adjudicatory hearing as to the allegations of the petition denied and prescribe for the provision of notice of the hearing;

5. If appropriate, provide for the out-of-home placement of the child pending the next hearing;

6. Make any appointments of guardians ad litem or other personnel pursuant to Chapter 3 of this Title; and

7. Order any other matters the Court deems necessary or appropriate.

**Section 3-7-20. Adjudicatory Hearing.**

1. Following the advisory hearing where the child denies any of the allegations of the petition, an adjudicatory hearing shall be held on the allegations of the petition denied.

2. The sole purpose of the adjudicatory hearing is to determine whether the child is a child offender under this Chapter.

3. The Court shall consider any and all reports required by this Chapter or ordered by the Court, and any additional relevant testimony or evidence presented at the hearing.

4. The allegations of the petition must be supported by clear and convincing evidence.

**Section 3-7-21. Order After Adjudicatory Hearing.**

1. After an adjudicatory hearing, the Court shall enter written findings of fact, conclusions of law and an order based on the results of said hearing. The order shall:

a. If the Court determines that the child is a child offender under this Chapter:

i. State that the child is a child offender by clear and convincing evidence;

ii. Set the matter for a dispositional hearing approximately thirty (30) from the date of the adjudicatory hearing and prescribe for the provision of notice of the hearing;

iii. If appropriate, declared the child a ward of the Court; and

iv. If appropriate, provide for the out-of-home placement of the child;

b. If the Court determines that the allegations of the petition are not supported by clear and convincing evidence or otherwise that the child is not a child offender under this Chapter:

i. Release the child, the child's parents, guardian or custodian, and other respondents from any orders previously entered; and

ii. Dismiss the action; and

c. Order any other matters the Court deems necessary or appropriate.

2. An order of adjudication is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

**Section 3-7-22. Dispositional Report.** After the entry of the Court's order after the advisory hearing where all allegations of the petition are admitted or after the adjudicatory hearing where the allegations of the petition are proven and prior to the dispositional hearing:

1. The Department shall prepare a written report describing all reasonably appropriate alternative dispositions of the child. The report shall contain:

a. A specific plan for care of and assistance to the child which is calculated to resolve the problems presented in the petition;

b. A detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the child under the proposed plan;

c. If placement with the child's parents, guardian or custodian is not recommended, specific and detailed reasons why such recommendation is not made and is authorized under this Chapter; and

d. Such other information the Department determines relevant to the disposition of the child.

2. The Tribe's report to the court filed for the dispositional hearing shall be based on the dispositional report required by this Section. In addition to any other matters generally included in the Tribe's report to the court, the Tribe shall state its recommended disposition of the child.

**Section 3-7-23. Dispositional Hearing.**

1. Following the adjudicatory hearing and entry of an order from said hearing, a dispositional hearing shall be held.

2. The primary purpose of the dispositional hearing is to determine how to resolve the case once the child has been determined to be a child offender.

3. The disposition of the child shall be made in accordance with the following:

a. The disposition shall be consistent with the allegations of the petition and the problems or issues that resulted in the filing of the petition and the basis for adjudication of the child as a child offender;

b. Preference shall be given to dispositional alternatives which are least restrictive of the child's freedom, resolve problems and issues the child may have which resulted in the filing of the petition, otherwise lead to the rehabilitation of the child, and are consistent with the purposes of this Chapter and the interests of the Tribe; and

c. The disposition shall be consistent with the best interests of the child.

4. If the disposition of a child includes the involuntary placement of the child out of the physical custody of his or her parents, guardian or custodian, the Court shall ensure that the standards under Section 3-7-7 of this Chapter have been met.

**Section 3-7-24. Order After Dispositional Hearing.**

1. After a dispositional hearing, the Court shall enter written findings of fact, conclusions of law and an order based on the results of said hearing. The order shall:

a. State the disposition of the child, including any terms, conditions, and limitations of the disposition;

b. When appropriate, provide for the maintenance and support of the child, including medical treatment;

c. When appropriate, provide for the stability and appropriateness of the child's education;

d. When appropriate, address the child's needs concerning health care and disability, if any, and if parental consent cannot be obtained, authorize evaluations and treatment needed;

e. Provide for the custody, care and placement of the child by:

i. Placing the child in the custody of one or both parents, guardian or custodian of the child,

subject to such conditions and limitations as the Court may prescribe;

ii. Placing the child in the custody or guardianship of a relative or other suitable individual according to the preferences set out in Section 3-7-8, subject to such conditions and limitations as the Court may prescribe; or

iii. Place the child in a facility designated by the Court according to the preferences set out in Section 3-7-8, including a licensed and supervised shelter or halfway house for the care and treatment of children with regard to alcohol and/or substance abuse problems, foster home, group home, or residential home;

f. Provide for any visitation by the child's parents, guardian or custodian and extended family members, including a visitation schedule and any limitations, if necessary;

g. Require any evaluations, tests, counseling, or treatments the Court finds necessary; and

h. Set the matter for a review hearing no more than six (6) months from the date of the dispositional hearing and prescribe for the provision of notice of the hearing; and

i. Order any other matters the Court deems necessary or appropriate.

2. In addition to any other matters required in the Court's dispositional order, the Court's order may also, as appropriate:

a. Order the Department, within its resources and capabilities, to supervise and assist the child and his or her parents, guardian or custodian so as to rectify the conditions that resulted in child offender adjudication;

b. Order the child to obtain services available through the Tribe, including youth programs and behavioral programs;

c. Order the child to obtain traditional and/or cultural forms of treatment or care which may be appropriate for the child's needs, provided that the child's parents, guardian or custodian consents;



d. Require the child to participate in a constructive program of service or education designed to impress upon the child a sense of responsibility for the injuries caused to the person or property of another or otherwise to resolve the issues that resulted in the filing of the petition;

e. Order the child to perform community service;

f. Require the child to pay restitution in an amount not to exceed the actual damage caused by the child, to be paid from his or her earnings or those of his or her parents, guardian or custodian or by performance of services acceptable to the victim which are reasonable and capable of being performed within one (1) year;

g. Require the child to participate in appropriate counseling programs available through social services or mental health agencies;

h. Place the child under the supervision and assistance of the Court, the Department, or other health or social services agency designated by the Court under such limitations as the Court may prescribe;

i. Order the child to pay a civil fine in an amount appropriate to the offense committed, but not to exceed \$100.00 for each offense;

j. Order the parents, guardian or custodian of the child to:

i. Stay home and monitor child;

ii. Submit to drug and alcohol testing when there is a reasonable suspicion of drug and/or alcohol use;

iii. Attend and successfully complete alcohol and drug education, treatment and/or other counseling services;

iv. Attend and successfully complete parenting education, treatment and/or other counseling services;  
or

v. Order any other term and condition that is reasonable and in the best interests of the child's rehabilitation.

3. If the basis for the child being found to be a child offender is due to the commission of an act which, if committed by an adult, would be a crime, a dispositional order shall remain in force no longer than the maximum period of confinement or probation that an adult could receive for the offense committed.

4. A dispositional order is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

#### **Section 3-7-25. Review Hearings.**

1. Following the dispositional hearing, a review hearing shall be held no less than every six (6) months after entry of the dispositional order until the jurisdiction of the Court over the child is terminated.

2. The primary purpose of a review hearing is to evaluate the progress of the child and family and determine whether court intervention should continue.

3. The Court shall consider the efforts or progress demonstrated by the child and, if appropriate, the child's parents, guardian or custodian and the extent to which they cooperated and availed themselves of services provided and, based on the Court's findings, do any of the following:

a. If there has been no material change of circumstances, continue the dispositional order in effect;

b. Order removal of the child from the physical custody of his or her parents, guardian or custodian if current facts justify such a removal under the standards set forth in Section 3-7-7 of this Chapter;

c. Order any additional services reasonably believed to be necessary;

d. Modify the dispositional order in effect in accordance with Section 3-7-24 of this Chapter;

e. Order a child returned to the physical custody of his or her parents, guardian or custodian with any limitations, conditions or supervision authorized by Section 3-7-24 of this Chapter;

f. Make any order otherwise authorized under Section 3-7-24 of this Chapter;

g. If the child is subject to specific terms and conditions and has satisfactorily complied with such terms and conditions, release the child from such terms and conditions; or

h. Terminate the child's status as a child offender and order the child immediately returned to the legal and physical custody of his or her parents, guardian or custodian.

**Section 3-7-26. Order After Review Hearing.** After an adjudicatory hearing, the Court shall enter written findings of fact, conclusions of law and an order based on the results of said hearing. The order shall:

1. State whether the current disposition of the child is best suited to the safety, protection, and physical, mental, and moral welfare of the child;

2. Reflect the determination made pursuant to Section 3-7-25;

3. If the Court decides to transfer custody or placement of the child:

a. State the name of the person who will have custody or with whom the child will be placed, unless disclosure is prohibited by order of the Court; and

b. Provide for any visitation by the child's parents, guardian or custodian and any extended family members, including a visitation schedule and any limitations, if necessary; and

4. Order any other matters the Court deems necessary or appropriate.

**Section 3-7-27. Modification or Setting Aside Order or Decree.**

1. A child, his or her parents, guardian or custodian, or any other person having a legitimate interest in the child may, by motion in the same action in which the child was declared to be a child offender, request the Court to change or set aside any previous order, including an order removing custody from the parents, guardian or custodian, or to terminate the child's status

as a ward of the Court or a child offender on the grounds of change of circumstances or new evidence.

2. A motion made under this Section shall identify the person making the motion and his or her relationship to or interest in the child and shall set forth in clear and concise terms any change of circumstance or new evidence which is alleged as grounds for such change or order or termination of status.

3. The Court shall hold a hearing on all motions filed under this Section upon notice given to the child, the Tribe, and the child's parents, guardian or custodian.

4. The Court may grant a motion made under this Section if it is in the best interests of the child and the Tribe and otherwise justified, except that, if the motion is based upon new evidence related to adjudication or disposition, the Court shall order a new adjudicatory or dispositional hearing, as appropriate, unless the Tribe agrees to the relief requested in the motion or the parties agree to alternative relief without a new hearing.

**Section 3-7-28. Prohibition on Subsequent Petition.** A child who is subject to a petition under this Chapter shall not again be subject of a petition under this Chapter based upon the same conduct and any such petition shall be dismissed with prejudice, unless the first petition was dismissed voluntarily by the Tribe prior to the entry of a dispositional order. Nothing in this Section precludes a civil suit against the child for damages arising from such conduct.

## **CHAPTER 8 TERMINATION OF PARENTAL RIGHTS**

**Section 3-8-1. Purpose.** The purpose of this Chapter is to provide for the voluntary and involuntary termination of the parent-child relationship. This Chapter shall be construed in a manner consistent with the philosophy that the family unit is of most value to the Tribe, community, and the individual family members when that unit remains united and together, and that the parent-child relationship is of such vital importance that it should be terminated only as a last resort when all efforts have failed to avoid termination and it is in the best interests of the child concerned to proceed under this Chapter.

**Section 3-8-2. Voluntary Termination of Parental Rights.**

1. A child's parent may voluntarily consent to termination or relinquishment of parental rights in accordance with the following:

a. The consent shall be executed in writing and recorded under oath during a hearing of the Court, including a telephonic hearing;

b. The writing shall be dated and positively identify the party giving the consent and the child subject of the voluntary termination; and

c. The Court shall ensure, and the consent shall acknowledge in writing, that the terms and consequences of the voluntary termination are fully understood by the parent.

2. The parent may withdraw consent at any time and for any reason prior to the entry of a final decree of termination and request return of the child.

**Section 3-8-3. Retention of Privileges.**

1. A parent who consents to voluntary termination of parental rights under this Chapter may retain privileges with respect to the child, including the ability to have future contact, communication, and visitation with the child.

2. A retained privilege must be in writing and stated with specificity. The Court shall include a retained privilege in:

a. The Court's order terminating parental rights under this Chapter; and

b. Except as provided in this Section, any subsequent decree of adoption or order of guardianship involving the child.

3. After an order terminating parental rights under this Chapter is entered and before the entry of a decree of adoption or guardianship order involving the child, a prospective adoptive parent or guardian, as the case may be, may request that the Court decline to incorporate a privilege retained in an order terminating parental rights under this Section. The request may only be considered by the Court after providing at least twenty (20) days notice to the person who retained the privilege. The notice must:

- a. Describe the request;
- b. Explain that the recipient of the notice may submit a written statement to the Court that the recipient either agrees with or opposes the request; and
- c. Include the deadline for submitting the statement and the mailing address of the Court.

The Court may decline to incorporate a retained privilege if the person who retained the privilege agrees with the request or if the Court finds that it is in the child's best interest.

4. An order terminating parental rights may not be vacated on the ground that a retained privilege has been withheld from the parent or that the parent has been unable, for any reason, to act on a retained privilege. However, after an order terminating parental rights is entered, a person who has retained a privilege under this Section may request a review hearing, upon a showing of good cause, to seek enforcement or modification of or to vacate a privilege retained. The Court may modify, enforce, or vacate the retained privilege if the Court finds, by clear and convincing evidence, that it is in the best interest of the child to do so.

#### **Section 3-8-4. Involuntary Termination of Parental Rights.**

1. The Court may terminate the parental rights of a child's parent in accordance with the provisions of this Chapter if the Court finds such termination is in the best interests of the child and the Tribe and, by clear and convincing evidence, one or more of the following:

- a. The parent, including a parent who is unidentifiable, has abandoned the child for at least six (6) months and, during this period, while being able, the parent has made no attempt to resume physical custody of the child or make suitable arrangements for the child;

- b. The parent, including a parent who is unidentifiable, has voluntarily surrendered a child in accordance with Section 3-6-4 of this Title or other equivalent law in another jurisdiction

- c. The child has been adjudicated a child in need of assistance under Chapter 6 of this Title and:

i. The child has been involuntarily removed from the care and custody of his or her parent;

ii. Twelve (12) or more months have elapsed since the issuance of an initial disposition order or removal of the child;

iii. There is no court-approved plan for long-term placement or care of the child or the child otherwise is not in a permanent placement;

iv. All required reasonable and active efforts have been made to rehabilitate the family;

v. The conditions which led to the removal of the child from the custody of his or her parent still exist;

vi. There is little likelihood that the conditions which led to removal will be remedied so that the child can be returned to the custody of the child's parent;

vii. Custody of the child with the child's parent would likely result in serious emotional or physical harm to the child; and

viii. Termination of parental rights is in the best interests of the child and the Tribe;

d. The child has been adjudicated a child in need of assistance under Chapter 6 of this Title and the child has been in foster care for fifteen (15) of the last twenty-two (22) months, provided such foster care does not constitute not a permanent placement under Chapter 6 of this Title or a guardianship;

e. The parent has willfully or recklessly subjected the child to sexual abuse;

f. The parent, without regards to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child;

g. The parent has committed murder, voluntary manslaughter or felony assault that led to serious bodily injury against the child or another child of the parent;

h. The parent committed an act of rape or sexual assault against the other parent of the child and the child was conceived as a result of the act of rape or sexual assault, provided that the Court shall accept a guilty plea or conviction of rape, sexual assault or comparable offense under the laws of the Tribe or other jurisdiction where the offense occurred against the other parent as conclusive proof that the parent committed the act of rape or sexual assault; or

i. Parental rights to one (1) or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

2. Involuntary termination of parental rights shall be considered only as a matter of last resort. Involuntary termination of parental rights shall only be granted:

a. In the most egregious situations; or

b. When it is clear that long-term guardianship or other placement away from the parent's physical custody is insufficient to meet the child's needs and an adoption has been arranged.

3. The fact that a child cannot be returned to his or her parent shall not by itself constitute grounds for the involuntary termination of parental rights if there is no proposed adoptive placement.

4. Termination of parental rights shall not be sought or granted for the purpose of punishment or penalization of the parent.

#### **Section 3-8-5. Continuing Jurisdiction.**

1. Jurisdiction of the Court over a proceeding and a child under this Chapter is retained after entry of an order terminating parental rights for purposes of reviewing the status of the child until such jurisdiction is terminated by any of the following situations:

a. The child is adopted;

b. The child becomes an adult; or



c. The Court enters an order closing the matter and removing it from its continuing jurisdiction.

2. Where the Court deems it appropriate, the Court may retain jurisdiction under this Section over children and their extended family members who leave the territory of the Tribe.

**Section 3-8-6. Proceedings Involving Child of Another Tribe.** In any proceeding under this Chapter involving termination of parental rights to a child who is not a member of the Tribe and is a member or eligible to be a member of another federally recognized Indian tribe:

1. The Court shall provide notice of the proceedings to the child's tribe as soon as possible, and preferably prior to the next hearing, after the Court knows or has reason to know that the child is not a member of the Tribe and is a member or eligible to be a member of another federally recognized Indian tribe, which shall include:

a. The nature of the proceedings;

b. Notification of the tribe's right to intervene in the proceedings; and

c. Notification of the tribe's right to request transfer of the proceedings involving that child to it;

2. The child's tribe shall have a right to intervene at any point in the proceedings; and

3. No termination of parental rights shall be ordered until at least ten (10) days after receipt of notice of the proceedings by the child's tribe.

**Section 3-8-7. Initiation of Proceedings.**

1. Proceedings in the Court to terminate the parent-child relationship shall be initiated by the filing of a petition.

2. Petitions may be filed by:

a. Either parent when termination is sought with respect to the other parent;

b. A parent when seeking the voluntary termination of his or her parental rights;

c. The Tribal Attorney, or in the absence of the Tribal Attorney, the Department on behalf of the Tribe; or

d. Any other person possessing a legitimate interest in the matter.

3. Other than proceedings to terminate parental rights in a proceeding under Chapter 6 or Chapter 10 of this Title, petitions to terminate parental rights, shall be captioned: "In Re the Matter of (child's or children's name(s)) and concerning (parent's name(s))". Proceedings to terminate parental rights in a child in need of assistance proceeding under Chapter 6 of this Title may be filed as a motion in, brought in, and captioned as the pending child in need of assistance proceeding. Petitions to terminate parental rights in an adoption proceeding under Chapter 10 of this Title may be combined with the petition for adoption, captioned as the adoption proceeding, and conducted as part of the adoption proceeding.

4. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. Unless the petitioner is the Tribe, the name and address of the petitioner;

b. The child's name, sex, date and place of birth, current residence and tribal membership or the reasons such information is unavailable;

c. Unless the petitioner is the Tribe, the relationship of the petitioner to the child, or the fact that no relationship exists;

d. The names, last known addresses and tribal membership of the child's parents or the reasons that such information is unavailable;

e. Where the child's parent is also a child, the names and addresses of the parent's parents or guardian or a statement that the parent has no parent or guardian, or the reasons that such information is unavailable;

f. The names, last known addresses and tribal membership of the persons having legal custody or guardianship of the child or the reasons that such information is unavailable;

g. The names, last know addresses and tribal membership of the child's extended family members, former care givers and others who have or may have a direct or substantial interest in the child, or the reasons such information is unavailable;

h. The basis for the Court's jurisdiction;

i. The grounds upon which termination of parental rights is sought under this Chapter; and

j. A request that the Court terminate the parental rights of the child's parent.

5. The child's parents, except a parent who is a petitioner, shall be included as named respondents.

6. Two (2) or more children having one (1) or more common parent may be included in the same petition.

7. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section, provided that the Court shall maintain the authority to sanction any petitioner, other than the Tribe, pursuant to the Court's rules governing the same, including sanctions for filing petitions that are unreasonable, groundless, abusive or obstructionist.

#### **Section 3-8-8. When Proceedings Mandated.**

1. Except as provided in this Section, the Tribe shall seek termination of parental rights when:

a. A child has been adjudicated a child in need of assistance under Chapter 6 of this Title and has been in foster care for fifteen (15) of the last twenty-two (22) months;

b. The child has been abandoned; or

c. The parent has committed murder, voluntary manslaughter or felony assault as defined by the laws of the

Tribe or other jurisdiction where the act occurred that led to serious bodily injury against the child or another child of the parent.

2. The Tribe shall not be required to file a petition for termination of parental rights under any circumstances when:

a. The child has been placed with or is being cared for by a relative of the child;

b. The Department has determined that filing the petition would not be in the best interests of the child and the Tribe, including when the legal standard required for termination of parental rights under this Chapter cannot be met; or

c. Reasonable and active efforts to return the child to his or her parents are required, but have not been made or completed.

**Section 3-8-9. Pre-Termination Report.** In any proceeding under this Chapter not brought by the Tribe and seeking the involuntary termination of parental rights:

1. Upon the filing of the petition, the Court shall immediately notify the Department in writing;

2. The Department shall investigate the circumstances of the petition, the social history, the present condition of the child and parent, proposed plans for the child and other such facts as may be pertinent;

3. No later than fifteen (15) days before the hearing on the petition, the Department shall file with the Court a written report of the investigation with a recommendation, and the reasons therefore, as to whether parental rights should be terminated for grounds defined in this Chapter; and

4. Copies of the Department's report shall provided to all parties no later than ten (10) days before the hearing on the petition.

**Section 3-8-10. Summons and Service of Process.**

1. Upon the filing of a petition, a summons shall be issued to all named respondents to the petition in accordance with the general rules governing the issuance of summons by the Court,

except that, if the petition declares the parties are unknown, the summons shall be issued to "All Whom it May Concern" and shall be deemed sufficient to authorize the Court to hear and determine the action as though the parties had been described by their proper names.

2. In addition to all other requirements of a summons issued by the Court, the summons shall also state that the respondents and the child who is the subject of the petition have the right to legal counsel at all stages in the proceedings.

3. The summons shall be served in accordance with the Tribal Rules of Civil Procedure and shall be made at least ten (10) days before the first hearing on the petition.

#### **Section 3-8-11. Responsive Pleading.**

1. Any respondent may file a responsive pleading.

2. Any responsive pleading shall be filed with the Court and served on all parties within the time period provided in the rules of procedure for the Court for answering or responding to a claim or at least seven (7) business days before the hearing on the petition, whichever is earlier.

3. Failure to file a responsive pleading shall not constitute an admission of any allegation contained in the petition.

#### **Section 3-8-12. Hearing on Petition.**

1. At the beginning of the hearing on the petition, the Court shall first:

a. Read the petition to the child's parents;

b. Explain to the parents and to the child the effect of the granting of the petition; and

c. Advise the parties of their basic rights under Section 3-3-7 of this Title;

2. The Court shall consider any and all reports required by this Chapter or ordered by the Court, and any additional relevant testimony or evidence presented at the hearing.

3. Except in the case of voluntary termination of parental rights, the burden of proof shall lie with the petitioner to prove that the allegations in the petition are supported by clear and convincing evidence and that the best interests of the child and the Tribe will be served by termination of parental rights.

**Section 3-8-13. Order Terminating Parental Rights.**

1. Every order terminating parental rights shall be in writing and shall recite the Court's findings of fact, conclusions of law, and the statutory basis for the order.

2. Every order terminating parental rights shall also provide for the custody and placement of the child in one of the following ways:

a. If only the rights of one parent are terminated, leaving the child in the custody of the remaining parent;

b. Granting an adoption of the child in accordance with the laws of the Tribe;

c. Appointing a guardian of the child and, if appropriate, a conservator for the child in accordance with the laws of the Tribe; or

d. Awarding the Department custody and guardianship of the child for the purpose of placing the child for adoption or guardianship.

3. Upon entry of an order terminating parental rights, all rights, powers, privileges, immunities, duties and obligations, including to custody, to control visitation and to support, existing between the child and the parent subject of the order shall be severed, divested and terminated unless otherwise directed by the Court, except that:

a. Any support obligations existing prior to the effective date of the order terminating parental rights shall not be severed or terminated;

b. The order shall not prevent the child from inheriting property or interests from the parent in the same manner as any other biological child of the parent even though the parent may not inherit from the child after termination of parental rights;

c. The status of the child as a member of the Tribe or any other tribe, or his or her eligibility to be a member, and his or her right to benefits and privileges as a member of the Tribe or another tribe shall not be affected; and

d. The order shall not disentitle the child to any benefit due the child from any third person, agency, state or the United States.

4. Upon entry of an order terminating the parental rights of a parent, the parent shall have no standing to appear at any future legal proceeding concerning the child.

**Section 3-8-14. Notice of Termination of Parental Rights.** Upon entry of a final order terminating the parental rights of one or both parents, the Court shall give notice of such termination:

1. In the case of a child who is a member or eligible to be a member of the Tribe, to the Enrollment Department; and

2. In the case of a child who is not a member of the Tribe and is a member or eligible to be a member in another federally recognized Indian tribe, to the child's tribe.

**Section 3-8-15. Restoration of Parental Rights.**

1. A petition to restore parental rights that have been terminated may be filed and heard in accordance with this Section.

2. A petition to restore parental rights of a parent of a child who has not been adopted and whose parent has had his or her parental rights terminated may be filed by:

a. The child;

b. The guardian or custodian of the child;

c. A parent who voluntarily consented to termination of his or her parental rights to the child; or

d. The Tribal Attorney or the Department on behalf of the Tribe, if the Tribe obtained the original order terminating parental rights.

3. Upon the filing of a petition under this Section, a summons shall be issued in accordance with the general rules governing the issuance of summons by the Court to the following:

a. The parent for whom parental rights are sought to be restored;

b. The guardian or custodian of the child who is the subject of the petition; and

c. The person who obtained the original order terminating parental rights under this Chapter or, if termination was part of a proceeding under Chapter 6 of this Title, the Tribal Attorney and the Department.

4. The Court may restore parental rights, after a hearing on the petition, if it finds by clear and convincing evidence that:

a. The child is not currently subject of a pending adoption proceeding;

b. If the child who is subject of the petition is twelve (12) years of age or older, the child consents to the restoration of parental rights;

c. The parent whose rights are to be restored:

i. Has been informed of the legal obligations, rights and consequences of the restoration and the parent is willing and able to accept such obligations, rights and consequences;

ii. Consents in writing to the restoration of his or her parental rights; and

iii. Is a fit parent and has remedied any bases for the original order terminating parental rights;

d. The restoration of parental rights does not present a risk to the child's health, welfare, or safety; and

e. Restoration of parental rights of the parent is in the best interests of the child.

5. The Court may conditionally grant a petition filed under this Section, enter a temporary order restoring parental rights, and continue the case for up to six (6) months. During such continuance, the child shall be placed in the custody of the parent. At the end of the continuance, the Court shall hold a hearing and, if the Court finds that the placement with the parent



has been successful, the Court shall enter a final order restoring of parental rights.

6. Upon the entry of a final order restoring parental rights under this Section, any child who is the subject of the petition becomes the legal child of the parent whose rights have been restored and he or she shall become the child's legal parent on that date with all the rights, powers, privileges, immunities, duties, and obligations of the parent as to the child, including those relating to custody, control, and support of the child.

7. The granting of the petition under this Section does not vacate or otherwise affect the validity of the original order terminating parental rights.

## **CHAPTER 9 GUARDIANSHIP AND CONSERVATORSHIP**

**Section 3-9-1. Purpose.** The purpose of this Chapter is to provide a process and procedure governing the appointment of guardians and conservators of children and incapacitated persons to promote the health, safety and general welfare of the Tribe.

**Section 3-9-2. Definitions.** Unless the context requires otherwise, in this Chapter:

1. "Conservator" means a person appointed as caretaker and protector to look after the property of a child or an incapacitated person, with the duties and powers described in this Chapter.

2. "Developmental disability" means a disability attributable to intellectual development disorder, cerebral palsy, epilepsy, autism or another neurological condition closely related to intellectual development disorder or requiring treatment similar to that required for individuals with intellectual development disorder, which has continued indefinitely, substantially impairs the individual from adequately providing for his or her own care or custody and constitutes a substantial handicap to the afflicted individual. The term does not include a person affected by senility which is primarily caused by the process of aging or the infirmities of aging.

3. "Estate" means income, accounts, securities, assets, liabilities and personal and real property.

4. "Incapacitated person" means a person who is substantially incapable of managing his or her property or caring

for himself or herself by reason of infirmities of aging, mental illness, mental deficiency, physical illness or disability, developmental disabilities, chronic use of drugs, chronic intoxication, or other like incapacity which results in a lacking of sufficient understanding or capacity to communicate informed decisions. Physical disability without mental incapacity is not sufficient to establish incapacitation.

5. "Infirmities of aging" means organic brain damage caused by advanced age or other physical degeneration in connection therewith to the extent that the person so afflicted is substantially impaired in his or her ability to adequately provide for his or her own care or custody.

6. "Mental Illness" means a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

7. "Other like incapacities" means those conditions incurred at any age which are the result of accident, organic brain damage, mental or physical disability, or continued consumption or absorption of substances, producing a condition which substantially impairs an individual from providing for his or her own care or custody.

**Section 3-9-3. When Guardianship Permitted.** Subject to the provisions of this Chapter, the Court may appoint a guardian for a person where:

1. In the case of a child who is not an incapacitated person, when appointment of a guardian is in the best interest of the child and:

a. The parents of the child consent in writing to the guardianship;

b. The parental rights of both parents or the surviving parent to the child have been terminated or suspended by prior order of the Court or any other court of competent jurisdiction;

c. The parents of the child have been determined to be incapacitated persons by the Court or any other court of competent jurisdiction;

d. The parents of the child have disappeared;

- e. The parents of the child are imprisoned;
- f. The parents of the child are dead;
- g. The child is a child in need of assistance under Chapter 6 of this Title; or
- h. The appointment of a guardian is otherwise necessary for the immediate well-being of the child; or

2. The person is an incapacitated person and appointment of a guardian is necessary as a means of providing continuing care and supervision of the incapacitated person.

**Section 3-9-4. When Conservatorship Permitted.** Subject to the provisions of this Chapter, the Court may appoint a conservator in relation to the estate of a person where:

1. The person is unable to manage his or her estate effectively because the person is an incapacitated person or because of confinement, detention, or disappearance; and

a. The person's estate will be wasted or dissipated unless proper management is provided; or

b. Money is needed for the person's support, care and welfare, or for those entitled to the person's support and protection is necessary to obtain or provide money; or

2. The person is mentally competent, but due to age or physical infirmity is unable to manage his or her estate or affairs effectively.

**Section 3-9-5. Requirements for Finding Incapacity.**

1. In any proceeding under this Chapter where it is proposed to appoint a guardian or conservator on the ground that the proposed ward is an incapacitated person, the petitioner shall submit a written statement concerning the mental condition of the proposed ward, based upon examination, from a physician or qualified mental health professional, or both, provided that such physician or mental health professional is able to make evaluations grounded in the cultural context of the proposed ward.

2. A copy of the statement required by this Section shall be provided to the proposed ward and his or her guardian ad litem and legal counsel, if any.

3. The proposed ward shall have the right to secure, at his or her own expense, an independent examination by a physician or mental health professional, or both, and may present a report of this independent examination or the evaluator's personal testimony to the Court at an appropriate hearing.

4. If necessary, the Court may issue an order for examination of the proposed ward in accordance with and subject to the provisions of Section 3-9-13 of this Chapter.

5. In the absence of a written statement as required by this Section and an affirmative finding by the Court that the proposed ward is an incapacitated person, the Court shall not appoint a guardian or conservator on the basis that the proposed ward is an incapacitated person.

**Section 3-9-6. Eligibility for Appointment.**

1. The Court may appoint the following to act as guardian or conservator:

a. Any competent, suitable and willing adult individual who is subject to the jurisdiction of the Court;  
or

b. Any suitable and willing entity which is authorized to exercise fiduciary powers, provided that the Court shall appoint an entity only if such appointment is in the proposed ward's best interests and there is no adult individual who is subject to the jurisdiction of the Court and competent, suitable and willing to serve as guardian or conservator.

2. The same person or entity may be appointed to serve as both guardian and conservator.

3. More than one person may be appointed to serve as conservator, but only one person may be appointed as guardian unless:

a. The guardians are spouses or domestic partners;

b. There is a compelling reason that multiple guardians would be in the ward's best interests; or

c. Separate guardians are appointed with one to have guardianship of the ward's person and another the ward's estate.

4. Subject to the provisions of this Chapter, the Court shall appoint a person as guardian or conservator in a proceeding brought under this Chapter based upon the following order of priority:

a. Subject to the rights of a surviving parent, a person nominated by the testamentary will of the parent to be guardian of his or her minor child unless such nominated person is unable or unwilling to serve as guardian;

b. A person or entity designated by a proposed ward twelve (12) years of age or older so long as the appointment is not contrary to the best interests of the proposed ward;

c. The proposed ward's spouse;

d. An adult child of the proposed ward;

e. A parent of the proposed ward;

f. A relative of the proposed ward, other than those listed above, with whom the proposed ward has resided for more than six (6) months before the filing of the petition;

g. A member of the proposed ward's extended family, other than those listed above; and

h. Any other competent, suitable and willing person.

#### **Section 3-9-7. Continuing Jurisdiction.**

1. Jurisdiction of the Court over a person subject of a proceeding under this Chapter is retained until terminated by any of the following situations:

a. Where the guardianship or conservatorship is terminated automatically or by order of the Court as provided in this Chapter;

b. The case is transferred by the Court to another court and the other court accepts the transfer; or

c. The Court dismisses a petition or enters an order closing the matter.

2. Where the Court deems it appropriate, the Court may retain jurisdiction under this Section over persons and their extended family members who leave the territory of the Tribe.

**Section 3-9-8. Proceedings Involving Child of Another Tribe.** In any proceeding under this Chapter involving a child who is not a member of the Tribe and is a member or eligible to be a member of another federally recognized Indian tribe where guardianship of the child is requested without the consent of the parents:

1. The Court shall provide notice of the proceedings to the child's tribe as soon as possible, and preferably prior to the next hearing, after the Court knows or has reason to know that the child is not a member of the Tribe and is a member or eligible to be a member of another federally recognized Indian tribe, which shall include:

a. The nature of the proceedings;

b. Notification of the tribe's right to intervene in the proceedings; and

c. Notification of the tribe's right to request transfer of the proceedings involving that child to it; and

2. The child's tribe shall have a right to intervene at any point in the proceedings.

**Section 3-9-9. Initiation of Proceedings.**

1. Except as otherwise expressly provided in this Chapter, proceedings in the Court to appoint a guardian or conservator shall be initiated by the filing of a petition.

2. Petitions may be filed by:

a. For guardianship, any person interested in the welfare of the proposed ward;

b. For conservatorship:

i. Any adult on his or her own behalf;

ii. Any person interested in the estate, affairs or welfare of the proposed ward;

iii. A guardian or any person or entity who would be adversely affected by lack of effective management of a proposed ward's estate or business affairs;

iv. A guardian, if the Court orders the guardian to file upon a determination that financial protection of a ward's estate is required;

c. For guardianship or conservatorship, a proposed ward twelve (12) years of age or older;

d. For guardianship or conservatorship, the Tribal Attorney, or in the absence of the Tribal Attorney, the Department on behalf of the Tribe when there is no other available petitioner to file;

3. Petitions to appoint a guardian or conservator shall be captioned: "In Re the (Guardianship/Conservatorship) of (proposed ward(s) name(s))".

4. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. Unless the petitioner is the Tribe, the name, address and tribal affiliation of the petitioner;

b. The name, sex, date and place of birth, current residence and tribal affiliation of the proposed ward or the reasons such information is unavailable;

c. Unless the petitioner is the Tribe, the relationship of the proposed guardian or conservator to the proposed ward, or the fact that no relationship exists;

d. The names, last known addresses and tribal affiliation of the proposed ward's parents or the reasons that such information is unavailable;

e. Where the proposed ward's parent is a child, the names and addresses of the parent's parents or guardian or a statement that the parent has no parent or guardian, or the reasons that such information is unavailable;

f. The names, last known addresses and tribal membership of the persons having legal custody or guardianship of the child or the reasons that such information is unavailable;

g. The names, last known addresses and tribal membership of the proposed ward's extended family members, former care givers and others who have or may have a direct or substantial interest in the proposed ward, or the reasons such information is unavailable;

h. The basis for the Court's jurisdiction;

i. Whether guardianship or conservatorship is requested;

j. In detail, the grounds which justify the appointment of a guardian or conservator, including, in the case of a proposed ward who is alleged to be an incapacitated person, the grounds upon which the proposed ward is an incapacitated person under this Chapter;

k. A full description and statement of the value of the proposed ward's estate, including all property owned, possessed, or in which the proposed ward has an interest; and

l. A request that the Court appoint a guardian or conservator, as the case may be, for the proposed ward.

5. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

#### **Section 3-9-10. Appointment in Other Proceedings.**

1. The Court may appoint a guardian or conservator without a petition filed under this Chapter or a separate hearing in a child in need of assistance proceeding under Chapter 6 of this Title or a child offender proceeding under Chapter 7 of this Title.

2. When the Court is administering a deceased's estate, the Court may appoint a guardian of a minor child in that proceeding without a petition filed under this Chapter or a separate hearing if:

a. The decedent is the parent, guardian or custodian of a minor child;



b. Such minor child is orphaned by the deceased's death; and

c. There is a valid will containing a designation of a guardian for the minor child.

However, the Court shall hold a separate hearing in accordance with this Chapter if the person designated in the will is unable or unwilling to serve, a child over the age of twelve (12) years objects to such person's appointment, or the Court determines that a hearing is in the best interests of the minor child.

**Section 3-9-11. Summons and Service of Process.**

1. Upon the filing of a petition, a summons shall be issued in accordance with the general rules governing the issuance of summons by the Court to the following:

a. The proposed ward, if an adult;

b. The parents of the proposed ward, if known, except for parents whose parental rights to the child have been terminated;

c. The children, siblings and spouse of the proposed ward, if an adult;

d. All known interested persons listed in the petition; and

e. If the petition is for the appointment of a conservator, the known creditors of the proposed ward at the time the petition is filed.

2. If the petition declares any person required to be issued a summons under this Section is unknown, the summons shall be issued to "All Whom it May Concern" and shall be deemed sufficient to authorize the Court to hear and determine the action as though such person had been described by his or her proper name.

3. The summons shall be served in accordance with the Tribal Rules of Civil Procedure and shall be made at least ten (10) days before the first hearing on the petition.

**Section 3-9-12. Responsive Pleading.**

1. The proposed ward and any person issued a summons may file a responsive pleading.

2. Any responsive pleading shall be filed with the Court and served on all parties within the time period provided in the rules of procedure for the Court for answering or responding to a claim or at least seven (7) business days before the hearing on the petition, whichever is earlier.

3. Failure to file a responsive pleading shall not constitute an admission of any allegation contained in the petition.

**Section 3-9-13. Orders for Examinations.**

1. In any proceeding under this Chapter, on motion of any interested party or on the Court's own motion, the Court may order:

a. A proposed ward subject of the proceeding to be examined by a physician or qualified mental health professional, provided that such physician or mental health professional is able to make evaluations grounded in the cultural context of the proposed ward;

b. The proposed ward to submit to a substance abuse evaluation if the grounds for guardianship or conservatorship involve chronic use of drugs or intoxication; and

c. Homestudy investigations of the home of a proposed guardian.

2. An order issued under this Section shall provide that the results of any ordered evaluation, examination or investigation be submitted to the Court, legal counsel of record for the parties, and any representatives of the proposed ward.

3. The proposed ward shall have the right to secure, at his or her own expense, an independent examination by a physician or mental health professional or substance abuse evaluation which may be submitted to the Court and legal counsel of record for the parties.

4. The Court shall treat any written report resulting from an evaluation, examination or investigation ordered or secured under this Section as it would consider all other evidence regardless of whether the report, any matter therein or any exhibit attached thereto is formally introduced as evidence.

**Section 3-9-14. Initial Hearing.**

1. The Court may hold an initial hearing as soon as practicably possible following the filing of a petition under this Chapter.

2. The purpose of the initial hearing shall be to address procedural matters and enter any necessary orders appointing a guardian ad litem for the proposed ward, having conducted examinations and evaluations as permitted in this Chapter, and entering any temporary guardianship orders as permitted in this Chapter.

**Section 3-9-15. Temporary Guardianship or Conservatorship.**

1. The Court may appoint a temporary guardian or conservator for a period not to exceed sixty (60) days if:

a. During a hearing, the Court finds that the welfare of the proposed ward requires the immediate appointment of guardian or conservator, or of both; or

b. With or without a hearing, where a petition filed under this Chapter:

i. Alleges abuse or neglect as the grounds which justify the appointment of a guardian;

ii. Requests temporary guardianship or custody of the proposed ward;

iii. Is signed under oath or affirmation;

iv. Includes a separate affidavit which sets forth specific facts constituting abuse or neglect, provided that no guardianship, conservatorship or custody, temporary or otherwise, based on allegations of abuse or neglect shall be granted without a hearing unless such affidavit is filed with the petition and the facts thereof, if true, would constitute abuse or neglect; and

v. Has been served on all required parties as provided in this Chapter.

2. If the Court appoints a temporary guardian or conservator without a hearing, the Court shall conduct a hearing

to review the appointment within ten (10) business days of the order appointing the temporary guardian or conservator.

3. The authority of a temporary guardian or conservator shall be limited to the performance of duties respecting specific property, or to the performance of particular acts, as stated in the order of appointment.

4. All provisions of the laws of the Tribe concerning the powers and duties of guardians and conservators shall apply to temporary guardians and conservators except as limited by the order of appointment.

5. No temporary guardian or conservator shall sell, dispose of, convey or otherwise alienate title to or interest in the ward's property.

6. The temporary guardian or conservator shall make the reports the Court directs and shall account to the Court upon termination of authority.

7. Every temporary guardian or conservator appointed pursuant to this Section shall, before entering upon the duties of his or her appointment, give any security required by the Court as provided in this Chapter.

8. The Court may extend the period of a temporary guardianship or conservatorship only once for an additional sixty (60) days.

9. If the temporary guardianship or conservatorship is not sooner terminated, the duties and powers of the temporary guardian or conservator shall cease upon:

a. The issuing of letters of permanent guardianship or conservatorship to the guardian or conservator of the ward;

b. If the ward is a minor and not an incapacitated person, upon his or her reaching the age of majority; or

c. When the Court determines that the grounds which were the cause for the temporary guardianship or conservatorship have ceased or no longer exist.

10. Upon termination of a temporary guardianship or conservatorship, the temporary guardian or conservator shall:

a. File with the Court any report that the Court requires;

b. Account to the Court for any part of the ward's estate in the temporary guardian's or conservator's possession or control; and

c. Deliver the assets of the ward in the temporary guardian's or conservator's possession or control to the persons entitled thereto.

11. Any action which has been commenced by a temporary guardian or conservator prior to termination of the temporary guardianship or conservatorship may be prosecuted to final judgment by the ward or an appointed permanent guardian or conservator on behalf of the ward.

#### **Section 3-9-16. Hearing on Petition.**

1. Upon the filing of a petition under this Chapter or an initial hearing, if held, the Court shall schedule and conduct a hearing on the petition.

2. The primary purpose of a hearing on the petition is to determine whether there are grounds for appointment of a guardian or conservator, as applicable, to make any such appointment, and to enter any other appropriate order.

3. The Court shall consider any and all reports allowed under this Chapter or ordered by the Court, and any additional relevant testimony or evidence presented at hearing.

4. Any person may request permission from the Court to participate in the hearing and the Court may grant the request, with or without a hearing, upon determining that the best interest of the proposed ward will be served by granting the request. The Court may attach appropriate conditions to any such grant of permission.

5. The Court may appoint a guardian and/or conservator, as requested, if the Court finds:

a. The proposed ward is a child or an incapacitated person;

b. The appointment is necessary or desirable as a means of providing continuing care and supervision of the proposed ward and/or the property of the proposed ward; and

c. The proposed guardian and/or conservator is eligible to serve as provided in this Chapter.

6. Based on the information provided to the Court, the Court's appointment, if any, must be no more restrictive upon the liberty of the ward than is reasonably necessary to protect the ward.

7. The Court may grant a guardian of a child guardianship over the estate of the child only if the Court specifically finds that guardianship over the estate is necessary and appropriate under the circumstances and is in the best interests of the child.

8. The burden of proof shall lie with the petitioner to demonstrate that grounds exist under this Chapter for the appointment of a guardian or conservator by clear and convincing evidence and that the best interests of the proposed ward will be served by appointment of a guardian or conservator.

9. The burden of proof shall lie with the proponent of the appointment of a proposed guardian or conservator to establish by a preponderance of the evidence that the proposed guardian or conservator is eligible, is granted any priority, and is most suitable for the appointment.

### **Section 3-9-17. Order of Appointment.**

1. After hearing on the petition, the Court shall enter written findings of fact, conclusions of law and an order based on the results of said hearing. The order shall:

a. If the Court determines that a guardian or conservator shall be appointed:

i. Set forth the statutory basis for appointing the guardian or conservator, including the basis for finding that the proposed ward is an incapacitated person if that is the basis for appointment;

ii. Appoint a guardian or conservator, as applicable, and state the name and address of the appointed guardian or conservator;

iii. Set forth whether the guardian or conservator accepted appointment before the Court or in writing, or provide for the appointment to be contingent upon receipt of such written acceptance by the Court;

iv. Set forth the scope of the guardian's or conservator's authority, including, in the case of a guardian, whether the guardian will have guardianship of the ward's estate;

v. Design the guardianship or conservatorship to encourage the development of maximum self-reliance and independence;

vi. If appropriate, provide for visitation between a ward who is a child and his or her parents or any other person, in the best interest of the child and of the Tribe, including specifying that supervision is required or imposing other requirements to protect the child;

vii. Provide whether security for the guardian's or conservator's performance is required;

viii. Set forth the compensation of the guardian or conservator, if any;

ix. State the duration of the appointment;

x. State that the guardian or conservator shall be required to file periodic reports and/or accountings as provided in this Chapter; and

xi. State whether periodic review hearings shall be required and, if so, the frequency of such hearings;

b. If the Court determines that the allegations of the petition are not supported by the evidence or otherwise that a guardian or conservator shall not be appointed:

i. Release the proposed ward from any temporary guardianship, restrictions, or other orders previously entered; and

ii. Dismiss the action; and

c. Order any other matters the Court deems necessary or appropriate.

2. Upon entry of an order appointing a guardian or conservator for a minor child, the rights, powers, privileges, duties and obligations, including rights to custody and to control visitation, existing between the child subject of the order and his or her parents shall be temporarily suspended with respect to the rights, powers, privileges, duties and obligations granted the guardian or conservator until the guardianship or conservatorship is terminated, unless otherwise directed by the Court.

3. An order appointing or denying the appointment of a guardian or conservator is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

**Section 3-9-18. Acceptance of Appointment.**

1. A proposed guardian or conservator shall affirmatively accept his or her appointment before such appointment becomes effective.

2. At a minimum, an acceptance of appointment shall state that the guardian or conservator:

- a. Accepts the appointment;
- b. Submits to and consents to the jurisdiction of the Court, which cannot be withdrawn without permission of the Court;
- c. Will not delegate any authority of the guardian or conservator; and
- d. Will perform all required duties and obligations.

3. The acceptance of appointment shall either be made orally before the Court during a hearing on the petition or by filing a written acceptance with the Court in a form prescribed by the Court.

**Section 3-9-19. Oath.** A guardian or conservator appointed by the Court shall certify under oath, the form of which to be prescribed by the Court, to the effect that he or she will faithfully perform his or her duties as guardian or conservator, as the case may be.

**Section 3-9-20. Consent to Jurisdiction.** Any person or entity who accepts appointment as a guardian or conservator submits to



the jurisdiction of the Court and shall be deemed to agree as follows:

1. Any portion of the ward's estate which is under the control or possession of the guardian or conservator in connection with the guardianship or conservatorship shall be subject to the jurisdiction of the Court; and

2. The guardian or conservator shall be subject to the jurisdiction of, and all orders entered by, the Court in connection with all actions or proceedings related in any way to service in such capacity.

**Section 3-9-21. Security.**

1. The Court may, in its discretion, require a guardian or conservator to provide security in the form of a bond or otherwise in such amount as the Court may deem necessary to protect the ward's estate and affairs.

2. Any surety or other company of any security provided under this Section shall be deemed to have consented to the jurisdiction of the Court for the purposes of actions against such security in connection with any such security.

**Section 3-9-22. Letters.** Upon a guardian or conservator taking the oath required in this Chapter and filing proof of any security required by the Court, the Tribal Court Administrator or his or her designee shall issue letters under seal of the Court granting the guardian or conservator the powers authorized by the Court's order of appointment and this Chapter, as applicable. Any restriction or limitation on the powers of a guardian or conservator must be set forth in the letters. A guardian or conservator duly appointed shall be entitled to receive, without charge, three (3) certified copies of letters from the Court.

**Section 3-9-23. Review Hearings.** The Court shall conduct a review hearing as it deems necessary and upon the filing of a report or accounting by a guardian or conservator.

**Section 3-9-24. Powers and Duties of Guardians.**

1. Except as limited or modified by order of the Court, a guardian shall be responsible for the care, custody and control of the ward and, without limiting such responsibilities, shall have all of the following powers and duties:

a. To the extent consistent with the terms of an order of the Court relating to detention or commitment of the ward, have custody of the person of the ward and establish the ward's place of residence, provided that the guardian shall give preference as follows:

i. To the least restrictive setting in which the ward's special needs, if any, will be met;

ii. To places within the territory of the Tribe, if residence within the territory of the Tribe and outside the territory of the Tribe would be substantially equivalent; and

iii. To places that are not treatment facilities, unless the only available and appropriate place of residence is a treatment facility, in which case the guardian shall give preference to any treatment facilities licensed or approved by the Tribe over other such facilities;

b. Provide for the care, comfort and maintenance of the ward and, whenever appropriate, arrange for training and education of the ward;

c. Take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and begin protective proceedings if other property of the ward is in need of protection;

d. If the ward is an incapacitated person, to the extent possible, secure services to restore the ward to the best possible state of mental and physical well-being in an effort to return the ward to self-management at the earliest possible time;

e. Consent to or approve any necessary medical or other professional care, counsel, treatment or service for the ward and any other matters that may be required or in the ward's best interest;

f. If no conservator has been appointed or the guardianship does not exclude guardianship of the ward's estate, to the extent consistent with the orders of the Court:

i. Institute a proceeding to compel a person under a duty to support the ward or to pay money for the ward's welfare to perform the duty;

ii. Receive money and tangible property deliverable to the ward and apply the same for the ward's care, comfort, maintenance and appropriate training and education while exercising care to conserve any excess for the ward's needs; provided, however, the guardian shall not use money from the ward's estate for room and board which is furnished by the guardian or his or her spouse, parent or child unless authorized by order of the Court;

g. If a conservator has been appointed, pay the conservator for management, pursuant to this Chapter, the amount of the ward's estate received by the guardian in excess of the amount the guardian expends for the ward's current care, comfort, maintenance and appropriate training and education, and account to the conservator for all amounts expended; and

h. Do all other things necessary for the protection of the ward.

2. Except as limited or modified by order of the Court, a guardian shall:

a. Whenever meaningful communication is possible, consult with the ward before making any major decision affecting the ward;

b. Visit the ward within one (1) month of appointment and not less than once within one (1) month after each previous visit;

c. Immediately notify the Court, in writing, of any change of address;

d. Provide the Court with annual written reports on the guardianship as provided in this Chapter; and

e. At the termination of the guardianship, deliver the assets of the ward to the persons entitled thereto.

3. A guardian may petition the Court for authority to do any act about which the guardian is uncertain, and the Court may

grant such authority if such act appears to be in the best interests of the ward.

4. Except as provided by order of the Court, a guardian shall have no authority to relinquish a ward's membership in the Tribe without express permission of the Court.

5. The Court may impose restrictions and limitations on the duties and powers of a guardian and condition the appointment on the performance of specific duties.

**Section 3-9-25. Powers and Duties of Conservators.**

1. Except as limited or modified by order of the Court, a conservator shall be responsible for the collection, care, preservation, administration and protection of the ward's estate and, without limiting such responsibilities, shall have all of the following powers and duties without Court authorization or confirmation:

a. To expend or distribute the ward's estate income or principal for the support, education, care, or benefit of the ward or the ward's dependents and others who are members of the ward's household who are unable to support themselves;

b. To collect, hold, and retain assets of the ward's estate, in the ward's name, and receive any additions thereto, including real property wherever situated, until proper disposition in accordance with this Chapter;

c. To continue or participate in the operation of any business or other enterprise in which the ward is engaged;

d. To deposit estate funds in a federally insured financial institution;

e. To insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons;

f. To pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration and protection of the estate;

g. To pay any sum distributable to a ward or dependent of the ward by paying the sum to the proper party; and

h. To execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator.

2. Upon authorization by the Court, a conservator may exercise the following powers:

a. To acquire an undivided interest in any asset of the ward's estate in which the conservator, in any fiduciary capacity, holds an undivided interest;

b. Sell, transfer, mortgage, encumber, lease, or otherwise dispose of the ward's real property or any interest therein;

c. To consent to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise in which the ward is engaged;

d. To prudently invest and reinvest assets and funds of the ward's estate as would a trustee;

e. To acquire or dispose of an asset of the ward's estate, including non-trust land wherever located, for cash or on credit, at public or private sale;

f. To borrow money to be repaid from the ward's estate or otherwise for the purpose of paying debts, taxes, and other claims against the ward or the ward's estate;

g. To manage, develop, improve, exchange, partition, change the character of, or abandon an asset of the estate;

h. To make ordinary or extraordinary repairs or alterations to buildings or other structures, and demolish or construct new buildings or structures and any improvements;

i. To vote a security owned by the ward in person or by general or limited proxy;

j. To employ persons, including attorneys and lay counsel, auditors, investment advisors, or agents, even though they are associated with the conservator, to advise and assist the conservator in the performance of administrative duties and to act upon their recommendation without independent investigation;

k. To prosecute or defend actions, claims or proceedings in any jurisdiction to obtain support to which the ward is legally entitled and for the protection of assets of the ward's estate or of the conservator in the performance of his or her duties;

l. To compromise, adjust, arbitrate, sue on, defend, abandon, or otherwise deal with and settle any claim in favor of or against the ward or the ward's estate; and

m. To prosecute claims of the ward, including those for personal injury.

3. Except as limited or modified by order of the Court, a conservator shall:

a. Whenever meaningful communication is possible, consult with the ward before making any major decision affecting the ward's affairs or estate;

b. Within forty-five (45) days of appointment, conduct a due diligence investigation of the ward's estate and prepare and submit to the Court an inventory and appraisal of the estate;

c. Mail notice of the conservator's appointment to all known creditors who were not originally notified of the conservatorship appointment;

d. Immediately notify the Court, in writing, of any change of address;

e. Provide the Court with annual written reports on the conservatorship as provided in this Chapter; and

f. At the termination of the conservatorship, deliver the assets of the ward to the persons entitled thereto.

4. A conservator may petition the Court for authority to do any act about which the conservator is uncertain, and the Court may grant such authority if such act appears to be in the best interests of the ward.

5. A conservator shall have no authority to relinquish a ward's membership in the Tribe.

6. The Court may impose restrictions and limitations on the duties and powers of a conservator and condition the appointment on the performance of specific duties.

**Section 3-9-26. Limited Guardians and Conservators.**

1. If the Court finds by clear and convincing evidence that grounds exist to appoint a guardian or conservator, but the proposed ward is only partially disabled in managing his or her estate and/or affairs, then a limited guardian or limited conservator may be appointed, as the case may be.

2. Any Court order appointing a limited guardian or limited conservator shall specify all duties and authority of the limited guardian or limited conservator and any time limits on the appointment.

3. A ward for whom a limited guardian or limited conservator has been appointed shall retain all rights except those which have been granted to the limited guardian or limited conservator by Court order or the exercise of which would be inconsistent with those granted by order of the Court.

**Section 3-9-27. Fiduciary Duties of Guardians and Conservators.**

All guardians and conservators shall:

1. Be in a fiduciary relationship to the ward;

2. Exercise a high degree of care in managing the ward's estate; and

3. Derive no personal benefit of any kind from the management of the ward's estate, excluding reimbursement from the ward's estate in accordance with this Title.

**Section 3-9-28. Liability to Ward.**

1. A guardian or conservator shall be liable to the ward for any losses to the ward's estate attributable to a breach of the guardian's or conservator's duties.

2. An action to hold a guardian or conservator liable for breach of duty may be brought by:

a. The ward; or

b. A subsequently appointed guardian or conservator on behalf of the ward.

3. An action to hold a guardian or conservator liable for breach of duty may be brought anytime within two (2) years after either:

a. The appointment of a new guardian or conservator for the ward; or

b. The termination or expiration of the guardianship or conservatorship as provided in this Chapter.

**Section 3-9-29. Liability to Third Persons.**

1. A guardian is legally and morally responsible for acts of a ward who is a child pursuant to the laws of the Tribe. However, neither a guardian or conservator shall be liable to third persons for the acts of a ward solely by reason of the guardian and ward relationship or conservator and ward relationship, as the case may be.

2. Unless otherwise provided in a contract, a conservator shall not be personally liable to a third person on a contract properly entered into in a fiduciary capacity in the course of exercising any power or performing any duty unless the conservator failed to reveal the representative capacity and identify the ward's estate in connection with the contract.

3. A conservator shall not be personally liable to a third person for an obligation arising from ownership or control of the ward's estate or a tort committed in the course of exercising any power or performing any duty unless the conservator was personally at fault.

4. A claim based on a contract entered into by a conservator in a fiduciary capacity, an obligation arising from ownership or control of the ward's estate, or a tort committed in the course of administering the ward's estate may be asserted against the ward's estate by proceeding against the conservator in the conservator's fiduciary capacity, whether or not the conservator is personally liable for the claim.

5. Any question of liability between the estate of a ward and the guardian or conservator may be determined in a Court proceeding for accounting, surcharge, indemnification, or other appropriate proceeding or action.



**Section 3-9-30. Transactions with Guardian or Conservator.**

1. Any person who, in good faith, either assists or deals with a guardian in the conduct of a transaction may assume the existence and proper exercise of trust powers by the guardian. A third person is not bound to inquire whether a guardian may act or is properly exercising power. Unless the third person has actual knowledge that the guardian is exceeding or improperly exercising the guardian's powers, a third person shall be fully protected in dealing with the guardian as if the guardian properly exercised the power. This subsection does not apply to a limited guardian.

2. Any person who, in good faith, either assists or deals with a conservator for value in a transaction, excluding any transaction requiring a Court order under this Chapter, shall be protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise. This subsection does not apply to a limited conservator.

**Section 3-9-31. Reimbursement.**

1. A guardian or conservator shall be entitled to be reimbursed out of the ward's estate for necessary, reasonable, and proper expenditures incurred in the performance of his or her duties, subject to such limitations and requirements of this Section and as the Court may establish.

2. The Court may order reimbursement payments to be made on a regular schedule or on the request of the guardian or conservator, subject to the submission of adequate proof of the expenditure, the necessity of the expenditure, and the availability of funds.

**Section 3-9-32. Compensation.**

1. No guardian or conservator shall receive any compensation for acting as such without the prior approval of the Court.

2. A guardian or conservator may petition the Court to be compensated at a reasonable amount for services rendered.

3. The Court shall determine the amount of any such compensation, which if approved, shall be paid from the ward's

estate and shall not exceed ten percent (10%) of the gross income of the estate.

4. A guardian or conservator shall be deemed to have waived any right to compensation for all periods prior to approval thereof by the Court.

**Section 3-9-33. Reports.**

1. All guardians and conservators shall file reports with the Court annually within thirty (30) days after the anniversary of the appointment, and at such other times as ordered by the Court.

2. All reports filed pursuant to this Section shall be served on the ward and other persons as directed by the Court in the manner provided under the laws of the Tribe.

3. All reports filed by a guardian shall provide complete and accurate information regarding the condition of the ward, including, but not limited to:

- a. The ward's mental, physical and social condition;
- b. The ward's educational status, if the ward is in school;
- c. The ward's present living arrangement and any changes to the same during the reporting period;
- d. If the ward is not residing with the guardian, the dates and times of the guardian's visits with the ward during the reporting period;
- e. A full accounting of the ward's estate, which is subject to the control or possession of the guardian, including but not limited to, all assets, liabilities, receipts, disbursements and other relevant financial information for the reporting period;
- f. If the ward is not a minor, a recommendation as to the need for continued guardianship; and
- g. Other information required by the Court or useful in the opinion of the guardian.

4. All reports filed by a conservator shall provide a full accounting of the ward's estate, verified under oath or affirmation of the conservator, which is subject to the control or possession of the conservator, including but not limited to:

a. All assets, liabilities, receipts, balances, investments, disbursements and other relevant financial information for the reporting period; and

b. All additions to and withdrawals from the estate, supported by cancelled checks, vouchers, receipts, statements, and the like.

5. The Court shall review and either approve or not approve any report filed by a guardian or conservator and, if not approved, the Court shall, by order, inform the guardian or conservator of the deficiencies in the report and set a deadline by which the report must be resubmitted. The Court shall reconcile or settle every account or balance in the report by allowing or disallowing it, either in whole or in part, and may charge or assess the guardian or conservator for any deficiencies.

6. The Court shall develop and provide forms to assist in completing reports required under this Section.

7. If a guardian or conservator fails to file a report or accounting as required by this Chapter or otherwise ordered by the Court, the Court shall take appropriate action. If the Court finds that the failure is willful or inexcusable, the guardian or conservator may be fined not to exceed \$500.00 and such fine may be enforced and collected through a civil cause of action brought by the Tribal Attorney on behalf of the Tribe in a proceeding in the Court.

**Section 3-9-34. Automatic Termination.**

1. A guardianship shall terminate:

a. When a minor ward attains majority, unless the minor is an incapacitated person;

b. When a minor ward lawfully marries a person who is not subject to a guardianship or conservatorship;

c. When the Court adjudicates a former incapacitated person to no longer be incapacitated;

- d. When a ward dies; or
  - e. By expiration of the term of the guardianship specified in the order appointing the guardian, unless prior to such expiration a motion has been filed and served seeking an extension of such term.
2. A conservatorship shall terminate:
- a. When a minor ward attains majority, unless the minor is an incapacitated person;
  - b. When a minor ward lawfully marries a person who is not subject to a guardianship or conservatorship and the Court approves such termination;
  - c. When the Court adjudicates a former incapacitated person to be capable of handling his or her property;
  - d. When a ward dies; or
  - e. By expiration of the term of the conservatorship specified in the order appointing the conservator, unless prior to such expiration a motion has been filed and served seeking an extension of such term.

**Section 3-9-35. Modification or Termination by Court.**

1. On its own motion or on motion of the ward, a guardian ad litem of the ward, or a person interested in the welfare of the ward, the Court may modify or terminate a guardianship or conservatorship or remove or replace a guardian or conservator. Such motion shall state the specific reasons or grounds for modification, termination, or removal or replacement.

2. The Court may summarily deny a motion under this Section without scheduling a hearing if it appears, based on the contents of the motion or documents in the Court file, that the motion is frivolous. Any denial of a motion without a hearing shall be in writing with the reasons for the denial explained.

3. Upon a motion under this Section that is not summarily denied, the Court shall set a date for a hearing, provided that an order finding a ward to be an incapacitated person may specify a minimum period, not exceeding 180 days, during which a motion to terminate the guardianship or conservatorship shall not be filed without special leave of the Court.

4. At any hearing under this Section, the ward shall have all the rights afforded under an initial hearing to appoint the guardian or conservator.

5. The Court may terminate a guardianship or conservatorship if it is in the best interests of the ward and one of the following grounds exists:

a. The guardianship or conservatorship has automatically terminated as provided in this Chapter;

b. A ward who is an incapacitated person lawfully marries a person who is not subject to a guardianship or conservatorship;

c. The custody of a ward who is a minor child will be restored to the child's parents and parental rights have not been terminated; or

d. The grounds for guardianship or conservatorship set forth in this Chapter, as applicable, no longer permit the guardianship or conservatorship.

6. In all other proceedings under this Section, the Court may grant such relief as it deems just and in the best interest of the ward.

**Section 3-9-36. Resignation of Guardian or Conservator.** Any guardian or conservator who wishes to resign shall file a motion with the Court submitting their resignation. The motion may include a request to appoint a successor guardian or conservator. Subject to the filing of a final report as required in this Chapter, the Court may accept the resignation after a showing that no other actions in the interim are necessary to protect the ward or the ward's estate.

**Section 3-9-37. Appointment of Successor.** Upon the resignation, removal, or death of a guardian or conservator, the Court, if necessary, may appoint a successor and, prior to any such appointment, may enter an emergency or interim order which is in the best interests of the ward.

**Section 3-9-38. Final Report.** Upon termination of a guardianship or conservatorship or upon resignation, removal or death of a guardian or conservator, such guardian, conservator or his or her personal representative shall file a final report with the Court

in the form required for the annual report required in this Chapter. Upon approval of the report and filing any proper receipts, the guardian or conservator shall be discharged and his or her bond released.

**Section 3-9-39. Civil Fines.** In addition to any liability a guardian or conservator may have to his or her ward, any guardian or conservator who steals, diverts, or grossly abuses the funds or property of a ward or who knowingly or recklessly abuses a ward or neglects a ward's rights under this Chapter or any other law of the Tribe shall, in addition to any crime, be subject to a civil fine not to exceed \$1000 per occurrence.

## **CHAPTER 10 ADOPTION OF CHILDREN**

**Section 3-10-1. Purpose.** The purpose of this Chapter is to protect the rights and the welfare of children, biological parents, and adoptive parents. The purpose of adoptions is to give the adoptive child a permanent home. It is the policy of the Tribe to promote the adoption of children who are members or eligible to be members of the Tribe by other family members and other members of the Tribe.

**Section 3-10-2. Who May Be Adopted.** Any child who is located within the territory of the Tribe or who is a member or eligible to be a member of the Tribe, regardless of location, may be adopted.

**Section 3-10-3. Who May Adopt.**

1. Any adult is eligible to adopt a child, provided, that no non-member who is not a member of the child's extended family may adopt a child who is a member or eligible to be a member of the Tribe except in compelling circumstances as determined by the Court when the best interests of the Tribe or the child so require.

2. Spouses, not lawfully separated, may jointly adopt children but a person may not adopt a child without the consent and approval of the adopting person's spouse, provided the spouse is capable of giving such consent.

3. A person adopting a child must be at least ten (10) years older than the child adopted.

**Section 3-10-4. Recognition of Customary Adoption.**

1. A person may petition the Court under this Chapter to recognize an adoption under the customs and traditions of the Tribe. The Court shall issue a decree recognizing the adoption if:

a. The biological parents of the person adopted acknowledge the traditional or customary adoption; or

b. At least two (2) reliable witnesses attest to the traditional or customary adoption;

2. The Court shall issue a decree recognizing the adoption even if the parental rights of the biological parents of the person adopted have not been terminated.

3. Upon request of the customary adoptive parents and/or the biological parents of the person adopted, the Court shall resolve any questions that arise over the respective rights of the biological parents and the adoptive parents in a traditional or customary adoption based on the best interests of the person adopted and where the sense of family is for the person adopted.

**Section 3-10-5. Consent to Adoption; Waiver.**

1. Except as provided in this Section, no adoption shall be granted unless consent to adopt has been obtained and filed with the Court from the following:

a. Both parents;

b. The guardian of the child;

c. The custodian of the child, if empowered to consent;

d. Any official appointed by a court of competent jurisdiction and given authority by it to consent to the child's adoption;

e. An agency which has been given consent to place the child for adoption by a parent whose consent would be necessary under this subsection, or which has been given authority in other legal proceedings to place the child for adoption;

f. The Department or any other person or agency with legal custody of the child; and

g. The child, if twelve (12) years of age or older.

2. Consent is not necessary from the following:

a. A parent:

i. Who is not living;

ii. Whose parental rights have been lawfully relinquished or have been terminated by a court of competent jurisdiction if the adjudication is final on appeal to the court of last resort or the time for an appeal has expired;

iii. Who has abandoned his or her child for a period of one (1) year;

iv. Who has been convicted of any crime punishable by imprisonment for a period that, in the opinion of the Court, will deprive the child of a parent's companionship for a critical period of time;

v. Who has been adjudged by a court of competent jurisdiction to be incompetent or an incapacitated person; or

vi. Who committed an act of rape or sexual assault against the other parent of the child and the child was conceived as a result of the act of rape or sexual assault, provided that the Court shall accept a guilty plea or conviction of rape, sexual assault or comparable offense under the laws of the Tribe or other jurisdiction where the offense occurred against the other parent as conclusive proof that the parent committed the act of rape or sexual assault;

b. The father of a child born out of wedlock where parentage has not been established by acknowledgment, subsequent marriage to the mother, or a court of competent jurisdiction;

c. The guardian of the child, if the guardian is adopting the child; and



d. The parents, guardian or custodian of the child in the case of recognition of a customary adoption.

3. The Court may waive any requirement for the consent of any person, except a parent and the child when, after a hearing, the Court determines that the best interests of the child will be promoted thereby. In such a case, the Court shall make written findings of all facts upon which its order is based.

4. The consent of a parent to the adoption of a child shall not constitute or be construed as constituting a relinquishment or termination of the parental rights of such parent.

**Section 3-10-6. Form of Consent.**

1. Except for the child to be adopted whose consent is required, all consents to an adoption shall be executed in writing, signed by the person giving the consent under oath or affirmation and filed with the Court prior to the hearing on a petition for adoption.

2. Consent by a child to be adopted whose consent is required shall be made:

a. Orally either in open court or in chambers with only the judge, any other persons the judge deems necessary, and the child present; and

b. After an explanation to the child of the legal consequences of the adoption and the rights of the child under this Chapter.

3. A consent given prior to, or within, ten (10) days after the birth of the child to be adopted shall not be valid.

4. A consent by a parent or guardian to an adoption shall designate one of the following:

a. An agency authorized to place the child for adoption; or

b. A particular person or persons authorized to adopt the child.

5. A consent which purports to permit a third person, other than an agency, to locate or nominate an adoptive parent shall be invalid.

6. A consent by a minor parent to an adoption shall not be valid unless prior written approval from the Court is obtained. Any consent given in accordance with this Section shall not be subject to revocation by reason of the parent's minority.

**Section 3-10-7. Withdrawal of Consent.**

1. Any consent given under the provisions of this Chapter may be withdrawn by the person or agency which gave the consent at any time prior to the entry of a decree of adoption.

2. No reason need to be stated and no hearing need be held on any withdrawal of consent under this Section.

3. All withdrawals shall be in writing and notarized or witnessed by the Tribal Court Administrator with the original being filed with the Court.

4. If a parent withdraws consent under this Section, the child shall be returned to the parent withdrawing consent if such parent would otherwise be entitled to the custody and control of the child.

**Section 3-10-8. Proceedings Involving Child of Another Tribe.** In any proceeding under this Chapter involving a child who is not a member of the Tribe and is a member or eligible to be a member of another federally recognized Indian tribe:

1. The Court shall provide notice of the proceedings to the child's tribe as soon as possible, and preferably prior to the next hearing, after the Court knows or has reason to know that the child is not a member of the Tribe and is a member or eligible to be a member of another federally recognized Indian tribe, which shall include:

a. The nature of the proceedings;

b. Notification of the tribe's right to intervene in the proceedings; and

c. Notification of the tribe's right to request transfer of the proceedings involving that child to it; and

2. The child's tribe shall have a right to intervene at any point in the proceedings.

**Section 3-10-9. Nature of Adoption.**

1. Except as expressly provided in this Section, adoptions under this Chapter shall be open adoptions. An open adoption is intended to not permanently deprive the child of connections to, or knowledge of, his or her biological family. The following shall apply to all orders and decrees of an open adoption:

a. The adoptive child shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his or her biological family and tribal heritage;

b. Unless termination of parental rights is required under another provision of the laws of the Tribe, the termination or relinquishment of the parental rights of the child's biological parents shall not be required, provided that:

i. The Court may provide for the respective rights and duties of the biological parents and the adoptive parents based on the best interests of the child or, to the extent consistent with the best interests of the child, the agreement of the biological parents and the adoptive parents; and

ii. In the absence of the Court providing for the respective rights and duties of the biological parents and the adoptive parents, the rights, powers, privileges, duties and obligations of a parent, including to custody, to control visitation and to support, shall reside with the adoptive parents;

c. The adoptive child and members of the child's biological extended family, including parents, may have the right to reasonable visitation, subject to reasonable controls of the adoptive parents, unless otherwise restricted by the Court for a compelling reason; and

d. Adoption shall not serve to prevent an adoptive child from inheriting from a biological parent in the same manner as any other biological child.

2. At the request of the petitioner, the child's biological parents, or the Department and if deemed reasonable by the Court, adoption proceedings may be made closed adoptions. A closed adoption is intended to sever all ties between the child and his

or her biological family. The following shall apply to all orders and decrees of a closed adoption:

a. The adoptive child shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his or her biological family and tribal heritage upon reaching the age of majority;

b. The termination or relinquishment of the parental rights of the child's biological parents shall be required;

c. The child's biological family shall not be entitled to or have access to any information regarding the child; and

d. The adoptive child shall not be entitled to inherit from his or her biological parents by intestate succession.

#### **Section 3-10-10. Placement Preferences.**

1. In any adoption proceeding except the recognition of a customary adoption, preference shall be given to placement in the following order:

a. A relative of the child who is a member of the tribe in which the child is a member or eligible to be a member;

b. A relative of the child who is not a member of the tribe in which the child is a member or eligible to be a member;

c. A non-relative member of the tribe in which the child is a member or eligible to be a member; or

d. A member of a federally recognized Indian tribe.

2. If a child who is a member or eligible to be a member of the Tribe is to be adopted by a non-Ponca family, the following placement conditions, when reasonable, should be imposed:

a. The child should have reasonable access to Ponca family members, including, but not limited to, visitation, phone calls, and correspondence;

b. If the child wishes to observe or participate in the Tribe's cultural and religious ceremonies and activities, appropriate arrangements should be made;

c. All correspondence from the Tribe (such as the Tribal Newsletter, special mailings, etc.) must be accepted; and

d. The Tribe must be kept informed of all address changes.

3. Notwithstanding anything in this Section, the Court, with good cause shown, may place the child in a placement that serves the best interests of the child.

### **Section 3-10-11. Initiation of Proceedings.**

1. Proceedings in the Court to adopt a child or recognize a customary adoption shall be initiated by the filing of a petition.

2. Petitions may only be filed by the person desiring to adopt the child or who claim a customary adoption, provided that spouses desiring to adopt a child shall file a joint petition for adoption unless one of the spouses is the biological or adopted parent of the proposed adoptee.

3. Petitions for adoption shall be captioned: "In the Adoption of (child's or children's name(s))". Petitions for the recognition of customary adoptions shall be captioned: "In the Recognition of the Adoption of (child's or children's name(s))".

4. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. The full names, ages, place of residence, marital status, and tribal membership of the petitioner;

b. The status of parental rights of the petitioner;

c. The child's full name, sex, date and place of birth, current residence and tribal membership or the reasons such information is unavailable;

d. The adoptive name of the child, if a change of name is desired;

e. The date, if applicable, when the child was first placed or lived with petitioner;

f. The relationship of the petitioner to the child, or the fact that no relationship exists;

g. The names, last known addresses and tribal membership of the child's parents or the reasons that such information is unavailable;

h. Where the child's parent is also a child, the names and addresses of the parent's parents or guardian or a statement that the parent has no parent or guardian, or the reasons that such information is unavailable;

i. The names, last known addresses and tribal membership of the persons having legal custody or guardianship of the child or the reasons that such information is unavailable;

j. The names, last know addresses and tribal membership of the child's extended family members, former care givers and others who have or may have a direct or substantial interest in the child, or the reasons such information is unavailable;

k. A full description and statement of the value of all property owned or possessed by the child if known by petitioner;

l. The names and addresses of any person or agency whose consent to the adoption is necessary;

m. Information regarding any consents which have been given or the reason that consents need not be given;

n. Information regarding notifying the Department of the filing of the petition;

o. Full disclosure of any fees or anything of value given or paid in connection with the adoption of the child;

p. If the petitioner desires a closed adoption, a statement to that effect;

q. The basis for the Court's jurisdiction;

r. That it is the desire of the petitioner to adopt the child, and approved by the spouse of the petitioner, if applicable;

s. A request that the Court grant the adoption or recognize the customary adoption, as the case may be.

5. All petitions under this Section shall be verified under oath or affirmation of the petitioner.

6. Any written consent required by this Chapter may be attached to the petition or may be filed separately with the Court.

7. The petitioner's written agreement required by this Chapter that the child adopted shall be treated in all respects as his or her own may also be attached to the petition or may be filed separately with the Court.

8. Where there is more than one child to be adopted by the petitioner, only one petition shall be required for the adoption of all or any combination of the children, provided that each child proposed to be adopted shall be named in the petition and a separate order of adoption shall be made and filed by the Court as to each child adopted.

9. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

**Section 3-10-12. Summons and Service of Process.**

1. Upon the filing of a petition, a summons shall be issued in accordance with the general rules governing the issuance of summons by the Court to the following:

a. Any person whose consent is required by this Chapter;

b. The parents of the child whose parental rights have not been terminated;

c. The person having custody of or responsibility for the child, if any; and

d. If the child is a ward or dependent child of the Tribe, the Department.

2. The summons shall be served in accordance with the Tribal Rules of Civil Procedure and shall be made at least ten (10) days before the hearing on the petition.

**Section 3-10-13. Responsive Pleading.**

1. Any person issued a summons may file a responsive pleading.

2. Any responsive pleading shall be filed with the Court and served on all parties within the time period provided in the rules of procedure for the Court for answering or responding to a claim or at least seven (7) business days before the hearing on the petition, whichever is earlier.

3. Failure to file a responsive pleading shall not constitute an admission of any allegation contained in the petition.

**Section 3-10-14. Notice to Department.**

1. Upon the filing of a petition for adoption, the petitioner shall notify the Department by mailing to the Department a copy of the petition. In the event the petitioner fails to notify the Department, the Tribal Court Administrator shall provide notice to the Department in the petitioner's stead.

2. The Department may appear in any proceeding under this Chapter the same as a party.

**Section 3-10-15. Investigation and Recommendation.**

1. Unless otherwise ordered by the Court pursuant to this Section, upon receipt of notification of the filing of a petition for adoption under this Chapter, the Department shall investigate the proposed adoption.

2. The investigation required by this Section shall consider all relevant and material facts concerning the petitioner's fitness to adopt the child and shall include, but not be limited to, the following factors concerning the petitioner and the members of his or her household:

- a. Social history;
- b. Financial condition;



c. A history of any previous child support obligations;

d. Moral and physical fitness;

e. Religious and community background;

f. Mental and physical conditions; and

g. All other facts bearing on the issue of the fitness of the petitioner and his or her household that may be deemed relevant.

3. If a petitioner is not a member of the Tribe and the child to be adopted is a member or eligible to be a member of the Tribe, the investigation shall also include the reasons the nonmember should be considered suitable to adopt a member.

4. As soon as identity of the child to be adopted is known, the investigation shall also include:

a. The background of the child and his or her mental and physical condition;

b. The existing arrangements for custody of the child;

c. The adoptability of the child and the suitability of the child's adoption by the petitioner; and

d. The desire of the child, to the extent it may be determined.

5. The Department may request a postponement of a hearing on the petition in the event it needs more time for its investigation.

6. Based on the Department's investigation, the Department or the Tribal Attorney shall submit a recommendation to the Court on behalf of the Tribe prior to the hearing on the petition. The recommendation shall include:

a. A full report of the facts disclosed by its investigation;

b. Information on whether the requirements of this Chapter have been met, including placement preferences; and

c. A recommendation whether the adoption should be allowed.

7. The Tribe may attach the Department's report to its recommendation as an exhibit or may include the necessary information from the Department's report directly in the Tribe's recommendation. The Tribe may also attach any homestudy investigations or other reports and documents as exhibits to its recommendation. Subject to objection from any party, the Court shall receive and accept the Tribe's recommendation and any exhibit attached thereto as it would any other evidence presented regardless of whether the recommendation, any matter therein or any exhibit attached thereto is formally introduced as evidence.

8. In the case of a step-parent adopting his or her stepchild, the Court, by order, may waive the requirement of the Department's investigation pursuant to this Section or limit the investigation to such matters as the Court deems appropriate.

**Section 3-10-16. Requirements to Complete Adoption.** No petition for adoption shall be granted unless and until:

1. A home study has been completed by the Department or another agency or individual qualified to perform a home study and filed with the Court in the proceedings, provided that the Court, by order, may excuse the requirement of a home study in the case of a step-parent adopting his or her stepchild;

2. The child to be adopted has lived with the petitioner in the petitioner's home for a period of at least six (6) months;

3. The petitioner executes an agreement under oath or affirmation to the effect that the child to be adopted shall be treated in all respects as his or her own;

4. An affidavit of non-identifying information as required under this Chapter is executed and filed with the Court; and

5. The child to be adopted, if eligible to be a member of the Tribe, is enrolled as a member of the Tribe, unless the Court finds compelling circumstances as determined by the Court that best interests of the Tribe or the child require otherwise.

**Section 3-10-17. Affidavit of Non-Identifying Information.**

1. Except in the case of a step-parent adopting his or her stepchild, in a petition for adoption, the petitioner or, if the

identity of the biological parents is unknown another appropriate person, shall execute and file with the Court an affidavit of non-identifying information, if known, which shall include the following:

a. The age of the biological parents at the time of the birth of the child to be adopted, but not the dates of birth of the biological parents;

b. The nationality, ethnic background and race of the biological parents;

c. The number of years of school completed by the biological parents at the time of the birth of the child to be adopted;

d. The height, weight, hair color, eye color, skin color and other information of a similar nature of the biological parents at the time of the birth of the child to be adopted;

e. The talents, hobbies, and special interests of the biological parents;

f. The existence of any other children born to either biological parent before the birth of the child to be adopted;

g. Whether the parental rights of the biological parents were terminated voluntarily or involuntarily;

h. The religion of the biological parents;

i. The occupation of the biological parents in general terms;

j. The health history of the biological parents and blood relatives; and

k. The relationship between the biological parents.

2. Notwithstanding anything to the contrary in this Title, upon written request and proper proof of identification, the non-identifying information listed in this Section shall be made available to the adopted child, except that in the case of a closed adoption such information shall not be made available until the child reaches the age of majority and part or all of such

information may be withheld if it would tend to identify a biological relative of the child.

**Section 3-10-18. Hearing on Petition.**

1. The petitioner and the child to be adopted shall appear in person at the hearing on the petition.

2. The Department shall appear at the hearing if it has custody of the child to be adopted. In all other cases, the Department and the Tribal Attorney may appear, but shall not be required to appear.

3. All other persons issued a summons, persons whose consent is necessary, and extended family members of the child and others who have a direct or substantial interest in the child may also appear at the hearing either in person or through legal counsel.

4. At the beginning of the hearing on the petition, the Court shall first:

a. Explain to the petitioner and to the child the effect of the granting of the petition; and

b. Advise the parties of their basic rights under Section 3-3-7 of this Title.

5. The Court shall examine all persons appearing before it. The examination of each person shall be conducted separately but within the physical presence of each such other persons unless the Court, in its discretion, shall order otherwise.

6. The Court shall consider any and all reports required by this Chapter or ordered by the Court and any additional relevant testimony or evidence presented at the hearing.

7. For a petition for adoption, the Court shall determine if adoption is in the best interests of the child to be adopted and the Tribe. In determining the best interests of the child and the Tribe, the Court shall examine:

a. The validity of any written consents;

b. Any termination of parental rights order;

c. The length of time of the child's wardship by the Court, if any;

d. Special conditions of the child;

e. Parent communications with the child;

f. Homestudies;

g. The recommendation of the Tribe and report of the Department; and

h. Order of preference of placement.

8. For a petition to recognize a customary adoption, the Court shall determine whether the customary adoption is recognizable as provided in this Chapter.

9. The burden of proof shall lie with the petitioner to prove that the allegations in the petition are supported by a preponderance of the evidence and that the best interests of the child and the Tribe will be served by the adoption.

10. Proceedings for termination of parental rights and proceedings for adoption may be consolidated and determined at one hearing provided that all the requirements of this Chapter as well as Chapter 8 of this Title governing termination of parental rights are complied with fully.

**Section 3-10-19. Order After Hearing.**

1. After a hearing on the petition, the Court shall enter a written order based on the results of said hearing. The order shall be in writing, and shall recite the findings of fact upon which the order is based. The order shall:

a. State the appearances of all parties and failures to appear;

b. Include findings pertaining to the Court's jurisdiction;

c. If the hearing is continued, set a new date for the advisory hearing;

d. If the Court is satisfied that the requirements of this Chapter have been met, the adoption or recognition of

the customary adoption is in the best interests of the child and the Tribe, and, in the case of a petition to recognize a customary adoption, a decree recognizing the adoption should be entered, or, in the case of a petition for adoption, the child is suitable for adoption, the petitioner is fit to adopt the child, and a decree of adoption should be entered:

i. State the full adoptive name, date of birth, sex, race or ethnicity, and place of birth of the adopted child;

ii. State the full name, date of birth, citizenship, residence, race or ethnicity, birthplace, and occupation of the petitioner;

iii. Order the termination of parental rights, if appropriate or necessary;

iv. Order that the name of the child is changed, if requested;

v. Order that the child shall be the adopted child of the petitioner and shall be regarded and treated in all respects as the child of the petitioner; and

vi. Order that the adoptive parents shall maintain cultural ties with the Tribe and take those steps necessary to inform and/or affirm the child's knowledge and understanding of Tribal culture and traditions;

e. If the Court finds that not all of the requirements of this Chapter have been met, that the adoption or recognition of the customary adoption will not be in the best interests of the child or the Tribe, or, in the case of petition for adoption, the child is not suitable for adoption or the petitioner is not fit to adopt the child:

i. Delay action on the petition and, if appropriate under this circumstances, place the child in the legal custody of the petitioner for a period of time not to exceed six (6) months; or

ii. Deny the petition, make any other order not inconsistent with this Title the Court deems necessary for the care and custody of the child, and dismiss the action; and

f. Order any other matters the Court deems necessary or appropriate.

2. A decree of adoption and decree recognizing a customary adoption shall be effective and binding on all persons from the date of entry.

3. A decree of adoption, a decree recognizing a customary adoption, and an order dismissing a petition under this Section are final orders and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

**Section 3-10-20. Notice of Adoption.** The Tribal Court Administrator shall notify any agencies or departments of the Tribe or other governments who need the information of any decree of adoption entered under this Chapter, including for purposes of amending the birth certificate of an adopted child, updating or creating vital records impacted by the adoption, and protecting the inheritance rights or tribal membership status of the adopted child and his or her descendants.

**Section 3-10-21. Effect of Decree.**

1. Upon entry of a decree of adoption, the relationship of parent and child and all the legal rights, privileges, duties, obligations and other legal consequences of the natural and biological relationship of child and parent shall thereafter exist between the adopted child and the adoptive parent the same as though the child were born biologically to the adoptive parent in lawful wedlock.

2. The entry of a decree recognizing a customary adoption acknowledges the relationship of parent and child and all the legal rights, privileges, duties, obligations and other legal consequences of the natural and biological relationship of child and parent existing between the adopted person and the adoptive parent the same as though the person were born biologically to the adoptive parent in lawful wedlock from the date of the customary adoption.

3. An adopted child shall be entitled to inherit real and personal property from and through the adoptive parent and the adoptive parent shall be entitled to inherit real and personal property from and through the adopted child. However, if an inheriting adopted child or adoptive parent is not a member or eligible to be a member of the Tribe, then said child or parent shall not be eligible to inherit any interest which the deceased

member's estate may have to any Tribal privilege, right, land or property of any kind.

4. Subject to the Court resolving the respective rights of a child's biological parents and adoptive parents as provided in this Chapter and except where the parental rights of a biological parent have been terminated, the entry of a decree of adoption or a decree recognizing a customary adoption does not alter, effect or modify the relationship between the child and his or her biological parents.

5. Except in a closed adoption, an adopted child shall be entitled to the society and companionship of his or her biological siblings.

6. Upon entry of a decree of adoption, the adopted child shall assume the surname of the person by whom he or she was adopted, unless the Court orders otherwise.

7. Notwithstanding anything in this Section to the contrary, the status as a member of the Tribe shall not be effected by adoption or a decree of adoption or recognition of customary adoption and adoption and the decree of adoption or recognition of customary adoption shall not extinguish any status, rights or privileges due to the child's membership or eligibility for membership in the Tribe.

**Section 3-10-22. Dismissal After Death; Exception.** In the event of the death of the petitioner prior to adoption, the petition shall be dismissed, except that, if there are two petitioners, the proceeding shall continue as to the surviving petitioner, unless voluntarily dismissed or withdrawn by the survivor.

**Section 3-10-23. Sealing of Records in Closed Adoption.**

1. Notwithstanding any provision of this Title to the contrary, upon entry of a decree of adoption in a closed adoption, the Court shall order all Court records relating to such proceeding sealed and no person shall have access to such records except:

- a. The adoptive parents and their legal counsel;
- b. Representatives of the Department; and
- c. The child when he or she reaches the age of majority.



2. A person may petition the Court for permission to inspect such records, but permission shall not be granted except in extraordinary circumstances and for compelling cause shown or with consent of the adopted child executed after the child attains the age of majority.

**Section 3-10-24. Vacating Decree.** Subject to the disposition of an appeal, within one (1) year after the entry of a decree of adoption or decree recognizing a customary adoption, said decree may be vacated upon the filing of a petition therefor and a showing that the consent which made the adoption possible was obtained through fraud or duress. Upon such a showing, the Court shall vacate the decree and return the adopted person to that status he or she had prior to the entry of the decree.

**Section 3-10-25. Irregularities; Curative Period.** Subject to the disposition of an appeal, after one (1) year from the date that a decree of adoption or decree recognizing a customary adoption is entered, any irregularity in the proceeding, including lack of jurisdiction, fraud, misrepresentation, and failure to give any required notice, shall be deemed cured and the validity of the decree shall not thereafter be subject to attack or question on any ground by any person, including the petitioner, in any collateral or direct proceeding or any other manner unless the petitioner has not taken custody of the child.

## **CHAPTER 11 EMANCIPATION**

**Section 3-11-1. Purpose.** The purpose of this Chapter is to provide for a child who is at least sixteen (16) years of age and capable of self-support and managing his or her own affairs to obtain the status of an emancipated person for limited or general purposes.

**Section 3-11-2. Emancipated Minor Defined.** For purposes of this Chapter, an emancipated minor is an individual under the age of majority who:

1. Has entered into a valid marriage, whether or not such marriage was terminated by dissolution; or

2. Is on active duty with any of the armed forces of the United States of America; or

3. Has received a declaration of emancipation pursuant to this Chapter.

**Section 3-11-3. Initiation of Proceedings.**

1. Proceedings in the Court to emancipate a child shall be initiated by the filing of a petition.

2. Petitions may be filed by a child sixteen (16) years of age or older or a parent, guardian or custodian of such child.

3. Petitions for emancipation shall be captioned: "In the Emancipation of (child's name)".

4. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. The child's full name, date and place of birth, current residence and length of time at that residence, and tribal membership;

b. Whether the child is at least sixteen (16) years of age;

c. Whether the child is married;

d. The names, last known addresses and tribal membership of the child's living parents or the reasons such information is unavailable;

e. The names, last known addresses and tribal membership of the child's guardian or custodian, if any, or the reasons such information is unavailable;

f. A written statement of the reason for requesting emancipation;

g. The purpose for which emancipation is sought;

h. The income and housing plan for the child, if emancipated;

i. How the child would pay for medicine and health care costs through insurance or other programs, if emancipated;

j. A declaration by the child indicating that he or she has demonstrated the ability to manage his or her financial affairs and any information he or she considers necessary to support the declaration;

k. A declaration by the child indicating that he or she has the ability to manage his or her personal and social affairs and any information he or she considers necessary to support the declaration;

l. The basis for the Court's jurisdiction;

m. A request that the Court grant the emancipation.

5. All petitions under this Section shall also include the following items attached to the petition:

a. A certified copy of the child's birth certificate;

b. Tribal identification verification, if applicable;

c. One of the following:

i. The written consent or agreement of each living parent, guardian or custodian having control of the person or property of the child; or

ii. At least one affidavit from the Department or other appropriate service provider declaring the individual has personal knowledge of the child's circumstances, recommending emancipation, and setting out the factual basis for the recommendation; and

d. Any other affidavits supporting the request.

6. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

#### **Section 3-11-4. Summons and Service of Process.**

1. Upon the filing of a petition, a summons shall be issued in accordance with the general rules governing the issuance of summons by the Court to the following:

a. The child, if the child is not the petitioner;

b. The parents, guardian or custodian of the child, if the parents, guardian or custodian is not the petitioner;

c. The person having custody of or responsibility for the child, if such person is not the parents, guardian or custodian of the child; and

d. If the child is a ward or dependent child of the Tribe, the Department.

2. The summons shall be served in accordance with the Tribal Rules of Civil Procedure and shall be made at least ten (10) days before the hearing on the petition.

**Section 3-11-5. Responsive Pleading.**

1. Any person issued a summons may file a responsive pleading.

2. Any responsive pleading shall be filed with the Court and served on all parties within the time period provided in the rules of procedure for the Court for answering or responding to a claim or at least seven (7) business days before the hearing on the petition, whichever is earlier.

3. Failure to file a responsive pleading shall not constitute an admission of any allegation contained in the petition.

**Section 3-11-6. Notice of Hearing; Waiver.**

1. In addition to any other persons required to receive notice of the emancipation hearing pursuant to Section 3-3-11 of this Chapter, the Court shall ensure that any individuals who provided affidavits attached to the petition are notified of each hearing in a proceeding under this Chapter.

2. A parent, guardian or custodian of the child may waive appearance at hearings under this Chapter, except that a parent, guardian or custodian may not waive such appearance where he or she is the petitioner. To be effective, the waiver must be in writing, be attested to by a notary public and contain a statement that the parent, guardian or custodian understands the meaning and consequences of the waiver and the emancipation.

**Section 3-11-7. Hearing on Petition.**

1. The petitioner and, if the petitioner is not the child, the child to be emancipated shall appear in person at the hearing on the petition.

2. Any individuals who provided affidavits attached to the petition may also appear or the Court may require their attendance.

3. All other persons issued a summons or notice may also appear at the hearing either in person or through legal counsel.

4. The Court may require the presence of any other parties or witnesses deemed necessary for disposition of the petition.

5. At the beginning of the hearing on the petition, the Court shall first:

a. Explain to the petitioner and to the child the effect of the granting of the petition; and

b. Advise the parties of their basic rights under Section 3-3-7 of this Title.

6. The Court shall determine if emancipation is not contrary to the best interests of the child and whether all of the following is established:

a. That the child is at least sixteen (16) years of age;

b. That the child's parents, guardian or custodian does not object to the petition, or if a parent, guardian or custodian objects to the petition, that the objecting parent, guardian or custodian is not providing the child with support;

c. That the child has demonstrated the ability to manage his or her financial affairs, including proof of employment or other means of support, provided that general assistance or aid to families with dependent children received from a government shall not constitute other means of support;

d. That the child has the ability to manage his or her personal and social affairs, including, but not limited to, proof of housing; and

e. That the child understands his or her rights and responsibilities under this Chapter as an emancipated child.

7. In determining whether to order emancipation of the child, the Court shall consider at least the following factors as evidence of the child's ability to be emancipated:

a. Whether the minor is able to manage his or her affairs independently of his or her parents, guardian or custodian;

b. Whether the minor is living separately or paying room and board at home;

c. Whether the minor is employed and the history of the minor's employment;

d. Whether the minor is married;

e. Whether the minor is enlisted in the Armed Services;

f. Any other facts deemed relevant by the Court.

8. The burden of proof shall lie with the petitioner to prove that emancipation should be ordered by clear and convincing evidence and that the best interests of the child will be served by the emancipation.

**Section 3-11-8. Order After Hearing.**

1. After a hearing on the petition, the Court shall enter a written order based on the results of said hearing. Emancipation may be for general purposes or the limited purposes specified in the order. The order shall be in writing and shall recite the findings of fact upon which the order is based. The order shall:

a. State the appearances of all parties and failures to appear;

b. Include findings pertaining to the Court's jurisdiction;

c. If the hearing is continued, set a new date for the hearing;

d. If the Court is satisfied that the requirements of this Chapter have been met and the child shall be emancipated, order the emancipation of the child for general purposes or limited purposes specified;

e. If the Court finds that not all of the requirements of this Chapter have been met or that the child should not be emancipated, deny the emancipation and dismiss the action; and

f. Order any other matters the Court deems necessary or appropriate.

2. An emancipation order shall be conclusive and binding on all persons from the date of entry. The Court shall retain a copy of an emancipation order until the emancipated child reaches the age of majority.

3. An order issued under this Section shall not be confidential and shall be open to inspection as other records of the Court generally open to the public.

4. An emancipation order and an order dismissing a petition under this Section are final orders and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

#### **Section 3-11-9. Effect of Emancipation.**

1. Notwithstanding any other provision of law, an emancipation order for limited purposes means that such child has the power and capacity of an adult for the limited purposes stated in the order.

2. Notwithstanding any other provision of law, an emancipation order for general purposes means that such child may, in the same manner as an adult:

a. Consent to or obtain medical, chiropractic, optometric, dental, psychiatric, legal and educational services;

b. Enter into a binding contract;

c. Sue and be sued in his or her own name;

d. Earn, keep and spend his or her own earnings;

e. Establish his or her own residence apart from such child's parents, guardian or custodian;

f. Buy, sell and dispose of real and personal property;

g. Not be the subject of a petition as a child in need of assistance or otherwise as an abused, dependent, neglected or uncared for child;

h. May enroll in any school or college;

i. Obtain an operator's license or marriage license;  
and

j. Enlist in the armed forces of the United States.

3. An emancipation order for general purposes releases the child's parents, guardian or custodians of the following during the period of emancipation:

a. Being the guardians of the minor;

b. Any obligations respecting the child's school attendance;

c. All obligations to support the child; and

d. All liability for agreements, contracts, obligations, torts and crimes of such minor.

4. Nothing in this Section shall be construed to relieve the child's parents, guardian or custodian from any liability for the emancipated child under a principle of law other than the parent-child relationship.

5. An emancipation order does not affect or alter any specific constitutional or statutory age requirements, including but not limited to, voting, holding public office, and use of alcoholic beverages or tobacco.

#### **Section 3-11-10. Effect of Fraud.**

1. An emancipation order obtained by fraud or by the withholding of material information shall be voidable.



2. A proceeding to void an emancipation order under this Section may be commenced by any person or by any public or private agency in accordance with the laws of the Tribe governing civil actions.

3. The voiding of any emancipation order pursuant to this Section shall not alter any contractual obligations or rights or any property rights or interests which arose during the period that the order was in effect.

4. No liability may accrue as a result of the voiding of an emancipation order pursuant to this Section to any parent, guardian or custodian not given actual notice until such parent, guardian or custodian is given actual notice.

**Section 3-11-11. Review and Revocation.**

1. At any time before an emancipated minor reaches the age of majority, the child or his or her parents, guardian or custodian may file a petition with the Court for a review of the emancipation order in accordance with the laws of the Tribe governing civil actions.

2. The Court may revoke an emancipation order in a hearing to review the order if:

a. The child voluntarily consents to the revocation under oath during a hearing of the Court;

b. The petitioner proves by clear and convincing evidence that the child is indigent and has no means of support; or

c. The petitioner proves by clear and convincing evidence that the child otherwise no longer meets the requirements for emancipation under this Chapter.

3. Revocation of any emancipation order pursuant to this Section shall not alter any contractual obligations or rights or any property rights or interests which arose during the period that the order was in effect.

4. No liability may accrue as a result of the revocation of an emancipation order pursuant to this Section to any parent, guardian or custodian not given actual notice until such parent, guardian or custodian is given actual notice.

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