

CHAPTER VII – RULES FOR CHILDREN’S COURT

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- (1) The Children's Court shall protect the rights and interests of its young and unborn by proceeding with a course of action that will provide for the welfare, care, and protection of its children and their families;
- (2) To preserve the unity of the family, by separating the children from their parents and siblings, only as a course of last resort;
- (3) To take action that will best meet the mental, physical, emotional, and spiritual needs of the children, and preserve the interest and culture of the Bois Forte Band;
- (4) To recognize and acknowledge the traditional customs and practices of the Band regarding child rearing;
- (5) To preserve and strengthen children's cultural ethnic identity whenever possible;
- (6) To provide procedures for intervention in state court proceedings involving Indian Children and for the transfer of jurisdiction over Indian children from state and other tribal courts to the Bois Forte Children's Court;
- (7) To secure the rights of and ensure fairness to the children, their parents, guardians, custodians, extended family members, and other parties who come before this Court under the provisions of this Chapter, and
- (8) To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention, and community based alternatives.

703. Definitions. The following terms shall have the meanings described below for the purposes of this Chapter:

- (a) "Abandon" means failure of an able parent or legal custodian of a child to provide for the necessary physical, emotional, and financial support and care of the child as required by the child's age and development for a period of six months.
 - (1) Services in the U.S. Armed Forces, Custody with extended family, out of home placement during Child Protection Proceedings, and voluntary consent to placement of a child, or Incarceration of a parent or legal custodian will not support a finding of abandonment unless the parent or legal custodian ceases contact with the child and fails to arrange for care of the child.
 - (2) Failure to maintain contact with the child and to maintain a substantial and positive relationship with the child, without cause, for a period of one year shall constitute prima facie evidence of abandonment.

(k) "Child Born Out of Wedlock" means a child conceived and born to a woman who is unmarried from the conception to the birth of the child, or a child determined by judicial notice or otherwise to have been conceived or born during a marriage but who is not the issue of that marriage.

(l) "Child in Need of Protective Services (CHIPS)" means a child:

- (1) Who has no parent(s), guardian, or custodian available and willing to care for him;
- (2) Who has suffered domestic violence as defined by Chapter XII, Section 1208, Subdivision 4, Bois Forte Tribal Code, or who has witnessed domestic violence and court intervention is necessary to protect the child from physical, emotional, or mental harm;
- (3) Whose home environment is so dysfunctional because of the abuse of alcohol or drugs by others in the household that court intervention is necessary to protect the child from physical, emotional, or mental harm;
- (4) Whose parent(s), guardian, or custodian is unwilling to provide adequate food, clothing, shelter, medical care, education, or supervision necessary for the child's health and well-being, or whose parent(s), guardian, or custodian is willing but unable to provide the same without court intervention;
- (5) Who has committed delinquent acts because of parental pressure, guidance, approval, or failure to properly supervise;
- (6) Who, prior to birth and during the mother's pregnancy, has been so exposed to the use of alcohol or other chemicals that a substantial danger exists that the child may suffer physical and/or mental harm without court intervention;
- (7) Who, due to his emotional or mental health, poses a danger to himself or to others;
- (8) Who is habitually truant, a runaway or unwilling to allow his parent(s), guardian, or custodian care for him, or who violates the Band's "Curfew" ordinance, Section 640.01;
- (9) Who is alleged to have committed delinquent acts while under seven (7) years of age; or
- (10) Who is a sexually exploited minor.

(Resolution 39-2018; November 1, 2017)

- (2) The man and the mother file a joint written request for a correction of the certificate of birth pertaining to the child that results in issuance of a substituted certificate recording the birth;
 - (3) The man acknowledges the child, without the acknowledgment of the mother, with the approval of the court; or
 - (4) A man, who by order of filiation or by judgment of paternity, is determined to be the father of the child.
- (w) “Final Decree of Customary Adoption” means the final court order which establishes the permanent legal relationship between the child and the adoptive parent(s) and establishes any contact which may be allowed with the biological parent.
- (x) “Final Order Suspending Parental Rights” means a final order of the court that permanently suspends the rights of a biological parent to provide for the care, custody, and control of their child. Said order may establish the parameters of contact between the birth parent and the child if said contact is in the child’s best interests.
- (y) “Guardian” means a person, other than a parent, assigned by a court of law who has legal duty and authority to provide care and control of a child.
- (z) “He/His” means he or she, him or her, and singular includes plural.
- (aa) “Immediate danger” means a hazard, peril, or harm that is currently present and is likely to affect the physical, mental, or emotional wellbeing of the child.
- (bb) “Indian” means any member of a federally recognized Indian tribe, band, or community, or Alaska Natives; any person so defined by federal or state law, and any person of indigenous descent who holds himself out to be an “Indian” person and is recognized by the Bois Forte community as such.
- (cc) “Indian Child” means a child whose mother or father is an “Indian” as defined above.
- (dd) “Juvenile” or “Minor” means a person under the age of eighteen (18) years.
- (ee) “Juvenile Offender” means a juvenile offender is a child who has committed an act that would be designated as a crime if committed by an adult under the laws of the Bois Forte Band of Chippewa Indians. The term “Juvenile Offender” does not include a juvenile alleged to have engaged in conduct which would, if committed by an adult, violate any provision of the Bois Forte Band’s criminal code relating to being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual contact.

(Resolution 39-2018; November 1, 2017)

- (5) Any other person or entity upon motion and approval by the Court.
- (ll) “Probation Officer” means staff persons of the Children’s Court who monitor and supervise the restrictions related to probationary status imposed by the Court.
- (mm) “Protective Services Agency” means the agency, department, or division of the Bois Forte Band, or of any other tribe, county, or state which is required by applicable law to provide protective services to children and to investigate allegations of child abuse and/or neglect.
- (nn) “Responsible Person” means a person who is of adequate age, maturity, and morals and who has the ability and authority to provide for the child’s care in the absence of a parent or custodian.
- (oo) “Suspension of Parental Rights” means the suspension of the rights of biological parents to provide for the care, custody, and control of their child.
- (pp) “Tribe” and/or “Band” means the Bois Forte Band of Chippewa Indians.
- (qq) “Tribal Council” means the Bois Forte Reservation Tribal Council.
- (rr) “Tribal Court” means the tribal court of the Bois Forte Band of Chippewa Indians.
- (ss) “Tribal Health & Human Services” mean the agencies, divisions, and/or departments of the Tribe which provides health, human, and social services to the residents and guests of the Bois Forte Band of Chippewa Indians.
- (tt) “Truant” means failing or refusing without justifiable cause to comply with the requirements of any duly enacted Band ordinance requiring compulsory education of Indian children residing within the boundaries of the Bois Forte Reservation or, in the event no such ordinance has been enacted or does not apply to the child in question, failing or refusing to comply with the requirements of Chapter 122A.22, Minnesota Statutes (2007), and any subsequent amendment thereof, requiring compulsory instruction of children within the State of Minnesota.

704. Jurisdiction of the Bois Forte Children’s Court. Except as provided herein, the Bois Forte Children’s Court shall have:

- (a) Exclusive original jurisdiction, regardless of any other court proceedings, concerning any Indian child over the age of seven (7) years who commits a delinquent act within the territorial jurisdiction of the Bois Forte Band of Chippewa Indians.
- (b) Jurisdiction over any child alleged to be in need of protective services who is found, domiciled, or resides within the territorial jurisdiction of the Bois Forte Band of Chippewa Indians.

707. Service by Publication. In any proceeding commenced pursuant to the provisions of this Chapter where a responding party cannot be located for either personal service or for service by mail, the Court may order service of a summons or of notice of hearing to be made by publication in the Bois Forte newspaper and in any other regularly published newspaper serving the area where the respondent is thought to be. A copy of the order authorizing such service and an affidavit of service by publication shall be filed as a part of the court record.

708. Notice to Financially Responsible County Agencies. In any proceeding commenced pursuant to this Chapter where court-ordered placement of the child in relative care, other foster care, or in residential treatment is contemplated, and where a county agency and/or the State of Minnesota may be expected to pay some or all of the costs of any such out-of-home placement or residential treatment, notice of hearing shall be provided to the financially responsible county agency and it shall have the right to appear and take part as an interested party. It shall also be entitled to receive copies of all documentary evidence considered by the Court and to receive copies of all Findings and Orders entered by the Court in those proceedings.

709. Court Files and Records. All files and records in a proceeding under this Chapter are open to inspection only by:

- (a) The judge(s), officer, and professional staff of the Court;
- (b) The parties to the proceeding, their counsel(s), and their representatives;
- (c) A public or private agency or institution providing supervision or having custody of the child under an order of the Court;
- (d) A court and its staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who prior thereto had been a party to the proceeding in the Children's Division; and
- (e) With leave of the Court, any other person, agency, or institution having a legitimate interest in the proceeding or the work of the Court.

710. Right of Appeal. Any party aggrieved by a final order, judgment or decree of the Children's Court arising under the provisions of this Chapter may appeal such order, judgment, or decree to the Bois Forte Court of Appeals in accordance with the procedures set forth in Chapter III of the Bois Forte Tribal Code.

711. Severability. If any provision of this Chapter, or the application thereof, to any person is held invalid, such invalidity shall not affect the provisions or applications of this Chapter which can be given effect without the invalid provisions, and to this end the provisions of this Chapter are declared severable.

PART B – JUVENILE OFFENDERS

715. Commencement of Juvenile Offender Proceedings. A juvenile offender proceeding shall be commenced either by filing the original of a citation issued pursuant to Section 714, above, or by filing a juvenile offender petition as provided herein.

716. Juvenile Offender Petition.

- (a) **Authorization to File.** The Chief of the Bois Forte Police Department or his designee is authorized to file on behalf of the Band, a petition alleging that a minor subject to the jurisdiction of the Tribal Court is a juvenile offender.
- (b) **Contents of Petition.** The juvenile offender petition shall set forth the following with specificity:
 - (1) The name, birth date, age, sex, residence, and tribal affiliation of the juvenile;
 - (2) The basis for the Court's jurisdiction;
 - (3) The specific allegations that cause the juvenile to be an offender, including the specific code provision(s), if any, alleged to be violated;
 - (4) A plain and concise statement of facts upon which the allegations of juvenile offender are based, including the date, time, and location at which the alleged facts occurred;
 - (5) The names, residences and tribal affiliation of the juvenile's parents, guardians, or custodians, if known;
 - (6) If the child is in temporary detention, the location of placement and the facts on which the determination to place was based, including the time and date of placement; and
 - (7) Law enforcement investigation or incident reports, truancy officer's reports, school attendance records, or any other similar documents that relate to the offense(s) shall be included by reference with copies attached.
- (c) **Verification.** The petition shall be sworn to and signed in the presence of the Clerk or of a notary by a law enforcement officer having knowledge of the facts upon which the petition is based who shall affirm that the same are true and correct to the best of his knowledge and belief and that the allegations set forth probable cause to believe that the minor is a juvenile offender.

717. Time Limitations. If an alleged juvenile offender has been placed in temporary detention without a court order, a juvenile offender petition shall be filed with the Court and a preliminary hearing held within 72 hours, excluding weekends and holidays, following such placement or the juvenile shall be released from detention. This hearing may be conducted by telephone conference call and shall be recorded.

(E) To be provided with notice as to the date, time, and place of any and all future hearings before the Court.

(2) **The Alleged Juvenile Offender.** In addition to the above, the alleged juvenile offender shall have the following rights:

(A) To either admit or deny the petition;

(B) To have a trial before the Court on the merits if a denial is entered and to be presumed innocent until and unless found by proof beyond a reasonable doubt to have committed the delinquent acts alleged in the petition;

(C) To be informed of all evidence and all witnesses that the prosecution may be aware and to cross-examine all witnesses called to testify by the prosecution;

(D) To produce evidence and call witnesses to testify on his own behalf should he so desire and to utilize the subpoena powers of the Court to compel the attendance of any such witnesses or the production of such evidence;

(E) To remain silent and not be required to testify nor shall any failure to testify be construed against him; and

(F) To voluntarily waive any and/or all of the above stated rights either orally on the record in open court or in a writing sworn and executed before the Clerk or a notary and filed with the Court.

720. Admission or Denial. Unless the preliminary hearing is otherwise continued for cause, the minor shall then either admit or deny the allegations contained in the petition.

(a) **Denial.** If the petition is denied, the matter shall be set for a pre-trial or an adjudicatory hearing and the minor shall be released to the custody of his parent(s), guardian, or custodian under such terms and conditions as may be necessary to ensure his future appearance before the Court and to adequately protect the minor, any alleged victims and the community at large. The minor shall not be kept in detention unless an evidentiary showing has been made that the minor represents a danger to himself or to others or will not appear for future hearings.

(b) **Admission.** If the petition is admitted, sworn testimony shall be taken from the minor so as to form a factual basis for the acceptance of the admission following the Court may proceed immediately to disposition or it may continue the matter for a reasonable period to obtain chemical dependency and/or psychological evaluations and recommendations, school reports, records of delinquent acts, if any, and

722. Dispositional Hearing. A dispositional hearing shall be conducted to determine measures to be taken by the Court with respect to the child properly within its jurisdiction and, when applicable, against any adult, once the Court has determined following trial, plea of admission or no contest that the child comes within its jurisdiction.

- (a) **Time for Hearing.** The dispositional hearing may be held immediately after the adjudicatory hearing. The interval if any, between the adjudicatory hearing and the dispositional hearing is within the discretion of the Court. When the minor is in temporary detention or out-of-home placement, the interval may not be more than 60 days except for good cause. If the dispositional hearing is not held immediately after the adjudication, notice of hearing may be given by scheduling it on the record in the presence of the parties but written notice shall also be served in accordance with Section 718, above.
- (b) **Pre-disposition Investigation and Evaluations.** The Court may order the probation officer and/or the Bois Forte Divisions of Health or Human Services or any other agency of the Band to conduct an investigation of the minor's circumstances, including his schooling, living arrangements, record (if any) in this or other juvenile courts, and to render a written report and recommendations. The Court may also order the minor and any adult who is a party to the proceeding to submit to an evaluation to determine the need, if any, for counseling, treatment, or education pertaining to chemical dependency, anger management, mental health, or other condition affecting the ability of the child to remain safely in the home. The Court's order shall also include a requirement that the minor or adult so ordered to be evaluated execute a waiver and release of information so that copies of the evaluation will be timely received by the Court and can be provided to the prosecutor and the minor and/or his counsel.
- (c) **Evidence.** All relevant and material evidence, including oral and written reports, may be received and may be relied on to the extent of its probative value, even though such evidence may not be otherwise admissible at an adjudicatory hearing or trial.
 - (1) The parties shall be given an opportunity to examine and controvert written reports so received and may cross-examine individuals making reports when such individuals are reasonably available.
 - (2) No assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at the dispositional phase, of materials prepared pursuant to a court ordered examination, interview or course of treatment.
- (d) **Dispositional Order.** The Court shall enter an order of disposition after considering the pre-disposition investigation report(s), evaluations, and recommendations, if any, and any other evidence offered bearing on disposition. The Court may order

dispositional order; the progress, if any, that has been made in any treatment or rehabilitative program and the need, if any, to restructure the dispositional order to facilitate any such progress.

724. Violation of Probation. A juvenile offender who is alleged to have violated the terms of any probation imposed shall be brought before the Court for a hearing to determine (a) if he has violated the terms of his probation and (b) if so, what additional or further consequences may be imposed. Notice of a probation violation hearing shall be served upon the minor and his parent, guardian, or custodian in the same manner as set forth in Section 718, above. The same rights, burden of proof, standard of proof, and procedures for an adjudicatory hearing shall apply with regard to a probation violation hearing. If the Court finds that the minor did not violate the terms of probation, the proceeding shall be dismissed. If the Court finds that the terms of probation were violated it may order execution of any previously suspended consequences or it may impose any further consequences as provided in Section 722(e), above, except it cannot impose a greater monetary fine or amount of restitution than originally imposed.

725. Trial as an Adult. Upon motion of the Band Prosecutor at the time of filing a juvenile offender petition or after it has been filed but prior to a hearing on the merits of the petition, the Court may order a juvenile accused of an offense prohibited by Chapters VI and/or VIII, Bois Forte Tribal Code, to be tried as an adult if the juvenile was sixteen (16) or more years of age at the time of the alleged offense and, after a hearing on the motion, the Court finds that there are reasonable grounds to believe that:

- (a) The juvenile committed the offense(s) alleged, and
- (b) Either:
 - (1) The juvenile is not amenable to treatment or rehabilitation as a juvenile through available facilities, or
 - (2) The juvenile poses a significant threat to the safety and welfare of the Band.

PART C – CHILD IN NEED OF PROTECTIVE SERVICES (CHIPS)

726. Temporary Removal of Child Alleged to be in Need of Protective Services.

- (a) A child alleged to be in need of protective services may be removed from its parent(s), guardian, custodian, or other surroundings and taken into temporary custody by a law enforcement officer:
 - (1) Pursuant to a court order under this Chapter;
 - (2) If there is probable cause to believe that:
 - (A) The child is abandoned or without a responsible person to provide adequate care and/or supervision;

- (4) The names, residences, and tribal affiliation of the child's parent(s), guardian, or custodian, if known;
 - (5) If the child is in a placement, the location of placement and the facts upon which the determination to place was based, including the time and date of placement;
 - (6) Law enforcement investigation or incident reports, child protection workers, medical reports, truancy officer's reports, school attendance records, or any other similar documents that relate to the offense(s) shall be included by reference with copies attached; and
 - (7) Whether the agency is seeking custody or protective supervision;
 - (8) If the agency is seeking custody, a description of alternatives considered and why rejected; and
 - (9) A description of active efforts provided or reasons active efforts were not possible.
- (c) **Verification.** The petition shall be sworn to and signed in the presence of the Clerk or of a notary by a law enforcement officer or child protection worker having knowledge of the facts upon which the petition is based who shall affirm that the same are true and correct to the best of his knowledge and belief and that the allegations set forth probable cause to believe that the child is in need of protective services.

730. Time Limitations. If a child alleged to be in need of protective services has been removed from his parent(s), guardian, or custodian pursuant to Section 726, above, and placed in temporary custody without a court order, a child in need of protective services petition shall be filed with the Court and an initial hearing thereon shall be held within 72 hours, excluding weekends and holidays, following said placement or the child shall be returned to his parent, guardian, or custodian. This hearing may be conducted by telephone conference call and shall be recorded.

731. Summons and Notice. After a CHIPS petition has been filed, the Court shall timely schedule a preliminary hearing thereon and shall direct the issuance of a Summons and Notice of Hearing to be served, together with a copy of the petition and all attachments, upon the child's parent(s), guardian, or custodian requiring them to appear before the Court at the time fixed to answer the allegations of the petition. Service may be made personally by a law enforcement officer, including leaving the same with a responsible adult at the minor's usual place of abode, or by USPS mail addressed to the minor's parent(s), guardian, or custodian with sufficient postage attached thereto. The person making service shall file an affidavit of service with the court.

- (8) To produce evidence and call witnesses to testify on their own behalf should they so desire and to utilize the subpoena powers of the Court to compel the attendance of any such witnesses or the production of such evidence;
- (9) To voluntarily waive any and/or all of the above stated rights either orally on the record in open court or in a writing sworn to and executed before the Clerk or a notary and filed with the Court; and
- (10) To be provided with notice as to the date, time, and place of any and all future hearings before the Court.

734. Admission or Denial. Unless the initial hearing is otherwise continued for cause, the parent(s), guardian, or custodian shall then either admit or deny the allegations contained in the petition.

- (a) **Denial.** If the petition is denied, the matter shall be set for a pre-trial or an adjudicatory hearing.
- (b) **Admission.** If the petition is admitted, sworn testimony shall be taken from the respondent so as to form a factual basis for the acceptance of the admission following the Court may proceed immediately to disposition or it may continue the matter for a reasonable period to obtain chemical dependency and/or psychological evaluations and recommendations, school reports, dispositions in other jurisdictions if any, home studies, and an any other reports, materials, testimony, or other evidence which may assist the Court in making the best possible disposition.
- (c) **Placement and Conditions after Denial or Admission.** In the event the petition is denied and set for pre-trial or an adjudicatory hearing or the petition is admitted and continued for later disposition, the child may be released to the physical custody of his parent(s), guardian, or custodian under such terms and conditions as may be necessary to adequately protect the child or the child's custody may be temporarily transferred to the Band's Child Protective Services Division (and jointly with St. Louis County Social Services Department if need be) for placement in relative or other foster care. The Court may also impose such terms and conditions as may be necessary to adequately protect the child.

735. Adjudicatory Hearing. An adjudicatory hearing shall be a trial on the merits of the petition to the Court without a jury. The petitioner shall have the burden of proving the allegations contained in the petition by a mere preponderance of the evidence. Once the petitioner has met its burden of proof, the burden of disproving the petition shall shift to the respondent. The respondent may be called by the petitioner as adverse witnesses to testify in support of the allegations contained in the petition. The order of trial shall be as follows:

- (a) **Opening Statements.** Opening statements as to the facts to be proven by the evidence may be given by the petitioner's attorney, followed by the respondent or his

presence of the parties but written notice shall also be served in accordance with Section 731, above.

- (b) **Pre-disposition Investigation and Evaluations.** The Court may order the Band's child protective services agency or any other agency over which it may have jurisdiction to conduct a home study and an investigation of the child's and the family's circumstances and to render a written report and recommendations. The Court may also order the child, the child's parent, guardian, and custodian, and any other adult who is a party to the proceeding to submit to an evaluation to determine the need, if any, for counseling, treatment, or education pertaining to chemical dependency, anger management, mental health, or similar issues. The Court's order shall also include a requirement that the child, child's parent, guardian, or custodian, or any other adult so ordered to be evaluated execute a waiver and release of information so that copies of the evaluation will be timely received by the Court and can be provided to the petitioner and the minor and/or his counsel
- (c) **Evidence.** All relevant and material evidence, including oral and written reports, may be received and may be relied on to the extent of its probative value, even though such evidence may not be otherwise admissible at an adjudicatory hearing or trial.
- (1) The parties shall be given an opportunity to examine and controvert written reports so received and may cross-examine individuals making reports when such individuals are reasonably available.
 - (2) No assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at the dispositional phase, of materials prepared pursuant to a court ordered examination, interview, or course of treatment.
- (d) **Dispositional Order.** The Court shall enter an order of disposition after considering the pre-disposition investigation report(s), evaluations and recommendations, if any, and any other evidence offered bearing on disposition. The Court may order compliance with all or part of any recommended treatment plans and may enter such orders as it considers necessary in the interest of the minor and of the Band.
- (e) **Dispositional Alternatives.** If a child has been found to be a child in need of protective services, the Court may order any of the following dispositional alternatives:
- (1) Permit the child to remain with his parent(s), guardian, or custodian, subject to such conditions as the Court may prescribe, including transferring legal custody to the Band's Child Protection Services agency individually or jointly with the financially responsible county agency;

original case plan development. The Court may modify any part of the case plan including, but not limited to, the following:

- (A) Prescribing additional services that are necessary to rectify the conditions that caused the child to become or to remain a child offender or child in need of care.
- (B) Prescribing additional actions to be taken by the parent, guardian, or custodian to rectify the conditions that caused the child to become or remain a child offender or a child in need of care.
- (C) The continuing necessity and appropriateness of the child's present placement and, after reviewing all of the relevant material and recommendations, shall either order the return of the child to the custody of the parent, guardian, or prior custodian, or continue the existing dispositional order, modify the existing dispositional order, or enter a new dispositional order.

738. Permanency Planning Hearings.

- (a) **Purpose.** A permanency planning hearing shall be conducted to review the status of the child adjudicated as in need of care and the progress being made toward the child's return to his natural parents or to some other permanent home.
- (b) **Frequency of Hearings.** Unless modified by the Court for cause, the Court shall conduct a permanency planning hearing not more than 24 months after entry of the order of disposition and every 12 months thereafter, so long as the child remains a child in need of care. A permanency planning hearing may be combined with a disposition review hearing under Section 737 of this Chapter.
- (c) **Summons and Notice.** Notice of a permanency planning hearing shall be provided on the record or pursuant to the provisions of Section 731.
- (d) **Child Returned.** If the Court determines at a permanency planning hearing that the return of the child would not cause a substantial risk of harm to the child's life, physical health, or mental well-being, the Court shall order the child returned to his or her parent. In determining whether the return of the child would cause a substantial risk of harm to the child, the Court shall view the failure of the parent to substantially comply with the terms and conditions of the case service plan and dispositional orders of the court as evidence that return of the child to his parent would cause a substantial risk of harm to the child's life, physical health, or mental well-being. If a child is returned to the care of the parent(s) or custodian(s), the Court may order services and safety measures designed support safe and successful return to the care of the parent(s) or custodian(s).

- (4) A concise statement as to the child's present placement, including the location of placement and the facts upon which the determination to place was based, including the time and date of placement;
- (5) The basis for the Court's jurisdiction;
- (6) A statement as to why an order for the suspension of parental rights of the parent is in the best interests of the child and the child's tribe;
- (7) A statement as to basis for the request for the suspension of parental rights, supported by medical, psychiatric, child protection worker, family member, and/or psychological reports or testimony;
- (8) A statement that no similar action is pending in a state or other tribal court having jurisdiction over the child;
- (9) A description of alternatives considered and reasons the alternatives were rejected;
- (10) A description of the active efforts provided to the family to correct the conditions that lead to out of home placement of the children; and
- (11) A statement as to whether there are any additional services or efforts that are reasonably available and likely to assist the family in reunifying.

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

741. Summons and Notice. After a petition seeking suspension of parental rights has been filed, the Court shall timely schedule a hearing thereon and shall direct the issuance of a Summons and Notice of Hearing to be served, together with a copy of the petition and all attachments, upon the child's parent(s), guardian, or custodian requiring them to appear before the Court at the time fixed to answer the allegations of the petition. Service may be made personally, including leaving the same with a responsible adult at the respondent's usual place of abode, or by certified mail, return receipt requested, addressed to the respondent with sufficient postage attached thereto or, in the event the respondent cannot be found or his address is unknown, by publication. The person making service shall file an affidavit of service with the Court.

742. Conduct of Hearing. A suspension of parental rights hearing shall be conducted in the same manner as provided in Part C of this Chapter for hearings on a CHIPS petition. The burden of proof shall be on the petitioner and the standard of proof shall be clear and convincing evidence.

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

746. Review. Final orders for the suspension of parental rights may be reviewed by the Court at the request of the biological parent or the agency or agencies possessing custody of the child if, after a period of one year or more following entry of the final order suspending parental rights, the adoption of the child fails or the adoptive parent is deceased or there is no permanent legal custodian or guardian of the person of the minor child, or if, when requested by the biological parent, the biological parent documents in the request completion of substantial progress towards remedying the conditions that lead to suspension of parental rights. Notice of this review shall be provided to all parties to the hearing at which the final suspension of parental rights order was issued.

PART E – CUSTOMARY ADOPTION

747. Commencement of Proceedings. A customary adoption proceeding shall be commenced by the filing of a petition as provided herein.

748. Customary Adoption Petition.

(a) **Authorization to File.** Any adult may file a petition with the Court seeking an order or decree authorizing the customary adoption of a minor child who is subject to the jurisdiction of the Bois Forte Children's Court.

(b) **Contents of Petition.** The petition shall set contain the following information:

- (1) The name, address, and telephone number of the child's tribe;
- (2) The name, address, telephone number and age of the child to be adopted;
- (3) The name, address, and telephone number of the petitioner and the petitioner's relationship, if any; to the child;
- (4) The name, address, and telephone number of any other relatives who may have an interest in the care, custody, and control of the minor child;
- (5) The proposed name of the adoptee after the entry of the final order of customary adoption;
- (6) A statement or a copy of the final order suspending the parental rights of the biological parent(s), or, if the parent(s) are deceased, a certified copy of the death certificate(s);
- (7) A statement as to why a final order for customary adoption is in the best interests of the child and the best interests of the child's tribe supported by a

into the record and to timely object to such evidence, and further to be informed of the nature and consequences of the proceedings.

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

(c) Findings.

- (1) At the conclusion of the hearing, the Court shall make specific written findings of fact, state separately its conclusions of law, and enter an appropriate judgment or order.
- (2) The Court may make findings that it is in the child's best interests that a final order for a customary adoption be entered and the court shall specify the basis of those findings or it may find that it is not in the child's best interest to be adopted by the petitioner.

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

- (a) **Statement of Adoption.** A statement that the child has been adopted by the petitioner(s) and that the parent-child bond is hereby established and that all of the rights and responsibilities of that relationship shall exist upon the entry of such a final order.
- (b) **Child's New Name.** A notice regarding the new name of the child, if any.
- (c) **Statement Confirming Suspension of Parental Rights.** A statement that the child is available for adoption because the parental rights to his/her original parents were suspended.
- (d) **Statement Regarding Relationship with Extended Family and Parents.** When applicable, a statement adoptive parents shall ensure that the child continue his/her relationship with extended family and parents and shall abide by any and all contact agreements which are incorporated therein.
- (e) **Statement Regarding Continuing Rights of Parents.** A statement informing the original parents that because their parental rights were suspended, they retain a right to notice in the event this adoption fails, the adoptive parents die, or the adoptive parents are no longer able to provide care for the children.

752. Certification of a Customary Adoption.

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

755. Notice of Hearing. Upon the filing of a petition seeking an order awarding permanent legal custody of or appointing a guardian for a minor child, the Court shall schedule a hearing to be held thereon and shall cause written notice of such hearing to be served upon the petitioner; the child's tribe; appropriate family members including siblings, if any; caretaker, if any; and appropriate agencies of the Band and the county of financial responsibility, if any, which may either have an interest in the proceedings or be of assistance to the Court in adjudicating the matter. Such notice shall be served in the manner provided for in Section 731, herein.

756. Hearing on Petition.

(a) **Attendance at Hearing.**

- (1) The child who is the subject of a petition for an award of permanent legal custody or for the appointment of a guardian; the petitioner; the child's tribe; appropriate family members including siblings, if any; caretaker, if any; and appropriate agencies of the Band and the county of financial responsibility, if any, which may either have an interest in the proceedings or be of assistance to the Court in adjudicating the matter, may be present at the hearing in person or by telephone.
- (2) The petitioner's failure to appear shall be grounds for dismissal of the petition.

(b) **Conduct of Hearing.**

- (1) The Court shall conduct the hearing in a manner consistent with Section 705 of this Chapter. The burden of proving the allegations of the petition shall be upon the petitioner and the burden of proof shall be a mere preponderance of the evidence.
- (2) The Court shall inform the parties of their rights which shall include the right to be represented by counsel of their own choice and at their own expense, the right to testify and introduce evidence, to utilize the subpoena power of the Court to compel the attendance of witnesses, the right to cross-examine any witness presented by other parties, the right to timely obtain copies of any documentary evidence presented by other parties to the Court for introduction into the record and to timely object to such evidence, and further to be informed of the nature and consequences of the proceedings.
- (3) The Court may continue the hearing, upon a showing of good cause, at the request of any party to the proceeding and enter such temporary orders, if any,

- (5) The name, address, and telephone number of the person to whom legal custody is sought to be transferred;
- (6) The name, address, and telephone number of any other relatives who may have an interest in the care, custody and control of the minor child;
- (7) A statement as to why an order allowing for a transfer of legal custody is in the best interests of the child and the best interests of the child's tribe supported by a home study, medical, psychiatric, child protection worker, family member, and/or psychological reports or testimony; and
- (8) A statement that no similar action is pending in a state or other tribal court having jurisdiction over the child.

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

760. Notice of Hearing. Upon the filing of a petition seeking an order allowing a voluntary transfer of legal custody of a minor child, the Court shall schedule a hearing to be held thereon and shall cause written notice of such hearing to be served upon the petitioner; the child's tribe; the child's parent's if other than the petitioner, they are not deceased or their parental rights have not been suspended; appropriate family members including siblings, if any; caretaker, if any; and appropriate agencies of the Band and the county of financial responsibility, if any, which may either have an interest in the proceedings or be of assistance to the Court in adjudicating the matter. Such notice shall be served in the manner provided for in Section 731, herein.

761. Hearing on Petition.

(a) **Attendance at Hearing.**

- (1) The child who is the subject of a petition for an order allowing a transfer of legal custody, the petitioner, and all of the persons and representatives of agencies entitled to notice as provided above, may be present at the hearing in person or by telephone.
- (2) The petitioner's failure to appear shall be grounds for dismissal of the petition.

(b) **Conduct of Hearing.**

- (1) The Court shall conduct the hearing in a manner consistent with Section 705 of this Chapter. The burden of proving the allegations of the petition shall be upon the petitioner and the standard of proof shall be a mere preponderance of the evidence.

766. Final Order. A final order incorporating the Court's findings and conclusions shall be entered and the Clerk of Court shall cause a certified copy to be served upon each of the parties and upon the Clerk of Court of the state or other tribal court to which jurisdiction was sought to be transferred.

767. Transmittal of Court File. In the event the court orders a transfer of jurisdiction then the Clerk of Court shall transmit a certified copy of the record in the Bois Forte Children's Court to the Clerk of Court of the state or tribal court to which jurisdiction was transferred.

768. Transfer from other Courts. The Court may, after a hearing upon a written motion or petition filed by the Band or by a parent, guardian, or custodian of a minor child who is either a Band member, eligible for membership, or the child of a Band member, accept a transfer of jurisdiction of a child protection case from any federal, state or other tribal court, including child custody proceedings arising under the Indian Child Welfare Act, as well as the dispositional phase of juvenile offender cases, when it is in the best interest of the Band and of the child to accept such a transfer of jurisdiction.

769. Contents of Motion or Petition. The motion or petition shall contain the following information:

- (a) The name, address, and telephone number of the petitioner and the relationship, if any, between the petitioner and the minor child;
- (b) The name, address, telephone number, and tribal status of the child's parents, custodian, and/or guardian;
- (c) The name, address, telephone number, age, and tribal status of the child who is the subject of the transfer of jurisdiction proceedings;
- (d) The name, address, and telephone number of the state or tribal court presently having jurisdiction over the minor child;
- (e) The nature of the state or other tribal court proceedings giving rise to the request for a transfer of jurisdiction, the date of any state or tribal court order ordering such a transfer. A certified copy of that order should be attached;
- (f) The name, address, and telephone number of relatives, any, who may have an interest in the care, custody, and control of the minor child;
- (g) A statement as to why an order allowing for a transfer of jurisdiction from the state or other tribal court is in the child's best interests and the best interests of the Bois Forte Band.

770. Summons and Notice of Hearing. In any proceeding seeking to accept a transfer of jurisdiction pursuant to this Chapter, a summons and notice of hearing shall be given to all