CHAPTER VII – RULES FOR CHILDREN'S COURT

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CHAPTER VII – RULES FOR CHILDREN'S COURT

PART A – GENERAL PROVISIONS

701. Children's Court. While proceeding under this Chapter, the Court shall be termed the Bois Forte Children's Court.

702. Purpose. This Chapter shall be liberally interpreted and construed as an exercise of the inherent sovereignty of the Bois Forte Band of Chippewa to fulfill the following express purposes:

(a) Children are the Band's most vital and cherished resource. The Band's future depends on the health and well-being of its children. Children have a sacred right to receive the care and guidance necessary for their spiritual, emotional, mental, and physical development. Feeling pride from their identity as Anishinabe will help them grow into strong, healthy responsible adult Band members.

(b) To embody and promote the basic traditional values of the Band regarding the protection and care of the tribe's children. The Band believes that it is the responsibility of the Band, its communities, and its extended families to protect, care for, and nurture our children. The Band recognizes that individual families may at times struggle to care for and guide their children in a healthy and meaningful way and is committed to providing services and supports, when necessary, on both a voluntary and involuntary basis, to support and strengthen families.

(c) To promote the belief of the Band that children deserve a sense of permanency and belonging throughout their lives and at the same time they deserve to have knowledge about their unique cultural heritage including their tribal customs, history, language, religion, and values.

(d) To provide for the safety and well-being of the Band and its members and residents by affording judicial processes addressing offenses and violations of Bois Forte laws committed by juveniles and conferring jurisdiction upon the Bois Forte Children's Court to hear such matters.

(e) To afford judicial processes which allow for formal adjudications that address the issues of the rights, responsibilities, care, custody, and control of minor children when parents, guardians, or custodians are unable or unwilling to provide a safe, stable, nurturing, and permanent environment for their children by conferring jurisdiction upon the Bois Forte Children's Court to hear and adjudicate such matters.

(f) To ensure that children receive their rightful care, and to protect them from abuse and neglect, by helping and treating families, and placing children when necessary for their care. Specifically:

(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.

(b) "Active Efforts" means the provision of appropriate, available, and meaningful services to the family and the child based upon that family's specific needs and may include, but are not limited to, financial assistance, food, housing, health care, transportation, in-home services, community support services, identification and engagement of extended family and community members to support the child's family and to provide permanency for the child, and specialized services through the pendency of the case or through voluntary services.

(c) "Adequate Care means sustaining a meaningful and positive relationship with the child that supports the child's physical, spiritual, and emotional development and needs.

(d) "Adoptee" means a child who is adopted or is to be adopted.

(e) "Adoptive Parent" means a person who has established or is seeking to establish a permanent parent-child relationship with a child who is not their biological child.

(f) "Adult" means a person eighteen (18) years of age or older, or otherwise emancipated by order of a court of competent jurisdiction.

(g) "Best Interests of the Child" means a variety of factors including: the ability of the tribe and reservation community to provide for the care of the child; the wishes of the tribe, parents, party, or parties; the preference of the child if the child is of sufficient age to express a preference; the intimacy of the relationship between the parties and the child; the child's adjustment to home, school, and tribal community; the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity; the permanence, as a family unit, of the existing or proposed adoptive home; the mental and physical health of all individuals involved; the capacity and disposition of the parties to give the child love, affection, guidance, and to continue educating the child in the child's tribal culture and heritage.

(h) "Best Interest of the Tribe" means a variety of factors including but not limited to the ability of the tribe and its members to provide for the child; the ability of the tribe and its members to provide for the continuation of the tribe's culture, language, history, religion, traditions, and values through its children if those children are taken away and not taught these things throughout their daily lives. The ability of the Tribe to continue as a viable cultural entity will be hindered by the loss of its children. Every child is a gift from the creator and is viewed by the Tribe as crucial to the future of the tribe as a whole.

(i) "Birth Parent" means the biological parent of a child.

(j) "Child" means an unmarried person who is less than eighteen (18) years old and has not been emancipated by order of a court of competent jurisdiction and includes the unborn child of a pregnant female.

(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)

(m) "Citation" means a short form summons and complaint ordinarily used by law enforcement in adult criminal, traffic, and conservation violations, which may also be used by law enforcement for juvenile traffic and conservation violations.

(n) "Court" means the Bois Forte Children's Court, a division of the Bois Forte Tribal Court.

(o) "Court Administrator" means the Judicial Administrator or Chief Clerk or their designee of the Bois Forte Tribal Court.

(p) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the child has been given or a person, other than a parent, guardian or legal custodian, who has actual physical custody and control of a child.

(q) "Customary Adoption" means a traditional tribal practice recognized by the community and the Band that gives a child a permanent parent-child relationship with someone other than the child's biological parent(s).

(r) "Delinquent Act" means an act that if committed by an adult would constitute an offense in violation of the Band's criminal, traffic, or conservation code.

(s) "Domicile" means a person's permanent home, legal home, or main residence. The domicile of a child is generally that of the custodial parent, guardian, or custodian. Domicile includes the intent to establish a permanent home or place where the child's parent, guardian, or custodian considers his permanent home.

(t) "Extended Family" means a person who is the child's grandparent, great-aunt or uncle, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

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

(v) "Father" means a man married to the mother at any time from a child's conception to the child's birth unless the child is determined to be a child born out of wedlock, or a man who legally adopts the child, or a man whose paternity is established in one of the following ways:

(1) The man and the mother of the child acknowledge that he is the child's father in writing executed and notarized and filed in accordance with applicable tribal or state law;

(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)

(ff) "Least Restrictive Alternative" means the placement alternative that is the least restrictive method, in terms of restrictions to be placed upon the child and family, of obtaining the objectives of the Court and this Chapter.

(gg) "Legal Custody" unless otherwise agreed to by the parties or limited by order of a court having jurisdiction, means the right to determine a minor child's upbringing, including education, health care, and religious training.

(hh) "Legal Standing" means that the person or entity has a sufficient connection to and harm from the potential outcome of the case that warrants their participation in that portion of the case proceedings.

(ii) "Parent" means a person who is legally responsible for the control and care of the child, including a mother, father, guardian, custodian, or a natural or adoptive parent or any person who has assumed legal responsibility for the control and care of a child, but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.

(jj) "Participant" is any individual or entity who has right to attend hearings and to make the Court aware of the strengths and needs of the family and children, including, but not limited to:

(1) Financially responsible agency;

(2) Grandparents;

(3) Extended family members living in the home of the child;

(4) Foster parents; and

(5) Any other person or entity upon motion and approval by the Court.

(kk) "Party" is any individual or entity who has the right to attend hearings, to receive copies of records pertaining to themselves or their duties under this Chapter, to file motions, to be heard on matters before the court, to call witnesses at trial or contested hearing, including, but not limited to:

(1) Parents;

(2) Band;

(3) Protective Services Agency;

(4) Guardian Ad Litem, where appointed by the Court; and

(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.

(c) Jurisdiction over the child's immediate family and over the child's extended family residing in the household whenever the court deems it appropriate and necessary to carry out its responsibility to protect the child and prevent family dysfunction.

(d) Jurisdiction over any adult whose behavior causes or tends to cause the child to come within the jurisdiction of the Court.

(e) Jurisdiction over any proceeding that is transferred to the Children's Court by a state or tribal court.

(f) Jurisdiction to hear petitions for child in need of protection and services, petitions for appointment of guardians for children, petitions for suspension of parental rights, petitions for decrees of customary adoption, and petitions for awards of permanent custody of children.

(g) Once jurisdiction over a child has been exercised by the Children's Court, the Court shall maintain jurisdiction over the child after the case closes despite the domicile of the child.

(h) Jurisdiction over a juvenile offender under this Chapter shall remain after he attains the age of eighteen (18) if he has committed an offense prior to such age and one or more of the following conditions exist:

(1) He has not been arraigned on a juvenile offender petition;

(2) He has been arraigned and the matter is still pending for adjudication;

(3) He has been arraigned and adjudicated but the terms imposed at the time of a dispositional hearing, including an order for restitution, have not been satisfactorily completed or he remains on probations;

(4) He has not been referred to stand trial as an adult, or

(5) He has not attained the age of nineteen (19).

705. Conduct of Hearings. The Court shall conduct all hearings pursuant to this Chapter in an informal but orderly manner and insuring that the respective parties are fully informed of and understand their due process rights. In any hearing related to a petition commenced pursuant to this Chapter, the general public may be excluded and only such persons admitted as are parties and/or as proper and necessary to the proceeding.

706. Record of the Proceedings. In all proceedings conducted pursuant to this Chapter, the Court shall take and preserve an accurate stenographic or recording of the proceeding. In addition, the Clerk of Court shall prepare and keep minutes of each hearing.

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 pre-sentence 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

712. Apprehension of Juvenile Offenders. An alleged juvenile offender may be apprehended and taken into custody by a law enforcement officer:

(a) Pursuant to a court order under this Chapter;

(a) If the juvenile has committed an offense in violation of the Bois Forte Tribal Code and the offense has occurred in the presence of the officer;

(b) If the officer has probable cause to believe that the juvenile arrested has committed an offense in violation of the Bois Forte Tribal Code;

(c) If the officer has a proper warrant or detention order from a federal, state, or other tribal court having jurisdiction commanding the arrest or detention of the said juvenile, or the officer knows for a certainty that such a warrant or detention order has been issued, or

(d) If there is probable cause to believe that the child has run away from his parent(s), guardian, custodian, or court-ordered placement and would continue to run if not temporarily placed in a secured facility.

713. Temporary Detention of Juvenile Offenders.

(a) Unless otherwise ordered by the Court, an alleged juvenile offender who has been apprehended pursuant to Section 712, above, shall be released to the custody of his parent(s), guardian, or custodian upon their promise to bring the alleged offender before the Court in the event a citation is issued or a juvenile offender petition is filed.

(b) In the event the parent(s), guardian, or custodian cannot be found or either refuse or are not in a condition to reasonably care for and/or supervise the alleged offender then he shall be temporarily placed in a suitable home, shelter, or juvenile detention facility until such time as a petition is filed.

(c) In no event shall an alleged juvenile offender be placed in a jail or similar facility for the incarceration of adults.

714. Use of Citations. A law enforcement or conservation officer may issue a citation in lieu of a juvenile offender petition in those instances where the alleged offense is a violation of either the Bois Forte Conservation Code or the Bois Forte Traffic Code. The citation shall contain, at a minimum, the name, address, age and date of birth of the alleged offender, the date and location of the alleged offense(s), the section(s) of the tribal code alleged to have been violated, a short statement of fact *(example: speeding; 55 in 30 mph zone)*, and the day, time and place of the juvenile offender hearing. A copy of the citation shall be given by the officer to the alleged juvenile offender or to his parent, guardian, or custodian who shall be responsible for ensuring that the juvenile subsequently appears before the Court.

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, of 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.

718. Summons and Notice. After a juvenile offender 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 minor and his parent(s), guardian, or custodian requiring them to appear before the Court at the time fixed to answer the allegations of the petition and directing that the person having physical custody and control of the minor to bring the minor to the hearing. 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.

719. Preliminary Hearing. After the petition has been filed and served, the Court shall conduct a preliminary hearing for the purpose of informing the minor and his parent(s), guardian, or custodian of the nature of the proceedings, the rights of the parties, the allegations giving rise to the petition, and the consequences in the event the allegations are proven to be true.

(a) **Absence of Parent at Preliminary Hearing.** If the child's parent, guardian, or custodian is not present at the preliminary hearing, the Court shall make an inquiry into what efforts have been made to notify and to obtain the presence of the parent, guardian, or custodian. If it appears that further efforts are likely to produce the child's parent, guardian, or custodian, the Court may continue the matter for a reasonable period of time and direct the Clerk or petitioner to make continued efforts to obtain the presence of the child's parent's, guardian or custodian. However, the preliminary hearing may be conducted in the absence of the parent(s), guardian, or custodian if they cannot be located.

(b) **Rights of the Parties.** The Court shall inform the parties that they have the following rights:

(1) **Generally.**

(A) To be represented by counsel of their choosing at their own expense or by the Band's Public Defender if his services are available;

(B) To be provided with a copy of the juvenile offender petition, any attachments to it, and with copies of all documents, records, reports, or similar materials the prosecution may possess or have access to which may tend to prove or disprove the allegations contained in the petition;

(C) To request and be granted a reasonable continuance for the purpose of obtaining and/or consulting with counsel;

(D) To be informed of the possible consequences in the event the Court finds that the minor committed the delinquent acts alleged in the petition, and

(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

dispositions in other jurisdictions, home studies, and an any other reports, materials, testimony or other evidence which may assist the Court in making the best possible disposition.

721. Adjudicatory Hearing. An adjudicatory hearing shall be a trial on the merits of the petition to the court without a jury. The alleged juvenile offender shall be presumed to be innocent until proven to have committed the delinquent act(s) by proof beyond a reasonable doubt. The burden of proof shall remain with the prosecution until the case is submitted for consideration. 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 Band Prosecutor, followed by the alleged juvenile offender or his counsel provided that the latter's opening statement may be deferred until presentation of the respondent's case.

(b) **Prosecution's Evidence.** The Band's prosecutor shall open the case and offer evidence in support of the petition. The respondent or his counsel shall have the right to question any witness called to testify by the prosecutor.

(c) **Respondent's Evidence.** The respondent or his counsel may then open their case and offer evidence in support of the denial of the petition but are under no obligation to do so. The alleged juvenile offender may testify under oath if he so chooses but cannot be compelled to testify. The prosecutor shall have the right to question any witness, including the respondent, called to testify by the respondent.

(d) **Rebuttal.** The prosecution may call or recall any witness for the purpose of rebutting any evidence submitted by the respondent and the respondent may similarly rebut any new evidence offered by the prosecution.

(e) **Final Argument.** When all of the evidence is before the court and both parties have rested their case, the prosecutor, followed by the respondent or his counsel, may argue the case to the court.

(f) **Findings and Judgment.** After hearing all of the evidence and the arguments of counsel and weighing and considering the same, the Court may take the matter under advisement before rendering its findings and judgment in writing or it may enter it from the bench followed by a written judgment or order. If the Court finds the allegation that the minor is a juvenile offender has not been established by proof beyond a reasonable doubt, it shall dismiss the petition and further order the minor to be released and returned to his parent(s), guardian, or custodian in the event the minor is being held in detention or temporary placement. If the Court finds the allegation that the minor is a juvenile offender has been established by proof beyond a reasonable doubt then, in such an event, the Court shall proceed to a dispositional hearing

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

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.** The Court may order any one or more of the following dispositions, including placing the juvenile offender on supervised or unsupervised probation for either a specific or an indefinite period of time; ordering him to perform community service, and:

(1) Permit the juvenile offender to remain with his parent, guardian, or custodian subject to such reasonable terms and conditions, including house arrest with or without an ankle bracelet, as the Court may prescribe;

(2) Place the juvenile offender with a suitable relative or a licensed or unlicensed foster home subject to such reasonable terms and conditions, including house arrest with or without an ankle bracelet, as the Court may prescribe

(3) Place the juvenile offender in a chemical dependency treatment center, group home, or a residential care facility designated by the Court subject to such reasonable terms and conditions as the Court may prescribe;

(4) Place the child in a juvenile offender facility designated by the Court;

(5) In addition, the Court may require any juvenile offender to pay a fine commensurate with the fine which would be imposed on an adult convicted of the same offense or, in the case of conservation violations, the Court may impose a civil fine or remedial forfeiture commensurate with that which would be imposed upon an adult found to have committed the same offense. A juvenile offender who is without the resources to pay a fine or civil remedial forfeiture may perform community service in lieu thereof subject to approval by the Court;

(6) The Court may also require a juvenile offender to pay restitution for any damage, including medical or similar expenses suffered by the victim(s), resulting from his delinquent act(s).

723. Dispositional Review Hearings.

(a) **Initiation of Review.** The Court in its discretion or at the request of the petitioner, the probation officer, the juvenile offender or the juvenile offender's parent, guardian or custodian may conduct a dispositional review hearing.

(b) **Notice of Review.** Notice of review hearing shall be provided on the record or by ordinary mail as provided in Section 714.

(c) **Purpose and Content of Review.** The purpose of the review hearing shall be to determine the extent, if any, of the juvenile offender's compliance with the

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;

(B) The child is in immediate danger from his condition or surroundings and removal is necessary to protect the child from physical, mental, or emotional harm, and there are not alternatives available to safely mitigate the immediate danger;

(C) The child has been the victim of or has witnessed domestic abuse and removal is necessary to protect the child from further harm or abuse, or

(D) The child by reason of his physical, emotional, or mental health poses an immediate danger to himself or others.

(b) Whenever it is reasonably possible, a child protective services worker shall accompany the law enforcement officer at the time of a child's removal pursuant to this section.

727. Ex Parte Orders. Upon written application by a law enforcement officer, child protection worker, or other interested party setting forth a need for the emergency removal of a child described in Section 726(a), above, the Court may issue a temporary order without a prior hearing authorizing such removal, out-of-home placement and transfer of custody, setting a subsequent hearing date within at least 72 hours thereof, and granting such other temporary relief as the Court may deem just and necessary under the circumstances. The Court may, or its own or by request of a party, conduct the hearing by telephonic or other electronic appearance. Copies of the application and the ex parte order shall be promptly served upon the child's parent(s), guardian, or custodian.

728. Commencement of CHIPS Proceedings. A child-in-need-of-protective services, a/k/a CHIPS, proceeding shall be commenced by filing a petition as provided herein.

729. CHIPS Petition.

(a) **Authorization to File.** The Band's Child Protective Services Supervisor or ICWA Supervisor or their designee is authorized to file on behalf of the Band, a petition alleging that a child subject to the jurisdiction of the Tribal Court is a child-in-need-of-protective services.

(b) **Contents of Petition.** The petition shall set forth the following with specificity:

(1) The name, birth date, age, sex, residence, and tribal affiliation of the child;

(2) The basis for the Court's jurisdiction;

(3) The specific allegations that cause the petitioner to believe that the child is in need of protective services, including a plain and concise statement of the facts supporting the allegations.

(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.

732. Presence of the Child. The Court in its discretion may allow children who are the subject of the CHIPS petition to be present during some or all of the proceedings and with regard to children twelve (12) years of age and older shall use its best efforts to include them in the proceedings.

733. Initial Hearing. After the petition has been filed and served, the Court shall conduct an initial hearing for the purpose of informing the child's parent(s), guardian, or custodian of the nature of the proceedings, the rights of the parties, the allegations giving rise to the petition, and the consequences in the event the allegations are proven to be true.

(a) **Absence of Parent at Initial Hearing.** If the child's parent, guardian, or custodian is not present at the initial hearing, the Court shall make an inquiry into what efforts have been made to notify and to obtain the presence of the parent, guardian, or custodian. If it appears that further efforts are likely to produce the child's parent, guardian, or custodian, the Court may continue the matter for a reasonable period of time and direct the Clerk or petitioner to make continued efforts to obtain the presence of the child's parent's, guardian, or custodian. However, the initial hearing may be conducted in the absence of the parent(s), guardian, or custodian if they cannot be located.

(b) **Rights of the Parties.** The Court shall inform the parties that they have the following rights:

(1) To be represented by counsel of their choosing at their own expense or by the Band's Public Defender if such services are available;

(2) To be provided with a copy of the child-in-need-of-protective services petition, any attachments to it, and with copies of all documents, records, reports, or similar materials the prosecution may possess or have access to which may tend to prove or disprove the allegations contained in the petition;

(3) To request and be granted a reasonable continuance for the purpose of obtaining and/or consulting with counsel;

(4) To be informed of the possible consequences in the event the Court finds that the allegations contained in the petition are true and the child is in need of protective services;

(5) To either admit or deny the petition;

(6) To have a trial before the Court on the merits if a denial is entered;

(7) To be informed of all evidence and all witnesses of which the prosecution may be aware and to cross-examine all who are called to testify by the prosecution;

(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

counsel provided that the latter's opening statement may be deferred until presentation of the respondent's case.

(b) **Petitioner's Evidence.** The petitioner's attorney shall open the case and offer evidence in support of the petition. The petitioner may, if it so chooses, call the respondent to testify as an adverse witness. The respondent or his counsel shall have the right to question any witness called to testify by the petitioner.

(c) **Respondent's Evidence.** The respondent or his counsel may then open their case and offer evidence in support of the denial of the petition but are under no obligation to do so. The petitioner shall have the right to question any witness, including the respondent, called to testify by the respondent.

(d) **Rebuttal.** The petitioner may call or recall any witness for the purpose of rebutting any evidence submitted by the respondent and the respondent may similarly rebut any new evidence offered by the petitioner.

(e) **Final Argument.** When all of the evidence is before the Court and both parties have rested their case, the petitioner's attorney, followed by the respondent or his counsel, may argue the case to the court.

(f) **Findings and Judgment.** After hearing all of the evidence and the arguments of counsel, weighing, and considering the same, the Court may take the matter under advisement before rendering its findings and judgment in writing or it may enter it from the bench followed by a written judgment or order. If the Court finds that prosecution failed to meet its burden of proving by a mere preponderance of the evidence that the child is in need of protective services then, in such an event, the Court shall dismiss the petition and order the return of the child to the physical and legal custody of its parent(s), guardian, or custodian. However, if the Court finds that the child is in need of protective services it shall proceed to a dispositional hearing and in the interim may make shall temporary orders, including out-of-home placement, as may be necessary to protect the safety and welfare of the child

736. Dispositional Hearing. A dispositional hearing shall be conducted to determine measures to be taken by the Court with respect to the safety and welfare of 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 as a child in need of protective services.

(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 child is in temporary 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 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;

(2) Place the child with a relative, a licensed or unlicensed foster home, licensed group home, or in a residential treatment program, 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;

(3) Order the child, the child's parent(s), guardian, or custodian or any other adult who is a party to the proceedings to undergo evaluations to determine the necessity, if any, for chemical dependency or mental health treatment, anger management programs, parenting programs, or anything similar and to further order compliance with the recommendations arising from such evaluation; or

(4) Order the child's parent to contribute a reasonable amount toward the support and maintenance of the child if the child does not remain in the parental home. Said amount shall be based upon the parent's ability to pay.

737. Dispositional Review Hearings.

(a) **Frequency.** The dispositional order is to be reviewed at the discretion of the Court at least once every six (6) months. The petitioner, the child, the child's parent(s), custodian, or guardian may also request a review of the dispositional order at any time upon a showing of changed circumstances.

(b) **Notice of Review.** Notice of review hearing shall be provided on the record or as provided in Section 731.

(c) **Written Report by Protective Services Agency.** Except where waived by the Court, the protective services agency shall submit written reports to the Court, the Band's attorney, the parents, the parents' attorneys, and any other parties, summarizing the current welfare and needs of the children, the progress of the parents towards reunification or closure of the case, and making recommendations for services or benefits that will help the parents and child(ren) reunify or a recommendation that permanency be established for the children. Written reports shall be submitted seven (7) calendar days before the review hearing.

(d) **Purpose and Content of Review.** At every review hearing the Court shall review on the record the compliance, if any, with the previous orders of the Court including:

(1) Services provided or offered to the child and his parent, guardian, or custodian and whether the child, parent, guardian, or custodian has complied with and/or benefited from those services.

(2) The extent of progress, if any, made toward alleviating or mitigating the conditions that caused the child to become a child in need of protection. The child protection services agency may submit a modified case plan, taking in to account circumstances that arose or became known since the time of the

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).

(e) **Child Not Returned.** If the Court determines at a permanency planning hearing that the child should not be returned to his parent, it shall order one of the following alternative permanent placement plans:

(1) The child remain in its current placement and a petition for permanent custody or guardianship be jointly filed by the child's current caretaker and the Band's Child Protective Services Agency;

(2) The child be placed permanently with a relative or other suitable adult caretaker and a petition for permanent custody or guardianship be jointly filed by that relative or proposed caretaker and the Band's Child Protective Services Agency;

(3) The child be placed with a proposed adoptee while a petition for suspension of parental rights and for a decree of customary adoption is prepared, filed, and heard; or

(4) Continue the child in placement for a limited period so that further attempts can be made under the direction of the Court to either reunite the child with his parent(s), guardian, or custodian or to find a suitable permanent caretaker

PART D – SUSPENSION OF PARENTAL RIGHTS

739. Commencement of Proceedings. A Suspension of Parental Rights proceeding shall be commenced by the filing of a petition as provided herein.

740. Suspension of Parental Rights Petition.

(a) **Authorization to File.** The Band's Child Protective Services Supervisor or ICWA Supervisor or their designee is authorized to file on behalf of the Band, a petition seeking to permanently suspend the parental rights of the parent(s) of a child who has been adjudicated a child in need of protective services, pursuant to the provisions of Part C of this Chapter.

(b) **Contents of Petition.** The petition shall set forth the following with specificity:

(1) The name, birth date, age, sex, residence, and tribal affiliation of the child;

(2) The name, address, and phone number of the child's parent(s), guardian(s), or legal custodian(s);

(3) The name, address, and phone number of any other relatives who may have an interest in the care, custody, and control of the child;

(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.

743. Findings. In all cases, the Court shall make specific written findings of fact, state separately its conclusions of law, and enter an appropriate judgment or order. The Court may make findings that it is in the best interests of the child and the child's tribe and that a final order suspending the parental rights be entered. In such an event, the Court shall specify the basis of those findings.

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

(a) **Allowing Adoption, Permanent Legal Custody, or Guardianship.** A permanent suspension of the parental rights of the parent including the suspension of the right to the care, custody, and control of the minor child and allowing the child to be adopted or be placed in the permanent legal custody or under the guardianship of a responsible adult caretaker;

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

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

(d) **Terminating Child Support Obligation.** Ordering that the biological parents' obligation to pay child support, except for arrearages, is hereby terminated;

(e) **Terminating Prior Court Orders.** Ordering that any prior court order for custody, visitation, or contact with the minor child be hereby terminated;

(f) **No Further Legal Standing.** The parent shall have no legal standing to appear at any future legal proceedings involving the child, provided, however, upon the death of the adoptive parents or failure of the adoption, the original parents will be notified and may upon motion and permission of the Court be granted legal standing to intervene in furture legal proceedings;

(g) **Tribal Relationship and Rights of Inheritance.** The suspension of parental rights does not sever or affect in any way a child's relationship to his/her tribe or any rights of inheritance from the biological parent(s); and

(h) **Best Interests Statement.** Shall contain a statement regarding why it is in the best interests of the child and the child's tribe to enter this order.

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

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.

749. Notice of Hearing. Upon the filing of a petition seeking an order or decree for a customary adoption of a minor child, the Court shall schedule a hearing to be held thereon and shall cause written notice of such hearing to be served upon the petitioner; the child's tribe; appropriate family members, 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.

750. Hearing on Petition for Customary Adoption.

(a) **Attendance at Hearing.**

(1) The child who is the subject of a petition for customary adoption; 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) 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 proving the allegations of the petition shall be upon the petitioner and the standard 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, 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 Relantionship 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.

(a) **Nature of a Customary Adoption.** A customary adoption, conducted in a manner that is a long-established, continued, reasonable process, and considered by the people of the Bois Forte Band to be binding and authentic, based upon the testimony of an expert witness, may be certified by the Children's Court as having the same effect as an adoption order issued by this Court so long as it is in the best interests of the child and the child's tribe.

(b) **Effect.** A decree certifying a customary adoption has the same effect as a decree or final order of customary adoption issued by this court.

PART F – PERMANENT CHILD CUSTODY AND GUARDIANSHIP

753. Commencement of Proceedings. A permanent child custody or a guardianship of a minor proceeding shall be commenced by the filing of a petition as provided herein.

754. Petition Seeking Permanent Custody or Guardianship.

(a) **Authorization to File.** Any adult may file a petition with the Court seeking an order awarding permanent legal custody of or appointing a guardian for a minor child who is subject to the jurisdiction of the Bois Forte Children's Court.

(b) **Contents of Petition.** The petition shall 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 whose permanent legal custody or guardianship is sought;

(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) 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);

(6) A statement as to why an order awarding permanent legal custody or appointing a guardian 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

(7) 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.

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,

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 awarding permanent legal custody of or appointing a guardian for the minor child 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 for such an order to be entered.

757. Final Order. 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 awarding permanent legal custody of or appointing a guardian for the minor child. Such an order may include conferring the authority upon the legal custodian or guardian to make all decisions regarding the minor child's care and control that the natural or adoptive parent(s) could legally make if parental rights had not been suspended.

PART G - VOLUNTARY TRANSFER OF CHILD CUSTODY

758. Commencement of Proceedings. A proceeding for the voluntary transfer of child custody shall be commenced by the filing of a petition as provided herein.

759. Petition for Voluntary Transfer of Child Custody.

(a) **Authorization to File.** Any adult parent or court-appointed legal custodian of a child may file a petition with the Court seeking an order transferring legal custody 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 whose transfer of legal custody is sought;

(3) The name, address, and telephone number of the child's parent(s) if parental rights have not been terminated;

(4) The name, address, and telephone number of the petitioner, the petitioner's relationship to the child and, if the petitioner has legal custody pursuant to a court order, a short statement setting forth the circumstances that gave rise to the court order including a certified copy of the court order;

(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.

(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, as may be deemed just and reasonable to carry out the purposes of this Chapter.

(c) **Findings.** 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 that it is in the child's and the child's tribe's best interests that legal custody of the minor child be transferred or that legal custody should not be transferred.

(d) **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.

PART H – TRANSFERS OF JURISDICTION TO/FROM STATE COURTS AND OTHER TRIBAL COURTS

762. Transfer to State Court or other Tribal Court. In any CHIPS proceeding commenced pursuant to this Chapter, the Court may, after a hearing upon its own motion or upon the motion of any party to the proceeding, transfer the proceedings to an appropriate state court or to another tribal court where the state or the other Indian tribe has a significant interest in the child and the transfer would be in the best interest of the child.

763. Summons and Notice of Hearing. Summons and Notice of Hearing upon the proposed motion seeking such transfer of jurisdiction shall be served upon all interested parties, including a county agency having financial responsibility, in the same manner as provided in Section 731.

764. Conduct of the Hearing. The hearing shall be conducted in the same manner as any dispositional hearing on a CHIPS proceeding commenced pursuant to this Chapter.

765. Findings. A 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 that it is in the child's and the child's tribe's best interests that jurisdiction over the proceedings shall be transferred or not transferred to the state or other tribal court.

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

interested parties, including a county having financial responsibility, in a manner consistent with the provisions of Section 731 of this Chapter.

771. Conduct of Hearing. An acceptance of jurisdictional transfer hearing shall be conducted informally and in the same manner as a dispositional hearing in a CHIPS proceeding commenced pursuant to the provisions of this Chapter. The burden of proof to accept a transfer shall be upon the petitioner and the standard of proof shall be a mere preponderance of evidence.

772. Findings. Upon the conclusion of the hearing, the Court shall enter its order accepting or rejecting the transfer of jurisdiction. If the Court rejects the transfer of jurisdiction, it shall make written findings and conclusions as to why the proposed transfer of jurisdiction is not in the best interests of the minor child or of the Band or of both.

773. Service of Order. A certified copy of the Court's order shall be served upon the petitioner, each of the parties, and upon the Clerk of Court of the state or tribal court from which transfer of jurisdiction was sought.

774. Acceptance of Transfer. In the event the Court accepts a transfer of jurisdiction then the matter shall proceed either for a Juvenile Offender dispositional hearing or for a CHIPS adjudicatory, dispositional or dispositional review hearing, as the case may be, in accordance with the provisions of this Chapter.

775. Denial of Transfer. In the event the Court declines to accept a transfer of jurisdiction, the parties shall be so notified and the papers and records, if any, received from the initiating court shall be returned to it.

776. Financial Responsibility. Notwithstanding any financial support or services provided and available to children within the Band's jurisdiction and regardless of the jurisdiction that a child protection case falls in, it is the financial responsibility of the county the children reside in to ensure the safety and welfare of all its children. As such, the transferring state court retains financial responsibility and related reunification costs for the affected family.

Enacted by Resolution No. 93-40, of the Bois Forte Tribal Council on the 20th day of November 1992.

Amended by Resolution No. 160-96, May 8, 1996.

Amended by Resolution No. 95-2000, January 20, 2000.