



HO-CHUNK NATION CODE (HCC)
TITLE 4 – CHILDREN, FAMILY, AND ELDER WELFARE CODE
SECTION 3 – HOCAK NATION CHILDREN AND FAMILY ACT

ENACTED BY LEGISLATURE: OCTOBER 19, 2004

(Effective Date: December 1, 2004)

RESTATED: NOVEMBER 5, 2004

CITE AS: 4 HCC § 3

This version of the Hocak Nation Children and Family Act supersedes the Hocak Nation Children and Family Code enacted as HCC 98-002 by Legislative Resolution 6/15/99A and last amended by Legislative Resolution 6/15/99A.

TABLE OF CONTENTS

Chapter I - General Provisions, Policies and Definitions

1. Authority	3
2. Purpose and Construction	4
3. General Policies	4
4. Child and Family Records Protection	5
5. Definitions	6

Chapter II - Programs and Services

6. Program Participation and Funding	11
7. Social Service Workers	11
8. Child Protection Team	13
9. Medical Care	13

Chapter III - Reporting Child Abuse and Neglect

10. Duty to Report	14
11. Penalty for Not Reporting	15
12. Form and Content of Reports	15

Chapter IV - Investigation and Removal

13. Investigation	16
14. Removal	16
15. Temporary Placement of Removed Children	16

Chapter V - Jurisdiction and Initiation of Court Action

16. Jurisdiction	17
17. Initiation of Court Action	19
18. Service of Process	22
19. Warrants	24

Chapter VI - Court Reports and Hearings

20. Proceedings	24
21. Hearings	25
22. Initial Hearing	25
23. Grounds for Re-Hearing	27

Chapter VII - Formal Trial and Disposition of Cases

24. Formal Trial on Child/Family Protection Petition	27
25. Adjudication Not Criminal	29
26. Findings of Jurisdictional Fact	29
27. Welfare of the Child	30
28. Establishment of Conditions by the Court	30
29. Hospitalization of the Child	31
30. Rehabilitative Centers	31
31. Placement Preferences	31
32. Review of Cases	32

Chapter VIII - Judgments and Orders

33. Judgments Inoperative After Age 18	32
34. Motions to Modify, Revoke, or Extend Court Order	32
35. Termination and Renewal Orders	33

Chapter IX - Transfer of Cases

36. Application of the Indian Child Welfare Act	34
37. Transfer to Foreign Court	34
38. Transfer From Other Courts	34

Chapter X - Judicial Review and Appeals

39. Six Month Review Report	35
40. Six Month Judicial Review	36
41. Court Appeals	37

Chapter XI - Guardianship

42. Purpose 38
43. Order and Guardianship Preferences 38
44. Types of Guardianships 39
45. Guardianship Procedures 39

Chapter XII - Support of Children

46. By the Parents 42
47. Procedure for Payment 42
48. Enforcement of Support Orders 42
49. Support From Other Sources 42
50. Payment Directly to Agency and Court Visits 43
51. Child Placement Assistance 44

**CHAPTER I
GENERAL PROVISIONS, POLICIES AND DEFINITIONS**

1. Authority.

a. Article V, Section 2(a) of the Ho-Chunk Nation Constitution (“Constitution”) grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(b) of the Constitution grants the Legislature the power to establish Executive Departments, and to delegate legislative powers to the Executive Branch to be administered by such Departments in accordance with the law; any Department established by the Legislature shall be administered by the Executive; the Legislature reserves the power to review any action taken by virtue of such delegated power.

c. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Nation.

d. Article V, Section 2(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions.

e. Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation.

f. Article V, Section 2(t) of the Constitution grants the Legislature the power to enact laws governing law enforcement on lands within the jurisdiction of the Nation.

g. Article V, Section 2(u) of the Constitution grants the Legislature the power to enact laws to regulate domestic relations of persons within the jurisdiction of the Nation.

h. Public Law 101-630, “Indian Child Protection and Family Violence Prevention Act,” mandates the prevention of child abuse and neglect.

2. Purpose and Construction. It is the purpose of this Children and Family Act to secure for each child coming before the Court such care, guidance, and control, preferably in his or her own home, as will serve the child’s welfare and advance the interests of the Hocak Nation; to preserve and strengthen family ties whenever possible; and to preserve and strengthen the child’s cultural and Tribal identity wherever possible. To this end, this Act shall be liberally construed to fulfill the following purposes:

a. To provide for the welfare, care, and protection of the children and families of the Hocak Nation.

b. To preserve unity of the family, preferably by separating the child from his parents only when necessary.

c. To take such actions as may be necessary and feasible to prevent the abuse, neglect, or abandonment of children.

d. To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention, and community based alternatives.

e. To secure the rights of ensure fairness to the children, parents, custodians, or to other Traditional Relatives who come before the Court under the provisions of this Act.

f. To ensure that foreign courts are able to return Tribal children to the Hocak Nation.

g. To recognize and acknowledge the customs and traditions of the Hocak Nation with regard to child rearing.

3. General Policies.

a. Application of the Indian Child Welfare Act. The Court may apply the policies of the Indian Child Welfare Act 25 U.S.C. §§ 1901-1963, where they do not conflict with the provisions of this Act.

b. Contempt. Any person who willfully violates or refuses to obey any order of the Court may be proceeded against for contempt of Court as in paragraph 18h.

c. Payment of Fines. Except as otherwise provide by law, all fines, penalties, and forfeitures imposed and collected by the Act shall be paid out as the Hocak Legislature shall direct.

d. Termination of Parental Rights. Neither the Court nor the Legislature shall terminate parental rights.

e. Disabled Children. The Nation has a special obligation to children for treatment and services, whether they are physically, emotionally, or mentally disabled.

4. Child and Family Records Protection.

a. Court Records.

(1) Records to be Kept – Accessibility. The Court shall keep such records as may be required by the Judge. Records in children cases shall be withheld from public inspection, but the Court records shall be open to inspection by the parents or guardian, other parties in the case, the attorneys, and agencies to which custody of a child has been transferred. Records and reports of social and clinical studies shall not be open inspection, except by the consent of the Court.

(2) A record of all hearings under this Act shall be made and preserved. Records sealed by Court order are not open for inspection without a specific Court order authorizing review. All Court records shall be confidential and open to inspection by any of the following.

(a) The child.

(b) The child's parent, guardian, or custodian.

(c) The child's traditional relatives or clan members if such relative or clan member is an interested party as defined in this Act.

(d) The child's counsel or guardian ad litem.

(e) The Court personnel directly involved in the handling of a particular case.

(f) Any other person by order of the Court, having legitimate interest in the particular case.

b. Social Services and Law Enforcement Records.

(1) Central Report Registry. The Department and the local law enforcement agency shall maintain a central registry of reports, investigations, and evaluations made under this Act. The registry shall contain the information furnished by tribal personnel, including protective services workers, probation officers, caseworkers, and Indian Child Welfare Program employees. Data shall be kept in the central registry until the child concerned reaches the age of eighteen (18) years (unless the Court orders the individual's records be kept on file beyond the date in order to protect other siblings). Data and information in the central registry shall be confidential and shall be made available only

upon approval of the Executive Director of the Department of Health and Social Services, the Court, and agencies licensed or regulated by the Nation. A request for the release of information must be submitted in writing, and such request and its approval shall be made part of the child's file.

(2) Law enforcement and social services records and files concerning a child shall be kept separate from Court records and files. All law enforcement and social services records are confidential and shall not be open to inspection to anyone but he following:

(a) The child.

(b) The child's parents, guardian, or custodian.

(c) The child's counsel or guardian ad litem.

(d) Law enforcement and social services personnel directly involved in the handling of the case.

(e) The Court personnel directly involved in the handling of the case.

(f) Any other person by order of the Court.

5. Definitions. As used in this Children and Family Act, the singular includes the plural and the plural the singular, and the masculine the feminine, when consistent with the intent of this Act. The following definitions shall apply:

a. "Abandon" means the failure of the parent, guardian, or custodian to provide reasonable support and/or to maintain regular contact with a child. Failure to maintain a parental relationship with the child for a period of six (6) months shall constitute presumptive evidence of abandonment. Placement of a child by mutual consent of traditional family members does not constitute abandonment. The party claiming that there was no consent has the burden of proving abandonment.

b. "Abuse" means the infliction of physical, emotional, or mental injury on a child, or the sexual abuse or exploitation of a child, including failure to thrive.

(1) Abuse includes any case in which:

(a) a child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling; and

(b) such condition is not justifiably explained or may not be the product of an accidental occurrence.

(2) Any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution.

c. “Adjudication” means judgment by the Court, incorporated in a decree, that the facts alleged in a petition (i.e., blood tests for paternity) have been proven or substantiated.

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

e. “American Indian” means any enrolled member of a federally recognized American Indian Nation, Band or Community, Alaska Native, or Native Hawaiian.

f. “Child” means an individual who is not married and has not attained eighteen (18) years of age

g. “Child Placement Agency” means an organization of the Nation licensed to receive children for placement under the law of the Nation; or an organization receiving children for placement in another state that is approved by the Hocak Nation.

h “Child Placement Facility” means the physical location approved by the Department that offers the least restrictive setting deemed appropriate for the proper care of the child.

i. “Child Protection Team” means a team established to involve and coordinate the child protection services of various agencies as set forth in Chapter IV of this Act.

j. “Clan Representative” means a Hocak man who is the representative of one of the clans of the Hocak Nation and who is recognized as such by the Traditional Court of the Hocak Nation.

k. “Court” means the Hocak Nation Trial Court.

l. “Custodian” means a person to whom legal and/or physical custody of a child has been given.

m. “Department” means the Hocak Nation Department of Health and Social Services.

n. “Dependent Child” means any child found to be in one or more of the following situations:

(1) A child who is homeless or without necessary support through no fault of his parent or guardian.

(2) A child who lacks necessary care by reason of the mental or physical condition of the parent, guardian, or custodian.

(3) A child who lacks necessary care by reason of the mental or physical condition of the child.

o. “Domicile” means a person’s permanent home or usual place of habitation. The domicile of a child is that of the custodial parent or guardian.

p. “Emergency Foster Home” means a home which has been licensed to accept emergency placements of children at any hour of the day or night.

q. “Foreign Court” means any non-Hocak Court, which exercises judicial authority over cases and controversies and is entitled to full faith and credit and comity under tribal, federal, and state rules of law.

r. “Foster Family” means a family whose home has been licensed to accept placements of children.

s. “Grandparents’ Rights” mean the inherent rights of a child’s Hocak grandparents to have an active role in determining a child’s welfare, care, and protection at all stages of development according to Hocak custom.

t. “Guardian Ad Litem” means a person appointed by the Court to represent the child’s interests before that Court.

u. “Guardian of Property” means a person appointed by the Court to manage the property of a child as set forth in paragraph 44b(3) of this Act.

v. “Hocak Child” means a person who is an enrolled Hocak Tribal member or is eligible for enrollment and who is less than eighteen (18) years old and has not been emancipated by order of a court of competent jurisdiction.

w. “Indian Custodian” means an American Indian person authorized to have custody of a Hocak child by a parent or other relatives via Hocak Traditional Arrangements.

x. “Legal Custody” means the authority to make those major life decisions, such as the right to consent to marriage, to enlist in the Armed Forces, and to consent to major medical, surgical, or psychiatric treatment, and as may otherwise be granted by the Court.

y. “Licensing Agency” means the Hocak Nation Department of Health and Social Services as the licensing agency to license foster homes, day care facilities, and treatment facilities for the purposes of placement of children.

z. “Local Law Enforcement Agency” means that Tribal, state, or federal law enforcement agency that has the primary responsibility for the investigation of an instance of alleged child abuse in the location where the abuse occurs.

aa. “Nation” means the Hocak Nation.

bb. “Neglect” means the failure of the parent, guardian, or custodian to provide adequate food, clothing, shelter, medical care, education or supervision for the child’s health and well-being for reasons other than poverty. “Neglect” shall include “abandoned” children.

cc. “Neglected Child” means any child found to be in one or more of the following situations:

(1) A child whose parents, guardian, or custodian has abandoned them.

(2) A child whose parents, guardians, or custodians have subjected him/her to mistreatment or abuse.

(3) A child who lacks necessary parental care by reason of the fault or habits of the parent, guardian, or custodian.

(4) A child whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, supervision, education, or medical care, including surgery or psychiatric services when required, or any other care necessary for their health or well-being.

dd. “Other Interested Party” means any adult or organization listed under paragraph 31e, or someone who desires temporary or permanent guardianship of the child(ren).

ee. “Parent” means a biological parent or a Traditional Hocak parent as described in the definition of Hocak Traditional Relatives.

ff. “Per Capita Address” means the most recent mailing and physical address provided to the Nation’s Enrollment Office by the individual completing the Hocak Nation address verification form.

gg. “Permanent Guardian” means a guardian who has been granted long term guardianship status as set forth in paragraph 44b(2) of this Act.

hh. “Physical Custody” means the physical custody and responsibility for the care of a child including the rights and duties to provide him/her with food, clothing, shelter, education, and emergency medical care.

ii. “Power of Attorney” means a legal document authorizing one to act as another’s attorney or agent.

jj. “Protective Supervision” means a court order following an adjudication on the grounds of neglect or dependency whereby the child is permitted to remain in the home under supervision provided by the Department or other persons designated by the Court.

kk. “Residual Parental Rights and Duties” mean those rights and duties remaining with the parents after legal custody or guardianship, or both, has been vested in another person or agency, including but not limited to: the responsibility for support; the right to consent to customary adoption; the right to determine the child’s religious affiliation; and the right to reasonable visitation unless restricted by the Court. If no guardian has been appointed, “residual parental rights and duties” also includes the right to consent to marriage, to enlistment in the Armed Forces, and to consent to major medical, surgical, or psychiatric treatment.

ll. “Social Services Worker” means the social services worker, law enforcement personnel, or any person who performs the duties and responsibilities set forth in Section 7 of this Act.

mm. “Suitable” means a home environment satisfying the requirements of this Act and meeting as many of the purposes of this Act as possible.

nn. “Temporary Guardian” means a person assigned, other than a parent, by a court of law, having the duty and authority to provide physical care and control of a child until final decisions as to permanent placement is made by the Court.

oo. “Traditional Arrangement” means a mutual authorization of child placement via consultation through *najokijawasiki*, a Hocak traditional practice. Examples include, but not limited to, the grandparents for purposes of Hocak teachings, i.e., sacred teachings, way-of-life, etc.

pp. “Traditional Court” means the forum of Hocak Nation clan representatives, which provides guidance and assistance to the Court and other interested parties on matters of Hocak traditions and customs.

qq. “Traditional Relatives” mean those people within the child’s *wazoki* (intrinsic familial network) according to Hocak tradition.

rr. “Trust Lands” mean all territories within the exterior boundaries of lands held for the Hocak Nation by the United States for the benefit of the Nation and the members of the Nation, and any additional lands acquired for the Nation by the United States for the benefit of the Nation or members of the Nation.

CHAPTER II

PROGRAMS AND SERVICES

6. Program Participation and Funding.

a. The Court is authorized to participate in any approved federal, state, tribal, public or private agency programs to carry out the purposes of this Act. This authority is subject to the approval of the Legislature.

b. The Legislature shall provide adequate funding support, as determined by Children and Family Services program needs to ensure the health, safety, and welfare of the Nation's children. This shall include but is not limited to providing funding for emergency foster homes and emergency secure and non-secure shelter care facilities.

c. The Court shall utilize such social services as may be furnished by any tribal, federal, or state agency provided that it is economically administered without unnecessary duplication of services and expense.

7. Social Service Workers.

a. Social Services Workers shall be employed by the Department of Health and Social Services.

b. The Department may cooperate with such state and community agencies as necessary to achieve the purposes of this Act. The Department may negotiate working agreements with other jurisdictions. Such agreements shall be subject to ratification by the Legislature or its designee.

c. Powers and Duties. A Social Services Worker shall:

(1) Receive reports of neglected, abused, or abandoned children and be prepared to provide temporary foster care and/or shelter care for such children on a twenty-four (24) hour basis.

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

(3) Upon receipt of any report or information under paragraph (1) or (2), above, shall immediately:

(a) Notify the appropriate law enforcement agency and the County Department of Social Services.

(b) Initiate an investigation within 24 hours of the Department's receipt of case intake information. The investigation will be thorough and shall include a determination of the nature, extent, and cause of any circumstance which is detrimental to the child's best interests and the names, ages, and conditions of other children in the home.

(c) Whenever Children and Family Services is informed by a police officer or any other person that a child is or appears to be within the Nation's jurisdiction, the Department shall make a preliminary inquiry to determine whether the interests of the Nation or the child's safety requires that further action be taken. The report of the preliminary investigation shall be filed in the record system of the Children and Family Services.

(4) Home Environment Assessment.

(a) After the investigation, prepare an assessment of the home environment (in accordance with Section 39) of the child or children in the same home and the risk to such children if they remain in the home environment, and all other relevant factors. The Social Services Worker shall determine whether any of such children are in need of protective services.

(b) A Social Services worker may enter into either an informal (out of court) disposition or consent decree (court ordered) with the child of age 12 or older, the parents or guardians and other parties when the worker has determined that the interests of the child do not require filing of a Child/Family Protection Petition.

(c) The consent decree will remain in effect for up to six months unless the child, parent, guardian, or legal custodian is discharged sooner. The Court may extend a consent decree once for six additional months upon motion of the Court, or by motion of Child and Family Services, the child if age 12 or older, a parent, or a guardian. If, upon the expiration of the consent decree, its express terms and conditions have not been fulfilled, a Child/Family Protection Petition.

(5) Take a child into temporary custody from his surroundings based on reasonable grounds to believe that the child is in imminent danger due to injury, neglect, or abuse and that removal is necessary.

(a) Place the child on a temporary basis in accordance with placement preferences in Section 31, or in an emergency foster home, or in the Ho-Chunk Shelter Care Facility.

(b) Law enforcement officials shall cooperate with social services personnel to remove a child from the custody of his parents, guardian, or custodian when necessary.

(6) Offer family and child services when it is determined that any child is found to be in need of protective services.

(7) Within thirty (30) days after a referral of a child in need of protective services, submit a final written report of the investigation and assessment, which shall be recorded in a central registry maintained by the Department.

d. Duty to Inform.

(1) Before offering protective services to a family, a Social Services Worker shall inform the family that he/she has no legal authority to compel the family to receive such services and of her/his authority to initiate a petition in the Court.

(2) If the family declines the offered services, the Worker may initiate a child/family protection petition in Court alleging a child in need of protective services if he/she believes it to be in the child's best interest.

8. Child Protection Team. The Department of Health and Social Services shall maintain a Child Protection Team to prevent American Indian children from being abused or neglected. Confidentiality shall be maintained by all child protection team members.

9. Medical Care.

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

(1) Unavailability of Parent, Guardian, or Custodian. A parent, guardian, or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case; or

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

b. In making its order the Court shall give due consideration to any treatment being given the child by prayer through spiritual means alone or through other methods approved by the tribal customs, traditions, or religion, if the child or his parent, guardian,, or custodian are adherents of a bona fide religious denomination that relies exclusively on this form of treatment in lieu of medical treatment or practices in fact the tribal customs, traditions, or religion upon which is relied for such treatment of the child.

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

d. Oral authorization by the Court is sufficient for care or treatment to be given and shall be accepted by any physician or hospital. No physician or hospital, not any technician or other person under the direction of such a physician or hospital shall be subject to criminal or liability in the Court for performance of care or treatment in

reliance on the Court's authorization, and any function performed thereunder shall be regarded as if it were performed with the child's and the parent's authorization.

CHAPTER III REPORTING CHILD ABUSE AND NEGLECT

10. Duty to Report.

a. Any person who knows, or has reasonable suspicion that a child has been abused, neglected, or abandoned; or that actions are being taken or are going to be taken that would reasonably be expected to result in abuse, neglect, or abandonment of a child, shall immediately report the abuse, neglect, abandonment, or actions to the Department and/or the local law enforcement agency.

b. Persons Specifically Required to Report. Those persons who are mandated to report suspected abuse or neglect include any of the following:

(1) Physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or other health care provider.

(2) Teacher, school counselor, instructional aid, teacher's aid, teacher's assistant, or bus driver employed by any tribal, federal, public, or private school.

(3) Administrative officer, supervisor of child welfare, and attendance or truancy officer of any tribal, federal, public, or private school or home-school program.

(4) Child day care worker, Head Start teacher, public assistance worker, worker in a group home or residential or day care facility, or social worker.

(5) Psychiatrist, psychologist, or psychological assistant.

(6) Licensed or unlicensed marriage, family, or child counselor.

(7) Person employed in the mental health profession.

(8) Law enforcement officer, probation officer, worker in a juvenile rehabilitation or detention facility, or person employed in a public agency who is responsible for enforcing statutes and judicial orders.

(9) Protective services worker, foster parents, judge, attorney, court counselor, clerk of court, or judicial system official.

c. Anonymous Reports. Those persons reporting, except those specified in paragraph b, above, may remain anonymous.

d. Immunity From Liability A person making a report described in paragraph a, above, that is based upon their reasonable belief and which is made in good faith, shall be immune from civil or criminal liability for making that report.

11. Penalty for Not Reporting.

a. Any person who fails to immediately report such abuse or actions described in paragraph 10a to the Department or local law enforcement agency may be fined under this Act or imprisoned for not more than six (6) months or both.

b. Any person who supervises or has supervisory authority over a person described in paragraph 10b and inhibits or prevents that person from making the report described in paragraph 10a shall be fined under this Act or imprisoned for not more than six (6) months or both.

c. Those persons mandated to report a case of known or suspected abuse or neglect who knowingly fail to do so or willfully prevent someone else from doing shall be subject to civil cause of action proceedings in the Court.

12. Form and Contents of Reports.

a. Form. Those persons mandated to report under paragraph 10b shall promptly make an oral report to the Department or local law enforcement agency and then follow with a written report within twenty-four (24) hours.

b. Contents. The following information shall be included in the written report:

(1) Names, addresses, and tribal affiliation of the child and his parents, guardian, or custodian.

(2) The child's age.

(3) The nature and content of the child's abuse or neglect.

(4) Previous abuse or neglect of the child or his/her siblings, if known.

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

(6) The name and address of the person or agency making the report.

CHAPTER IV INVESTIGATION AND REMOVAL

13. **Investigation.** A child abuse or neglect report shall be investigated within one Court working day by the Department or other appropriate agency, unless the Court directs otherwise.

14. **Removal.**

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

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

(1) When failure to remove the child may result in a substantial risk of death, permanent injury, or serious emotional harm, etc.

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

c. Power to Remove. Designated persons employed by the Hocak Nation shall have the power to remove a child pursuant to this Section provided that:

(1) Reasonable grounds existed at the time of the removal to believe the removal was necessary;

(2) The person removing the child ensures the safety and well-being of the child, until such time as the Court assumes control of the matter; and

(3) The person removing the child complies with the notice provisions contained in paragraph d, below.

d. Notice to the Parent, Guardian, or Custodian. An order by the Court shall articulate good cause for removal. The Court shall make all reasonable efforts to notify the parents, guardian, or custodian within twelve (12) hours of the Court knowing that the child was removed. Reasonable efforts shall include personal, telephone, and written contacts at their residence, place of employment, or other locations where the parents, guardian, or custodian are known to frequent with regularity. If the parents, guardian, or custodian cannot be found, notice shall be given to members of the traditional family or clan members of the child.

15. **Temporary Placement of Removed Children.**

a. A child alleged to be neglected or abused shall not be detained in a jail nor other facility intended or used for the detention of alleged child abuse offenders.

b. The following community-based shelter care facilities may be used to temporarily detained removed children:

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

(2) A facility operated by a licensed child welfare services agency.

(3) Any other suitable place, other than a facility for the care that meets the standards for emergency shelter care facilities established by the Department.

c. A child may be detained with a traditional relative of the child who is willing to guarantee to the Court that the child will not be returned to the alleged abuser or neglectful parent, guardian, or custodian without the prior approval of the Court.

CHAPTER V JURISDICTION AND INITIATION OF COURT ACTION

16. Jurisdiction.

a. General Jurisdiction.

(1) The Court shall have the authority to issue all orders necessary to ensure the safety of children within the Hocak community. This grant of civil jurisdiction to the Court authorizes the Court to exercise its power to issue and enforce subpoenas, issue orders of restriction, impose fines, adjudicate and punish contempt, order confinement, and issue other orders that may be deemed necessary and appropriate, in matters regarding children.

(2) Once the Court exercises its jurisdiction under this Act, its authority continues until such time as it may be terminated pursuant to paragraph d, below.

(3) The Court may exercise jurisdiction over the following persons:

(a) Enrolled members of the Nation under the age of eighteen (18) years.

(b) Persons under the age of eighteen (18) who are eligible for enrollment in the Nation.

(c) American Indians, as defined in paragraph 5e, who are under the age of eighteen (18).

(d) Children of enrolled members of the Nation or other American Indians, as defined in paragraph 5e, including adopted children.

b. Concurrent Jurisdiction.

(1) The Court has concurrent jurisdiction in cases Hocak children who are in need of protection and services and who are subject to the jurisdiction of foreign courts.

(2) Indian Child Welfare Act cases within foreign court systems may be transferred to the Court, if the foreign court consents and upon acceptance of transfer by the Court.

(3) The case of a child, who is otherwise under the continuing jurisdiction of the Court, may be transferred to a foreign court if the foreign court consents. The Court will maintain jurisdiction of the case after acceptance of transfer of the case by the foreign court, until formal relinquishment of jurisdiction by the Court.

c. Jurisdiction Over Adults and Traditional/Clan Relatives.

(1) In any case in which a child has come within the jurisdiction of the Court, the Court shall have authority to exercise jurisdiction over adults to the extent necessary to make proper disposition of each case, including authority to punish for contempt either in or out of the Court's presence.

(2) Where the Court asserts jurisdiction over a child under this Act, the Court shall also have jurisdiction over the child's traditional relatives to the extent necessary to make proper disposition of each case.

(3) Consent to Jurisdiction. Any adult living off the Nation's Trust Lands who obtains custody of a child, however designated, from the Court either personally or as the result of association with an agency or institution to which custody has been awarded, shall be deemed to have consented to the jurisdiction of the Court for all purposes or actions in any way related to such custody of the child.

(4) Procedures Applicable to Adults. Except when specific procedures are otherwise specified in this Act, all matters concerning adults or the rights of any adult which come before the Court need not be handled according to procedures established by the Court, but rather may be handled in an informal manner as in other children's cases. Provided, however, that the Court shall see to it that minimum standards of procedural fairness are observed.

d. Termination of Continuing Jurisdiction. Jurisdiction obtained by the Court of a child under this Act shall continue until the child becomes eighteen (18) years of age or the case is dismissed or the underlying order expires; at which time the continuing jurisdiction of the Court shall terminate.

17. Initiation of Court Action.

a. Petition.

(1) A petition may be brought in the interest of a child by Children and Family Services or the parents of the child. If brought by Children and Family Services, the Hocak Nation Department of Justice shall file the petition on behalf of the Nation. The Court has exclusive original jurisdiction over a child alleged to be in need of protection or services that can be ordered by the Court, and the child is in one or more of the following situations or circumstances:

(a) Without a parent or guardian.

(b) Abandoned.

(c) A victim of sexual or physical abuse including injury which is self-inflicted or inflicted by another by other than accidental means.

(d) At substantial risk of becoming the victim of sexual or physical abuse, including injury that is self-inflicted or inflicted by another by other than accidental means, based on reliable and credible information that another child in the home has been the victim of sexual or physical abuse.

(e) A child whose parent or guardian signs the petition requesting jurisdiction and states that he or she is unable to care for, control, or provide necessary special treatment or care for the child.

(f) A child who has been placed for care or adoption in violation of the law.

(g) A child who is habitually truant from school.

(h) A child who is home-schooled or participates in alternative education and fails to show acceptable academic progress as defined in the student's educational plan.

(i) A child who is habitually truant from home and either the child or a parent, guardian, or relative, in whose home the child is staying signs the petition and states that reconciliation efforts have been attempted and have failed.

(j) A runaway.

(k) Receiving inadequate care during the period of time a parent/guardian is missing, incarcerated, hospitalized, or institutionalized.

(l) A child whose parent, guardian, or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child.

(m) A child whose parent, guardian, or legal custodian is at substantial risk of neglecting, refusing, or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child, based on reliable and credible information that the child's parent, guardian, or legal custodian has neglected, refused, or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of another child or children.

(n) Suffering emotional damage for which the parent or guardian is unwilling to provide treatment, which is evidenced by one or more of the following characteristics, exhibited to a severe degree: anxiety, depression, withdrawal, or outward aggressive behavior.

(o) A reliable and credible child signs the petition and states that he or she is in need of special care and treatment which the parent, guardian, or legal custodian is unwilling to provide.

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

(a) The name (by initials), birth date, sex, residence, and tribal affiliation of the child.

(b) The basis for the Court's jurisdiction.

(c) The specific allegations of abuse, neglect, or abandonment.

(d) A plain and concise statement of the facts upon which the allegations of abuse, neglect, or abandonment are based, including the date, time, and location at which the alleged facts occurred.

(e) The names, residences, and tribal affiliation of the child's parents, guardians, or custodians, if known.

(f) The names, relationships, and residences of all known members of the child's traditional family and all former care givers, if known.

(g) If the child is placed outside of the home, where the child is placed, the facts necessitating the placement, and the date and time of the placement.

(h) The enrollment numbers of the child and parents or if the child is not enrolled in the Hocak Nation a reason the petitioner believes the child is eligible for enrollment.

(i) A statement indicating if any of the facts required to be stated are not known by the petitioner.

(3) Evidentiary material accompanying a petition may come in the form of an investigative report, police report, or report(s) prepared by other health and/or social service agencies.

(4) On the basis of the preliminary inquiry, or other report as provided above, an assigned Department of Justice attorney may suggest a petition be filed to commence a civil proceeding or require further investigation.

b. Time Limitations. If a child has been removed from the home, the child/family protection petition shall be filed with the Court no later than 12:00p.m. (noon) of the second Court working day following the removal.

c. Health Examinations.

(1) The Court may upon the motion of a party, or upon its own motion, order that the child identified in the petition be examined by a physician, surgeon, psychiatrist, or psychologist and may place the child in a hospital or other facility for such medical examination.

(2) The Court may order an examination of a parent or guardian whose ability to care for the child is at issue, if the Court finds from the evidence presented at the hearing that the parent's or guardian's physical, mental, or emotional condition may be a factor in causing the neglect, dependency, or delinquency of the child.

d. Petition Dismissal. The Court may dismiss a petition at any stage of the proceedings.

e. Consolidation of Proceedings. When more than one child is involved in a home situation that may be found to constitute neglect of dependency, the proceedings may be consolidated, although each child will have a separate case number.

f. Amendment of Pleadings. It is the duty of the moving party to file a motion requesting the Court to consider additional or different material facts raised by evidence not alleged or in the original petition. In such event, the Court may direct that the petition be amended to conform to the evidence.

g. Continuances. The Court shall grant such continuances as justice may require.

h. Legal Representation. At the commencement of any proceedings under this Act, the Judge shall advise a parent or other interested party that they may have legal representation of their own choice and at their own expense.

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

18. Service of Process.

a. Initial Summons – When Required. An initial summons is issued the first time a petition is filed or upon transfer of a case from a foreign court to the Court.

(1) After an initial petition is filed, the Court may deem it necessary to request further investigative reports in the petition. When the Court accepts the filed petition, the Court shall promptly issue a summons. The summons is to be personally served on the parents of the child and any other interested party. A summons is required whether or not a person appears voluntarily or files a written waiver of service with the Clerk of Court at or prior to the hearing.

(2) Any person can waive the time requirement to respond to the petition.

b. Summons – Content Requirements.

(1) The summons shall contain the name of the Court, the title of the proceedings, and (except for published summons) a brief statement of the substance of the allegations in the petition. A published summons shall state that a proceeding concerning the child (identified by initials only) is pending in the Court and that an adjudication will be made. The summons shall require the person or persons who have legal custody of the child to appear personally and bring the child before the Court at the time and place stated. If the person or persons so summoned are not the parent(s) or guardian of the child, then the summons shall also be issued to the parent(s) or guardian notifying them of the pendency of the proceedings and the time and place set for the hearing. No summons need be issued to a parent or parents whose parental rights have been relinquished.

(2) The summons issued by the Court shall conspicuously display the words:

NOTICE – VIOLATION OF THIS ORDER IS SUBJECT TO PROCEEDINGS FOR CONTEMPT OF COURT. SUBPOENAS: “THE FAILURE TO COMPLY WITH A SUBPOENA SHALL SUBJECT THE PERSON FAILING TO COMPLY TO THE CONTEMPT POWER OF THE COURT.” THE COURT MAY FIND ANY PARTY TO THIS MATTER IN CONTEMPT OF COURT FOR FAILURE TO APPEAR AT A COURT HEARING OR FOR FAILURE TO FOLLOW COURT ORDERS.

d. Summons – Other Persons. Summons may be issued to any person within the jurisdiction of the Court whose presence the Court deems necessary.

e. Compulsory Attendance of Witnesses. A parent or guardian shall be entitled to issuance of compulsory process for the attendance of a witness on his/her behalf or on behalf of the child. A guardian ad litem shall be entitled to compulsory process for the attendance of witnesses on behalf of the child(ren) or on behalf of the Nation. Should any person fail to attend a hearing after being properly served with process and be unable to provide the Court with an acceptable explanation, the Court may find such person in contempt pursuant to the Hocak Nation Contempt Ordinance.

f. Payment of Travel Expenses. The Court may authorize the payment of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing of a case under this Act. A person or party must make a written request to the Court for such expense payment. The terms of travel reimbursement shall equal the amount that the Nation reimburses its employees under its employment law.

g. Service of Summons.

(1) By Whom Served.

(a) A designee selected by the Court shall make Service of summons or process.

(b) A service of summons may be made by delivering a copy to the person summoned. Provided, However, that parents of a child living together at their current place of residence may both be served personally by delivering to either parent copies of the summons, one copy for each parent.

(c) Upon order of the Court for good cause shown, service may be accomplished by publishing the contents of the summons in the *Hocak Worak* or another newspaper of general circulation in an area where the party was last known to be domiciled.

(2) Substituted Service – Jurisdiction. If the parent(s) or guardian required to be summoned by personal service under this Section cannot be found upon reasonable search, the fact of the child's enrollment or eligibility for enrollment shall confer jurisdiction to the Court as to any absent parent, guardian, or custodian.

(3) Time Requirement.

(a) In the case of service of an initial petition where all parties reside in the State of Wisconsin; in order to be sufficient to confer jurisdiction on the person served; service must occur no less than ten (10) calendar days before the time set in the summons for the appearance.

(b) In the case of service of an initial petition to any party residing outside the State of Wisconsin; in order to be sufficient to confer jurisdiction on the person served;

service will occur within a reasonable time period before the time set in the summons for the appearance.

h. Disobedience – Contempt. Any person summoned as herein provided whom, without reasonable cause, fails to appear, may be proceeded against for contempt of court pursuant to the Hocak Nation Contempt Ordinance, and the Court may cause a bench warrant to be issued to produce such a person in Court.

19. Warrants.

a. Search and Seizure Warrants. If it appears to the Court upon an affidavit sworn to by a police officer or any other person, and upon the examination of other witnesses if required by the Court, that there is probable cause to believe that a child is being detained or ill-treated in any place within the jurisdiction of the Court, the Court may issue a warrant authorizing a duly authorized police officer or Department designee to search for the child. Upon serving such warrant, the officer or designee making the search may enter the house or premises, of necessary by force, in order to remove the child. The officer and/or Department designee must thereupon take the child to Court, or an emergency shelter designated by the Court and based on the recommendation of the Children and Family Services worker. All in accordance with Chapter IV.

b. Arrest of Parent, Guardian, or Custodian.

(1) A warrant may be issued for the arrest of the parent, guardian, or custodian should any of the following circumstances exist:

(a) If the summons cannot be served.

(b) If it is made to appear by affidavit or sworn statement to the Court that the person served will not obey the summons.

(c) That serving the summons will be ineffectual.

(d) That the welfare of the child requires that he be brought immediately into custody of the Court.

(2) Any such warrant may be served anywhere within the jurisdiction of the Court.

**CHAPTER VI
COURT REPORTS AND HEARINGS**

20. Proceedings.

a. Proceedings in children's cases shall be regarded as civil proceedings.

b. The Court shall appoint a guardian as litem to protect the interests of the child.

c. A record shall be made for all proceedings. Upon a motion, an interested party may obtain a copy of the record at their own expense.

d. If necessary, the Court may designate or appoint an attorney or lay counselor to represent a parent or guardian in any proceeding under this Act.

21. Hearings.

a. Hearings in children's cases shall be before the Court and may be conducted in an informal manner.

b. The general public shall be excluded and only such persons admitted as the Judge finds that have a direct and legitimate interest in the case or the work of the Court.

c. The child or his/her parents may be separately interviewed at any time at the discretion of the Court.

d. The hearing may be continued from time to time upon leave of the Court.

e. Evidence.

(1) For the purpose of determining proper disposition of the case and for the purpose of establishing the fact of neglect or dependency, evidence to be considered by the Court include written reports and other materials relating to the child's mental, physical, and social history and condition. This is not a limit to the types of evidence that may be considered by the Court.

(2) The Court may require that the person who wrote the report or prepared the material appear as a witness.

22. Initial Hearing.

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

b. Scheduling.

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

(2) If a child has not been removed from the home a plea hearing will be held within ten (10) days of the filing of the petition. The Court will set a date for a formal

hearing on the issues no later than thirty (30) calendar days after the plea hearing. A dispositional hearing date is to be scheduled no later than sixty (60) days after the filing of the child/family protection petition.

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

d. Rights of Parties. During these hearings, the Court shall advise the party(s) of the reason for the hearing and of their basic rights, which are as follows:

(1) Right to counsel at their own expense.

(2) Right to confront and cross-examine those appearing against them.

(3) Right to present and subpoena witnesses.

(4) Right to substitution of judge. The parties shall be notified that a request for substitution of judge must be made before the end of the initial hearing (or plea hearing if the child has not been removed from the home prior to the filing of the petition) or this right will be deemed waived unless good cause is shown at a later point in the proceedings.

(5) Right to a jury trial.

e. Nature of Hearing. The hearing shall be informal in nature. Concerned parties shall present evidence relating to the situation. Hearsay evidence will not be excluded at this hearing as long as it is otherwise admissible. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's extended family, and other persons determined to be appropriate by the Court shall be admitted.

f. Possible Outcomes.

(1) The child/family protection petition may be dismissed and the child returned to the home.

(2) The child may be returned to the home of the parents, guardian, or custodian under the supervision of the Court and another hearing held within forty (40) days.

(3) The child may be continued in the out-of-home placement and a forty (40) day hearing is held.

23. **Grounds for Re-Hearing.** A parent, guardian, custodian, other Traditional relative, clan member, or any child whose status has been adjudged under this Act, or any adult affected by a decree in a child's proceedings may at any time petition the Court for a new hearing on the grounds that new evidence, which might affect the decree, has been discovered. If it appears to the Court that there is such new evidence which might affect its decree, it shall order a new hearing and enter such decree and make such disposition of the case as is warranted by all the facts and circumstances and the best interest of the child

CHAPTER VII FORMAL TRIAL AND DISPOSITION OF CASES

24. **Formal Trial and Disposition of Cases.**

a. General.

(1) The formal trial on the issues will be set for not later than forty (40) days following the filing of the child/family protection petition.

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

(3) During this hearing the Court shall advise the party(s) of the reason for the hearing and of their basic rights as provided for in paragraph 22d.

b. Child Witnesses. If the Court determines that it is in the best interests of the child and does not violate the rights of a party, the Court may allow the child to testify by means of a videotape deposition, closed circuit television, or other appropriate method. If the Court does allow these methods to be utilized, the Court shall specifically set out the reasons for this determination on the record. The Guardian ad Litem may prevent the child from appearing as a witness if this non-appearance would be in the best interests of the child.

c. Burden of Proof. The petitioner has the burden of proof. The petitioner must prove that the allegations raised in the child protection petition are more likely true than not, that is, by the preponderance of the evidence, and that the best interests of the child will be served by continued Court intervention.

d. Disposition.

(1) The Court will determine validity of the allegations in the child protection petition. If the Court finds that there does not exist sufficient evidence to support a

finding, the hearing shall be continued to a date certain to allow for the presentation of further evidence.

(2) Return to Home.

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

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

(3) Continued Removal From the Home.

(a) The Court may find that the allegations of the child protection petition to be true and order that the child remain out of the home.

1 Further, the Court shall order that the child may not be returned home, absent specific order of the Court.

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

3 The Court shall specify what steps the parents shall take to demonstrate their abilities to care for their child, and specify to the parties what factors the Court will consider at a subsequent hearing to determine whether or not the child should be returned.

(b) Grounds. The grounds for continuing removal from the home of a parent, guardian, or custodian are as follows:

1 A child has no parent, guardian, or custodian available, willing, and capable to care for the child.

2 The child has suffered, or is likely to suffer, a physical injury inflicted upon him by other than accidental means, which causes or creates a substantial risk of death, disfigurement, or impairment of bodily functions.

3 The child has not been provided with adequate food, clothing, shelter, medical care, education, or supervision by his/her parent, guardian, or custodian, which is necessary for the child's health and well-being.

4 The child has been sexually abused or sexually exploited.

5 The child has committed children's offenses as a result of parental pressure, guidance, or approval.

6 The child has been emotionally abused or neglected.

7 The child has suffered or is likely to suffer emotional damage, which causes or creates a substantial risk of impaired development.

8 The child continues to behave in a manner that required the Court to continue the removal.

e. Written Order. The Court shall specify in writing the facts, grounds, and code citations upon which it relied to make its decision.

f. Default Judgment.

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

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

(3) If the parent, guardian, or custodian is found in default, the Court shall specify the facts, grounds, and code citations, upon which it relied to make the decision, in a written order.

25. Adjudication Not Criminal. Any adjudication by the Court that a child is within its jurisdiction under Chapter V shall not be deemed a conviction of a criminal offense.

26. Findings of Jurisdictional Facts. When a child is found to come within the provisions of Chapter V of this Act, the Court shall so adjudicate, and make findings of the facts upon which it bases its jurisdiction over the child, and shall enter its decree. Upon such adjudication, the Court may make any one or more of the following dispositions by Court order:

- a. Place the child under protective supervision (as these terms are defined herein) in his or her own home, upon conditions determined by the Court.
- b. Place the child in the legal custody of Children and Family Services.
- c. Place the child in the physical custody of a Traditional Relative, clan member, or other suitable person, with or without protective supervision.
- d. Authorize admittance of a child to an institution or facility for the purpose of an assessment or psychological evaluation.
- e. Place the child in an approved American Indian boarding school, on a ranch, forestry camp, or other camp or similar facility for care and, if possible, for work, provided that the person, agency or association operating the facility has been approved by the Hocak Nation Legislature, or has otherwise complied with all applicable Nation, state, or local laws. The child placed in a forestry camp or similar facility may be required to work on or off the grounds of such facility and may be paid wages, all subject to the approval of or under conditions set by the Court.
- f. Order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that he/she receive other special care, and for such purposes may place the child in hospital or other suitable facility.
- g. Appoint a guardian for the child where it appears necessary to do so in the interest of the child, and may appoint a public or private institution or agency in which legal custody of the child is vested, as such guardian.
- h. The Court may make any other reasonable orders that are for the best interests of the child or are required for the protection of the public.
- i. The Court may combine several of the above listed modes of disposition where they are compatible.

27. Welfare of the Child. In placing a child under the guardianship or legal custody of an institution or of a private agency or institution, the Court shall give primary consideration to the welfare of the child; but, whenever practicable, may take into consideration the religious preferences of the child and parents, and shall consider other factors allowable under this Act.

28. Establishment of Conditions by the Court. Under a decree entered pursuant to this Act, the Court may make a dispositional order that sets forth reasonable conditions to be complied with by the parents, the child, his custodian, or any other person who has been made party to the proceedings, including, but not limited to restrictions on the visitations by the parents or one parent, restrictions on the child's associates, occupation, and other activities and requirements to be observed by the parents or custodian. Failure to follow the Court's order may result in the following:

- a. Imposition of penalties.
- b. Imposition of fines.
- c. Some other provisions to restrict the behavior of the individual in non-compliance.

29. Hospitalization of the Child. With respect to a child within the jurisdiction of the Court under this Act, the Court may order hospitalization in an authorized hospital of the Court finds, upon due notice to the parents or guardian and after a special hearing conducted in accordance with applicable laws and regulations, that the child is:

- a. Mentally ill, and
- b. Because of his illness is likely to injure himself or others if allowed to remain at liberty or is in need of treatment.

30. Rehabilitative Centers. The Court may admit a child within its jurisdiction to a rehabilitation center in accordance with the provisions of the applicable law and regulation.

31. Placement Preferences.

a. In making any decision to place children in homes or institutions other than with one of the natural parents of the child, the Court's determination in all cases shall not be contrary to the child's best interests. The Court shall consider family relations and the acceptance of the placement by the child(ren) and relative(s); all in accordance with the traditions, customs, and preferences of the Hocak Nation.

b. In order to enable the Court to place children in a manner consistent with the preceding paragraph, Children and Family Services shall make or cause to be made a continuing survey of the Nation's members or other Indians living on or off Trust Lands to determine the availability of homes suitable for child placement and the willingness of such persons to accept and care for placed children on either a temporary or permanent basis, or both.

c. Children and Family Services shall, if necessary, determine the fitness of a home into which a child is to be placed at or immediately prior to the time such placement is needed. Children and Family Services shall, whenever possible and as needed, schedule a meeting of the child(ren)'s family for the purpose of assisting the Court in determining proper placement of the child(ren) and to allow the family to discuss what it can offer the Court in terms of placement of the child(ren).

d. The Judge and the Department of Health and Social Services may contract on the behalf of the Nation with agencies or departments of the federal government for the care

and placement of children whose status is adjudicated under this Act, subject to the approval of the Legislature before expenditure of any Nation funds.

e. Order of Preference.

(1) Any placement ordered by the Court shall require a child to maintain cultural ties with the Nation, to be informed of the traditional ways of the Tribe, and to be a participant in Hocak Nation language classes. The Tradition Court shall have the opportunity through oral or written testimony to the Court to recommend placement of children.

(2) Whenever possible and appropriate, a child shall be placed in a home with Hocak Tribal members. Such placement shall be given preference in the following order:

(a) Paternal traditional relatives, provided these relatives are Hocak Tribal members, with priority to paternal grandparents.

(b) Other maternal traditional relatives, with priority to the *dega* and maternal grandparents, if the father is not a member of the Hocak Nation, or is not known.

(c) Another Hocak family.

(d) Another American Indian family that is a relative of one of the child's parents.

(e) A Hocak owned, secure or non-secure Shelter Care Facility.

(f) A suitable American Indian family.

(g) Any other family which can provide a suitable home for Hocak children.

32. **Review of Cases.** An order under this Chapter for the placement of a child with an individual or an agency shall include a date certain for review of the case by the Court, with a new date to be set upon each review.

CHAPTER VIII JUDGMENTS AND ORDERS

33. **Judgments Inoperative After Age 18.** No judgment, order, or decree of the Court shall operate after the child becomes eighteen (18) years of age.

34. **Motions to Modify, Revoke, or Extend Court Order.**

a. The Court may modify or set aside any order or decree made by it; but no modification or revocation of an order shall be made until there has been a hearing after due notice to all persons concerned.

b. An individual, agency, or institution vested with legal custody of a child may petition the Court for modification or revocation of the custody order on the grounds that such change is necessary for the welfare of the child or in the public interest. The Court shall proceed upon such petition in the same manner as upon a petition filed under Section 17.

c. Notice and a hearing shall be required in any of the cases in which the effect of modifying or setting aside an order is to deprive a parent of the legal custody of the child; to place the child in an institution or agency; or to transfer the child from one institution or agency to another; except that transfer from one foster home to another may be effected without notice and hearing to the parties.

d. The Court may hold a hearing to modify, revoke, or extend a Court order under this Act at any time upon the motion of any of the following:

- (1) The child age sixteen (16) years of age or older.
- (2) The child's grandparents or parents.
- (3) The child's Traditional Relatives having legitimate interest in the particular case.
- (4) The child's counsel or guardian ad litem.
- (5) The agency or person vested with the legal custody of the child or with responsibility for protective supervision.
- (6) Any other person, by order of the Court, having legitimate interest in the particular case.

35. Termination and Renewal Orders.

a. An order vesting legal custody of a child in an individual, agency, or institution shall be for an indeterminate period.

b. The Court, upon motion of a party seeking termination of an order and being satisfied all parties were properly notified of the motion, may schedule a hearing to consider termination of its Order. After hearing the parties, if the Court finds that continuation or renewal is necessary to safeguard the welfare of the child or the public interest, the Court shall enter its findings and reasons for denying the motion for termination.

c. If the Court finds that some or all of the terms of the Order being considered are not necessary to protect the safety of the child or the public, the Court may terminate the order or modify the Order in accordance with this Section.

d. Notice of an order terminating protective supervision shall be given to the parents, guardians, custodian, and where appropriate, to the child.

CHAPTER IX TRANSFER OF CASES

36. Application of the Indian Child Welfare Act. The required procedures for foreign courts in the Indian Child Welfare Act shall not be binding upon the Court unless specifically provided for in this Act.

37. Transfer to Foreign Court. In any proceedings before the Court, the Court may transfer the proceedings to any appropriate foreign court or another tribal court where the state or other American Indian tribe has a significant interest in the child, and the transfer would be in the best interest of the child.

38. Transfer From Other Courts. The Court may accept or decline, under the procedures set forth in this Act, transfers of child welfare cases from foreign or other tribal courts.

a. Procedures.

(1) Receipt of Notice. The agent for service of notice of foreign court child custody proceedings, as defined by the Indian Child Welfare Act, shall be the Hocak Department of Health and Social Services.

(2) Transfer Report. The Department of Health and Social Services shall file a written Transfer Report with the foreign court and the Department of Justice.

(3) Petition for Transfer. The petition for transfer shall be filed by the Hocak Nation Department of Justice within ten (10) days of receipt of the Pre-Transfer Report.

(4) Intervention in Foreign Court Proceedings.

(a) The Nation may intervene in foreign court child custody proceedings, as defined in the Indian Child Welfare Act, at any point in the proceedings; and

(b) The Hocak Department of Justice shall file a motion to within ten (10) days of receipt of the Pre-Transfer Report from the Department of Health and Social Services.

(5) Hearing(s). Upon receipt of transfer jurisdiction from the foreign court, the Department of Health and Social Services shall file a child/family protection petition or a guardianship petition may be filed by the Department or the proposed guardian with the Court and appropriate hearing(s) shall be held in accordance with this Act.

b. Full Faith and Credit.

(1) Foreign Court Orders. State child custody orders of other tribal courts involving children over whom the Court could take jurisdiction may be recognized by the Court only after a full independent review of such state proceedings. The Court shall determine the following:

(a) The foreign had jurisdiction over the child.

(b) The provisions of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963, were properly followed.

(c) Due process was provided to all interested persons participating in the state proceedings.

(d) The foreign court proceedings does not violate the public policies, customs, or common law of the Nation.

(2) Orders of Other Tribal Courts. Court orders of other tribal courts involving children over whom the Court could take jurisdiction shall be recognized by the Court after the Court has determined the following:

(a) That the other tribal court exercised proper subject matter and personal jurisdiction over the parties.

(b) Due process was afforded to all interested parties participating in the other tribal court proceedings.

(3) Tribal Interests. Because of the vital interest of the Nation in its children and those children who may become members of the Nation, the statutes, regulations, public policies, customs and common law of the Nation shall control in any proceeding involving a child who is a member of the Nation.

CHAPTER X JUDICIAL REVIEW AND APPEALS

39. Six Month Review Report. The Court shall require that the Department of Health and Social Services prepare a report and submit the same to the Court in writing.

a. A social worker shall prepare the report.

b. The report shall cover the child's home environment, history, and associations, the present conditions of the child and family, recommendations as to the child's future care, and other matters that may be relevant to the disposition of the case.

c. The report shall be submitted to the Court three (3) days prior to a child protection review hearing.

c. The Six Month Review Report shall include the following:

(1) A summary of the problem.

(2) The steps, if any, the parents, guardian, custodian, or social service personnel have already taken to correct the problem.

(3) The services (i.e., parenting skills) that could be of benefit to the parent, guardian, or custodian, but are not available within the Nation.

(4) A report on how the child is doing in their current placement. If there has been any residence changes of the child, the report will contain the reason for such move(s).

(5) Dates of contacts by the Department with a parent, guardian, or custodian and the child. If there has been no contacts with the parent, guardian, or custodian, what efforts have been made to contact such parties.

(6) Dates of contacts by the parent, guardian, custodian, and child with Children and Family Services.

(7) An assessment of when the child is expected to return home.

(8) A list of names of traditional relatives and the number of attempts to contact the traditional relatives regarding placement of the child.

(9) A case plan for family reunification that includes recommendations for the next six (6) months. Such recommendations shall include the following:

(a) Case plan for the parents.

(b) Future placement of the child or under what circumstances and conditions the child will be reunified with his/her parents.

(c) What services will be provided for the child and family.

40. Six Month Judicial Review.

a. Requirement. The Court shall review the status of all children subject to this Act at least every six (6) months at a hearing to determine whether Court intervention shall continue. The Court may schedule the first review following a formal trial on the issues at any time within six (6) months.

b. Return to Home. A child may be returned home at the review hearing unless the Court finds that the parents have not completely complied with the case plan. If the Court returns the child to the parent's home, the Court may continue supervision as appropriate.

c. Continued Court Supervision. If continued Court supervision is determined to be necessary, the Court shall set forth the following in a written order:

(1) What services have been required of the parent, guardian, or custodian to help correct the underlying problem(s).

(2) The extent to which the parent, guardian, or custodian has visited or contacted the child and any reason why such visitation and/or contact has been infrequent or has not otherwise occurred.

(3) Whether the parent, guardian, or custodian is cooperative with the Court.

(4) Whether additional services are to be offered to the parent, guardian, or custodian.

(5) Whether the parent, guardian, or custodian will be required to participate in any additional programs to help correct the underlying problem(s).

(6) When the next review hearing is scheduled.

d. Permanency Plan Review. Traditional family members as identified by Child and Family Services and the parents or guardians of children may meet prior to the Sixth Month Review Hearing(s) to discuss permanence plans for the child or children.

e. Permanent Guardianship. The Court, in the event a child cannot be returned at the review hearing, may order that a petition seeking permanent guardianship of the child be filed.

41. Court Appeals.

a. Any interested party to the Court hearing may appeal a final Court order on a specific legal issue.

b. Procedure. An appeal to the Nation's Appellate Court may be taken from any order, decree, or judgment of the Court. Such appeal shall be taken in the same manner in which appeals are taken from judgments or decrees of the Court. The notice of appeal

must be in writing and taken within thirty (30) month from the entry of the order, decree, or judgment appealed from.

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

d. Stay Pending Appeal. The pendency of an appeal shall not stay the order or decree appealed from in a child's case. Where the order or decree appealed from directs a change of legal custody of a child, the appeal shall be heard and decided at the earliest practicable time. The name of the child shall not appear on the record of appeal.

CHAPTER XI GUARDIANSHIP

42. **Purpose**. When it appears to the Court to be in the best interests of a child, the Court may appoint guardians for the persons and/or property of children under the Court's jurisdiction who have no guardian. Such appointment may be made on the petition of a traditional relative or other interested party on behalf of the child. Before making such an appointment, the Court must cause such notice as the Court deems reasonable to be given to any person having the care of the child and to such other traditional relatives of the child residing on or off Trust Lands as the Court may deem proper.

43. Order and Guardianship Preferences.

a. Any appointment under this Chapter shall require the guardian to have the child maintain cultural ties with the Nation, be informed of the traditional ways of the Tribe and be a participant in Hocak Nation language classes.

b. The Court shall consider the appointment of a guardian for a child from the following persons in the following order:

(1) Paternal traditional relatives, provided these relatives are Hocak Tribal members, with priority to paternal grandparents.

(2) Other maternal traditional relatives, with priority to the *dega* and maternal grandparents, if the father is not a member of the Hocak Nation, or is not known.

(3) Another Hocak family.

(4) Another American Indian family that is a relative of one of the child's parents.

(5) A suitable American Indian family.

(6) Another family which can provide a suitable home for Hocak children.

c. When a guardian has been appointed by the Court for a child, the Court may grant legal custody and care of the child and management of his property until such child arrives at the age of eighteen (18), marries, is emancipated by the Court under this Act, or until the guardian is legally discharged; provided, however, that said guardian shall not have the authority without express written consent of the Court to dispose of any real or personal property of the child in any manner.

d. The Court may order monthly reimbursement payments to the person or agency to who custody is granted under this Chapter from the per capita monies of the parents of the child pursuant to a child support order or other valid order of similar intention, or by Legislative appropriation. Said person or agency with custody of the child must use disbursements for the sole purpose of covering expenses incurred in the care and custody of said child and shall not be used for any other purpose. The use of said funds for any purposes other than that described in this Chapter shall subject said person or agency to contempt of court and to criminal and civil penalties or remedies provided by Tribal law.

44. Types of Guardianships.

a. In cases where the Court orders guardianship over the person, temporary guardianship shall be considered over permanent guardianship. The Court should not change temporary guardianship to permanent guardianship until all reasonable efforts to reunify the family have been exhausted.

b. Types of guardianship shall include:

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

(2) Permanent Guardianship of the Person. The Court may appoint a permanent guardian for the child under such terms and conditions as the Court sets forth in the written order. Permanent guardianship provides for permanent custody of the child to someone other than the parent(s), although there is no termination of the parental rights of the parents. There shall be a presumption of continued permanent guardianship in order to provide stability for the child. Permanent guardianship can only be terminated based upon the unsuitability of the permanent guardian. The parent(s) and the child's traditional relatives and clan members shall be granted liberal visitation rights unless deemed inappropriate by the Court.

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

45. Guardianship Procedures.

a. Petition for Guardianship.

(1) Who May File. A petition for guardianship may be filed either by the proposed guardian or by the child if at least sixteen (16) years of age.

(2) Contents of Petition. The petition for guardianship shall include the following:

- (a) The full name, address, and tribal affiliation of the petitioner.
- (b) The full name, sex, date and place of birth, residence, and tribal affiliation of the proposed ward.
- (c) The basis for the Court's jurisdiction.
- (d) The relationship of the proposed guardian to the child.
- (e) The name and address of the person or agency having legal or temporary custody of the child.
- (f) The type of guardianship requested.
- (g) To the best information and belief of the petitioner, a full description and statement of value of all property owned, possessed, or in which the proposed ward has an interest (if guardianship of property is requested).

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

b. Notice. Notice shall be provided in accordance with the notice procedures set forth in this Act, except that the Court may determine that it is unnecessary to give notice to specific individuals, including a parent whose parental rights have been terminated.

c. Guardianship Report.

(1) Upon the filing of a guardianship petition, the Court shall immediately request that Children and Family Services or other qualified agency conduct a

guardianship report on the proposed guardian and report on the proposed ward. The guardianship report shall contain all pertinent information necessary to assist the Court in determining the best interests of the proposed ward.

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

d. Management of Property.

(1) In the event that any guardian shall receive any property, money, or funds of any child as guardian, before taking and receiving into custody such money or funds, the Court may require of such person a bond with sufficient surety to be approved by the Court and in such sum as the Court shall order, conditioned that the guardian will faithfully execute the duties of his trust. The following conditions shall form the part of such bond without being expressed therein.

(a) To make an inventory of all the estate of his ward what comes into his possession or knowledge and to return the same within such time as the Court may order.

(b) To discharge of and manage the estate according to the law and for the best interests of the ward, and faithfully to discharge his trust in relation thereto, and also in relation to the care, custody, and education of the ward.

(c) To render an account on oath of the property, estate, and money of the child in his hands and all proceeds or interests derived therefor, and of the management and disposition of the same, within two (2) months after his appointment, and at such other times as the Court directs, and at the expiration of his trust, to settle his accounts with the Court or if he be full age, or his legal representative, and to pay over and deliver all the estate, monies, and effects remaining in his hands, or due from him on such settlement to the person who is legally entitled thereto. The funds of any child must be used by his guardian solely for the support and education of such child, and shall be expended by the guardian in a reasonable manner according to the circumstances and station in life of such child, and in such manner as can reasonably be afforded according to the income and estate of said child.

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

e. Withdrawal of Consent. Any consent given under the provisions of this Chapter may be withdrawn by the person or agency that gave consent at any time prior to the hearing of the petition. No reason need be stated and no hearing need be held on such withdrawal. All withdrawals must be in writing and notarized or witnessed by a clerk of the Court, with the original being filed with the Court.

f. Guardianship Hearing Procedures.

(1) A guardianship hearing shall be held within forty-five (45) days of filing of a guardianship petition. The Court shall conduct the hearing to determine if it is in the best interests of the child to be placed with the petitioners.

(2) In determining the best interests of the child, the Court shall examine each of the following:

- (a) Validity of written consent.
- (b) Length of time of the child's guardianship by the Court.
- (c) Special conditions of the child.
- (d) Parent communication with the child.
- (e) Minor's consent to guardianship dependent upon maturity.
- (f) Home studies or other reports.
- (g) Order of preference of placement.

(3) If the Court is satisfied that the guardianship will not be in the child's best interest, or finds that all of the requirements of this Chapter have not been met, it may deny the petition and make any other order it deems necessary for the care and custody of the child not inconsistent with this Act.

CHAPTER XII SUPPORT OF CHILDREN

46. **By the Parents.** When legal custody, guardianship, or other placement of a child is vested by the Court in an individual or agency other than his parents, the Court may in the same or subsequent proceedings, inquire into the ability of the parents, a parent, or any other person who may be obligated, to support the child or to pay any other expenses of the child, including the expenses of any medical, psychiatric, or psychological examination or treatment provided under order of the Court. In cases involving the duty of support, the study shall include such matters as earnings, assets, financial obligations and employment. The Court may, after due notice and a hearing on the matter, require such person or persons to pay the whole or part of such support and expenses, depending on their financial resources and other demands on their funds. The amounts so required to be paid shall be paid at such intervals as the Court may direct, and unless otherwise ordered, payment is to be made to the clerk of the Court for transmission to the person or agency having legal custody of the child or to whom compensation is due. The clerk of

the Court shall have authority to receive periodic payments towards the care and maintenance of the child, such as social security payments made in the name of or for the benefit of the child.

47. Procedure for Payment. No Court order issued under the Section 46 against a parent or other person shall be entered unless summons has been served or a voluntary appearance is made or a waiver of service given. The summons shall specify that a hearing with respect to the financial support of the child will be held.

48. Enforcement of Support Orders.

a. An order entered under Section 46 against a parent or other person may be enforced by contempt proceedings, and shall also have the effect of a civil judgment at law. In addition to other remedies, the Court may issue an order to any employer, trustee, financial agency, or other person or corporation indebted to any other person ordered to make payments under this Act, to withhold and pay over to the clerk of the Court monies due or to become due not in excess of the lessor of the following:

(1) The amount ordered to be paid by the Court; or

(2) One-fourth of the amount due or becoming due to the parent or other person at each regular or usual payday or day of disbursement.

b. A copy of such order shall be served on the parents or either of them adjudged liable and either the parents or parent or the indebted party may request a hearing to determine the propriety of the order or the extent of the indebtedness.

c. No property of the parents, or either of them, shall be exempt from execution to enforce collection of the amounts to be paid.

49. Support From Other Sources. If the Court finds that the parents are unable to pay for full or partial support, examinations, treatment, and other expenses of the child and that no other provision for the payment of such support and expenses has been made, or the parents or other person obligated to pay under a court order issued under this Chapter have failed to make such payment, or if summons cannot be served on the trust lands upon the parents or other persons, the Court shall request any other public or tribal agency or department of the United States or the State of Wisconsin with funds available for such purposes to pay for such support and other expenses and if such department or agency consents, the Court shall order it.

50. Payments Directly to Agency and Court Visits.

a. Payment for child support may be made to a non-government agency in which the Court vests legal custody, provided that the agency shall make periodic reports to the Court concerning the care and treatment. Such reports shall be made at such intervals as

the Court may direct, and shall be made with respect to each child at least every six (6) months.

b. The agency shall also afford an opportunity for a representative of the Court to visit the child as frequently as the Court deems necessary.

51. Child Placement Assistance. Child placement assistance checks to help defray the additional costs associated with foster children are processed by Child and Family Services on the 2nd Friday of each month.

Legislative History:

5/4/99	Legislature places draft Hocak Nation Children and Family Code out for public comment for 30 days.
6/15/99	Hocak Nation Children and Family Code enacted as HCC 98-002 by Legislative Resolution 6/15/99A.
5/20/02	Legislative Resolution 5/20/02A amends Section 5A of Article XXIV providing that the Court may require bond.
8/14/04	Legislature places draft Hocak Nation Children and Family Act out for 45-Day Public Review.
10/19/04	Enacted as Hocak Nation Children and Family Act (4 HCC § 3) with an effective date of 12/1/04 by Legislative Resolution 10/19/04F.
11/5/04	Restated to make technical corrections.