

TITLE III

JUVENILE CODE

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TITLE III
JUVENILE CODE

Chapter 1. GENERAL SECTION

3-1-1. Purposes and Construction

The Juvenile Code shall be interpreted and construed to fulfill the following purposes:

- A. To provide for the welfare, care and protection of the Northern Cheyenne Tribe;
- B. To preserve the unity of the family, preferably by separating the child from the parents only when necessary;
- C. To discourage delinquent acts and to protect the community's interest by providing supervision, care and rehabilitation;
- D. To ensure that off-reservation courts will be willing to return tribal children to the reservation [*As amended by Ord. DOI 3(98)*]; and
- E. To preserve and utilize Northern Cheyenne traditional approaches and remedies whenever appropriate and in the best interest of the child.

3-1-2. Definitions

The following definitions shall apply to all Chapters of this Title. [*As amended by Ord. DOI 3(98)*]

- A. Abandon - When a parent or other person responsible for a child's welfare (1) leaves the child under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or (2) willfully surrenders physical custody and there is no indication of a willingness to assume parental role(s) for a period exceeding two (2) years.
- B. Abused or Neglected Child - A child whose normal physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent(s) or other person responsible for his welfare and includes, but is not limited to, all definitions of abuse contained in this Code and circumstances concerning basic needs such as food, clothing, shelter, medical attention, adequate hygiene, education, emotional and moral training.
- C. Adjudication - A Court proceeding in which facts supporting the allegations in a petition are determined.

- D. Adult - Any person subject to the jurisdiction of the Northern Cheyenne Tribe who is eighteen (18) years of age or older.
- E. Child -
1. A person under eighteen (18) years of age;
 2. A person eighteen (18) years of age or older when proceedings are commenced in the Court prior to his eighteenth (18th) birthday; [*As amended by Ord. DOI 3(98)*]
 3. A person eighteen (18) years of age or older who is under the continuing jurisdiction of the Court, as a result of a proceeding under this Chapter. [*As amended by Ord. DOI 3(98)*]
- F. Child Custody Proceeding - Any voluntary or involuntary informal or formal Court action not including divorce actions, that may result in the temporary or permanent removal of the child from his or her parent, guardian, or custodian.
- G. Child in Need of Care - A child who:
1. Has no parent(s), guardian, or custodian available and willing to care for him;
 2. 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. Has not been provided with adequate food, clothing, shelter, medical care, education, or supervision by his parent(s), guardian, or custodian necessary for his health and welfare;
 4. Has been sexually abused;
 5. Has committed delinquent acts as a result of parental pressure, guidance, or approval; or
 6. Has been emotionally abused or neglected.
- H. Child in Need of Intervention - A child that has engaged in non-criminal, offensive conduct which may have included, but is not limited to, the following types of conduct:
1. Habitual truancy;
 2. Ingesting or inhaling alcoholic beverages, narcotics or any other mind-altering substances;

3. Breaking curfew;
 4. Habitual runaway;
 5. Conduct beyond the control of the person responsible for the child;
 6. Habitual subjection to serious physical or psychological injury to himself or to others;
 7. Seriously endangering the health or well-being of himself or others.
- I. Court - The Trial Court of the Northern Cheyenne Court when exercising jurisdiction under this Juvenile Code unless another court is clearly intended. [As amended by Ord. DOI 3(98)]
- J. Court Judge - Any duly appointed or elected Trial Judge of the Northern Cheyenne Court when exercising jurisdiction under this Juvenile Code. [As amended by Ord. DOI 3(98)]
- K. Custodian - A person other than a parent or guardian, to whom legal custody of the child has been given who has the same responsibilities and authority as a guardian except as expressly limited in a custody decree.
- L. Delinquent Child - A child who has committed an act that violates this Law and Order Code and/or would be a crime if committed by an adult, or is a verified fugitive from another jurisdiction. [As amended by Ord. DOI 3(98)]
- M. Dependent Child - A child lacking an adult person responsible for providing the physical, medical, emotional, educational, or supervisory needs of the child, when such lack is likely to result in serious harm to the child as determined by appropriate Northern Cheyenne Social Services personnel, appropriate county welfare department, or other expert appointed by the Court.
- N. Detention - The placement of a minor in a physically restrictive facility.
- O. Detention Facility - Any public or private residential facility which:
1. Includes construction fixtures and administrative policies and procedures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and
 2. Is used primarily for the temporary placement of any juvenile who is accused of having committed an offense, [cont'd on p. III-7]

or any other individual accused of having committed a criminal offense.

3. Secure detention may consist of a locked room within a nonsecure private or public residential facility if such a facility is available.

- P. Diversion - A course of remedial action taken in matters arising under this Title that is designed to avoid formal Court action and is in the best interests of the child involved.
- Q. Domicile - The place considered to be the child's home.
- R. Emergency Removal - The temporary removal of a child from his custodian, guardian, or parent(s) which is reasonably believed necessary to prevent serious and imminent physical or psychological harm to the child and such removal lasts only so long as the conditions for the removal continue to exist.
- S. Emotionally Abused Child - An abused child suffering injury to his psychological functioning as determined by appropriate Northern Cheyenne Social Services personnel, appropriate county welfare department, or other expert appointed by the Court.
- T. Extended Family - Includes any person 18 years of age or older who is related by blood or marriage to the child, or any other person considered to be an extended family member of the child under the customs of the Northern Cheyenne Tribe or a person determined to be most able to look after the best interests of the child.
- U. Guardian - A person other than the child's parent who has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child, and is concerned about his general welfare. Except as limited by the court, these duties and responsibilities are those that would ordinarily be exercised by the natural or adoptive parent if no guardian had been appointed.
- V. Guardian Ad Litem - An adult appointed by the Court to represent the best interests of a child in any proceeding to which the child may be a party or the outcome of which affects the child's interests.
- W. ICWA - The Indian Child Welfare Act of 1978, P.L. 95-608.
- X. Indian Custodian - An adult tribal member to whom temporary physical care, custody, and control has been transferred by the parent of such child.
- Y. Least Restrictive Alternative - This term directs the Court to

select the least drastic method of achieving its goal; the restrictions placed on the child must be reasonably related to the Court's objectives and must be the least restrictive way of achieving that objective.

- Z. Nutritionally Abused Child - A child subjected to inadequate or non-nutritional foods as determined by appropriate Northern Cheyenne Social Services personnel, appropriate county welfare department, or other expert appointed by the Court.
 - AA. Parent - Includes a biological or adoptive parent but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established in the community.
 - BB. Probation - A legal status created by the Court whereby the physical custody of the child is unchanged and the child's freedom of movement is not legally restricted but may be subject to minimal, necessary and certain restrictive conditions by the Court for a limited period of time. The conditions of probation shall be specified by the Court.
 - CC. Residence - The place where the child is presently living and will continue to live for an indefinite period of time.
 - DD. Residual Parental Rights and Duties - Those rights and duties remaining with the parent(s) after legal custody or guardianship, or both have been vested in another person or agency including, but not limited to, the duty to financially support the child, the right to consent to adoption, the right to decide the child's religious affiliation, and the right to reasonable visitations unless restricted by the Court. Where no guardian has been appointed, residual parental rights and duties shall also include the right to consent to marriage, to enlistment in the Armed Forces, and to consent to major medical, surgical or psychiatric treatment.
 - EE. Sexually Abused Child - An abused child subjected to obscene or sexual activities.
 - FF. Shelter Care - The temporary care of children in physically unrestricting facilities pending court disposition.
- 3-1-3. Duty to Report Abuse and Neglect.
- A. Basis of Reports - Persons who have a reasonable cause to suspect that a child has been abused or neglected shall serve the Northern Cheyenne Tribes by reporting the abuse or neglect to the Director of the Northern Cheyenne Social Services, or the appropriate county welfare department.
 - B. Professionals and officials required to report are:

1. Physicians, residents, interns, or members of a hospital's staff engaged in the admission, examination, care, or treatment of persons;
 2. Nurses, osteopaths, chiropractors, podiatrists, medical examiners, coroners, dentists, optometrists, or any other health or mental health professional;
 3. Religious healers;
 4. School teachers, other school officials, and employees who work during regular school hours;
 5. Social workers, operators or employees of any registered or licensed day-care or substitute care facility, or any other operator or employee of a child-care facility;
 6. Foster care, residential, or institutional workers; or
 7. Peace officers or other law enforcement officials; or
 8. Attorneys with the express consent of their clients.
- C. No person listed in subsection (B) may refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege if the person came into possession of such information as a result of his treatment of the child.
- D. Other Persons - Any person within the exterior boundaries of the Northern Cheyenne Reservation has a duty to report known or suspected instances of child abuse or neglect. Those persons reporting may remain anonymous except when the court determines the report was made in bad faith.
- E. Immunity from Liability - All persons or agencies reporting, in good faith, known or suspected instances of abuse or neglect shall be immune from civil liability and criminal prosecution.
- F. Upon determination by the Court, any person who maliciously uses this reporting procedure may be held in contempt of court and may be subject to appropriate penalties, and/or civil liability as malicious reports shall be deemed bad faith reports under subsection (D).
- G. Penalty for Not Reporting - Any person, official, or institution required to report known or suspected child abuse or neglect or required to perform any other act, who knowingly fails to do so, or who prevents another person from doing so may be civilly liable for the damages caused by such failure or prevention.

3-1-4. Proceedings as Civil in Nature.

- A. Proceedings in juvenile cases shall be regarded as civil proceedings with the Court exercising certain equitable powers. Any disposition under this Code shall not be deemed a conviction of a crime, shall not impose any civil disabilities ordinarily resulting from conviction, nor operate to disqualify any child in any application or appointment to a program or position.
- B. The fact that the proceedings are of a civil nature shall not be interpreted to deprive the child of his rights to counsel at his own expense, to confront accusers, to refuse to incriminate himself, to cross-examine witnesses, and the right to trial by jury.
- C. The disposition of a juvenile matter and evidence given in a hearing in the Court shall not be admissible as evidence against the child in any case or proceeding in other than juvenile proceedings of the Northern Cheyenne Court in order to avoid any stigma that interferes with the child overcoming his problems and becoming a viable adult member of the Tribe.
- D. Juvenile cases under this Code shall be handled separately from the adult cases in the Northern Cheyenne Court.

3-1-5. Due Process of Law.

Due process of law shall be guaranteed at all formal and informal proceedings under this title.

3-1-6. Computation of Time Limits.

The following time periods shall be excluded in computing the time for any proceeding under this Code:

- A. The period of delay resulting from other proceedings concerning the child.
- B. The period of delay resulting from a continuance granted at the request, or with the consent, of the child, child's parent(s), his counsel, or attorney.
- C. The period of delay resulting from the absence or unavailability of the child.
- D. Saturdays, Sundays and legal holidays when the original time limitation is less than seven (7) days.

3-1-7. Notice.

All parties to a formal or informal hearing shall be notified in writing by

an officer of the Court, by a properly drafted and delivered summons of the hearing, and such notice shall be given within a reasonable time before the scheduled hearing, but not less than seventy-two (72) hours before the hearing.

3-1-8. Representation.

The parties shall be informed of their right to representation at their own expense. An appropriate officer or individual shall be available to represent the child. Where the child is not represented the proceedings shall be continued until such representation is obtained.

3-1-9. Evidence and Burdens of Proof.

All findings shall be based upon relevant evidence. Findings shall be supported by clear and convincing evidence. Determinations of delinquency and terminations of parental rights shall be supported by proof beyond a reasonable doubt.

3-1-10. Confidentiality.

- A. Formal and informal hearings both shall be conducted in closed and private chambers except when the child requests an open hearing.
- B. Names of children involved in proceedings under this title shall not be published.
- C. A record of all informal and formal proceedings shall be made and preserved with the Court. All Court records and all law enforcement records and files concerning children under this title, including social, medical and psychological reports shall be kept confidential. These records shall not be open for inspection but except upon Court Order and then only to the following persons or agencies:
 - 1. The child;
 - 2. The child's representative;
 - 3. The child's parent, guardian, or custodian and their representatives;
 - 4. The officers of the court; and
 - 5. Any other person having a legitimate interest in the case and in performance of their duties, as determined by the Court.

3-1-11. Expungement.

When a child who has been the subject of any proceeding before the

Court attains the age of eighteen (18) the Court shall order the destruction of both the Court records and the law enforcement records, except those records dealing with adoptions and parental matters.

Chapter 2. DELINQUENT CHILDREN, CHILDREN IN NEED OF INTERVENTION, AND CHILDREN IN NEED OF CARE

3-2-1. Custody.

- A. A child may be taken into custody by an officer when the officer has a reasonable belief that the child is delinquent or is in need of intervention.
- B. A child shall be taken into custody by a law enforcement officer, a representative of Northern Cheyenne Social Services, or an appropriate welfare official in any case where they have reason to believe the child is in danger of serious and imminent physical or emotional harm.

3-2-2. Custodial Procedure.

The child's parent(s), guardian or custodian shall be notified of the child's custody as soon as possible. The child shall be released to the custody of the parent(s), guardian or custodian unless:

- A. In a delinquency proceeding, such release is impossible;
- B. In a child in need of care proceeding, it is reasonably believed that continued custodial care is necessary because the parent(s), guardian or custodian is unable or unwilling to provide supervision or care, or the child would be placed in danger of serious and imminent harm.

3-2-3. Custodial and Shelter Care Placements.

Whenever a child is taken into custody and not immediately released to his or her parents, guardian, or custodian, the child shall be placed in the least restrictive custodial environment and may be placed as follows:

- A. If the child is taken into custody for committing a delinquent act or is alleged to be in need of intervention, he or she shall be placed in a nonsecure residential shelter on the Reservation. In the following situations, the child may be detained in a secure facility:
 - 1. The alleged offense is a Class A offense;
 - 2. The child is a verified fugitive from another jurisdiction;
 - 3. The child is on conditional release in connection with another delinquency proceeding; or

4. The child has a demonstrable recent record of willful failures to appear at Court proceedings.
- B. If the child is alleged to be in need of care, he or she may be placed:
1. With a responsible member of the child's extended family;
or
 2. With a foster family residing on the Reservation approved by the Tribe; or
 3. With a responsible adult residing on the Reservation; or
 4. In a shelter care facility on the Reservation which has been approved by the Tribe and designed to care and supervise such children in need of care, and which meets applicable federal guidelines as determined by the Director of Social Services.

3-2-4. Prohibited Custodial Placements.

- A. Children who are taken into custody for committing a delinquent act who are detained in a secure facility shall not be detained or confined in any institution in which they have sight or sound contact with adult persons incarcerated because such adults have been convicted of a crime or are awaiting trial on criminal charges.
- B. Children taken into custody for committing a delinquent act and eligible for secured detention may be held temporarily in an adult jail or lock-up only where necessary for administrative purposes of identification, processing, transfer to another jurisdiction, transfer to Court officials or transfer to juvenile shelter or detention facilities. Any such detention of children in an adult jail or lock-up shall be limited to the absolute minimum time necessary to complete the administrative purpose, not to exceed six (6) hours, and children shall be separated from having any sight or sound contact with adult offenders.
- C. A child alleged to be in need of care shall not be placed in any adult jail, adult lock-up or any other facility used for the detention of adult offenders. Nor shall the child be placed in any facility used for the detention of delinquent children or children in need of intervention, unless separate facilities are not available. Where placement in the same facility with such juveniles is necessary the child in need of care shall be kept in rooms separate from and not readily accessible to rooms used for the detention of delinquent children or children in need of intervention.

3-2-5. Complaint.

Within two (2) days of taking the child into custody, a complaint shall be filed, stating the reasons that the child should remain in custody. In child in need of care proceedings, the prosecutor shall take the course of action that is in the best interest of the child. Such action may be, instead of the above, to refer the child, the parent, guardian or custodian to appropriate Social Service agencies and release the child to the custody of the parent, guardian or custodian.

3-2-6. Initial Hearing.

The court shall determine, within 72 hours of the child being taken into custody, whether further custodial care of the child is necessary pending further action on the matter. If the court determines that further custodial care is not necessary, the child shall be released to his or her parents, guardians, or custodians.

3-2-7. Investigation and Informal Conference.

Where the Court has made a preliminary finding that further custodial care of the child is necessary, the Court shall order the designated officials of the Northern Cheyenne Tribe to conduct a preliminary investigation into the matter.

The prosecutor, investigating official, social services representative, parent(s) of the child, and child may hold an informal conference to discuss alternatives to the filing of a petition if the judge determines that:

- A. The admitted facts indicate the child is delinquent, in need of intervention or in need of care;
- B. An informal adjustment would be in the child's best interest; and
- C. The child and the child's parents, guardian, or custodian consent to an informal adjustment with the knowledge that the consent is voluntary.

3-2-8. Disposition Permitted at Informal Conference.

- A. The following dispositions are permissible at the informal conference hearing. All dispositions must be voluntarily agreed to by all parties to the hearing.
 1. Release the child to parent, guardian or adult custodian with no further action;
 2. Release the child to parent, guardian or adult custodian and refer them to appropriate community-based service agencies;

3. Place the child in a Tribally-approved foster home on the Reservation or other home on the Reservation, approved by the Court; or
 4. Place the child with a community-based agency responsible for the care of such children.
- B. In an informal adjustment hearing in a proceeding regarding delinquency or child in need of intervention the following dispositions are permissible, in addition to those in (A) above:
1. Place the child on probation;
 2. Order terms of supervision designed to rehabilitate the child related to the offense, which regulate the child's activities and are within the child's ability to perform;
 3. Accept an offer of restitution if the child makes it voluntarily and restitution is practicable;
 4. Any traditional remedy when appropriate; or
 5. Any combination of the above.
- C. In an informal hearing in a proceeding regarding a child in need of care, the following dispositions are permissible, in addition to those listed in (A) above:
1. Placing the child with a responsible member of the extended family; or
 2. Any combination of the above.
- D. If any person waives a right guaranteed to them by this title, such waiver must be knowing and voluntary and shall be written in the record and signed by the waiving person.

3-2-9. Time Limitation on Informal Disposition.

No informal adjustment disposition period shall exceed six (6) months.

3-2-10. Record.

- A. The prosecutor or other designated official shall see to it that a written record of the informal adjustment conference is made at the time of the hearing and that the record contains the following information:
1. The name, address and birthdate of the child;

2. The names and addresses of all persons present at the hearing;
 3. The date and purpose of the hearing;
 4. The admitted facts indicating the child is delinquent or in need of intervention or in need of care;
 5. All persons' voluntary consents to the hearing;
 6. The dispositions agreed to; and
 7. The signatures of all persons present at the hearing.
- B. Any informal adjustment disposition agreed to must be signed by a Judge and incorporated in an order from the Northern Cheyenne Court.

3-2-11. Proceeding on a Formal Petition.

The prosecutor shall file a petition on behalf of the Northern Cheyenne Tribe charging the child delinquent or in need of intervention when efforts at diversion have been unsuccessful, or alleging the child is abused, neglected or dependent when efforts at diversion have been unsuccessful and formal court action is in the best interests of the child.

3-2-12. Formal Petition Requirements.

The petition shall be specific and shall include the following information:

- A. The basis of the Court's jurisdiction;
- B. The name, address and birthdate of the child;
- C. The present custodial status of the child;
- D. The names and addresses of the child's parent(s), guardian, or custodian and any other relevant persons;
- E. In a delinquency or child in need of intervention proceeding, the offense(s) charged against the child, or in a child in need of care proceeding, the charges being filed under this title;
- F. The facts and circumstances surrounding the offense(s) or charge(s); and
- G. What efforts if any have been made to divert the child from the Court system.

3-2-13. Summons.

- A. Within 72 hours of filing of a petition, an officer of the Court shall serve a summons by hand delivery if possible or by certified mail return receipt requested, on
1. The child;
 2. The child's representative if appropriate;
 3. The parent, guardian, or custodian, and
 4. Any other person as the Court directs.
- B. The summons shall:
1. Direct the person to whom it is addressed to appear at a scheduled hearing;
 2. Give notice of the date, time and place of the scheduled hearing, and the date shall be no longer than 72 hours from service of the summons;
 3. Have attached a copy of the petition;
 4. Notify the parties of their right to have independent representation at all stages of the proceedings; and
 5. Advise the child of his or her right to have representation.

3-2-14. Records and Investigations.

The Court may subpoena the records of Social Service agencies, the Juvenile Department, Health Services and other persons or agencies that possess records relevant to the child's case and are records kept by such agency in the ordinary course of its business. Parties to the hearing may request the Court to subpoena such relevant records on their behalf if by obtaining such records the rights of the child would not be violated.

3-2-15. Time Limitations for Hearing.

The date of the adjudicatory hearing shall be set by the Court and such date shall be within a reasonable time from the filing of the petition, but no later than sixty 60 days. An unreasonable length of time between the filing of the petition and date of the scheduled hearing shall result in the permanent dismissal of the matter.

3-2-16. Adjudicatory Hearing.

- A. In a delinquency or child in need of intervention proceeding, the adjudicatory hearing shall be held solely to determine the

guilt or innocence of the child. At minimum, all due process rights as provided in this Title shall apply. Waivers of such rights must be knowing and voluntary and shall be in writing and signed by both the child and his parent(s), guardian or other representative.

- B. In a child in need of care proceeding, the adjudicatory hearing shall be conducted solely to determine whether or not the child is abused, dependent or neglected. The hearing shall be conducted in closed and private chambers. All due process rights provided in this Title shall apply. Waivers of any rights must be in writing and signed by the person waiving such rights.

3-2-17. Dispositional Hearing.

A dispositional hearing shall be conducted as soon as practicable after the conclusion of the adjudicatory hearing. Adequate time between the hearings, not to exceed 15 working days, shall be allowed to permit the Court to consider the dispositional alternatives that are in the best interests of the child.

3-2-18. Rights of the Parties to the Dispositional Hearing.

All those rights provided at the adjudicatory hearing shall be provided at the dispositional hearing. If the dispositional hearing is scheduled for a separate proceeding at a later date than the adjudicatory hearing, the notice and time limitations of this Title shall apply.

3-2-19. Dispositions Permissible.

The Court may order any of the dispositional alternatives permissible under 3-2-7. - In addition, where the child has been found delinquent the child may be committed to a secure juvenile detention facility. In addition, where the child has been found in need of care, the Court may order that permanent termination of parental rights proceedings be initiated. The Court shall pursue a course of action that:

- A. Is the least restrictive alternative;
- B. Is designed to rehabilitate the child;
- C. Will maintain the child's ties to the community; and
- D. Is consistent with the interests and safety of the Tribe.

3-2-20. Dispositional Orders

The Court shall set forth the disposition in an order which contains specific time limitations and conditions on the disposition.

- A. In a delinquency or child in need of intervention proceeding,

no order shall be in effect longer than six (6) months or after the child reaches the age of 18 years.

- B. In a child in need of care proceeding, no order shall continue after the child reaches the age of 18 years. All orders are to be reviewed at the discretion of the Court, provided however that all orders must be reviewed at least once every six (6) months. Whenever a child is placed temporarily off the Reservation, the Court shall require the party receiving custody of the child to sign an agreement that the child will be returned to the Reservation upon written order of the Court.

3-2-21. Modification of Orders.

Dispositional orders may be reviewed by the Court at its discretion. Orders may be modified upon a showing of a substantial change of circumstances and when it is in the best interest of the child. The Court shall conduct a hearing in accordance with the due process procedures of this Chapter when a modification involves either a change of custody or an extension on the time the order is to be in effect.

Chapter 3. VOLUNTARY AND INVOLUNTARY TERMINATION OF PARENTAL RIGHTS

3-3-1. Purpose.

The purpose of this section is to provide procedures for the permanent severance of the parent-child relationship. The procedures provided here demonstrate a recognition of the severe consequences of termination. The cancellation of all legal ties between parent and child is viewed as such an extreme measure that the law should insure that all legal and cultural rights of the parent and the child are protected. One measure intended to insure this protection is the separation of the termination proceedings from the adjudication of the child in need of care proceedings and the separation of the termination proceedings from the adoption proceedings.

3-3-2. Initiating Termination Proceedings.

The Court may conduct a hearing to permanently terminate the parental rights of the parent(s) to the child only if it has found:

- A. In a separate, prior adjudicatory hearing, upon proof beyond a reasonable doubt, that the particular parent has abused the child, neglected the child, or left the child dependent, and termination would be in the best interest of the child; or
- B. That the parent(s) voluntarily give written consent before the Court to permanent termination of their parental rights provided however that the Court certifies that it has advised the parent(s) of the seriousness and finality of termination and the parent(s) understood such advice.

3-3-3. Petition.

A proceeding to terminate parental rights may be instituted by the filing of a petition by the prosecutor on behalf of the Tribe, or by the parent(s) of the child.

3-3-4. Petition Requirements.

The petition shall comply with the requirements set out in 3-3-18 of this Title.

3-3-5. Summons Requirements.

The summons shall comply with the requirements set out in 3-2-12 of this Title.

3-3-6. Pre-Termination Investigation.

Prior to the date of the scheduled termination hearing, the Court shall order an investigation to be conducted by an official(s) designated by the President of the Council. Relevant records of Social Service Agencies, Health Service Agencies and from other appropriate persons or agencies, provided such records are kept in the course of the ordinary business of such agency or person, and provided that the use of such records would not result in a violation of the child's rights, may be obtained for the investigation.

3-3-7. Pre-Termination Report.

The official(s) designated shall prepare and present a written report to the Court at least ten (10) days before the termination of parental rights hearing. The report shall contain the opinions of all professionals and others consulted along with recommendation to the Court.

3-3-8. Termination Hearing.

- A. The Court shall conduct a termination hearing within 30 days of receipt of a petition to terminate. The hearing shall be conducted for the purpose of determining whether permanently terminating parental rights is in the best interest of the child and if so found, where the child should be placed upon termination. The Court shall hear evidence and the parties shall have the right to introduce evidence on the matter of proper disposition. The hearing shall be conducted in closed and private chambers:
- B. The Court shall conduct the hearing for the purpose of determining whether parental rights should be terminated based upon a showing of:
 1. Abandonment of the child;

2. Willful and repeated physical injuries which cause or create a substantial risk of death;
3. Willful and repeated acts of sexual abuse; or
4. Relinquishment of parental rights acknowledged before the Court.

C. The Court shall enter a written judgment setting forth the findings, decision, and disposition.

3-3-9. Dispositions Permitted at Termination Hearing.

Appropriate dispositions provided in 3-3-6 and 3-3-15 of this Title shall apply at the Termination Hearing. In addition, the Court may permanently terminate parental rights, and order the initiation of adoption proceedings, provided however, that the Court has found by clear and convincing proof that termination is in the best interest of the child.

3-3-10. Relinquishment of Parental Rights
(Voluntary Termination of Parental Rights).

Parental rights may be relinquished (voluntarily terminated) in accordance with 3-3-2(B), if signed by the parent(s) in the presence and with the approval of the Court. Relinquishment shall not be accepted or acknowledged by the Court prior to ten (10) days after the birth of the child. An interpreter shall be provided if the Court deems it necessary to insure the parent(s)' understanding of the seriousness and finality of the termination.

3-3-11. Record.

- A. A record of all hearings and reports made under this Code shall be preserved.
- B. All Court records shall be confidential and shall not be open to inspection to any but those acting on behalf of the best interests of the child as determined by the Court.

3-3-12. Child's Rights.

The termination of parental rights shall not adversely affect the child's rights, privileges and interests as an Indian, nor as a member of the Northern Cheyenne Tribe, including rights of inheritance. Nor shall it affect the child's enrollment status with the Tribe.

Chapter 5. CHILD CUSTODY REFERRALS UNDER THE INDIAN CHILD WELFARE ACT

3-4-1. Purpose.

The purpose of this section is to provide the procedures for implementing the Indian Child Welfare Act of 1978 that will protect the best interests of Northern Cheyenne children and their families involved in custody proceedings. Where Northern Cheyenne children are involved in custody proceedings off the Reservation, an informed and careful decision as to whether the Tribe should petition for a transfer of jurisdiction back to the Reservation is necessary to protect both the child and the Tribe. It is intended that the Tribe will investigate cases referred to it and will petition for transfer when it is in the best interest of the child to do so. The procedures found in this chapter are aimed at producing a thoughtful and wise decision in the matter of transfers, one that is in the best interest of the child and will insure the stability and security of the Northern Cheyenne Tribe.

3-4-2. Authorized Representative of the Tribe.

The Director, Northern Cheyenne Social Services for the Tribe shall be the sole representative of the Tribe for:

- A. Receiving notification of referrals to the Tribe under the ICWA;
- B. Initiating the filing of petitions for the transfer of jurisdiction to the Tribe; and
- C. For providing an intervenor in other Courts where jurisdiction is not transferred to the Tribe.

3-4-3. Receipt of Referral.

- A. The Director, Northern Cheyenne Social Services shall be bound to honor referrals that are sent to him provided in the ICWA. Upon receiving notification of the referral, the Northern Cheyenne Social Services shall make a record of all the following information on the referral:
 1. The source of the referral;
 2. The names and addresses of the child and the parent, guardian or custodian;
 3. The date of the referral; and
 4. The date of the scheduled proceedings in the outside Court.
- B. The Director, Northern Cheyenne Social Services shall

immediately make a written request by registered mail, return receipt requested to the referring Court for the twenty (20) day extension to prepare the case for a transfer decision if such additional time is necessary.

3-4-4. Investigation of Referral.

- A. Immediately upon receipt of the referral the Director of the Northern Cheyenne Social Services shall conduct a thorough investigation into the matter, and shall perform the following duties:
1. Contact tribal enrollment and other appropriate sources to determine the child's membership status with the Tribe;
 2. Investigate and determine whether the child custody referral is one properly referred to the Tribe under the ICWA;
 3. Contact the parent(s), guardian or custodian of the child by registered mail, return receipt requested and notify them of the fact of the referral to the Tribe and the possibility the Tribe will transfer the case to its jurisdiction;
 4. Contact relevant social, medical, legal and other such sources to obtain necessary information on the child's case;
 5. Prepare a case file on the child;
 6. Make a decision as to whether transfer, intervention or taking no action on the case would be in the best interest of the child. This decision should be made with the advice and assistance of two (2) responsible and knowledgeable Tribal members, appointed by the Tribal Council, and the court official designated by the tribal council;
 7. Notify the parent, guardian or custodian, the prosecutor and the Reservation Court of the decision. Notification to the parent, guardian or custodian shall be by registered mail, return receipt requested;
 8. Where the decision is made to transfer the case to the Reservation Court, the Court shall have the authority to veto this decision and decline jurisdiction. Absent the Court's notice, within 3 days, to decline jurisdiction, the Director, Northern Cheyenne Social Services shall file a petition with the referring Court for the transfer of jurisdiction;

9. If the Director, Northern Cheyenne Social Services obtains a decision not to petition for transfer, he shall also notify the parent(s), guardian or custodian and the referring Court of the decision by registered mail, return receipt requested. The Director, Northern Cheyenne Social Services shall also notify them as to whether or not the Tribe will provide an intervenor in the proceedings in the referring Court.

B. The Director of the Northern Cheyenne Social Services shall complete the above duties within 10 days from receiving the notice of referral, unless he requests the referring Court, in writing by registered mail, for the 20-day extension as provided in the ICWA.

C. For purposes of the required investigation the Director, Northern Cheyenne Social Services shall request the referring Court to provide all reports and other documents filed with the referring Court concerning the child custody action, as provided in the ICWA.

3-4-5. Tribal Appearance:

A. The Northern Cheyenne Tribe shall file a formal notice of appearance in every instance that it receives notice of a proceeding under the ICWA. In so doing the Tribe intends to assure its receipt of notice of any further hearings involving a particular child and preserves the right to intervene subsequent to an initial hearing.

B. When the Tribe receives notice under the ICWA of the temporary removal of a child by any welfare officer in an effort to reunify a family, the tribe will file a formal appearance in accordance with subsection A:

1. Stating its intent to intervene if the family reconciliation does not occur within ninety (90) days;
2. Stating the Tribe's desire to receive notice of any subsequent hearing concerning the child;
3. Stating the intent of the Northern Cheyenne Tribe to issue its own Court Order concerning placement of children of the Northern Cheyenne Tribe; and
4. Citing the portions of the Northern Cheyenne Code which preserve the due process rights of interested parties in its own Court.

C. When the Tribe receives notice under the ICWA of the temporary removal of a child for any reason, the Tribe shall

file a formal notice of appearance containing the information set out in subsection (B) with modification of the time limit in (B)(1) which is appropriate to the circumstances of a particular child.

- D. When the Tribe receives notice under the ICWA of the possibility of permanent placement of a child for any reason the Tribe shall file a formal appearance containing the information in subsection (B), deleting the time limit statement in (B)(1) and asserting the right to notice of any change in the placement of the child and requiring a report of the child's residence, school attendance, health condition and other appropriate information as to the child's well being every two (2) years commencing from the date of placement.

3-4-6. Proceeding After Transfer.

Where jurisdiction is properly transferred to the Reservation Court, the procedures set forth in the provisions on children in need of care, or children in need of intervention, shall be followed, whichever is appropriate under the circumstances. In no event shall delinquency proceedings be pursued.

3-4-7. Records.

- A. The Director of the Northern Cheyenne Social Services will make and preserve records of all referrals received and document compliance with all applicable provisions of this Chapter.
- B. These records shall be confidential and shall not be open to inspection except upon an order of the Northern Cheyenne Court.

Chapter 6. ADOPTIONS

3-5-1. Who May be Adopted.

- A. Any person who is within the jurisdiction of the Northern Cheyenne Court may be adopted under this Code.
- B. When a petition has been filed for the adoption of an adult the court may waive the inapplicable procedures under this Code.

3-5-2. Petition Requirements.

Any adult person who wishes to adopt, may file the petition for adoption with the Court in a form prescribed by the Court. It shall be verified under oath before a Judge, by the adoptive parent or parents and shall contain:

- A. The full name, residence, sex of the child and documentary

- proof of the date and place of the birth of the child to be adopted;
- B. The full name, residence, sex and occupation of the adoptive parent or parents and documentary proof of their marital status, if appropriate and of their Indian affiliation, if any;
 - C. Proof of a court order terminating the parent-child relationship with respect to each living parent of the child;
 - D. Proof of parental consent where the adoption is by the voluntary consent of the child's parent(s). Such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding Judge's certificate that the terms and consequences of the consent were fully explained in detail and fully understood by the parent;
 - E. An agreement by the adopting parents that it is their desire that the relationship of parent and child be established between them and the child; and
 - F. A full description and statement of value of all property owned or possessed by the child.

3-5-3. Consents to Adoption.

- A. Form of Consent: Consents to adoptions where required by this Chapter shall be executed in writing and recorded before a judge of a court of competent jurisdiction, and cannot be given until ten (10) days after birth.
- B. Consent by a Child Aged 12 or Older: The adoption of a child twelve (12) years or older, shall not be granted without the child's consent given in Court, unless the Court finds that his consent is being withheld arbitrarily and capriciously.
- C. Filing of Consents: Written consents shall be attached to the adoption petition. A consent by a guardian of the child shall be accompanied by evidence satisfactory to the Court establishing the guardian's authority to consent to adoption of the child.
- D. Withdrawal of Consent Prior to Entry of Decree: No consent to adoption shall be withdrawn unless authorized by order of the Court after notice and opportunity to be heard is given to the petitioner in the adoption proceedings, and to the person seeking to withdraw consent. The Court shall not grant permission to withdraw consent unless it finds that the best interests of the child will be served by such withdrawal.
- E. Withdrawal of Consent After Order of Adoption: After the

entry of a final decree of adoption the parent or child may withdraw consent thereto only upon the grounds that consent was obtained by fraud or duress and may petition the Court to vacate such decree and return the child to the parent(s), guardian or custodian. No adoption which has been effective for at least one (1) year may be invalidated under these provisions.

3-5-4. Investigation and Report.

Within five (5) days after the filing of a petition for adoption, the Court shall request the assistance of the appropriate tribal personnel to investigate and report in writing to the Court within thirty (30) days as to the child's family history, the suitability of the child for adoption, the reasons for the adoption, the financial ability, moral and physical fitness, and the general background of the adoptive home and of the adoptive parent or parents, and to make recommendations on the proposed adoption.

In the case of an adoption by persons not residing within this Court's jurisdiction, the Court shall request the assistance of the appropriate social services personnel in the jurisdiction which is the home of the prospective adoptive parents, for the above information.

3-5-5. Hearing on Adoption.

- A. Within five (5) days after the written report required by 3-5-4 is filed, the Court shall fix a time for a hearing on the petition for the adoption. The adoptive parent or parents and adoptive child shall appear personally at the hearing. All other persons whose consent is necessary to the adoption shall be duly notified and shall appear for the purpose of the adoption, unless prior consent has been obtained.
- B. The Judge shall examine all persons appearing separately and, if satisfied as to the following may enter a final decree of adoption, or may place the child in the legal custody of the petitioners for a period not to exceed six (6) months prior to entering a final decree of adoption:
 1. The suitability of the child for adoption;
 2. The financial ability of the adoptive parents;
 3. The moral and physical fitness and responsibility of the adoptive parents; and
 4. That the best interest of the child will be promoted by the adoption.
- C. If the Court is satisfied that the adoption will not be in the best interests of the child, the petition shall be denied and the

guardian instructed to arrange suitable care for the child, and the Court may request agencies authorized to provide such services to assist in the placement and the care of the child.

3-5-6. Report and Final Decree of Adoption.

- A. If the Court does not enter a final decree of adoption at the time of the hearing for adoption, but places the child in the legal custody of the petitioners, within six (6) months after the child has been in the custody of the petitioner, the Court shall request a supplementary written report under the same procedures in 3-5-4, as to the welfare of the child, the current situation and conditions of the adoptive home and the adoptive parents. If the Court is satisfied that the interests of the child are best served by the proposed adoption, a final decree of adoption may be entered. No final order shall be entered by the Court unless it appears to the Court that the adoption is in the best interests of the child.
- B. In any case where the Court finds that the best interests of the child will not be served by the adoption, a guardian of the child shall be appointed and suitable arrangements for the care of the child shall be made and the Court may request tribal agencies or federal agencies or other agencies authorized to provide such services to assist in the placement and care of the child.
- C. Legal custody for purposes of this code means, subject to any limitations contained in the court order, a relationship embodying the following rights and duties:
 1. The right to physical custody of the child;
 2. The right and duty to protect, train and discipline the child;
 3. The duty to provide the child with food, clothing, shelter, education, and ordinary medical care;
 4. The right to decide where and with whom the child will live; and
 5. The right in an emergency to authorize surgery or other extraordinary care.

3-5-7. Adoption Records.

All records, reports, proceedings, and orders in adoption cases are confidential and permanent records of the Court, and shall not be available for release to or inspection by the public. Information contained in such records may be released upon petition to the Court by the adopted person after reaching legal majority, or upon order of the

Court upon good and sufficient cause shown.

3-5-8. Contents of Adoption Order.

- A. The final order of adoption shall include such facts as are necessary to establish that the child is eligible and suitable for adoption, and that the adoptive home and parents are adequate and capable of the proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence adduced at the hearings.
- B. Within five (5) days after the final decree of adoption has been entered by the Court, the Clerk of Court shall mail the information required in subsection (C) and a certified copy of the final adoption decree to the appropriate officials of the Northern Cheyenne Tribe, the Bureau of Indian Affairs, as regulations require, and the appropriate agency of the State of Montana.
- C. The information filed by the Clerk of Court should advise that the adoption has taken place, giving the full name, sex, birthdate, and names of natural parents and full names of adoptive parent(s) so that a new record of birth in the new name and with the name of the adopting parents is recorded.

3-5-9. Name and Legal Status of Adopted Child.

Minor children adopted by order of Court shall assume the surname of the persons by whom they are adopted, unless the Court orders otherwise, and shall be entitled to the same rights of person and property as children or heirs of the person adopting them.

3-5-10. Child's Rights.

Nothing in this Section shall be construed to indicate that the child involved in these proceedings will terminate any of his rights and/or privileges as an enrolled Indian, including rights of inheritance.

Chapter 7. GUARDIANSHIP OF CHILDREN

3-6-1. Guardianship.

- A. A guardian may be appointed for any child who is within the jurisdiction of the Northern Cheyenne Court.
- B. Any adult enrolled member of the Northern Cheyenne Tribe is eligible to be appointed guardian of a child.
- C. The spouse of an adult enrolled member of the Northern Cheyenne Tribe is eligible to be appointed guardian of the natural child of that spouse.

3-6-2. Petition.

- A. Upon the filing of a petition by an interested party, the Court shall determine whether petitioner(s) is fit to serve as guardian of the person and/or property of the child named in the petition.
- B. The petition shall contain the following information:
 - 1. The petitioner(s) full name, age, address, and relationship, if any, to the child; and
 - 2. The name, date, and place of birth of the child; and
 - 3. The name and address of the child's custodian; and
 - 4. The names and addresses of all interested parties, including the child's natural parents.

3-6-3. Social Study.

- A. Upon the filing of a petition for guardianship, the court may order that a social study be made of the petitioner(s), and his or her home, by the prosecutor, a social services representative, or any other suitable person chosen by the Court.
- B. The social study shall consider all facts related to the petitioner(s)' fitness to be appointed guardian of the child, and shall include, but not be limited to, the following factors concerning the petitioner(s) and the members of his or her immediate family with whom he or she lives:
 - 1. General background of the Petitioner(s)' home;
 - 2. Moral fitness;
 - 3. Religious and tribal background;
 - 4. Financial condition;
 - 5. Mental and physical health conditions;
 - 6. Any other facts which the Court finds are relevant to the fitness of the petitioner(s) to serve as guardian of the child.
- C. The Court shall order that a written report of the results of the social study be submitted to the Court within thirty (30) days of the original order.

3-6-4. Notice of Hearing.

- A. After a petition for appointment of a guardian has been filed, the Court shall set a time and place for a hearing.
- B. Notice of the hearing shall be given to:
 - 1. Petitioner(s);
 - 2. The child's custodian, if any;
 - 3. The person who has prepared a social study under section 3-6-3, if the Court has ordered that a study be made;
 - 4. The natural parents of the child; and
 - 5. All relatives and interested parties named in the petition in accordance with section 3-6-2 (B)(4).
- C. Notice shall be given to the natural parents of the child by registered mail. All other persons shall be notified by mail.
- D. All persons notified shall be required to answer in accordance with the Northern Cheyenne Civil Procedure Code, or by personal appearance at the hearing. Failure to answer may be deemed a waiver of any interest in the proceedings.

3-6-5. Hearing on the Petition.

A. Attendance:

- 1. The petitioner(s), the child for whom a guardian is to be appointed, and the natural parents of the child, shall attend the hearing, unless the court orders otherwise;
- 2. The person who has prepared a social study under section 3-6-3, if the Court has ordered that a study be made, shall attend the hearing;
- 3. The Court may require the presence of any other person as it finds necessary.

B. Testimony:

- 1. The hearing shall be as informal as due process and fairness permit;
- 2. The Court shall examine all persons in attendance for the purpose of determining the necessity of the appointment of a guardian for the child, and the fitness and responsibility of the petitioner(s) to serve as guardian of the child.

3-6-6. Letters of Guardianship--Security.

- A. If, after the hearing and consideration of all evidence and social studies, the Court determines that the requirements of this chapter have been met, and that appointment of petitioner(s) as guardian of the child is in the best interest of the child, the Court shall appoint Petitioner(s) guardian of the child.
- B. Security. The Court may order the person appointed guardian to provide security in an amount sufficient to cover any loss or damage which may be caused by improper administration of the child's property by the guardian.
- C. The person appointed guardian shall take an oath to discharge faithfully the duties of his or her office.
- D. After the person appointed guardian has qualified by furnishing any security required of him or her by the Court, by taking the oath, and by fulfilling any other special conditions imposed by the Court, the Court shall issue to him or her letters of guardianship. These letters, issued in the name of the Court and signed by the Court shall be evidence of the guardian's authority to act on behalf of the minor.
- E. The order of appointment of a guardian is to be in effect for the time limit set by the Court, but no order shall continue after the child reaches the age of eighteen (18) years.
- F. The order of appointment of a guardian is to be reviewed at the Court's discretion, but at least every year.

3-6-7. Modification or Termination of Order of Appointment of Guardian.

- A. A modification hearing shall be held in the manner provided for by this section for a hearing on a guardianship petition.
- B. The Court may modify or terminate an order of appointment of guardian upon motion of any interested party.
- C. An order of appointment may be modified or terminated upon a showing that it is no longer appropriate.
- D. Guardianship shall be terminated:
 - 1. Upon the death of the guardian;
 - 2. Upon the conviction of the guardian of a felony under the laws of the United States or any state or territory thereof;

3. Upon a civil commitment of the guardian;
4. Upon a showing that the guardian is unfit to exercise authority over the person of the child, and/or unfit to act in his or her fiduciary capacity on behalf of the child; or
5. Upon the child's eighteenth (18th) birthday.

3-6-8. Guardianship of the Person.

A person named guardian of the child's person shall have physical custody of the child and shall render to the child the same care a natural parent would, including, but not limited to rearing, feeding, clothing, housing, and educating the child in his or her custody.

3-6-9. Guardianship of Property.

A person named guardian of the child's property shall assume possession of the child's property, personal and real, administer said property as profitably as possible, and preserve and maintain said property until the child reaches the age of eighteen (18). The guardian may not alienate or encumber by mortgage the child's interest in real property, nor may he lease, alienate, or encumber any mineral interests the child owns without the approval of the Court. The guardian shall enforce all obligations in favor of the child and shall represent the child in all civil matters. The guardian shall act at all times as a prudent administrator, and shall be personally responsible for all damages resulting from his failure to so act.

3-6-10. Extraordinary Actions.

- A. The guardian shall file a petition setting forth any action affecting the child's interest he proposes with recommendations and reasons.
- B. If the Court finds that the proposed action is in the best interests of the child and if no other party objects within a reasonable time, the Court may enter an order approving the action without additional formality.
- C. If the Court is not persuaded by the petition that the proposed action is in the best interests of the child, the Court may appoint a lawyer or representative to oppose the guardian on behalf of the child.
- D. The Court shall render judgment after a hearing in the matter.

3-6-11. Funds of the Child.

- A. If the child is a member of the Northern Cheyenne Tribe, the Court shall order the appropriate official of the Northern Cheyenne Tribe to retain custody and control of funds in the

child's individual account and to disburse funds from the account to the guardian in a manner and amount to be determined by the Court.

- B. The Court may require that the guardian as a condition to issuance of Letters of Guardianship, set up special bank or investment accounts, in the name of the child, whether or not he or she is an enrolled member of the Northern Cheyenne Tribe.

3-6-12. Final Accounting.

- A. Upon termination of the guardianship, the guardian, or his heirs shall account for all real and personal property of the child received by the guardian at the beginning of the guardianship, received by the guardian during the course of the guardianship, and in the possession of the guardian at the termination of the guardianship.
- B. The accounting shall show the origin of any revenue, the disposition of any assets, and the purpose of all disbursements.
- C. The final accounting shall be presented to the Court in the form of a petition that shall include a list of all interested parties.
- D. Any interested parties, including the child, may oppose the final accounting by answering the guardian's petition in accordance with the Northern Cheyenne Civil Procedures Code.
- E. The Court shall render judgment accepting the final accounting, when it is convinced of the correctness of the accounting.
- F. A judgment of the Court accepting the final accounting does not relieve the guardian of responsibility or liability for breach of fiduciary duty to the child.