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**NORTHERN CHEYENNE TRIBE LOGO HERE**

**TITLE III - JUVENILE CODE**

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## Chapter 1. GENERAL PROVISIONS

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### 3.1.1 Purpose 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/her parent(s) or other person responsible for his/her welfare and included, 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/her eighteenth (18<sup>th</sup>) birthday; [*As amended by Ord. DOI 3(98)*]

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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/her;
2. Has suffered or is likely to suffer a physical injury, inflicted upon him/her 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/her parent(s), guardian, or custodian necessary for his/her 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, meaning the child recorded unexcused absences of ten (10) or more whole days or thirty (30) or more parts of a day, whichever is less, in one (1) school year;
2. Ingesting or inhaling alcoholic beverage, narcotics or any other mind-altering substances;
3. Breaking curfew;
4. Habitual runaway, meaning any child who has been found to have been absent from his or her place of lawful residence without the permission of his or her custodian for at least seven (7) days during a one (1) year period;
5. Conduct beyond the control of the person responsible for the child;
6. Habitual subjection to serious physical or psychological injury to him/herself or to others;
7. Seriously endangering the health or well-being of him/herself 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)*]

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## 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 Human Services personnel, the Bureau of Indian Affairs Social Services, an 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 offence 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/her 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 Human Services personnel, the Bureau of Indian Affairs Social Services, or appropriate

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county welfare department, or other expert appointed by the Court.

## T. Extended Family

Includes any person eighteen (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/her 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 Custody

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 Human Services personnel, the Bureau of Indian Affairs Social Services, 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.

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## 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 affiliations, 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 Tribe by reporting the abuse or neglect to the Director of the Northern Cheyenne Human Services and to the appropriate Bureau of Indian Affairs Social Services personnel.

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 professionals;

3. A member of the clergy or a priest, who is licensed, recognized, and/or registered as such by the church to which he/she belongs;

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 facility, or any other operator or employee of a child-care facility;

6. Foster care, residential or institutional workers;

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/her 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

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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 civil in 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 him/herself, 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/her 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 the 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 of, or with the consent, of the child, child's parent(s), his/her 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.

E. Days in which the Tribal Court is closed for administrative or inclement weather purposes.

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## **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 forty-eight (48) 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 request 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) years 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**

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## **3.2.1 Custody**

A child may be taken into custody by a law enforcement officer when the officer has a reasonable belief that the child is delinquent.

## **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 the child taken into custody for committing a delinquent act is still alleged to be delinquent, in which case the child shall instead be detained in a secure facility.

## **3.2.3 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 and adult jail or lock-up only where necessary for administrative purposes of identification, processing, transfer to another jurisdiction, transfer to Court official as or transfer to juvenile shelter or detention facilities. Any such detention of children in 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.

## **3.2.4 Complaint**

A. Within two (2) days of taking the child into custody, subject to the exclusions provided in Section 3.1.6, a complaint shall be filed stating the following:

1. The reasons that the delinquent child should remain in custody;
2. The basis of the Court's jurisdiction;
3. The name, address and birthdate of the child;
4. The present custodial status of the child; and
5. The names and addresses of the child's parent(s), guardian, or custodian and any other relevant persons.

B. When efforts at diversion have been unsuccessful, the prosecutor may then charge the delinquent child with any criminal or civil actions deemed appropriate by the prosecutor on behalf of the Northern Cheyenne Tribe. The details included in the complaint shall then also include:

1. the offense(s) charged against the child;
2. The facts and circumstances surrounding the offense(s) or charge(s); and
3. What efforts if any have been made to divert the child from the Court System.

## **3.2.5 Summons**

A. Within forty-eight (48) hours of filing of a petition, subject to the exclusions provided in Section 3.1.6, an officer of the Court shall serve a summons by hand delivery if possible or by certified mail return receipt requested, to:

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1. The child;
  2. The child's representative if appropriate;
  3. The parent(s), 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;
  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/her right to have representation.

### **3.2.6 Records and Investigations**

The Court may subpoena the records of Social Service and/or Human 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 are not violated.

### **3.2.7 Initial Arraignment**

The court shall hold an initial hearing and arraignment within five (5) days of the child

being taken into custody, subject to the exclusions provided in Section 3.1.6. At minimum, all due process rights as provided in this Title shall apply. Waivers of such rights must be knowing and voluntary. The Court shall determine the following at the hearing:

- A. 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/her parents, guardian, or custodians.
- B. Whether the delinquent child is found guilty or innocent of the alleged charges.

### **3.2.8 Dispositional Hearing**

Following the Court's finding of the child's guilt or innocence, the Court shall render an order on the disposition of the child. The date of the dispositional hearing shall be set by the Court and such date shall be within sixty (60) days of the initial hearing. Each criminal or civil offense alleged against the delinquent child shall be separately heard and addressed by the Court.

Following the Court's finding of the child's guilt or innocence on each of the charges brought against the delinquent child, the Court shall render an order on the disposition of the child. The Court shall pursue a Court 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.

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The Court may order any of the following disposition options:

1. Release the child to the parent(s), guardian or adult custodian with no further action;
2. Release the child to the parent(s), guardian or adult custodian and refer them to appropriate community-based service agencies;
5. Place the child on probation;
6. 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;
7. Accept an offer of restitution if the child makes it voluntarily and restitution is practicable;
8. Any traditional remedy when appropriate; or
9. Any combination of the above.
10. In addition, where the child has been found delinquent, the child may be committed to a secure juvenile detention facility.

### **3.2.9 Dispositional Orders**

The Court shall set forth the disposition in an order which contains specific time limitations and conditions on the disposition. In a delinquency proceeding, no order shall be in effect longer than six (6) months or after the child reaches the age of eighteen (18) years.

### **3.2.10 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. CHILDREN IN NEED OF INTERVENTION**

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### **3.3.1 Custody**

A child shall be taken into custody by a law enforcement officer, a representative of Northern Cheyenne Human Services, or an appropriate welfare official in any case where they have a reasonable belief that the child is a child in need of intervention as defined in Section 3.1.2(H.).

### **3.3.2 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 the child taken into custody is still alleged to be in need of intervention following their custodial pickup, in which in which case the child in need of intervention shall instead be detained in a secure facility.

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## **3.3.3 Complaint**

A. Within two (2) days of taking the child into custody, subject to the exclusions provided in Section 3.1.6, a complaint shall be filed stating the following:

1. The reasons that the child in need of intervention should remain in custody.
2. The basis of the Court's jurisdiction;
3. The name, address and birthdate of the child; and
4. The present custodial status of the child;
5. The names and addresses of the child's parent(s), guardian, or custodian and any other relevant persons.

B. When efforts at diversion have been unsuccessful, the prosecutor may then charge the child in need of intervention with any civil actions deemed appropriate by the prosecutor on behalf of the Northern Cheyenne Tribe. The details included in the complaint shall then also include:

1. the offense(s) charged against the child;
2. The facts and circumstances surrounding the offense(s) or charge(s); and
3. What efforts if any have been made to divert the child from the Court System.

## **3.3.4 Summons**

A. Within forty-eight (48) hours of filing of a petition, subject to the exclusions provided in Section 3.1.6, an officer of the Court shall serve a summons by hand delivery if possible or by certified mail return receipt requested, to

1. The child;
2. The child's representative if appropriate;
3. The parent(s), 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;
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/her right to have representation.

## **3.3.5 Records and Investigations**

The Court may subpoena the records of Social Service and/or Human 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 are not violated.

## **3.3.6 Initial Hearing**

The court shall hold an initial hearing, within five (5) days of the child being taken into

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custody, subject to the exclusions provided in Section 3.1.6. At minimum, all due process rights as provided in this Title shall apply. Waivers of such rights must be knowing and voluntary. The Court shall determine the following at the hearing:

A. 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/her parents, guardian, or custodians.

B. Whether the child in need of intervention is found guilty or innocent of the alleged charges.

### **3.3.7 Dispositional Hearing**

Following the Court's finding of the child's guilt or innocence, the Court shall render an order on the disposition of the child. Each civil offense alleged against the delinquent child shall be separately heard and addressed by the Court. The date of the dispositional hearing shall be set by the Court and such date shall be within sixty (60) days of the initial hearing. The Court shall pursue a Court 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.

The Court may order any of the following disposition options:

- 1. Release the child to the parent(s), guardian or adult custodian with no further action;

- 2. Release the child to the parent(s), guardian or adult custodian and refer them to appropriate community-based service agencies;

- 5. Place the child on probation;

- 6. 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;

- 7. Accept an offer of restitution if the child makes it voluntarily and restitution is practicable;

- 8. Any traditional remedy when appropriate; or

- 9. Any combination of the above.

### **3.3.8 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 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 eighteen (18) years.

### **3.3.9 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.

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## **CHAPTER 4. CHILDREN IN NEED OF CARE**

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### **3.4.1 Custody**

A child may be taken into custody by a law enforcement officer, a representative of Northern Cheyenne Human Services, or an appropriate welfare official in any case where they have reason to believe the child is a child in need of care as defined in Section 3.1.2(G).

### **3.4.2 Placement**

A. The child's parent(s), guardian or custodian shall be notified of the child in need

of care's custody as soon as possible. The child shall be released to the custody of the parent(s), guardian or custodian unless the Court determines that placement of the child is in the immediate best interests of the child. 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 Human Services.

B. 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.

### **3.4.3 Complaint**

Within two (2) days of taking the child into custody, a complaint shall be filed stating the

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reasons that the child in need of care should remain in custody. In child of 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 Human Service agencies and release the child to the custody of the parent, guardian or custodian.

### **3.4.4 Initial Hearing**

The court shall determine, within seventy-two (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/her parents, guardian, or custodians.

### **3.4.5 Temporary Investigation Authority or Informal Conference**

Where the Court has made preliminary finding that further custodial care of the child is necessary, the Court shall order the designated officials of the to conduct a preliminary investigation in coordination with BIA Social Services into the matter.

The prosecutor, BIA investigation 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 in need of care;
- B. An informal adjustment would be in the child's best interest; and
- C. The child and the child's parent(s), guardian, or custodian consent to an informal

adjustment with the knowledge that the consent is voluntary.

### **3.4.6 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 the parent(s), guardian or adult custodian with no further action;
2. Release the child to the parent(s), 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;
4. Place the child with a community-based agency responsible for the care of such children;
5. Placing the child with a responsible member of the extended family; or
6. 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 recorded in the Court record.

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## **3.4.7 Time Limitation on Informal Disposition**

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

## **3.4.8 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 person's 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.

## **3.4.9 Proceeding on a Formal Petition**

The prosecutor, in his or her discretion, may then file a petition on behalf of the Tribe alleging the child is abused, neglected or dependent when formal court action is in the best interests of the child.

## **3.4.10 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 child in need of care proceeding, the charges being filed under this title; and
- F. The facts and circumstances surrounding the offense(s) or charge(s); and

## **3.4.11 Summons**

A. Within seventy-two (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, to

1. The child;
2. The child's representative if appropriate;
3. The parent(s), 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;



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and the date shall be no longer than seventy-two (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/her right to have representation.

### **3.4.12 Records and Investigations**

The Court may subpoena the records of Social Service and/or Human 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 are not violated.

### **3.4.13 Setting an Adjudicatory 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 thirty (30) days.

### **3.4.14 Adjudicatory and Dispositional Hearing**

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 such rights must be knowing and voluntary

### **3.4.15 Dispositions Permissible**

Following the Court's finding of the child's abuse, dependency, or neglect, the Court shall render an order on the disposition of the child. The Court shall pursue a Court 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.

The Court may order any of the following disposition options:

1. Release the child to the parent(s), guardian or adult custodian with no further action;
2. Release the child to the parent(s), 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;
4. Place the child with a community-based agency responsible for the care of such children;
8. Any traditional remedy when appropriate; or
9. Any combination of the above.
10. In addition, where the child has been found in need of care, the Court may order that permanent

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termination of parental rights proceedings be initiated.

### **3.4.16 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 child in need of care proceeding, no order shall continue after the child reaches the age of eighteen (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.

B. The Court shall hold a permanency hearing no less than annually with the parent(s), guardian(s), custodian(s), foster placement, and/or community-based agency in which the child is placed to determine the status of the child and provide updates and recommendations on courses of action to meet the best interests of the child.

### **3.4.17 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 5. VOLUNTARY AND INVOLUNTARY TERMINATION OF PARENTAL RIGHTS**

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### **3.5.1 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(s) and child is viewed as such an extreme measure that the law should ensure that all legal and cultural rights of the parent and the child are protected. One measure intended to ensure 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 proceeding from the adoption proceedings.

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## **3.5.2 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.

## **3.5.3 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.

## **3.5.4 Petition Requirements**

The petition for termination of the parent-youth relationship shall include:

A. The name and place of residence of the petitioner;

B. The name, sex, date and place of birth and residence of the child;

C. The relationship of the petitioner to the child, if any;

D. The names, addresses, dates of birth of the parents, if known;

E. Where the child's parent is a minor, the name and address of the child's grandparents, if known;

F. The names and addresses of the person having legal custody or guardianship of the child, or acting in the place of the parent of the child; and

G. The grounds on which termination of the parent-child relationship are sought.

## **3.5.5 Summons Requirements**

The summons shall comply with the requirements set out in 3.2.5 of this Title.

## **3.5.6 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 Chief Judge. Relevant records of Social Service Agencies, Human 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.

## **3.5.7 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 a recommendation to the Court.

## **3.5.8 Termination Hearing**

A. The Court shall conduct a termination hearing within thirty (30) days of receipt of a petition to terminate. The hearing shall be conducted for the purpose of determining whether permanently terminating parental

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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. The parents have relinquished the child;
2. The child has been abandoned by the parents;
3. The parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred;
4. The parent has:
  - a. Subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;
  - b. Committed, aided, abetted, attempted, conspired, or solicited deliberate homicide of a child;
  - c. Committed aggravated assault against a child;

d. Committed neglect of a child that resulted in serious bodily injury or death; or

e. Had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

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

### **3.5.9 Dispositions Permitted at Termination Hearing**

Appropriate dispositions provided in 3.4.15 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 evidence that termination is in the best interests of the child.

### **3.5.10 Relinquishment of Parental Rights (Voluntary Termination of Parental Rights)**

Parental rights may be relinquished (voluntarily terminated) by written document if signed by the parent(s) in the presence of the presiding judge 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)

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understanding of the seriousness and finality of the termination.

### **3.5.11 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.

### **3.5.12 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 6. GUARDIANSHIP OF CHILDREN**

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### **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.

D. By accepting a Court appointment as guardian, a guardian submits personally to the jurisdiction of the Court in any proceeding relating to the guardianship that may be instituted by any interested person.

### **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.

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## **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, Northern Cheyenne Human Services personnel, 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/her immediate family with whom he/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 names 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;

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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 permits.

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. A person becomes a guardian of a child by acceptance of a testamentary appointment or upon appointment by the Court. Any letters of guardianship must indicate that the guardian was appointed by Court order.

C. The Court shall 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.

D. The person appointed guardian shall take an oath to discharge faithfully the duties of his/her office.

E. After the person appointed guardian has qualified by furnishing any security required of him/her by the Court, by taking the oath, and by fulfilling any other special conditions imposed by the Court, the Court shall issue letters of guardianship to the guardian. 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.

F. 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 of age.

G. The order of appointment of a guardian is to be reviewed at the Court's discretion, but at least every year.

### **3.6.7 Temporary Guardianship for Immediate Needs**

If necessary in the discretion of the Chief Judge, and upon the filing of a petition pursuant to Section 3.6.2 which describes the immediate need for a guardian to be appointed for emergency purposes, the Court may waive the hearing requirements provided in this Chapter and appoint a temporary guardian with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than three (3) months.

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## **3.6.8 Modification or Termination of Order of Appointment of Guardian**

A. A modification hearing shall be held in a 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. The guardianship status continues until terminated, without regard to the location from time to time of the guardian and child. 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/her fiduciary capacity on behalf of the child; or

5. Upon the child's eighteenth (18<sup>th</sup>) birthday.

## **3.6.9 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/her custody.

## **3.6.10 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 preserved 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 interests in real property, or 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 as all times as a prudent administrator, and shall be personally responsible for all damages resulting from his failure to so act.

## **3.6.11 Extraordinary Action**

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.



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D. The Court shall render judgment after a hearing in the matter.

accordance with the Northern Cheyenne Civil Procedures Code.

## **3.6.12 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.

E. The Court shall render judgement accepting the final accounting, when it is convinced of the correctness of the accounting.

F. A judgement of the Court accepting the final accounting does not relieve the guardian of responsibility or liability for breach of fiduciary duty to the child.

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

## **3.6.13 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