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NORTHERN CHEYENNE TRIBE LOGO HERE

TITLE VIII - DOMESTIC RELATIONS CODE

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CHAPTER 1. MARRIAGE

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8.1.1 Short Title

This Code may be cited as the Northern Cheyenne Uniform Marriage and Divorce Act.

8.1.2 Purpose

This act shall be liberally construed and applied to promote its underlying purposes, which are to:

- A. Provide adequate procedures for the declaration and registration of marriage;
- B. Strengthen and preserve the integrity of marriage and safeguard family relationships;
- C. Promote the amicable settlement of disputes that have arisen between parties to a marriage;
- D. Mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;

E. Make reasonable provision for spouses and minor children during and after litigation; and

F. Make the law of legal dissolution of marriage effective for dealing with the realities of matrimonial experience by making ir retrievable breakdown of the marriage relationship the sole basis for its dissolution.

8.1.3 Application of the Northern Cheyenne Code of Civil Procedure

A. The Northern Cheyenne Code of Civil Procedure applies to all proceedings under this Code unless otherwise provided in this Code.

B. A proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage shall be entitled “In Re The Marriage of _____ and _____.” A custody of support proceeding shall be entitled “In Re The Custody or Support of _____.”

C. The initial pleading in all proceedings under this Code shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this Code shall be denominated as provided in the Civil Procedure Code.

8.1.4 Uniformity of Application and Construction

This act shall be applied and construed to effectuate its general purpose to make uniform the laws with respect to the subject matter of this act among those reservations and states which enact it.

8.1.5 Formalities

Marriage is a personal relationship between a man and a woman arising out of a civil contract to which the consent of the parties is essential. A marriage license, declared and registered as provided in this act is valid in

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the Northern Cheyenne Reservation. A marriage may be contracted, maintained, invalidated, or dissolved only as provided by the law of the Northern Cheyenne Reservation.

8.1.6 Form of Application, License, Certification, and Consent [As amended by Ord. DOI 3(98)]

A. The Trial Court (hereinafter “Court”) of the Northern Cheyenne Court shall prescribe the form for an application for a marriage license, which shall include the following information:

1. Name, sex, address, date and place of birth of each party to the proposed marriage;
2. If either party has previously married, his/her name and the date, place and court in which the marriage was dissolved or declared invalid or the date and place of death of a former spouse;
3. Name and address of the parents or guardian of each party;
4. Whether the parties are related to each other, if so, their relationship;
5. Name and date of birth of any child, of whom both parties are parents, born prior to the making of the application unless their parental rights and the parent and child relationship with respect to the child have been terminated.

B. The Court shall provide the forms for the marriage license, the marriage certificate, and the consent to marriage, or the declaration of marriage.

8.1.7 License to Marry [As amended by Ord. DOI 3(98)]

When a marriage application has been completed and signed by both parties to a

prospective marriage, and at least one (1) party has appeared before the Court Clerk, the Clerk shall issue a license to marry.

8.1.8 Effective Date of License

A. A license to marry becomes effective throughout the Northern Cheyenne Reservation three (3) days after the date of issuance, unless the Court orders that the license is effective when issued, and expires one-hundred eighty (180) days after it becomes effective.

8.1.9 Judicial Approval

A. Any person eighteen (18) years of age or older is eligible to apply for a license to marry. In addition, the Court may order the Court Clerk to issue a marriage license and a marriage certificate form to a party aged sixteen (16) years or seventeen (17) years who has no parent capable of consenting to his/her marriage or has the consent of both parents, or of the parent having the actual care, custody, and control of his/her guardian. The Court may require both parties to participate in a reasonable period of marriage counseling with a designated person as a condition of the order for issuance of marriage license and a marriage certificate form. [As amended by Ord. DOI 3(98)].

B. A marriage license and marriage certificate form may be issued under this section only if the Court finds that the underaged party is capable of assuming the responsibilities of marriage and that marriage will serve his/her best interest. Pregnancy alone does not establish that the best interest of the party will be served.

8.1.10 Existing Marriages

A. All marriages performed other than as provided for in this Code, which are valid under the laws of the jurisdiction where and when performed, are valid within the jurisdiction of the Northern Cheyenne Reservation.

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B. All marriages performed on the Reservation prior to the effective date of this Code, including those perfected according to Reservation custom, are valid for all purposes under this code.

8.1.11 Declaration of Marriage without Solemnization

A. A person desiring to consummate a marriage by written declaration must, prior to executing the declaration, meet all other provisions of the Northern Cheyenne Domestic Relations Code, and a certificate of attesting to this shall be attached to the declaration and shall be filed by the Clerk of Court when the contract is executed on the Northern Cheyenne Reservation. A declaration of marriage must contain the following:

1. The names, ages, and residence of the parties;
2. The fact of marriage;
3. The name of the father and the maiden name of the mother of both parties and addresses of each;
4. A statement that both parties are legally competent to enter into the marriage contract.

8.1.12 Declaration- Acknowledged and Recorded [As amended by Ord. 3(98)]

The written declaration of marriage shall be filed by the Court Clerk and shall serve and be processed as an official record of the marriage of the parties so long as all pertinent provisions of this Code are met.

8.1.13 Validity of Common Law Marriage

Common Law marriages are not invalidated by this Code.

8.1.14 Prohibited Marriages

A. The following marriages are prohibited:

1. A marriage entered into prior to the dissolution of an earlier marriage of one (1) or more parties.
2. Marriages between parents and children, between brothers and sisters of the one-half as well as the whole blood, and between uncles and nieces, aunts and nephews, or between first cousins.

B. All such marriages listed in Section 8.1.14(A) are null and void from the beginning of the marriage.

C. Parties to a marriage prohibited under this section who cohabit after removal of the impediment are lawfully married as of the date of the removal of the impediment.

D. Children born of a prohibited marriage are legitimate.

8.1.15 Declaration of Invalidity

A. The Court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:

1. A party lacked capacity to consent to marriage because of the influence of alcohol, drugs or other incapacitating substances, or a party was induced to enter into a marriage by force or duress, or by fraud involving the essentials of marriage;
2. A party was under the age of sixteen (16), or was age sixteen (16) or seventeen (17) and did not have the consent of his/her parents or guardian or judicial approval; or
3. The marriage is prohibited under applicable law.

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B. A declaration of invalidity may be sought by either party, the legal spouse in case of a bigamous marriage, the Tribal Prosecutor, or a child of either party, at any time prior to the death of one (1) of the parties [*As amended by Ord. DOI 3(98)*].

C. Children born of a marriage declared invalid are legitimate.

D. In no event may a declaration of invalidity be sought after the death of either party to the marriage.

E. A marriage declared invalid under this Code shall be found invalid as of the date of the marriage, except the Court may determine that a nonretroactive decree better serves the interest of all of the parties under the circumstances. The provisions of the Code relating to property disposition, maintenance, support and child custody on dissolution of marriage are applicable to decrees of invalidity.

CHAPTER 2. ANNULMENT, DIVORCE, AND CHILD CUSTODY

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8.2.1. Annulment, legal separation and divorce

The Court shall have jurisdiction over annulment, legal separation, divorce and any paternity, child custody, division of property, child support or alimony decree pursuant to such annulment, legal separation or divorce, where at least one party to the marriage is an Indian, and at least one party has been a bona fide resident within the boundaries of the Northern Cheyenne Reservation for a period of 90 days immediately preceding the filing of the action.

Parties may petition for legal separation as predicate to divorce and the Court may enter appropriate relief regarding child custody and support and alimony/maintenance.

8.2.2. Annulment

A. Petition. For any marriage performed under this Title, one (1) or both of the parties may, within one (1) year of the date of marriage, submit a petition of annulment to the Court, stating as grounds that:

1. One (1) or both parties was under sixteen (16) years of age at the time of the marriage;
2. One (1) or both parties did not freely consent to the marriage;
3. The parties were related to each other in a manner prohibited by Chapter 1 of this Title; or
4. One (1) or both parties had an existing spouse at the time of the marriage. The petition shall be sworn before a notary public or other official designated to verify signatures.

B. Service of process. The defendant in an annulment proceeding shall be served with a copy of the complaint.

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C. Response. If the non-petitioning spouse does not agree with the petition's allegations as to grounds for annulment or the division of property or custody of children proposed by the petition, the non-petitioning spouse may file with the Court a response within twenty (20) days of receiving the petition. The response shall be sworn before a notary public or other official designated to verify signatures, and shall contain an explanation of why there are no valid grounds for annulment or why the division of property or custody of children proposed in the petition is not appropriate. A copy of the response shall be served on the petitioning spouse.

D. Hearings and decree. Where such a response is received, the Court shall hold a hearing on the matter. If:

1. No response is received from the defendant after twenty (20) days, or

2. The Court determines that there are valid grounds for annulment, the Court shall enter a decree of annulment. The decree shall state the grounds for annulment and shall be signed by the presiding judge. A copy of the decree shall be delivered to each of the parties, and the original retained for the records of the Court. In extraordinary circumstances and for good cause shown, an annulment granted where the non-petitioning spouse did not respond may be set aside by order of the Court. Annulment voids a marriage from the time of the marriage forward.

8.2.3. Divorce

A. Grounds. A divorce shall be granted where the Court finds that:

1. Irreconcilable differences have caused the irreparable breakdown of the marriage or;

2. The parties have mutually and voluntarily lived separate and apart without cohabitation for a period of at least six (6) months immediately preceding the filing of the petition.

B. Petition. Either of the parties may file a petition with the Court, sworn before a notary public or other official designated to verify signatures and subject to a filing fee as listed on the Court's current fee schedule. The petition shall state the grounds for divorce and the facts and circumstances substantiating those grounds.

C. Summons. When the clerk of the court issues a summons pursuant to this section, the clerk shall issue and include with the summons a temporary restraining order:

1. Restraining both parties from transferring, encumbering, concealing or in any way disposing of any property, real or personal, whether jointly or separately held, without either the consent of the other party or an order of the Court, except in the usual course of business or for the necessities of life. The restraining order must require each party to notify the other party of any proposed extraordinary expenditures at least five business days before incurring the expenditures and to account to the Court for all extraordinary expenditures made after service of the summons. However, the restraining order may not preclude either party from using any property to pay reasonable attorney fees in order to retain counsel in the proceeding

2. Restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability coverage held for the benefit of a party or a child of a party for whom support may be ordered. However, nothing in this subsection adversely affects the rights, title, or

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interest of a purchaser, encumbrancer, or lessee for value if the purchaser, encumbrancer, or lessee does not have actual knowledge of the restraining order.

D. Service of process. The respondent in a divorce proceeding shall be served with a copy of petition.

E. Response. The non-petitioning spouse may file a response to the petition within twenty (20) days of receipt of the petition. Such response may state the background facts and circumstances which show that there are no valid grounds for divorce, or may seek a division of property or custody of children different from any proposed by the petition.

F. Hearing

1. In all divorce cases, the Court shall order and hold a hearing, unless the parties have stipulated to all matters and issues pending in which case the Court shall have the discretion to enter a decree without a hearing if the Court is convinced the stipulation is fair and equitable. If the matter is decided without a hearing, the Court shall have one party testify on the record as to the terms of the divorce. The hearing shall be held within six (6) months after the date the petition is filed. Where the custody of children is at issue in the case, the Court may order a home study by an appropriate social worker or other professional, to be completed and submitted to the Court prior to the hearing. The purpose of the home study shall be to assist the Court in determining the custody issue.

2. At the hearing, both spouses shall have an opportunity to testify, cross-examine the other spouse and any witnesses, call and question other witnesses, and present documentary evidence. Each spouse may retain counsel or otherwise be represented in the proceeding. The hearing shall

be closed to the public unless both spouses agree otherwise.

G. Divorces shall be granted without regard to the fault of the parties.

8.2.4. Jurisdiction - commencement of proceedings

A. The Tribal Court has jurisdiction to make a child custody determination by initial or modification decree if:

1. The Northern Cheyenne Reservation:

a. Is the home of the child at the time of commencement of proceedings; or

b. Has been the child's home within six (6) months before commencement of proceeding and the child is absent from this home because of his removal or retention by the person claiming custody or for other reasons, and a parent or person acting as parent continues to live within the Northern Cheyenne Reservation; or

2. It is in the best interest of the child that the Tribal Court assume jurisdiction because:

a. The child and his parents or the child and at least one contestant have a significant connection with the Northern Cheyenne Reservation; and

b. There is available within the Northern Cheyenne Reservation substantial evidence concerning the child's present or future care, protection, training, and personal relationship; or

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3. The child is physically present with the Northern Cheyenne Reservation and:

a. Has been abandoned; or

b. It is necessary in an emergency to protect him because he has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

4.

a. No other state or tribe has jurisdiction under prerequisites substantially in accordance with subsections (A)(1), (A)(2), (A)(3)(a), or (A)(3)(b) of this section or another state or tribe has declined to exercise jurisdiction on the ground that the Northern Cheyenne Reservation is the more appropriate forum to determine custody of the child, and it is in the best interest of the child that the Court assume jurisdiction.

b. A child custody proceeding is commenced in the Court:

i. By a parent, by filing a petition:

A. For dissolution or legal separation; or

B. For custody of the child in the Court; or

ii. By a person other than a parent, by filing a petition for

custody of the child in Court, but only if he is not in the physical custody of one of his parents.

c. Notice of the child custody proceeding shall be given to the child's parents, guardian, custodian, those persons having physical custody of the child and all other contestants, who may appear, be heard, and file a responsive pleading. The Court, upon the showing of good cause, may permit intervention of other interested parties.

8.2.5. Child custody actions outside divorce, legal separation and annulment proceedings

The Court shall have authority to determine custody of children as between parents, grandparents, and legal guardians, or as between parents, grandparents, or legal guardians and anyone with actual physical custody of the child, either pursuant to a court order or otherwise, where there is no divorce, legal separation, or annulment proceeding pending. Such a custody proceeding shall commence with the filing of a written petition by the parent, grandparent, legal guardian or the person with actual physical custody. The Court shall have jurisdiction over this action if a least one (1) party to the action is an Indian and at least one (1) party has been a bona fide resident within the boundaries of the Northern Cheyenne Reservation for a period of 90 days immediately preceding the filing of the action. In ruling on a custody petition, the Court shall employ the standards set forth in Section 8.2.4 of this Title and may order periodic support payments as set forth in that section. After the Court rules on the petition, neither party may file another custody petition for six (6) months absent a substantial change in circumstances. Any such change shall be described in the petition. Where abuse, neglect, or abandonment of the child is suspected, a petition may be filed at any time.

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8.2.6. Enforcement of child support orders

If the parent willfully refuses to make periodic support payments as ordered by the Court, the Court may initiate criminal contempt proceedings under Title V of this Code and in the event of conviction shall have available the full range of sanctions for Class A misdemeanors. No such proceedings shall be instituted if the parent fails to pay by reason of indigence.

8.2.7 Best interest and welfare of child - Court consideration - Factors

A. For the purpose of parental rights and responsibilities, the best interests and welfare of the child is determined by the Court's consideration and evaluation of all factors affecting the best interests and welfare of the child. These factors include all of the following when applicable:

1. The love, affection, and other emotional ties existing between the parents and child and the ability of each parent to provide the child with nurture, love, affection and guidance.
2. The ability of each parent to assure that the child receives adequate food, clothing, shelter, medical care, and a safe environment.
3. The child's developmental needs and the ability of each parent to meet those.
4. The sufficiency and stability of each parent's home environment, the impact of extended family, the length of time the child has lived in each parent's home, and the desirability of maintaining continuity in the child's home and community.
5. The willingness and ability of each parent to facilitate and encourage learning and participating in the culture and traditions of the Northern Cheyenne Tribe.

6. The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child.

7. The moral fitness of the parents, as that fitness impacts the child.

8. The mental and physical health of the parents, as that health impacts the child.

9. The home, school, and community records of the child and the potential effect of any change.

10. If the Court finds by clear and convincing evidence that a child is of sufficient maturity to make a sound judgment, the Court may give substantial weight to the preference of the mature child. The Court shall also give due consideration to other factors that may have affected the child's preference, including whether the child's preference was based on undesirable or improper influences.

11. Evidence of domestic violence. In determining parental rights and responsibilities, the Court shall consider evidence of domestic violence. If the Court finds credible evidence that domestic violence has occurred, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, this combination creates a rebuttable presumption that a parent who has perpetrated domestic violence may not be awarded custody of the child. This presumption may be overcome only by clear and convincing evidence that the best interests of the child require that parent have custody. The Court shall cite specific findings of fact to show

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that the custody best protects the child and the parent or other family or household member who is the victim of domestic violence. If necessary to protect the welfare of the child, residential responsibility for a child may be awarded to a suitable third person, provided that the person would not allow access to a violent parent except as ordered by the Court. If the Court awards residential responsibility to a third person, the Court shall give priority to the child's nearest suitable adult relative. The fact that the abused parent suffers from the effects of the abuse may not be grounds for denying the parent residential responsibility.

12. The interaction and interrelationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or frequents the household of a parent and who may significantly affect the child's best interests. The Court shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault, on other persons.

13. The making of false allegations not made in good faith, by one parent against the other.

14. Any other factors considered by the Court to be relevant to a particular parental rights and responsibilities dispute.

B. In a proceeding for parental rights and responsibilities of a child of a service member, the Court may not consider a parent's past deployment or possible future deployment in itself in determining the best interests of the child but may consider any significant impact on the best interests of the child of the parent's past or possible future deployment.

C. In any proceeding under this Chapter, the Court shall consider that a parent has a fundamental right to parent their child and any analysis in a fact finding under this Chapter shall reflect the Court's application of this standard to a final custody determination, listing any factors considered under subsection (a)(1-14).

D. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

8.2.8. Alimony

When an annulment, legal separation, or divorce is granted, the Court may order either party to make periodic alimony payments as necessary for the support of the other party. Such orders may be modified at any time, on motion of either party, to reflect changes in either party's economic circumstances. Upon motion, the Court shall terminate alimony to any spouse who has remarried.

8.2.9. Temporary alimony and custody awards

The Court may issue temporary orders during the pendency of an annulment, legal separation, or divorce proceeding as to child custody, alimony, and the possession of real and personal property, not held in trust for any individual. Such orders may be granted upon motion of either party, or on the Court's own motion. A person may file a petition for temporary emergency custody without notice to the adverse party if it clearly appears from specific facts shown by affidavit that immediate and irreparable injury will result to the applicant and/or his/her children before notice can be served and a hearing held thereon. A hearing, for which 10 days advance notice shall be provided to the parties, shall be held prior to the issuance of such temporary orders, unless the Court determines that an emergency exists, or a party cannot be found, in which case such order may be issued ex parte. Emergency shall be interpreted to include, but not limited to; a danger of physical abuse to the spouse or the parties' children, a severe emotional

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abuse, a lack of means for interim subsistence, or the danger the child will be removed from this jurisdiction. An order may be issued within 24 hours of the filing of the affidavit. If the initial order is issued ex parte, a full hearing on the temporary order shall be held within 10 business days. At the hearing upon 10 days, an interim order shall be issued pending a final hearing.

8.2.10. Indian Child Welfare Act Transfers

A. Upon written notification to the Tribal Court from a State court or social service agency of a possible Indian Child Welfare Act transfer, the Court shall promptly notify the Director of Northern Cheyenne Human Services (hereafter referred to as the "Director" for purposes of this Section).

B. Upon notification, the Director shall determine through the enrollment department of the Tribe whether the youth is enrolled or eligible for enrollment and shall forward a written verification to the Tribal Court in a timely manner.

C. If the youth is enrolled or eligible for enrollment with the Tribe, and if the Director determines, upon preliminary investigation, that transfer appears to be in the best interest of the youth, the Tribe shall intervene in the State court proceeding.

D. If transfer is in the best interest of the youth, the Director shall initiate all necessary documentation and recommendations in the following areas to assist the appropriate social service agency in case planning and finding proper relative placement for the youth:

1. The family relationships of the youth on and off the Reservation for potential placement;
2. The social histories of the extended family members;
3. The health and special needs of the youth; and

4. Developing a service program for the youth

E. The necessary documentation and recommendations shall be forwarded to the appropriate social service agency by the Director, whereby the social service agency shall assume the case management and, subject to the orders of the Court, shall be responsible for the placement of the youth in the event of transfer.

F. The Director shall notify the Tribal receiving home, when available, of the potential transfer of the youth to the Reservation and the need for placement in said home.

G. When the Court receives an order of a State court for an Indian Child Welfare Act transfer, the appropriate Prosecutor or other designated representative shall file a Motion to Accept the Transfer of Jurisdiction and shall request a hearing on the Motion in a timely manner.

H. The Court shall determine whether the transfer to the Tribes' jurisdiction would be detrimental to the best interest of the youth in a transfer hearing initiated by the guardian ad-litem. In making such a determination, the Court may consider:

1. Whether the youth or the youth's family or extended family will be in need of any specialized services which the Tribe and their resources are unable adequately to provide; and
2. The emotional, cultural and social ties of the youth and the youth's family; and
3. Any other matters which may adversely affect the Tribe's ability to provide the necessary services for the youth and the youth's family or extended family.

I. When transfer is either accepted or declined by the Court, the Court shall

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forward a certified copy of the Tribal Court Order to the appropriate State court.

J. Upon entering an order accepting an Indian Child Welfare Act transfer as provided in this Chapter, the Court shall proceed with the case as if the petition had been originally filed or the adjudication had been originally made in this Court, once the State court documents are properly filed with this Court.

K. The youth shall be transported back to the Reservation by the Director or Human Services and the initial temporary placement shall be the responsibility of the appropriate social service agency.

8.2.11. Tribal Appearance regarding ICWA Proceedings

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 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 appearances 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.

8.2.12. Proceeding After ICWA Transfer

Where jurisdiction is properly transferred to the Tribal 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.

8.2.13. Records

The Director of the Northern Cheyenne Human Services will intake and preserved records of all referrals received and document compliance with all applicable provisions of the Northern Cheyenne Court. These records shall be confidential and shall not be open to inspection except upon an order of the Northern Cheyenne Court.

8.2.14. Division of property

When an annulment, legal separation, or divorce is granted, the Court shall make such equitable distribution of all real and personal property as it deems just and proper. With

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respect to trust property, the Court shall have authority to make appropriate orders to distribute such property, but shall have no authority to order that any property or interest in property be removed from trust status, or to make any order that would result in such removal.

8.2.15. Recognition of foreign divorces and annulments

A divorce or annulment duly granted under the laws of the United States, any Tribe, state, or foreign nation shall be recognized as valid by the Tribal Court for all purposes.

Chapter 3. ADOPTIONS

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8.3.1 Who May be Adopted

A. Any person who is within the jurisdiction of the Northern Cheyenne Court may be adopted under this Code. The Court may also hear petitions transferred from state courts pursuant to 25 U.S.C. 1911(b).

C. In a case where all persons petitioning to adopt a child are not Indians, the petition shall not be granted unless:

1. No Indian is available who is willing to adopt the child;

2. The petitioners agree in writing that the Northern Cheyenne Tribal Court shall retain exclusive jurisdiction over custody of the child, wherever domiciled or resident.

8.3.2 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(s) and shall contain;

A. The full name, residence, sex of child and documentary proof of the date and place of birth of the child to be adopted;

B. The full name, residence, sex and occupation of the adoptive parent(s) 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 the 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(s);

E. An agreement by the adopting parents that it is their desire that a relationship of parent(s) and child be established between them and the child; and

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F. A full description and statement of value of all property owned or possessed by the child.

8.3.3 Consents of 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 twelve (12) years of Age 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/her 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 petitions 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 final decree of adoption the parent(s) or child may withdraw consent thereto only up on 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 adoptions which has been effective for at least one (1) year may be invalidated under these provisions.

8.3.4 Investigation and Report

Within five (5) days after 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 general background of the adoptive home and of the adoptive parent(s) and to make recommendations on the proposed adoption.

In the case of an adoption by persons not residing within the 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 parent(s), for the above information.

8.3.5 Hearing on Adoption

A. Within five (5) days after the written report required by 8.3.4 is filed, the Court shall fix a time for a hearing on the petition for the adoption. The adoptive parent(s) 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 enter an interim decree and place the child in the legal custody of the petitioners for a period not to exceed six (6)

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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 parent(s);
4. That the best interests 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.

8.3.6 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, with 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 8.3.4, as to the welfare of the child, the current situation and conditions of the adoptive home and the adoptive parent(s). 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 interest 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.

8.3.7 Adoption Records

All records and reports, proceedings and orders in adoption cases are confidential 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.

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8.3.8 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 adoptions, 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 the 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 the new record of birth in the new name and with the name of the adopting parent(s) is recorded.

8.3.9 Name and Legal Status of Adopted Child

Minor children adopted by order of the 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.

8.3.10 Child's Rights

Nothing in this Section shall be construed to indicate that the child involved in these proceedings will terminate any of his/her

rights and /or privileges as an enrolled Indian, including rights of inheritance.

8.3.11 Confidentiality

All hearings held pursuant to this Chapter that involve children shall be;

A. Conducted in closed and private chambers;

B. The names of all youth involved shall not be published; and

C. A record of all proceedings shall be made and preserved with the Court. All Court records concerning youth under this Chapter, including social, medical and psychological reports, shall be kept confidential and shall be open for inspection only upon Court order and then only to the following persons or agencies:

1. The youth;
2. The youth's representative;
3. The youth's parent(s), legal guardian or custodian and their representatives;
4. The juvenile officer; and
5. Any other person having a legitimate interest in the case in the performance of their official duties, as determined by the Court.

Chapter 4. PATERNITY

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8.4.1 Jurisdiction

A. The Northern Cheyenne Tribal Court shall have jurisdiction over any action to determine paternity under this Title.

B. Any person who has sexual intercourse with a person who is a member or is eligible to become a member of the Tribe thereby submits to the jurisdiction of the Tribal Court as to an action brought under this Title with respect to a child who may have been conceived by the act of intercourse.

C. In addition to any other method provided by statute, personal jurisdiction may be acquired by personal service outside the Reservation or by service in accordance with the tribal law as now or hereafter amended.

8.4.2 Applicability

All civil proceedings pertaining to the establishment, enforcement or modification of child support obligations shall comply with this Title.

8.4.3 General provisions

A. Statute of Limitations. No statute of limitations applies to an action to establish paternity.

B. Determination of Maternity. The provisions of this chapter may be applied to determinations of maternity.

8.4.4 Rules of procedure in paternity proceedings

A. Any paternity action under this chapter is a civil action governed by Title IV, Rules of Civil Procedure.

B. All proceedings in this section shall assure that concerned parties, including minors, shall have proper notice of hearings, and be accorded the right to professional counsel or lay advocate at their own expense, the opportunity to introduce evidence, to be heard on their own behalf, and to examine witnesses. If the alleged father does not appear after notice through service of process, the hearing may be held and decree rendered in his absence.

C. Any hearings or trial under this section shall be in closed Court without admittance of any person other than those necessary to the action. All papers, records of files, other than the part of the permanent record of the Court or of a file of any agency, are subject to inspection only upon consent of the Court and all interested parties, or in exceptional cases only upon an Order of the Court for good cause shown.

8.4.5 Definitions

A. Alleged or Putative Father means any man who might be the biological father of a child.

B. Adult Child means a child 18 years old or older.

C. Child means a person who is less than 18 years old who has not been emancipated

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by order of a court of competent jurisdiction or by legal marriage.

D. test or other approved genetic testing by an accredited laboratory used to establish that the alleged father is the child's biological father with a probability of paternity of 99% or higher.

E. Party means the parent, guardian, child, social service agency, or the Tribe to whom certain rights accrue, including, but not limited to, with certain restrictions and limitations; the right to be notified of proceedings; to retain counsel or, in some cases, to secure Court approved spokespersons; to appear and present evidence; to call, examine, and cross-examine witnesses; the unlimited or restricted right to discovery and the inspection of records; and the right to request a hearing or appeal a final order.

F. Paternity means fatherhood. Establishing paternity means identifying the father of a child and legally determining that he is the father.

G. Presumption means a fact presumed to be true under law.

8.4.6 Presumption of paternity

A man is presumed to be the natural father of a child if:

A. He and the child's mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, divorce, or dissolution, or after a decree of separation is entered by a court; or

B. Before the child's birth, he and the child's mother have attempted to marry each

other by a marriage solemnized in apparent compliance with the law, although the attempted marriage is or could be declared invalid, and the child is born within 300 days after the termination of cohabitation; or

C. After the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and

1. He has acknowledged his paternity of the child in writing filed with the Court; or

2. With his consent, he is named as the child's father on the child's birth certificate; or

3. He is obligated to support the child under a written voluntary promise or by court order;

D. He acknowledges his paternity of the child in a writing filed with the Court, who shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the Court. If another man is presumed under subsection (A), (B), (C), or (D) of this section to be the child's father, such acknowledgment shall give rise to the presumption of paternity only with the written consent of the otherwise presumed father or after such other presumption has been rebutted.

E. A presumption under this section may be rebutted in an appropriate action by a preponderance of evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of

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policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man or an order of the Court disestablishing paternity.

8.4.7 Good cause not to establish paternity

A woman may be excused from submitting to genetic testing or from identifying or locating the father of her child when there is good cause not to reveal his identity or location. The Court may hold a closed, ex-parte hearing to determine whether good cause exists. "Good cause" may include, but is not limited to:

- A. Cases involving domestic violence;
- B. Cases involving incest or rape; or
- C. Cases where identification of the father is not in the best interest of the child.

8.4.8 Artificial insemination

A. Husband and Child Relationship. If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were he natural father of the child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician will certify their signatures and the date of the insemination.

B. Donor and Child Relationship. The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived, unless the donor and the woman agree in writing that said donor shall be the father. The agreement must be in writing and signed by the donor

and the woman. The physician shall certify their signatures and the date of insemination.

C. Administrative Record. The failure of the licensed physician to perform any administrative act required by this section shall not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only in exceptional cases upon an order of the Court for good cause shown.

8.4.9 Agreed paternity order

A. The parties may submit an agreed order establishing the paternity of a child. Before deciding whether to approve the agreed order, the judge shall discuss the agreed order with each party and shall:

1. Explain the proposed agreed order in detail and the consequences of the order and of the person's failure to comply with agreed terms;
2. Assure that the person's consent to the proposed agreed order is not the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of any person;
3. Explain the person's right to a spokesperson at their own expense;
4. Explain the burden of proof as to each issue;
5. Explain that once the person agrees to the proposed order and it is signed and entered by the Court, it will be too late for the person to change his or her mind.

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D. If the Court finds that any consent was not truly voluntary, the agreed order shall not be entered and the case shall proceed to a hearing.

8.4.10 Paternity petition

A. Generally. A paternity proceeding under this Title may stand alone as a separate proceeding or it may be joined with an action to determine child support at the request of the alleged father or the child's mother. Paternity proceedings may also be joined with an action for divorce, dissolution, annulment, declaration of invalidity, separate maintenance, child-parent relationship, support, or any other civil action in which paternity is an issue including proceedings in Juvenile Court.

B. Who May File Petition. A petition to request the Court to establish paternity may be filed by:

1. An adult child, or, a child's legal guardian;
2. The child's natural mother;
3. An alleged father of the child;
4. Any tribal agency with an interest in determining parentage; or
5. Any social service agency.

C. Contents of Petition. A petition to establish paternity, prepared on a form approved by the Court shall state:

1. The names, ages, addresses, and tribal affiliations, if any, of the natural mother, the alleged father(s), the child, all others who have legal rights of custody, visitation, or

support of the child and of the petitioner;

2. Whether the natural mother and the alleged father are or were married, and the dates of marriage, separation, and divorce, if any;

3. Whether the natural mother and alleged father agree that the alleged father is the natural father of the child; and

4. Whether there are other courts or administrative paternity proceedings or state paternity affidavits concerning the child or whether parental rights have been terminated.

5. A certified copy of the child's birth certificate shall be attached to the petition or provided to the Court at least ten (10) days before the first hearing.

6. An affidavit setting forth the factual basis for the alleged paternity of each child.

D. Service and Summons. All parties, including the child if over 18 years of age, the biological mother, and the man alleged in the petition to be the natural father, shall be served with the petition and a summons. The summons shall notify the party that the party must respond to the summons and petition by filing an answer with the Court and serving it on all parties. The summons shall further notify the party that, if written response is not filed with the Court within 21 days after receipt of the summons and petition, the Court may, without the party's response, enter a judgment of paternity by default only if it has admitted evidence of genetic testing

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statistically proving that the man alleged in the petition is the biological father.

8.4.11 Paternity hearing

The following rules shall apply to paternity hearings:

A. Only those persons the Court finds to have a legitimate interest in the proceedings may attend hearings under this chapter;

B. The mother of the child and the alleged father may be compelled to testify or to provide DNA samples at the paternity hearing;

C. Testimony of a health care provider concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged for purposes of admitting this evidence;

D. The parties shall provide testimony on how the costs of paternity testing shall be paid and the Court will make a determination based on this testimony.

E. The Court may enter a judgment of paternity by default only if it has admitted evidence of genetic testing statistically proving that the man alleged in the petition to be the natural father is the biological father.

8.4.12 Evidence relating to paternity

Genetic tests are the preferred method of establishing paternity. Evidence relating to paternity may include:

A. Genetic test result, weighted in accordance with evidence of the statistical probability of the alleged father's paternity;

B. Evidence of an ongoing intimate relationship at the time of conception that would support paternity;

C. An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration for the mother's pregnancy;

D. Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the Court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and

E. Any other evidence relevant to the issue of paternity of the child.

8.4.13 Genetic testing

In all paternity proceedings, the Court shall require the child, mother, and alleged father(s) to submit to genetic tests, unless good cause exists not to require such testing. The following requirements apply to genetic testing under this section:

A. Lab Accredited. The tests shall be performed by an accredited paternity genetic testing lab that performs legally and medically acceptable tests, approved by the Court as an accredited genetic testing laboratory of reputable standing.

B. Admission into Evidence. Unless a party objects to the results of genetic tests in writing at least five (5) days before the hearing, the tests shall be admitted as evidence of paternity without the need for foundation testimony or other proof of authenticity.

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C. Affidavit of Genetic Expert. The results of genetic tests must be accompanied by an affidavit from the expert describing the expert's qualifications and analyzing and interpreting the results as well as documentation of the chain of custody of the genetic samples.

D. Contempt of Court. Failure to submit to genetic tests when required by the Court may constitute civil contempt of the Court.

8.4.14 Paternity order

The judgment or order of the Court determining whether or not a respondent is a parent of a child shall be based on a preponderance of the evidence. If the judgment or order of the Court establishes a different father than that on the child's birth certificate, the Court shall send the order to the Department of Vital Statistics of the state in which the child was born.

8.4.15 Disestablishment of presumed paternity

A man presumed to be a child's father under Section 8.4.6 of this chapter may bring an action for the purpose of declaring the nonexistence of the father and child relationship only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party. Any other interested party may bring an action at any time for the purpose of declaring the existence or nonexistence of the father and child relationship. Regardless of its terms, no agreement between an alleged or presumed father and the mother or child shall bar an action under this section. If an action under this section is brought before the birth of the child, all proceedings may be stayed

until after the birth, except service of process and discovery, including the taking of depositions.

8.4.16 Paternity records

The records filed in a paternity action shall be confidential. Only parties to the case and any tribal or social service agency with an interest in determining parentage may obtain copies.

8.4.17 Paternity established by other jurisdictions

Properly issued court and administrative orders, judgments, or decrees of other tribes, states, or federal agencies establishing paternity will be given full faith and credit. Such orders will be considered properly issued when the issuing court or administrative agency had personal jurisdiction over the person claimed to be bound by the foreign order, subject matter jurisdiction over the matter, proper service of process under the law of the issuing jurisdiction was made on such person, and the order was issued according of the laws of that jurisdiction and does not violate the public policy of the Tribe. The Court shall not recognize any paternity judgments entered by default in the absence of evidence of genetic testing statistically proving that the man alleged is actually the biological father.