

SPIRIT LAKE TRIBAL CHILDREN'S CODE

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SPIRIT LAKE CHILDREN'S CODE

CHAPTER 1 - DEFINITIONS

1-201 DEFINITIONS

For the purposes of this Code, the use of he/she means he or she, the use of him/her means him or her, and the singular includes plural except where the context clearly indicates differently and unless the context provides otherwise, the following words and phrases shall be defined accordingly:

- A. Abandon:** The leaving of a child for a prolonged period without the parent or legal custodian making proper arrangements for their care; or the willful leaving of a child by the parent(s) or legal custodian with no intent of returning to the child. The age of the child and other individual circumstances will be considered in determining the definition of "a prolonged period of time". In any case, a "prolonged period" of time shall be presumed where the parent(s) or legal custodian willfully fails to support or otherwise make appropriate arrangements for the care of a child for a period of more than one (1) continuous year.
- B. Abandonment:** Lack of parental contact with the child or the failure to provide financial support for more than one (1) continuous year. Consensual placement of the child with a member of either parent's extended family shall not constitute abandonment. Consensual placement must include the consent of the parent as well as the extended family with whom the child is placed.
- C. Abuse:** The intentional infliction of physical or mental injury, unreasonable confinement, intimidation, cruel punishment, or deprivation of food, shelter, clothing or services necessary to maintain the physical or mental health of a child.
- D. Active Efforts:** Active efforts includes and exceeds what is required by "reasonable efforts". A rigorous and concerted level of services that is ongoing throughout the involvement of social services that uses the prevailing Dakota social and cultural values, conditions, and way of life to preserve the child's family and prevent placement of the child and, if placement occurs, to return the child to the child's family at the earliest possible time.
- E. Adjudication:** A finding by the Court on the facts alleged in the petition or complaint and incorporated in a decree.
- F. Adjudication Hearing:** A hearing to determine whether the allegations stated in the petition alleging a child to be

deprived is supported by the evidence that a child is deprived.

G. Adoptive Placement: The placement of a child, who is legally able to be adopted, with a family through an Adoption Decree.

H. Adult: Any person who is eighteen (18) years of age or older.

I. Best Interest of the Child: Shall refer to the medical psychological, educational, physical, spiritual, cultural and emotional needs of a child which can reasonably be provided to ensure the best opportunity for a successful life.

J. Child: Any person less than 18 years of age including an unborn child.

K. Child Deprivation Proceedings: Any Court action which may result in the removal of the child from their parent, guardian or custodian because the child is alleged to be deprived.

L. Custodian: The person, persons, agency or institution responsible for the care and supervision of the child. This also refers to an individual having physical custody of the child.

M. Delinquency Petition: A written request to the Court that it preside over a case involving a child who has allegedly committed a delinquent act.

N. Delinquent Act: An act that would constitute a crime under Spirit Lake Tribal law if committed by an adult or any act a child commits that is defined as an offense under the Spirit Lake Children's Code.

O. Delinquent Child: Any child who has committed a delinquent act.

P. Deprivation Petition: A written request to the Court that it preside over a case involving a child who is alleged to be deprived.

Q. Deprived (AKA Neglected) Child:

A deprived child shall be defined as a child who/whom/whose:

1. Has no parent, guardian, or other custodian available and willing to care for him.
2. Has suffered or is likely to suffer immediate or imminent substantial physical or emotional harm or injury,

- resulting from the intentional or negligent acts of the parent, guardian, or other custodian of the child.
3. Has not been provided with adequate food, clothing, shelter, medical care, hygiene, education or supervision by his parent, guardian or other custodian who is responsible for the health, safety and welfare of the child. Any special physical or mental needs of the child shall be taken into consideration.
 4. Parent(s) misuse benefits intended for the child including selling or squandering of social impact payments, food stamps, commodities or TANF monies.
 5. Has been subjected to obscene, indecent or inappropriate sexual abuse, activities, conduct, content or material as a result of the actions, pressure, guidance or approval of the child's parent, guardian, custodian or other household member.
 6. Has been emotionally injured, harmed or neglected by a parent, guardian, other custodian or any household member.
 7. Has committed delinquent acts or status offenses as a result of pressure, guidance, or approval by the parent, guardian or other custodian.
 8. Has been exposed to continued alcohol use and/or substance abuse to such a degree that the health, safety, or welfare of the child is being affected.
 9. Needs treatment and whose parent, guardian or other custodian has refused to acquire treatment for the child or participate in treatment.
 10. Has been chronically truant or suffered other inattention of educational needs.
 11. Parent, guardian or custodian cannot effectively care for the child due to the child's behavior or resistance.
 12. Due to the action or inaction of a parent, guardian or custodian, is in a situation that causes or creates a substantial risk of death, disfigurement, impairment of bodily functions or serious physical or emotional harm or injury.
 13. Has been excessively beaten or suffered other unusual or inappropriate corporal punishment.
 14. Parent fail to protect the child through their actions, inactions, negligence or recklessness.

15. Lifestyle is dangerous (e.g. - excessive drinking, excessive drug use, etc.).
16. Has no parent, guardian or custodian available or willing and able to care for the child.
17. A child who has suffered emotional abuse as defined in this Code.
18. An unborn child whose mother has been or is abusing alcohol or controlled substances.

R. Detention: The act of exercising authority over a minor by physically placing the minor in any juvenile facility designated by the Court and restricting the minor's movement in that facility.

S. Disposition Hearing: Is a hearing held, after an Adjudication Hearing and after the Court making findings that a child is deprived, delinquent or otherwise in need of protection. At the dispositional hearing the Court shall determine the appropriate remedy, including placement of the child, should the Court find placement necessary and in the best interests of the child.

T. Diversion: A course of remedial action taken in matters arising under this Code designed to avoid formal Court action and to serve the best interests of the child involved.

U. Domicile: For a parent, guardian or custodian, the place at which a person has been physically present and that the person regards as home; a person's true, fixed, principal and permanent home, to which that person intends to return and remain indefinitely even though the person may be residing elsewhere. For a child, the domicile of the child's parent, guardian or custodian. In the case of a child whose parents are not married to each other, the domicile of the child's custodian parent.

V. Educational neglect: The intentional or unintentional failure of a parent, guardian or custodian to ensure that a child is complying with the applicable school's attendance policy.

W. Emancipation: The legal action by the Court declaring a minor an adult capable of meeting his or her own needs.

X. Emotional Abuse: A pattern of behavior by any person responsible for the child's health, safety and welfare that attacks a child's emotional development and sense of self-worth; or the failure of a person to provide a child with a nurturing environment characterized by the qualities of

appropriate attention, support and affection.

Y. Extended Family Member: A person who is the child's grandparent, aunt or uncle, brother, sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin or stepparent or any person related by blood or marriage to the family or any individual who is viewed by the family as a relative in accordance with customs of the Tribe, or any person related by blood or marriage to the child and having significant contacts with the child. However, in situations where the relationship is not formally established by blood or marriage, two reliable witnesses must attest to the relationship.

Z. Foster Care Placement: Means the arrangement for the care of any child in a licensed facility such as shelter care, a foster home or child caring institution.

AA. Foster Home: A facility or home licensed by a federal, tribal or state organization/agency which is eligible for payments for providing specialized care to children.

BB. Grandparent:

1. Biological grandparent
2. The brothers and sisters of a biological grandparent and their spouses.
3. Any other person who, by virtue of an adoption either of themselves or a member of their family pursuant to the laws of any Indian Tribe or state, would come within the terms of subparagraphs (1) or () of the above subsection.
4. Any other person who, is viewed by the family as a grandparent in accordance with Dakota customs of the Tribe.

CC. Guardian: A person, agency or organization who has been granted legal custody of a child by the Court or a court of appropriate jurisdiction. The guardian shall be granted care, custody and control of the child by the Court and shall have the duty, responsibility and authority to provide care, shelter, medical treatment and control over the child. This includes the rights of legal custody as well as the right to consent to marriage, enlistment in the Armed Forces, major medical, surgical or psychiatric treatment.

DD. Guardian-Ad-Litem: An individual, other than a parent or legal guardian, appointed by the Court to represent the best interest of the child in an advocacy role.

- EE. Habitual Truancy:** A child who has been truant for five (5) days within ten (10) school days or ten (10) days within any ninety (90) school day period within a school year.
- FF. Imminent Risk:** Facts or evidence demonstrate that the minor child is at risk of harm, abuse or neglect that is likely to occur very soon.
- GG. Indian:** For purposes of the Children's Code, this term shall include any person who is a member or is eligible for membership in a federally recognized tribe and any person who is a lineal descendant of any person who is a member or eligible for membership in a federally recognized tribe.
- HH. Indian Child Welfare Act Representative:** The person or party designated by the Court or the Tribe to represent the Tribe in all state court child welfare proceedings under the Children's Code in which the Tribe is a party to the proceeding.
- II. Involuntary Placement:** Any action to remove a minor child from the physical custody of a parent, guardian or other custodian and place the minor child in a foster home, institution or home of another guardian or custodian wherein the parent, guardian or other custodian cannot have the minor child returned upon demand without a Court Order.
- JJ. Juvenile Presenter:** A licensed attorney who represents the Tribe in child-welfare proceedings under this Code. The duties and responsibilities of the Juvenile Presenter may be delegated to the tribal prosecutor.
- KK. Least Restrictive Alternative:** Means the use of the least drastic method of achieving and meeting the needs of the child. This refers to the method(s) of intervention in the family, placement needs of the child, educational needs of the child, medical needs of the child, and psychological and emotional needs of the child. Least restrictive alternative shall not be construed to prevent the best interests of the child from being met.
- LL. Legal Custody:** Subject to any limitations which may be imposed by the Court or a court of appropriate jurisdiction, a relationship embodying the following rights and duties:
1. The right and duty to have input in and help determine major life decisions regarding the child such as religion, education, etc.

2. The duty to provide a child with food, clothing, shelter, education and medical care.
3. In an emergency, the right to authorize surgery or other extraordinary care.

MM. Nurturing Environment: An environment characterized by the qualities of appropriate attention, support and affection, as provided by the caretaker of the child; and failure to provide a child with such nurturing environment could be detrimental to the child's emotional, physical or psychological development and growth.

NN. Parent: A natural, biological or lawfully adoptive parent. "Parent" does not include persons whose parental rights have been terminated or otherwise suspended nor does it include an unwed father for whom paternity has not been established or acknowledged in accordance with Title Nine (9) Chapter Four (4) of the Spirit Lake Law and Order Code.

OO. Permanency Planning: The systematic process of carrying out a set of goal-oriented activities designed to help children live with families that offer continuity of relationships with nurturing parents or caretakers, and the opportunity to establish lifetime relationships. Examples of Permanency Plans include, but are not limited to: Reunification with parents, guardianship, adoption or another planned permanent living arrangement.

PP. Permanent Foster Care: Means the court ordered placement of a child in a foster home or facility on a permanent basis. Permanent foster care may be ordered only when return of the child to the parents is not possible after a reasonable period, when adoption is not a reasonable possibility, when permanent guardianship is not possible and when emancipation is not possible.

QQ. Permanent Guardianship: Court appointed guardianship over a child on a permanent basis. Permanent guardianship is an alternative only when adoption and return of the child to the parents is not possible.

RR. Physical Custody: The physical presence or physical control over a child by an adult or agency.

SS. Placement Prevention and Family Reunification Services: Services designed to help children remain with their families or to reunite children with their parents.

TT. Preliminary Hearing: The initial hearing held within seventy two (72) hours (excluding weekends and holidays) of the filing of an Emergency Removal Petition submitted after

the removal of a child from a home.

- UU. Probation:** Allowing a person convicted of a delinquent act or status offense to go at large, generally under the supervision of a probation officer.
- VV. Protective Supervision:** A voluntary or involuntary legal status created by a court order where the child is permitted to remain in the child's home, and supervision and assistance to correct the issues are provided by social services as designated by the Court without impacting the parent's legal rights to the child.
- WW. Public Defender:** A licensed attorney appointed by the Court tasked with representing respondent(s) or defendant(s) in child-welfare proceedings in which a social service agency is involved.
- XX. Reservation:** All lands and territories within the exterior boundaries of the Spirit Lake Nation.
- YY. Residence:** The physical presence of the child or the parent, custodian or guardian of the child with the intent to remain.
- ZZ. Social Services:** The department(s) supervising and directing all child welfare, health, and family services programs and their related programs.
- AAA. Status Offense:** Laws or ordinances, which apply only to children or an act committed by a child, which is in violation of a statute, but if committed by an adult would not constitute a crime.
- BBB. Suspension of Parental Rights:** The voluntary or involuntary temporary severance of the rights of biological parents to provide for the care, custody and control of their child. Suspension of parental rights does not include the child's right to inherit from the parent whose rights have been terminated.
- CCC. Termination of Parental Rights:** The voluntary or involuntary permanent severance of a parent's rights, duties and responsibilities to a child by the Court. Termination of parental rights does not include the child's right to inherit from the parent whose rights have been terminated.
- DDD. Trial Home Placement:** A legal status created by a court order following adjudication where the child is allowed to remain in or be returned to the child's home, and supervision and assistance to correct the issues are provided by social services as designated by the Court.

- EEE. Tribal Court:** The Spirit Lake Tribal Court as established by the Spirit Lake Tribe.
- FFF. Truant:** A child who is absent from school without permission and by their own volition.
- GGG. Unborn child:** A child conceived but not yet born.
- HHH. Unruly Child:** Is a minor found to be in one or more of the following situations:
1. A child who is habitually truant from school.
 2. A child whose parents, despite making a reasonable effort, cannot control him or her.
 3. A child who habitually runs away from parent or custodian.
 4. A child who acts in such a manner so as to injure or endanger the child's own well-being or the well-being of others.
- III. Ward of the Court:** A minor child who has a guardian or custodian appointed by the Court for the care and control of that child but who remains under the legal supervision of the Court.
- JJJ. Working Days:** Means any day except Saturday, Sunday, or any holidays that are recognized by the Tribe.

CHAPTER 2 - GENERAL PROVISIONS

2-101 PURPOSE

The Spirit Lake Children's Code shall be interpreted and construed to effectuate the following:

- A.** To protect our children through stabilizing and strengthening families and to assure the safety and welfare of children.
- B.** To preserve and retain family unity.
- C.** To provide for the care, protection, and physical, emotional and spiritual development of our children.
- D.** To express the belief that although protection of our children is primarily the responsibility of the parents, the Tribe must intervene to correct the situation and protect the children and Tribal community when parents are not able to.
- E.** To ensure that the community is kept safe and that the children who commit offenses under this Code are subject to a program of supervision, care, and rehabilitation consistent with the protection of the community.

- F. To provide judicial procedures that ensure parties are granted fair treatment and that their legal rights are recognized and enforced.
- G. To ensure that children who commit juvenile offenses maintain responsibility for their actions and to apply a program of supervision, care and rehabilitation consistent with the protection of the community.

2-102 JUVENILE COURT ESTABLISHMENT.

The Court, when exercising jurisdiction under this Code, shall be known as the Juvenile Court and any duly appointed Judge of the Spirit Lake Tribal Court, when exercising jurisdiction under this Code, shall be known as the Juvenile Judge. Any appeals from the Juvenile Court shall be subject to Chapter Ten (10) of this Code. It shall be assumed that any reference to the term "Court" in this Code shall be in reference to the Juvenile Court or any other competent Court of the Spirit Lake Tribe.

2-103 JURISDICTION.

- A. The jurisdiction of the Juvenile Court shall be civil in nature and shall include the right to issue all orders necessary to ensure the safety, well-being and best interests of children who are subject to the jurisdiction of the Court. The Court shall also have the power to enforce subpoenas and orders of restriction, fines, contempt, confinement and other orders as appropriate.
- B. The Court shall have jurisdiction over all proceedings involving children under this Code in the following situations:
 1. Any child deprivation proceeding involving a child residing or domiciled within the exterior boundaries of the Spirit Lake Reservation.
 2. Any child delinquency proceedings involving an Indian child residing or domiciled within the exterior boundaries of the Spirit Lake Reservation.
 3. Any case involving a child who is a Ward of the Court. Such jurisdiction shall include the power to effect or cause the return of the child to the Spirit Lake Nation or to effect the child's transfer to another location.
 4. Any child deprivation case involving a child who, within thirty (30) days before the filing of the proceeding, had been domiciled on the Spirit Lake Nation with his parent or legal guardian, and the child who, at the time of filing, is absent from the Reservation because of his/her

removal by any person, and a parent, guardian or legal custodian continues to live on the reservation.

5. The child is not physically present on the Reservation due to a placement made pursuant to an Order from the Court.

6. The proceeding is transferred to the Court pursuant to the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963.

2-104 AUTHORITIES OF THE COURT.

- A.** The Court is authorized to cooperate with any tribal, federal, state or private agencies and departments to accomplish the purpose(s) of this Code.
- B.** The Court is authorized to utilize any available services that may be available through any tribal, federal, state or private agencies and departments to accomplish the purpose(s) of this Code.
- C.** The Court may negotiate a contract with any tribal, federal, state or private agencies and departments on behalf of the Tribal Council for the care and placement of a child who is under the jurisdiction of the Court, subject to the approval of the Spirit Lake Tribal Council before the execution of any such contract and/or expenditure of any Tribal funds.
- D.** The Court may accept or decline other tribal or state court transfers of child deprivation and delinquency proceedings.
- E.** The Court may accept or decline Indian Child Welfare referrals.

2-105 PROCEDURES

- A.** Unless otherwise specified to the contrary, the rules of Court and criminal and/or civil procedure for the Court as set out in Titles Two (2), Three (3) and Four (4) shall also govern the Juvenile Court.
- B.** In cases involving a Delinquent or Unruly Child, the Adjudication Hearing shall be held in conformity with the rules of criminal procedure. The child shall be entitled to all the rights, privileges and immunities of an accused in a criminal case. However, the child shall not have the right to a jury trial.
- C.** Only by written rules and not inconsistent with this Title or the Rules of Civil and Criminal Procedure set forth in the Spirit Lake Law and Order Code, the Court shall have the authority to create any necessary forms or rules of Court to provide for the efficient, orderly and just

resolution of cases under this Title by filing said rules in the office of the Clerk of Court. All parties and their attorneys shall have access to the written Court Rules.

D. AMENDMENT OF PLEADINGS. When it appears, during the course of any proceeding that the evidence presented points to material facts not alleged in the Petition, the Court may proceed to consider forthwith the additional or different matters raised by the evidence. In such an event, the Court, on motion of any interested party or on its own motion, shall direct that the Petition be amended to conform to the evidence.

E. CONTINUANCE. On the Court's Motion or by Motion of the child, parent, guardian, custodian or attorney, the Court, for good cause shown, may continue any hearing or proceeding for a reasonable time.

F. DISMISSAL. The Court may dismiss a Petition at any stage of the proceedings provided the Court specifically sets forth the reasons for the dismissal on the record and in the Order of Dismissal.

Grounds for such a dismissal include, but are not limited to:

1. A motion to dismiss made by the Juvenile Presenter, Intake Officer or Prosecutor.
2. A finding by the court that the allegations set forth in the Petition were not established by the required standard of proof.
3. A finding that the action was brought in bad faith.

G. PRESENCE OF PARENTS. When the court deems their presence appropriate or necessary, the Court shall endeavor to insure the presence at the hearing of one or both parents, guardian or custodian.

H. PROTECTION OF CHILD. At any time, the Court may appoint a Guardian ad Litem to protect the best interests and welfare of the child.

I. CONSOLIDATION OF PROCEEDINGS. When more than one child is involved in a home situation which may be found to constitute deprivation, the proceedings may be consolidated. In its own discretion, the Court may conduct separate hearings with respect to the disposition of each child. The above provision shall not apply to delinquency cases.

2-106 EVIDENCE.

- A. Written reports and other material relating to a child's mental, physical and social history and conditions, must be received in evidence, and may be considered as probative by the court along with other evidence.
- B. The Court may require that the person who wrote the report or prepared the material appear in person or telephonically as a witness if he is reasonably available.
- C. Further, the Court shall inform the child, his parents, legal guardian, or custodian of the right to cross-examination concerning any written report or other material.
- D. All such evidence shall be maintained as part of the court record and shall be kept confidential in accordance with 2-114 herein.
- E. Applicable rules of evidence shall be those applied pursuant to provisions found in Title Three (3) and Title Four (4) of the Spirit Lake Law and Order Code.

2-107 PRE-HEARING EXAMINATIONS AND INQUIRIES.

- A. The Court may order a child named in any Petition under this Code to be examined by a physician, surgeon, psychiatrist or psychologist, and may place the child in a hospital or other facility for such examination.
- B. If the Court finds from the evidence presented that the parent, guardian or custodian's physical, mental or emotional condition may be a factor in causing the deprivation or delinquency of a child, the Court may also order an examination of the parent, guardian or custodian.
- C. The Court, in its discretion, may utilize Social Services as an investigator and may require the person who is the subject of said examination or the healthcare provider conducting the examination to produce examination reports or records to the Court for examination.
- D. If Social Services is serving as an investigator, all records or reports shall be submitted to the Juvenile Presenter, Intake Officer or Prosecutor who shall file the same with the Court for review.
- E. The Court may order disclosure of physical or mental health examination records or reports for the purpose of safeguarding the child, providing services necessary to prevent removal of the child, furthering reunification or providing due process and equal protection to the child, parent, guardian or custodian.

2-108 INTERPRETER.

In any proceeding under this Code, an interpreter shall be available for a child, parent, guardian or custodian who does not fully understand the English language. An interpreter shall interpret, only after taking an oath to faithfully and truly interpret in the language that the child, parent, guardian or custodian understands.

2-109 RECORDS OF THE COURT.

- A. Following each hearing, the Court shall enter a written Order that sets forth its Findings, Conclusions and Orders for disposition of each case.
- B. A record of all hearings under this Code shall be made and preserved.
- C. All records from the Court shall be confidential and shall not be open to inspection to anyone but the following:
 - 1. The child's attorney or Court approved guardian ad litem.
 - 2. The child, the child's parent, guardian or other custodian.
 - 3. The Juvenile Presenter.
 - 4. The Indian Child Welfare Worker.
 - 5. The social services worker assigned to the case.
 - 6. Attorney(s) who represent the parent(s), guardian(s) or other custodian(s).
 - 7. The sharing of records and information with those persons, agencies or entities who participate in approved child protection team and multi-disciplinary team meetings; but, only during said meetings.
 - 8. **The Tribal Council** or other state, federal or other Tribal agencies, for good cause, upon written request to the Court and approval by the Court, after proper notice and an opportunity to be heard and/or object has been provided to all parties. Any objection or request for hearing pursuant to this section shall be made within five (5) days of proper notice. A hearing shall be held within seventy two (72) hours of any objection or request for hearing.

2-110 RECORDS - USE IN OTHER COURT.

- A. Neither the record of the Court nor any evidence given therein shall be released for use in any proceeding in any other court, without written consent of a Judge or upon

standing Agreement or Memorandum of Understanding with the Tribe or Court.

- B. No information shall be released unless a signed request for the information indicating whom is requesting the release and the purpose for which the information will be used is placed in the file.
- C. Unless specifically Ordered by the Court, no records shall be released after the child turns eighteen years of age.

2-111 JUVENILE COURT PERSONNEL.

A. JUVENILE COURT JUDGE.

1. Appointment, Removal, Disqualification and Qualification.

The process(es) for appointment of, the removal of, disqualification of and the required qualifications of the Juvenile Court judge(s) shall be governed by the Spirit Lake Law and Order Code and the Constitution and By-Laws of the Spirit Lake Tribe.

2. Duties and Powers. In addition to the duties and powers specifically enumerated under this Code, judges of the Juvenile Court shall have the same duties and powers as other judges of the Tribal Court, including, but not limited to, the power of contempt, the power to issue arrest or custody warrants, and the power to issue search warrants.

3. Removal or Disqualification. The rules of removal or disqualification of a Juvenile Court judge shall be those rules that govern all Tribal Court Judges as established by the Spirit Lake Tribe.

B. JUVENILE COURT PRESENTING ATTORNEY (JUVENILE PRESENTER).

1. Appointment, Removal, Disqualification and Qualification.

The process(es) for appointment of, the removal of, disqualification of and the required qualifications of the Juvenile Presenter shall be the same as that of the Tribal Prosecutor as governed by the Spirit Lake Law and Order Code and the Constitution and By-Laws of the Spirit Lake Tribe.

2. Powers and Duties. The Juvenile Presenter shall have the same powers and duties as a Tribal Prosecutor has in Tribal Court. The Juvenile Presenter shall represent the Tribe in all child deprivation proceedings under this Code. The Juvenile Presenter shall make recommendations to the Court and to any caseworker assigned to the child's case. The Juvenile Presenter may make recommendations to the Spirit Lake Tribal Council

regarding needed amendments to this Code. The Juvenile Presenter shall be responsible for developing the necessary procedures for carrying out the objectives of this Code.

C. JUVENILE COURT PUBLIC DEFENDER (PUBLIC DEFENDER).

1. Appointment, Removal, Disqualification and Qualification.

The process(es) for appointment of, the removal of, disqualification of and the required qualifications of the Public Defender shall be the same as that of the Tribal Prosecutor as governed by the Spirit Lake Law and Order Code and the Constitution and By-Laws of the Spirit Lake Tribe.

- 2. Powers and Duties.** The Juvenile Court Public Defender shall have the same powers and duties as a public defender has in Tribal Court. The Public Defender shall present a defense to legal proceedings in Court. The Public Defender may make recommendations to the Spirit Lake Tribal Council regarding needed amendments to this Code. The Public Defender may assist in developing the necessary procedures for carrying out the objectives of this Code.

D. GUARDIAN AD LITEM (GAL).

- 1. Appointment.** At any stage of any proceedings conducted under this Code, the Court may appoint a GAL for the child.

- 2. Role.** The role of the GAL is to represent the interests of the child. The GAL shall make a determination as to the best interests of the child, regardless of whether that determination reflects the wishes of the child. However, the wishes of the child shall always be relevant to the determination of best interests and shall be weighed according to the competence and maturity of the child. If the GAL recommendations differ from the expressed wishes of the child, the GAL shall inform the Court of the child's express wishes and the reason(s) the recommendation differs from the child's wishes.

- 3. Duties.** The GAL shall perform the following duties:

- a. Appear at all hearings when assigned.
- b. If the child is of a sufficient age and maturity to express their opinion or perspective as to what is in their best interest(s) to the Court, the GAL shall attempt to secure the attendance of that child at all hearings.

- c. Conduct an independent investigation, including interviewing the child, parent(s), social worker(s), care provider(s), school personnel and other persons to properly ascertain the facts and circumstances underlying the allegation that the child is in need of protection or services within the jurisdiction of the Court.
- d. According to the competency and maturity of the child, the GAL shall ascertain the wishes of the child and take the child's wishes into consideration when determining the best interests of the child.
- e. Provide a written report of findings and recommendations to the Court at each hearing held before the Court.
- f. Provide a written report of findings and recommendations to the Juvenile Presenter and, if applicable, the Public Defender, 5 days before each hearing.

E. SOCIAL SERVICE WORKERS.

1. **Employment.** The Spirit Lake Tribal Social Services or agency designated to carry out its functions on behalf of the Spirit Lake Tribe shall employ or contract for social service workers.
2. **Cooperation.** The Spirit Lake Tribal Social Services Department or agency designated to carry out its functions on behalf of the Spirit Lake Tribe shall cooperate with such federal, state and other services as are necessary to achieve the purposes of this Code. The Spirit Lake Tribal Social Services Department or agency designated to carry out its functions on behalf of the Spirit Lake Tribe may negotiate agreements with other jurisdictions and such agreements shall be subject to approval by the Court and Tribal Council.
3. **Duties and Responsibilities.** A social worker shall perform all duties and responsibilities outlined in that agencies policy and procedure manual as necessary to carry out the purpose(s) of this Code.
4. **Cooperation of Law Enforcement Officials.** Law enforcement officials shall cooperate with social service workers to remove a child from the custody of his/her parent(s), guardian(s) or other custodian(s) pursuant to Section 5-101.

5. **Completion of Family Assessment.** Upon completion of the family assessment by a social service worker(s), the social service worker may inform the person who made the report as to the disposition of the report in accordance with the policies and procedures of the agency.

F. **INDIAN CHILD WELFARE ACT (ICWA) REPRESENTATIVE.** If necessary, an ICWA Representative may be appointed by the Court.

1. **Duties.** The ICWA representative shall adhere all to procedural requirements set out in the Indian Child Welfare Act as well as those outlined in Chapter Eight (8) of the Children's Code.

2. **Cooperation of Law Enforcement Officials.** Law enforcement officials shall cooperate with the social service worker(s) and ICWA representative in conducting investigations and carrying out the purpose(s) of this this Code.

G. **PROBATION OFFICER.**

1. **AUTHORITY OF THE COURT.** The Court shall have authority to appoint any number of responsible persons of good moral character to serve as Probation Officer(s).

2. **JOB DESCRIPTION.** The Probation Officer shall be responsible for performing field work in the supervision and rehabilitation of adjudicated child probationers on personal, social, family, employment, psychological, financial and school problems. The Probation Officer shall also work with community groups and community law enforcement authorities in establishing and coordinating community projects.

3. **DUTIES AND RESPONSIBILITIES.** The Probation Officer shall have duties that include, but are not limited to the following:

- a. Supervise adjudicated child probationers.
- b. Make investigations and file Petitions regarding children under the supervision of the Probation Officer.
- c. Prepare pre-sentence reports for the court with information such as the court may require.
- d. Be present in court when cases are heard concerning child probationers.
- e. Recommend a probation plan to the Court for the suggested disposition of a case.

- f. Implement a Probation or Parole Plan including making recommendations for return to the Court for violations of probation, continued supervision or termination of supervision.
- g. Furnish any such related services as the Court may require.

2-112 JUVENILE COURT CLERK.

There shall be a Clerk of the Juvenile Court. He/she shall schedule all hearings, file all papers, including the findings and final order in proceedings under this Code and shall note, the date of such filings on the papers. Final orders shall be served on all parties, as evidenced by a Certificate of Service, and the original order shall be filed in the Court file.

Chapter 3 - RIGHTS, RESPONSIBILITIES AND ROLES

3-101 GENERAL

- A. This Court shall have the broadest of powers provided under the Spirit Lake Constitution and the Spirit Lake Law and Order Code to construct orders and fashion any remedy to ensure that all of the followings rights and responsibilities are adhered to in order to protect the best interests of the children under the jurisdiction of the Court.
- B. All parties have a right to be represented by an advocate/attorney at their own expense or, if qualified, may choose the services provided by the Tribe in all proceedings under this Code, to introduce evidence, to be heard on his or her own behalf, to examine witnesses, and to be informed of possible consequences if the allegations of the petition are found to be true. All parties shall be entitled to advance copies of court documents, including petitions and reports, unless deemed inappropriate by the Court.

3-102 CHILD PROTECTION TEAM.

- A. Social Services, in collaboration with tribal, Federal or state agencies and service providers, and in cooperation with IHS and the BIA shall develop, maintain and coordinate the services of a multidisciplinary Child Protection Team (Team). The Team may be composed of representatives of appropriate health, mental health, social services, educational, legal and law enforcement agencies and shall be governed by applicable policies and procedures as authorized and approved by Tribal Council.

- B.** The Team shall be convened at the direction of Social Services to supplement the single intake and protective services activities of the Tribal, Federal or State social services agencies. Social Services shall ensure that the Team receives the report of abuse or neglect. Social Services shall cooperate with and work in conjunction with the Team.
- C.** The purpose of the Team shall be to support Social Services in providing services to deprived children upon referral as deemed by the Team to be necessary and appropriate for such children. The specialized diagnostic assessment, evaluation, coordination, consultation, and other supportive services that the team may be capable of providing include, but are not limited to the following:
1. Medical diagnosis and evaluation services, including provision or interpretation of x-rays and laboratory tests, and related services, as needed, and documentation of findings relative thereto.
 2. Telephone consultation services in emergencies and in other situations.
 3. Medical evaluation related to deprivation, as defined by department policy or rule.
 4. Such psychological and psychiatric diagnosis and evaluation services for the child, parent(s), guardian(s), custodian(s) or other caregiver(s), or any other individual involved in a child deprivation case, as the child protection team may determine to be needed.
 5. Short-term psychological treatment.
 6. Case staffing to develop, implement, and monitor treatment plans for a child whose case has been referred to the child protection team. The Team may provide consultation on any other child who has not been referred to it, but who is alleged or is shown to be deprived, which consultation shall be provided at the request of the appropriate social services agency or at the request of any other professional involved with a child, his parent(s), guardian (s), custodian(s) or other care givers. A social services representative shall attend and participate in all Team case meetings, consultations, or staff activities involving a child.
 7. Case service coordination and assistance, including the location of services available from other public and private agencies.

8. Such training services for program and other department employees as is deemed appropriate to enable them to develop and maintain their professional skills and abilities in handling child deprivation cases.

9. Educational and community awareness campaigns on child deprivation to enable citizens more successfully to prevent, identify, and treat child deprivation in the community.

D. Nothing in this section shall be construed to remove or reduce the duty and responsibility of any person to report all suspected or actual cases of child deprivation pursuant to this Code. This section shall not govern the purpose or function of a multi-disciplinary team that may be organized to support criminal prosecution in child abuse and neglect criminal matters.

3-103 RIGHTS AND RESPONSIBILITIES OF PARENTS

The rights and responsibilities of a parent, guardian or custodian of a child who has been removed and placed in the temporary custody of another person, agency, or institution, including foster care placement, are:

- A. The right to visitation at the discretion of the Court.
- B. The right to consent to, be informed of, and to be involved in determining the medical, mental, and physiological needs of the child.
- C. The right to choose the child's religion.
- D. The right to be involved in planning for the child.
- E. The right to be treated with respect and have information be kept confidential unless otherwise set forth by this Code or the Court.
- F. The right to be provided with active efforts.

3-104 RIGHTS AND RESPONSIBILITIES OF GUARDIAN

The rights and responsibilities of a parent outlined in section 3-103 above can be, at the discretion of the Court, applied to a previously established legal guardian, if reunification with the guardian is deemed to be in the best interest of the child. Nothing in this section limits the ability of the Court to terminate a previously established legal guardianship with a child if the same is in the child's best interest.

3-105 RIGHTS OF THE CHILD

The rights of the child in foster care or who has been removed and placed in the custody of another person, agency, or institution are:

- A. The right to visit the parent, guardian, custodian, siblings or extended family at the discretion of the Court.
- B. The right to adequate food, clothing and shelter.
- C. The right to biological inheritance, unless otherwise modified by the Court.
- D. The right to adequate nutrition, housing and medical services.
- E. If of the appropriate age deemed by the Spirit Lake Tribal Court, the right to be an active participant in their case.
- F. The right to have their best interests represented by a Guardian ad Litem whenever deemed appropriate by the Court.
- G. The right to special education and treatment that is appropriate to their needs.
- H. The right to understanding and love by parents, guardians, or other custodians.
- I. The right to protection against all forms of neglect, cruelty and exploitation.

3-106 RIGHTS AND RESPONSIBILITIES OF FOSTER PARENTS

The rights and responsibilities of the foster parent(s) are:

- A. The responsibility to utilize a reasonable and prudent parenting style.
- B. The right to be appropriately informed for the purpose of planning for the child.
- C. The responsibility to provide food, necessary medical care, clothing and shelter for the child.
- D. The responsibility to meet the emotional needs of the child.
- E. The right to receive assistance from the supervising social service agency to appropriately meet the needs of the child.
- F. The responsibility to keep the supervising agency informed of the needs and status of the child.
- G. The responsibility not to disclose any information not disclosable pursuant to the social service agency and foster parent confidentiality agreement.

- H. The rights and responsibility to attend continued required education regarding foster care parenting, the needs of foster care children and planning for the children.
- I. The right and responsibility to obtain emergency medical treatment for the child.
- J. The responsibility to continuously monitor the child appropriately.
- K. The responsibility to continuously nurture the child.

3-107 RIGHTS AND RESPONSIBILITIES OF SOCIAL SERVICE AGENCIES

- A. Social Services has the duty and responsibility to prevent out-of-home placement whenever possible, promote family reunification, and shall have:
 - 1. The responsibility to have open and honest communication with the foster parent, child, parent, guardian, custodian and Court regarding the welfare of the child.
 - 2. The responsibility to assist the parent and the foster parent in meeting the psychological, emotional physical, educational and medical needs of the child.
 - 3. The right to sign for emergency medical treatment when the parent, foster parent, guardian or custodian are unavailable.
 - 4. The responsibility of insuring confidentiality of the child, parent, foster parent, guardian and custodian.
 - 5. The responsibility to accept and execute the order(s) of the Court as those orders relate to children to be placed in or who are in the care and control of Social Services. The Director of Social Services shall bear the ultimate responsibility of ensuring that the Court's orders and/or directives are complied with.
 - 6. The responsibility to further the educational needs of the child and to ensure that the child's educational needs are being met by attending IEP meetings, 504 meetings and reporting lack of cooperation in meeting the child's educational needs to the Court in a written report including the efforts made to obtain services.
 - 7. The responsibility to educate caretakers related to the welfare of children.
 - 8. The responsibility to maintain ready access to the case managers by telephone and in person.
 - 9. The responsibility to maintain an emergency number for use by law enforcement and the Court that provides

telephone access to a social worker 24 hours a day.

10. The responsibility to notify the Court and the Guardian Ad Litem whenever a child in the care and control of Social Services is moved from one location to another.
11. Work with the child's tribe and family to develop an alternative plan to out-of-home placement and to ensure that adequate, appropriate, protective and corrective services are provided through active efforts which includes acknowledging traditional helping and healing systems of an child's tribe and using these systems as the core to help and heal the child and family.
12. Review and track all child deprivation cases which have been referred to Social Services.
13. Before making a decision that may affect a child's safety and well-being or when contemplating out-of-home placement of a child, seek guidance on family structure, how the family can seek help, what family and tribal resources are available and what barriers the family faces.
14. Provide services and resources whenever possible to relatives who are being considered as a placement option for a child to overcome barriers to providing care to a child. Services and resources shall include, but are not limited to, childcare assistance, financial assistance, housing resources, emergency resources, and foster care licensing assistance and resources.
15. The Social Service Department shall work with all foster parents or placements to become licensed, or if they will not become licensed, to secure financial support for the care of the children.
16. The Social Services agency shall have the right to license foster homes on and off the reservation, that are within the service area, pursuant to the Tribal and State IV-E agreement. Social Services shall also be responsible for monitoring the licenses of foster homes licensed through the agency.

B. CONFIDENTIALITY. All records, information, and reports prepared, acquired, received or reviewed by an employee of any social services agency are confidential and shall only be disclosed or dispersed pursuant to this Code or any other governing Spirit Lake Tribal Law. Those found to be in violation of the confidentiality rules shall be held accountable by the laws of the Spirit Lake Tribe.

CHAPTER 4 - REPORTING AND ASSESSING CHILD DEPRIVATION

4-101 REPORTING CHILD DEPRIVATION.

A. MANDATORY REPORTING.

1. **Who Must Report.** In general, any person who, while engaged in a professional capacity or activity on Tribal land, in a Tribally operated or Tribally contracted facility, or within the exterior boundaries of the Spirit Lake Reservation or on Spirit Lake Tribal Territory, learns of facts that give reason to suspect that a child has suffered an incident of child deprivation, shall as soon as possible make a report of the suspected deprivation to the Fort Totten/BIA Law Enforcement Agency and Spirit Lake Social Services Agency. Professional persons engaged in the following professions and activities are subject to this requirement:
 - a. Physicians, dentists, medical residents or interns, hospital personnel and administrators, nurses, health care practitioners, chiropractors, osteopaths, pharmacists, optometrists, podiatrists, emergency medical technicians, ambulance drivers, undertakers, coroners, medical examiners, alcohol or drug treatment personnel, and persons performing a healing role or practicing the healing arts.
 - b. Psychologists, psychiatrists and mental health professionals.
 - c. Social workers, licensed or unlicensed marriage, family and individual counselors.
 - d. Teachers, teacher's aides or assistants, school counselors and guidance personnel, school officials and school administrators.
 - e. Childcare workers and administrators.
 - f. Law enforcement personnel, probation officers, criminal prosecutors and juvenile rehabilitation or detention facility employees.
 - g. Foster parents.
 - h. Commercial film and photo processors.
2. Those persons required to report shall immediately cause such reports to be made to the responsible social services agency and/or law enforcement agency. Oral reports shall be followed by written reports within seventy-two (72) hours by those mandated to report.

3. Any person mandated by Section 4-101(A) to report a case of known or suspected child deprivation, who knowingly fails to do so or willfully prevents someone else from doing so, shall be held accountable by and answer to the laws of the Spirit Lake Criminal Tribe and be subject to the penalties thereof.

B. WHO IS ENCOURAGED TO REPORT. Any person not covered by section 4-101(A) above who knows or has reasonable suspicion that a child is deprived that present actions will result in the deprivation of a child should report such deprivation or actions to the responsible social services agency and/or law enforcement agency.

C. BASIS FOR REPORT. Any person who makes a report pursuant to this section in bad faith for the purpose of harassing those identified in the report, without reasonable cause to believe the report is true, shall be held accountable by and answer to the laws of the Spirit Lake Criminal Tribe and be subject to the penalties thereof.

D. CONFIDENTIALITY OF REPORTER AND IMMUNITY FROM LEGAL LIABILITY.

1. Any person, other than the alleged perpetrator, acting in good faith in the making of any report of child deprivation, or in providing protective services under this Code, is held immune from any liability, civil or criminal, that otherwise might result. For the purpose of this section, the good faith of any person mandated to report cases of child deprivation shall be presumed.

2. Any information regarding the source of the child deprivation report shall be kept confidential and the identity of the reporter shall not be disclosed.

3. Any person disclosing the identity of the reporter or any information regarding the source of the report shall be held accountable by and answer to the laws of the Spirit Lake Criminal Tribe and be subject to the penalties thereof.

4. Those persons reporting, except those specified in Section 4-101(A) (1), may remain anonymous.

E. REPORTING NON-ATTENDANCE AT SCHOOL. Any employee of the child's school, who is aware that the child is not attending school, is obligated to notify the appropriate social services agency of such non-attendance. The social services agency shall investigate every such complaint and take appropriate action to get the child into school if they are not attending.

4-102 ASSESSING CHILD DEPRIVATION

- A.** Social Services shall bear the responsibility to assess every report of child deprivation in accordance with this Code and other applicable regulations and policies.
- B. INTERVIEWING THE CHILD.** When assessing a report of child deprivation, the interview may take place in a school, medical facility, child care facility or any other facility, with private access to the child facilitated by the administrator or officer of said facility who is presumed to be acting in good faith. When assessing a report of child deprivation, parental consent is not required prior to interviewing the child.
- C. DISCLOSURE OF INFORMATION.** During the process of assessment, there may be a need to gather information that is reasonably necessary to the investigation such as school records, police records, medical records, photographs and records of other agencies. When such information is requested of the administrative officer of the facility, civil immunity shall be afforded to any administrator/officer who is presumed to be acting in good faith.
- D. LEGAL AUTHORITY FOR EXAMINING PHYSICIAN.** Authority hereby is granted under this Code giving any physician examining any child under the Spirit Lake Tribe's jurisdiction, who is a suspected victim of child deprivation, the right to medically examine the child without written or verbal consent of the parent, guardian or custodian.
- E. PROTECTIVE CUSTODY BY PHYSICIAN.** Any physician examining a child that is a suspected victim of child deprivation, after reasonable attempts to advise the parents, guardian, or other person having any responsibility for the care of the child may, if it appears that the child's health, safety, or welfare is in immediate danger:
1. Keep the child in the custody of the hospital or medical facility for a period of time that does not exceed seventy-two (72) hours.
 2. The examining physician shall notify the applicable social services agency as soon as is reasonably possible after the examination.
 3. Upon presentation of credible evidence from the examining physician, the Court may order emergency medical care for a child who is the subject of a child deprivation petition.

CHAPTER 5 - REMOVAL AND CUSTODY PROCEDURES AND PROCEEDINGS

5-101 REMOVAL AND CUSTODY.

- A. ACTIVE EFFORTS TO PREVENT REMOVAL.** Before removing a child, active efforts shall be made to safely prevent the removal. These efforts may include the implementation of a Safety Plan with the parent, guardian or custodian. If the parent, guardian or custodian from who the child is being removed consents in writing, such efforts may include allowing a relative, who is willing to take the child and agrees to file an temporary custody petition pursuant Section 9-3-110 regarding the child, to take the child without the need for a removal.
- B. EMERGENCY REMOVAL BY LAW ENFORCEMENT OR SOCIAL WORKER.** If there is probable cause to believe that the child is deprived and the conditions in which the child is found present a substantial risk of harm to the child's life, physical health or mental well-being, the child may be removed on an emergency basis. Absent emergency circumstances that render Social Services unavailable, only Social Services shall be authorized to remove a child. In the event of an emergency that renders Social Services unavailable, a police officer may remove a child. The individual removing the child shall notify Social Services immediately upon removal and Social Services shall arrange for appropriate medical care, shelter, family placement or foster care if such removal is deemed necessary for the welfare of that child. Said removal shall last no longer than ninety six (96) hours, non-inclusive of weekends and holidays.
- C.** Tribal Social Services shall make available a telephone number that provides at least one caseworker on call and available for consult twenty four (24) hours a day for emergency situations. The person who makes an emergency removal of a child shall submit a written report on the incident to Social Services. A written Petition for Emergency Removal shall be filed with the Court within twenty four (24) hours of the removal non-inclusive of weekends and holidays.
- D. NOTICE OF A CHILD'S REMOVAL.** The person removing the child shall:
1. Make all diligent efforts to notify the parent, guardian or custodian within twelve (12) hours of the removal.
 2. If possible, notify the parent, guardian or custodian of the date and time of the hearing, their right to appear

- at the hearing and the contact information for the Court.
3. Active efforts shall include in-person communication, telephone and written contacts at their residence, place of employment, or other location where the parent, guardian or custodian is known to frequent.
 4. If the parent, guardian or custodian cannot be found or otherwise notified, notice shall be given to a member of the extended family of the parent, guardian, or custodian, as well as the extended family of the child.
 5. **NOTICE TO A CHILD'S TRIBE.** If any Court of the Spirit Lake Tribe asserts jurisdiction over a person who is a member of an Indian tribe or historic band other than the Spirit Lake Tribe, the Court shall notify the tribe or tribal court of the non-tribal member Indian child, so that appropriate notice and jurisdiction can be asserted.

5-102 EMERGENCY REMOVAL PETITION.

- A. If within 24 hours, the imminent risk has been resolved, or the agency will proceed with a services-only case plan that does not require removal by Social Services and court involvement, the agency shall not be required to file a petition for emergency removal.
- B. In the event that it is necessary for Social Services to retain physical and/or legal custody of the child, Social Services shall file a Petition for Emergency Removal and if available, a supporting affidavit, the social services report and police report, within twenty four (24) hours of the actual removal of a child.
- C. The Petition shall set forth the findings of the Social Services initial investigation into the case and the basis for Social Services' request for temporary legal and/or physical custody.

5-103 EMERGENCY REMOVAL HEARING.

- A. Non-inclusive of weekends and holidays, within seventy two (72) hours of receipt of the Petition for Emergency Removal, the Court shall conduct an Emergency Removal Hearing.
 1. If the parent or the person from whom the child has been removed does not appear, the Emergency Removal Hearing may be held ex parte.
 2. At the Hearing, the Court shall review the Petition, supporting documentation and consider any testimony offered by any parties.

- B. At the Emergency Removal Hearing and if the parent or other person from whom the child has been removed does appear, the Court shall perform the following duties:
1. Advise the parent or guardian of the right to have counsel represent them, at their own expense, or if they qualify and one is available, to be represented by a Court appointed attorney.
 2. Advise the parent or guardian of their right to an adjudication on the allegations set out in the petition.
 3. Advise the parent or guardian of their right to admit or deny any or all allegations stated in the petition.
 4. Advise the parent or guardian of their right to present testimony and/or evidence to dispute the contents of the Emergency Removal Petition.
 5. Appoint a Guardian Ad Litem for the child.
- C. If the Court finds probable cause to believe that it is contrary to the welfare of the child to remain in the home, the Court may issue a Temporary Emergency Removal Order which shall include such findings.
1. Said Order shall be for not more than thirty (30) days absent good cause being shown at a Review Hearing that additional time is needed to conduct the investigation.
 2. The Order shall also specify a date and time for a Preliminary Hearing and establish a visitation schedule for the parent, guardian or custodian so long as visitation does not pose a danger or threat to the child.
 3. The Order shall provide that placement and care responsibility of the child is vested in the agency.
 4. At the Court's discretion, the Court may also make a finding that active efforts were made to prevent removal.
 5. The Court shall cause a copy of the Order and notice to be given to necessary parties.

5-104 TERMINATION OF EMERGENCY REMOVAL.

- A.** Unless exceptional circumstances are presented to and accepted by the Court, in no case shall Emergency Removal without a Court Order extend beyond ninety six (96) hours, excluding weekends and holidays.
- B.** The ninety six (96) hours shall be determined by calculating a period of twenty four (24) hours from actual removal for the Juvenile Presenter or social worker to file

the Petition and a Court hearing to occur within seventy two (72) hours of receipt of the Petition.

- C. At the expiration of the ninety six (96) hour period, the Court shall cause the child to be returned to the child's parent, guardian or custodian unless the Court has received the Petition set forth herein and has conducted a hearing on the same.

5-105 PETITION FOR CONTINUED CARE, CONTROL AND/OR REMOVAL.

- A. Social Services shall submit an updated affidavit and all collected evidence to the Juvenile Presenter within 14 days of the Emergency Removal Hearing.
- B. The Juvenile Presenter shall file a Petition for Continued Care, Control and Removal with the Court within twenty one (21) days of the Emergency Removal Hearing.
- C. The Petition shall outline the facts supporting the need for continued care, control and/or removal and the recommended services designed to alleviate safety concerns alleged within the Petition with the goal of family reunification.
- D. The Petition must be served upon the parent, guardian or custodian who shall file an Answer to the Petition not less than five (5) days prior to the Adjudication Hearing.
- E. **NON-EMERGENCY CHILD DEPRIVATION CASES.** All other child deprivation matters that are non-emergent but require action by the Court shall be initiated in accordance with Section 5-106 of this Code.
- F. Nothing in this section shall prevent the agency from returning the child under protective supervision.

5-106 FILING A CHILD DEPRIVATION PETITION.

- A. **WHO MAY FILE A CHILD DEPRIVATION REPORT.** Any person may file a report with the Court, Spirit Lake Social Services, the presenting officer or law enforcement alleging that a child is deprived.
- B. **FORMAL PROCEEDINGS.** The Juvenile Presenter or social worker may initiate formal child deprivation proceedings by filing a Petition in the Court on behalf of the Tribe and the best interests of the child.
- C. **EMERGENCY ACTION NOT PRECLUDED.** Nothing in this Section shall preclude law enforcement or child protective services personnel from taking emergency action pursuant to Section 5-101 of this Code.

D. CONTENTS OF THE PETITION. The Petition shall set forth the following:

1. The name, birth date, sex, address, and all known tribal affiliations of the named child.
2. The basis for the Court's jurisdiction.
3. The specific allegation(s) which cause the child to be a deprived child.
4. A plain and concise statement of the facts upon which the allegations of deprivation are based, including the date, time and location at which the alleged facts occurred.
5. All known names, addresses, and tribal affiliation of the child's parents, custodians or guardians.
6. If the child is placed outside of the home, the agency with whom the child is placed, the facts necessitating the placement and the date and time of the placement.
7. Efforts made to prevent the removal and/or reunify the child with the child's parent, guardian or custodian.

5-107 PRELIMINARY HEARING.

A. A Preliminary Hearing shall be held within thirty (30) days of the issuance of the Emergency Removal Order or the filing of a Deprivation Petition.

B. At the Preliminary Hearing, the Court shall perform the following procedures:

1. Advise the parent or guardian of the right to have counsel represent them, at their own expense, or if they qualify and one is available, to be represented by a Court appointed attorney.
2. Advise the parent or guardian of their right to an adjudication on the allegations set out in the petition.
3. If they did not do so at the Emergency Hearing, advise the parent or guardian of their right to admit or deny any or all allegations stated in the petition.
4. Advise the parent or guardian of their right to present testimony and/or evidence to dispute the contents of the Child Deprivation Petition.
5. Appoint a Guardian Ad Litem for the child
6. Ask the parties to admit or deny the allegations in the petition.

C. If the party(s) deny the allegations, an Adjudication Hearing shall be scheduled not longer than sixty (60) days

from the date of the Emergency Removal Hearing or thirty (30) days from the Preliminary Hearing in a non-emergency case.

- D.** If the child has been previously removed under emergency circumstances or the child has not been previously removed and immediate removal is sought, the court shall decide:
1. Whether probable cause exists to believe that the child is deprived; and
 2. Whether probable cause exists to believe the home conditions present a substantial risk of harm to the child's life, physical health, emotional, spiritual or mental well-being; and
 3. Whether probable cause exists to believe that there is not any alternative, except the removal or the continued removal of the child from the home, available to adequately protect the child from such risk; and
 4. If a previous finding regarding reasonable efforts to prevent removal has not been made pursuant to Section 5-103(C)(4), the Court shall also decide whether active efforts were made to prevent removal.
- E.** If the Court does not find probable cause pursuant to 5-107(D)(1)(2), (3) and/or (4), the Court shall dismiss the Petition.
- F.** If the Court finds probable cause pursuant to 5-107(D)(1)(2), (3) and/or (4), the Court shall issue an Order granting or continuing care, control, removal and placement authority to Social Services agency pending the Adjudication Hearing; and, if applicable, include in the Order a finding regarding active efforts to prevent removal pursuant to 5-107(D)(4).
- G. COURT ORDERED EVALUATIONS AND ASSESSMENTS.** At any time after conducting a Preliminary Hearing, at which probable cause is found, the Court may order the child, parent, guardian, custodian or any family member or extended family member to undergo the following assessments by a qualified professional:
1. A criminal background check;
 2. A psychological evaluation; or
 3. A substance abuse evaluation or assessment.
- H.** If the party admits the allegations, the Court shall immediately proceed to the dispositional phase of the matter unless the party requests a continuance for good

cause and/or to seek the assistance of an attorney or advocate.

- I. If the party refuses to admit or deny the Court shall enter a denial on behalf of the party and schedule an Adjudicatory Hearing in accordance with 5-108.
- J. If the party fails to appear after proper service pursuant to Chapter Eight (8), the Court shall immediately proceed to the dispositional phase of the matter.

5-108 ADJUDICATION HEARING.

- A. Unless continued pursuant to 5-108(B), an Adjudication Hearing shall be scheduled not longer than sixty (60) days from the date of the Emergency Removal Hearing or thirty (30) days from the Preliminary Hearing in a non-emergency case.
- B. **CONTINUANCES.** A continuance of an Adjudication Hearing may be granted by the Court, but only:
 - 1. Upon stipulation of the parties;
 - 2. Where process cannot be completed;
 - 3. Where the Court finds that the testimony of an unavailable witness is needed;
 - 4. Where a parent, guardian or custodian requests an opportunity to obtain legal counsel, with a time limitation at the discretion of the Court; or
 - 5. For other good cause shown.
- C. Upon filing of a Motion for other good cause pursuant to 5-108(B)(5), the Juvenile Presenter may request additional time for Social Services to complete the investigation. Upon receipt of such Motion the Court shall schedule a hearing on the Motion. As part of said Hearing, the Court shall:
 - 1. Determine whether additional time is warranted to complete the investigation.
 - 2. Review the need for continued out of home placement of the child during the extended period of time; and, if so granted, set a new date and time for the Adjudication Hearing if necessary.
- D. **CLOSED PROCEEDINGS.** All proceedings shall be exclusive to the parties, their counsel, witnesses and other persons determined necessary or useful to the proceedings by the Court.

E. PURPOSE. The purpose of an Adjudication Hearing is to determine:

1. Whether the allegations in the Petition are proven by a preponderance of the evidence.
2. Whether continued Court jurisdiction is necessary.

F. CROSS EXAMINATION OF WRITTEN REPORTS. Upon reasonable notice that the party intends to exercise their right to examination and cross examination of such reports, any party shall be afforded an opportunity to examine written reports received by the Court and shall be allowed to cross-examine all witnesses who were involved in the production of such reports.

G. REMOTE APPEARANCE. The Court may rely upon conference telephone calls or other electronic devices that permit all those appearing or participating to hear and speak to each other.

H. If the allegations are not proven by a preponderance of the evidence, the child shall be returned to their parent, guardian or custodian and the case shall be closed.

I. If the allegations are proven by a preponderance of the evidence, the Court shall immediately proceed to disposition.

5-109 DISPOSITION HEARING.

A. DISPOSITION FOLLOWING ADJUDICATION. A Disposition Hearing shall be held immediately following the Adjudication Hearing unless continued for good cause. If the Disposition Hearing is not held immediately, it must be held within thirty (30) days of the Adjudication Hearing, unless continued for good cause.

B. PROPOSED CASE PLAN. The case manager shall prepare a written report that includes the following:

1. A proposed case plan for the care of and assistance to the child, parent, guardian or custodian;
2. Solutions designed to resolve the problem;
3. Detailed explanation of the necessity of the proposed disposition plan and its benefits to the child;
4. If the report recommends placement of a child somewhere other than with the child's parent, guardian, or custodian, specific reasons underlying the placement recommendation: and

5. Anticipated completion dates, which shall be presented to the parents/parent's attorney, the GAL and the Juvenile Presenter at least three (3) days prior to the Disposition Hearing.

C. ORDER OF DISPOSITION. The Court shall enter an Order of Disposition after considering the proposed case plan and other evidence offered bearing on Disposition. The Court shall approve a case plan order in full or in part. The Order of Disposition shall outline the expectations of Social Services and the parent, guardian or custodian regarding visitation with the child. The Order of Disposition shall also:

1. Permit the child to remain with his or her parent, guardian or custodian subject to such conditions as the Court may order; or
2. Place the child with a relative, subject to the conditions as the Court may order; or
3. Place the child in a foster home, group home or residential care facility designated by the Court; or
4. Authorize Social Services to place the child out of state if necessary and in the best interest of the child.

5-110 CHILD SUPPORT.

A. Parents, unpaid relative placements, guardians or custodians may apply for child support payments, pursuant to Title Nine (9) Chapter Four (4) of the Spirit Lake Tribal Law and Order Code, for support of the child while they are providing care.

B. JUDGMENTS OF SUPPORT. The person or persons required by law to support the child may be ordered by the Court to pay to the custodial guardian or institution a reasonable sum in accordance with the Child Support Guidelines set forth in the Spirit Lake Law and Order Code for the support, maintenance or education of such child. Such Orders shall have the force and effect of judgments for money and shall be enforceable as such under the Spirit Lake Law and Order Code.

C. WAGE WITHHOLDING. If the person or persons so ordered to pay for the support, maintenance or education of a child are employed for wages, the Court may order that the sum to be withheld from their wages and paid directly to the custodial guardian or institution.

5-111 REVIEW HEARINGS.

- A.** The Court may schedule a Review Hearing at any time at its own discretion or at the request of any party.
- B. SIX (6) MONTH REVIEW HEARING.** A Review Hearing shall be held by the Court at a minimum of six (6) months from the date of removal.
- C. TWELVE (12) MONTH REVIEW HEARING.** Another Review Hearing shall be held by the Court at a minimum of twelve (12) months from the date of removal and at a minimum of every twelve (12) months thereafter.
- D.** At each Review Hearing the Court shall review the following:
1. Whether the parties are complying with the case plan generally. Specifically, the Court shall address whether there has been compliance with the case plan with respect to visitation with the child. If visitation did not occur or was infrequent, the Court shall determine why visitation did not occur or was infrequent. The Court may question the parent or legal guardian as to any discrepancy to the non-occurring or infrequent visitation.
 2. Whether to modify the case plan. The Court may modify the case plan, including, but not limited to, the following:
 - a. Additional Services. Prescribing any additional services that are necessary to rectify the conditions that caused the child to become or to remain a child in need of protection or services.
 - b. Removing unnecessary or extraneous services or obligations of the parent.
 3. After review of the case plan, the Court shall determine whether the conditions that caused the child to be deprived have been addressed. If the conditions that caused the child to be deprived have been addressed, the case shall be dismissed, and the child shall be returned home. When making this determination, the Court's considerations shall include but, not be limited to, the following:
 - a. The continuing necessity and appropriateness of the child's continued removal.
 - b. Whether there is likely to be any harm to the child if the child continues to be separated from the parent or legal guardian.

4. If the case is not dismissed pursuant to Section 5-111(E) (3), whether to modify existing placement based upon the best interests of the child. In making this determination, the Court shall determine whether the child can be safely returned to the parent's care. If there are services or resources that could be put in to place to safely accommodate a return of the child(ren) to the parents, those must be articulated in a safety plan and implemented. Active efforts must be made to return the child to the parent, guardian or custodian. In making this determination, the Court shall consider, but not be limited to, both of the following:
 - a. The parent, guardian or custodian's efforts to make the necessary changes to provide a safe and suitable environment for the child.
 - b. Whether there are additional services that can be integrated into the home environment to safely return the child to the parent.
5. Whether reasonable efforts have been made to finalize a permanency plan.

5-112 PLACEMENT OF CHILDREN.

- A. RESTRICTIONS.** Unless also found to be a delinquent child, a child alleged to be or found to be a deprived child shall not be placed in a jail or other facility intended or used for incarceration of adults charged with criminal offenses or for the detention of children alleged to be juvenile offenders.
- B. PLACEMENT PREFERENCES.** A child may be placed in the following environments listed in order of preference to be followed:
 1. A member of the Indian child's extended family.
 2. An Indian foster home licensed, approved or specified by the Indian child's tribe.
 3. An Indian foster home licensed, approved or specified by the Spirit Lake Tribe.
 4. An Indian foster home licensed or approved by an authorized non-Indian licensing authority.
 5. A non-Indian foster home licensed or approved by the Indian child's tribe or the Spirit Lake Tribe.
 6. A non-Indian foster home licensed or approved by an authorized non-Indian licensing authority.

7. An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

C. REMOVAL OF THE ALLEGED PERPETRATOR. If the alleged perpetrator is known and he or she resides in the home of the victim, such perpetrator may be ordered removed from the home.

D. LEAST RESTRICTIVE SETTING. If the child cannot be returned to his or her parent, guardian or custodian, the child shall:

1. Be placed in the least restrictive setting which most approximates a family and in which his or her special needs, if any, may be met.
2. Whenever possible, reasonable efforts shall be made to ensure the child is placed in reasonable proximity to their home.

E. CHANGES TO PLACEMENT. Before the child is removed from their current placement environment, including trial home placements and changes in placement, notice of the intent to change placement shall be submitted by Social Services to the Juvenile Presenter and the Court no later than 5 days prior to the change in placement, unless the removal is due to an emergency situation, in which case notice may be provided to the Court after the fact. If any party objects to the change in placement, a hearing shall be held as soon as reasonably practical.

5-113 PERMANENCY PLANNING

A. If a child remains adjudicated as a deprived child and parental rights have not yet been terminated, the Court shall evaluate permanency planning for the child at each Review Hearing.

B. The scope of review when conducting permanency planning is to review the status of the child and the progress made toward the child's return to his or her parent, guardian or custodian or to some other permanent home.

C. PARENT RIGHTS NOT TERMINATED. The Court shall order the child returned to his or her parent or legal guardian if:

1. The parental rights of the child have not been terminated; and
2. The Court determines that the return of the child would not cause a substantial risk of the harm to the child's health, safety or welfare.

D. The Court shall review and consider the failure of the parent to substantially comply with the terms and conditions of the Court ordered case plan and Order of Disposition as evidence that the return of the child to his or her parent, guardian or custodian would cause substantial risk to the child's health, safety, or welfare.

E. **ALTERNATIVE PERMANENT PLACEMENT PLANS.** If the Court determines at a Review Hearing that the child should not be permanently returned to the parent, guardian or custodian, the Court may Order one of the following alternative permanent placement plans:

1. That guardianship be granted to a relative on a permanent basis.
2. That the child remain in long-term foster or residential care.
3. That a Petition to Terminate Parental Rights under this Code be filed by the Juvenile Presenter so that the child may be adopted.

5-114 TERMINATION OF PARENTAL RIGHTS

A. The Juvenile Presenter may file a Petition to Terminate Parental Rights if reunification efforts as outlined by the permanency plan have not been successful. Any such Petition shall explain what active efforts were made to reunify the child and parents, if active efforts were not made, the Petition shall also explain why such efforts were not made and the petition will also explain why termination is in the best interests of the child.

B. All terminations of parental rights shall be processed and adjudicated by Tribal Court in accordance with Title 9, Chapter 5 of the Spirit Lake Law and Order Code.

5-115 SUSPENSION OF PARENTAL RIGHTS.

A. A suspension of parental rights may be ordered when:

1. Social Services has made active efforts to reunify a child with the previous parent, guardian or custodian for a period of at least two years; and
2. The issues that caused the deprivation have not been remedied; and
3. The likelihood that the child will be adopted is low. The likelihood that a child will be adopted is presumed low when:

- a. the child is 16 years of age or older AND b or c below apply.
- b. the child is not currently placed in a home that is interested in seeking adoption of the child
- c. The child is not interested in being adopted.

B. IMPACT OF SUSPENSION OF PARENTAL RIGHTS. An Order for Suspension of Parental Rights has the following consequences:

1. The parent's rights and obligations to a child are suspended until either, the child turns 18 or the parent successfully petitions the Court and an Order reinstating their parental rights is entered.
2. Social Services is no longer required to make reasonable or active efforts towards reunifying the parent with the minor child.
3. An Order for Suspension of Parental Rights will not result in the name of the parent being removed from the child's birth certificate.
4. Adoptions shall not be granted if the parental rights of the parents have only been suspended, as opposed to terminated.

C. RIGHTS OF PARTIES IN SUSPENSION OF PARENTAL RIGHTS PROCEEDINGS. In addition to any other rights afforded under the Indian Civil Rights Act, 25 U.S.C. Sections 1301-03 (1968), as amended or enumerated within governing Tribal law. The following rights shall be afforded to the parties:

1. Petitioner and Respondent have the right to have reasonable notice and to attend any hearing arising out of the filing of a Petition.
2. The parents have the right to be represented by counsel at their own expense or, if qualified, may use the services provided by the Tribe.
3. Petitioner and Respondent have the right to summon and examine witnesses.
4. Petitioner and Respondent have the right to seek independent medical, psychological or psychiatric evaluations of the child at their own expense.

D. PETITION TO SUSPEND PARENTAL RIGHTS.

1. The Juvenile Presenter or Social Services may file a Petition for Suspension Parental Rights.

2. The Petition shall contain the following information:
 - a. The name of the child's Tribe.
 - b. The name, last known address, last known telephone number and age of the child's parent whose parental rights are to be suspended.
 - c. A statement as to why an order for the suspension of parental rights of the parent is in the best interests of the child and the child's Tribe.
3. Petitioner shall sign the Petition and shall affirm under oath that the contents are true and correct to the best of their knowledge and belief.

E. NOTICE OF HEARING ON PETITION TO SUSPEND PARENTAL RIGHTS.

1. Upon the filing of a Petition, the Court shall schedule a hearing to be held thereon and shall cause written notice of such hearing to be served upon Petitioner, the Juvenile Presenter and the parent.
2. Notice shall be served on the parent by personal service.
3. If the parent cannot be located after diligent efforts to locate the parent have been made, service may be made by publication.

F. ATTENDANCE AT A SUSPENSION OF PARENTAL RIGHTS HEARING.

1. The parent, Petitioner and Social Services shall be present at the hearing in person unless the Court has granted leave to appear by way of other means.
2. The parent's failure to appear after proper service shall not prevent the issuance of an Order for Suspension of Parental Rights.
3. Petitioner shall be present at the hearing.
4. Petitioner's failure to appear shall be grounds for dismissal of the Petition.

G. CONDUCT OF THE SUSPENSION HEARING.

1. The Court shall inform the parent of their rights under this Code and of the nature and consequences of the proceedings.
2. The Court shall inform all parties of their right to summon and cross-examine witnesses.
3. The burden of proving the allegations of the Petition shall be upon Petitioner and the standard of proof shall be clear and convincing evidence.

4. There shall be a legal presumption of the parent's ability to parent until proven otherwise.
5. Upon a showing of good cause at the request of any party to the proceeding, the Court may continue the Hearing and enter such temporary orders as may be deemed just and reasonable to carry out the purposes of this Code.

H. RECORD OF PROCEEDINGS. In all proceedings the Court shall take and preserve an accurate stenographic or recording of the proceedings.

I. FINDINGS. In all cases, the court shall make specific written Findings of Fact, state separately its Conclusions of Law, and enter an appropriate Judgment or Order. The Court may make Findings that it is in the child's best interests that an Order Suspending Parental Rights be issued, and the Court shall specify the basis of those Findings.

J. FINAL ORDER OF SUSPENSION OF PARENTAL RIGHTS.

1. If the Court determines that it is in the best interests of the child, it shall issue an Order for Suspension Parental Rights. Such an Order shall include, but is not limited, to the following:
 - a. A permanent suspension of the right of the parent to have contact with the minor child including contact in person, by mail, by telephone or through third parties or the Order may allow for a contact agreement agreed upon by the parties to be Ordered by the court.
 - b. Unless the Order allows for a contact agreement under Section a, an Order Restraining the parent from contacting the child, the child's foster parent, Social Services or other agencies possessing information regarding the child.
 - c. Ordering that the parent's obligation to pay child support, except for arrearages, is suspended.
 - d. Ordering that any prior Order for custody, visitation or contact with the minor child be terminated.
 - e. A statement regarding why it is in the best interests of the child to enter the Order.
2. The parent shall have no standing to appear at any future legal proceedings involving the child nor any right to review proceedings or records that occur after the suspension, unless the parental rights are later reinstated.

3. Suspension of Parental Rights does not sever or affect in any way a child's relationship to his/her Tribe or any rights of inheritance from the parent.
4. Copies of the Order shall be mailed to the parent and the agency having legal custody of the child and any other parties as directed by the Court at their last known address via first class mail.
5. At the discretion of the Court, the Order may be reviewed at the request of the parent or the agency possessing custody of the child.

5-116 REHEARINGS

A. TIME AND GROUNDS. A party may seek a rehearing by filing a written Motion setting the basis for such relief sought within thirty (30) days after the entry of a final Order by this Court.

1. The Court may entertain an untimely Motion for good cause shown; and

2. A Motion may not be considered unless it presents a matter not previously considered by the Court, which if true, would cause the Court to reconsider the matter.

B. NOTICE. All parties must be given notice of the Motion for rehearing in accordance with Chapter Eight (8) of this Code.

C. RESPONSE BY PARTIES. Any response by parties must be in writing, filed with the Court, and served upon the opposing parties within five (5) days after receipt of notice of the Motion.

D. PROCEDURE. The judge may affirm, modify or vacate the decision previously made, in whole or in part, based on the record, the memoranda prepared or a Hearing on the Motion, whichever the Court in its discretion deems appropriate.

E. HEARINGS. The Court need not hold a Hearing before ruling on a Motion for rehearing. Any Hearing conducted shall be in accordance with the rules of the Hearing which is sought to be reheard. The Court shall state the reasoning for its decision on the Motion on the record or in writing.

F. STAYS. The Court may stay any Order pending a ruling on the Motion.

CHAPTER 6 - CHILD DELINQUENCY

6-101 AUTHORITY OF THE COURT. In addition to other authorities outlined in this Code and the Spirit Lake Law and

Order Code generally, the Court shall also have the following additional authorities in cases involving a Delinquent or Unruly Child:

- A.** The Court shall make Orders for the commitment, custody and care of the minor or take such other actions as it may deem advisable or appropriate for a proper determination and disposition of the case, including custody or placement of the child.
- B. SOCIAL SERVICES.** The Court has discretion in directing the participation of Social Services or other tribal agencies to assist the Court in investigating a child's case or in fashioning a remedy in the child's best interests. The Court shall utilize such social services as may be furnished by any tribal, federal or state agency as applicable.
- C. CUSTODY OF A CHILD PENDING HEARING.** Pending final disposition of the case, the child shall be subject to Order of the Court and may be permitted to remain in control of the parent, guardian or custodian, or under the supervision of the probation officer or he may be detained in a place designated by the Tribe.
- D. MEDICAL EXAMINATIONS AND CARE.** The Court may order medical examinations and prescribe such care as may be required for the child.

6-102 FILING A CHILD DELINQUENCY REPORT. Any person may file a report with the Court, the Juvenile Presenter, Intake Officer, Prosecutor or law enforcement alleging that a child is delinquent or unruly.

6-103 FILING A CHILD DELINQUENCY PETITION.

- A.** All proceedings under this chapter must be initiated by the filing of a Child Delinquency Petition.
- B. FORMAL PROCEEDINGS.** The Juvenile Presenter, Intake Officer, Prosecutor or any duly authorized law enforcement officer of the Spirit Lake Tribe may initiate formal child delinquency proceeding by filing a Petition in the Court on behalf of the Tribe.
- C. CONTENTS OF THE PETITION.** The Petition shall set forth the following:
 - 1. The name, birth date, sex, address, and all known tribal affiliations of the named child.
 - 2. The basis for the Court's jurisdiction.
 - 3. The specific allegation(s) which cause the child to be a

Delinquent or Unruly Child.

4. A plain and concise statement of the facts that support the allegation that the child is delinquent or unruly, including the date and location at which the alleged facts occurred.
5. All known names, addresses and tribal affiliations of the child's parent, guardian or custodian.

6-104 ARREST/TAKING A CHILD INTO CUSTODY.

A. A child may be taken into custody pursuant to an Order of the Court for any of the following reasons:

1. The child is delinquent.
2. The child is unruly.
3. The Court has reasonable grounds to believe that the child is suffering from illness or injury or is in immediate danger from his surroundings and detention is necessary for the well-being of the child.

4. The child is avoiding process or has failed to appear before the Court despite having been given notice according to this Code.

5. The child is a danger to the community.

6. The child has run away from his parent, guardian or custodian.

B. A child may be taken into custody by any law enforcement officer upon the officer's probable cause that the child has committed a criminal, delinquent or unruly act.

C. The person taking the child into custody shall immediately notify the child's parent, guardian or custodian and the Court of the status of the child's physical custody.

6-105 BASIC RIGHTS AFTER ARREST.

A. If a child is taken into custody for a delinquent or unruly act he or she shall be afforded all the due process procedures as would be an adult.

B. Miranda warnings shall be given anytime the minor is in custody and is being questioned about a delinquent act.

C. The child or the child's parent, guardian or custodian may obtain an attorney at any time at their own expense.

D. The parent, guardian or custodian shall be notified and, if they so choose, be present before the child is questioned about a delinquent or unruly act.

- E. An officer of the law who arrests a child for violation of law shall immediately notify the Court of the arrest and shall place the child in such custody as the Court directs, pending a Hearing by the Court.

6-106 SEARCH WARRANTS

- A. A Search Warrant may be issued by the Court to search any place for the recovery of any child within the jurisdiction of the Court regarding a child believed to be a delinquent, unruly or deprived child. Such a Warrant or Order shall contain the following information:
 1. Name or describe with particularity the child sought.
 2. State that the child is believed to be a delinquent, unruly or deprived child and the reasons upon which such belief is based.
 3. State the address or legal description of the place to be searched.
- B. All search warrants issued and executed pursuant to this Code must also comply with the provisions set out in Title Three (3) of the Spirit Lake Law and Order Code pertaining to the application, issuance and execution of search warrants.
- C. If the child is found, the child shall be taken into custody and transported to and placed in a detention or shelter facility or as directed by the Court.
- D. The warrant or order shall be returned to the issuing Court and the officer shall subscribe on the warrant the officer's name, the date and time of service and the place the child was delivered.
- E. A copy of the warrant shall be forwarded to the Juvenile Presenter, Prosecutor or Intake Officer.
- F. If the child was not found, such information shall be subscribed on the warrant and the warrant returned to the Court.

6-107 ARREST; 72 HOUR HEARING.

- A. If the child is being held in detention after being arrested, the Court must hold a hearing within 72 hours of the arrest, to decide if further detention is warranted.
- B. Weekends and holidays are not counted in the time calculation.
- C. If further detention is warranted, the Court may impose commitments pursuant to this Code.

D. If further detention is not warranted the child must be released immediately.

6-108 DIVERSION AGREEMENTS.

- A.** Prior to the Initial Appearance, the Juvenile Presenter, Prosecutor or Juvenile Intake Officer may divert any juvenile's case, except a case alleging drug trafficking, human trafficking, or physical violence, including but not limited to dating violence or sexual abuse, from the Court process.
- B.** Diversion shall be made by entering into a contract with the child, the parents, guardian or custodian whereby all agree to undergo a specified diversionary program, plan of conduct or treatment. Diversion may include an agreement to do or refrain from doing certain acts.
- C.** The Juvenile Presenter, Prosecutor or Juvenile Intake Officer shall agree not to proceed with the petition in the case so long as the child, parents, guardian or custodian comply with the contract.
- D.** Should the child fail to successfully complete the diversionary program, plan of conduct or treatment, the Juvenile Presenter, Prosecutor or Juvenile Intake Officer may proceed with the petition in Court.
- E.** Each contract shall contain the following:
1. The specified facts or allegations, including dates that gave rise to the filing of the petition.
 2. Any diversionary programs the child, parent, guardian or custodian agree to complete successfully and the duration.
 3. Any treatment programs the child, parent, guardian or custodian agree to complete successfully and the duration.
 4. The specific tasks which the child, the parent, guardian or custodian agree to do or refrain from doing.
 5. A fixed, limited time for the contract not to exceed one year.
 6. A waiver of any statute of limitations or adjudication deadlines specified by Law and Order Code.
 7. That the Juvenile Presenter, Prosecutor or Juvenile Intake Officer shall not pursue the petition that is the subject of the contract if the child, parent, guardian or

custodian comply with each of the contract terms for the full terms of the contract.

8. That each party has received a copy of the contract.

F. No diversion contract may place physical custody of the child in any person or agency other than the parent, guardian or custodian unless the contract bears the written approval of the Judge.

6-109 RECORD OF SUCCESSFUL DIVERSION.

A. If the parties participating in a diversion contract successfully complete the terms of the contract, the Juvenile Presenter, Prosecutor or Juvenile Intake Officer shall dismiss the petition that was the subject of the diversion contract and no such record shall be entered on the child's record.

B. The child, parent, guardian or custodian may choose to prove the contract and show their compliance with the terms as a defense to a petition filed concerning the matter of the contract.

C. Upon a showing of compliance, the Court shall dismiss the petition.

D. However, if the Court finds by a preponderance of the evidence that the contract has been violated, the Court may then proceed with an Adjudication Hearing on the original petition.

6-110 DIVERSION CONTRACTS ADMISSIBLE.

The diversion contract and any statements or admissions of the parties made in negotiating or fulfilling the terms of the contract are admissible as evidence.

6-111 INFORMAL ADJUSTMENTS.

A. The Court may allow the Juvenile Presenter, Prosecutor or Juvenile Intake Officer to hold an informal conference with the child, parent, guardian or custodian to discuss alternatives to proceeding formally with further hearings if the admitted facts bring the case within the jurisdiction of the Court and an informal adjustment of the minor would be in the best interest of the child and the Tribe.

B. The child, parent, guardian or custodian must consent to an informal adjustment with knowledge that the consent is voluntary.

6-112 WRITTEN AGREEMENT TO INFORMAL ADJUSTMENT.

- A. The Juvenile Presenter, Prosecutor or Juvenile Intake Officer shall set forth in writing the agreements and conclusions reached at the informal hearing and the disposition agreed to by the parties for remedying the situation.
- B. Agreements shall be signed by the Judge and have the same force and effect as an Order of the Court.
- C. An informal adjustment period shall not exceed one (1) year.

6-113 RECORD OF INFORMAL ADJUSTMENT.

An informal adjustment shall be entered as an admission to the allegations into the record of the child.

6-114 VIOLATION OF INFORMAL ADJUSTMENT CONTRACT.

- A. The informal adjustment contract and any statements or admissions of the parties made in negotiating or fulfilling the terms of the contract are admissible as evidence.
- B. The child, child's parents, guardian or custodian may choose to prove the contract and show their compliance with the terms thereof as a defense to a subsequent action involving the contract.
- C. If an alleged violation of the contract has taken place, the Tribal Juvenile Prosecutor may proceed with prosecuting the original charge(s), filing a contempt action or any other action allowed pursuant to the Spirit Lake Law and Order Code

6-115 CONDUCT OF HEARINGS.

- A. **PRIVATE AND CLOSED.** All hearings shall be separate from other proceedings and shall be private and closed to the public. Only the parties, their attorneys' witnesses, and other persons requested by the parties and approved by the Court may be present at the hearing.
- B. **DENIAL OF ALLEGATIONS.** If the allegations are denied, the Court shall schedule an Adjudication Hearing and shall decide whether or not the allegations were committed.
- C. **ADMISSION OF ALLEGATIONS.** If the allegations are admitted, the Court must find that an admission is voluntary and knowingly given.
- D. **STANDARD OF PROOF.** The standard of proof for an Adjudication Hearing shall be proof beyond a reasonable doubt.

- E. **ADJUDICATION HEARING.** Unless the Defendant has requested a continuance or good cause is established for extending the time period, an Adjudication Hearing shall take place within 120 days of the Initial Appearance,
- F. **MAINTAINING ORDER DURING HEARINGS.** Upon request of the Court, a law enforcement officer or an officer of the Court shall aid the Court in maintaining order during any Hearing.

6-116 NOTICE OF LEGAL RIGHTS; INITIAL APPEARANCE.

At the Initial Appearance before the Court for an alleged delinquent or unruly act, the child and the parent, guardian or custodian shall be fully advised by the Court of their legal rights, including:

- A. The difference between admitting or denying a charge.
- B. The right to an Adjudication Hearing to determine whether or not the minor is guilty of the offense charged.
- C. The right to be represented by an attorney of their own choosing and at their own expense at every phase of the proceedings.
- D. The right against self-incrimination.
- E. The right to subpoena witnesses.
- F. The right to cross-examine those witnesses called by the Tribe.

6-117 WAIVER INTO ADULT COURT.

- A. The Court may, in its discretion, allow prosecution of any delinquent child, fifteen (15) years or older, as an adult if it is alleged that the child has allegedly committed an act, which would have been a crime if committed by an adult.
- B. The Court shall have a hearing to consider the following factors and any relevant testimony to determine whether a Waiver is appropriate.
- C. In determining whether the Waiver should take place, the Court shall consider the following factors as well as any other factors the Court deems appropriate:
 - 1. The juvenile history of the child.
 - 2. The attempts taken through the Juvenile system to rehabilitate the child.
 - 3. The home environment of the child

4. The age of the child and the potential for rehabilitation.

5. The serious nature of the alleged act committed.

- D. In such cases where the Court determines that justice would best be served by a Waiver, the Petition filed under this Code shall be dismissed, and a criminal complaint shall be filed by the Adult Criminal Prosecutor.

6-118 ADJUDICATION HEARING

A. In any matter in which the child has denied or pled not guilty to the allegation(s) outlined in the Delinquency Petition, they shall be entitled to an Adjudication Hearing.

B. The Adjudication Hearing shall be by bench trial and shall be held in accordance with procedures outlined in this Code and Title Three (3), Chapter Two (2) of the Spirit Lake Law and Order Code.

6-119 DISPOSITION.

A. The Court will proceed to the Disposition Hearing if the allegations are established by a valid admission or by the required standard proof at an Adjudication Hearing. The Disposition Hearing shall take place within 60 days of the Adjudication Hearing or the admission unless good cause is demonstrated for the delay or the child or the parent, guardian or custodian requests a continuance.

B. After the Disposition Hearing, the Court shall enter a written Disposition Order setting forth the findings, decision and disposition.

C. No adjudication of any child within the jurisdiction of the Court shall operate to impose any of the civil disabilities ordinarily resulting from a criminal conviction, nor shall any child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction.

D. The disposition of a child or any evidence given in the Court shall not be admissible as evidence against the child in any case or proceeding in any other court, nor shall such disposition or evidence operate to disqualify a child in any future civil service examination, appointment or application.

E. No Disposition Order or decree Court shall operate after the child becomes 18 years of age unless the Court deems that it is the best interests of the child or the Tribe to

continue its jurisdiction. This jurisdiction shall in no event extend beyond the child's 21st birthday.

F. The Court shall have broad discretionary power with respect to commitments and Orders involving a Delinquent or Unruly Child. The Court's authority shall include, but is not limited to, the authority to:

1. Place the child in care, control and/or custody of Social Services.
2. Place the child under supervision in his own home, or in the custody of a relative or other proper person upon such terms as the court shall determine.
3. Commit or detain the child to a private home, institution, agency, school or institution.
4. Order the child into programs or to complete services.
5. Order the child to perform specific acts as specified by the Court.
6. Order the child into working in community betterment projects.
7. Place the child in detention.
8. Require the parent, guardian or custodian of the child to be involved in the treatment process of a child, if it can be clearly shown that the parents of the child are contributing factors in the child's delinquent behavior.
9. Order such care and treatment as the Court deems is in the best interests of the child.
10. Permit removal of the child from the reservation by the person or institution in whose custody the juvenile is given, on condition that such custodian produce the child when required by the Court.

6-120 SPECIAL RULES OF PROCEDURE FOR TRAFFIC VIOLATIONS.

In its discretion, the Court may adopt special rules of procedure to govern proceedings involving violations by children of traffic laws or ordinances.

6-121 PROBATION VIOLATIONS. No modification of a Disposition Order placing a child on probation shall be made upon an alleged violation of the terms of probation, until the following has occurred:

- A.** A Probation Revocation Petition has been filed by the Juvenile Presenter, Intake Officer or Prosecutor that clearly outlines the allegations that support the alleged probation violation(s).

- B. A copy of the Probation Revocation Petition has been properly served on the child and parent, guardian or custodian.
- C. A Probation Revocation Hearing is held after due Notice to all persons concerned.

6-122 REMOVAL OF JUVENILE UPON A PROBATION VIOLATION ALLEGATION OR PETITION.

Upon the Court's own finding of probable cause or upon the filing of a Probation Revocation Petition that sets out probable cause to support a finding of probable cause that the child has violated the terms of their probation, the Court may issue an Order directing that the child be taken into custody and removed from his parent, guardian or custodian.

6-123 PROBATION REVOCATION HEARING PROCEDURES. At the Revocation Hearing:

- A. The child and the parent, guardian or custodian will again be informed of their rights as outlined in this Code.
- B. The Petition shall be read in Court.
- C. The child shall be asked to admit or deny the allegations.
- D. If the child admits the allegations, the Court may proceed to modify the Disposition Order as it sees fit.
- E. If the child denies the allegations, the allegations must be proven or found to have occurred by a preponderance of the evidence.
- F. If the allegations are proven or found to have occurred by a preponderance of the evidence, the Court may proceed to modify the Disposition Order as it sees fit.
- G. If the allegations are not proven or found to have occurred by a preponderance of the evidence, the Petition shall be dismissed and probation shall be reinstated as it was prior to the filing of the Petition.

6-124 MODIFICATIONS, REVOCATION OR EXTENSION OF ORDERS.

- A. At any time, the Court may modify, revoke or extend an Order upon Motion by any of the following:
 1. The child.
 2. The parent, guardian or custodian.
 3. The agency having placement authority.
 4. Upon the Court's own motion.

B. AUTOMATIC TERMINATION. When a child reaches eighteen (18) years of age, all Orders affecting the minor shall automatically terminate unless said Orders are otherwise extended by lawful order of the Court.

C. In no event shall the Orders affecting the child extend beyond the age of twenty-one (21) years.

6-125 PLACE OF DETENTION OR SHELTER CARE.

A. Pending any Initial, Adjudication or Probation Revocation Hearing or after any Disposition Hearing, a child found or alleged to be a Delinquent or Unruly Child may be detained, in any of the following places:

1. A foster care facility on the reservation licensed or approved by the Tribe.
2. A private family home on the reservation approved by the Tribe.
3. A shelter care facility approved by the Tribe.
4. A group home or institution for juveniles approved by the Tribe.
5. A detention facility for juveniles approved by the Tribe or the BIA.

B. EXCEPTIONS. A child found or alleged to be a Delinquent or Unruly Child who is 16 years of age or older may be detained in a jail or facility used for the detention of adults only if all of the following apply:

1. A facility as described in 1, 2, 3, 4 or 5 of the Section 6-125(A) is not available or would not assure adequate supervision of the child.
2. Detention is in a cell separate from adults.
3. Adequate supervision is provided twenty-four hours per day.

6-126 STANDARDS FOR SHELTER CARE AND DETENTION FACILITIES.

A. The standards for shelter care and detention facilities for children shall be according to the current federal standards governing the Bureau of Indian Affairs for detaining children. However, the Tribe may adopt its own regulations.

B. Prior to the detention of any Delinquent or Unruly Child, a representative of the Court, including the Judge, Juvenile Presenter, Prosecutor or other designee of the Court shall conduct an initial inspection of any jail or detention center which will be used for the confinement of any child.

- C. The Judge shall note in the record of the Court whether the jail or detention center is a suitable place of confinement of children.
- D. After an initial inspection is conducted, the Court shall conduct inspections in alternating years thereafter unless a complaint is received by the Court regarding the jail or detention center.
- E. If a complaint is received, the Court shall conduct an immediate inspection to ensure the safety and well being of the children being placed.

6-127 PERIODIC REPORTS.

The Court may require the probation officer, guardian or institution where the child is placed or detained to furnish such periodic reports concerning the child as the Court may deem necessary or desirable.

CHAPTER SEVEN - INDIAN CHILD WELFARE ACT REFERRALS

7-101 RECEIPT OF INDIAN CHILD WELFARE ACT REFERRALS.

Referral of cases shall be received by the person or persons who shall be designated to receive such referrals by the ICWA Representative described in Section 2-111(F). Upon receipt of a referral, the ICWA Representative shall immediately respond in accordance with the provisions outlined in this Chapter.

7-102 INITIAL INVESTIGATION AND DETERMINATIONS OF INDIAN CHILD WELFARE ACT REFERRALS.

- A. It shall be the responsibility of the Spirit Lake ICWA Office to receive, review and timely respond to all ICWA referrals sent to and on behalf of the Spirit Lake Tribe.
- B. Upon receipt of a referral, the ICWA Representative shall conduct an initial review of the referral and shall conduct such due diligence as is necessary to:
 - 1. Contact appropriate sources to determine the child's membership and tribal status.
 - 2. Investigate and determine whether the child custody referral is one properly referred to the Tribe under the Indian Child Welfare Act.
 - 3. Make inquiry as to whether the parents are seeking transfer or otherwise objecting to a transfer.
 - 4. Determine the applicability of the Indian Child Welfare Act to the referral.

C. After an in initial review pursuant to Section 7-102(A), the ICWA Representative shall make an initial determination of whether to do one of the following:

1. Intervene in the case pursuant to Section 7-103.
2. Seek a transfer of jurisdiction pursuant to Section 7-104.
3. Monitor the case.

7-103 INTERVENTION. After initial review and verification by the ICWA Representative, if it is deemed necessary and appropriate to intervene and to not transfer jurisdiction of the matter pending before the referring court, the ICWA Representative shall have the following duties and responsibilities:

- A. File a Notice of Intervention with the referring court.
- B. Provide a Notice of Intervention to the Tribal Court and Social Services.
- C. Notify the parent(s) of the Tribe's intervention in the referring court's case
- D. The ICWA Representative shall thereafter be responsible for ongoing supervision and involvement in the matter to the degree deemed necessary and appropriate by the ICWA Representative to ensure that the best interests of the child and the the interests of the Tribe are being served.

7-104 TRANSFER OF JURISDICTION.

- A. **INVESTIGATION.** Prior to submission of a Petition to Accept Transfer of Jurisdiction from a referring court, the ICWA Representative shall investigate the case and contact appropriate sources to:
 1. Determine the child's membership and tribal status.
 2. Investigate and determine whether the child custody referral is one properly referred to the Tribe under the Indian Child Welfare Act.
 3. Contact the parent, guardian or custodian by registered mail with return receipt requested and notify them of the referral and possible transfer of the case to the tribal jurisdiction.
 4. Contact social, medical, legal or other such sources to obtain necessary information regarding the circumstances of the case. Consider continuity in the child's surroundings and emotional contact.

5. Ascertain wishes of the child's family, extended family, and other interested persons.
6. Consider the past and present residences of the child, the child or the child's family's ties with the Tribe or the tribal community, any special conditions of the child and the ability of Tribal or reservation facilities to deal with such conditions.
7. Consult with Social Services to determine whether they have the staff and resources to serve the best interests of the child.
8. Determine whether the transfer of the case would be appropriate and in the best interests of the child.
9. Determine whether jurisdiction should be taken before or after the adjudication stage of the proceedings considering the location of the witnesses, documents, and other evidence and the existence of subpoena and other process limitations of Tribal jurisdiction.
10. Notify the parent, guardian, custodian and other interested parties of the decision regarding transfer. Notification to parent, guardian or custodian shall be by registered mail, addressee only, return receipt requested.

B. FILING OF PETITION. If, after initial review, investigation and verification by the ICWA Representative pursuant to Sections 7-102 and 7-104(A), it is deemed necessary and appropriate to transfer jurisdiction of the case from the referring court to the Tribal Court, the ICWA Representative shall file a Motion to Transfer Jurisdiction in the referring court and a Petition to Accept Transfer of Jurisdiction in the Juvenile Court. Any Petition to Accept Transfer of jurisdiction must include:

1. A copy of the ICWA referral from the referring court.
2. A copy of the Motion to File Jurisdiction in the referring Court.
3. A copy of the ICWA referral.
4. The name(s) of the minor child(ren) subject to the request.
5. The reason why transfer is being sought.
6. Any special needs of the minor child.

7. A statement or written verification stating whether the biological parents have been given an opportunity to object to the transfer in the referring court.
8. A report detailing the investigative findings from Section 7-104(A).
9. A signature of the Director of Social Services confirming that the ICWA Representative consulted with Social Services pursuant to Section 7-104(A)(7) and that Social Services supports the the Petition to Transfer Jurisdiction.

C. A biological parent may also file a Petition to Accept Transfer of Jurisdiction with the Juvenile Court. However, said Petition must comply with the 7-104(B) above.

7-105 DUTIES OF THE JUDGE WITH REGARD TO AN INDIAN CHILD WELFARE ACT REFERRAL.

- A. Upon receipt of a Petition to Accept Transfer of Jurisdiction that is in compliance with 7-104(B), the Judge shall do one of he folowing:
1. Direct the ICWA Representative to request a twenty (20) day extension from the referring court if such extension is necessary to properly arrange for transfer of the case, transition the child to a new placement, or to seek additional information from the state jurisdction to aide the Court in determining whether transfer of jurisdiction is in the childs best interests.
 2. Direct the ICWA Representative to conduct further investigation into the referral and may also direct appropriate tribal personnel to assist in the investigation. The Judge shall provide the investigative designee with a deadline for completion of an investigative report and a timeline for submission of the same to the Court so the Court is able to make an informed decision on whether to accept transfer of jurisdiction.
 3. Approve of the Petition by issuing an Order to Accept Transfer of Jurisdiction if the Judge determines that the transfer is in the best interests of the child. Transfer of the case from the referring court to the Juvenile Court shall be governed by the Indian Child Welfare Act.
 4. Deny the Petition to Accept Transfer of Jurisdiction if the Judge determines that the transfer is not in the best interests of the child. If the Judge denies the Petition to transfer, the Court may Order the ICWA Representative

to intervene in the proceedings in the referring court pursuant to and in compliance with Section 7-103.

- B. Unless request has been made, in writing by registered mail, for 20 day extension as provided for in the Indian Child Welfare Act and pursuant to Section 7-105(A) (1), the Judge shall complete the above duties within ten (10) business days of receiving the Petition to Accept Transfer of Jurisdiction filed in compliance with Section 5-109(B).

CHAPTER EIGHT - EMANCIPATION

8-101 PETITION.

- A. Any child who has attained the age of sixteen (16) years may petition the Court for a determination that he be Emancipated. The Petition for Emancipation shall set forth with specificity:
 1. The name, sex, date and place of birth, present address and tribal affiliation of the child.
 2. The names, date of births, addresses if known, and tribal affiliation of the child's parent, guardian or custodian.
 3. The facts upon which emancipation is sought and the basis for the Court's jurisdiction.
- B. Upon the filing of a Petition for Emancipation, the Court shall cause Notice to be issued to the child and the parent, guardian or custodian.

8-102 TIME FOR HEARING AND NOTICE REQUIRMENTS.

- A. Upon the filing of Petition for Emancipation, the Court shall set a time for Hearing the Petition that shall not be more than thirty (30) days after the filing of the Petition.
- B. The Court shall notify the child and the parent, guardian, custodian or any other person whom the Court deems appropriate. The Notice shall state that the child is seeking emancipation and has the right to be represented by counsel.
- C. Notice of the Hearing and a copy of the Petition certified by the Petitioner, their attorney or the Clerk of Court shall be personally served upon the persons enumerated in Subsection 6-102(B) at least ten (10) days before the date of the Hearing.
- D. If personal service cannot be effectuated after reasonable efforts or the address of the person is unknown, the Court

may Order that Notice to be given by registered or certified mail, return receipted requested. If no such address is known, then Notice by Publication in a newspaper of general circulation in the community where the Court is located may be permitted

8-103 CONDUCT OF HEARING AND ORDER OF EMANCIPATION

A. The Court shall make written Findings when determining whether the Emancipation would be in the best interests of the child. The Court thereafter may enter an Order of Emancipation if the Court finds that Emancipation is in the best interests of the child and any of the following apply:

1. Upon demonstration to the Court that said minor can be responsible in meeting his/her needs (i.e. education, medical, shelter, foods and clothing and is able to be responsible in his/her affairs).
2. The child has entered into a valid marriage.
3. The child is on active duty with the armed forces of the United States of America.
4. The child willingly lives separately from their parent, guardian or custodian, with or without their consent, and the child is managing their own financial affairs responsibly.
5. Any other valid circumstances in which the Court finds that Emancipation is warranted.

B. An Order of Emancipation shall not grant the child the right to vote, purchase alcohol, enter liquor establishments, purchase tobacco, etc. that may otherwise be prohibited by Tribal, State or Federal Law.

C. An Order of Emancipation shall result in the child being treated essentially like a legal adult and shall have additional effects which shall include but, not be limited to, the following:

1. The child shall be free of control and custody of their parent, guardian or custodian.
2. The child may consent to any medical, dental or psychiatric care without parental consent, knowledge or liability.
3. The child shall be entitled to their own earnings and to establish their own residence.

4. The child may enter into a binding contract, buy and sell real and personal property, execute releases, sue and be sued in his or her name.
5. The child is deemed eligible to secure a marriage license, register a motor vehicle and enlist in the armed services of the United States.
6. The child may not thereafter be the subject of a Deprivation Petition.
7. The parent, guardian or custodian of the child shall no longer be the guardians of the child and shall be relieved of any obligations with regards to school attendance and financial support.
8. The child shall be emancipated for the purposes of parental liability for the child's acts.
9. An Order of Emancipation shall not change the child's eligibility for Tribal housing, incentive benefits or other Tribal benefits as determined by governing Tribal law or policy.

CHAPTER NINE – SERVICE OF PROCESS, NOTICE & SUBPOENAS

9-101 SUMMONS ISSUANCE, ANSWER AND SERVICE.

- A. GENERAL.** A Summons shall be issued for all Preliminary, Adjudication and Termination of Parental Rights Hearings.
- B. CONTENTS OF SUMMONS.** The Summons shall direct the person to whom it is addressed to appear with the child in any proceeding with the Court, unless the child's appearance has been excused or deemed unnecessary. If the child is under the age of twelve (12), it will be a rebuttable presumption of the Court that the child's appearance is unnecessary. The Summons must:
 1. Identify the time and place of the Hearing.
 2. Identify the nature of the proceeding.
 3. Include a prominent notice that the proceedings could result in a suspension or termination of parental rights.
 4. Have a copy of the Petition attached to the Summons.
- C. SUMMONS ISSUANCE.** After the Petition has been filed, a Summons shall be issued to the Respondent(s) in the action.
- D. ANSWER.** The Summons shall require the person as directed to appear before the Court at a specific time to answer the allegations.

E. SERVICE. The Summons and a copy of the underlying Petition shall be served at least five (5) days, excluding weekends and holidays, before each Preliminary Hearing and at least twenty one (21) days before each Termination of Parental Rights Hearing and Adjudication Hearing. The following methods of service are acceptable:

1. Personal service by an uninterested third (3rd) party.
2. Service by mail with return receipt.
3. Service on the Respondent's attorney.
4. If personal service or service by mail with return receipt cannot be effectuated, service by publication according the Spirit Lake Law and Order Code shall.

9-102 NOTICE OF HEARING.

A. PERSONS ENTITLED TO NOTICE. The Court shall ensure that the following persons are notified:

1. The parent(s).
2. The attorney(s) for the parent(s).
3. The child or advocate for the child.
4. The legal guardian(s) or custodian(s) other than the parent(s), if any.
5. The petitioner.
6. The child-placing agency or protective/social worker.
7. The ICWA Worker, if applicable.
8. The presenting officer, if applicable.
9. The guardian ad litem.
10. Any other party the Court directs to be notified.

B. GENERAL. Notice of hearing must be provided in writing at least five (5) days prior to the hearing.

C. EMERGENCY REMOVAL HEARING. When a child is placed out of the home pursuant to an Emergency Removal, Social Services shall make active efforts notify the parent, guardian or custodian of the date and time of the Hearing as soon as possible. The Notice may be in person, in writing or by telephone. (Remove as already stated)

D. TERMINATION OF PARENTAL RIGHTS. Notice of a hearing on a Petition to Terminate Parental Rights must be given in writing or be on the record at least twenty-one (21) days before the Hearing.

E. WAIVER OF SERVICE. A person entitled to Notice may waive notice of hearing or service of process. If the waiver is in writing, the waiver shall include the following:

1. Name of the party.
2. Address of the party.
3. A statement or expression of waiver.
4. Signature of party.
5. Date of signature.

F. SUBSEQUENT NOTICES. After a party's first appearance before the Court, subsequent notice of proceedings and pleadings shall be served on that party, either personally or by ordinary, non-certified mail. If the party has retained or has been assigned an attorney, the subsequent notice of proceedings and pleadings shall be served on the party's attorney, either personally or by ordinary, non-certified mail.

9-103 SUBPOENAS.

A. GENERAL. On its own motion, a party, the attorney for a party or the Court may cause a subpoena to be served on a person whose testimony or appearance is desired or necessary. It is not necessary to tender advance fees to the person serving a subpoena in order to compel attendance. If a party fails to comply with a subpoena, the Court may hold the non-compliant party in contempt, issue monetary sanctions, or a warrant for arrest.

B. SERVICE. Service must be done in person or via certified mail, return receipt and must be completed at least five (5) days before the hearing.

CHAPTER TEN - APPEALS

10-101 APPEALS.

A. WHO CAN APPEAL. Any party to a Court proceeding may Appeal a final Order of the Court with the Appellate Court designated by the Spirit Lake Tribe.

B. APPELLATE COURT RULES AND PROCEDURES. All Appeals pursuant to this section shall be in accordance with the rules and procedures set out by the Appellate Court designated by the Spirit Lake Tribe so long as they do not directly conflict with the provisions of this Code.

C. TIME FOR TAKING APPEAL. A party seeking to Appeal a final Court order shall file a written notice of appeal with the Court within thirty (30) days of the final Order.

D. STANDARD OF REVIEW. The standard of review will be further determined by the Appellate Court upon review of the final Order(s) and decision(s) of the Spirit Lake Tribal Courts.

E. RECORD. For purposes of Appeal, a record of proceeding shall be made available to the parties. The party seeking the Appeal shall pay the costs of obtaining such records.

F. STAY ON APPEAL. The Court's may be stayed upon the Order of the Court or the Appellate Court.

CHAPTER ELEVEN - SEVERANCE

11-101 In the event that any section under this Code is held to be invalid for any reason, the remaining sections shall remain in full force and effect.

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