

Title IX - Youth Code

Chapter 1. General Provisions

Sec. 101. Jurisdiction

Sec. 102. Definitions

Chapter 2. Youth Offender

Sec. 201. Taking a Youth into Custody prior to a Court Hearing

Sec. 202. Application to Court

Chapter 3. Court Procedures

Sec. 301. Petition

Sec. 302. Screening the Petition

Sec. 303. Initial Hearing

Sec. 303a. Guardian Ad-Litem

Sec. 304. Transfer of Juvenile Proceedings

Sec. 305. Fact-Finding Hearing

Sec. 306. Dispositional Hearings

Sec. 307. Right of Appeal

Sec. 308. Periodic review for delinquent youth and youth in need of supervision in approved facilities

Sec. 309. Confidentiality

Sec. 310. Records

Sec. 311 Expungement of Records

Chapter 4. Abused, Neglected, Abandoned or Dependent Youth

Sec. 401. Taking a youth into protective custody

Sec. 402. Taking a youth into non-protective custody

Sec. 403. Notification and application to Court

Chapter 5. Court Procedures

Sec. 501. Petitions

Sec. 502. Screening the petition

Sec. 503. Initial hearing

Sec. 504. Guardian ad-litem

Sec. 505. Fact-finding hearing

Sec. 506. Dispositional procedure

Sec. 507. Confidentiality

Sec. 508. Petition for return of abused, neglected, abandoned or dependent youth removed from parent(s) legal guardian or custodian

Sec. 509. Periodic review for abused, neglected, abandoned or dependent youth removed from parent(s), legal guardian or custodian

Sec. 510. Expungement of records

Chapter 6. Report of Abused, Neglected, Abandoned or Dependent Youth

Sec. 601. Obligation to report youth abuse, neglect, dependency and abandonment

Sec. 602. Contents of reports

Sec. 603. Immunity for good faith reports; penalties for reports made in bad faith

Sec. 604. Investigation of reports

Sec. 605. Record keeping

Sec. 606. Confidentiality

Chapter 7. Indian Child Welfare Act Transfers

Sec. 701. Purpose of Indian Child Welfare Act Transfer

Sec. 702. Procedures of transferring the youth to the jurisdiction of the Tribal Court

Chapter 8. Termination of Parent-Youth Relationship

Sec. 801. Purpose of termination of the parent-youth relationship

Sec. 802. Who may file a petition

Sec. 803. Contents of the petition

Sec. 804. Service of petition

Sec. 805. Social study prior to hearing

Sec. 806. Notice

Sec. 807. Hearing

Sec. 808. Order

Sec. 809. Disposition

Sec. 810. Effects of termination order

Chapter 9. Guardian of Minors

Sec. 901. Status of guardian of minor – how acquired generally – letters to indicate means of appointment

Sec. 902. Consent to jurisdiction by acceptance of appointment

Sec. 903. Testamentary appointment of a guardian of minor – when effective – priorities – notice of appointment

Sec. 904. Recognition of appointment of guardian by foreign will

Sec. 905. Objection by minor twelve or older to testamentary appointment

Sec. 906. Court appointment of guardian of minor – when allowed – priority of testamentary appointment

Sec. 907. Guardian of a minor by court appointment – qualifications – nominee of minor preferred

Sec. 908. Temporary guardian of minor

Sec. 909. Procedure for court appointment of guardian of minor – notice – hearing – representation by attorney, lay advocate

Sec. 910. Powers and duties of guardian of minor

Sec. 911. Termination of appointment – how effected – certain liabilities and obligations not affected

Sec. 912. Procedure for resignation or removal – petition, notice, and hearing – representation by attorney

Sec. 913. Abuse and neglect proceedings – appointment of guardian – financial subsidies

Chapter 1. General Provisions

Sec. 101. Jurisdiction.

The Fort Peck Tribal Court, Youth Division, shall have exclusive jurisdiction over all matters

involving Indian youth covered by this Title provided all other elements of jurisdiction are met.

Sec. 102. Definitions.

(a) Youth. The term Youth shall include a child or minor and shall constitute any Indian person under eighteen (18) years of age.

(b) Abused youth. A youth who has suffered or is likely in the immediate future to suffer serious physical or emotional harm as a result of a parent, guardian or custodian inflicting or failing to make reasonable efforts to prevent the infliction of physical or mental injury upon the youth, including but not limited to excessive corporal punishment or an act of sexual abuse or molestation.

(c) Abandoned youth. A youth whose parent, guardian or custodian is not identifiable, or if known, has made no reasonable efforts to care for or arrange substitute care for the youth for a period of six (6) months or more.

(d) Neglected youth. A youth:

(1) whose parent, guardian or custodian fails to provide the minimal care which a reasonable prudent parent would provide in the same or similar circumstances for the subsistence, education, and welfare of the youth; or

(2) who has special physical or mental conditions for which the youth's parent, guardian or custodian neglects or refuses to provide a reasonable level of special care; or

(3) whose parent, guardian or custodian is unable to discharge his/her responsibilities to and for the youth because of incarceration, hospitalization, or other physical or mental incapacity. A youth shall not be deemed neglected if the only reason for failing to provide the minimal care for the youth is the indigence of the parent, guardian or custodian.

(e) Dependent youth. A youth who is homeless or destitute or without proper care and support, through no fault of his/her parent, legal guardian or custodian.

(f) Youth in Need of Supervision. A youth:

(1) who is subject to compulsory school attendance and is habitually truant from school without justification; or (2) who has committed an offense committable only by youth; or (3) who is habitually disobedient to the reasonable and lawful commands of the parent, guardian or custodian; or (4) who habitually runs away from home.

(g) Delinquent Youth. A youth who commits an act which if committed by an adult would be in violation of any provisions of the Fort Peck Tribal Comprehensive Code of Justice (CCOJ), except that traffic offenses shall be deemed delinquent acts only if committed by a youth under sixteen (16) years of age.

(h) Detention. The temporary, secure custody of a youth in a facilities designated by the Court, pending a final disposition of a petition, provided that detention shall not be in a facility where the youth has sight or sound contact with incarcerated adult offenders.

(i) Foster/Shelter Care. The temporary care of a youth in licensed child/youth care facility designated by the Court, pending a final disposition of a petition.

(j) Diversion. A course of remedial action taken in matters arising under this Title, designed to utilize, if available, community based treatment and/or preventative programs to avoid formal Court action and which is agreed to be in the best interest of the youth involved.

(k) Probation. A formal course of action by the Court or an agreement between the youth, parent(s) and a Juvenile officer whereby a youth is permitted to remain in the youth's home under prescribed conditions and under supervision by a designated Probation/Juvenile officer and is subject to return to Court for any violation of the prescribed conditions.

- (l) Probable Cause. Such facts and circumstances as would convince a reasonable person.
- (m) Clear and Convincing Evidence. The measure or degree of proof which will produce in the mind of the trier of fact more than a mere preponderance, but not to the extent of such certainty as required by beyond a reasonable doubt.
- (n) Beyond a Reasonable Doubt. Where facts and circumstances shown by evidence proves every essential element that the act was committed.
- (o) Parent. The biological parent of a youth or any person who has lawfully adopted a youth. Parent shall not mean the unwed father of a youth where paternity has not been acknowledge, adjudicated or established by other clear and convincing evidence. Parent shall not mean any person whose parent-child relationship has been lawfully terminated.
- (p) Custodian. A person or agency, other than a parent or guardian, to whom the legal custody of a youth has been granted by an order of a court of competent jurisdiction or who is acting in loco parentis but does not include a person who has only physical custody.
- (q) Guardian. A person, other than the youth's parent(s), who has the legal duty and responsibility for that youth's person while under the guardianship of that person.
- (r) Guardian Ad-Litem. An individual appointed by the Court to represent the best interests of the youth in an advocacy role.
- (s) Ft. Peck Tribal Guardian Ad-Litem. An individual either hired or contracted by the Tribe to represent the best interest of the Indian youth on behalf of the Tribes in an advocacy role.
- (t) Extended Family Member. Any adult family member other than the youth's parents related by blood, customs or traditions.
- (u) Minimal Care. The provision of adequate food, clothing, shelter, medical care, education and day-to-day supervision. In determining whether minimal care has been provided, the Court shall apply the standards prevailing in the community.
- (v) Restitution. Financial or other reimbursement by a youth and/or the parent, custodian or guardian of a youth who is adjudged by the Court guilty of an offense which if committed by an adult would be arson (section 301), burglary (section 310), criminal trespass (section 311), theft (section 320), robbery (section 321), criminal mischief (section 322), injury to public property (section 323), issuing bad checks (section 324), or forgery (section 330) under Title VII - Criminal Offenses, in order to reimburse any injured party for damage or loss caused directly or indirectly by the youth's offense, by means of surrender of property, payment of money damages in an aggregate amount not to exceed \$2,500.00, or the performance of any other act, including appropriate work detail, for the benefit of the injured party.
- (w) Probation Officer. A person designated by the Tribal Executive Board to be responsible for performing field work in the supervision and rehabilitation of youth probationers and assigned to assist the Court and the Juvenile Services Department in ensuring that such youth fulfill the Orders of the Court.
- (x) Indian Child Welfare Act Transfers. Any state court proceedings for foster care placement, custody or adoption of, or termination of parental rights to, an Indian youth transferred to the Court under the Indian Child Welfare Act, 25 U.S. C. sections 1901 et seq.

Chapter 2. Youth Offender

Sec. 201. Taking a Youth into Custody Prior to a Court Hearing.

(a) Taking a Youth into secured custody/detention. Any law enforcement officer and/or juvenile officer, who has probable cause to believe a youth is a delinquent youth and either (1) is likely to commit other delinquent acts, unless detained, or (2) poses an immediate threat to his/her own welfare or to the community, may take the youth into secured detention. If such action is taken, the law enforcement officer and/or juvenile officer shall charge the youth, place the youth in a secured facility for delinquent youth and promptly notify the parent(s), legal guardian, or custodian or an extended family member if parent(s), legal guardian or custodian cannot be located, of why the youth has been taken to a detention facility, the charge(s) alleged and where the youth is being detained. After notification and a written promise to bring the youth to Court at the designated time and place, the youth may be released to one of the above listed responsible adults.

(b) Youth in need of supervision. Any law enforcement officer, and/or juvenile officer who has probable cause to believe a youth is a youth in need of supervision may issue a citation to the youth and temporarily place the youth into custody until such time as the parent(s), legal guardian or custodian can be located and the youth placed back into the home. In the event the parent(s), legal guardian or custodian cannot be located within a reasonable time, the law enforcement officer and/or juvenile officer shall notify an extended family member. In no event shall a youth in need of supervision be placed in a facility for delinquent youth without an Order of the Court. The taking of a youth in need of supervision into custody, or the taking into detention of a delinquent youth who is not thereafter charged with an offense under this section is not an arrest nor does it constitute a police record.

(c) Rights of youth offender. Any youth who is taken into secured custody/detention by a law enforcement and/or juvenile officer shall be afforded the same rights as an adult in the reading of their Tribal rights.

A youth's rights shall consist of the following:

1. the right to remain silent;
2. the right to the presence of his/her parent, guardian, legal custodian and/or counsel during questioning, and;
3. a right to an advocate or attorney at his/her own expense or as provided by his/her parent, guardian or custodian. Anything the youth says after the foregoing rights have been read can be used against the youth in Court.

(d) Duties of law enforcement officers and/or juvenile officers. If a youth is taken into secured custody/detention and not released to his/her parent(s), legal guardian or custodian, the person taking the youth into secured custody/detention shall immediately attempt to notify the youth's parent(s), legal guardian or custodian. All reasonable efforts shall be made to advise the parent(s), legal guardian or custodian of the reason for taking the youth into secured custody/detention and the place of continued secured custody/detention. Reasonable efforts shall include telephone and personal contacts at the home or place of employment or other location where the person is known to frequent. If notification cannot be provided to the youth's parent(s), legal guardian or custodian, the notice shall be given to an extended family member.

(e) In no event shall a youth be kept in secured custody/detention without a Court order for more than forty-eight (48) hours, except (1) as otherwise provided in Section 202, or (2) if an initial hearing is held pursuant to Section 303.

Sec. 202. Application to Court.

(a) Any law enforcement officer, and/or juvenile officer who takes a youth into secured

custody/detention without a Court hearing shall (1) immediately notify the Juvenile Services Department and make a good faith effort to notify the parent(s), legal guardian or custodian of the youth and (2) submit to the Juvenile Services Department a report of the event by the next following work day.

(b) Any law enforcement officer and/or juvenile officer who places a youth in need of supervision into custody with parent(s), legal guardian, custodian, extended family member or a social service agency shall (1) immediately notify the Juvenile Services Department and (2) submit to the Juvenile Services Department a report of the event by the next following work day.

(c) Within twenty-four (24) hours of the time the youth is placed in secured custody/detention, the Juvenile Services Department shall submit to the Court a petition under Section 301 of this Title. If the youth is taken into secured custody/detention on a weekend or holiday, Juvenile Services Department shall have twenty-four (24) hours from the start of the next work day to file a petition in Court.

(d) Where the youth is not placed in secured custody/detention, the Juvenile Services Department shall submit to the Court a petition within forty-eight (48) hours from the date of the officer's report. If the forty-eight (48) hour time limit to file a petition falls on a weekend and/or holiday, the forty-eight (48) hour time limit continues on to the next work day.

Chapter 3. Court Procedures

Sec. 301. Petitions.

Any person may, and under the circumstances set forth in Section 202, the Juvenile Services Department shall, submit to the Court a petition to have any youth subject to the jurisdiction of the Court declared a delinquent youth or a youth in need of supervision. Such petition shall include (a) the name, address and telephone number of the petitioner, the youth and, if known, the youth's parent(s), legal guardian or custodian; (b) the reason(s) why the petitioner believes the youth is a delinquent youth or a youth in need of supervision; (c) supporting credible evidence, including but not limited to, affidavits, reports or written statements from social workers, law enforcement officers, juvenile officers, other child care professionals, relatives of the youth or members of the community.

Sec. 302. Screening the petition.

(a) Upon receiving a petition, the Court shall immediately have the petition screened by a juvenile officer. The screening of the petition by a juvenile officer shall not apply if submitted by the Juvenile Services Department, Tribal prosecutor or the Tribal guardian ad-litem. The juvenile officer shall determine if the petition is sufficient on its face to support a finding of delinquency or a youth in need of supervision. If, based upon examination of the petition, the juvenile officer determines that the petition lacks merit, he/she shall recommend to the Court that the petition be dismissed without further proceedings. Absent good cause to the contrary, the Court shall promptly dismiss the petition and order the youth released from custody/detention.

(b) Social Study /Report to Court. The Juvenile Services Department agency shall conduct a Social Study/Report to Court with respect to each petition which is not dismissed on initial screening. Such Study /Report shall be undertaken before the initial hearing, if possible, and in all cases before the fact finding hearing. The Study /Report shall, if possible, include interviews of the youth, parent(s), legal guardian or custodian and, if applicable, teachers and law enforcement officers, on investigation of the conditions of the home, and recommendations. The Juvenile Services Department

shall submit the Study/Report to the Court.

(c) Diversion program.

(1) Youth in need of supervision. The Juvenile Services Department may recommend counseling, treatment, or such other disposition of a youth in need of supervision which in the Department's opinion is in the best interest of the youth. Such recommendation(s) shall be implemented, without Court action, only upon the consent of the parent, legal guardian or custodian with the knowledge that consent is voluntary. Upon receiving consent, the Juvenile Services Department shall inform the Court that the case is being resolved informally. The diversion program shall not include any disposition which separates the youth from parent(s), legal guardian or custodian, unless consented to in writing by the parent(s), legal guardian or custodian. Upon successful completion by the youth of the recommended program, the Juvenile Services Department shall so notify the Court and the petition shall be dismissed. No diversion program shall exceed six (6) months. In cases where a diversion is not successful and/or completed, the Juvenile Services Department shall have the right to reactivate the petition.

(2) Delinquent youth. In cases where a youth has no previous record of delinquency and the youth is alleged to have committed a misdemeanor, the juvenile officer may recommend a diversion program, including counseling and/or treatment or any other disposition in the opinion of the juvenile officer is in the best interest of the youth. The diversion program shall not include any disposition which separates the youth from parent(s), legal guardian or custodian or, unless consented to in writing by the parent(s), legal guardian or custodian, or otherwise ordered by the Court. The Court may, in its discretion, approve such recommendation without a hearing. Upon successful completion of the recommended program by the youth, the Juvenile Services Department shall so notify the Court and the petition shall be dismissed. A youth who successfully completes the diversion program shall not be deemed a delinquent for any purpose. No diversion program shall exceed six (6) months. In cases where a diversion program is not successful and/or completed, the Juvenile Services Department shall have the right to reactivate the petition.

Sec. 303. Initial hearing.

(a) After receiving a petition, the Court shall promptly schedule an initial hearing, to be held immediately, if possible, and in all cases within forty-eight (48) hours after the filing of the petition if a youth has been placed in secured custody/detention and within ten (10) days if the youth is not in secured custody/detention. The Court shall make all reasonable attempts to notify, by telephone or other means, the youth and the youth's parents, legal guardian or custodian of the time and place of the initial hearing, and of the right of the parent, legal guardian custodian and youth: (1) to obtain counsel at his/her own expense, (2) to be present at the hearing, and (3) to testify, present documentary evidence, call witnesses, and ask questions of all witnesses. The initial hearing shall be conducted informally and shall be closed to the public. The youth shall be present for all Court hearings if over the age of ten (10) years unless the Court determines that the youth will likely suffer severe emotional harm as a result of such presence. If the Court determines that there is probable cause to believe that the youth should be declared delinquent or a youth in need of supervision, the Court may temporarily order such disposition as is appropriate under Section 306(d) of this Title, pending a fact-finding hearing. Otherwise the case shall be dismissed.

(b) In the event the youth admits the allegation(s) of the petition and the Court accepts that admission, the Court shall proceed to a dispositional hearing as provided by Section 306, and if the Court deems necessary, the Court shall require a pre-dispositional report from the Juvenile Services

Department, or the Tribal probation officer or other appropriate agency or person concerning the youth, the family of the youth, the environment of the youth and any other matter relevant to the need for treatment or to appropriate disposition of the case.

Sec. 303a. Guardian Ad-Litem.

(a) Appointment of guardian ad-litem. The Court in its discretion may appoint a guardian adlitem or request the Fort Peck Tribal guardian ad-litem to represent a youth in any proceedings under this Title or any criminal proceedings under Title VII where the youth may be a witness or, the parent(s), legal guardian or custodian cannot be located. The guardian ad-litem shall be at least twentyone (21) years of age, be of high moral character and integrity, and shall not be a close relative of the youth or have any other special interest in the case that would prevent the guardian ad-litem from representing the best interests of the youth in an objective way. The Court may appoint the guardian ad-litem or request the services of the Fort Peck Tribal guardian ad-litem at the initial hearing, or at any other appropriate point during the proceedings, including before a petition is filed.

(b) Duties of the guardian ad-litem. The Court appointed guardian ad-litem shall meet and become acquainted with the youth as soon as feasible after appointment. The guardian ad-litem shall, except where the best interests of the youth indicate otherwise, attend all Court proceedings in the case, be present at interviews between the youth and law enforcement officials, social workers, and other personnel who need to speak with the youth in connection with the case, and when possible, visit the youth in any foster home or other Court-ordered placement for the purpose of determining whether the placement is in the best interests of the youth, and determine the views of the youth with respect to placement and communicate those views to the Court. The guardian ad-litem shall perform such other duties as the Court shall order in the best interests of the youth.

(c) Term and compensation. The guardian ad-litem shall continue to serve until discharged by the Court and shall be compensated as determined by the Tribal Executive Board.

(d) Notice of Court proceedings. The Court appointed guardian ad-litem shall be notified of any Court proceeding at which his/her attendance is required. Notice shall be furnished as provided in Section 305(b) of this Title.

Sec. 304. Transfer of juvenile proceedings.

Upon motion of the petitioner or on its own motion, the Court may waive juvenile proceedings so that the youth may be tried as an adult in the Fort Peck Tribal Court where (a) the youth is sixteen (16) years of age or more; and/or (b) the youth has previously been found to be a delinquent. In determining whether the youth should be tried as an adult, the Court shall consider the seriousness of the crime alleged to have been committed; the extent of the youth's prior delinquency record; the possibility of rehabilitation of the youth; and the effects of prior attempts to rehabilitate the youth. The Court shall provide the youth and the youth's authorized representative with prior notice of a hearing on this issue, as provided in Section 305(b), and shall hold a hearing as provided in Section 305(a) of this Title.

Sec. 305. Fact-finding hearing.

(a) When a fact-finding hearing shall be held. The fact-finding hearing shall be held as soon as possible after the petition is filed and following receipt of a Social Study/Report to the Court or such other evidence sufficient to enable the Court to make a determination. In all cases, the fact-

finding hearing shall be held within thirty (30) days after the initial hearing, unless, with good cause shown, the Tribes, the youth or the youth's authorized representative requests a postponement.

(b) Notice. The Court shall serve prior written notice of the date, time, and place of the hearing upon the youth, any person authorized to represent the youth and the parent(s), legal custodian or guardian. Notice shall be served in person or by certified mail, return receipt requested, or by publication in the local newspaper for a period of three (3) consecutive weeks, if the whereabouts of the parent(s), legal custodian or guardian are unknown. The youth's full name shall not be published when notice is required by publication in any newspaper. Notice shall also specify that the youth (and any other party served with notice) has a right to retain counsel at his/her own expense, be present, testify, present documentary evidence, call witnesses, and ask questions of all witnesses.

(c) Procedures. The youth and his/her parent(s), legal guardian or custodian or legal representative, shall be physically present at the fact-finding hearing. The hearing shall be closed to the general public. The petitioner, the Juvenile Services Department or the Tribal prosecutor shall have the burden of proving the allegations of the petition by competent evidence and testimony. The Court may require the testimony of a physician or child care expert based on an examination of the youth.

The youth or his/her authorized representative and the parent(s), legal custodian or guardian may summon or produce such witnesses and relevant evidence as he/she may desire, and may be represented by counsel at his/her own expense. The Court may call such witnesses as it deems necessary.

(d) Order.

(1) If the Court shall find, after the fact-finding hearing that (i) there is clear and convincing evidence that the youth is a youth in need of supervision, or (ii) that there is evidence beyond a reasonable doubt that the youth is a delinquent, the Court shall determine the proper disposition of the youth under Section 306(d) of this Title. Otherwise, the petition shall be dismissed.

(2) If the Court deems necessary, the Court shall request a pre-dispositional report as defined in Section 303 to be provided by the Juvenile Services Department, or the probation officer or any appropriate agency or person as the Court deems necessary. The pre-dispositional report shall be submitted at the time of the dispositional hearing. Otherwise the petition shall be dismissed.

(3) If the Court determines that the youth should be tried as an adult, as provided in Section 304, it shall enter an Order to that effect.

Sec. 306. Dispositional hearing of a delinquent youth or a youth in need of supervision.

(a) When a dispositional hearing shall be held. A dispositional hearing shall be conducted as soon as practicable after the conclusion of the fact-finding hearing or the initial hearing if the youth admits the allegations of the petition and the Court accepts such admission at the initial hearing. Adequate time between hearings, not to exceed fifteen (15) working days, shall be allowed to permit the Court to consider the dispositional alternatives that are in the best interests of the youth.

(b) Rights of the parties to the dispositional hearing. All those rights provided at the initial hearing and/or the fact-finding hearing shall be provided at the dispositional hearing. The notice requirements of this Chapter shall apply, except that notice by publication need not be made if that notice previously has been given. The youth shall be physically present at the dispositional hearing if over ten (10) years of age unless the Court determines that the youth would likely suffer severe

emotional harm as a result of such presence. Otherwise the presence of the youth shall be in the discretion of the Court. The Court in its discretion may confer with the youth with only the guardian ad-litem present in order to determine the youth's desires concerning disposition.

(c) Evidence. At the dispositional hearing the Court shall hear evidence and the parties shall have the right to introduce evidence on the matter of proper disposition. The Court shall consider all relevant reports submitted at the hearing in making a disposition, including any reports prepared by the youth and his/her representative.

(d) Disposition.

(1) Best interest of the youth. The Court shall make such disposition as is in the best interest of the youth.

(2) Delinquent youth. The Court may order one of the following dispositions:

(i) to the supervision of the parent(s), legal guardian or custodian with such conditions as the Court deems necessary; or

(ii) to the supervision of an extended family member with such conditions as the Court deems necessary; or

(iii) to an approved facility for delinquents on the Reservation; or

(iv) to an approved facility for delinquents off the Reservation; or

(v) to a Tribal work program as approved and recognized by the Tribal Executive Board to fulfill any obligation that the Court deems necessary; or

(vi) to a community service program as recommended through the Juvenile Services Department. Alternatively or cumulatively, the Court also may order restitution as defined by Section 102(v) by the youth and/or his/her parent(s), legal guardian or custodian for damage or loss caused by the youth's wrongful act(s); provided that:

(A) no liability may be imposed upon a parent, legal guardian or custodian under this section if at the time of the commission of the offense, the parent, legal guardian or custodian has neither custody of the youth nor is entitled to custody of the youth or if the youth is institutionalized or emancipated;

(B) restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses; and

(C) the Court, in determining the amount and nature of restitution, shall consider the amount of loss sustained by any victim as a result of the offense, the financial resources of the parent, legal custodian or guardian, the present and potential future needs and earning ability of the parent, legal custodian or guardian and his/her dependents, and such other factors that the Court deems appropriate. No order for commitment for any delinquent in an approved facility shall be for a term longer than six (6) months or until the youth reaches the age of eighteen (18) years, whichever ever sooner occurs. If, after at least five (5) months of the six (6) month term after the youth has reached the age of eighteen (18), the youth care professional in charge of the delinquent youth believes that the youth needs further treatment and rehabilitation, he/she shall inform the Court and a hearing shall be held. If the Court finds that the youth is in need of further treatment or rehabilitation, the Court shall order a further commitment of up to six (6) months. No commitment for a single act of delinquency shall be cumulatively, for a period longer than one (1) year.

(3) Youth in need of supervision. The Court may order one or more of the following dispositions:

(i) to the supervision of the parent(s), legal guardian or custodian with such conditions as the Court deems necessary; or

(ii) to the supervision of an adult member of the youth's extended family with such conditions as the Court deems necessary; or

(iii) to an approved treatment and/or rehabilitation facility on the Reservation; or (iv) to an approved treatment and/or rehabilitation facility off the Reservation provided that a youth in need of supervision shall not be committed to an off-Reservation facility unless he/she has been found by the Court to be a youth in need of supervision on at least four (4) separate occasions. Off-Reservation placement shall be used only as a last resort, where no reasonable on-Reservation placement is available. Whenever a youth is placed temporarily off the Reservation, the Court shall require the party receiving the child to sign an agreement that the child will be returned to the Reservation upon written Order of the Court.

Sec. 307. Right of Appeal.

Following the disposition under Section 306(d), the Court shall inform the youth and his/her parent(s), legal guardian or custodian, or legal representative that the youth has the right to appeal. This right of appeal shall not apply if the youth admitted the allegations of the petition. If the youth or his/her representative requests, the clerk of the Court shall prepare and file a notice of appeal on behalf of the youth. The youth, or his/her representative or the clerk of the Court filing on his/her behalf, must file the notice of appeal within fifteen (15) working days of the disposition.

Sec. 308. Periodic review for delinquent youth and youth in need of supervision in approved facilities.

The Court shall hold periodic hearings, at least once every six (6) months, at the request of Juvenile Services Department, probation officer, other agencies, the youth or his/her parent(s), legal guardian, custodian or legal representative to determine if the youth should remain in the approved facility to which he/she has been committed. If the Court finds that the youth is not likely to commit additional delinquent acts or is no longer in need of supervision, the Court may release the youth, subject to such terms or probation as the Court deems necessary.

Sec. 309. Confidentiality.

In all proceedings held pursuant to this Title,

- (a) the hearings shall be conducted in closed and private chambers;
- (b) the names of any youth involved shall not be published; and
- (c) a record of all proceedings shall be made and preserved with the Court. All

Court records concerning youth under this Title, including social, medical and psychological reports, shall be kept confidential and shall be open for inspection only upon Court order and then only to the following persons or agencies:

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

Sec. 310. Records.

The Juvenile clerk of Court shall be responsible for any and all filings, record keeping, Court schedules and other appropriate activities in all Court matters pertaining to youth under this Title.

Sec. 311. Expungement of records.

Records of youth involved in proceedings under this Title shall be physically sealed when the youth reaches the age of twenty-one (21) years. Upon reaching the age of twenty-one (21) years, any person who was a party to proceedings under this Chapter, or the party's legal representative, may petition the Court to have such Court records destroyed. In any case, the Court may order such records, except those dealing with the termination of a parent-youth relationship, to be destroyed five (5) years after the youth reaches the age of twenty-one (21) years.

Chapter 4. Abused, Neglected, Abandoned or Dependent Youth.

Sec. 401. Taking a youth into protective custody.

(a) Any licensed medical professional, law enforcement officer, social worker or Tribal juvenile officer who has probable cause to believe a youth is abused, neglected, abandoned or dependent and will suffer physical or emotional harm if not immediately removed from the home may place or refer the youth to protective custody. Such youth may be placed in a private home of an appropriate extended family member or temporary foster home or an appropriate facility, but not in a facility where the youth has sight or sound contact with alleged delinquents. Any medical professional, law enforcement officer or tribal juvenile officer taking a youth into protective custody shall make a good faith effort to immediately notify an appropriate social service agency of placement of the youth.

(b) Any youth who is placed into protective custody and has been subjected to severe abuse, neglect, abandonment or dependency, shall promptly be examined by a licensed physician. In no event shall a youth be kept in protective custody without a court order for more than seventy-two (72) hours.

Sec. 402. Taking a youth into non-protective custody.

Any law enforcement officer, social worker or Tribal juvenile officer who has probable cause to believe a youth is abused, neglected, abandoned or dependent but is not in immediate danger of physical or emotional harm unless removed from the home may allow the youth to remain in the home with notification to the parent, legal guardian or custodian that the youth is placed in the home in a nonprotective custody status. Any law enforcement officer or Tribal juvenile officer shall make a good faith effort to immediately notify an appropriate social service agency of placement of the youth.

Sec. 403. Notification and application to Court.

Any law enforcement officer, licensed physician, Tribal juvenile officer or social worker who takes a child into custody without a Court hearing shall (a) immediately notify an appropriate social service agency for further investigation and make a good faith effort to notify the parent(s), legal guardian or custodian of the youth and (b) within forty-eight (48) hours submit to the Court and the Fort Peck Tribal guardian ad-litem or his/her successor a civil petition/report under Section 501 of

this Title. If the youth is taken into custody on a weekend or holiday, the individual and/or agency taking the youth into custody shall have forty-eight (48) hours from the start of the next scheduled work day to submit a petition/report to the Fort Peck Tribal guardian ad-litem or his/her successor and the Court.

Chapter 5. Court Procedures

Sec. 501. Petitions.

Any person who has taken a youth into custody pursuant to Sections 401 and 402 shall, submit to the Tribal Court a petition to have any youth subject to the jurisdiction of the Court declared an abused, neglected, abandoned or dependent youth. Such petition shall include (a) the name, address and telephone number of the petitioner, the youth and, if known, the youth's parent(s), legal guardian or custodian; (b) the reason(s) why the petitioner believes the youth is abused, neglected, abandoned or dependent; (c) supporting credible evidence, including but not limited to; affidavits, reports or written statements from social workers, law enforcement officers, juvenile officers, other child care professionals, other relatives of the youth or members of the community.

Sec. 502. Screening the petition

Upon receiving a petition, the Court shall immediately have the petition screened by a juvenile officer, unless the petition was submitted by the Juvenile Services Department, Tribal prosecutor or the Tribal guardian ad-litem. The juvenile officer shall determine if the petition is sufficient on its face to support a finding of abuse, neglect, abandonment or dependency. If, based upon examination of the petition, the juvenile officer determines that the petition lacks merit, he/she shall recommend to the Court that the petition be dismissed without further proceedings. Absent good cause to the contrary, the Court shall promptly dismiss the petition and, if applicable, order the youth released from custody.

(a) Social Study/Report to Court. The appropriate social service agency shall conduct a Social Study/Report to Court with respect to each petition which is not dismissed on initial screening. Such Study/Report shall be submitted to the Court at the initial hearing, the fact finding hearing and all review hearings. The Study/Report shall, if possible, include interviews of the youth, parent(s), legal guardian or custodian and investigation of the conditions of the home, and recommendations. The social service agency shall submit the Study/Report to the Fort Peck Tribal guardian ad-litem or his/her successor and the Court.

(b) Diversion.

(1) The social service agency may recommend counseling, treatment, or such other disposition of an abused, neglected, abandoned or dependent youth which in the social service agency's opinion is in the best interest of the youth. Such recommendation shall be implemented, without Court action, only upon the consent of the parent, legal guardian or custodian with the knowledge that consent is voluntary. Upon receiving consent, the social service agency shall inform the Court that the case is being resolved informally.

(2) A diversion shall not include any disposition which separates the youth from the parent(s), legal guardian or custodian, unless consented to in writing by the parent(s), guardian or custodian or otherwise ordered by the Court. Upon successful completion of the recommended program, the petition shall be dismissed. No diversion program shall exceed six (6)

months. In cases where a diversion is not successful and/or completed, the social service agency shall have the right to reactivate the petition.

Sec. 503. Initial hearing.

(a) After receiving a petition, the Court shall promptly schedule an initial hearing, to be held immediately, if possible, and in all cases within seventy two (72) hours of the time a youth is placed in protective custody and within ten (10) days if the youth is in non-protective custody. The Court shall make all reasonable attempts to notify, by telephone or other means, the youth and the youth's parent(s) or legal guardian or custodian of the time and place of the initial hearing, and of the right of the youth and the parent(s), legal guardian or custodian to: (1) obtain legal counsel at his/her own expense, (2) be present at the hearing, and (3) testify, present documentary evidence, call witnesses, and ask questions of all witnesses. The initial hearing shall be conducted informally and shall be closed to the public. If the Court determines that there is probable cause to believe that the youth has been abused, neglected, abandoned or dependent, the Court may temporarily order such disposition as is appropriate under Section 506 of this Title, pending a fact-finding hearing. Otherwise, the case shall be dismissed.

(b) Where there is probable cause to believe that a youth has been sexually abused, severely physically abused, neglected, abandoned or dependent and the Court determines that a criminal investigation has commenced or will commence in the near future, the Court shall not allow the youth to reside or be placed in the residence with the person(s) allegedly responsible for said act. Such placement shall remain in force until the fact-finding hearing, at which time placement shall be determined according to Section 506 without regard to the provisions of this subsection. The Court shall have the discretion to implement this subsection according to the best interest of the youth.

Sec. 504. Guardian Ad-Litem.

(a) Court appointment of guardian ad-litem. The Court in its discretion may appoint a guardian ad-litem or request the Fort Peck Tribal guardian ad-litem to represent the best interest of a youth in any proceedings under this Title or any criminal proceeding where a youth may be a witness or where the parent(s), legal guardian or custodian cannot be located. The guardian ad-litem shall be at least twenty-one (21) years of age, be of high moral character and integrity, and shall not be a close relative of the youth or have any other special interest in the case that would prevent the guardian ad-litem from representing the best interests of the youth in an objective way. The Court may appoint the guardian ad-litem or request the Fort Peck Tribal guardian ad-litem at the initial hearing, under Section 503 of this Title, or at any other appropriate point during the proceedings, including before a petition is filed.

(b) Duties of the Court appointed guardian ad-litem. The guardian ad-litem shall meet and become acquainted with the youth as soon as feasible after appointment. The guardian ad-litem shall, except where the best interest of the youth indicates otherwise, attend all Court proceedings in the case, be present at interviews between the child and law enforcement officials, social workers, and/or other personnel who need to speak with the youth in connection with the case, visit the youth in any foster home or other Court-ordered placement for the purpose of determining whether the placement is in the best interests of the youth, and determine the views of the youth with respect to placement and communicate those views to the Court. The guardian ad-litem shall perform such other duties as the Court shall order in the best interests of the youth.

(c) Term and compensation. The Court appointed guardian ad-litem shall continue to serve until discharged by the Court and shall be compensated as determined by the Tribal Executive Board.

(d) Notice of Court proceedings. The Court appointed guardian ad-litem and the Fort Peck Tribal guardian ad-litem shall be notified of any Court proceeding in which their attendance is required. Notice shall be furnished as provided in Section 505(b) of this Title.

Sec. 505. Fact Finding Hearing.

(a) When a fact-finding hearing shall be held. The fact-finding hearing shall be held as soon after the petition is filed as possible, and immediately following receipt of a Social Study/Report to Court or such other evidence sufficient to enable the Court to make its determination. In all cases the fact finding hearing shall be held within thirty (30) days after the initial hearing, absent good cause or if the youth's authorized representative or the parent(s), legal guardian or custodian, or the Tribes requests a postponement.

(b) Notice. The Court shall serve prior written notice of the date, time, and place of the hearing upon the youth, any person authorized to represent the youth and the parent(s), legal guardian or custodian. Notice shall be served in person or by certified mail, return receipt requested, or by publication in the local newspaper for a period of three (3) consecutive weeks, if the whereabouts of the parent(s), legal guardian or custodian are unknown. The youth's full name shall not be published when notice is required by publication in any newspaper. Notice shall also specify that any party served with notice has a right to retain counsel at his/her own expense, be present, testify, present documentary evidence, call witnesses, and ask questions of all witnesses.

(c) Procedures. The youth may be physically present at the fact-finding hearing in the Court's discretion. The fact finding hearing shall be closed to the general public. The petitioner or his/her surrogate shall have the burden of proving the allegations of the petition. The Court may require the testimony of a physician or child care expert based on an examination of the youth. The youth's parent(s), legal guardian or custodian may summon or produce such witnesses and relevant evidence as they may desire, and may be represented by counsel at his/her own expense. The Court may call such witnesses as it deems necessary.

(d) Order. If the Court shall find, at the conclusion of the fact-finding hearing, that there is clear and convincing evidence that the youth is abused, neglected, abandoned or dependent, the Court at that time shall determine the proper disposition of the youth under Section 506 of this Title. If clear and convincing evidence does not exist, the petition shall be dismissed and the youth shall be returned to the custody of the parent(s), legal guardian or custodian.

Sec. 506. Dispositional procedure.

(a) A disposition shall be determined by the Court as soon as practicable after the conclusion of the fact finding hearing to permit the Court to consider the dispositional alternatives that are in the best interests of the youth.

(b) The presence of the youth shall be in the discretion of the Court. The Court in its discretion may confer with the youth with only the Court appointed guardian ad-litem or the Fort Peck Tribal guardian ad-litem present in order to determine the youth's desires concerning disposition.

(c) Disposition.

(1) Best interest of youth. The Court shall make such disposition as is in the best

interest of the youth.

(2) The Court shall order one of the following dispositions:

(i) to the custody of the parent(s), legal guardian or custodian subject to such counseling, treatment, or other services as are deemed necessary to keep the youth in the home; or

(ii) to the custody of an extended family member on the Reservation with such conditions as the Court shall require; or

(iii) to the care and supervision of an appropriate social service agency which shall be responsible for appropriate placement; or

(iv) to the custody of an extended family member off the Reservation with such conditions as the Court shall require; or

(v) to the custody of a Tribal group home, if available; or

(vi) to recommend a permanency planning placement proceedings for the youth; or

(vii) to recommend termination of parental rights proceedings.

(3) Determining and changing placements. In determining which of several relatives shall have placement of the youth under subsection (2), the Court shall consider their ability to provide adequate food, shelter, medical care, love, emotional support and day-to-day supervision. The Court shall also take into account the desires of the youth. In its discretion, after the youth is placed under subsection (2), the Court may hold a hearing to consider a change in placement. In deciding whether to hold a hearing or to change placement, the Court shall consider the best interests of the youth.

Sec. 507. Confidentiality.

All hearings held pursuant to this Title shall be (a) conducted in closed and private chambers; (b) the names of all youth involved shall not be published; and (c) a record of all proceedings shall be made and preserved with the Court. All Court records concerning youth under this Title, including social, medical and psychological reports, shall be kept confidential and shall be open for inspection only upon Court order and then only to the following persons or agencies: (1) the youth; (2) the youth's representative; (3) the youth's parent(s), legal guardian or custodian and their representatives; (4) the juvenile officer; and (5) any other person having legitimate interest in the case in the performance of their official duties, as determined by the Court.

Sec. 508. Petition for return of abused, neglected, abandoned or dependent youth removed from the parent(s), legal custodian or guardian.

The youth's authorized representative or the parent(s), legal guardian or custodian may petition the Court for return of an abused, neglected, abandoned or dependent youth to the parent(s), legal guardian or custodian. Such a petition shall not be filed until three (3) months after the disposition and only at six (6) month intervals thereafter. The petition shall be in writing, but need not be in any particular form. Grounds for return include a showing that the youth would not be in danger of being abused, neglected, abandoned or dependent upon return to the parent(s), legal guardian or custodian. Upon receipt of a petition for return of a youth, the Court shall order the appropriate social agency or Juvenile Services Department to undertake a social study. If after consideration of the petition and social study, the Court finds substantial evidence that the youth may safely be returned to the home of the parent(s), legal guardian or custodian, the Court shall order and hold a hearing on the matter, following the procedures set forth in Section 505.

Sec. 509. Periodic review for abused, neglected, abandoned or dependent youth removed from parent(s), legal custodian or guardian.

(a) The foster care review process, through the foster care review committee, shall monitor services, placement, and/or the permanency plan and shall make recommendations to the Court, as deemed appropriate to the best interest of the child. The foster care review committee shall review any child who has been placed by any agency under order of the Court, in substitute care for a period of six (6) months or longer, or may review any substitute care placement as directed by the Court. Subsequent follow-up must take place within six (6) months of the initial review and within every six (6) months thereafter for as long as the child remains in care. The foster care review committee shall adhere to policy and procedure of the foster care review committee as established by the Fort Peck Tribal Executive Board.

(b) Whether or not the foster care review process is used or a petition for return is filed, the Court shall hold a hearing, following the procedures under Section 505 of this Title, to determine if the basis for the original disposition is still in existence. The first hearing after the Order of disposition shall be held ninety (90) days after that Order. Subsequent hearings shall be held every six (6) months; or

For youth who have been in the same placement for three (3) years or more, the Court, in its discretion, may extend the review period to one (1) year. If the Court finds that there is no longer clear and convincing evidence that grounds for out of home placement exist, the Court shall order the return of the youth to the parent(s), legal guardian or custodian. **(AMENDED AS PER RESOLUTION NO. 1574-2001-2, DATED 02/26/2000)**

Sec. 510. Expungement of records.

Records of youth involved in proceedings under this Title shall be physically sealed when the youth reaches the age of twenty-one (21) years. Upon reaching the age of twenty-one (21) years, any youth involved in proceedings under this Title may petition the Court to have such Court records destroyed. In any case, the Court may order such records, except those dealing with the termination of a parent-youth relationship, to be destroyed five (5) years after the youth reaches the age of twenty-one (21) years.

Chapter 6. Report of Youth Abuse, Neglect, Dependency and Abandonment

Sec. 601. Obligation to report youth abuse, neglect, dependency and abandonment.

Any physician, registered nurse, licensed practical nurse, community health representative, mental health professional, staff of a residential care facility or group home, school principal, teacher or teacher's aide, social worker, foster care worker, law enforcement officer, juvenile officer or any person with control of minor youth having reasonable cause to believe that a child is being or has recently been abused, neglected, abandoned or dependent as defined in Section 102 of this Title, shall immediately report such condition to a social service agency, police officer, tribal juvenile officer, or the Fort Peck Tribal guardian ad-litem. Reports from persons not obligated to report are encouraged.

Sec. 602. Contents of reports.

The report may be made orally or in writing and shall contain as much of the following

information as is known to the person making the report: the name, address, and age of the youth, the name and address of the alleged perpetrator of the abuse, the nature and extent of the abuse and any other pertinent information.

Sec. 603. Immunity for good faith reports; penalties for reports made in bad faith .

Any person who in good faith makes a report pursuant to this Chapter or who testifies in any judicial proceeding arising from such report shall be immune from any civil or criminal liability because of such report or testimony. Any person who makes a report pursuant to this Chapter in bad faith for the purpose of harassing those identified in the report, without reasonable cause to believe the report is true, is guilty of a Class B misdemeanor.

Sec. 604. Investigation of reports.

The person to whom the report is made shall inform the tribal prosecutor. The prosecutor shall assign the case for investigation to a tribal juvenile officer, an appropriate social service agency, a court investigator, and/or a police officer, as appropriate. If the investigation reveals probable cause that abuse, neglect, abandonment or dependency has occurred, the procedures outlined in Chapters 4 and 5 of this Title shall be initiated.

Sec. 605. Record keeping.

The Tribal juvenile officers, Fort Peck Tribal guardian ad-litem or an appropriate social service agency shall keep a separate file for each report received under this Chapter. The file shall include a complete record of the report, the results of all investigations, a summary of any court proceedings, and any other pertinent information.

Sec. 606. Confidentiality.

The records described in Section 605 shall be confidential, except that the Tribal Court shall have access to the case file as needed for any criminal proceedings against the offender or for any proceedings under this Title.

Chapter 7. Indian Child Welfare Act Transfers

Sec. 701. Purpose of the Indian Child Welfare Act Transfer.

Congress, in enacting the Indian Child Welfare Act, 25 U. S. C. Sections 1901 et seq., intended to protect the best interests of Indian children and to promote the stability and security of Indian Tribes and Indian families by the establishment of minimum federal standards for the placement and adoption of Indian children through State proceedings. Congress further provided in the Act for Indian Child Welfare Act transfers.

Sec. 702. Procedures of transferring a youth to the jurisdiction of the Fort Peck Tribal Court.

(a) Upon written notification to the Tribes from a State court or social service agency, of a possible Indian Child Welfare Act transfer, the Indian Child Welfare Act (ICWA) attorney or his/her successor shall notify the Indian Child Welfare Act Program or its successor of the notification.

(b) Upon notification, the Indian Child Welfare Act Program shall determine through the enrollment clerk of the Tribes whether the youth is enrolled or eligible for enrollment and shall forward a written verification to the ICWA attorney in a timely manner.

(c) If the youth is enrolled or eligible for enrollment with the Tribes, and if the ICWA Program determines, upon preliminary investigation, that transfer appears to be in the best interest of the youth, the ICWA attorney shall intervene in the State court proceeding.

(d) If transfer is in the best interest of the youth, the ICWA Program, or its successor, shall initiate all necessary documentation and recommendations in the following areas to assist the appropriate social service agency in case planning and finding proper relative placement for the youth:

(1) the family relationships of the youth on and off the Reservation for potential placement;

(2) the social histories of the extended family members;

(3) the health and special needs of the youth; and

(4) developing a service program for the youth.

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

(f) The ICWA Program shall notify the Fort Peck Tribal receiving home, when available, of the potential transfer of the youth to the Reservation and the need for placement in said home.

(g) When the Court receives an order of a State court for an Indian Child Welfare Act transfer, the Fort Peck Tribal guardian ad-litem or his/her successor shall file a Motion to Accept the Transfer of Jurisdiction and shall request a hearing on the Motion in a timely manner.

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

(1) Whether the youth or the youth's family or extended family will be in need of any specialized services which the Tribes and their resources are unable adequately to provide; and

(2) The emotional, cultural and social ties of the youth and the youth's family; and

(3) Any other matters which may adversely affect the Tribes ability to provide the necessary services for the youth and the youth's family or extended family.

(i) When transfer is either accepted or declined by the Court, the Court shall forward a certified copy of the Tribal Court Order to the appropriate State court.

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

(k) The youth shall be transported back to the Reservation by the ICWA Program and/or the appropriate social service agency and the initial temporary placement shall be the responsibility of the appropriate social service agency.

Chapter 8. Termination of Parent-Youth Relationship

Sec. 801. Purpose of termination of the parent-youth relationship.

The purpose of this Chapter is to provide termination of the parent-youth relationship by court order, to enable the youth to be adopted by other adults. This Chapter shall be used only in conjunction with an adoption proceeding. A petition for termination of parental rights may be filed, but may not be granted, unless and until a petition for adoption has been filed with the Court.

Sec. 802. Who may file a petition.

(a) A parent, with the exception of a minor parent, may voluntarily file a petition for the termination of the parent-youth relationship.

(b) One (1) parent may file a petition for the termination of the parent-youth relationship between the other parent and the youth.

(c) A guardian, any other person having a family relationship or other legitimate interest in the youth, including a prospective adoptive parent, or the Tribes, may file a petition for the termination of the parent-youth relationship with respect to either or both parents.

Sec. 803. Contents of the petition.

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

- (a) The name and place of residence of the petitioner;
- (b) The name, sex, date and place of birth and residence of the youth;
- (c) The relationship of the petitioner to the youth, if any;
- (d) The names, addresses, dates of birth of the parents, if known;
- (e) Where the youth's parent is a minor, the name and address of the youth's grandparents, if known;
- (f) The names and addresses of the person having legal custody or guardianship of the youth, or acting in the place of the parent of the youth;
- (g) The grounds on which termination of the parent-youth relationship are sought.

Sec. 804. Service of petition.

Service of the petition shall be made personally upon each parent or, if he or she cannot be located, by sending a copy of the petition to his/her last known address by registered or certified mail, return receipt requested. In the event the petition cannot be served personally or by mail delivery, service may be accomplished by publishing a summons, or an order of the Court directing the person to respond by a day certain, either in three (3) consecutive editions of a Tribal or Reservation newspaper of general circulation or for at least once in each week for three (3) consecutive weeks in a newspaper of general circulation published off the Reservation, in the county in which such person was last known to reside. Service by publication requires the filing of an affidavit (a) stating the reason for service by publication is that personal service cannot be made; (b) that service by mail cannot be effected; (c) setting out the person's place of residence, if known, and if not known to the affiant, stating that fact. The affidavit shall be accompanied by the return by the Court process server or a member of the Reservation police department certifying that after diligent inquiry for the purpose of serving the petition, he/she is unable to make personal service on the person.

Proof of service of the summons or Court order, or of other notice of action by publication, must be by filing an affidavit of the publisher or printer of the newspaper, or his/her foreman, clerk, bookkeeper, to which is annexed a copy of the summons or order of the Court, specifying the paper in which the times when the publication was made, and a certificate by the clerk that a copy of the summons and petition was mailed to the person's last known address not less than ten (10) days before the date of the first publication. In the case of a voluntary petition of the parent, the parent may waive, in writing, notice and appearance in Court, provided the Court is assured that the parent understands the meaning and consequences of the termination action. Where the parent is a minor, a waiver shall not be effective.

Sec. 805. Social study prior to hearing.

When the Court receives a petition, the Court shall request a social study to be submitted in writing prior to the hearing from a juvenile officer, social worker, or similar employee of the Bureau of Indian Affairs, or the Tribe, or other appropriate social service agency. Such report shall be submitted to the Court prior to a hearing.

Sec. 806. Notice.

After a petition has been filed and the social study made, the Court shall set the time, date and place for a hearing. The Court shall cause notice to be given by summoning the petitioner, the youth, the parents, guardian, and such other persons as the Court determines are necessary for the proper adjudication of the matter. Notice shall provide the date, time and place of the hearing.

Notice to the youth and parents shall specify that each shall have the right

(1) to retain counsel at his/her own expense;

(2) be present; and

(3) to testify, present documentary evidence, call witnesses, and ask questions of all witnesses. Where possible, notice shall be served as provided under Title VIII, Section 102(b) (1) of the Fort Peck Tribal Code of Civil Procedure. Notice need not be given by publication where a parent has been served with a copy of the petition in accordance with Section 804 and has failed to respond to the petition or otherwise appear before the Court.

Sec. 807. Hearing.

The youth may be physically present at the hearing, in the Court's discretion. The hearing shall be closed to the public. The Court may require the testimony of a physician or youth care expert based on examination of the youth. The youth, the youth's authorized representative, and the parent may summon or produce such witnesses or evidence as they may desire. The Court may call such witnesses as it deems necessary.

Sec. 808. Order.

If the Court shall find after the hearing that there is clear and convincing evidence (a) that the youth has continuously or repeatedly been abused, neglected, abandoned or dependent for a period of one (1) year or more, and (b) the services available cannot adequately reduce the likelihood of further abuse, neglect, abandonment or dependency or there is no other way to protect the youth from the risk of serious physical injury, or (c) the parent whose rights are to be terminated consents to the termination and has not withdrawn that consent for over one (1) year, the Court shall order a termination of parental rights.

Sec. 809. Disposition.

A youth who has had the parent-youth relationship terminated under this Title shall be placed with an adoptive parent under Title X, Chapter 1 of this Code.

Sec. 810. Effects of termination order.

All rights, duties, and obligations between the parent(s) and the youth, including the rights of inheritance, are terminated by a termination order. A termination order shall have no effect upon the youth's Tribal membership or quantum of Indian blood.

(THIS TITLE AMENDED IN ENTIRETY PER RESOLUTION NO. 3302-97-9, DATED SEPTEMBER 9, 1997.)

Chapter 9. Guardians of Minors

Sec. 901. Status of guardian of minor – how acquired generally – letters to indicate means of appointment.

(a) A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court.

(b) Letters of guardianship must indicate whether the guardian was appointed by will or by court order.

(c) The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward.

Sec. 902. Consent to jurisdiction by acceptance of appointment.

(a) By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person.

Sec. 903. Testamentary appointment of a guardian of minor – when effective – priorities– notice of appointment.

(a) The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of a minor under Section 105, a testamentary appointment becomes effective upon filing the guardian's acceptance in the court in which the will is probated if, before acceptance, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority.

(b) Upon acceptance of appointment, written notice of acceptance must be given by the guardian to the minor and to the person having his care or to his nearest adult relations.

Sec. 904. Recognition of appointment of guardian by foreign will.

The Fort Peck Tribes recognize a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile.

Sec. 905. Objection by minor twelve or older to testamentary appointment.

A minor of 12 or more years may prevent an appointment of his testamentary guardian from becoming effective or may cause a previously accepted appointment to terminate by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within 30 days after notice of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person.

Sec. 906. Court appointment of guardian of minor – when allowed – priority of testamentary appointment.

(a) The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or if parental rights have been suspended or limited by circumstances or prior court order.

(b) A guardian appointed by will whose appointment has not been prevented or nullified under Section 105 has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept

testamentary appointment within 30 days after notice of the guardianship proceeding.

Sec. 907. Guardian of a minor by court appointment – qualifications – nominee of minor preferred.

The court may appoint as guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor if the minor is 12 years of age or older unless the court finds the appointment contrary to the best interests of the minor.

Sec. 908. Temporary guardian of minor.

If necessary, the court may appoint a temporary guardian with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than 6 months.

Sec. 909. Procedure for court appointment of guardian of minor – notice – hearing – representation by attorney, lay advocate.

(a) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by IX CCOJ 305(b) to:

- (1) the minor, if he is 12 or more years of age;
- (2) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and
- (3) any living parent of the minor.

(b) Upon hearing, if the court finds that a qualified person seeks appointment, the required notices have been given, the requirements of Sec. 106 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interest of the minor.

(c) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney or lay advocate to represent the minor, giving consideration to the preference of the minor if the minor is 12 years of age or older.

Sec. 910. Powers and duties of guardian of minor.

Unless otherwise limited by the court, a guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of the parent's minor and unemancipated child, except that a guardian is not legally obligated to provide from the guardian's own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular and without qualifying the foregoing, a guardian has the following powers and duties:

- (1) The guardian shall take reasonable care of the ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.
- (2) The guardian may receive money payable for the support of the ward to the ward's parent, guardian, or custodian under the terms of any statutory benefit or insurance system or any private contract, devise, trust, conservatorship, or custodianship. Any sums received must be applied to the ward's current needs for support, care, and education. The guardian shall exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case the excess must be paid at least annually to the conservator. Sums received by the guardian may not be used for compensation for the guardian's services except

as approved by an order of the court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(3) The guardian is empowered to facilitate the ward's education, social or other activities and to authorize medical or other professional care, treatment or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage but not adoption of the ward.

(4) A guardian shall report the condition of the ward and of the ward's estate that has been subject to the guardian's possession or control, as ordered by the court on petition of any person interested in the minor's welfare or as required by court rule.

Sec. 911. Termination of appointment – how effected – certain liabilities and obligations not affected.

A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian or upon the minor's death, adoption, marriage or attainment of majority, but termination does not affect his liability for prior acts or his obligation to account for funds and assets of his ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

Sec. 912. Procedure for resignation or removal – petition, notice, and hearing – representation by attorney.

(a) Any person interested in the welfare of a ward or the ward, if 12 or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may but need not include a request for appointment of a successor guardian.

(b) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(c) If at any time in the proceeding the court determines that the interests of the ward are or may be inadequately represented, it may appoint an attorney or lay advocate to represent the minor, giving consideration to the preference of the minor if the minor is 12 or more years of age.

Sec. 913. Abuse and neglect proceedings – appointment of guardian – financial subsidies.

(a) The court may, upon the petition of a department of social services (department) or guardian ad litem, enter an order appointing a guardian for a child who has been placed in the temporary or permanent custody of the department. The guardianship may be subsidized by the department under subsection (i) if the guardianship meets the department's criteria, or the guardianship may be nonsubsidized.

(b) The court may appoint a guardian for a child pursuant to this section if the following facts are found by the court:

(1) the department has given its written consent to the appointment of a guardian, whether the guardianship is to be subsidized or not;

(2) if the guardianship is to be subsidized, the department has given its written consent after the department has considered initiating or continuing financial subsidies pursuant to subsection (i);

(3) the child has been adjudicated an abused, neglected, abandoned or dependent youth;

(4) the department has made reasonable efforts to reunite the parent and child, further efforts to reunite the parent and child by the department would likely be unproductive, and reunification of the parent and child would be contrary to the best interests of the child;

(5) the child has lived with the potential guardian in a family setting and the potential guardian is committed to providing a long-term relationship with the child;

(6) it is in the best interests of the child to remain or be placed with the potential guardian; and

(7) either termination of parental rights to the child is not in the child's best interests or parental rights to the child have been terminated, but adoption is not in the child's best interests.

(c) In the case of an abandoned child, the court may give priority to a member of the abandoned child's extended family, including adult siblings, grandparents, great-grandparents, aunts and uncles, if placement with the extended family member is in the best interests of the child. If more than one extended family member has requested to be appointed as guardian, the court may determine which extended family member to appoint considering which family member best meets the child's needs.

(d) The entry of a decree of guardianship pursuant to this section terminates the custody of the department and the involvement of the department with the child and the child's parents except for the department's provision of a financial subsidy, if any, pursuant to subsection (i).

(e) A guardian appointed under this section may exercise the powers and has the duties provided in Section 110.

(f) The court may revoke a guardianship ordered pursuant to this section if the court finds, after hearing on a petition for removal of the child's guardian, that continuation of the guardianship is not in the best interests of the child. Notice of hearing on the petition must be provided by the moving party to the child's lawful guardian, the department, any court-appointed guardian ad litem, the child's parent if the rights of the parent have not been terminated, and other persons directly interested in the welfare of the child.

(g) A guardian may petition the court for permission to resign the guardianship. A petition may include a request for appointment of a successor guardian.

(h) After notice and hearing on a petition for removal or permission to resign, the court may appoint a successor guardian or may terminate the guardianship and restore temporary legal custody to the department.

(i) The department may provide financial subsidy to a guardian appointed pursuant to this section if the guardianship meets the department's criteria and if the department determines that a subsidy is in the best interests of the child. The amount of subsidy must be determined by the department.

(THIS CHAPTER ADOPTED IN ENTIRETY PER RESOLUTION NO. 80-2003-11, DATED 11/25/03.)