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## CHAPTER 26 - RED CLIFF CHILDREN'S CODE

### 26.1 SECTION 1: AUTHORITY AND PURPOSE

- 26.1.1 This Code is enacted pursuant to authority vested in the Red Cliff Band of Lake Superior Chippewa Indians pursuant to the Tribal Constitution, Article VI, Section 1(i) and (q).
- 26.1.2 The Children's Code shall be interpreted and construed to fulfill the following purposes:
- (a) To provide for the welfare, care and protection of the children of the Red Cliff Tribe;
  - (b) To preserve the unity of the family, preferably by separating the children from his/her parents only when necessary;
  - (c) To facilitate return of Tribal children to the jurisdiction of the Tribe.

### 26.2 SECTION 2: JURISDICTION

- 26.2.1 Tribal Proceedings Involving a Child. The Court has exclusive, original jurisdiction of a proceeding in which a child is alleged to be a minor-in-need-of-care and the child is a member of or eligible to be a member of the Red Cliff Band of Lake Superior Chippewa and is domiciled within the boundaries of the reservation.

The Children's Court may exercise jurisdiction over any child who is not a member of the Tribe but is a member of another Tribe, and resides within the boundaries of the Red Cliff Reservation. The Court shall verify that notice was given by the Clerk of Court to such other Tribe, providing opportunity to participate as a witness, to intervene as a party, or to file a motion seeking transfer of proceedings to the other Tribe's Court. If a Child's Tribe objects to the jurisdiction of the Children's Court prior to the entry of adjudication in the case, the Court shall dismiss the action involving the ineligible child, except as provided in Section 11 of this Chapter.

**26.2.2** Other Tribal Proceedings:

- (a) Suspension of Parental Rights
- (b) Customary Adoption
- (c) Custody
- (d) Guardianship

**26.2.3** State Proceedings. The Court shall also exercise jurisdiction over:

- (a) A minor who is domiciled on or a resident of the reservation before a state court in a child custody proceeding pursuant to the Indian Child Welfare Act, 25 U.S.C. sec. 1911(a); or
- (b) The Court may also exercise jurisdiction over a minor who is not domiciled on or a resident of the reservation and is the subject of a state court child custody proceeding, pursuant to the Indian Child Welfare Act, 25 U.S.C. sec. 1911, including but not limited to cases where transfer of jurisdiction has been requested and accepted.

**26.3** **SECTION 3: DEFINITIONS**

**26.3.1** "Abandon" means when a parent leaves a child without provision for care or support, and the parent's whereabouts cannot be ascertained for a period of sixty (60) calendar days, or when a parent voluntarily or pursuant to court order relinquishes care and custody of a child, and fails to communicate with the child other than on an incidental basis for a period of one (1) year or more.

**26.3.2** "Adoptee" means the individual, child who is adopted or is to be adopted.

**26.3.3** "Adoptive Parent" means the person establishing or seeking to establish a permanent parent-child relationship with a child who is not their biological child.

- 26.3.4** "Affected Persons" means the child who is the subject of a petition under this Chapter, the Tribe acting through the Child Welfare Department, and the child's parents, guardians, or custodians including any extended family member deemed to be an affected person by the Child Welfare Department or the Court.
- 26.3.5** "Best Interests of a Child" includes but is not limited to:
- (a) The wishes of the Tribe, parents, party or parties;
  - (b) The preference of the Child if the Child is of sufficient age to express a preference;
  - (c) The intimacy of the relationship between the parties and the Child; the Child's adjustment to the home, school and the Tribal community;
  - (d) The length of time the Child has lived in a stable, satisfactory environment and desirability of maintaining continuity;
  - (e) The permanence as a family unit, of the existing or proposed adoptive home;
  - (f) The mental and physical health of all individuals involved;
  - (g) The capacity of the parties to give the child love, affection, guidance and to continue educating the Child in the Child's Tribal culture and heritage.
- 26.3.6** "Birth Parent" means the biological parents listed on the child's birth certificate, enrollment application or acknowledged as the birth parent by law.
- 26.3.7** "Child Welfare Director" means the director of the Indian Child Welfare Department of the Red Cliff Band of Lake Superior Chippewa Indians, or his or her designee.
- 26.3.8** "Child Welfare proceeding" means:

- (a) Any action removing an Indian child from his/her parent(s), guardian or custodian for temporary placement in a foster home or institution or the home of a guardian or custodian where the parent cannot have the child returned upon demand, but where parental rights have not been terminated or suspended;
- (b) Any action resulting in the termination or suspension of the parent-child relationship;
- (c) Any temporary placement of an Indian child in a foster home or institution after the termination or suspension of parental rights, but prior to or in lieu of adoptive placement; or
- (d) Any permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

- 26.3.9** "Children's Court" means the Red Cliff Tribal Court when exercising jurisdiction pursuant to this Code.
- 26.3.10** "Children's Court Judge" means any duly appointed Judge of the Red Cliff Tribal Court when exercising jurisdiction under this Code.
- 26.3.11** "Custodian" means one who has physical custody of and who is providing food, shelter, and supervision to a minor.
- 26.3.12** "Customary Adoption" means a traditional Tribal practice recognized by the community and Tribe which gives a child a permanent parent-child relationship with someone other than the child's birth parent(s) where the birth parent(s) rights have been terminated or suspended.
- 26.3.13** "Days" means business days and excludes all observed holidays including Tribal holidays.
- 26.3.14** "Emotional Abuse" means any act including confinement, isolation, verbal assault, humiliation, intimidation, infantilization, or other treatment which may diminish the sense of identity, dignity and self-worth.
- 26.3.15** "Extended Family" shall include persons over 18 years of age who are a child's brother, sister, step-parent, grandparent, aunt, uncle, first or second cousin, niece,

nephew or any person of a proceeding generation as denoted by the prefix of great such as great-grandmother or great-grandfather.

- 26.3.16** "Fictive Kin" means extended family members who are not related by either blood or marriage such as godparents or close family friends.
- 26.3.17** "Final Decree of Customary Adoption" means a final order of the Children's Court which establishes the permanent legal relationship between the child and the adoptive parent(s).
- 26.3.18** "Final Order Suspending Parental Rights" means a final order of the Children's Court which suspends the rights of the biological parents to provide for the care, custody and control of their child. A Final Order Suspending Parental Rights may establish the parameters of contact between the birth parent and the child if that contact is in the child's best interest.
- 26.3.19** "Guardian" means a person other than the minor's parents who is by court order responsible for that minor. The guardian of a child's person, shall have no authority over the property or income of the child, except public assistance benefits, unless specially authorized by a court.
- 26.3.20** "Guardian Ad Litem" means an adult appointed by the Court to represent the best interests of a minor in any proceeding to which s/he may be a party.
- 26.3.21** "Minor" means a person under eighteen (18) years of age.
- 26.3.22** "Minor-In-Need-Of-Care" means minor who is a member of or is eligible for membership in the Tribe and who:
- (a) Has no parent, guardian or custodian available and willing to care for him/her; or
  - (b) Has suffered or is likely to suffer a physical or emotional injury, inflicted on him/her by other than accidental means, including exposure to unsafe conditions. Unsafe conditions may include but are not necessarily limited to, the presence of controlled substances, criminal activity, domestic violence exposure, or significant neglect of a child; or

- (c) Has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his/her parents, guardian or custodian necessary for his/her health and well-being; or
- (d) Has been sexually abused or exploited; or
- (e) Has been emotionally abused or neglected; or
- (f) Is habitually truant from home or school; or
- (g) Has violated tribal laws relating to intoxicating beverages, controlled substances, or curfew; or
- (h) Has a parent or parents who have failed to maintain an appropriate parental role or have failed to maintain contact with the minor(s) for a period of one (1) year or more; or
- (i) Is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized, or institutionalized; or
- (j) Is a Prenatal Exposed Newborn, but only if the Child Welfare Department files a petition alleging that the minor is in need of care within sixty (60) days of the child's birth; or
- (k) Has been placed for care or adoption in violation of Tribal, State or Federal Law.

**26.3.23** "Parent" includes a birth parent or adoptive parent, but does not include persons whose parental rights have been terminated or suspended, nor does it include an unwed father whose paternity has not been acknowledged or established.

**26.3.24** "Prenatal Exposed Newborn" means a child, who has been exposed to addictive illegal drugs or prescription drugs or alcohol while in the womb and exhibits symptoms consistent with Neonatal Abstinence Syndrome after birth, or the child or the mother tests positive for addictive illegal drugs or addictive prescription drugs during the pregnancy or shortly after the child's birth.

**26.3.25** "Probable Cause" exists where the facts and circumstances within a judge's knowledge and of which s/he has



reasonable trustworthy information are sufficient in themselves to warrant a person of reasonable caution to believe that the minor is a minor-in-need-of-care.

- 26.3.26** "Substantial Parental Relationship" means the acceptance and exercise of significant responsibilities for the daily supervision, education, protection, and care of a child, as evidenced by factors including but not limited to whether the parent has ever expressed concern for or interest in the support, care, or well-being of the child or custodial parent, and whether the parent has neglected or refused to provide support.
- 26.3.27** "Suspension of Parental Rights" means the suspension of the rights, powers, privileges, immunities, duties, and obligations existing between parent and child; however Tribal membership, rights, privileges, entitlements, shall not be affected by such suspension for the child(ren).
- 26.3.28** "Tribe" means the Red Cliff Band of Lake Superior Chippewa Indians.

**26.4**        **SECTION 4: THE COURT SYSTEM**

- 26.4.1**        Establishment. There is hereby established for the Red Cliff Tribe the Red Cliff Children's Court to hear and determine matters pursuant to this Code. The Children's Court shall consist of two Judges (Chief Judge, Associate Judge) as appointed by the Tribal Council.
- 26.4.2**        Powers and Duties of Children's Court Judges. In carrying out duties and powers specifically enumerate under the Children's Code, Judges of the Court shall have the same powers and duties as Judges of the Red Cliff Tribal Court.
- 26.4.3**        Cooperation and Grants. The Court is authorized to cooperate fully with any Federal, State, Tribal, public or private agency in order to participate in any diversion, rehabilitation or training programs and to receive grants-in-aid to carry out the purposes of this Code (subject to the approval by the Tribal Council of expenditure of funds).

- 26.4.4 Social Services. The Court shall utilize such social services as may be furnished by any Tribal, Federal, or State agency, PROVIDED that it is economically administered without unnecessary duplication and expense.
- 26.4.5 Contracts. The Court may negotiate contracts with Tribal, Federal, or State agencies and Departments on behalf of the Tribal Council for the care and placement of minors whose status is adjudicated under this Code, subject to the approval of the Tribal Council before expenditure of funds.
- 26.4.6 Transfer From State Courts. The Court may accept or decline state court transfers of child custody proceedings.
- 26.4.7 Disqualification. In the event that a Tribal Judge is unable to hear and determine a matter due to absence, illness, or conflict of interest, the Chief Judge or the Tribal Council shall have authority to appoint a substitute judge.
- 26.4.8 Precedence over Family Court Orders. Whenever an order rendered under this Code conflicts with any custody, physical placement or other Family Court order rendered by any Court, the order under this Code shall take precedence.

26.5 **SECTION 5: THE INDIAN CHILD WELFARE WORKER**

The Tribal Indian Child Welfare Worker shall be appointed by the Tribal Council with the following authority and duties:

- 26.5.1 To accept referrals regarding minors alleged to be in need of care.
- 26.5.2 To investigate the circumstances of a minor alleged to be in need of care and to seek the assistance of Tribal or county departments or county or tribal Law Enforcement Officer's, if necessary.
- 26.5.3 The Child Welfare Worker may contact, observe, or interview the child at any location without permission from the child's parent, guardian, or legal custodian if necessary to determine if the child is in need of protection or services, except that the person making the

investigation may enter a child's dwelling only with permission from the child's parent, guardian, or legal custodian or after obtaining a court order permitting the person to do so.

- 26.5.4** To make such other investigations as ordered by the Children's Court or authorized by this code.
- 26.5.5** To develop case plans concerning any minor, if an investigation supports an administrative or judicial finding that the minor is in need of care.
- 26.5.6** To develop case plans to address the specific needs of each individual within the family.
- 26.5.7** To make reports to the Children's Court and to provide information or referrals to recognized child welfare agencies having an interest or service role concerning a Tribal child.
- 26.5.8** To maintain a confidential system of records, subject to disclosure to a non-party only upon order of the Children's Court.
- 26.5.9** Subject to the approval of the Tribal Council, negotiate service agreements with other recognized child welfare agencies.
- 26.5.10** Pending a determination of the minor's status to prevent risk of immediate harm by or to the minor, take into emergency custody and provide emergency placements.
- 26.5.11** To make emergency, foster, group home, and institutional placements on behalf of the Tribe subject to the control of the Children's Court.
- 26.5.12** To represent the Tribe in proceedings concerning the Welfare of any child as defined in sec. 26.2.3 of this Ordinance in any foreign Court or Agency proceeding.
- 26.5.13** To receive and administer supervision, guardianship and custody of children under this Ordinance.
- 26.5.14** To receive as the Tribe's Agent, notifications under Wisconsin Stats. Sec. 48.981 and to maintain the confidentiality of such records as required by law.

- 26.5.15 To decide, in consultation with legal counsel, whether or not to intervene in a case, and whether or not to seek transfer of jurisdiction in a case.
- 26.5.16 In any non-Tribal proceeding, where transfer of jurisdiction is denied or not sought, the Child Welfare Department shall maintain a record of all information gathered, actions taken, and documents received.
- 26.5.17 Immunity for Acts and Omissions. No liability shall attach to the Child Welfare Director, Child Welfare Worker, Presenting Officer or the Tribal Court for statements, acts, or omissions while in the course of activities defined under this Ordinance.

26.6 **SECTION 6: GUARDIAN AD LITEM**

- 26.6.1 Appointment. The Court, under any proceeding(s) authorized by this Code, shall appoint, for the purposes of that proceeding(s), a Guardian Ad Litem (G.A.L.) for a minor, except where the Court finds that a parent, guardian, or custodian, is willing and able to effectively represent the best interests of the minor.
- 26.6.2 Qualifications. The G.A.L. must be familiar with the rights of children and the provisions of this Code.
- 26.6.3 Duties. The G.A.L. shall, represent the minor's best interests in any proceeding required by the Court and make recommendations to the Court on disposition.
- 26.6.4 The Court shall compensate the G.A.L. for their fees. The Court may order one or more of the parties involved in the case to reimburse the Court for the G.A.L. fees. If more than one party is deemed to be responsible for G.A.L. fees, the Court shall determine to what extent each party is responsible, and the time frame to reimburse the Court for the G.A.L. fees. (12/2/96E)

26.7 **SECTION 7: PRESENTING OFFICER**

- 26.7.1 The Children's Court shall appoint a presenting officer to carry out the duties and responsibilities set forth in this Code.

26.7.2 The presenting officer's qualifications shall be the same as the qualifications for the official who acts as prosecutor for the adult Tribal Court.

26.7.3 The presenting officer shall represent the Tribe in all proceedings under this Code.

26.8 **SECTION 8: PARTIES**

26.8.1 In any proceeding the following parties shall be entitled to participate:

(a) The minor and the appointed G.A.L. or other representative.

(b) The minor's parents, custodian, or guardian.

(c) The Tribe.

(d) Any other tribal government or non-tribal child welfare agency having an independent legal interest in the welfare of the minor.

26.8.2 A member of the extended family, upon a motion and determination by the Children's Court that the interests of the minor will be best protected by allowing such participation may intervene in a proceeding under this Code.

26.8.3 Any party may be represented by an attorney or lay advocate of his or her own choosing, at the parties' expense, provided the attorney or lay advocate is admitted to practice before the Red Cliff Tribal Court. The Tribe or Children's Court shall not be required to provide counsel for any party.

26.8.4 Any party or counsel appearing in a proceeding shall be permitted access to and inspection of court records, subject to such disclosure limitations as the Court may provide.

26.8.5 In the absence of a specific provision in this Chapter or a Court order to the contrary, all Affected Persons, as defined in sec. 26.3.4 of this Chapter, shall be parties to a Children's Court proceeding held in the interest of a child. Parties who have a child in an out-of-home placement will receive notices of all proceedings, but their appearance is not required. After termination or

suspension of parental rights, no parent whose rights have been terminated or suspended shall be entitled to notice of any further proceedings regarding the child, except as the Children's Court may deem appropriate.

**26.9            SECTION 9:    INITIAL CONTACT**

**26.9.1**        Referrals.        All information, complaints, notices, reports, oral referrals, and inquiries concerning a minor alleged to be in need of care, shall be forwarded or relayed to the Indian Child Welfare Worker, who is designated contact person for receipt of such.

**26.9.2**        Complaints.      A complaint may be filed by a person who has knowledge of the facts alleged. The complainant shall sign the complaint. The complaint shall contain:

- (a)    A citation to the specific statutory provisions of this Code which gives the Children's Court jurisdiction of the proceedings; and
- (b)    Name, age, address, and tribal affiliations of the minor who is the subject of the complaint.
- (c)    A plain and concise statement of the facts upon which the allegations are based, including the date, time and location at which the alleged events occurred or circumstances arose.

**26.10           SECTION 10:    SERVICE OF SUMMONS AND PETITIONS.**

**26.10.1**        Petitions filed pursuant to this Chapter shall be filed with the Clerk of Court who shall:

- (a)    Assign a case number.
- (b)    Stamp petition with date of filing.
- (c)    Schedule hearing date and time.
- (d)    Issue a summons commanding parties to appear in the Tribal Court on the specified date and time.

**26.10.2**        The summons and petition shall be served personally or by certified mail (return receipt requested) by the Petitioner on all parties in the matter. Personal service shall be accompanied by an Affidavit of Service which

shall be signed in the presence of the Clerk of Court or a notary public.

**26.10.3** Personal service may be made by any Law Enforcement Agency. A Certificate of Service signed by the officer making the service shall be submitted to the Court prior to the scheduled hearing.

**26.10.4** If personal service or service by mail cannot be accomplished, service may be made by publication in a newspaper of general circulation within the County of the person(s) last known address. The notice shall be published for a minimum of (2) consecutive issue and shall contain the following information:

- (a) The name of the party or parties to who notice is given.
- (b) The former address of the party or parties.
- (c) Time, date and location of the hearing.
- (d) The notice shall not include the name of the minor but shall include the minor's initials and date of birth.
- (e) A brief statement of the relief requested.
- (f) Notice that any party has the right to representation by counsel at his or her own expense.

**26.10.5** An Affidavit of Publication provided by the newspaper shall be submitted to the Court prior to the scheduled hearing.

**26.11**        **SECTION 11: EMERGENCY CUSTODY**

**26.11.1** If it appears that the child is in immediate danger of physical or emotional harm, a minor may be taken into emergency custody by the Indian Child Welfare Worker or Tribal Law Enforcement.

**26.11.2** A person who takes a child into emergency custody without a Children's Court order, under the circumstances described in sec. 26.11.1 of this Chapter, shall make reasonable efforts to provide immediate notice to the Children's Court which may be accomplished through

submission of an emergency custody form, and/or providing immediate notice to the Child's Tribe if different from the Red Cliff Band of Lake Superior Chippewa Indians.

- 26.11.3** Upon taking a minor into custody, the person having custody of the minor shall make immediate and repeated efforts to notify the minor's parents, custodian, or guardian that the minor is in custody and of the pending hearing.
- 26.11.4** If the person taking a child into custody, or the Child Welfare Director, believes the child to be in need of prompt medical diagnosis or treatment that person shall deliver the child to a hospital or physician, for that purpose, and may consent to emergency or urgent care of the child.
- 26.11.5** The agency taking a child into custody shall thereafter have the authority to make all decisions regarding the care and well-being of the child until the child is released from custody or by order of the Court, unless custody is transferred to the Child Welfare Director, in which case such authority shall transfer therewith.
- 26.11.6** Within three (3) business days after taking a minor into custody, the minor shall be presented to the Children's Court for a determination concerning whether there is probable cause to believe that the minor is in need of care. If, within three (3) business days no hearing is held, or no petition is filed, the child shall be released from emergency custody, unless the Court finds that probable cause exists to believe that the child is in imminent danger to self or another, or that the child's parent, guardian, or custodian is unwilling or unable to provide adequate supervision and care, in which case one (1) 48 hour extension may be granted during which time the child shall remain in emergency custody pending the filing of a petition.
- 26.11.7** Upon a determination that there is probable cause to believe that the minor is in need of care, the Court may order a temporary disposition as permitted by this code.
- 26.11.8** Emergency Custody Order. Upon a sworn written statement of facts showing that probable cause exists to believe that a minor is a minor-in-need-of-care, the Court may issue an emergency custody order.



**26.11.9** Search Warrant. The Court may issue a warrant authorizing a Tribal Police Officer, to search for a minor if there is probable cause to believe that the minor is within the court's jurisdiction and an emergency order has been issued for the alleged minor-in-need-of-care.

**26.11.10** In the event that the Indian Child Welfare Department receives a report of unborn child abuse, including but not limited to use of illegal drugs or abuse of alcohol during pregnancy, such report shall immediately be referred to the County Child Protection Department of the mother's County of residence, and the Indian Child Welfare department shall actively participate in any intervention until the child is born. If the child requires out-of-home placement after birth, the Tribe may consider whether to seek transfer of jurisdiction at that time.

**26.12** **SECTION 12: PRENATAL EXPOSURE.**

**26.12.1** There shall be a presumption that a child is in need of care if the child is diagnosed with Neonatal Abstinence Syndrome by a doctor who is competent to make that diagnosis, or samples of blood, urine or meconium of the child or the mother obtained during pregnancy, or shortly after birth, indicate the presence of addictive illegal drugs or non-prescribed addictive prescription drugs after a drug screen analysis. That presumption can be overcome by clear and convincing evidence showing that the birth mother made the following efforts to prevent harm to her unborn child during the pregnancy:

- (a) Only using addictive prescription medication as prescribed by a physician and lowering doses of addictive medication during the pregnancy, as recommended by the prescribing physician.
- (b) Avoiding all illegal drugs, and addictive prescription drugs without a prescription, as shown through drug screens testing the mother's blood or urine throughout the pregnancy.
- (c) Actively participating in AODA services; and

- (d) Obtaining all necessary and recommended prenatal care, including mental Health Services if recommended by her health care provider(s).

**26.13**      **SECTION 13: BASIC RIGHTS**

**26.13.1**      Minors-in-Need-of-Care; Right to an Attorney.      In a minor-in-need-of-care proceeding, the parents, and the child's guardian or custodian shall be informed of their rights to an attorney pursuant to section 26.8.3 of this Chapter.

**26.13.2**      Guardian Ad Litem (G.A.L.).      The Court, at any stage of proceeding, may appoint a G.A.L. for a minor who is a party, if the minor has no parent, guardian, or custodian appearing on behalf of the minor or if their interests conflict with those of the minor.

**26.13.3**      Hearings.      All hearings under this code 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 to appear and approved by the Court may be present at the hearing.

**26.13.4**      Explanation of Rights at First Appearance.  
The parent(s), guardian, or custodian, when a minor is alleged to be a minor-in-need-of-care, and the parent(s) in a suspension of parental rights proceeding, shall be informed by the Court of:

- (a) The allegations against him/her;
- (b) The right to an attorney;
- (c) The right to testify or remain silent and that any statement made by him/her may be used against him/her;
- (d) The right to cross-examine witnesses;
- (e) The right to subpoena witnesses on his/her own behalf; and
- (f) The possible consequences if the allegations of the complaint are found to be true.

**26.14**      **SECTION 14: SHELTER CARE**

- 26.14.1**      Upon a determination that there is probable cause to believe that the minor is in need of care, or upon a determination by the Indian Child Welfare Worker that the minor requires custodial care pending a probable cause hearing, a minor may be placed in shelter care.
- 26.14.2**      The Indian Child Welfare Worker shall not place a minor in shelter care unless the Children's Court orders that a minor is taken into custody pursuant to Section 10 of this Code.
- 26.14.3**      If the minor's parent, guardian or custodian has not been contacted, the Indian Child Welfare Worker shall make immediate and recurring efforts to inform him or her that the minor has been taken into custody and shall release the minor to the parent, guardian or custodian, unless shelter care is immediately necessary.
- 26.14.4**      If a minor is not released to his parent, guardian or custodian, the Indian Child Welfare Worker shall place the minor in shelter care, pending the preliminary inquiry.
- 26.14.5**      If a minor is not released to his parent, guardian or custodian, the Indian Child Welfare Worker shall immediately explore alternative preadjudication custody arrangements and prepare recommendations for temporary care and custody for presentation at the preliminary inquiry.
- 26.14.6**      A child may be held in shelter care in any of the following places:
- (a)      The home of a parent or guardian;
  - (b)      The home of a relative;
  - (c)      The home of another responsible adult;
  - (d)      A licensed foster home provided the placement does not violate the terms of the license;
  - (e)      A licensed group home provided the placement does not violate the terms of the license;

- (f) A non-secure facility operated by a Child Welfare Agency;
- (g) A hospital or physician's office; or
- (h) A drug or alcohol treatment facility.

**26.14.7** In any Emergency Shelter placement, the Child Welfare Director or their designee shall immediately notify the child's parent, guardian, or custodian that the child is in custody, the reasons for custody, and the location of the child, if the Child Welfare Director or designee deems such disclosure to be safe and appropriate for the child.

**26.14.8** Criteria for Shelter Care. If a minor is placed in shelter care, the Court shall conduct a preliminary inquiry within three (3) days for the purpose of determining if criteria for shelter care exist. Criteria for Shelter care exists if the Court finds:

- (a) Probable cause exists to believe the minor is a minor-in-need-of-care; and
- (b) The minor is suffering from an illness or injury, and no parent, guardian, or custodian, or other person is providing adequate care of him/her; or
- (c) The minor is in immediate danger from his/her surroundings, and removal is necessary for his/her safety or well-being; or
- (d) The minor will be subject to inquiry by others if not placed in the custody of the Court; or
- (e) The minor has been abandoned by his/her parent, guardian, or custodian; or
- (f) No parent, guardian, custodian or other person is able or willing to provide adequate supervision and care for the minor.

**26.15** **SECTION 15: PRELIMINARY INQUIRY**

**26.15.1** If a minor is placed in shelter care by the Indian Child Welfare Worker pursuant to Section 14 of this Chapter, the Children's Court shall conduct a preliminary inquiry within three (3) days for the purpose of determining:

- (a) Whether probable cause exists to believe the minor is a minor-in-need-of-care; and
- (b) Whether continued shelter care is necessary pending further proceedings.

**26.15.2** If a minor has been released to his parents, guardian, or custodian, the Children's Court shall conduct a preliminary inquiry within three (3) days after receipt of a petition for the sole purpose of determining whether probable cause exists to believe the minor is a minor-in-need-of-care.

**26.15.3** Basic Rights. At the beginning of the preliminary inquiry the minor, the parents, guardian or custodian shall be advised of their basic rights under Section 13 of this Chapter.

**26.15.4** Presence of Minor's Parents, Guardian, or Custodian. If the minor's parent, guardian, or custodian is not present at the preliminary inquiry, the Court shall determine what efforts have been made to notify and to obtain the presence of the parent, guardian, or custodian. If it appears that further efforts are likely to produce the parent, guardian, or custodian, the Court shall recess for not more than twenty-four (24) hours and direct the Indian Child Welfare Worker to make continued efforts to obtain the presence of a parent, guardian, or custodian.

**26.15.5** At the Preliminary Inquiry, the non-petitioning parties shall state whether they intend to contest the allegations of the petition. If no party contests the allegations of the petition, the Court shall set a date for a dispositional hearing no later than thirty (30) days from the date of the preliminary inquiry. If all parties consent, the Court may proceed immediately with the dispositional hearing. The Court must find that consent is voluntarily and knowingly given.

**26.15.6** If the petition is contested, the Court shall set a date for an adjudicatory hearing no later than thirty (30) days from the date of the preliminary inquiry, unless this time limit is waived by the parties and approved by the Court. Any party may request a waiver of the time limit.

26.15.7 Any affected person has the right to be heard and represented at a hearing by counsel at his or her own expense. The Court shall determine, on a case by case basis, whether appointment of a guardian ad litem for any child who is subject of a petition is necessary.

26.15.8 If the Court finds probable cause exists that the minor(s) is a minor-in-need-of-care and further finds shelter care to be necessary, the Court shall enter an interim Dispositional order.

26.16 **SECTION 16: INVESTIGATION BY THE INDIAN CHILD WELFARE WORKER**

26.16.1 The Indian Child Welfare Worker shall make an investigation within twenty-four (24) hours after the preliminary inquiry or the release of the minor to his/her parent, guardian, or custodian to determine whether the interests of the minor and the public require that further action be taken. Upon the basis of this investigation, the Indian Child Welfare Worker may:

- (a) Recommend that no further action be taken; or
- (b) Suggest to the minor, his/her parent, guardian, or custodian that they appear for an informal hearing pursuant to Section 18 of this Chapter; or
- (c) Recommend that the presenting officer file a petition pursuant to Section 17 of this Chapter in the Children's Court to initiate further proceedings. The petition shall be filed within forty-eight (48) hours if the minor is in shelter care. If the minor has been previously released to his parent, guardian, or custodian, relative or responsible adult, the petition shall be filed within ten (10) days.

26.17 **SECTION 17: PETITION**

26.17.1 Proceedings under the Children's Code shall be instituted by a petition filed by the presenting officer on behalf of the Tribe and in the interest of the minor. The petition shall state:

- (a) The name, birth date, tribal affiliations, and residence of the minor; and
- (b) The names and residences of the minor's parent, guardian, or custodian; and
- (c) A citation to the specific provision of this Code which gives the Children's Court jurisdiction of the proceedings; and
- (d) If the minor is in shelter care, the place of shelter care and the time s/he was taken into custody.

**26.17.2** Petitions shall be served personally by a Tribal Law Enforcement Officer or appointee of the Court. If the petition cannot be delivered personally, the Court may deliver the petition by registered mail return receipt requested. In the case of a non-marital child, the petition shall be served on any man whose paternity has been adjudicated, or who has filed a declaration of paternal interest, or who is alleged in any paternity action to be the father, except if the child was conceived as a result of sexual assault.

**26.17.3** No petition filed on behalf of the Tribe shall be deemed insufficient on account of hearsay, provided that there is a sufficient indication in the petition of the declarant's reliability.

**26.17.4** Prospective adoptive parents are authorized to file a customary adoption petition pursuant to section 26.32 of this Chapter.

**26.18**      **SECTION 18: INFORMAL HEARING**

**26.18.1** The Indian Child Welfare Worker may hold an informal conference with the minor and the minor's parent, guardian, or custodian to discuss alternatives to the filing of the petition if:

- (a) The admitted facts bring the case within the jurisdiction of the Children's Court; and
- (b) An informal adjustment of the matter would be in the best interest of the minor and the Tribe, and

(c) The minor and his/her parent, guardian, or custodian, consent to an informal adjustment with knowledge that the consent is voluntary and revocable at will.

**26.18.2** Notice of the informal hearing shall be given to the minor and his/her parent, guardian, or custodian and their counsel as soon as the time for the hearing has been established. The Notice shall contain:

(a) The name of the Court; and

(b) The title of the proceedings; and

(c) A brief statement of the alleged circumstances upon which the minor-in-need-of-care allegation is based; and

(d) The date, time and place of the informal hearing.

**26.18.3** The notice shall be delivered by the Tribal Law Enforcement Officer or the Indian Child Welfare Worker or a designee. If the Notice cannot be delivered personally, the notice shall be delivered by registered mail.

**26.18.4** No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing.

**26.18.5** At the informal hearing, the Indian Child Welfare Worker may refer the minor and the parent, guardian, or custodian to a community agency for needed assistance or recommend that the presenting officer file a petition pursuant to Section 17 of this Code.

**26.18.6** The Indian Child Welfare Worker shall set forth in writing the conclusions reached at the informal hearing and the disposition agreed to by the parties for remedying this situation, which shall be signed by the parents and the child, if over 12 years of age.

**26.18.7** Any informal adjustment period shall not exceed six (6) months.



**26.19**      **SECTION 19: ADJUDICATORY HEARING**

- 26.19.1**      Standard of Proof. The standard of proof for a minor-in-need-of-care adjudicatory hearing shall be clear and convincing.
- 26.19.2**      If a petition is contested at Preliminary Inquiry, an adjudication hearing shall be held no later than thirty (30) days of receipt of the petition by the Court unless this time limit is waived by the parties and approved by the Court. If a petition is not contested, the Court shall schedule a Dispositional Hearing in accordance with section 22 of this chapter.
- 26.19.3**      The Children's Court shall hear testimony concerning the circumstances, which give rise to the complaint.
- 26.19.4**      If the allegations of the petition are sustained by clear and convincing evidence, the Children's Court may find the minor to be a minor-in-need-of-care and may proceed immediately to the dispositional hearing. If any party requests, a dispositional hearing may be scheduled for no more than twenty (20) days after the adjudicatory hearing.
- 26.19.5**      The Court shall dismiss the petition if the allegations are not established by the required standard of proof;
- 26.19.6**      A finding that a minor is a minor-in-need-of-care constitutes a final order for purposes of appeal.

**26.20**      **SECTION 20: DISCOVERY**

- 26.20.1**      Copies of all law enforcement reports relevant to the proceeding under this chapter, including all officer's memoranda and witness statements, unless the statements are given under a promise of confidentiality, shall be made available by the Presenting Officer upon request of a party, counsel or the child's Guardian ad Litem prior to the adjudicatory hearing in any matter.
- 26.20.2**      All records relating to a child which are relevant to a proceeding under this chapter, and which are in the possession of the Indian Child Welfare Department, shall be open to inspection by a Guardian ad Litem or

counsel upon demand without release, unless privileged or prohibited by Tribal or Federal law, or unless the records contain statements given under a promise of confidentiality or contain material the non-disclosure of which is necessary to protect the interests of the child. If any records are not released to a requesting party, the reason shall be given to the party, who may ask the Children's Court to review the denial of the request, in which case the Children's Court may in its discretion, view the records in order to decide whether to order the records released. Persons entitled to inspect records may obtain copies of them at their own expense upon permission of the custodian of the records or the Children's Court. The children's Court may require counsel or parties not to disclose material contained in the records to any person if the Children's Court reasonably believes such disclosure would be harmful to the child. To address confidentiality breaches the Court may assess fines, may restrict member rights and may issue other orders intended to address any continuing breach as well as to punish offending parties.

**26.20.3** Counsel and Guardian ad Litem shall have the right to view any videotaped oral statement of the child upon reasonable notice without release, unless privileged, unless release is required by Tribal or Federal law, or unless the records contain statements given under a promise of confidentiality or contain material the non-disclosure of which is necessary to protect the interests of the child. If any videotaped oral statement of the child are not released to a requesting party, the reason shall be given to the party, who may ask the Children's Court to review the denial of the request, in which case the Children's Court may, in its discretion, view the videotaped oral Statement of the child in order to decide whether to order the videotaped oral statement of the child released. Any party not represented by counsel may have access to the videotaped oral statement of the child upon order of the Children's Court. Persons entitled to inspect the videotaped oral statement of the child may obtain copies of them at their own expense upon permission of the custodian of the videotaped oral statement or the

Children's Court. The Children's Court may require counsel or parties not to disclose material contained in the videotaped oral statement to any other person if the Children's Court reasonably believes such disclosure would be harmful to the child. To address confidentiality breaches the Court may assess fines, may restrict member rights and may issue other orders intended to address any continuing breach as well as to punish offending parties.

**26.21            SECTION 21:    PRE-DISPOSITIONAL REPORT**

**26.21.1**    No less than twenty-four (24) hours prior to a dispositional hearing, the Indian Child Welfare Worker shall file with the Court a pre-dispositional report. The report shall, in detail, describe:

- (a)    Services that are appropriate and available from or through the Tribe and how such services have or have not been effective;
- (b)    Social            history            of            the            Child;
- (c)    A recommended plan of treatment, rehabilitation, and care that preserves the least restrictive environment appropriate for the child and is most likely to preserve and protect the child's family unit;
- (d)    Care, service, or treatment providers under the plan; and
- (e)    The needs of the child and how the objectives of the plan will meet those needs.

**26.21.2**    In the event that out of home placement of the child is recommended, the dispositional report shall contain, or be supplemented within thirty (30) days by a report containing the following:

- (a)    Services available through the Tribe for and provided in an effort to prevent the out of home placement;
- (b)    Services available through the Tribe to facilitate a return to the minor's home;

- (c) Description of the minor's previous or planned future placements and how such placement has met or will meet the needs or facilitate the return home of the child;
- (d) Assessment of the appropriateness of any out of home placement and the goals to be met by such placement; and
- (e) Conditions upon which the minor will be returned to the home including any changes in the conduct of the child or parent or in the conditions of the home.

**26.22      SECTION 22:    DISPOSITIONAL HEARING**

**26.22.1**    A dispositional hearing shall be held within twenty (20) days of the adjudicatory hearing. The Court shall conduct the hearing for the purpose of determining the proper disposition of the minor. The Court shall enter a written judgment setting forth the findings, decision, and disposition.

**26.22.2**    The dispositional order shall recite the following elements:

- (a) Appearances at the hearing;
- (b) Disposition from among the alternatives provided by law;
- (c) The duration of the order, not to exceed one (1) year; and
- (d) Placement of the minor, except that the placement may be made after the hearing and upon notice to all parties, the location of the child shall be made a part of the record. The Court may limit disclosure of the minor's whereabouts if necessary to protect the minor.

**26.22.3**    In making disposition the Court may exercise jurisdiction over any adult within the court's jurisdiction in aid of its orders.

**26.22.4** If a minor has been adjudged a minor-in-need-of-care, the Court may assume or assign legal custody of the minor and may make any of the following dispositions:

- (a) Permit the minor to remain with his/her parents, guardian, or custodian, subject to such limitations and conditions as the Court may prescribe, which may include counseling, restitution, community service, treatment, or other conditions or conduct;
- (b) Place the minor with an extended family member within the external boundaries of the reservation subject to such limitations and conditions as the Court may prescribe;
- (c) Place the minor in a foster home within the external boundaries of the reservation, which has been licensed or approved by the Tribe, subject to such limitations and conditions as the Court may prescribe;
- (d) Place the minor in shelter care facilities designated by the Court;
- (e) Place the minor in a foster home or an extended family member's home outside the external boundaries of the reservation subject to such limitations and conditions as the Court may prescribe;
- (f) Transfer legal custody to an agency responsible for the care of minor-in-need-of-care children or to an extended family member or other person who the Court finds to be qualified to receive and care for the child;
- (g) Appoint a guardian for the minor under supervision of the Court;
- (h) Participation of the child and/or parent or custodian in a specified counseling, treatment, or educational program, which may include use of traditional or culturally appropriate services or activities;
- (i) Restitution in any reasonable amount for acts of the child resulting in damage to property or injury to any person or the Tribe;

- (j) Complete an alcohol, drug, or mental health assessment(s) with follow-through of recommendations;
- (k) Order drug and/or alcohol tests are conducted by the Indian Child Welfare Department or by a medical professional deemed appropriate by the Court;
- (l) Visitation by parties or Extended Family members as appropriate;
- (m) Enter an order of customary adoption if parental rights have been suspended or terminated by a State or other Tribal Court;
- (n) Suspend the parental rights of a parent or parents pursuant to section 26 of this Chapter; or
- (o) Enter an order of Customary Adoption pursuant to section 34 of this Chapter.

**26.22.5** Termination of Parental Rights. If parental rights to a child have been terminated by a State or other Tribal Court, the Court shall:

- (a) Place the minor with an extended family member;
- (b) Place the minor in a foster home or shelter care facility which has been approved by the Tribe; or
- (c) Proceed to the customary adoption section 31 of this Chapter.

**26.22.6** Placement Preference. The preference of placement in a customary adoption of a minor shall be:

- (a) Extended family member;
- (b) A member or person eligible for membership in the Red Cliff Tribe;
- (c) A member of another Indian Tribe; and
- (d) If this order or preference cannot be met, then placement may be made with any person who has knowledge of the child's Tribal Affiliation and his or her special needs.

**26.23**      **SECTION 23:      EXTENSION, MODIFICATION, DISMISSAL OF DISPOSITIONAL ORDERS**

A dispositional order may be modified as to conditions or placement, extended, or dismissed upon the following terms:

**26.23.1**      Extension. Within the time determined by the court for the expiration of any dispositional order, a party may file a petition for extension of the existing order. Such petition shall be filed in accordance with Section 17 and shall include a showing that the circumstances of the child have not improved and warrant continuation of the existing orders, or that new circumstances of the child warrant continuation of the existing orders.

**26.23.2**      Modification. Within the time determined by the court for the expiration of any dispositional order, a party may file a petition for modification of an existing order in accordance with Section 17, which shall allege the reasons for the proposed change in conditions or placement under the existing order. If the court finds that it is in the best interest of the child to make such modification, it shall enter orders accordingly.

**26.23.3**      Dismissal. At the end of the time determined by the court for the expiration of an existing dispositional order, if no petition for extension, modification, or dismissal has been filed, the court shall cause notices to be sent to all parties advising of the expiration of the order. If no petition is thereafter filed within ten (10) days after the expiration of the existing order or five (5) days after the sending of the notice of expiration, whichever is later, the court shall enter an order vacating the dispositional order and dismissing the petition.

**26.24**      **SECTION 24:      GUARDIANSHIP.**

**26.24.1**      The Court may appoint a guardian for any minor:

- (a) That is a subject of proceedings under this Chapter; or
- (b) Upon the Petition of any interested party.

When guardianship is the subject of a Petition, the Court shall initially rule on the subject of whether the Petitioner qualifies as an interested party, which it may make in its sole discretion.

**26.24.2** The Court's order of appointment in any guardianship proceeding shall specify:

- (a) Whether it is a Guardianship of the person or Guardianship of the estate of a minor; and
- (b) The extent and nature of the Guardian's authority.

**26.24.3** The Children's Court may appoint a guardian of the minor to exercise custody and the power to make daily and major decisions of importance to the minor's health, education, support, and welfare, regarding any minor as who has no living parent or whose parents are unavailable for reason of incarceration or commitment or otherwise unable to care for the minor. Such a guardian shall be known as a "legal guardian." A legal guardian of the minor may not manage the financial interests of the minor but may act as custodian with regard to ordinary property in the minor's possession.

**26.24.2** The Children's Court may appoint a guardian of the minor's estate to conserve the assets, income, and financial interests of any minor who has no living parent or whose parents are unavailable for reason of incarceration or commitment or otherwise unable to care for the minor. Such a guardian shall be known as a "guardian of the minor's estate." A legal guardian of the minor may be appointed guardian of the minor's estate or separate guardians may be appointed.

**26.24.3** Any person may petition for guardianship of a minor or a minor's estate upon payment of applicable Court filing fees. If a petition for guardianship is filed by the Indian Child Welfare Department, said filing fees shall be waived. The petition shall state:

- (a) The name, residence, address, mailing address, and date of birth of the minor(s), the petitioner, and of the proposed guardian or guardians.
- (b) The reason guardianship is sought.



- (c) Whether temporary or permanent guardianship is sought.
- (d) Whether a guardian of the minor or a guardian of the minor's estate or both is sought.
- (e) Whether any guardian of the minor(s) exists.
- (f) A statement as to how the minor has become, or will become, eligible for guardianship.

**26.24.4** Upon receiving a petition for guardianship, the Children's Court may appoint a Guardian ad Litem for the minor(s).

**26.24.5** Summons. Upon the filing of a petition seeking guardianship of a minor(s), or guardianship of a minor(s) estate, the Clerk of Court shall schedule a date for hearing and shall provide a copy of the summons to the petitioner(s) and the administrator of any estate or trust, for service.

**26.24.6** Service of Summons and Petition. A copy of the petition upon the minor's parent(s), parent(s) legal counsel, if any; guardian ad litem, if any; administrator of any estate or trust; any current guardian or custodian of the minor; and the Indian Child Welfare Department. The Child Welfare Director or the Child Welfare Worker is not required to appear in a guardianship case, but may participate as a party upon request of the Children's Court. The summons and petition shall be served in accordance with section 26.10 of this Chapter no less than ten (10) days prior to the hearing.

**26.24.8** Guardianship Hearing.

- (a) At the hearing on the petition the Children's Court shall hear the petitioner's evidence and the evidence offered by any other party. If the Court is satisfied by clear and convincing evidence that the appointment of a guardian is in the best interests of the minor, the Court shall appoint a guardian.
- (b) In lieu of a hearing, all parties may enter into a written stipulation allowing the Children's Court to appoint a guardian under this section.

**26.24.9** Appointment of Guardian.

- (1) The Children's Court may appoint a guardian of the minor, a guardian of the estate, or both, as requested in the petition. The guardianship so established may be temporary or permanent, as requested in the petition and ordered by the Court.
- (2) A guardian of a minor shall report to the Children's Court, on the care and status of the minor, and a guardian of the estate of a minor shall report annually or as often as the Court deems appropriate, in accordance with standards set by the Court, on the income, assets, expenses, and debts of the minor. The Court shall order a date and time for such reports to be filed.

**26.24.10** Termination or Change of Guardianship.

- (1) A guardianship may be altered or terminated, or a new guardian appointed, by the same procedures established in section 26.24.3.
- (2) Any guardianship created under this Chapter shall terminate upon its terms or upon the child's eighteenth (18) birthday, whichever is sooner.

**26.24.11** Voluntary Consent to Exercise Custodial Rights.

The parent or parents with legal custody of a child may enter into a voluntary agreement with an adult(s) transferring the rights of custody to the child to the designated adult(s). The parties may present the agreement to the Children's Court for approval, and if approved the agreement may not be revoked by any party except with the consent of the other party or parties, or pursuant to the terms of the agreement, or with Court approval.

**26.25** **SECTION 25: PERMANANCY PLANNING**

**26.25.1** The Child Welfare Director or the Child Welfare Worker shall prepare a Court report including the permanency planning requirements in every case where a child(ren) has remained in out-of-home placement for twelve (12) of the last eighteen (18) months.

**26.25.2** The permanency planning requirements of the Court report shall describe the following:

- (a) The services offered to prevent out of home placement and to facilitate the child's return to home.
- (b) The basis for the decision to hold the child in custody or to place out of home.
- (c) The current and future planned location and types of placement for the child.
- (d) If the child is placed more than 60 miles from the child's home, include a statement that a closer placement is either unavailable or inappropriate.
- (e) The appropriateness of the services provided to meet the needs of the child and the family, including services that have been considered but are not available, or not likely to become available, or are not being offered and why.
- (f) The services that will be offered to carry out the dispositional order; to insure proper care and treatment of the child and to promote stability in the placement; to meet the child's physical, social, emotional, educational, and vocational needs; and to facilitate return of the child to home or to obtain an alternative permanent placement.
- (g) The conditions, if any, upon which the child will be returned to home, including any changes required in the conduct of the parents or guardians, the conduct of the child, or the safety of the home.

**26.26**      **SECTION 26: SUSPENSION OF PARENTAL RIGHTS.**

**26.26.1**      Effect of a Suspension of Parental Rights. Suspension of parental rights means that, pursuant to Court order, the legal relationship of parent and child is suspended. The effect of a decree of suspension of parental rights is to suspend the parent-child relationship, to suspend the parent from all rights and responsibilities with respect to the child, and to suspend all legal relationships, custody, control, and financial responsibility, however,

tribal membership, rights, privileges, entitlements, or obligations shall not be affected by such suspension nor shall it affect any rights of inheritance from the biological parent(s).

**26.26.2** Suspension of Parental Rights Hearing. A suspension of parental rights hearing shall be held within thirty (30) days of filing of a petition to suspend parental rights pursuant to Section 28 of this Chapter. The Court shall conduct the hearing for the purpose of determining whether parental rights should be suspended based upon a showing of:

- (a) Abandonment of the child;
- (b) Willful and repeated risk to the child of death, disfigurement, or impairment of bodily functions;
- (c) Willful and repeated acts of physical or sexual abuse;
- (d) Relinquishment of parental rights acknowledged before the Court pursuant to section 27; or
- (e) Failure for a period of eighteen (18) months or more to correct the conditions that led to court ordered out of home placement.
- (f) Absent parent. A parent who has legal custody of a child pursuant to a judgement of divorce or separation or paternity may file a petition to suspend the parental rights of an absent parent if the petitioning parent has had physical placement of the child for at least twelve (12) months prior to the filing of the petition, and if, for at least twelve (12) months prior to the filing of the petition, the other parent has been absent from the household where the child has lived, has not had primary physical placement of the child, has failed to contribute to the support of the child, or has not communicated or attempted to communicate with the child or with the petitioning parent about the child. Incidental communications through other persons shall not prevent a finding of no contact or communication.

**26.26.2** The parental rights of a non-adjudicated or unacknowledged father may be suspended after service of the summons and petition on all persons named by the

mother as the possible father or, in the case of an unknown father, after publication of the notice as provided in section 26.10 of this ordinance. If an individual appears claiming paternity and contesting the suspension of rights, the individual shall be given reasonable time to establish paternity at his own cost before the Court considers the suspension of the individual's parental rights.

**26.27      SECTION 27:      RELINQUISHMENT OF PARENTAL RIGHTS**

**26.27.1**      The Children's Court may suspend the parental rights of a parent who has given his or her informed, voluntary consent by one of the following methods;

- (a)      The parent appears personally at a hearing and gives his or her consent, the court explains the effect of a suspension of parental rights, and the court has questioned the parent and found to its satisfaction that the consent is informed and voluntary. If the personal appearance of the parent before the court would be impossible or difficult, the court may allow the parent to appear by telephone or video conference.
- (b)      The court may accept written consent executed by the parent before a notary public accompanied by a notarized statement that he or she has been informed of and understands the effect of a suspension of parental rights and voluntarily disclaims any rights he or she may have to the child, including the right of notice to further proceedings; or
- (c)      Written consent executed by the parent before a judge of a court of record of another jurisdiction , and the consent is accompanied by the judge's written findings that the parent was questioned and that the consent is informed and voluntary.
- (d)      A person who may be but has not been adjudicated the father of a non-marital child may consent to suspension of parental rights by signing a written, notarized statement that he has been informed of and understands the effect of a suspension of parental rights and voluntarily disclaims any rights he may have to the child,

including the right of notice of further proceedings.

- (e) If the proceeding to suspend parental rights is held prior to an adoption proceeding in which the petitioner is the child's stepparent, the parent may consent to suspension of rights in person or by filing with the court a written, notarized statement that he or she has been informed of and understands the effect of an order to suspend parental rights, and that he or she voluntarily disclaims all rights to the child, including the right to notice of further proceedings. If the personal appearance of the parent before the court would be impossible or difficult, the court may allow the parent to appear by telephone or video conference.

**26.27.2** Any minor parent stating intent to relinquish his or her parental rights shall have a guardian ad litem appointed for him or her by the court. The minor parent's consent to suspend rights shall not be accepted unless joined by his or her guardian ad litem.

**26.27.3** Relinquishment shall not be accepted or acknowledged by the Court prior to ten (10) days after birth of the child.

**26.28**     **SECTION 28: PETITION FOR SUSPENSION OF PARENTAL RIGHTS.**

**26.28.1** Any adult or agency possessing custody of a minor child may petition the Court seeking an order for the suspension of the parental rights of a parent of a child. The petition shall contain the following information:

- (a) The name, address, and telephone number of the child's tribe;
- (b) The name, address, telephone number (if known) and age of the child's parent whose parental rights are to be suspended;
- (c) The name, address, and telephone number of the petitioner and the petitioner's relationship, if any; to the child;
- (d) The name, address, and telephone number of any relatives who may have an interest in the care,

custody, and control of the minor child;

- (e) A statement as to why an order for the suspension of parental rights of the parent is in the best interests of the child;
- (f) A statement as to basis for the request of the suspension of parental rights supported by medical, psychiatric, child protection worker, family member and/or psychological reports or testimony;
- (g) A statement that no similar action is pending in a state or another tribal court having jurisdiction over the child.

**26.28.2** The petition shall be filed with the clerk of court, with copies served, by the petitioner, on the Child Welfare Department, the child's tribe and the child's parent(s) in the manner provided for in Section 26.10.3 or 26.10.4 of this Chapter.

**26.28.3** A Guardian ad Litem shall be appointed to assist the Court in determining the best interests of the child.

**26.29**     **SECTION 29:     ATTENDANCE AT HEARING.**

**26.29.1** The biological parent(s) shall be present at the hearing in person or by telephone unless he or she has waived the right to appear in writing executed before the Clerk of Court or a Notary Public and filed with the court, or unless the parent is unable to attend by reason of a medical condition as evidenced by a written statement from a licensed physician.

**26.29.2** The Court may proceed on a petition without the presence of the biological parent(s) if the petitioner has provided to the Court a Certificate of Service in accordance with section 26.10.3 of this Chapter.

**26.29.3** The petitioner shall be present at the hearing. The Children's Court may continue the hearing, upon a showing of good cause, at the request of any party to the proceeding and enter such temporary orders, if any, as may be deemed just and reasonable.

**26.29.4** The Court shall inform the parent(s) of their rights under section 26.13 of this code and of the nature and consequences of the proceedings.

Petitioners and other parties have the following rights:

- (a) The parties have the right to written notice of proceedings and to attend any hearing arising out of the filing of a petition for suspension of parental rights. The biological parents and the petitioner have the right to be represented by counsel at their own expense;
- (b) The parties have the right to summon and cross-examine witnesses;
- (c) The biological parents and the petitioner have the right to seek independent medical, psychological or psychiatric evaluation of the child at their own expense.

**26.29.5** The burden of proving the allegations set forth in the petition shall be upon the petitioner and the standard of proof shall be beyond a reasonable doubt. There shall be a legal presumption of a parent's ability to parent until proven otherwise.

**26.30** **SECTION 30: FINDINGS AND FINAL ORDER ON PETITION TO SUSPEND PARENTAL RIGHTS.**

- (a) In all cases, the court shall make specific written findings of fact, state separately its conclusions of law, and enter a written judgment or order.
- (b) The court shall make findings that it is in the child's best interest that a final order suspending the parental rights be entered and the court shall specify the basis for those findings.

**26.30.1** If the court determines that it is in the best interest of the child(ren), it shall issue a final order for a suspension of parental rights. Such order may include, but is not limited to:

- (a) A suspension of the parental rights of the parent, including the suspension of the right to the care,



custody and control of the minor child and allowing the child to be adopted;

- (b) A suspension of the right of the parent(s) 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;
- (c) Restraining a parent from contacting the minor child, the child's foster parent, the child's adoptive parent and/or the social services agency or agencies possessing information regarding the minor child;
- (d) Ordering that the biological parents' obligation to pay child support, except for arrearages, is terminated;
- (e) Ordering that any prior court order for custody, visitation or contact with the minor child is hereby terminated;
- (f) Ordering that the parent shall have no standing to appear at any future legal proceedings involving the child; and
- (g) A statement regarding why it is in the best interest of the child(ren) to enter this order.

**26.30.2** A suspension of parental rights does not require a change on the child's birth certificate.

**26.30.3** Copies of any order for suspension of parental rights shall be served upon the parents and the agency or agencies having legal custody of the child and any other parties as directed by the court.

**26.30.4** Final orders for the suspension of parental rights may be reviewed by the court at the request of the biological parent or the agency or agencies possessing custody of the child only if one of the following occurs;

- (a) If there is no final permanency order in effect after a period of one (1) year after the entry of the final order suspending parental rights;
- (b) The adoption of the child fails within six (6)

months of issuance of a final order;

- (c) The adoptive parent is deceased; or
- (d) If the adoptive parent(s) joins in the biological parents' request for review.

**26.30.5** Notice of this review shall be provided to all parties to the hearing at which the final suspension of parental rights order was issued.

**26.31**        **SECTION 31:        CUSTOMARY ADOPTION.**

**26.31.1**        The principles that shall guide the Children's Court in decisions on Customary Adoption pursuant to this section are:

- (a) Protection of the child's safety, well-being and welfare and their sense of belonging;
- (b) Preservation of the child's identity as a tribal member and member of an extended family and clan; and
- (c) Preservation of the culture, religion, language, values, clan system and relationships of the Tribe.

**26.31.2**        Consent Not Required. Written consent to a customary adoption is not required if:

- (a) The parent(s) have abandoned his or her child;
- (b) The parent(s) rights have been terminated or suspended;
- (c) The parent has relinquished his or her parental rights;
- (d) The parent has been declared incompetent; or
- (e) The death of both parents attested by a certified copy of a Certificate of Death.

**26.31.3**        Consent Required. Except as provided in section 26.31.2, written consent to a customary adoption is required of:

- (a) The biological or adoptive mother; or
- (b) The biological, adoptive or acknowledged father; or
- (c) The custodian, if empowered to consent; or
- (d) The Court, if the custodian is not empowered to consent; and
- (e) The minor, if he or she is over twelve (12) years of age.

**26.31.4** Execution of Consent to Customary Adoption. Written consent to a customary adoption shall be executed in writing and acknowledged before the Court. Consent shall not be accepted or acknowledged by the Court prior to ten (10) days after birth of a child.

**26.31.5** Withdrawal of Consent to Customary Adoption. Written consent to a customary adoption cannot be withdrawn after the entry of a final order by the court. Upon a showing by clear and convincing evidence at a hearing before the Court that the consent was obtained by fraud, duress, or coercion, consent may be withdrawn prior to the final order of adoption.

**26.31.6** Pre-Petition Report on Prospective Adoptive Parent(s). Within sixty (60) days of a petition for customary adoption, the Indian Child Welfare Worker shall investigate the prospective parents and file a written report with the Court with recommendations for or against adoption by the applicant(s).

**26.32** **SECTION 32: PETITION FOR CUSTOMARY ADOPTION.**

**26.32.1** Any adult or agency possessing custody of a minor child may petition the Court seeking an order for Customary Adoption of a child. The petition shall contain the following information:

- (a) The name(s), age(s), and address of the petitioner(s) and his or her relationship to the child.
- (b) The name, address, and date of birth (or expected date of birth) of the child.

- (c) The name, address, and telephone number of the Tribe in which the child is (or is expected to be) a member.
- (d) The name, address, and age of the birth parents (if known).
- (e) The name and address of all persons or agencies which solicited, negotiated, or arranged for the customary adoption on behalf of any party.
- (f) A report of all transfers of anything of value made or agreed to be made between the birth parent and adoptive parent including a copy of any written agreement between the birth parent and adoptive parent.
- (g) A statement as to how the child has become, or will become, eligible for customary adoption. If rights have been terminated or suspended, a copy of the Court order terminating or suspending the rights must be attached to the petition. If a child is eligible for customary adoption because one or both parents are deceased, a certified copy of the death certificate(s) shall be attached to the petition.
- (h) A statement as to the basis for customary adoption supported by a home study, medical, psychiatric and/or psychological report, child protection worker, and/or family member.
- (i) The proposed name of the adoptee after the entry of the final order of customary adoption.
- (j) A statement that no similar action is pending in a tribal or state court having jurisdiction over the child(ren).

**26.32.2** The petitioner shall sign the petition in the presence of the Court Clerk or a notary public and shall affirm that the contents are true and correct to the best of their knowledge.

**26.32.3** The petition shall be filed with the clerk of court, with copies served, by the petitioner, on the child welfare department, family members, if any, caretaker, if any, guardian ad litem, if any, and appropriate agencies of the Tribe which may have an interest in the proceeding or

be of assistance to the Court in adjudicating the matter in accordance with section 26.10 of this Chapter.

**26.32.4** A Guardian ad Litem shall be appointed to assist the Court in determining if a customary adoption is in the best interests of the child.

**26.33**      **SECTION 33:      CUSTOMARY ADOPTION HEARING.**

**26.33.1** A customary adoption hearing shall be held within ninety (90) days of receipt of a petition from the prospective parents. The Court shall conduct the hearing to determine if it is in the best interest of the minor to be adopted by the petitioners. In determining the best interest of the minor, the Court shall examine:

- (a) Validity of written consent;
- (b) Termination or suspension of parental rights order;
- (c) Length of time of the minor's ward ship by the court;
- (d) Special conditions of the minor;
- (e) Parent communication with the minor;
- (f) Minor's consent to a customary adoption, if the minor is over twelve (12) years of age;
- (g) Pre-petition reports; and
- (h) Order of preference of placement.

**26.33.2** The petitioner shall be present at the hearing for customary adoption. The petitioner's failure to appear at the hearing shall be grounds for dismissal of the petition. The child who is the subject of a petition, Indian Child Welfare Worker and any other agency assisting in the customary adoption, and any family members including siblings may be present at the hearing.

**26.33.3** The court shall inform the parties of their rights under this code of the nature and consequences of the proceedings pursuant to section 26.13 of this Chapter.

**26.33.4** The rules of evidence of the Tribal Court Chapter 4 sections 4.54 through 4.78 shall apply. The burden of

proving the allegations of the petition shall be upon the petitioner and the standard of proof shall be clear and convincing evidence.

**26.33.5** The court may continue the hearing upon a showing of good cause at the request of any party to the proceeding and enter such temporary orders as the court deems just and reasonable to carry out the purposes of this Section.

**26.34**      **SECTION 34:      FINDINGS AND FINAL ORDER FOR CUSTOMARY ADOPTION.**

**26.34.1** In every customary adoption the Court shall make specific written findings of fact, state separately its conclusions of law, and enter an appropriate judgment or order.

**26.34.3** If the court determines that it is in the best interests of the child and the child's tribe it shall issue a final order for a customary adoption. Such an order shall include, at a minimum, the following:

(a) A statement that the child has been adopted by the petitioner(s) and that the parent-child bond is hereby established and that all of the rights and responsibilities of that relationship shall exist upon the entry of the final order.

(b) A notice regarding the new name of the child, if any.

**26.35**      **SECTION 35:      CERTIFICATION OF A CUSTOMARY ADOPTION.**

**26.35.1** A customary adoption, conducted in a manner consistent with this code shall be considered legally binding and authentic and may be certified by the Children's Court as having the same effect as an adoption order issued by this court or any other state or tribal court unless and until otherwise ordered by this court.

**26.35.2** A decree certifying a customary adoption has the same effect as a decree or final order of customary adoption issued by this court.

**26.35.3** A Customary Adoption shall not affect the child's

enrollment status or eligibility for enrollment as a member of the Red Cliff Band of Lake Superior Chippewa or any other Tribe.

**26.36      SECTION 36: FOREIGN PROCEEDINGS**

- 26.36.1**      Receipt of Notice.      The Tribal Agent for service of notice of State court child custody proceedings, as defined by the Indian Child Welfare Act, shall be the Indian Child Welfare Worker.
- 26.36.2**      Recommendations for Transfer or Intervention.      The Indian Child Welfare Worker shall consult with the Tribal Attorney on whether or not the Tribe should petition for transfer from or intervene in a State Court child custody proceeding. The Indian Child Welfare Worker and Tribal Attorney shall consider whether transfer will serve the best interests of the child, and the basis and justification of any party or person(s) who petitions for, or who objects to the transfer of jurisdiction.
- 26.36.3**      Intervention in State Court Proceedings.      The Tribe may intervene in State Court child custody proceedings, as defined by the Indian Child Welfare Act, at any point in the proceedings, and the Tribal Attorney or selected representatives shall file a motion to intervene.
- 26.36.4**      Initial Hearing.      Upon receipt of transfer of jurisdiction from State Court, an Initial hearing shall be held to hear the facts of the case and determine if the child(ren) remain a minor or minors-in-need-of-care and if shelter care is necessary.
- 26.36.5**      Upon entry of the order transferring the case, other state or tribal court orders in effect when the case was transferred to the Children's Court shall have the same effect as if they had been issued by the Children's Court. The Children's Court may modify, extend, suspend or terminate any order issued in a transferred judicial proceeding pursuant to the provisions of this Code.
- 26.36.6**      The Children's Court may on its own motion or the motion of any party, decline or waive jurisdiction over a child at any time.

**26.37**      **SECTION 37: RECORDS**

**26.37.1**      Records of the Tribe, Indian Child Welfare Department and Tribal Court concerning a minor under this Chapter shall be confidential.

**26.37.2**      In any proceeding requiring action or consideration of the Tribal Council, any meeting, action, or record shall require such measures as will preserve the confidentiality of the matter, including but not limited to executive session, identification of persons by initials, and limitation of participants and advisers.

**26.37.3**      Any party deemed appropriate by the Court and the child who has been the subject of a termination or suspension of parental rights proceeding or an adoption or customary adoption proceeding has the right, upon reaching the age of eighteen (18), to review all of the courts file on these matters subject to redaction by the court of names or the rights of confidentiality of some documents under federal or tribal law.

**26.37.4**      The records of a termination or suspension of parental rights proceeding and adoption or customary adoption proceedings shall be retained for a minimum of ten (10) years after the subject minor child's eighteenth (18<sup>th</sup>) birthday.

**26.38**      **SECTION 38: CARE PROVIDER'S LICENSING**

**26.38.1**      Pursuant to written standards, the Tribe may license persons or families to accept minors in need of shelter or foster care. By agreement, the Tribe may recognize or honor such licenses issued by the State of Wisconsin or may co-license with the State or its subdivision.