

BAND ASSEMBLY BILL 06-04-01-96

A bill of Tribal Government to provide for the amendment to Band Statute 1096-MLC-28 of the Laws of the Non-Removable Mille Lacs Band of Ojibwe Indians. To supersede any provisions of 1096-MLC-28 not consistent with this amendment.

The District Representative(s) II and III, collectively and concurrently introduce the following bill on the 23rd day of October, 1995.

Preamble

Be it enacted by the Band Assembly of the Non-Removable Mille Lacs Band of Ojibwe Indians for the purpose of amending Band Statute 1096-MLC-28.

CHILD/FAMILY PROTECTION ACT

1 SHORT TITLE, PURPOSE AND DEFINITIONS

1 A. Short Title

Title 2 (Section 1 through 29) shall be entitled "The Child/Family Protection Statute".

Section 1. Purpose

The child/family protection statute shall be liberally interpreted and construed to fulfill the following expressed purposes:

- 1.01 To provide for the welfare, care and protection of the children and families under the jurisdiction of the Mille Lacs Band;
- 1.02 To preserve unity of the family, preferably by separating the child from his/her parents only when necessary;
- 1.03 To take such actions as may be necessary and feasible to prevent the abuse, neglect or abandonment of children;
- 1.04 To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community-based alternatives;
- 1.05 To secure the rights of and ensure fairness to the children, parents, guardians, custodians or other parties who come before the children's court under the provisions of the statute;
- 1.06 To ensure that off-reservation courts will be willing to return Mille Lacs Band children to us by establishing this statute;
- 1.07 To recognize and acknowledge the customs and traditions of the Mille Lacs Band with regards to child-rearing.

Section 2. Definitions

As used in this statute:

- 2.01 **"Abandonment"**: The failure of the parent, guardian or custodian to provide reasonable support and to maintain regular contact with a child. Failure to maintain a normal parental relationship with the child without just cause for a period of six (6) months shall constitute prima facie evidence of abandonment. Custody with extended family members or voluntary consent to placement does not constitute abandonment.
- 2.02 **"Abuse"**: The infliction of physical, emotional or mental injury on a child, or sexual exploitation of a child and shall include failing to maintain reasonable care and treatment or exploiting or overworking a child to such an extent that his health, moods or emotional well-being is endangered.
- 2.03 **"Adult"**: A person eighteen (18) years of age or older, or otherwise emancipated by order of a court of competent jurisdiction.
- 2.04 **"Child"**: A person who is less than eighteen (18) years old or has not been emancipated by order of a court of competent jurisdiction.
- 2.05 **"Child Protection Team"**: A team established to involve and coordinate the child protection services of various agencies as set forth in Section 7 of this statute.
- 2.06 **"Court" or "Children's Court"**: The Children's Court of the Mille Lacs Band of Chippewa Indians.
- 2.07 **"Custodian"**: A person, other than a parent or guardian, to whom legal custody of the child has been given.
- 2.08 **"Domicile"**: A person's permanent home, legal home or main residence. The domicile of a child is generally that of the custodial parent or guardian. Domicile includes the intent to establish a permanent home or where the parent or guardian consider to be their permanent home.
- 2.09 **"Emergency Foster Home"**: Placement with a family whose home has been licensed to accept emergency placements of children at any hour of the day or night (see "Foster Home").
- 2.10 **"Extended Family"**: Defined according to the customs and traditions of the Mille Lacs Band.
- 2.11 **"Foster Home"**: Placement with a family whose home has been licensed under section 24 of this statute.
- 2.12 **"Foster Home Inspector"**: A person selected to inspect and license foster homes under section 24 of this code.
- 2.13 **"Guardian"**: A person assigned by a court of competent jurisdiction, other than a parent, having the duty and authority to provide care and control of a child (see "Permanent Guardian," "Temporary Guardian," "Guardian Ad Litem." and "Guardian of Property").
- 2.14 **"Guardian Ad Litem"**: A person appointed by the court to represent the child's interests before the court.

- 2.15 **"Guardian of Property"**: A person appointed by the court to manage the property of a child or incompetent person as set forth in section 25 of this statute.
- 2.16 **"He/His"**: The use of he/his means he or she, his or her, and singular includes plural.
- 2.17 **"Incompetent"**: An insane person or person who is for any cause mentally incompetent (as defined by the court) to take care of himself and to manage his property.
- 2.18 **"Indian"**: Any member of a federally recognized Indian tribe, band or community, or Alaska Natives, or a person considered by the community to be Indian.
- 2.19 **"Solicitor General"**: The Solicitor General or other designated person who appropriately performs the duties and responsibilities set forth in section 5.02 of this statute.
- 2.20 **"Juvenile Offender"**: A child who commits a "juvenile offense" prior to the child's eighteenth (18th) birthday (see Juvenile Justice Code).
- 2.21 **"Juvenile Offense"**: A criminal violation of the Mille Lacs Band Laws which is committed by a person who is under the age of eighteen (18) at the time the offense was committed (see Juvenile Justice Code).
- 2.22 **"Neglect"**: The failure of the parent, guardian or custodian to provide adequate food, clothing, shelter, medical care, education or supervision for the child's health and well-being. "Neglect" shall include "abandoned" children.
- 2.23 **"Parent"**: Includes a natural or adoptive parent, but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.
- 2.24 **"Open Adoption"**: An adoption which is intended not to permanently deprive the child of connections to, or knowledge of, his or her natural family.
- 2.25 **"Permanent Guardian"**: A guardian who has been granted long term guardianship status as set forth in section 25.02 of this statute.
- 2.26 **"Protective Services Worker"**: The protective services worker, social services worker, law enforcement personnel or any person who performs the duties and responsibilities set forth in section 6 of this statute.
- 2.27 **"Reservation"**: All the territory under the jurisdiction of the Mille Lacs Band.
- 2.28 **"Temporary Guardianship"**: A guardian who has been granted temporary guardianship status as set forth in section 25 of this statute.
- 2.29 **"Band Assembly"**: The Legislature and Chief Executive of the Mille Lacs Band.
- 2.30 **"Tribal Court"**: The Court of Central Jurisdiction of the Mille Lacs Band.
- 2.31 **"Tribe"**: The Non-Removable Mille Lacs Band of Chippewa Indians.

3 JURISDICTION OF THE CHILDREN'S COURT

3.01 General Jurisdiction

There is hereby established for the Non-Removable Mille Lacs Band of Chippewa Indians a court to be known as the Court of Central Jurisdiction Children's Court. The jurisdiction of the Children's Court shall be civil in nature and shall include the right to issue all orders necessary to insure the safety of children and incompetents within the boundaries of the reservation, as well as other children who have been declared to be wards of the Children's Court. The Children's Court shall also have the power to enforce subpoenas and orders of restriction, fines, contempt, confinement and other orders as appropriate.

The Children's Court shall have jurisdiction over the following persons:

- 3.011 Members of the Band under the age of eighteen (18) years;
- 3.012 Persons under the age of eighteen (18) years who are eligible to become members of the Band;
- 3.013 Indians, as defined in section 2.18 of this statute, who are under the age of eighteen (18) years and who are residing within the exterior boundaries of the reservation;
- 3.014 Children of members of the Band or other Indians, as defined in section 2.18 of this statute, including adopted children, who reside within the exterior boundaries of the reservation;
- 3.015 Children residing within the exterior boundaries of the reservation, for whatever reason, in the home of a member of the Band or other Indians, as defined in section 2.18 of this statute, as long as the parents, guardians, or custodians have consented to the jurisdiction of the Children's Court. Such consent, once given, may be revoked only with permission of the Children's Court; and
- 3.016 Incompetent persons residing or domiciled within the exterior boundaries of the reservation.

3.02 Jurisdiction Over Extended Family

Where the Children's Court asserts jurisdiction over a person under section 3.01 above, the court shall also have jurisdiction over the person's extended family whenever the court deems it appropriate.

3.03 Continuing Jurisdiction

Where the Children's Court deems it appropriate, the court may retain jurisdiction over children and their extended families who leave the exterior boundaries of the reservation.

3.04 TRANSFER OF JURISDICTION

3.041 Application of the Indian Child Welfare Act

The Children's Court may apply the policies of the Indian Child Welfare Act, 25 U.S.C. §1901-1963, where they do not conflict with the provisions of this statute. The procedures for state courts in the Indian Child Welfare Act shall not be binding upon the Children's Court unless specifically provided for in this statute.

3.042 Transfer to State Court or Other Tribal Courts

In any proceeding before the Children's Court, the court may transfer the proceedings to an appropriate state court or another tribal court where the state or the other Indian tribe have a significant interest in the child and the transfer would be in the best interests of the child.

3.043 Transfer from Other Courts

The Children's Court may accept or decline, under the procedures set forth in this statute, transfers of child welfare cases from federal, state or other tribal courts.

3.044 Procedures for Transfer from State Court

3.0441 **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 Mille Lacs Band Social Service Department.

3.0442 **Investigation and Pre-Transfer Report by the Solicitor General:** The Band Social Services Department shall conduct an investigation and file a written report with the court within seven (7) days of receipt of notice from the Band's agent for service of notice.

3.0443 **Petition for Transfer:** The Band petition for transfer shall be filed by the Solicitor General within seven (7) days of receipt of recommendations from the court.

3.0444 **Intervention in State Court Proceedings:**

- a. The Band may intervene in state court child custody proceedings, as defined by the Indian Child Welfare Act, at any point in the proceedings, and;
- b. the Solicitor General or selected representatives may file a motion to intervene within seven (7) days of receipt of recommendations from the court.

3.0445 **Acceptance of Transfer:** The Children's Court will not accept a transfer from state court unless:

- a. a parent or Indian custodian's petition to state court for transfer is granted, or;
- b. the Band's petition to state court for transfer is granted, and;
- c. the Band Social Services Department's pre-transfer report recommends the acceptance of transfer, and;
- d. the Solicitor General recommends acceptance.

3.0446. **Hearing(s):** Upon receipt of transfer jurisdiction from state court, the **Solicitor General** shall file a child/family protection petition, and appropriate hearing(s) shall be held in accordance with this statute.

3.05 Full Faith and Credit; Conflict of Laws

- 3.051 **State Court Orders:** State child custody orders involving children over whom the Children's Court may exercise jurisdiction may be recognized by the Children's Court only after a full independent review of such state proceedings has determined:
- a. the state court had jurisdiction over the child, and;
 - b. the provisions of the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., were properly followed, and;
 - c. due process was provided to all interested persons participating in the state proceedings, and;
 - d. the state court proceeding does not violate the public policies, customs, or common law of the Mille Lacs Band.
- 3.052 **Court Orders of Other Tribal Courts:** Court orders of other tribal courts involving children over whom this Children's Court could take jurisdiction shall be recognized by this Children's Court after the court has determined:
- a. that the other tribal court exercised proper subject matter and personal jurisdiction over the parties, and;
 - b. due process was accorded to all interested parties participating in the other tribal court proceeding.
- 3.053 **Mille Lacs Band Interest:** Because of the vital interest of the Band in its children and those children who may become members of the Band, the statutes, regulations, public policies, customs and common law of the Band shall control in any proceeding involving an Indian child.

4 PROCEDURES AND AUTHORIZATIONS

4.01 Rules of Procedure

The procedures in the Children's Court shall be governed by the rules of procedure for the Court of Central Jurisdiction which are not in conflict with this statute.

4.02 Cooperation and Grants

The Children's Court is authorized to cooperate fully with any federal, state, tribal, public or private agency in order to participate in any foster care, shelter care, treatment or training program(s) and to receive grants-in-aid to carry out the purposes of this statute. This authority is subject to the approval of the Band Assembly.

4.03 Social Services

The Children's 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.

5 CHILDREN'S PERSONNEL

5.01 Juvenile Counselor

5.011 Selection

The Mille Lacs Band shall select juvenile counselor(s) to carry out the duties and responsibilities set forth in this statute. The person(s) carrying out the duties and responsibilities set forth in this section may be labeled juvenile counselors or any other title which the court finds appropriate so long as they perform the duties and responsibilities set forth in this section.

5.012 Qualifications

The juvenile counselor shall have an educational background and/or prior experience in the field of delivering social services to youth and shall never have been convicted of any offense involving child abuse, or sexual abuse of a child.

5.013 Resource Development

The juvenile counselor shall identify and develop resources on the reservation, in conjunction with the Children's Court and the Chief Executive and Band Assembly, to enhance each tribal child's potential as a viable member of the community.

5.014 Duties

- (a) make investigations as provided in this statute or as directed by the court; and
- (b) make reports to the court as provided in this statute or as directed by the Children's Court; and
- (c) provide counseling services; and
- (d) perform such other duties in connection with the care, custody or transportation of children as the court may require.

5.015 Prohibited Duties

The juvenile counselor shall not be employed as or be required to perform the duties of a prosecutor or law enforcement official.

5.02 Duties of the Solicitor General:

5.021 File petitions with the court as provided in this statute; and

5.022 Represent the Mille Lacs Band in all proceedings under this statute; and

5.023 Perform such other duties as the court may order.

5.03 Guardian ad Litem

At any stage of the proceedings conducted under this statute the Children's Court may appoint separate counsel for the child, without affecting the right to counsel of the parents, guardians or other

legal custodians, to act as guardian ad litem representing the child's best interests.

5.04 Additional Court Personnel

The court may set qualifications and appoint additional juvenile court personnel such as guardians ad litem, court appointed special advocates, Children's Court advocates, whenever the court decides that it is appropriate to do so.

6 PROTECTIVE SERVICES WORKERS

6.01 Power and Duties

6.011 Protective services workers shall be employed by the tribal social services department and/or the tribal law enforcement department.

6.012 The department(s) may cooperate with such state and community agencies as are necessary to achieve the purposes of this statute. The department(s) may negotiate working agreements with other jurisdictions. Such agreements shall be subject to ratification by the Band Assembly.

6.013 A protective services worker shall:

6.0131 Receive reports of neglected, abused or abandoned children and be prepared to provide temporary foster care for such children on a twenty four (24) hour basis, and;

6.0132 Receive from any source, oral or written, information regarding a child who may be in need of protective services.

6.0133 Upon receipt of any report or information under paragraph (a) or (b) of this section, immediately:

6.01331 notify the appropriate law enforcement agency, and;

6.01332 make prompt and thorough investigation which shall include a determination of the nature, extent, and cause of any condition which is contrary to the child's best interests and the name, age, and condition of other children in the home.

6.0134 Take a child into temporary custody if there are reasonable grounds to believe that the child is suffering from illness or injury or is in immediate danger from his surroundings and that his removal is necessary. Law enforcement officials shall cooperate with social services personnel to remove a child from the custody of his parents, guardian, or custodian when necessary.

6.0135 After investigation, evaluate and assess the home environment of the child or children in the same

home and the risk to such children if they continue to be subjected to the existing home environment, and all other facts or matters found to be pertinent. They shall determine whether any of such children is a child in need of protective services.

6.0136 Offer to the family of any child found to be a child in need of protective services appropriate services which may include, but shall not be restricted to, protective services.

6.0137 Within thirty (30) days after a referral of a potential child in need of protective services, submit a written report of his investigation and evaluation to the Solicitor General and to a central registry maintained by the department(s).

6.0138 No child shall remain in temporary custody for a period exceeding seventy-two (72) hours, excluding Saturdays, Sundays and holidays, unless a child/family protection petition is filed.

6.02 Limitations of Authority; Duty to Inform

6.021 Before offering protective services to a family, a worker shall inform the family that he has no legal authority to compel the family to receive such services and of his authority to initiate a petition in the Children's Court.

6.022 If the family declines the offered services, the worker may initiate a child/family protection petition in Children's Court alleging a child in need of protective services if he believes it to be in the child's best interest.

7 CHILD PROTECTION TEAM

7.01 The Mille Lacs Band shall establish a child protection team. Establishment of the child protection team is an attempt, through the involvement and coordination of various agencies, to prevent Indian children from being abused or neglected. In cases where children have been abused or neglected, efficient and effective protective services shall be provided so as to immediately secure the children's safety and health. Follow-up actions shall then be taken to stabilize the circumstances for the long-term benefit of the children and, to the extent possible, their family members.

7.02 Prevention of child abuse and neglect is to be emphasized. The child protection team is intended to facilitate the identification of danger signs which will prompt immediate intervention and/or preventive actions to be taken. However, when a child's well-being is found to be endangered, the child protection team should recommend protective services as promptly, efficiently, and effectively as possible. These services are to be provided so as to ensure the child's immediate safety and health. Once attained, to the extent possible, actions are to be taken to correct the problems which caused the abuse or neglect and prevent it from occurring again. The child protection team should facilitate the development and implementation of a plan to promote the long-term well-being of the child and the appropriate family members.

7.03 The child protection team is technical and advisory in nature. In no way is it intended to undermine the authorities and responsibilities of individual agencies. It is designed to promote cooperation, communication, and consistency among agencies. It is appropriate for the child protection team to debate what actions would best promote the well-being of a child and provide relevant information and advice to decision-making agencies. The child protection team shall facilitate (not hinder) the decision making process. Confidentiality shall be maintained by all child protection team members.

The duties of the child protection team shall include the development and implementation of procedures for:

7.01 Providing Oversight

- 7.011 Monitor child abuse and neglect activities to ensure that adequate preventive, protective, and corrective services are provided.
- 7.012 Review and track all child abuse and neglect cases which have been referred.
- 7.013 Review case plans for their adequacy.
- 7.014 Maintain confidentiality of information.

7.02 Facilitating Provision of Services

- 7.021 Identify available community resources, programs and services.
- 7.022 Provide recommendations to various pertinent agencies.
- 7.023 Promote cooperation, communication, and consistency among agencies.
- 7.024 Provide a forum for debating what action would best promote the well-being of Indian children.
- 7.025 Respond to inquiries from the community, area child protection teams, and other individuals and groups.

7.03 Providing Technical Assistance

- 7.031 Develop procedures to provide effective and efficient preventive, and corrective child abuse and neglect services.
- 7.032 Develop standards to determine which cases are to be investigated.
- 7.033 Provide information and technical recommendations to decision-making agencies.
- 7.034 Educate communities about child abuse and neglect problems and solutions.
- 7.035 Assist in the development and implementation of plans to promote the long-term well-being of children and their families.
- 7.036 Assist in the development and implementation of strategies by communities to create environments which provide opportunities

for community members to lead meaningful, productive, self-fulfilling, and rewarding lives. These environments should promote the dignity, self-worth, self-respect, and self-sufficiency of community members.

8 DUTY TO REPORT CHILD ABUSE AND NEGLECT

8.01 Duty to Report

Any person who has a reasonable cause to suspect that a child has been abused, neglected or abandoned shall immediately report the abuse, neglect or abandonment to the tribal social services department and/or tribal law enforcement department.

8.02 Person Specifically Required to Report

Those persons who are mandated to report suspected abuse or neglect include any physician, nurse, dentist, optometrist, or any other medical or mental health professional; school principal, school teacher, or other school official; social worker; child day care center worker or other child care staff including foster parents, residential care or institutional personnel, counselor; peace officer or other law enforcement official; judge, juvenile counselor(s), clerk of court, Solicitor General or other judicial system official(s).

8.03 Anonymous Reports

Any person who has reasonable cause to suspect that a child has been abused, neglected or abandoned shall report the abuse, neglect or abandonment. Those persons reporting, except those specified in section 8.02 above, may remain anonymous.

8.04 Immunity from Liability

All persons or agencies reporting, in good faith, known or suspected instances of child abuse or neglect shall be immune from civil liability and criminal prosecution.

8.05 Penalty for Not Reporting

Those persons mandated to report a case of known or suspected abuse or neglect who knowingly fail to do so or wilfully prevent someone else from doing so shall be subject to a civil cause of action proceeding in the Court of Central Jurisdiction.

8.06 Abuse and Neglect Reports

8.061 **Form of Report:** Those persons mandated to report under section 8.02 above shall promptly make an oral report to the Mille Lacs Band Social Services Department and then make a written report within 48 hours.

8.062 **Contents of Written Report:** The following information shall be included in the written report:

- a. Names, addresses, and tribal affiliation of the child and his parents, guardian, or custodian.
- b. The child's age.
- c. The nature and content of the child's abuse and neglect.

- d. Previous abuse or neglect of the child or his siblings, if known.
- e. The name, age, and address of the person alleged to be responsible for the child's abuse or neglect, if known.
- f. The name and address of the person or agency making the report.

8.063 **Photograph of Visible Trauma:** Persons reporting suspected abuse or neglect may photograph or cause X-Rays to be taken of the child suspected of being abused and such photographs or X-Rays may be introduced into evidence at a hearing.

8.07 Central Registry

The Mille Lacs Band Social Services and Mille Lacs Band Law Enforcement shall maintain a central registry of reports, investigations and evaluations made under this statute. The registry shall contain the information furnished by Band personnel throughout the reservation, including protective services workers, probation officers, caseworkers and Indian Child Welfare Program employees. Data shall be kept in the central registry until the child concerned reaches the age of eighteen (18) years (unless the Children's Court orders that individual records shall be kept on file beyond that date in order to protect other siblings). Data and information in the central registry shall be confidential and shall be made available only with the approval of the director of the department to the Children's Court, social service agencies, public health and law enforcement agencies, licensed health practitioners, and health and educational institutions. A request for the release of information must be submitted in writing, and such request and its approval shall be made part of the child's file.

9 INVESTIGATION AND REMOVAL

9.01 Investigation

The child abuse or neglect report shall be investigated within (48) hours by the Social Services Department or other appropriate agency, unless the Children's Court directs otherwise.

9.02 Authority to Remove

If the law enforcement or social services personnel investigating a report of child abuse or neglect finds that the grounds for removal, listed in section 9.03 below, have been met, such person may remove the child from the home in which the child is residing and place the child in a temporary receiving home or other appropriate placement.

9.03 Grounds for Emergency Removal

A child shall not be removed from the home of the child's parents, guardian or custodian without the consent of the parent, guardian or custodian absent a specific order of the Children's Court, except as follows:

- 9.031 When failure to remove the child may result in a substantial risk of death, permanent injury, or serious emotional harm, or;
- 9.032 When the parent, guardian or custodian is absent and it appears, from the circumstances, that the child is unable to

provide for his own basic necessities of life, and that no satisfactory arrangements have been made by the parent, guardian or custodian to provide for such necessities.

9.04 Power to Remove

A Social Services worker or Law Enforcement officer shall have the power to remove a child pursuant to this section provided that:

- 9.041 Reasonable grounds existed at the time of the removal to believe the removal was necessary, and;
- 9.042 The person removing the child ensures the safety and well-being of the child, until such time as the Children's Court assumes control of the matter, and;
- 9.043 The person removing the child complies with the notice provisions contained in section 10 of this statute.

10 NOTICE OF REMOVAL

10.01 Notice to the Children's Court

After a child is removed from his home, the person who removed the child shall attempt to contact the Children's Court within eight (8) business hours. The attempt to contact the Court shall be documented. Actual notice to the Court shall be made, by the removing person, no later than 12:00 p.m. the next Court working day.

10.02 Notice to the Parent, Guardian or Custodian

The Court shall make all reasonable efforts to notify the parents, guardian or custodian, within twelve (12) hours of the Courts actual notice of the child's removal. Reasonable efforts shall include personal, telephone and written contacts at their residence, place of employment, or other location where the parent, guardian or custodian is known to frequent with regularity. If the parent, guardian or custodian cannot be found, notice shall be given to members of the extended family of the parent, guardian or custodian and/or the extended family of the child.

11 RESTRICTIONS ON PLACEMENT OF CHILDREN

A child alleged to be neglected or abused shall not be detained in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be juvenile offenders, but may be detained in the following community-based shelter care facilities:

11.01 Licensed Foster Home

A licensed foster home or a home otherwise authorized under the law to provide foster care, group care, protective residence, or;

11.02 Other Licensed Facility

A facility operated by a licensed child welfare services agency, or;

11.03 Relatives

With a relative of the child who is willing to guarantee to the court that the child will not be returned to the alleged abusive or neglectful parent, guardian or custodian without the prior approval of the court, or;

11.04 Other Suitable Place

Any other suitable place, other than a facility for the care and rehabilitation of juvenile offenders to which children adjudicated as juvenile offenders may be confined and which meets the standards for shelter-care facilities established by the department.

12 FILING CHILD/FAMILY PROTECTION PETITION

12.01 Authorization to File Petition

Formal child/family protection proceedings shall be instituted by a child/family protection petition filed by the Solicitor General on behalf of the Band and in the best interests of the child.

12.02 Time Limitations

If a child has been removed from the home, a child/family protection petition shall be filed with the Children's Court no later than 12:00 p.m. of the second court working day following the removal.

12.03 Contents of Petition

The child/family protection petition shall set forth the following with specificity:

- 12.031 The name, birth-date, sex, residence and tribal affiliation of the child;
- 12.032 The basis for the Court's jurisdiction;
- 12.033 The specific allegations of abuse, neglect or abandonment;
- 12.034 A plain and concise statement of the facts upon which the allegations of abuse, neglect or abandonment are based, including the date, time and location at which the alleged facts occurred;
- 12.035 The names, residences and tribal affiliation of the child's parents, guardians or custodians, if known;
- 12.036 The names, relationship and residence of all known members of the child's extended family and all former care givers, if known, and;
- 12.037 If the child is placed outside of the home, where the child is placed, the facts necessitating the placement and the date and time of the placement.

13 INITIAL HEARING

13.01 Hearing Date

An initial hearing shall be held regarding the removal of a child before the end of the second working day following the filing of the child/family protection petition.

13.02 Purpose

The purpose of the initial hearing is to determine whether it is reasonable to believe that continuing absence from the home is necessary to protect the well-being of the child.

13.03 Advise of Rights

During the hearing, the court shall advise the party(s) of the reason for the hearing and of their basic rights as provided for in section 14 of this statute.

13.04 Nature of Hearing

The hearing shall be informal in nature. Concerned parties may present evidence relating to the situation. Hearsay evidence will not be excluded at this hearing as long as it is otherwise admissible. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, Social Services, the child's extended family and any other person as determined appropriate by the court shall be admitted.

13.05 Possible Outcomes of the Initial Hearing:

13.051 The child/family protection petition may be dismissed and the child returned to the home.

13.052 The child may be returned to the home of the parents, guardians or custodians under the supervision of the court and another hearing held within thirty (30) days.

13.053 The child may continue in the child's out-of-home placement and a thirty (30) day hearing will be held.

13.06 Notice of Initial Hearing

The court shall make all reasonable efforts to advise the parents, guardians or custodian of the time and place of the initial hearing. The court shall request that the parent, guardian or custodian be present for the hearing. Reasonable efforts shall include personal, telephone and written contacts at their residence, place of employment or other location where the person is known to frequent with regularity. If the court is unable to contact the parent, guardian or custodian, notice shall be given to members of the extended family of the child.

13.07 Unresolved Issues

If the problems are not resolved at the initial hearing or the thirty (30) day hearing, the Court will set a date for a formal hearing on the issues. Such date will be no later than ninety (90) days after the filing of the child/family protection petition.

14 NOTIFICATION OF RIGHTS

All parties have a right to be represented by an advocate/attorney at their own expense in all proceedings under this statute, to introduce evidence, to be heard on his or her own behalf, to examine witnesses, and to be informed of possible consequences if the allegations of the petition are found to be true. All parties shall be entitled to advance copies of court documents, including petitions and reports, unless deemed inappropriate by the court, ten (10) days prior to any hearing.

15 THIRTY (30 DAY HEARING)

15.01 Purpose

A second hearing will be held within thirty (30) days following the initial hearing. The purpose of this hearing is for the court to reassess whether continuing court intervention is necessary to protect the well-being of the child.

15.02 Hearing Procedure

The thirty (30) day hearing shall be held according to sections 13.03, 13.04, 13.05, 13.06, and 13.07 of this statute.

16 FORMAL TRIAL ON THE ISSUES

16.01 Time Limitation

The formal trial on the issues will be set for no later than ninety (90) days following the filing of the child/family protection petition.

16.02 Admissibility

The records of the initial hearing and the thirty (30) day hearing shall not be admissible at the formal trial. This shall not be construed to prevent the admissibility of any evidence that was presented at these hearing(s) which would be admissible under the court's rules of evidence.

16.03 Closed Hearing

The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's family, and other persons determined to be appropriate by the court shall be admitted.

16.04 Advise of Rights

At the beginning of the hearing, the court shall advise the party(s) of the reason for the hearing and of their basic right as provided for in section 14 of this statute.

16.05 Child Witnesses

If the court determines that it is in the best interests of the child and does not violate the rights of a party, the court may allow the child to testify by means of a videotape deposition, closed circuit television or other appropriate method. If the court does allow these methods to be utilized, the court shall specifically set out the reasons for this determination on the record.

16.06 Burden of Proof

The burden of proof lies with the petitioner. The petitioner must prove that the allegations raised in the child/family protection petition are more likely true than not, that is, by the preponderance of the evidence, and that the best interests of the child will be served by continued court intervention.

16.07 Outcome of Hearing

The court will either find the allegations of the child/family protection petition to be true or dismiss the child/family protection petition,

unless the hearing shall be continued to a date certain to allow for the presentation of further evidence.

16.08 Return to Home

The court may find the allegations of the child/family protection petition to be true, but that out of home placement is not needed to protect the child. The court may, however, due to unresolved problems in the home, continue court intervention and supervision as appropriate.

16.09 Grounds for Continuing Removal From the Home

The court may find the allegations of the child/family protection petition to be true and order that the child remain out of the home. The grounds for continuing removal from the home of a parent, guardian or custodian are:

- 16.091 A child has no parent, guardian or custodian available, willing and capable to care for the child.
- 16.092 The child has suffered, or is likely to suffer, a physical injury inflicted upon him by other than accidental means, which causes or creates a substantial risk of death, disfigurement or impairment or of bodily functions.
- 16.093 The child has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his/her parent, guardian or custodian, which is necessary for the child's health and well being, and the parent or guardian is incapable of continuing to provide the child with adequate food and care.
- 16.094 The child has been sexually abused or sexually exploited.
- 16.095 The child has committed juvenile offenses as a result of parental pressure, guidance or approval.
- 16.096 The child has been emotionally abused or neglected.
- 16.097 The child has suffered, or is likely to suffer, emotional damage which causes or creates a substantial risk of impaired development.

16.10 Court Order for Continuing Removal

The court shall specify in its order the necessary intervention and appropriate steps, if any, the parent, guardian or custodian must follow to correct the underlying problem. The court shall make particularized findings as to the grounds for continuing removal of the child from the home.

16.11 Return of Child to Parent, Guardian or Custodian

The court may find the allegations of the child/family protection petition to be true and out-of-home placement necessary, but with the performance of specified actions by the parent, guardian or custodian, the child may be returned absent good cause to the contrary. The order of the court will specify actions, and the time frames for such actions, that parents, guardians, or custodians must accomplish before the child is returned. The order will also specify the responsibilities of any support agency or personnel to be involved.

16.12 Out-Of-Home Placement

The court may find the allegations of the child/family protection petition to be true and that out-of-home placement continues to be necessary and further that the child may not be returned to the home, absent specific order of this court. The court shall specify what steps the parents shall take to demonstrate their abilities to care for their child, and specify to the parties what factors the court will consider at a subsequent hearing to determine whether or not the child should be returned.

16.13 Written Order

The court shall specify in writing the facts, grounds, and statutory sections upon which it relied to make its decisions.

17 NOTICE OF FORMAL TRIAL ON THE ISSUES

17.01 Summons

The court shall issue a summons to the parent, guardian or custodian and such other persons as appear to the court to be proper or necessary parties to the proceedings. The summons shall require them to appear personally before the court at the time set for the formal trial.

17.02 Attachments to Summons

A copy of the child/family protection petition shall be attached to each summons. The court shall also attach a notice to the parent, guardian or custodian which advises them of their rights under section 14 of this statute.

17.03 Personal Service

If the parties to be served with a summons can be found within the territorial jurisdiction of the Mille Lacs Band, the summons, a copy of the child/family protection petition and the notice of rights shall be served personally upon them at least twenty (20) court days before the formal trial on the issues.

17.04 Mail Service

If the parties are within the exterior boundaries of the reservation but cannot be personally served, and if their address is known, the summons, petition and notice of rights may be served by certified mail with a return receipt requested, at least twenty (20) days before the formal trial.

17.05 Notice to Extended Family

If the court cannot accomplish personal or mail service on the parent, guardian or custodian, the court shall attempt to notify the parent, guardian, custodian by contacting members of the extended family of the parent, guardian, custodian, and/or the extended family of the child.

17.06 Service of Summons

Service of summons may be made under the direction of the court by any person eighteen (18) years of age or older who is not a party to the proceedings.

17.07 Publication

In a child/family protection case where it appears within the body of the petition or within an accompanying statement that the parent, guardian or custodian does not reside within the territorial jurisdiction of the Mille Lacs Band, or that their name, place of residence or whereabouts is unknown, as well as in all cases where after due personal service or service by certified mail has been unable to be effected, the court shall direct the clerk to publish legal notice in a newspaper, printed in the county or on the reservation, qualified to publish summons once a week for three consecutive weeks with the first publication of the notice to be at least twenty-one (21) days prior to the date fixed for the hearing. Such notice shall be directed to the parent, guardian or custodian if their names are known, or if unknown a phrase to whom it may concern, be used and applied to and be binding upon any such person whose names are unknown. The name of the court, the date of the filing of the petition, the date of the hearing, and the object of the proceeding in general terms, shall be set forth. There shall be filed with the clerk an affidavit showing publication of the notice. The publication of the notice shall be paid by the Mille Lacs Band. The publication of the notice shall be deemed equivalent to personal service upon all persons known or unknown who have been designated as provided in this section.

17.08 Contempt Warning

The summons issued by the court shall conspicuously display the words:

NOTICE, VIOLATION OF THIS ORDER IS SUBJECT TO PROCEEDINGS FOR CONTEMPT OF COURT PURSUANT TO MILLE LACS BAND STATUTE 1303-MLC-4, SECTION 17.05. THE COURT MAY FIND THE PARENT, GUARDIAN OR CUSTODIAN IN CONTEMPT FOR FAILURE TO APPEAR AT A COURT HEARING OR FOR FAILURE TO FOLLOW COURT ORDERS.

18 DEFAULT JUDGMENT

18.01 When Appropriate

If the parent, guardian or custodian fail to appear for the formal trial, the court may find the parent, guardian or custodian in default, and enter a default order of child/family protection and order necessary intervention and appropriate steps the parents, guardian or custodian must follow to correct the problem.

18.02 Notice Determination

Prior to finding a parent, guardian, or custodian in default, the court must be satisfied actual notice has been given or that all reasonable steps have been taken to provide notice of the formal trial to the parent, guardian, or custodian. The court must also find that the petitioner can prove the elements of the child/family protection petition.

18.03 Written Order

If the parent, guardian or custodian is found in default, the court shall specify the facts, grounds, and statutory provisions upon which it relied to make the decision.

19 SIX (6) MONTH REVIEW

19.01 Review Requirement

The status of all children subject to a child/family protection order shall be reviewed by the court at least every six (6) months at a hearing to determine whether court supervision shall continue, except that the first review following a formal trial on the issues shall be held within ninety (90) days of the formal trial on the issues.

19.02 Return to Home

A child shall be returned home following review hearing unless the court finds that a reason for removal as set forth in section 16.09 of this statute still exists. The court may, however, due to unresolved problems in the home, continue court intervention and supervision if appropriate.

19.03 Written Order

If continued court intervention is determined to be necessary, the Court shall set forth the following in a written order:

19.031 What services have been provided or offered to the parent, guardian or custodian to help correct the underlying problem(s).

19.032 The extent to which the parent, guardian or custodian has visited or contacted the child, any reason why such visitation and/or contact has been infrequent or has not otherwise occurred.

19.033 Whether the parent, guardian or custodian is cooperative with the Court.

19.034 Whether additional services should be offered to the parent, guardian or custodian.

19.035 Whether the parent, guardian or custodian should be required to participate in any additional programs to help correct the underlying problem(s).

19.036 When the return of the child can be expected.

19.04 Additional Steps

The court at the review hearing may order that a guardianship petition be filed.

20 SOCIAL SERVICE REPORT

20.01 Requirement of a Social Services Report

To aid the court in its decision, a social services report consisting of a written evaluation of matters relevant to the disposition of the case shall be made by the person or agencies filing the petition.

20.02 Contents of a Social Service Report

The social services report shall include the following points, and be made available to the court, and the parties as deemed appropriate by the court, at least three (3) days prior to a child/family protection review hearing:

- 20.01 A summary of the problem(s).
- 20.02 What steps, if any, have the parent, guardian, custodian or social services personnel already taken to correct the problem(s).
- 20.03 What services could benefit the parent, guardian or custodian, but are not available in the community.
- 20.04 A report on how the child is doing in his/her current placement(s) since the last hearing. If there have been any moves, the report will contain the reason for such moves.
- 20.05 Dates of contacts with parent, guardian or custodian and the child since the first hearing was held, method of contact, duration and subjects discussed.
- 20.06 If there have been no contacts with the parent, guardian, custodian by the social worker, what efforts have been made to contact such parties.
- 20.07 An assessment of when the child is expected to return home.
- 20.08 A list of who the extended family members are and a list of contacts or attempts to contact such family members regarding placement of child.
- 20.09 Social services personnel shall develop a case plan and shall make recommendations for the next six (6) months. Such recommendations will include:
 - 20.091 A treatment plan for the parents, guardian or custodian.
 - 20.092 Future placement of the child.
 - 20.093 What services should be provided for the child, if services are needed.

21 PLACEMENT PREFERENCES

21.01 Least Restrictive Setting

If a child cannot be returned home, the child shall be placed in the least restrictive setting which most approximates a family in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his home, taking into account any special needs of the child. The placement restrictions set forth in section 11 of this statute shall be followed.

21.02 Order of Preferences

Whenever appropriate, a child shall be placed in a home with the following characteristics, which shall be given preference in the following order:

- 21.021 Members of the extended family.
- 21.022 An Indian family of the same Band as the child.
- 21.023 An Indian family.
- 21.024. People who have a relationship with the child, but who are not related to the child.

21.025 Any other family which can provide a suitable home for such a child.

22 EMANCIPATION

A child over the age of sixteen (16) may petition the court for emancipation. The court shall grant such status when the child proves to the court that the child is capable of functioning as an independent and responsible member of the community.

23 AUTHORIZATION OF MEDICAL TREATMENT

At any time whether or not a child is under the authority of the court, the court may authorize medical or surgical care for a child when:

23.01 Unavailability of Parent, Guardian or Custodian

A parent, legal guardian or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case, or

23.02 Life Endangerment

A physician informs the court orally or in writing that in his professional opinion, the life of the child would be greatly endangered without certain treatment and the parent, guardian or other custodian refuses or fails to consent. If time allows in a situation of this type, the court shall cause every effort to be made to grant the parent(s), guardian or custodian an immediate informal hearing, but this hearing shall not be allowed to further jeopardize the child's life.

In making its order the court shall give due consideration to any treatment being given the child by prayer through spiritual means alone or through other methods approved by Band customs, traditions or religions.

After entering any authorization under this section, the court shall reduce the circumstances, finding and authorization to writing and enter it in the records of the court and shall cause a copy of the authorization to be given to the physician or hospital or both, that was involved.

Oral authorization by the court is sufficient for care or treatment to be given and shall be accepted by any physician or hospital. No physician or hospital nor any nurse, technician or other person under the direction of such physician or hospital shall be subject to criminal or civil liability in a court for performance of care or treatment in reliance on the court's authorization and any function performed thereunder shall be regarded as if it were performed with the child's and the parent's authorization.

24 FOSTER HOME LICENSING PROCEDURES

24.01 Inspection and Licensing Procedures:

24.011 The Mille Lacs Band shall select one or more persons as the foster home inspector(s). The foster home inspector shall examine homes of Band members and others who reside both within the territorial jurisdiction of the Mille Lacs Band and within a thirty (30) mile radius of the Mille Lacs territorial jurisdiction. The foster home inspector shall submit a recommendation to the **Band Assembly** which shall act upon said recommendation within thirty (30) days of receipt of said recommendation and, if no action is taken, the recommendation of the foster home inspector shall be implemented.

- 24.012 Except under exceptional circumstances, or in order to preserve a family unit, no foster home may accept more than four (4) foster children.
- 24.013 Any license issued by the foster home inspector shall apply only to the residence(s) where the family is living at the time application for a license is made, and a permanent change of residence automatically terminates the license. The foster care parents are required to notify the foster care inspector whenever a change of residence is contemplated.
- 24.014 The foster care parents must also notify the foster care inspector whenever a change in the household occurs. Examples of a change in the household include but are not limited to, if one of the foster care parents is convicted or is accused of a felony or gross misdemeanor crime or if one of the foster parents moves out of the residence, or if any other person moves into the residence, the foster care inspector must be informed within seventy-two (72) hours. Failure to timely notify the foster care inspector of a change in circumstance will result in the immediate suspension of the license.

24.02 Foster Home Requirements

- 24.021 The home shall be constructed, arranged and maintained so as to provide for the health and safety of all occupants. The foster care inspector may, upon twenty-four (24) hours' notice, inspect a foster care dwelling at any time.
- 24.022 Heating, ventilation, and light shall be sufficient to provide a comfortable, airy atmosphere. Furnishing and housekeeping shall be adequate to protect the health and comfort of the foster child.
- 24.023 Comfortable beds shall be provided for all members of the family. Sleeping rooms must provide adequate opportunities for rest. All sleeping rooms must have a window of a type that may be opened readily and may be used for evacuation in the event of an emergency.
- 24.024 Play space shall be available and free from hazards which might be dangerous to the life or health of the child.

24.03 The Foster Family:

- 24.031 All members of the household must be in such physical and mental health as will not adversely effect either the health of the child or the quality and manner of the child's care.
- 24.032 Members of the foster family or household shall be of good character and habits. They must never have been convicted of a sex offense. They may not have any felony convictions within the last five (5) years. Exceptions concerning non-sexual felony convictions can be made providing adequate information is provided indicating that a change of character has occurred.
- 24.033 The person in charge of the foster home shall be of suitable temperament to care for the children, shall understand the special needs of the child as an Indian person and shall be capable of bringing the child up as an Indian person who is

well adjusted and able to get along both within the tribal community and in the non-Indian community as well.

- 24.034 Foster parents shall be responsible, mature individuals who are, in the view of most community members, of good character. Foster parents must be at least twenty-one (21) years old (unless a member of the child's extended family), but there is no upper age level provided the foster parent has the physical and emotional stamina to deal with the care and guardianship of a foster child. The foster parent must be willing, when necessary, to cooperate with the biological parents and must be willing to help the family re-establish necessary family ties.
- 24.035 A foster home does not necessarily have to have both a male and a female foster parent. The foster care inspector may, at the inspector's discretion, certify a foster home with a single foster parent provided that foster parent displays the outstanding qualities necessary to raise a foster child.
- 24.036 The foster parent must have an income sufficient to care for all individuals in the foster home. The foster care inspector may take into account the state stipend when determining the financial ability of the foster care parents.
- 24.037 Any time a pre-school foster child is placed in a foster home there must be at least one (1) foster parent in full time attendance. For school age children the foster parent must show the arrangements which will be made for those periods of time when both foster parents are employed. Infants and young children shall never be left alone without competent supervision.
- 24.038 Without specific approval by the **Band Assembly**, a foster home shall not be licensed whenever any member of the family is mentally ill or on convalescent status from a mental hospital or is on parole or probation or is an inmate of a penal or correctional institution.
- 24.039 The standards the foster care inspector shall use in judging the above criteria shall be those of the Mille Lacs Reservation Indian community.
- 24.0310 The foster care inspector is authorized to make a complete investigation to determine the adequacy of the foster care home. The inspector shall be authorized to examine not only the potential foster care parents, but also any other Band member or community member who is familiar with the applicants and is familiar with the type of care they provide to the children.
- 24.04 The Foster Child:**
- 24.041 The daily routine of a foster child shall be such as to promote good health, rest and play habits.
- 24.042 The responsibility for a child's health care shall rest with the foster parents. In case of sickness or accident to a child, immediate notice shall be given to the foster care inspector. Foster care parents may consent to surgery or other treatment in a medical emergency.

24.043 The foster care parents shall not subject the child to verbal abuse, derogatory remarks directed at the child, the child's natural parents or relatives, or to threats to expel the child from the foster home. No child shall be deprived of meals, mail or family visits as a method of discipline. When discipline or punishment must be administered, it shall be done with understanding and reason. The method of punishment will be that which is accepted by the people of the Mille Lacs Reservation Indian community.

25 GUARDIANSHIP

25.01 Purpose

25.011 The Children's Court, when it appears necessary or convenient, may appoint guardians for the persons and/or property of children under the court's jurisdiction or incompetents who have no guardian legally appointed by will or deed. Such appointment may be made on the petition of a relative or other person on behalf of the child or incompetent, or a petition of the child if at least fourteen (14) years of age. Before making such appointment, the court must cause such notice as the court deems reasonable to be given to any person having the care of the child, and to such other relatives of the child residing on the reservation as the court may deem proper, and in cases of adult incompetents, the court may cause notice to be given to the incompetent at least ten (10) calendar days before hearing the petition.

25.012 If a child is under the age of fourteen (14) years, the court may nominate or appoint his guardian. If he is fourteen (14) years of age or older, he may nominate his own guardian who, if approved by the court, must be appointed accordingly. If the guardian nominated by the child is not approved by the court, or if the child resides outside of the reservation, or if, after being duly cited by the court, he neglects for ten (10) days to nominate a suitable person, the court may nominate and appoint the guardian in the same manner as if the child were under the age of fourteen (14) years.

25.013 When a guardian has been appointed by the court for a child under the age of fourteen (14) years, the child, at any time after he attains that age, may nominate his own guardian, subject to the approval of the court. A guardian appointed may as specified by the court have the custody and care of the education of the child and the care and management of the child's property until such child reaches the age of eighteen (18), or marries, or is emancipated by the court under section 22 of this statute, or until the guardian is legally discharged, provided, however, that said guardian shall not have the authority, without express written consent of the court, to dispose of any real or personal property of the child in any manner, including, but not limited to, the child's individual Indian Money Account or assets otherwise held for the benefit of the child. Said guardian shall also have the authority to consent to the medical care and treatment of the child.

25.014. The court may order that the court disburse monthly reimbursement payments to the person or agency to whom custody is granted under this statute, provided sufficient funds have been appropriated by the Band Assembly. Said disbursements

must be used by the person or agency with custody of the child for the sole purpose of covering expenses incurred in the care and custody of said child and shall not be used for any other purpose. The use of said funds for any purpose other than that described in this section shall subject said person or agency to contempt of court and to any criminal and civil penalties or remedies provided by band statute.

25.02 Types of Guardianship

The types of guardianship shall include guardianship of property and/or guardianship of the person. Guardianship of the person shall include both temporary guardianship and permanent guardianship.

25.03 Guardianship of Property

The court may appoint a guardian of the property of a child or incompetent person under such terms and conditions as the court sets forth in the written order. The guardianship may cover all property until the child reaches eighteen (18) years of age or until the incompetent person becomes competent or it may be limited to only specific property or a specific legal action as set forth in the written order. A temporary or permanent guardianship of the person may also include guardianship of the child's property if set forth in the written order.

25.04 Permanent Guardianship

The court may appoint a permanent guardian for the child under such terms and conditions as the court sets forth in the written order. Permanent guardianship provides for permanent custody of a child to someone other than the parent(s), although there is no termination of the parental rights of the parents. There shall be a presumption of continued permanent guardianship in order to provide stability for the child. Permanent guardianship shall only be terminated based upon the unsuitability of the permanent guardian(s) rather than the competency or suitability of the parent(s). The parent(s) and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the court.

25.05 Temporary Guardianship

The court may appoint a temporary guardian under such terms and conditions as the court sets forth in the written order. A temporary guardianship may be terminated if the court determines that it is in the best interests of the child to change custody from the temporary guardianship to a new guardian or to return the child to the parent, guardian or custodian. The parent(s) and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the court.

25.06 Who May File Guardianship Petition

Any person may file a petition for guardianship. The petition shall be initiated either by the proposed guardian or by the child if at least fourteen (14) years of age.

25.07 Contents of Guardianship Petition

The petition for guardianship shall include the following, to the best information and belief of the petitioner:

25.071 The full name, address and tribal affiliation of the petitioner;

- 25.072 The full name, sex, date and place of birth, residence and tribal affiliation of the proposed ward;
- 25.073 The basis for the court's jurisdiction;
- 25.074 The relationship of the proposed guardian to the proposed ward;
- 25.075 The name and address of the person or agency having legal or temporary custody of the proposed ward;
- 25.076 The type of guardianship requested;
- 25.077 In the case of an alleged incompetent person, the grounds for incompetency under section 25.11; and
- 25.078 A full description and statement of value of all property owned, possessed, or in which the proposed ward has an interest (if guardianship of property is requested).

All petitions must be signed and dated by the petitioners, and must be notarized or witnessed by a clerk of the court.

25.08 Guardianship Report

Upon the filing of a guardianship petition, the court shall immediately request that the Social Services Department or other qualified agency conduct a guardianship report on the proposed guardian and report on the proposed ward. The guardianship report shall contain all pertinent information necessary to assist the court in determining the best interests of the proposed ward.

No determination can be made on a petition for guardianship until the report has been completed and submitted to and considered by the court. The guardianship report shall be submitted to the court at least ten (10) days before the hearing. The court may order additional reports as it deems necessary.

25.09 Guardianship Procedures

The procedures for guardianship hearings shall be in accordance with sections 13.03, 13.04, 13.06, 14, 20 and 21 of this statute.

25.10 Management of Property

In the event that any guardian shall receive any money or funds of any child or incompetent person during his or her term of office as guardian, before taking and receiving into custody such money or funds, the court may require of such person a bond with sufficient surety to be approved by the court and in such sum as he shall order, conditioned that the guardian will faithfully execute the duties of his trust, and the following conditions shall form the part of such bond without being expressed therein:

- 25.101 To make an inventory of all the estate of the ward that comes into possession or knowledge of the guardian and to return the same within such time as the court may order, and;
- 25.102 To dispose of and manage the estate according to law and for the best interests of the ward, and faithfully to discharge trust duties in relation thereto, and also in relation to the care, custody and education of the ward, and;

25.103 To render an account on oath of the property, estate and money of the ward in the guardian's hands and all the proceeds or interests derived therefrom, and of the management and disposition of the same, within three (3) months after being appointed, and at such other times as the court directs, and at the expiration of the trust, to settle all accounts with the court or judge or with the ward if the ward is of full age, or the ward's legal representative, and to pay over and deliver all the estate, monies and effects remaining in the guardian's hands, or due from the guardian on such settlement to the person who is legally entitled thereto.

The funds of any child or incompetent must be used by his guardian solely for the support and education of such child and for the support of such incompetent, and shall be expended by the guardian in a reasonable manner according to the circumstances and station in life of such ward, and in such manner as can reasonably be afforded according to the income and estate of said ward.

If determined to be appropriate by the court, the written order may set forth that the child's property may not be used for the child's care, but rather the ward's property to be managed for the child until the child reaches the age of eighteen (18) or is emancipated by the court.

25.11 Incompetent Persons

In case of incompetent persons, if after a full hearing and examination upon such petition, and upon further proof by the certificates of at least two qualified physicians showing that a person is incompetent as defined in this statute, it appears to the court that the person in question is not capable of taking care for their self and capable of managing their property, the court shall appoint a guardian of the person and estate within the powers and duties specified in this section.

Every guardian of an incompetent person appointed as provided herein has the care and custody of the person of their ward and the management of their estate until such guardian is legally discharged; the guardian must give bond to the ward in a similar manner and with similar conditions as specified with respect to the guardianship of a child.

Any person who has been declared incompetent or the guardian of the incompetent, or any relative of such person within the third degree or any friend, may petition the court in which the person was declared incompetent, to have the determination of his incompetency redetermined. The petition shall be accompanied by two (2) physicians and shall state that such person is then competent. The court shall require notice be given of a hearing upon the petition at some date after the petition has been filed; and at the hearing upon the petition, witnesses shall be examined and a determination made by the court as to whether the petition should be granted and the incompetent person declared of sound mind and capable of taking care of himself and his property, his restoration to competency shall be adjudged and the guardianship of such person, if such person shall not be a child, shall cease.

26 ADOPTIONS

26.01 Open Adoptions

Adoptions under this statute shall be in the nature of "Open Adoptions." The purpose of such open adoptions is not to permanently deprive a child of connections to, or knowledge of, the child's natural family. The purpose of adoptions shall be to give the adoptive child a permanent home.

To this end the following shall apply and be contained in all adoptive orders and decrees:

- 26.011 The adoptive parents and adoptive child shall be treated under the law as if the relationship was that of a natural child and parent, except as set forth herein.
- 26.012 The adoptive child shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his natural family and tribal heritage.
- 26.013 The adoptive child and members of the child's natural extended family, including parents shall have the right of reasonable visitation with each other, subject to reasonable controls of the adoptive parents.
- 26.014 Adoption shall not serve to prevent an adoptive child from inheriting from a natural parent in the same manner as any other natural child. The natural parent shall not be entitled to inherit from an adoptive child in the same manner as parents would otherwise be entitled to inherit. An adoptive child shall be entitled to inherit from adoptive parents, and vice versa, in the same manner as the natural parents and child.

26.02 Consent to Adoption

- 26.021 **When not required:** Written consent to an adoption shall not be required if:
 - a. The parent's rights have been terminated;
 - b. The parent has relinquished their parental rights;
 - c. The parent has been declared incompetent.
- 26.022 **When required:** Written consent to an adoption shall be required from:
 - a. The biological or adoptive mother;
 - b. The biological, adoptive, or acknowledged father;
 - c. The custodian, if empowered to consent;
 - d. The court, if the custodian is not empowered to consent;
 - e. The child, if the child is over twelve (12) years of age.

26.03 Execution of Consent to Adopt

Written consent to an adoption shall be executed and acknowledge before the court. Consent shall not be accepted or acknowledged by the court until fourteen (14) days after the birth of a child. An interpreter shall be provided for the person consenting to the adoption if they do not understand English. The consent of a child over the age of twelve (12) years shall be given orally either in open court, or in chambers with the judge and any other person(s) the judge deems necessary present.

26.04 Who May File An Adoption Petition

Any person may file a petition for adoption. The petition shall be initiated by the person proposing to adopt. In the case of married persons maintaining a home together, the petition shall be the joint petition of husband and wife, except that if one of the spouses is the natural or adopted parent of the proposed adoptee, said person shall not be required to join in the petition.

26.05 Consents of Adoption Petition

The petition for adoption shall include the following, to the best information and belief of the petitioner:

- 26.051 The full name, address, and tribal affiliation of the petitioner; and
- 26.052 The full name, sex, residence, date and place of birth, and tribal affiliation of the proposed adoptee; and
- 26.053 The name by which the proposed adoptee shall be known if the petition is granted; and
- 26.054 The basis for the court's jurisdiction; and
- 26.055 If the proposed adoptee is a child, a full description and statement of value of all property owned, or possessed in which the child has an interest; and
- 26.056 The relationship of the petitioner to the proposed adoptee; and
- 26.057 The names and addresses of any person or agency whose consent to aid adoption is necessary.

Where there is more than one proposed adoptee, and the proposed adoptees are siblings, only one petition shall be required for the adoption of all or any combination of the siblings, provided that each sibling proposed to be adopted be named in the petition.

All petitions must be signed and dated by the petitioner, and must be notarized or witnessed by a clerk of the court.

26.06 Notice

Notice shall be provided in accordance with the notice procedures set forth in section 26.07 of this statute except that the court may determine that it is unnecessary to give notice to specific individuals, including a parent whose rights have been terminated.

26.07

Notice shall be given by personal service. If service cannot be made personally, the court may authorize service by certified mail at the last known address of the person to be served. If notice cannot be served by registered mail, the court may authorize service by publication in either the tribal newspaper of the reservation, or a newspaper of general circulation in the county where the court is located, once a week for three consecutive weeks. All notices served whether personally or by certified mail shall be received by the person named therein no less than ten (10) days prior to the date set for the hearing. No hearing can be

held sooner than ten (10) days after the last publication where service is made.

26.08 Homestudies

When a petition for the adoption of a child is filed with the court, the court shall immediately request that the Social Services Department or other qualified agency conduct a home study on the petitioner and report on the child. The homestudy and report shall relate the circumstances of the home, the petitioner and their ability, both physical and mental, to assume the responsibilities of a parent of the child. The homestudy shall contain other pertinent information designed to assist the court in determining the best placement for the child. The homestudy will also address the issue of whether or not the home most closely resembles that of the child's culture, identity, and where applicable, the child's tribal affiliation. The homestudy or report shall not be required where the proposed adoptee is an adult.

No determination can be made on a petition for adoption until the homestudy and report has been completed and submitted to and considered by the court. The homestudy shall be submitted to the court no later than ten (10) days before the hearing. The homestudy and report may be consolidated into one document. The court may order additional homestudies or reports as it deems necessary.

26.09 Withdrawal of Consents

Any consent given under the provisions of this section may be withdrawn by the person or agency which gave the consent at any time prior to the entry of a final decree of adoption. No reason need be stated and no hearing need be held on such withdrawal.

All withdrawals must be written and notarized or witnessed by a clerk of the court, with the original being filed with the court.

Within two (2) years after the entry of a decree of adoption, said decree may be vacated upon a petition being filed and a showing that the consent which made the adoption possible was obtained through fraud or duress. Upon such a showing the court shall vacate the decree and return the adopted person to that status he had prior to entry of the decree.

26.10 Adoption Preferences

The preference of placement in adoption shall be in the following order unless the court determines that the child's best interests require deviation from the preferences:

- 26.101 Extended family members;
- 26.102 A tribal member or person eligible for tribal membership;
- 26.103 Other Indian person(s), and;
- 26.104 If this order of preference cannot be met, then placement may be made with any person who has some knowledge of the child's tribal affiliation and the child's special needs.
- 26.105 All other persons.

26.11 Hearing Procedures

An adoption hearing shall be held within ninety (90) days of receipt of an adoption petition from the prospective parent(s). The court shall conduct the hearing to determine if it is in the best interests of the child to be placed with the petitioners. In determining the best interests of the child, the court shall examine:

- 26.111 The validity of written consent;
- 26.112 A termination of parental rights order;
- 26.113 The length of time of the child's wardship by the court;
- 26.114 The special conditions of the child;
- 26.115 The parent communication with the child;
- 26.116 The minor's consent to adoption, if the child is over twelve (12) years of age;
- 26.117 The homestudies or other reports, and;
- 26.118 The order of preference of placement.

The petitioner and the proposed adoptee shall appear personally at the hearing. During the hearing the court shall advise the party(s) of their basic rights as provided in section 14 of this statute. The judge shall examine all persons separately, and may, if satisfied that all other requirements of this section have been met, enter a final decree of adoption, or may place the person to be adopted, if a child, in the legal custody of the petitioner for a period not to exceed six (6) months prior to entering a final decree of adoption.

If the court determines that the adoption will not be in the child's best interest, or finds that all of the requirements of this statute have not been met, it may deny the petition and make any other order it deems necessary for the care and custody of the child not inconsistent with this statute.

Proceedings for termination of the parent-child relationship and proceedings for adoption may be considered and determined at one (1) hearing provided that all the requirements of this section as well as section 26 of this statute governing termination are complied with fully.

The hearing shall be informal in nature. Concerned parties may present evidence relating to the situation. Hearsay evidence will not be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's extended family and other person determined to be appropriate by the court shall be allowed in the proceedings.

26.12 Adoption Decree

If the court finds that the requirements of this statute have been met and that the child's best interests will be satisfied, a final decree of adoption may be entered.

A person, when adopted, may take the name of the person adopting, and the two shall thenceforth sustain toward each other the legal relation of parent and child, and shall have all the rights and shall be subject to all the duties of that relation, including all of the rights of a child of

the whole blood to inherit from any person, in all respects, under the provisions of inheritance and succession of this statute.

27 MODIFICATION, REVOCATION OR EXTENSION OF COURT ORDERS

27.01 Motions to Modify, Revoke or Extend Court Order

The court may hold a hearing to modify, revoke or extend a court order under this statute at any time upon the motion of:

- 27.011 the child;
- 27.012 the child's parent, guardian or custodian;
- 27.013 the prospective adoptive parent(s) upon court order;
- 27.014 the child's counsel or guardian ad litem;
- 27.015 the Solicitor General;
- 27.016 the institution, agency, or person vested with the legal custody of the child or responsibility for protective supervision, or;
- 27.017 the court on its own motion.

27.02 Hearing Procedure

Any hearing to modify, revoke or extend a Court order shall be held in accordance with the procedures established for the order at issue.

28 CHILD/FAMILY PROTECTION RECORDS

28.01 Children's Court Records

A record of all hearings under this statute shall be made and preserved. All Children's Court records shall be confidential and shall not be open to inspection to any but the following:

- 28.011 the child;
- 28.012 the child's parent, guardian or custodian;
- 28.013 the prospective adoptive parent(s);
- 28.014 the child's counsel or guardian ad litem;
- 28.015 the Children's Court personnel directly involved in the handling of the case;
- 28.016 any other person by order of the Court, having a legitimate interest in the particular case or the work of the court.

28.02 Law Enforcement and Social Services Records

Law enforcement records and files concerning a child shall be kept separate from the records and files of adults. All law enforcement and social services records shall be confidential and shall not be open to inspection to any but the following:

- 28.021 the child;

- 28.022 the child's parent, guardian or custodian;
- 28.023 the child's counsel or guardian ad litem;
- 28.024 law enforcement and social services personnel directly involved in the handling of the case;
- 28.025 the Children's Court personnel directly involved in the handling of the case;
- 28.026 any other person by order of the Court, having a legitimate interest in the particular case or the work of the court.

29 CHILDREN'S COURT APPEALS

29.01 Who Can Appeal

Any party to a Children's Court hearing may appeal a final Children's Court order.

29.02 Time Limit for Appeal

Any party seeking to appeal a final Children's Court order shall file a written notice of appeal with the court within thirty (30) days of the final order.

29.03 Record

For purposes of appeal, a record of proceedings shall be made available to the child, his parent, guardian or custodian, the child's counsel and others upon court order. Costs of obtaining this record shall be paid by the party seeking the appeal.

29.04 Stay of Appeal

A Court order may be stayed by such appeal.


29.05 Conduct of Proceedings

All appeals shall be conducted in accordance with Band Statute and Court of Central Jurisdiction rules of procedure as long as those provisions are not in conflict with the provisions of this children's statute.

Ordinance 01-96

Introduced to the Band Assembly on this
twenty-third day of October in the year one
thousand nine hundred ninety five.

Passed by the Band Assembly on this
twenty-third day of October in the year
one thousand nine hundred ninety five.


David Matrious, Speaker of Assembly

APPROVED
DATE: 10-27-95


Marge Anderson, Chief Executive

FILED
DATE: 10-27-95


James Genia, Solicitor General

OFFICIAL SEAL OF THE BAND