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TITLE XI

PART I GENERAL.

SECTION 1 GENERAL

1.1 Purpose.

(1) The Child in Need of Care & Youth Offender Act shall be liberally interpreted and construed to fulfill the following expressed purposes:

- (a) To provide for the welfare, care and protection of the children and families on the Fort Belknap Indian Reservation;
- (b) To preserve unity of the family, preferably by separating only when necessary from the child from his or her parents;
- (c) To take such actions as may be necessary and feasible to prevent the abuse, neglect or abandonment of children;
- (d) 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;
- (e) To secure the rights of and ensure fairness to the children, parents, guardians, custodians or other parties who come before the Family Court under the provisions of this Code;
- (f) To recognize and acknowledge the Tribal customs and traditions of the Gros Ventre and Assiniboine with regard to child-rearing.

(2) The young people of the Gros Ventre and Assiniboine Tribes are the Tribes' most important resources and their welfare is of paramount importance to the Tribes.

(3) This Act is designed to preserve the unity and welfare of the family, the integrity of the family and safeguard family relationships whenever possible and to secure the rights of children, parents, guardians, and custodians, or other parties who come before the Family Court under the provisions of this Act.

(4) To provide a judicial system that ensures fairness and equality for all and a judicial system that recognizes and acknowledges the Tribes unique customs and traditions.

(5) The Fort Belknap Tribes need a recognized family court system to insure and safeguard the rights of children pursuant to applicable Tribal and federal law; to improve any conditions or home environment which may be contributing to a youth's delinquency, and at the same time to protect the peace and security of the community; to preserve and strengthen the youth's cultural and Tribal identity; and to preserve and strengthen the family ties.

(6) It is also the purpose of this law to provide and assure that each child within the jurisdiction of the tribal court shall receive the care and guidance needed to prepare such children to take

their places as an adult member of the tribes; to prevent the unwarranted break-up of Indian families by incorporating procedures that recognize the rights of children and parents or other custodial adults, and, where possible, to maintain and strengthen the family unit, and to preserve and strengthen the child's individual, cultural, and tribal identity. Wherever possible, family life shall be strengthened and preserved, and the primary efforts will be toward keeping the child with his or her family, and if this is not possible, then efforts shall be made toward maintaining the child's physical and emotional ties with the child's extended family and with the tribal community. Unless in direct conflict with specific provisions of this code, this code shall not be interpreted as excluding or prohibiting the adoption of procedures, remedies, or treatments traditionally used by the Gros Ventre and Assiniboiné tribes where possible and desirable. The Family court will utilize the traditional practices and social customs of the Gros Ventre and Assiniboiné tribes.

History: Amended ____; Resolution No. ____; Section 1 enacted on the 3/8/99, Resolution 63-99; Subsection A was formerly a part of the Children's Code, Title XII, Section 1

SECTION 2. JURISDICTION

2.1 Jurisdiction.

(1) There is hereby established for the Gros Ventre and Assiniboiné of Fort Belknap Indian Reservation a court to be known as the Fort Belknap Family Court. The Family Court is vested with personal, subject matter and territorial jurisdiction to the extent permitted under the Constitution and Laws of the Fort Belknap Indian Community and the United States of America. The jurisdiction of the Family Court under this code shall be civil in nature and shall include the right to issue all orders necessary to ensure the safety of children and incompetents of the Reservation.

(2) In all matters arising under this code, the Family Court has exclusive, original jurisdiction over all proceedings which includes, but is not limited to, the following: a youth who is alleged to be a delinquent, youth/child in need of supervision and care, marriage, dissolution of marriage, child support, custody and visitation, paternity, emancipation, guardianships, conservatorships, name change, Indian Child Welfare Act proceedings, termination parental rights, peacemaking, family protection, protection of elderly, and adoption.

(3) Fort Belknap Family Court jurisdiction is found when any child custody proceeding involving a child who is an enrolled member of the Gros Ventre or Assiniboiné Tribe; or a child who is eligible for such enrollment; or an Indian child residing or domiciled within the exterior boundaries of the Fort Belknap Indian Reservation; or an Indian child having significant contacts with the Reservation community.

(4) The Family Court shall have the power to enforce subpoenas and orders of restriction, fines, contempt, confinement, and other powers as appropriate.

(5) In any case where a court transfers legal custody of an Indian child subject to this jurisdiction to the Fort Belknap Family Court the Court shall reserve Jurisdiction over all future child

custody proceedings involving that child, unless otherwise specified by a tribal court order, and the child shall become a protected child of the Tribe. For purposes of tribal court jurisdiction, a protected child of the tribes shall be a ward of the tribal court, and such wardship status shall continue until terminated by the tribal court or until the child reaches the age of eighteen (18) years. All children who are wards of the court by previous action of the Family Court, or for any other reason, at the time of the adoption of this code shall be considered protected children. Any Indian child having at least one parent who is an enrolled member of the Gros Ventre or Assiniboine Tribe may become a protected child.

History: Amended ____; Resolution ____; Section 1 and Section 2, Subsection 2.1 enacted on the 3/8/99, Resolution 63-99; Subsection A was formerly a part of the Children's Code, Title XII, Section 1

SECTION 3. FULL, FAITH, AND CREDIT.

3.1 Foreign Court Orders.

- (1) Court orders of other Tribal and State courts involving children over whom the Family Court could take jurisdiction may be recognized by the Family court after the court has determined:
- (a) that the other courts exercised proper subject matter and personal jurisdiction over the parties;
 - (b) due process was accorded to all interested parties participating in the other court proceedings;
 - (c) the provisions of the Indian Child Welfare Act, 25 U.S.C. 1901-1963, were properly followed, if applicable;
 - (d) the other court proceeding does not violate the public policies, tribal customs, or common law of the tribes; and
 - (e) the order or judgment was not fraudulently obtained.

History: Amended ____, Resolution No. ____: Section 3, Subsection 3.1 (A-E) enacted on the 3/8/99, Resolution 63-99

3.2 Court Orders of Other Tribal Courts.

- (1) Child custody orders of other tribal courts involving children over whom the Family Court could take jurisdiction shall be recognized by the Family Court after the Court has determined that:
- (a) 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.

History: Enacted ____; Resolution No. ____.

3.3 Tribal Interest.

Because of the vital interest of the tribes in its children and those children who may become members of the tribe, the statutes, regulations, public policies, customs and common law of the

tribes shall control in any proceeding involving a child who is a member of, or eligible for membership in, the Gros Ventre or Assiniboine tribes.

History: Enacted ____; Resolution No. ____.

SECTION 4. OFFICERS OF THE COURT

4.1 Family Court Judge.

The Court shall have at least one judge of the Family court. Such Judge shall be appointed by the Fort Belknap Community Council.

(1) **Qualifications:** A Family Court judge shall be at least 30 years of age, adequately understand the justice system processes such as the rules of civil procedure, criminal procedure, rules of evidence, the Indian Child Welfare Act of 1978, the human services role and underlying child development and parental bonding, and child protection and permanency planning principles.

(2) **Duties:** Duties shall be to conduct hearings under this Act, and ensure that all hearings and other court appearances required under Parts Two and Three are given priority by the court and must be scheduled and tried as expeditiously as possible.

History: Section 4, Subsection 4.1 (A-B) enacted on the 3/8/99, Resolution 63-99.

4.2 Presenting Officer.

The Fort Belknap Community Council shall appoint as necessary tribal prosecutors to act as presenting officers to carry out the duties and responsibilities set forth in this code.

(1) **Qualifications.** A presenting officer shall thoroughly understand how to prosecute present a charge. Also, he/she must be a person of reputable character who has had experience in work of a nature related to the duties of prosecuting presenting officer.

(2) **Duties.** To carry out the duties and powers specifically enumerated under this code. To draft and review all petitions for legal sufficiency and shall appear at all child protective and juvenile proceedings. The presenting officer is a part of the prosecutor's office and prosecutes and represents the Tribes in Youth Offender proceedings, child-in-need-of-care proceedings, adoptions, and guardianship and conservatorship proceedings and any other duties assigned by the Tribal prosecutor. Guardianship, conservatorships and adoptions may also be conducted by an attorney or an advocate. The presenting officer may also be used to prosecute adult prosecutions as assigned by the tribal prosecutor.

History: Section 4, Subsection 4.2. (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section III, Subsection 3.5(A. --(B) of the Childrens Code, Title XII.

4.3 Guardian Ad Litem/Children's Court Counselor.

In every judicial proceeding, if allowed for in the tribal budget, the court shall appoint for any child alleged to be abused or neglected a guardian ad litem/children's court counselor (hereinafter "guardian") The guardian shall meet the following Qualifications and perform the following general duties:

(1) Qualifications. A person of reputable character who has experience in work of a nature related to the duties of a guardian ad litem/children's court counselor.

(2) Duties.

- (a) conduct an investigation necessary to ascertain the facts constituting the alleged abuse or neglect;
- (b) interview or observe the child who is the subject of the proceeding;
- (c) have access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child's siblings, parents or custodians;
- (d) to make written reports to the court concerning the child's welfare;
- (e) appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's welfare;
- (f) perform other duties as directed by the court.

History: Section 4, Subsection 4.3 enacted on the 3/8/99, Resolution 63-99; formerly Section III, Subsections 3.4 & 3.6 of the Childrens Code, Title XII.

4.4 Social Worker.

Social workers shall be employed by the tribe's social services department. In every judicial proceeding, if allowed for in the tribal budget or the social service budget, the Tribal Council shall appoint social worker(s), or they shall be employed by the Federal Government or a state, who will receive reports of neglected, abused or abandoned family members, received from any reliable source.

(1) Qualifications. A degree in social work or a related field or a person of reputable character who has experience working as a social worker.

Duties.

(2) Upon receipt of any report or information, shall immediately within 24 hours initiate a 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 the other children in the home.

(3) Take a child into temporary custody by a Law Enforcement Officer or emergency pickup order/shelter care order 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 parent(s), guardian, or custodian when necessary;

(4) In conducting an investigation, the child protection worker shall seek the assistance of law enforcement officials, without delay, after becoming aware that one or more of the following conditions exist:

(a) abuse or neglect resulting in severe physical injury to the child which requires medical treatment or hospitalization;

(b) law enforcement intervention is necessary for the protection of the child, the child protection worker, or another person involved in the investigation.

(5) 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; Supervise and assist a child placed outside the home;

(6) Under no circumstances shall the Child Protection Worker be required to perform the duties of the tribal prosecutor or law enforcement officer;

(7) Shall submit a written report to the court as set forth in this code.

(8) If a report alleging a pregnant woman's abuse of alcohol or a controlled substance is received, protective services shall arrange an appropriate assessment and offer services which may include, but are not limited to, a referral for chemical dependency assessment, a referral for chemical dependency treatment if recommended, and a referral for prenatal care. Child protection workers may also seek court ordered services if the pregnant woman refuses recommended voluntary services or fails recommended treatment. A referral shall also be made to the tribal prosecutor who may prosecute under tribal law any pregnant woman who abuses alcohol or drugs.

(9) Law enforcement officials shall cooperate with the child protection workers and the tribal and state welfare and foster placement agencies in conducting child protection service investigations pursuant to this section.

(10) No child shall remain in an out-of-home temporary placement for a period exceeding 72 hours, excluding Saturdays, Sundays and holidays, unless a child/family protection petition is filed.

(11) Perform other duties as directed by the court.

History: Section 4, Subsection 4.4 (A-B) enacted on the 3/8/99, Resolution 63-99.

4.5 Juvenile Probation Officer.

The Fort Belknap Community Council shall appoint a juvenile probation, if provided for in the budget, an officer to carry out the responsibility of monitoring and advising the court of the status of juveniles placed on probation.

(1) Qualifications. Juvenile probation officer must have experience working in the area of criminal law or experience in a related field or the Tribal Council may appoint or hire any person who has had experience in work of a nature related to the duties of a juvenile probation presenting officer.

(2) Duties.

(a) Before a petition is filed, the probation office may enter into a diversion agreement as set forth in this code and give counsel and advice to the youth and other interested parties.

(b) Make predisposition studies and submit reports and recommendations to the tribal prosecutor.

(c) Supervise, assist, and counsel youth placed on probation or under his supervision.

(3) A probation officer shall have no power to make arrests or to perform any other law enforcement functions in carrying out his duties except that a probation officer may take into custody any youth who violates either his/her probation or a lawful order of the court.

(4) The probation officer's written report shall describe all reasonable and appropriate alternative dispositions. The report shall contain: a detailed summary of the youth's vital statistics, the youth's family and youth's environment, and other matters relevant to the need for care or rehabilitation. If the youth has been examined by a doctor the result of such examination shall be included in the report.

History: Section 4, Subsection 4.5 (A-B) enacted on the 3/8/99, Resolution 63-99.

4.6 Child Advocate for Parents.

(1) In every judicial proceeding an Advocate for the family shall be appointed to represent and guide the parents in criminal, juvenile, and youth-in-need of care proceedings.

(2) Qualifications. The Advocate for the family shall have a thorough and extensive understanding of the legal process in both the criminal and civil context where the rights of the parents are at issue.

(3) Duties.

(a) Child custody proceedings between two fit parents shall not be part of the Advocate duties.

(b) Shall be responsible for receiving appointments to represent a parent when a child has been removed because the government alleges the child is a child-in-need of care or where the parents have been charged with a crime, as well as such related proceedings the court deems appropriate.

- (c) Shall be responsible for serving as the parent's advocate through the trial court system, and through appeal, as necessary or appropriate.
- (d) Shall be responsible for investigating defenses / responses for all cases appointed to.
- (e) Shall be responsible for providing monthly and quarterly reports to the court administrator.

History: Section 4, Subsection 4.6 (A-B) enacted on the 3/8/99, Resolution 63-99

PART II CHILD IN NEED OF CARE

SECTION 1. GENERAL PROVISIONS

1.1 Definitions.

“Abandon”: When a parent, guardian, custodian, or other person responsible for the welfare of a child leaves the child without communication; or 2) fails to support the child and there is no indication of that person's willingness to assume a parental role for a period in excess of six (6) months. Failure to maintain a normal parental relationship with the child without just cause for a period of six months shall constitute prima facie evidence of abandonment. Custody with extended family members or voluntary consent to placement does not constitute abandonment.

“Abused or Neglected”: Harm to a child's health or welfare by the acts or omissions of a person responsible for the child's welfare:

- 1) the person responsible for the child's welfare inflicts or allows to be inflicted upon the child physical or mental injury;
- 2) commits or allows to be committed sexual abuse or exploitation of the child;
- 3) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child.
- 4) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;
- 5) abandons the child by leaving the child under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or willfully surrenders physical custody for a period of one (1) year and during that period does not manifest to the child and the person having physical custody a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or 6) is unknown and has been unknown for a period of 180 days and reasonable efforts to locate the parents have failed.

“Adult”: A person who is (18) years of age or older, or otherwise emancipated by order of a court of competent jurisdiction.

“Child”: A person who is less than eighteen (18) years old and has not been emancipated by order of a court of competent jurisdiction.

“Child in Need of Care”: A child: 1) who has no parent(s), guardian, or custodian available and willing to care for him / her; or 2) who has suffered or is likely to suffer a physical injury inflicted upon him / her by other than accidental means, which causes or creates a substantial risk of death, disfigurement, or impairment of bodily function; 3) who has been neglected or abused by a parent, legal guardian, or person who has custodial care of the child.

“Child Protection Worker”: A child protective services worker or a social services worker.

“Custody” or “legal custody” means the status created by order of the Family Court or any other court of competent jurisdiction that vests the following rights and responsibilities:

- (1) The right to have physical custody of the child;
- (2) The right and duty to protect, train and discipline the child;
- (3) The responsibility to provide the child with food, shelter, education and ordinary medical care, and the authority to consent to surgery or extraordinary care in an emergency.

“Custodian”: A person, other than a parent or guardian, to whom legal custody of the child has been given.

“Detention” means the placement of a juvenile in a physically restrictive facility.

“Domicile”: A person’s permanent home, legal home or main residence. The domicile of a child is that of the legal custodial parent, guardian, or custodian.

“Emergency foster care” means placement in a home that has been licensed to accept emergency placements of children at any hour of the day or night.

“Failure to Thrive”: A medical condition seen in young children where the child fails to gain weight.

“Foster home” means a home that has been licensed to accept placement of children under the age of 18 years.

“Guardian Ad Litem”: A person appointed by the court to represent the best interests of a child who is before the court.

“Indian”: Any enrolled member of the Gros Ventre or Assiniboine Tribe or federally recognized Indian tribe, band or community, Alaska Native and descendant or a person considered by the community to be Indian, by traditions, customs and culture of the Gros Ventre or Assiniboine Tribes, or an individual who may not meet the requirements for enrollment but is recognized in the community as Indian.

“Parent”: Means a biological or adoptive or stepparent 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.

“Legal Age”: Means legal age of alcohol consumption is 21 years of age and the legal age of Tobacco use is 18 years of age. Mandatory legal age includes being a high school graduate.

“Probation” means a legal status created by Court order whereby a “juvenile offender” is permitted to remain in his or her home under prescribed conditions and under the supervision of a person designated by the Court. A “juvenile offender” on probation is subject to return to Court for further proceedings in the event of his or her failure to comply with any of the prescribed conditions of probation.

History: Section Amended ____; Resolution No. ____; 2.1 (A-L) enacted on the 3/8/99, Resolution 63-99; formerly Section II, Subsections 2.1, 2.2, 2.5, 2.12, 2 18, 2 30, of the Childrens Code, Title XII.

SECTION 2. REPORTING CHILD ABUSE

2.1 Persons Who are Legally Obligated to Report.

The following professionals or officials who know or have reasonable cause to suspect as a result of information they receive in their professional or official capacity, that a child is abused or neglected shall report the matter promptly to the tribal prosecutor/presenting officer, social worker, or law enforcement officer, physician, resident, intern, dentist, nurse, optometrist, community health representative, any official or employee who is employed by the Indian Health Service or the Tribal Health Department; school teachers, school officials and employees who work for the school during regular hours; social worker, operator or employee of any registered or licensed day-care facility; foster care or residential worker; law enforcement officer or official; clergy; any member of the local Indian Child welfare committee, child protection team; all tribal court staff. Other Persons May Report. Any person may report suspected abuse. Those reporting, except those specified above, may remain anonymous.

History: Section 2, Subsection 2.1 (A-B) enacted on the 3/8/99, Resolution 63-99.

2.2 Immunity from Liability.

Anyone investigating or reporting any incident of child abuse or neglect, participating in resulting judicial proceedings, or furnishing hospital or medical records as required is immune from any liability, civil or criminal or termination of employment, that might otherwise be incurred or imposed unless the person acted in bad faith or with malicious purpose. Upon receipt of a report that a child is or has been abused or neglected, a social worker, child protection worker, tribal prosecutor, law enforcement officer shall promptly conduct a thorough investigation into the home of the child involved or any other place where the child is present, into the circumstances surrounding the injury of the child, and into all other nonfinancial matters that in the discretion of the investigator are relevant to the investigation.

In conducting an investigation an investigator may not inquire into the financial status of the child's family or any other person responsible for the child's care, except as necessary to ascertain eligibility for assistance programs or to determine whether a person requesting the court to award custody is financially able to care for the child.

History: Section 2, Subsection 2.2 enacted on the 3/8/99, Resolution 63-99.

2.3 Reports and Records of Child Abuse.

(1) Unsubstantiated Report. If from the investigation it appears that the child has not suffered abuse or neglect and the initial report is determined to be unfounded, the department shall destroy all records concerning the report and the investigation.

(2) Confidentiality of Records. The case records of social services, child protection workers, tribal attorney and law enforcement officers, and court actions taken concerning child abuse and neglect must be kept confidential except for the following:

- (a) disclosure of records for an *in camera* inspection if relevant to the court action;
 - (b) disclosure to a government agency or entity that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect;
 - (c) disclosure to a licensed youth care facility;
 - (d) disclosure to a health or mental professional who is treating the family or child;
 - (e) disclosure to a parent, guardian or person designated who is the subject of a report in the records, without disclosure of the identity of any person who reported or provided information on the alleged abuse;
 - (f) disclosure to a child's legal representative, guardian ad litem, attorney or special advocate;
 - (g) a person who is authorized to receive records shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described.
- However, this section is not intended to affect the criminal court records concerning adults.

(3) Penalty for Failure to Report. Any person who is required under this act or by federal or state law to report known or suspected child abuse or neglect who fails to do so or purposely or knowingly prevents another person from doing so is guilty of a class 2 Offense (See Title IV)

(4) Abuse and Neglect Reports. Those persons mandated to report shall include the following information in a written report:

- (a) names and addresses of child and person(s) responsible for the child;
- (b) tribal affiliation;
- (c) to the extent known nature and extent of the child's injuries, including any previous injuries;
- (d) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful neglect; and
- (e) the name and address of the person or agency making the report.

History: Section 2, Subsection 2.3 (A-D) enacted on the 3/8/99, Resolution 63-99.

2.4 Civil Penalty for Obtaining or Releasing Information Confidential Information.

(1) Any person who knowingly and willfully requests or obtains any information concerning child abuse or neglect pursuant to the authority under this part under false pretenses, or any person who knowingly or willfully discloses any such information in any matter to any individual not entitled under any law to receive it.

(2) A Person found guilty of a Obtaining or Releasing Information Confidential Information shall be fined an amount not to exceed \$5,000.00.

History: Section 2, Subsection 2.4 (A-B) enacted on the 3/8/99, Resolution 63-99

SECTION 3. REMOVAL OF CHILD - ABUSED OR NEGLECTED CHILD

3.1 Investigation.

(1) A child abuse or neglect report shall be investigated within one day by the social services department or other appropriate agency, unless the court directs otherwise.

(2) When the Family Court is closed for judicial business and a peace officer or a social service worker asserts reasonable grounds to believe a child is in danger in the reasonably foreseeable future of being the victim of an unlawful offense, based upon an allegation of a recent unlawful offense or threat of the same, the matter must be investigated immediately.

(3) If the situation warrants, a peace officer or a social service worker may remove a child immediately. The Court shall in these situations provide notice of removal on a standardized form to the parents or guardian that indicates the basis for removal and that a petition must be filed within 72 hours of the removal, excluding holidays and weekends.

History: Amended ____, Resolution No. ____; Section 3, Subsection 3.1-3.2 enacted on the 3/8/99, Resolution 63-99

3.2 Taking Children into Custody.

(1) A child may be taken into protective custody without a court order only by a law enforcement official or the Tribes' or Federal government Indian child welfare / foster placement agency or the state office of child protection service when:

(a) failure to remove the child may result in a substantial risk of death, serious injury, or serious emotional harm; or

(b) 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 no satisfactory arrangements have been made by the parent, guardian or custodian to provide for such necessities and no alternative arrangements except removal are available to protect the child.

(c) If grounds for removal are corrected, the presenting officer shall return the child or if an order has been issued, make a written motion to dismiss the case, and the child may be returned to the parent by the person originally authorizing removal or the child protection worker.

(d) The taking of a child into temporary custody under this section shall not be deemed an arrest, nor shall it constitute a criminal offense.

(e) When a child is placed in a shelter facility or a temporary holding facility not operated by the department of social services, the law enforcement officer taking the child into custody shall promptly so notify the court. He shall also notify a parent or legal guardian or, if a parent or legal guardian cannot be found the person with whom the child has been residing and inform him of the right to a prompt hearing to determine whether the child is to be detained further.

History: Amended ____; Resolution No. ____; Section 3, Subsection 3.3 (A-E) enacted on the 3/8/99, Resolution 63-99.

3.3 Procedure Upon Removal of a Child.

(1) Upon the removal of a child into emergency protective care, the law enforcement or social services worker shall immediately notify the child's parents or custodian of such removal, and the reasons therefore as stated in this code. If attempts to so notify the child's parents or custodian are unsuccessful, then best efforts shall immediately be made to notify the child's nearest relatives, including extended family members. Law enforcement or social worker shall keep a list of persons contacted and notified, as well as the time of such notification; and the list shall be filed with the court immediately notify the director of social services, or the social services personnel designated to take such notice, of such removal.

(2) Law enforcement or social services worker shall take and accomplish all reasonable and necessary steps to return the child to the parents or custodian. If return of physical custody of the child can be accomplished without immediate, imminent danger of harm to the child, the child shall be returned to the parents or custodian.

(3) If the return of the child to the child's parents or custodian is impossible or would involve continued risk of such harm to the child, then the child shall be placed in the physical custody of a responsible non-custodial parent if such a person is available and if placement can be accomplished without risk of harm to the child. If the return of the child to the child's parents or custodian or the placement of the child with the child's non-custodial parent is impossible or would involve continued risk of such harm to the child, then the child shall be placed in the physical custody of a responsible adult member of the child's maternal or paternal extended family who is willing and able to care for the child if such a person is available and if placement can be accomplished without risk of harm to the child. If temporary protective care as set forth in sections above is not available, then the child shall be placed on the Fort Belknap Reservation with a secure home, family, or foster parent or shelter care facility having been approved for such placement by social services.

(4) Upon the placement of the child, a law enforcement or social services worker shall make and deliver a report to the court containing a summary of the circumstances surrounding the

temporary protective care and the basis therefore. If the placement has been without a court order, the court shall conduct a preliminary hearing with notice, and a copy of the petition officer or social worker's affidavit to the parents, custodian, guardian and extended family members within 72 hours following temporary placement.

(5) Termination of Protective Care. In no case shall protective temporary care extend beyond 72 hours, exclusive of weekends and holidays, without a petition filed by the presenting officer and the court issuing a written order continuing the placement. At the expiration of the 72 hours period, if no petition file social services shall cause the child to be returned to the child's parents or custodian.

History: Section 3, Subsection 3.3 & Section 4 enacted on the 3/8/99, Resolution 63-99.

3.4 Petition for Removal.

(1) The presenting officer shall be responsible for filing all petitions alleging abuse or neglect, however, social service shall conduct the necessary investigations and furnish reports that may be necessary.

(2) Court proceedings under this part shall be initiated by a petition entitled "Petition for Declaration of Youth in Need of Care." The petition shall contain the following information: 1. the name and birth date of the youth; 2. the name of the parents or custodian of the youth; 3. the basis of the Court's jurisdiction; an allegation that the youth is a youth in need care and a plain statement of facts supporting this allegation; 5. any facts relevant to the present physical or legal custody of the youth; 6.a summary of any efforts which have been made by tribal social services or others to divert the case from the Court system to community groups or advisors; 7. whether temporary custody of the youth is requested by tribal social services; a statement of any other relief requested by tribal social services, including termination of any parental or custodian rights or appointment of a substitute custodian.

(3) All petitions filed alleging abuse or neglect shall include the following statement: "Termination of the parent-child legal relationship is a possible remedy available if this petition alleging that a child is dependent or neglected is sustained. A separate hearing must be held before such termination is ordered. Termination of the parent-child legal relationship means that the child who is the subject to this petition would be eligible for adoption."

(4) The court may order further investigation and discovery including; but not limited to the following:

- (a) taking of photographs, gathering physical evidence;
- (b) examinations or evaluations of the child, parent, guardian or custodian by a physician, dentist, psychologist, or psychiatrist or any other person the court deems qualified to examine or evaluate the above-mentioned individuals.

History: Amended ____; Resolution No. ____, Section 5, Subsection 5.1,(A-B), 5.2 enacted on the 3/8/99, Resolution 63-99; formerly Section VI., Subsections 6.1, of the Childrens Code, Title XII.

3.5 Summary of Process.

If a child is removed from the parents a petition must be filed within 72 hours, excluding holidays and weekends. Once the petition is filed the court must hold a preliminary hearing within 72 hours from the date the petition was filed to determine whether probable cause exists to support removal. After the preliminary hearing within ninety days the court must hold a dispositional hearing to determine whether continued out of home placement is necessary. Thereafter the court shall hold a review hearing in six months.

History: Amended ____; Resolution No. ____, Section 3, Subsection 3.3 (A-E) enacted on the 3/8/99, Resolution 63-99.

3.6 PRELIMINARY HEARING.

(1) Preliminary Hearing. Within seventy-two hours of the filing of the petition, a Preliminary hearing shall be conducted unless another time has been set for good cause. All hearings under this section shall be in closed Court, including only officers of the Court, the child, parents, custodians, social services personnel, and such other persons who, in the discretion of the Court, may aid in the proceedings or have sufficient interest in the case. Upon the request of a parent, custodian, or the child, the hearing may be open to the public if the Court determines that the benefit of public hearing outweighs the right of privacy of the parties involved in the proceedings.

(2) The parents or custodians of the child shall be advised of:

- (a) the nature of the charges;
- (b) the factual allegations therefor;
- (c) the present custodial situation;
- (d) the relief requested by tribal social services; the right to be represented by legal counsel at their own expense; the presenting officer shall have the burden of proving probable cause exists, that such removal is necessary for the protection of the child.

(3) Possible outcomes of the Preliminary hearing. Upon completion of the preliminary hearing, the Court may decide to take one of the following actions:

- (a) state its jurisdiction over the case; encourage satisfactory, out-of-court solutions to cases under this code prior to the final disposition hearing.
- (b) Dismiss the child/family protection petition
- (c) Return the child to the home of the parent(s), guardian or custodian under the supervision of the Court and hold a Dispositional hearing within 30 days;
- (d) Continue the child in out-of-home placement and hold a hearing in 30 days unless continued for good cause. The dispositional hearing shall determine the further custody or placement of the child, and such hearing shall be set no later than thirty (30) days after the Preliminary hearing.

(4) In addition, the Order may direct:

- (a) that notice of the proceedings be given to additional interested parties;
- (b) that the child, parents, or custodians undergo medical or psychological examinations and that reports be submitted to the court;

(c) that further investigation be conducted by tribal social services; that the family or the child participate in such counseling, advice, or other program as the court may deem beneficial; and any of the above situations.

History: Section 3, Subsection 3.3 (A-E) enacted on the 3/8/99, Resolution 63-99.

SECTION 4. DISPOSITIONAL HEARING

4.1 Formal Dispositional Hearing.

(1) The formal dispositional hearing on the issues will be set for no later than 30 days following the filing of the child/family protection petition.

(2) The records of the preliminary hearing shall be admissible at the formal dispositional hearing.

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

(4) During the hearing, the Court shall advise all parties of the reason for the hearing and of their basic rights as provided for in the preliminary hearing.

(5) 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 a child to testify. Children will only be called to testify if their testimony and evidence is critical to the determination of a dependency, and may only be solicited using the process outlined below:

- (a) The child must be 11 years of age or older;
- (b) The child must testify by means of a video-taped deposition, closed-circuit television or other similar, appropriate method; and
- (c) At the hearings, the only persons allowed to be present are the:
 - (1) Judge;
 - (2) Presenting Officer;
 - (3) Defense Counsel;
 - (4) Parent(s)/guardian(s);
 - (5) Forensic Interviewer if necessary to interview the child, in order to reduce trauma to the child, and to bring forth evidentiary testimony in the case; and
 - (6) Court Reporter, if necessary.

(6) Examination of the child will be allowed by the Judge, Presenting Officer, Defense Counsel, and/or parent(s)/guardian(s) after the interview by the Forensic Interviewer. Examination must be done in a nonadversarial manner that gives consideration to the child's age and reduces potential trauma.

History: Section 3, Subsection 3.3 (A-E) enacted on the 3/8/99, Resolution 63-99.

4.2 Child hearsay exception.

(1) Children under the age of 11 cannot testify in open court in dependency proceedings. A statement made by a child (including a video-tape of the child, utilizing a Forensic Interviewer), that describes any form of neglect or abuse, including abuse that is either sexual or physical, is admissible in evidence in dependency proceedings if:

- (a) There is corroborative evidence of the allegations, which includes, but is not limited to:
 - (1) Medical reports showing that abuse occurred;
 - (2) Adult testimonial evidence, including observations of investigators;
 - (3) Physical evidence; or
 - (4) Any other evidence that corroborates that abuse occurred or did not occur.

The Judge may look at the weight of the evidence, taking this hearsay exception into account, while looking at other reliable corroborative evidence in light of this rule.

History: Section 3, Subsection 3.3 (A-E) enacted on the 3/8/99, Resolution 63-99.

4.3 In-camera interview.

Children under the age of 18 can go with the Court Clerk into the Judge's chambers if the Judge needs to ask the child an important question off-record regarding the dependency. These interviews will not be recorded. In-camera interviews will assist the Judge when making important decisions. The Judge has full discretion to consider the probative value of the child's statements, along with other corroborative evidence, before making a final decision regarding whether to establish a dependency.

History: Enacted _____, Resolution No. _____.

4.4 Burden of proof.

The burden of proof lies with the petitioner who is government or the presenting officer. 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.

History: Section 3, Subsection 3.3 (A-E) enacted on the 3/8/99, Resolution 63-99.

4.5 Dispositional Hearing Results - Grounds for continuing removal from the home.

(1) 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.

(2) 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.

(3) 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 that:

- (a) A child has no parent, guardian or custodian available, willing and capable to care for the child.
- (b) 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 of bodily functions.
- (c) The child has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his or her parent(s), guardian or custodian, which is necessary for the child's health and well-being.
- (d) The child has been sexually abused or sexually exploited.
- (e) The child has committed juvenile offenses as a result of parental pressure, guidance or approval.
- (f) The child has been emotionally abused or neglected.
- (g) The child has suffered, or is likely to suffer, emotional damage which causes or creates a substantial risk of impaired development.

4.6 Court order for continuing removal.

The Court shall specify in its order the necessary intervention and appropriate steps, if any, the parent(s), guardian or custodian must follow to correct the underlying problem(s).

History: Section 3, Subsection 3.3 (A-E) enacted on the 3/8/99, Resolution 63-99.

4.7 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 accomplishment of specified actions by the parent(s), 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.

History: Section 3, Subsection 3.3 (A-E) enacted on the 3/8/99, Resolution 63-99.

4.8 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 the 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.

History: Section 3, Subsection 3.3 (A-E) enacted on the 3/8/99, Resolution 63-99.

4.9 Written order.

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

History: Section 3, Subsection 3.3 (A-E) enacted on the 3/8/99, Resolution 63-99.

4.10 Notice of Formal Dispositional Hearing - Summons.

(1) The Court shall issue a summons to the parent(s), 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 adjudicatory hearing. A copy of the child/family protection petition shall be attached to each summons. The Court shall also attach a notice to the parent(s), guardian or custodian which advises them of their rights.

(2) Personal service. If the parties to be served with a summons can be found within the exterior boundaries of the Reservation, the summons, a copy of the child/family protection petition and the notice of rights shall be personally served upon them at least 10 Court days before the formal adjudicatory hearing.

(3) Mail service.

(a) 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 registered mail, return receipt requested, at least 10 days before the formal adjudicatory hearing.

(b) If the parties are outside the exterior boundaries of the Reservation and if their address is known, the summons, petition and notice of rights may be served by registered mail, return receipt requested, at least 10 days before the formal adjudicatory hearing.

(4) If the Court cannot accomplish personal or mail service, the Court shall attempt to notify the parent(s), guardian or custodian by contacting members of the extended family of the parent(s), guardian, custodian, and/or the extended family of the child.

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

(6) Publication. In a child/family protection case where it appears within the body of the petition or within an accompanying statement that the parent(s), guardian or custodian is a nonresident of the Reservation, and that their name, place of residence or whereabouts is unknown, and where personal service or service by registered mail has been unable to be effected, the Court may direct the Clerk to publish legal notice in a newspaper. Such newspaper must be distributed within Blaine County or on the Reservation and such notice must be published once a week for three consecutive weeks, with the first publication of the notice at least 21 days prior to the date fixed for the hearing. Such notice shall be directed to the parent(s), guardian or custodian if their names are known, or if unknown, the phrase "To whom it may concern," may be used and applied to and be binding upon any such person whose names are unknown. The name of the Court, name of the child, 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 such notice shall be paid by the Tribe and shall be deemed equivalent to personal service upon all persons known or unknown who have been designated as provided in this section.

(7) Warning. The summons issued by the Court shall conspicuously display the words: NOTICE, PURSUANT TO TRIBAL CODE SECTION ____, THE COURT MAY FIND THE PARENT, GUARDIAN OR CUSTODIAN IN DEFAULT FOR FAILURE TO RESPOND OR APPEAR AT A COURT HEARING. THIS MAY RESULT IN YOUR CHILD(REN) BEING PLACED IN ANOTHER HOME AND THE PARENT ORDERED TO CORRECT CERTAIN PROBLEMS.

Where the parental rights have been suspended or terminated, but the child has not been adopted, the child shall be considered a protected child of the tribe or ward of the court.

History: Amended ____; Resolution No. ____; Section 6, enacted on the 3/8/99, Resolution 63-99.

SECTION 5 REVIEW HEARING

5.1 Time Frame.

(1) The court's decision is to be reviewed every six (6) months. The court shall determine the extent of progress made toward alleviating or mitigating the conditions that caused the child to become and to remain a child in need of care. The court may modify any part of the formal order.

(2) At this hearing, the court shall determine the continuing necessity and appropriateness of the child's placement and shall order the return of the child to the custody of the parent, continue the formal order, modify the formal order, or enter a new formal order.

Notice. The court shall ensure that notice of a review hearing is given to the appropriate persons in accordance with this code and by scheduling a hearing on the record at the previous hearing.

History: Section 8 (A-C) enacted on the 3/8/99, Resolution 63-99.

5.2 Written order.

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

- (a) What services have been provided or offered to the parent(s), guardian or custodian, to help correct the underlying problem(s);
- (b) The extent to which the parent(s), 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;
- (c) Whether the parent(s), guardian or custodian is cooperative with the Court;
- (d) Whether additional services should be offered to the parent(s), guardian or custodian;
- (e) The extent to which the parent(s), guardian or custodian has participated in Court-ordered programs and whether the parent(s), guardian or custodian should be required to participate in any additional programs to help correct the underlying problem(s);
- (f) When the return of the child can be expected.

History: Section 3, Subsection 3.3 (A-E) enacted on the 3/8/99, Resolution 63-99.

5.3 Termination of Parental Rights Considered

The Court at the review hearing may order that a petition to terminate the parent/child relationship be filed, or that a guardianship petition be filed.

History: Section 3, Subsection 3.3 (A-E) enacted on the 3/8/99, Resolution 63-99.

5.4 Requirement of a social service report.

To aid the Court in its decision, a social service report consisting of a written evaluation of matters relevant to the disposition of the case from the time of removal to review hearings shall be prepared by the assigned caseworker, that has been directed by the court to provide social services to the child and his or her family.

History: Section 3, Subsection 3.3 (A-E) enacted on the 3/8/99, Resolution 63-99.

5.5 Contents of a social service report.

(1) The social service report shall include the following points, and be made available to the Court and the parties, as deemed appropriate by the Court, seven Court days prior to a child/family protection review hearing:

- (a) A summary of the problem(s);

- (b) What steps, if any, have the parent(s), guardian, custodian, or social services personnel already taken to correct the problem(s);
- (c) What services could be of benefit to the parent(s), guardian or custodian, but are not available in the community;
- (d) A report on how the child is doing in his or her current placement(s) since the last hearing. If there have been any moves, the report will contain the reason for such moves;
- (e) Dates of contacts with parent(s), guardian or custodian and the child since the first hearing was held, method of contact, duration and subjects discussed;
- (f) If there have been no contacts with the parent(s), guardian, custodian or social worker, what efforts have been made to contact such parties;
- (g) An assessment of when the child is expected to return home;
- (h) A list of who the extended family members are and a list of contacts, or attempted contacts, of such family members regarding placement of the child;
- (i) The social services personnel shall develop a case plan and shall make recommendations that include, but are not limited to:
- (j) A treatment plan for the parents;
- (k) Future placement of the child;
- (l) What services should be provided for the child, if services are needed

History: Section 3, Subsection 3.3 (A-E) enacted on the 3/8/99, Resolution 63-99.

5.6 Least restrictive setting.

If a child cannot be returned to the family home, the child shall be placed in the least restrictive setting which most approximates a family and in which his/her 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.

History: Section 3, Subsection 3.3 (A-E) enacted on the 3/8/99, Resolution 63-99.

5.7 Placement preferences.

- (1) The placement of children in homes other than with their biological parents will be done with strict adherence to the following preferences:
 - (a) Members of the child's extended family;
 - (b) An Indian family of the same tribe as the child; or
 - (c) An Indian family of another tribe.
 - (d) A licensed foster care home;
 - (e) A licensed facility operated by a licensed child welfare services agency; or
 - (f) A detention facility if all other placements are not possible (used only as a last resort).

History: Section 3, Subsection 3.3 (A-E) enacted on the 3/8/99, Resolution 63-99.

SECTION 6. PERMANENCY PLANNING

6.1 Permanency Planning Hearing/Concurrent/Reunification.

When a child-in-need-of-care remains in foster care for an extended time and, without parental rights to the child having been terminated, the court shall conduct a permanency planning hearing. At the hearing the court may determine that the child is to return home, that the child is to continue in foster care for a limited specified time or on a long-term basis, or that the agency failed to demonstrate that the termination of parental rights to the child is clearly in the best interest of the child. The, child protection team shall be involved during this process.

History: Section 9, Subsection 9.1 enacted on the 3/8/99, Resolution 63-99.

6.2 Time.

The court must conduct the permanency planning hearing no later than 365 days after entry of the original formal order. The Court may combine the permanency planning hearing with a review hearing.

History: Section 9, Subsection 9.2 enacted on the 3/8/99, Resolution 63-99. 5

6.3 Permanency - Concurrent Planning.

(1) If the court determines at a permanency planning hearing that the child should not be returned to his or her parent, the tribal, state, or federal Indian child welfare/foster placement agency shall propose one of the following alternative permanent placement plans:

- (a) the child be placed permanently with a relative within the primary service area of the Gros Ventre and Assiniboine Tribes; or
- (b) the child be placed permanently with a relative who is outside the primary service area of the Gros Ventre or Assiniboine tribes; or
- (c) the child remains in long-term Indian foster or Indian residential care.

History: Section 3, Subsection 3.3 (A-E) enacted on the 3/8/99, Resolution 63-99.

SECTION 7 TERMINATION OF PARENTAL RIGHTS

7.1 Termination of Parental Rights

(1) No termination of parental rights may be ordered unless the court determines, beyond a reasonable doubt, that the continued custody of the child by the parent or custodian is likely to result in serious emotional or physical damage to the child. No termination of parental rights may be ordered unless, in addition, the court determines that the risk of serious emotional or physical

damage to the child will continue due to circumstances that are irremediable by further efforts of the court and social services.

(2) If the court terminates parental rights, the court shall include in its Order that the court has considered the question of inheritance and residual parental rights, and the Court shall determine as follows: a. inheritance rights: that the inheritance rights of the child and natural parents shall be continued, with such conditions as the Court may place.

(3) Application to Presenting Officer. A petition to terminate parental rights under this code may be submitted by the placement agency to the presenting officer for application.

Evidence: At the permanency planning hearing all relevant material evidence, including oral and written reports, may be received by the court and relied upon to the extent of its probative value.

History: Section 9, Subsection 9.3 (A-C) enacted on the 3/8/99, Resolution 63-99.

7.2 Grounds for Involuntary Termination.

(1) The court may terminate the parental rights of a parent to a child adjudicated a child-in-need-of-care if there are foster parents, guardians, or adoptive parents available, and the court finds from clear and convincing evidence one or more of the following:

(a) the child has been abandoned under one or more of the following circumstances:

(1) The parent of a child is unidentifiable and has deserted the child for one (1) year and has not sought custody of the child during that period. For purposes of this section, a parent is unidentifiable if the parent's identity cannot be ascertained after reasonable efforts have been made to locate and identify the parent;

(2) The parent of the child has abandoned the child without provision for his support or without communication for a period of at least one hundred and eighty days. The failure to provide support or to communicate for a period of at least one hundred days shall be presumptive evidence of the parent's intent to abandon the child; or

(2) The child or a sibling of the child has suffered physical injury, or physical or sexual abuse under one or more of the following circumstance:

(a) a parent's act caused the physical injury or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home; or

(b) a parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home; or

(3) The parent was named in a proceeding brought under the child in need of care section of this code and twelve (12) or more months have elapsed since the issuance of a formal order, and the court finds either of the following. Other conditions exist that cause the child to be a child in

need of care, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice, a hearing, and been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child.

(4) A parent is unable to provide proper care and custody for a period in excess of one year because of a mental deficiency or mental illness, without a reasonable expectation that the parent will be able to assume care and custody of the child within a reasonable length of time considering the age of the child.

(5) The parent of the child is convicted of a felony of a nature as to prove the unfitness of the parent or have future custody of the child or if the parent is imprisoned for over two years and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time.

(6) Parental rights to one or more siblings of the child have been terminated due to serious and chronic neglect, or physical or sexual abuse, and prior attempts to rehabilitate the parent have been unsuccessful.

(7) Termination of Parental Rights Order. An order terminating parental rights under this code may be entered after the presenting officer or interested party files a petition and a hearing has been held. The court must make findings of fact, conclusions of law and the give the statutory basis for the order.

History: Section 9, Subsection 9.4 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section VII, Subsection 7.1 - 7.7 of the Childrens Code, Title XII.

7.3 Voluntary Relinquishment of Parental Rights.

Parental rights may be voluntarily terminated by a parent in writing, if signed by the parent in the presence and with approval of the court. Relinquishment shall not be accepted or acknowledged by the court prior to ten (10) days after birth of a child. The court shall ensure that the parent understands the consequences of the voluntary termination prior to granting approval.

History: Section 9, Subsection 9.5 enacted on the 3/8/99, Resolution 63-99

7.4 Effect of Termination on Child's Continued Right to Benefits.

An order terminating the parent-child relationship shall not disentitle a child to any benefit due the child from any third person, agencies, state or the United States, nor shall any action under this code be deemed to affect any rights and benefits that the child derives from the child's descent from a member of a federally recognized tribe.

History: Section 9, Subsection 9.6 enacted on the 3/8/99, Resolution 63-99. Subsections 6.1, of the Children's Code, Title XII.

SECTION 8. CUSTOMARY ADOPTION

8.1 Customary Adoption

Customary Adoption is when all of the natural parents' rights to the child have not been terminated but a customary adoption order has been issued granting a customary adoption but the natural parents may enjoy certain residual parental rights. Such parental rights may include: the right to communication; the right to visitation; the right or obligation to contribute to support or education through disposition of per capita payments or other benefits as determined by the Court; the right to be consulted regarding the child's religious affiliation, major medical treatment, marriage, or other matters of major importance in the minor child's life; or such other residual rights as the Court may deem appropriate, considering the circumstances.

Nothing in this Code shall prohibit a parent whose parental rights have been terminated under this judicial process to petition the Court to restore the parent to certain residual parental rights.

History: Enacted _____, Resolution No. _____.

PART III. YOUTH JUSTICE ACT of 2019

SECTION 1. GENERAL

1.1 Short title—Intent—Purpose.

(1) This chapter shall be known and cited as the Youth Justice Act of 2019.

(2) It is the intent of the Fort Belknap Indian Community that a system capable of having primary responsibility for, being accountable for, and responding to the needs of youthful offenders and their victims, as defined by this chapter, be established. It is the further intent of the Fort Belknap Indian Community that youth, in turn, be held accountable for their offenses and that communities, families, and the juvenile court carries out its functions consistent with this intent. To effectuate these policies, the Fort Belknap Indian Community declares the following to be equally important purposes of this chapter:

- (a) Protect all people within the exterior boundaries of the Fort Belknap Indian Reservation from criminal behavior;
- (b) Determine whether accused juveniles have committed offenses as defined by this chapter;
- (c) Make the juvenile offender accountable for his or her criminal behavior;
- (d) Provide for punishment commensurate with the age, crime, and criminal history of the juvenile offender;
- (e) Provide due process for juveniles alleged to have committed an offense;
- (f) Provide for the rehabilitation and reintegration of juvenile offenders;

- (g) Provide necessary treatment, supervision, and custody for juvenile offenders;
 - (h) Provide for the handling of juvenile offenders whenever consistent with public safety;
 - (i) Provide for restitution to victims of crime;
 - (j) Develop effective standards and goals for the operation, funding, and evaluation of all components of the juvenile justice system and related services;
 - (k) Provide for a clear policy to determine what types of offenders shall receive punishment, treatment, or both, and to determine the jurisdictional limitations of the courts, institutions, and community services;
 - (l) Provide opportunities for victim participation in juvenile justice process, including court hearings on juvenile offender matters; and
 - (m) Encourage the parents, guardian, or custodian of the juvenile to actively participate in the juvenile justice process.
 - (n) The Fort Belknap Tribal Court on behalf of the tribal members hereby finds that the goals of this code process are to hold youth accountable, to satisfy the demands of due process, and to prevent crime, ideally by providing rehabilitative interventions in the most serious and high-risk cases while keeping costs to a minimum and avoiding the use of expensive interventions for low-risk youth and youth charged with less serious offenses.
- History: Amended on ____; Resolution No.____, Section 1.1 Enacted on 3/8/99, Resolution 63-99; Subsection A was formerly a part of the Children's Code.

1.2 Definitions.

For the purposes of this chapter:

- (1) "Assessment" means an individualized examination of a child to determine the child's psychosocial needs and problems, including the type and extent of any mental health, substance abuse, or co-occurring mental health and substance abuse disorders, and recommendations for treatment. "Assessment" includes, but is not limited to, drug and alcohol evaluations, psychological and psychiatric evaluations, records review, clinical interview, and administration of a formal test or instrument;
- (2) "Community-based rehabilitation" means one or more of the following: Employment; attendance of information classes; literacy classes; counseling, outpatient substance abuse treatment programs, outpatient mental health programs, anger management classes, education or outpatient treatment programs to prevent animal cruelty, or other services including, when appropriate, restorative justice programs; or attendance at school or other educational programs appropriate for the juvenile as determined by the school district. Placement in community-based rehabilitation programs is subject to available funds;
- (3) "Community-based sanctions" may include one or more of the following:
 - (a) A fine, not to exceed five hundred dollars;
 - (b) Community restitution not to exceed one hundred fifty hours of community restitution;
- (4) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender as punishment for committing an offense.

Community restitution may be performed through public or private organizations or through work crews;

(5) "Community supervision" means an order of disposition by the court of a youth not committed to the department or an order granting a deferred disposition. A community supervision order for a single offense may be for a period of up to two years for a sex offense and up to one year for other offenses. As a mandatory condition of any term of community supervision, the court shall order the juvenile to refrain from committing new offenses. As a mandatory condition of community supervision, the court shall order the juvenile to comply with the mandatory school attendance order and to inform the school of the existence of this requirement. Community supervision is an individualized program comprised of one or more of the following:

- (a) Community-based sanctions;
- (b) Community-based rehabilitation;
- (c) Monitoring and reporting requirements;
- (d) Posting of a probation bond;
- (e) Residential treatment, where substance abuse, mental health, and/or co-occurring disorders have been identified in an assessment by a qualified mental health professional, psychologist, psychiatrist, or chemical dependency professional and a funded bed is available. If a child agrees to voluntary placement in a long-term evaluation and treatment facility, the case must follow the existing placement procedure including consideration of less restrictive treatment options and medical necessity.

(i) A court may order residential treatment after consideration and findings regarding whether:

- (A) The referral is necessary to rehabilitate the child;
- (B) The referral is necessary to protect the public or the child;
- (C) The referral is in the child's best interest;
- (D) The child has been given the opportunity to engage in less restrictive treatment and has been unable or unwilling to comply; and
- (E) Inpatient treatment is the least restrictive action consistent with the child's needs and circumstances.

(ii) In any case where a court orders a child to inpatient treatment under this section, the court must hold a review hearing no later than sixty days after the youth begins inpatient treatment, and every thirty days thereafter, as long as the youth is in inpatient treatment;

(6) "Confinement" means physical custody in a facility operated by the tribal government or pursuant to a contract with the federal or state, or physical custody in a detention facility operated by or pursuant to a contract with any county. The tribal government may operate or contract to operate detention facilities for juveniles committed to confinement. Pretrial confinement or confinement of less than thirty-one days imposed as part of a disposition or modification order may be served consecutively or intermittently, in the discretion of the court;

(7) "Court," when used without further qualification, means the family court judge(s);

(8) "Criminal history" includes all criminal complaints against the juvenile offender for which, prior to the commission of a current offense:

(a) The allegations were found correct by a court. If a juvenile offender is convicted of two or more charges arising out of the same course of conduct, only the highest charge from among these shall count as an offense for the purposes of this chapter; or

(b) The criminal complaint was diverted by a prosecutor pursuant to the provisions of this chapter on agreement of the juvenile offender and after an advisement to the juvenile offender that the criminal complaint would be considered as part of the juvenile offender's criminal history. A successfully completed deferred adjudication that was entered before July 1, 1998, or a deferred disposition shall not be considered part of the juvenile offender's criminal history;

(9) "Department" means the department of social and health services;

(10) "Detention facility" means a facility, paid for by the tribal government, for the physical confinement of a juvenile alleged to have committed an offense or an adjudicated offender subject to a disposition or modification order. "Detention facility" includes county group homes, inpatient substance abuse programs, juvenile basic training camps, and electronic monitoring;

(11) "Diversion Agreement" is when a probation counselor enters into a written agreement with an alleged youthful offender, or any other person, community accountability board, youth court under the supervision of the juvenile court, or other entity with whom the juvenile court administrator has contracted to arrange and supervise such agreements, or any person, community accountability board, or other entity specially funded by the legislature to arrange and supervise diversion agreements in accordance with the requirements of this chapter. For purposes of this subsection, "community accountability board" means a board comprised of members of the local community in which the juvenile offender resides. The court shall appoint the members. The boards shall consist of at least three and not more than seven members. If possible, the board should include a variety of representatives from the community, such as a law enforcement officer, teacher or school administrator, high school student, parent, and business owner, and should represent the cultural diversity of the local community;

(12) "Foster care" means temporary physical care in a foster licensed family home or group care facility, or other legally authorized care;

(13) "Institution" means a juvenile facility;

(14) "Intensive supervision program" means a parole program that requires intensive supervision and monitoring, offers an array of individualized treatment and transitional services, and emphasizes community involvement and support in order to reduce the likelihood a juvenile offender will commit further offenses;

(15) "Juvenile," "youth," and "child" mean any individual who is under the chronological age of eighteen years and who has not been previously transferred to adult court, unless the individual was convicted of a lesser charge or acquitted of the charge for which he or she was previously transferred or who is not otherwise under adult court jurisdiction;

(16) "Juvenile offender" means any juvenile who has been found by the juvenile court to have committed an offense, including a person eighteen years of age or older over whom jurisdiction has been extended;

(17) "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix;

(18) "Local sanctions" means one or more of the following: (a) 0-30 days of confinement; (b) 0-12 months of community supervision; (c) 0-150 hours of community restitution; or (d) \$0-\$500 fine;

(19) "Manifest injustice" means a disposition that would either impose an excessive penalty on the juvenile or would impose a serious, and clear danger to society in light of the purposes of this chapter;

(20) "Monitoring and reporting requirements" means one or more of the following: Curfews; requirements to remain at home, school, work, or court-ordered treatment programs during specified hours; restrictions from leaving or entering specified geographical areas; requirements to report to the probation officer as directed and to remain under the probation officer's supervision; and other conditions or limitations as the court may require which may not include confinement;

(21) "Offense" means an act designated a violation or a crime if committed by an adult under the law of this tribal government, under any ordinance of any city or county of the state of Montana, under any federal law, or under the law of another state if the act occurred in that state;

(22) "Physical restraint" means the use of any bodily force or physical intervention to control a juvenile offender or limit a juvenile offender's freedom of movement in a way that does not involve a mechanical restraint. Physical restraint does not include momentary periods of minimal physical restriction by direct person-to-person contact, without the aid of mechanical restraint, accomplished with limited force and designed to:

(a) Prevent a juvenile offender from completing an act that would result in potential bodily harm to self or others or damage property;

(b) Remove a disruptive juvenile offender who is unwilling to leave the area voluntarily; or

(c) Guide a juvenile offender from one location to another;

(23) "Postpartum recovery" means (a) the entire period a woman or youth is in the hospital, birthing center, or clinic after giving birth and (b) an additional time period, if any, a treating physician determines is necessary for healing after the youth leaves the hospital, birthing center, or clinic;

(24) "Probation bond" means a bond, posted with sufficient security by a surety justified and approved by the court, to secure the offender's appearance at required court proceedings and compliance with court-ordered community supervision or conditions of release ordered. It also means a deposit of cash or posting of other collateral in lieu of a bond if approved by the court;

(25) "Juvenile offender" means a juvenile who is alleged or proven to have committed an offense;

(26) "Restitution" means financial reimbursement by the offender to the victim, and shall be limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical treatment for physical injury to persons, lost wages resulting from physical injury, and costs of the victim's counseling reasonably related to the offense. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses. Nothing in this chapter shall limit or replace civil remedies or defenses available to the victim or offender;

(27) "Restorative justice" means practices, policies, and programs informed by and sensitive to the needs of crime victims that are designed to encourage offenders to accept responsibility for repairing the harm caused by their offense by providing safe and supportive opportunities for voluntary participation and communication between the victim, the offender, their families, and relevant community members;

(28) "Restraints" means anything used to control the movement of a person's body or limbs and includes:

(a) Physical restraint; or

(b) Mechanical device including but not limited to: Metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, tasers, or batons;

(29) "Screening" means a process that is designed to identify a child who is at risk of having mental health, substance abuse, or co-occurring mental health and substance abuse disorders that warrant immediate attention, intervention, or more comprehensive assessment. A screening may be undertaken with or without the administration of a formal instrument;

(30) "Services" means services which provide alternatives to incarceration for those juveniles who have pleaded or been adjudicated guilty of an offense or have signed a diversion agreement pursuant to this chapter;

(31) "Sex offense" means any sexual offense defined under the Fort Belknap laws, federal or state;

(32) "Sexual motivation" means that one of the purposes for which the juvenile offender committed the offense was for the purpose of his or her sexual gratification;

(33) "Surety" means an entity licensed under state insurance laws to write corporate, property, or probation bonds within the Fort Belknap Reservation, and justified and approved by the justice department;

(34) "Transportation" means the conveying, by any means, of an incarcerated pregnant youth from the institution or detention facility to another location from the moment she leaves the institution or detention facility to the time of arrival at the other location, and includes the escorting of the pregnant incarcerated youth from the institution or detention facility to a transport vehicle and from the vehicle to the other location;

(35) "Violation" means an act or omission, which if committed by an adult, must be proven beyond a reasonable doubt, and is punishable by sanctions which do not include incarceration;

(36) "Violent offense" means a violent offense as defined under tribal, federal, or state law;

(37) "Youth court" means a diversion unit under the supervision of the juvenile court.

History: Amended, _____, Resolution ____; Section 1, Subsection 1.1 (A-EI) enacted on the 3/8/99, Resolution 63-99; formerly Section II, Subsection 7.1 - 7.7 of the Childrens Code, Title XII

SECTION 2. ARRESTS AND DETAINMENT OF YOUTH OFFENDER

2.1 Rights of Offender.

(1) When a youth is taken into custody for questioning upon a matter that could result in a petition alleging that the youth has committed a crime the youth shall be advised of the following rights that apply to him:

- (a) right to remain silent and anything he says may be used against him in a court of law.
- (b) right to counsel at his own expense;
- (c) right to be informed of the charges against him.

(2) When Questioning of Youth Allowed. If the youth is under 18 years of age the youth may only be questioned when his parents are present.

(3) Detaining of Youth Requires a Hearing Immediately. If the youth is not released a hearing must be held within 72 hours, excluding weekends and holidays, to determine if there's is probable cause.

History: Section 2, Subsection 2.3 (A-E) enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.7 (E) of the Childrens Code, Title XII.

2.2 Taking juvenile into custody, grounds—Detention of, grounds—Detention pending disposition—Release on bond, conditions—Bail jumping. (Effective _____, 2019.)

(1) A juvenile may be taken into custody:

- (a) Pursuant to a court order if a complaint is filed with the court alleging, and the court finds probable cause to believe, that the juvenile has committed an offense or has violated terms of a disposition order or release order; or
- (b) Without a court order, by a law enforcement officer if grounds exist for the arrest of an adult in identical circumstances. Admission to, and continued custody in, a court detention facility shall be governed by subsection (2) of this section; or
- (c) Pursuant to a court order that the juvenile be held as a material witness; or

(2) A juvenile may not be held in detention unless there is probable cause to believe that:

- (a) The juvenile has committed an offense or has violated the terms of a disposition order; and
- (i) The juvenile will likely fail to appear for further proceedings; or
- (ii) Detention is required to protect the juvenile from himself or herself; or
- (iii) The juvenile is a threat to community safety; or
- (iv) The juvenile will intimidate witnesses or otherwise unlawfully interfere with the administration of justice; or
- (v) The juvenile has committed a crime while another case was pending; or (b) The juvenile is a fugitive from justice; or (c) The juvenile's parole has been suspended or modified; or (d) The juvenile is a material witness.

(3) Notwithstanding subsection (2) of this section, and within available funds, a juvenile who has been found guilty of Rape shall be detained pending disposition:

(4) Upon a finding that members of the community have threatened the health of a juvenile taken into custody, at the juvenile's request the court may order continued detention pending further order of the court.

(5) Except as provided in paragraph (3), a juvenile detained under this section may be released upon posting a probation bond set by the court. The juvenile's parent or guardian may sign for the probation bond. A court authorizing such a release shall issue an order containing a statement of conditions imposed upon the juvenile and shall set the date of his or her next court appearance. The court shall advise the juvenile of any conditions specified in the order and may at any time amend such an order in order to impose additional or different conditions of release upon the juvenile or to return the juvenile to custody for failing to conform to the conditions imposed. In addition to requiring the juvenile to appear at the next court date, the court may condition the probation bond on the juvenile's compliance with conditions of release. The juvenile's parent or guardian may notify the court that the juvenile has failed to conform to the conditions of release or the provisions in the probation bond. If the parent notifies the court of the juvenile's failure to comply with the probation bond, the court shall notify the surety. As provided in the terms of the bond, the surety shall provide notice to the court of the offender's noncompliance. A juvenile may be released only to a responsible adult or the department of children, youth, and families. Failure to appear on the date scheduled by the court pursuant to this section shall constitute the crime of bail jumping.

History: Amended _____, Resolution No. _____, Section 2, Subsection 2.1 enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.2 of the Childrens Code, Title XII. 2.1 Arrest with a Warrant. 2.2 Arrest without a Warrant. Section 2, Subsection 2.2 enacted on the 3/8/99, Resolution 63-99.

2.3 Juvenile detention facilities—Policy—Detention and risk assessment standards.

(1) It is the policy of this the Fort Belknap Indian Community that all juvenile detention facilities provide a humane, safe, and rehabilitative environment and that unadjudicated youth remain in

the community whenever possible and consistent with public safety.

(2) The tribal court shall develop and implement detention intake standards and risk assessment standards to determine whether detention is warranted, whether the juvenile is developmentally disabled, and if detention is warranted, whether the juvenile should be placed in secure, non-secure, or home detention to implement the goals of this section.

(3) Inability to pay for a less restrictive detention placement shall not be a basis for denying a juvenile offender a less restrictive placement in the community.

(4) The assessment standards to determine whether a juvenile entering detention is developmentally disabled must be developed and implemented.

History: Enacted _____, Resolution No. _____.

2.4 Establishment of house or room of detention.

A detention room or house of detention, separated or removed from any jail, or police station, to be in charge of a matron, or other person of good character, wherein all children within the provisions of this chapter shall, when necessary, be sheltered.

History: Section 2, Subsection 2.3 (A-E) enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.7 (E) of the Childrens Code, Title XII.

SECTION 3. INFORMAL PROCEEDING, DIVERSION AGREEMENT, TRANSFER TO ADULT COURT, REASON FOR TRANSFER, AND EFFECT OF TRANSFER.

3.1 Informal Proceeding (Diversion Agreement)

(1) When the probation officer receives a compliant he may decide it is in the youth's best interest to enter into an informal arrangement called a diversion agreement, before a petition is filed. The presenting officer, probation officer, the youth and the youth's parents may enter into an informal agreement to give counsel and advice to the youth.

(2) Agreement to Be in Writing. Such agreement must be in writing and signed by the youth and his parents or the person having legal custody of the youth.

History: Section 2, Subsection 2.3 (A-E) enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.7 (E) of the Childrens Code, Title XII.

3.2 Diversion agreement—Scope—Limitations—Restitution orders— Divertee's rights —Modification.

(1) A diversion agreement shall be a contract between a juvenile accused of an offense and a diversion unit whereby the juvenile agrees to fulfill certain conditions in lieu of prosecution. Such agreements may be entered into only after the prosecutor, or probation officer pursuant to this chapter, has determined that probable cause exists to believe that a crime has been committed and that the juvenile committed it. Such agreements shall be entered into as expeditiously as possible.

(2) A diversion agreement shall be limited to one or more of the following:

(a) Community restitution not to exceed one hundred fifty hours, not to be performed during school hours if the juvenile is attending school;

(b) Restitution limited to the amount of actual loss incurred by any victim;

(c) Attendance at up to ten hours of counseling and/or up to twenty hours of positive youth development, educational or informational sessions at a community agency. The educational or informational sessions may include sessions relating to respect for self, others, and authority; victim awareness; accountability; self-worth; responsibility; work ethics; good citizenship; literacy; and life skills. If an assessment identifies mental health or chemical dependency needs, a youth may access up to thirty hours of counseling. The counseling sessions may include services demonstrated to improve behavioral health and reduce recidivism. For purposes of this section, "community agency" may also mean a community-based nonprofit organization, a physician, a counselor, a school, or a treatment provider, if approved by the diversion unit. The tribal government shall not be liable for costs resulting from the diversion unit exercising the option to permit diversion agreements to mandate attendance at up to thirty hours of counseling and/or up to twenty hours of educational or informational sessions;

(d) Requirements to remain during specified hours at home, school, or work, and restrictions on leaving or entering specified geographical areas; and

(e) Upon request of any victim or witness, requirements to refrain from any contact with victims or witnesses of offenses committed by the juvenile.

(3) Notwithstanding the provisions of subsection (2) of this section, youth court is not limited to the conditions imposed by subsection (2) of this section in imposing sanctions on juvenile.

(4) In assessing periods of community restitution to be performed and restitution to be paid by a juvenile who has entered into a diversion agreement, the court officer to whom this task is assigned shall consult with the juvenile's custodial parent or parents or guardian. To the extent possible, the court officer shall advise the victims of the juvenile offender of the diversion process, offer victim impact letter forms and restitution claim forms, and involve members of the community. Such members of the community may meet with the juvenile and may advise the court officer as to the terms of the diversion agreement and may supervise the juvenile in carrying out its terms.

(5)(a) A diversion agreement may not exceed a period of six months and may include a period extending beyond the eighteenth birthday of the divertee.

(b) If additional time is necessary for the juvenile to complete restitution to a victim, the time period limitations of this subsection may be extended by an additional six months.

(c) If the juvenile has not paid the full amount of restitution by the end of the additional six-month period, then the juvenile shall be referred to the juvenile court for entry of a civil order establishing the amount of restitution still owed to the victim. In this order, the court shall also determine the terms and conditions of the restitution, including a payment plan extending up to ten years if the court determines that the juvenile does not have the means to make full restitution over a shorter period. For the purposes of this subsection (5)(c), the juvenile shall remain under the court's jurisdiction for a maximum term of three years after the juvenile's eighteenth birthday. The court may relieve the juvenile of the requirement to pay full or partial restitution if the juvenile reasonably satisfies the court that he or she does not have the means to make full or partial restitution and could not reasonably acquire the means to pay the restitution. If the court relieves the juvenile of the requirement to pay full or partial restitution, the court may order an amount of community restitution that the court deems appropriate. The court clerk shall make disbursements to victims named in the order. The restitution to victims named in the order shall be paid prior to any payment for other penalties or monetary assessments. A juvenile under obligation to pay restitution may petition the court for modification of the restitution order.

(6) The juvenile shall retain the right to be referred to the court at any time prior to the signing of the diversion agreement.

(7) Divertees and potential diverttees shall be afforded due process. Such due process shall include, but not be limited to, the following:

(a) A written diversion agreement shall be executed stating all conditions in clearly understandable language;

(b) Violation of the terms of the agreement shall be the only grounds for termination;

(c) No divertee may be terminated from a diversion program without being given a court hearing, which hearing shall be preceded by:

(i) Written notice of alleged violations of the conditions of the diversion program; and

(ii) Disclosure of all evidence to be offered against the divertee;

(d) The hearing shall be conducted by the juvenile court and shall include:

(i) Opportunity to be heard in person and to present evidence;

(ii) The right to confront and cross-examine all adverse witnesses;

(iii) A written statement by the court as to the evidence relied on and the reasons for termination, should that be the decision; and

(iv) Demonstration by evidence that the divertee has substantially violated the terms of his or her diversion agreement;

(e) The prosecutor may file an information on the offense for which the divertee was diverted:

(i) In juvenile court if the divertee is under eighteen years of age; or

(8) Subject to available funds, advocates may be available when juveniles need help understanding diversion agreements.

(9) A divertee shall be advised of his or her rights as provided in this chapter.

(10) One option for diversion is to refer a juvenile to a restorative justice program, community-based counseling, or treatment programs.

(11) The right to counsel shall inure prior to the initial interview for purposes of advising the juvenile as to whether he or she desires to participate in the diversion process or to appear in youth court. The juvenile may be represented by counsel at any critical stage of the diversion process, including intake interviews and termination hearings. The juvenile shall be fully advised at the intake of his or her right to an attorney at his own expense and of the relevant services an attorney can provide. For the purpose of this section, intake interviews mean all interviews regarding the diversion agreement process. The juvenile shall be advised that a diversion agreement shall not constitute a part of the juvenile's criminal history. A signed acknowledgment of such advisement shall be obtained from the juvenile, and the document shall be maintained by the tribal court together with the diversion agreement, and a copy of both documents shall be delivered to the prosecutor if requested by the prosecutor.

(12) When a juvenile enters into a diversion agreement, the juvenile court may receive only the following information for dispositional purposes:

- (a) The fact that a charge or charges were made;
- (b) The fact that a diversion agreement was entered into;
- (c) The juvenile's obligations under such agreement;
- (d) Whether the alleged offender performed his or her obligations under such agreement; and
- (e) The facts of the alleged offense.

(13) If a diversion agreement is unsuccessful because an entity refuses to have the juvenile into its program, it shall immediately forward to the juvenile probation officer a detailed statement of its reasons for refusing to allow the juvenile to enter the program.

(14) If restitution required by a diversion agreement cannot reasonably be paid due to a change of circumstance, the diversion agreement may be modified at the request of the divertee to convert unpaid restitution into community restitution. The modification of the diversion agreement shall be in writing and signed by the divertee and the juvenile probation officer. The number of hours of community restitution in lieu of a monetary penalty shall be converted at the rate of the prevailing minimum wage per hour.

History: Amended ____; Resolution No. ____ Section 3, Subsection 3.1 (A-D) enacted on the 11/5/97, Resolution No. 229-97; formerly Section V. Subsection 5.7 (E) of the Childrens Code, Title XII.

3.3. Transfer to Adult Court.

(1) After a petition has been filed alleging a criminal act has been committed, the court may, upon motion of the Presenting Officer, before hearing the petition on its merits, transfer the matter of prosecution to the Adult court if: 1) The individual charged is 16 years of age or more

at the time of the conduct alleged to be unlawful and the act would be considered a Class 1 offense under the criminal offense section if the act had been committed by an adult.

(2) Notice of Hearing. Notice of hearing shall be in writing of the time, place, and purpose of the hearing given to the youth, and parents, guardian or custodian, and his/her counsel, at least twenty (20) days before the hearing.

History: Section 2, Subsection 2.3 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section IV, Subsection 4.3 (A-B) of the Childrens Code, Title XII.

3.4 Reasons for Transfer.

(1) The court finds upon hearing all relevant evidence probable cause to believe the individual committed the act alleged, the alleged offense was violent or premeditated; and

(a) the sophistication and maturity of the youth, home environment, emotional attitude, and behavior patterns; and

(b) the criminal record and history with the court, law enforcement or commitments to any institution. Lack of prior history with the courts will not of itself be grounds for denying the transfer.

(2) Written Findings of Reason for Transfer. Upon transfer to adult court, the judge shall make written findings of the reasons why the jurisdiction of the Family Court was waived.

History: Amended ____; Resolution No. ____; Formerly Section 2, Subsection 2.4 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section IV, Subsection 4.3 (D) &(F) of the Childrens Code, Title XII.

3.5 Effect of Transfer.

The transfer terminates the jurisdiction of the Family Court over the individual with respect to the acts alleged in the petition. An individual may not be prosecuted in Adult Tribal Court unless the case has been transferred as provided in this section.

History: Section 2, Subsection 2.5 enacted on the 3/8/99, Resolution 63-99.

SECTION 4. FORMAL CHARGES

4.1 Recommended prosecuting standards for charging and plea dispositions.

RECOMMENDED PROSECUTING STANDARDS FOR CHARGING AND PLEA DISPOSITIONS

INTRODUCTION:

These standards are intended solely for the guidance of prosecutor of the Fort Belknap Indian Reservation. They are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party in litigation with the Tribe. Evidentiary sufficiency. (1) Decision not to prosecute.

STANDARD: A presenting officer may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question, or would result in decreased respect for the law. The decision not to prosecute or divert shall not be influenced by the gender, religion, or creed of the suspect.

GUIDELINES/COMMENTARY: Examples: The following are examples of reasons not to prosecute which could satisfy the standard.

- (a) Contrary to Legislative Intent - It may be proper to decline to charge where the application of criminal sanctions would be clearly contrary to the intent of the laws in enacting the particular law.
- (b) Antiquated Statute - It may be proper to decline to charge where the statute in question is antiquated in that:
 - (i) It has not been enforced for many years;
 - (ii) Most members of society act as if it were no longer in existence;
 - (iii) It serves no deterrent or protective purpose in today's society; and
 - (iv) The statute has not been recently reconsidered by the legislature. This reason is not to be construed as the basis for declining cases because the law in question is unpopular or because it is difficult to enforce.
- (c) De Minimis Violation - It may be proper to decline to charge where the violation of law is only technical or insubstantial and where no public interest or deterrent purpose would be served by prosecution.
- (d) Confinement on Other Charges - It may be proper to decline to charge because the accused has been sentenced on another charge to a lengthy period of confinement; and
 - (i) Conviction of the new offense would not merit any additional direct or collateral punishment;
 - (ii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and
 - (iii) Conviction of the new offense would not serve any significant deterrent purpose.
- (e) Pending Conviction on Another Charge - It may be proper to decline to charge because the accused is facing a pending prosecution in the same or another jurisdiction; and
 - (i) Conviction of the new offense would not merit any additional direct or collateral punishment;
 - (ii) Conviction in the pending prosecution is imminent;
 - (iii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iv) Conviction of the new offense would not serve any significant deterrent purpose.

(f) High Disproportionate Cost of Prosecution - It may be proper to decline to charge where the cost of locating or transporting, or the burden on, prosecution witnesses is highly disproportionate to the importance of prosecuting the offense in question. The reason should be limited to minor cases and should not be relied upon in serious cases.

(g) Improper Motives of Complainant - It may be proper to decline charges because the motives of the complainant are improper and prosecution would serve no public purpose, would defeat the underlying purpose of the law in question, or would result in decreased respect for the law.

(h) Immunity - It may be proper to decline to charge where immunity is to be given to an accused in order to prosecute another where the accused information or testimony will reasonably lead to the conviction of others who are responsible for more serious criminal conduct or who represent a greater danger to the public interest.

(i) Victim Request - It may be proper to decline to charge because the victim requests that no criminal charges be filed and the case involves the following crimes or situations:

(i) Assault cases where the victim has suffered little or no injury;

(ii) Crimes against property, not involving violence, where no major loss was suffered;

(iii) Where doing so would not jeopardize the safety of society. Care should be taken to ensure that the victim's request is freely made and is not the product of threats or pressure by the accused. The presence of these factors may also justify the decision to dismiss a prosecution which has been commenced. Notification

The prosecutor is encouraged to notify the victim, when practical, and the law enforcement personnel, of the decision not to prosecute.

(2) Decision to prosecute. STANDARD: Crimes against persons will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact finder.

Crimes against property/other crimes will be filed if the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised. The decision to prosecute or use diversion shall not be influenced by the gender, religion, or creed of the juvenile offender.

(3) Selection of Charges/Degree of Charge

(a) The prosecutor should file charges which adequately describe the nature of the juvenile offender's conduct. Other offenses may be charged only if they are necessary to ensure that the charges:

(i) Will significantly enhance the strength of the tribal government's case at trial; or

(ii) Will result in restitution to all victims.

(b) The prosecutor should not overcharge to obtain a guilty plea. Overcharging includes:

(i) Charging a higher degree;

(ii) Charging additional counts. This standard is intended to direct prosecutors to charge those crimes which demonstrate the nature and seriousness of a juvenile offender's criminal conduct,

but to decline to charge crimes which are not necessary to such an indication. Crimes which do not merge as a matter of law, but which arise from the same course of conduct, do not all have to be charged.

(4) Police Investigation: A presenting officer is dependent upon law enforcement agencies to conduct the necessary factual investigation which must precede the decision to prosecute. The presenting officer shall ensure that a thorough factual investigation has been conducted before a decision to prosecute is made. In ordinary circumstances the investigation should include the following:

- (a) The interviewing of all material witnesses, together with the obtaining of written statements whenever possible;
- (b) The completion of necessary laboratory tests; and
- (c) The obtaining, in accordance with constitutional requirements, of the suspect's version of the events. If the initial investigation is incomplete, a presenting officer should insist upon further investigation before a decision to prosecute is made, and specify what the investigation needs to include.

(5) Exceptions

In certain situations, a presenting officer may authorize filing of a criminal complaint before the investigation is complete if:

- (a) Probable cause exists to believe the suspect is guilty; and
- (b) The suspect presents a danger to the community or is likely to flee if not apprehended; or
- (c) The arrest of the suspect is necessary to complete the investigation of the crime.

In the event that the exception to the standard is applied, the presenting officer shall obtain a commitment from the law enforcement agency involved to complete the investigation in a timely manner. If the subsequent investigation does not produce sufficient evidence to meet the normal charging standard, the complaint should be dismissed.

(6) Investigation Techniques: The prosecutor should be fully advised of the investigatory techniques that were used in the case investigation including:

- (a) Polygraph testing;
- (b) Hypnosis;
- (c) Electronic surveillance;
- (d) Use of informants.

(7) Prefiling Discussions with Defendant Discussions with the defendant or his or her representative regarding the selection or disposition of charges may occur prior to the filing of charges, and potential agreements can be reached.

(8) Plea dispositions: STANDARD

(a) Except as provided in subsection (2) of this section, a juvenile offender will normally be expected to plead guilty to the charge or charges which adequately describe the nature of his or her criminal conduct or go to trial.

(b) In certain circumstances, a plea agreement with a juvenile offender in exchange for a plea of guilty to a charge or charges that may not fully describe the nature of his or her criminal conduct may be necessary and in the public interest. Such situations may include the following:

- (i) Evidentiary problems which make conviction of the original charges doubtful;
- (ii) The juvenile offender's willingness to cooperate in the investigation or prosecution of others whose criminal conduct is more serious or represents a greater public threat;
- (iii) A request by the victim when it is not the result of pressure from the juvenile offender;
- (iv) The discovery of facts which mitigate the seriousness of the juvenile offender's conduct;
- (v) The correction of errors in the initial charging decision;
- (vi) The juvenile offender's history with respect to criminal activity;
- (vii) The nature and seriousness of the offense or offenses charged; (viii) The probable effect of witnesses.

(c) No plea agreement shall be influenced by the race, gender, religion, or creed of the juvenile offender. This includes but is not limited to the prosecutor's decision to utilize such disposition alternatives as the Special Sex Offender Disposition Alternative, the Chemical Dependency Disposition Alternative, and manifest injustice.

(9) Disposition recommendations: STANDARD

The prosecutor may reach an agreement regarding disposition recommendations. The prosecutor shall not agree to withhold relevant information from the court concerning the plea agreement.

History: Enacted ____; Resolution No. ____.

4.2 Formal Proceeding

(1) Petition. A petition initiating proceedings alleging the youth to be a delinquent or in need of supervision shall be entitled "In the Matter of, a youth. and shall set forth with specificity the charge of an offense including the following:

- (a) name of offense; and
- (b) state the facts constituting the offense in ordinary concise language and in such manner as to enable a person of common understanding to know what is intended;
- (c) state the time and place of the offense as definitely as possible;
- (d) the names and residence addressees of parents, guardian or spouse or if none of the parent's guardian, or spouse resides within the Fort Belknap Reservation the adult relative residing nearest to the court;
- (e) whether the youth is in detention or shelter care;
- (f) a list of witnesses who will be used in proving the charges.

History: Section 3, Subsection 3.2 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.13 of the Childrens Code, Title XII.

4.3 Summons or other notification issued upon filing of petition—Procedure—Order to take juvenile into custody—Contempt of court, when.

- (1) Upon the filing of a petition the alleged offender shall be notified by summons, warrant, or other method approved by the court of the next required court appearance. The clerk of court shall be responsible for ensuring the summons is issued and returned within twenty-fours of receiving such request.
- (2) If notice is by summons, the presenting officer shall present a summons to the clerk and the clerk of the court shall issue a summons directed to the juvenile, if the juvenile is twelve or more years of age, and another to the parents, guardian, or custodian, and such other persons as appear to the court to be proper or necessary parties to the proceedings, requiring them to appear personally before the court at the time fixed to hear the petition. Where the custodian is summoned, the parent or guardian or both shall also be served with a summons.
- (3) A copy of the petition shall be attached to each summons. The summons shall contain the date and the time and place of the time set for the youth to deny or admit the allegations in the petition.
- (4) The summons shall advise the parties of the right to counsel at their own expense.
- (5) The judge may endorse upon the summons an order directing the parents, guardian, or custodian having the custody or control of the juvenile to bring the juvenile to the hearing.
- (6) If it appears from affidavit or sworn statement presented to the judge that there is probable cause for the issuance of a warrant of arrest the judge may endorse upon the summons an order that an officer serving the summons shall at once take the juvenile into custody and take the juvenile to the place of detention or shelter designated by the court.
- (7) Service of summons may be made under the direction of the court by any law enforcement officer or probation counselor.

(8) If the person summoned as herein provided fails without reasonable cause to appear and abide the order of the court, the person may be proceeded against as for contempt of court. In determining whether a parent, guardian, or custodian had reasonable cause not to appear, the court may consider all factors relevant to the person's ability to appear as summoned.

History: Section 3, Subsection 3.2 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.13 of the Childrens Code, Title XII.

4.4 Notice of hearing—Conditions of release—Consultation with parent, guardian, or custodian.

(1) When a juvenile taken into custody is held in detention:

(a) A petition, a community supervision modification, or termination of diversion petition, or a parole modification petition shall be filed within seventy-two hours, Saturdays, Sundays, and holidays excluded, or the juvenile shall be released; and
(b) A detention hearing, a community supervision modification or termination of diversion petition, or a parole modification petition shall be held within seventy-two hours, Saturdays, Sundays, and holidays excluded, from the time of filing the information or petition, to determine whether continued detention is necessary under.

(2) Notice of the detention hearing, stating the time, place, and purpose of the hearing, stating the right to counsel, and requiring attendance shall be given to the parent, guardian, or custodian if such person can be found and shall also be given to the juvenile if over twelve years of age.

(3) At the commencement of the detention hearing, the court shall advise the parties of their rights under this chapter and shall appoint counsel as specified in this chapter.

(4) The court shall, based upon the allegations in the information, determine whether the case is properly before it or whether the case should be treated as a diversion case.

(5) Notwithstanding a determination that the case is properly before the court and that probable cause exists, a juvenile shall at the detention hearing be ordered released on the juvenile's personal recognizance pending further hearing unless the court finds detention is necessary.

(6) If detention is not necessary the court shall impose the most appropriate of the following conditions or, if necessary, any combination of the following conditions:

- (a) Place the juvenile in the custody of a designated person agreeing to supervise such juvenile;
- (b) Place restrictions on the travel of the juvenile during the period of release;
- (c) Require the juvenile to report regularly to and remain under the supervision of the juvenile court;
- (d) Impose any condition other than detention deemed reasonably necessary to assure appearance as required;
- (e) Require that the juvenile return to detention during specified hours; or
- (f) Require the juvenile to post a probation bond set by the court under terms and conditions.

History: Section 3, Subsection 3.3 enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.13 of the Childrens Code, Title XII.

**4.5 Procedure upon plea of guilty or not guilty to information allegations—
Notice—Adjudicatory and disposition hearing—Disposition standards used in
sentencing.**

(1) The alleged juvenile offender shall be advised of the allegations in the petition and shall be required to plead guilty or not guilty to the allegation(s). Either party may make preliminary motions up to the time of the plea.

(2) If the alleged juvenile offender pleads guilty, the court may proceed with disposition or may continue the case for a dispositional hearing. If the juvenile denies guilt, an adjudicatory hearing date shall be set. The adjudicatory hearing shall be held within sixty (60) days. The court shall notify the parent, guardian, or custodian who has custody of a juvenile described in the charging document of the dispositional or adjudicatory hearing and shall require attendance.

(3) At the adjudicatory hearing it shall be the burden of the prosecution to prove the allegations of the information beyond a reasonable doubt.

(4) The court shall record its findings of fact and shall enter its decision upon the record. Such findings shall set forth the evidence relied upon by the court in reaching its decision.

(5) If the juvenile offender is found not guilty he or she shall be released from detention.

(6) If the juvenile offender is found guilty the court may immediately proceed to disposition or may continue the case for a dispositional hearing. Notice of the time and place of the continued hearing may be given in open court. If notice is not given in open court to a party, the party and the parent, guardian, or custodian who has custody of the juvenile shall be notified by mail of the time and place of the continued hearing.

(7) The court following an adjudicatory hearing may request that a predisposition study be prepared to aid the court in its evaluation of the matters relevant to disposition of the case.

(8) The disposition hearing shall be held within fourteen days after the adjudicatory hearing or plea of guilty unless good cause is shown for further delay, or within twenty-one days if the juvenile is not held in a detention facility, unless good cause is shown for further delay.

(9) In sentencing an offender, the court shall use the disposition standards in effect on the date of the offense.

(10) A person notified under this section who fails without reasonable cause to appear and abide by the order of the court may be proceeded against as for contempt of court. In determining whether a parent, guardian, or custodian had reasonable cause not to appear, the court may consider all factors relevant to the person's ability to appear as summoned.

History: Section 3, Subsection 3.4 enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.13 of the Childrens Code, Title XII.

4.6 Recording of Formal Hearing.

A Formal hearing must be recorded verbatim by whatever means the court considers appropriate.

History: Section 3, Subsection 3.5 enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.13 of the Childrens Code, Title XII.

4.7 Proceedings Closed

The hearing shall be closed, however, the proceedings may be open to the victim and the victim's immediate family at the Judge's discretion.

History: Section 3, Subsection 3.6 enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.13 of the Childrens Code, Title XII.

4.8 Youth's Presence Mandatory

The youth must be present with their parent or guardian at every Formal hearing.

History: Section 3, Subsection 3.7 enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.13 of the Childrens Code, Title XII.

4.9 Trial by Judge.

If the youth denies all offenses alleged in the petition, the youth or person responsible for the youth or advocate or attorney shall receive an adjudicatory hearing.

History: Section 3, Subsection 3.8 enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.13 of the Children's Code, Title XII.

4.10 Application of Rules of Civil Procedure and Evidence.

At the Formal hearing the rules of evidence and rules of civil procedure are applicable.

History: Section 3, Subsection 3.9 enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.13 of the Children's Code, Title XII.

SECTION 5. SENTENCING. HEARING & DISPOSITION

5.1 Sentencing Dispositional Hearing

(1) Sentencing Hearing Scheduled. If the youth is found to be a youth offender at the adjudicatory hearing or if such is adjudicated on the basis of a valid admission of the allegations, the court shall schedule a sentencing hearing.

(2) When Conducted. As soon as practicable the court shall conduct a sentencing disposition hearing.

(3) Presentence Report. Before the hearing the court shall direct that a presentence report be made in writing by a probation officer, if such officer is employed by the Tribes. Such report must be furnished to the youth or youth's counsel prior to the sentencing hearing and contain a detailed summary of the youth, the youth's family and youth's environment, and other matters relevant to the need for care or rehabilitation. If the youth has been examined by a doctor the result of such examination shall be included in the report. The presiding judge shall have the authority, in his/her discretion, to waive a pre-disposition report, if such action is deemed necessary and appropriate in the best interests of the child because of timelines or related issues.

History: Section 4, Subsection 4.1 (A-C) enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.14 of the Childrens Code, Title XII.

5.2 Disposition

The court may enter its judgment making one or more of the following dispositions:

- 1) place the youth on probation;
- 2) place the youth in an institution or with an agency designated by the Family Court for not more than one year.
- 3) require the youth to pay restitution. The Court may review the following factors when determining whether the youth shall pay restitution: age, ability to pay, ability of the parents or person responsible for the youth to pay, amount of damage to the victim, and legal remedies of the victim.
- 4) Community Services fines and fees.

History: Section 2, Subsection 2.3 (A-E) enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.7 (E) of the Childrens Code, Title XII.

5.3 Security guidelines—Limitations on permissible ranges of confinement.

- (1) The nature of the security to be imposed on youth placed in his or her custody based on the age, offense(s), and criminal history of the juvenile offender.

(2) The permissible ranges of confinement resulting from a finding of manifest injustice are subject to the following limitations:

- (a) Where the maximum term in the range is ninety days or less, the minimum term in the range may be no less than fifty percent of the maximum term in the range;
- (b) Where the maximum term in the range is greater than ninety days but not greater than one year, the minimum term in the range may be no less than seventy-five percent of the maximum term in the range; and
- (c) Where the maximum term in the range is more than one year, the minimum term in the range may be no less than eighty percent of the maximum term in the range.

History: Enacted ____, Resolution No. ____, Section 4, Subsection 4.2 enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.15 of the Childrens Code, Title XII.

SECTION 6. PROBATION AND PROBATION REVOCATION

6.1 Intensive supervision program—Elements—Report.

(1) An intensive supervision program as a part of its parole services includes, at a minimum, the following program elements:

- (a) A process of case management involving coordinated and comprehensive planning, information exchange, continuity and consistency, service provision and referral, and monitoring. The components of the case management system shall include assessment, classification, and selection criteria; individual case planning that incorporates a family and community perspective; a mixture of intensive surveillance and services; a balance of incentives and graduated consequences coupled with the imposition of realistic, enforceable conditions; and service brokerage with community resources and linkage with social networks;
 - (b) Administration of transition services that transcend traditional agency boundaries and professional interests and include courts, institutions, aftercare, education, social and mental health services, substance abuse treatment, and employment and vocational training; and
 - (c) A plan for information management and program evaluation that maintains close oversight over implementation and quality control, and determines the effectiveness of both the processes and outcomes of the program.
- A. Violation of Probation. A youth on probation incident to an adjudication as a youth offender who violated the terms of the probation may be proceeded against in a probation

revocation proceeding. Petition. A petition shall be filed entitled “Petition for Revocation of Probation” by the presenting officer. Petitions to revoke shall be subject to the same procedure as petitions alleging a youth to be an offender.

History: Section 2, Subsection 2.3 (A-E) enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.7 (E) of the Childrens Code, Title XII.

6.2 Probation bond or collateral—Modification or revocation of probation bond.

(1) The court may order a juvenile to post a probation bond or to deposit cash or post other collateral in lieu of a probation bond, to enhance public safety, increase the likelihood that a juvenile offender will appear as required to respond to charges, and increase compliance with community supervision imposed under various alternative disposition options. The parents or guardians of the juvenile may sign for a probation bond on behalf of the juvenile or deposit cash or other collateral in lieu of a bond if approved by the court.

(2) A parent or guardian who has signed for a probation bond, deposited cash, or posted other collateral on behalf of a juvenile has the right to notify the court if the juvenile violates any of the terms and conditions of the bond. The parent or guardian who signed for a probation bond may move the court to modify the terms of the bond or revoke the bond without penalty to the surety or parent. The court shall notify the surety if a parent or guardian notifies the court that the juvenile has violated conditions of the probation bond and has requested modification or revocation of the bond. At a hearing on the motion, the court may consider the nature and seriousness of the violation or violations and may either keep the bond in effect, modify the terms of the bond with the consent of the parent or guardian and surety, or revoke the bond. If the court revokes the bond the court may require full payment of the face amount of the bond. In the alternative, the court may revoke the bond and impose a partial payment for less than the full amount of the bond or may revoke the bond without imposing any penalty. In reaching its decision, the court may consider the timeliness of the parent's or guardian's notification to the court and the efforts of the parent and surety to monitor the offender's compliance with conditions of the bond and release. A surety shall have the same obligations and rights as provided sureties in adult criminal cases. Rules of forfeiture and revocation of bonds issued in adult criminal cases shall apply to forfeiture and revocation of probation bonds issued under this chapter except as specifically provided in this subsection.

History: Section 5 (A-B) enacted on the 3/8/99, Resolution 63-99.

6.3 Notification to school principal of conviction, adjudication, or diversion agreement—Provision of information to teachers and other personnel — Confidentiality.

(1) Whenever a minor enrolled in any common school is convicted in adult criminal court, or adjudicated or entered into a diversion agreement with the juvenile court on any of the following offenses, the court must notify the principal of the student's school of the disposition of the case, after first notifying the parent or legal guardian that such notification will be made:

- (a) A violent offense;
- (b) A sex offense;
- (c) Inhaling toxic fumes;
- (d) A controlled substances violation; and
- (e) A liquor violation;

(2) The principal must provide the information received under subsection (1) of this section to every teacher of any student who qualifies under subsection (1) of this section and any other personnel who, in the judgment of the principal, supervises the student or for security purposes should be aware of the student's record. The principal must provide the information to teachers and other personnel based on any written records that the principal maintains or receives from a juvenile court administrator or a law enforcement agency regarding the student.

(3) Any information received by a principal or school personnel under this section is confidential and may not be further disseminated.

History: Enacted ____; Resolution No. ____; Formerly Section 4, Subsection 4.2 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.13 of the Childrens Code, Title XII.

6.4 Educational program for juveniles in detention facilities—Application of chapter.

The tribal court shall ensure that for any long-term confinement, over ten days that a program of education shall be provided for common school-age persons confined in a detention facility.

History: Enacted ____; Resolution No. ____