

**TITLE 8  
CHILD WELFARE CODE**

**General --- Chapter 1**

**8-1-0. Title**

1. Title 8 shall be referred to as the Child Welfare Code of the Mandan, Hidatsa, and Arikara Nation of the Fort Berthold Indian Reservation.

**8-1-1. Purpose**

1. The Mandan Hidatsa and Arikara Nation has enacted this Title, recognizing that Tribal Children are the Tribe's most important resource and their welfare is of paramount importance to the Tribe. The purpose of this Title is to provide and assure that each Tribal Child within the jurisdiction of the Fort Berthold District Court shall receive the care and guidance needed to prepare such children to take their places as an adult member of the Tribe, to preserve and strengthen family ties whenever possible; and to preserve and strengthen the child's cultural and Tribal identity, wherever possible, to this end, the Child Welfare Code of the Mandan, Hidatsa, and Arikara Nation shall be liberally interpreted and construed to fulfill the following purposes.

- a. To provide for the welfare, care and protection of the children and families within the jurisdiction of the Mandan, Hidatsa and Arikara Nation.
- b. To compel, when necessary, the parent, custodian or guardian of a child to perform the moral and legal duties owed to the child.
- c. To preserve the unity of the family, and strengthen the child's individual, cultural and Tribal identity, separating the child from his parents only when necessary.
- d. To take actions that may be necessary and feasible to prevent the abuse, neglect, or abandonment of children.
- e. 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.

- f. To promote fairness to the children, parents, guardians, custodians and other parties who come before the District Court under the provisions of this Chapter.
- g. To ensure that foreign courts will be willing to return tribal children to the Mandan, Hidatsa and Arikara Nation by establishing this Child Welfare Code.
- h. To provide procedures for intervention in those state court proceedings regarding Indian children and for transfer of jurisdiction over Indian children from state and other tribal courts to the Fort Berthold District Court whenever deemed necessary and/or appropriate.

**8-1-2. Definitions**

1. Terms under this Title shall be liberally construed so as not to limit the jurisdiction of the District Court over tribal children, and to facilitate the authority of the District Court to act to protect the interests of tribal children and their families. When interpreting terms not defined by this Title, the District Court shall take into consideration tribal laws, customs, and traditional child rearing practices. Unless in conflict with applicable tribal law, terms not specifically defined in this Title shall be defined according to their normal usage, or as defined in the Indian Child Welfare Act (25 U.S.C. § 1901-1963); Title IV-B and Title IV-E of the Social Security Act (42 U.S.C. §620 et seq. and 42 U.S.C. §670 *et seq*; respectively); the Adoption of Safe Families Act (ASFA) (P.L. 105-89); B.I.A. guidelines to the federal law; and any applicable federal law.

As used in this Title, the following definitions apply:

**“Abandon:”** means the failure of the parent, guardian, or custodian to provide reasonable care and support and/or maintain regular contact and/or communication with a child. Failure to maintain a parental relationship with the child for one (1) year shall constitute presumptive evidence of abandonment. Placement of a child by mutual consent of members of the child’s family/extended family does not constitute abandonment. The party claiming that there was no consent has the burden of proving abandonment.

**“Adequate Health Care:”** means any medical or non-medical remedial health care permitted or authorized under tribal or state law.

**“Adjudicatory Hearing:”** a hearing to determine whether the allegations of a petition alleging a child to be a Youth-in-Need-of-Care filed pursuant to this Title are supported by the evidence.

**“Adult:”** means a person eighteen (18) years of age or older, or otherwise emancipated by order of a court of competent jurisdiction.

**“Advocate:”** means a person who is a non-lawyer and who has been qualified by the court to serve to as an advocate on behalf of a party.

**“Best Interests of the Child:”** means the preservation of the connection, or the creation of such a connection if one does not currently exist, between a tribal child and the child’s culture, family and Tribe in a stable setting where the usual and special needs of that child may be met; where the child is secure and safe; where the child is emotionally, physically, socially, and spiritually healthy.

**“Case Plan:”** means a written document for each child under the jurisdiction of the Court, prepared by M.H.A. Children and Family Services whenever possible. The plan shall include a detailed description of the services to be provided to the family along with the duties, responsibilities, and consequences regarding both M.H.A. Children and Family Services and the family. The plan will address efforts designed to reunite the family, and may contain, if appropriate, a concurrent, alternative permanent plan for the child in the event the child does not return to parental care.

**“Case Review:”** means a procedure for periodically reviewing the status of each child in foster care in accordance with the requirements of applicable law or District Court order.

**“Child Custody Proceedings”** mean:

- a. Adoptive placement, which is the permanent placement of an Indian child for adoption and includes any action resulting in a final decree of adoption;
- b. Foster care placement, which is any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian where the parent or Indian custodian cannot have the child returned on demand, but where parental rights have not be terminated.
- c. Termination of parental rights, which is any action resulting in the termination of the parent-child relationship.

- d. Pre-adoptive placement which is the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement.
- e. Permanent Guardianship placement which means an action that vests legal custody or guardianship with a permanent guardian, but does not terminate parental rights.

Child custody proceedings include only the above and do not include any placement made in juvenile delinquency proceedings, custody awarded to a parent as part of divorce proceedings, or voluntary placements where the child's parent or custodian has the right to regain custody upon demand.

**“Child” or “youth:”** means any person under the age of eighteen (18) years who is neither married, emancipated nor in the military service of the United States.

**“Child Protection Agency” or “Agency:”** means the Mandan, Hidatsa, and Arikara Nation Children and Family Services (M.H.A. Children and Family Services) including the child protective services unit.

**“Child Protection Team:”** a multi-disciplinary team that is designed to respond in a coordinated effort to child abuse and neglect cases.

**“Custodian:”** means any person who has legal custody of an Indian child under tribal law or custom or to whom temporary physical care, custody and responsibility has been transferred by the child's parent, and who is providing food, shelter and supervision to the child.

**“Dependency Case:”** means a case in which the child is alleged to be, or has been found by the Court to be a “Youth-in-Need-of-Care.”

**“Disposition:”** means the determination by the Court of a plan for the child, which plan includes, but is not limited to, legal custody, physical custody, placement and services to the child, parents, and family.

**“District Court” or “District Tribal Court:”** means the Fort Berthold District Court.

**“Extended Family Member:”** means a person who has reached the age of eighteen (18) and who is the Indian child's grandparent, aunt or uncle, brother or sister, niece or nephew, or first or second cousin, or stepparent; or is recognized by tribal custom as an extended family member; or is deemed by M.H.A. Children and Family Services to have established a significant familial type of relationship with the child.

**“Foster Care:”** means substitute family care for a child who has been voluntarily or involuntarily removed from parental care.

**“Fort Berthold District Court:”** means the tribal court of the Mandan, Hidatsa and Arikara Nation.

**“Guardian:”** means a person, other than a parent or custodian to whom legal custody of the child has been given by order of a court, but where parental rights have not been terminated.

**“Guardian Ad Litem:”** means an adult appointed by the District Court to represent a child in any suit to which he may be a party for the protection of the child’s interest.

**“Indian:”** means any member or person eligible for membership in a federally recognized Indian Tribe, band or community, or an Alaskan Native and a member of a Regional Corporation as defined in 43 U.S.C. § 1606.

**“Indian child:”** means any unmarried person who is under age eighteen (18) and is a member of an Indian tribe or eligible for membership in an Indian tribe and is either the biological child of a person who is enrolled or eligible for enrollment in an Indian tribe.

**“Mandan, Hidatsa and Arikara Nation:”** means the Three Affiliated Tribes of the Fort Berthold Indian Reservation.

**“Mandan, Hidatsa, and Arikara Nation (M.H.A.) Children and Family Services:”** means the Three Affiliated Tribes Agency which provides social services to children and families.

**“Mental Injury:”** means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child's ability to function within a normal range of performance and behavior with due regard to the child's culture.

**“Physical Injury:”** any harm to a child including but not limited to: disfigurement, impairment of any bodily organ, skin bruising, bleeding, burns, fracture of any bone, subdural hematoma, or substantial malnutrition.

**“Probable Cause:”** means reasonable cause or reasonable grounds to believe a fact, supported by sufficient evidence.

**“Putative Father:”** means a man who is alleged to be or who claims to be the biological father of a child born to a woman to whom the man is not married at the time of the birth of the child.

**“Strength-Based Case Plan Model:”** An approach to working with families that focuses on eliciting strengths and solutions for people who seek help. This means that the solutions lie within the individual or client and the worker elicits these solutions through guided interactions. The assumption behind the strength-based model is that promotes change and by building on strengths and changing behavior individuals may achieve their goals.

**“Spokesperson:”** A person approved by the Court to speak for a parent or an older child, or to speak to the best interests of a younger child.

**“Supervision:”** means the authority granted by the District Court or by a voluntary agreement of a parent to determine length of and needs of the child when placed in out-of-home care.

**“Wrap Around Case Plan Model:”** An approach to case planning which requires the process to be community based, individualized, strength based, culturally competent, in partnership with the family, team driven, flexibility funded, a balance of professional and natural supports, a commitment to unconditional care, collaborative, and focused on measured outcomes.

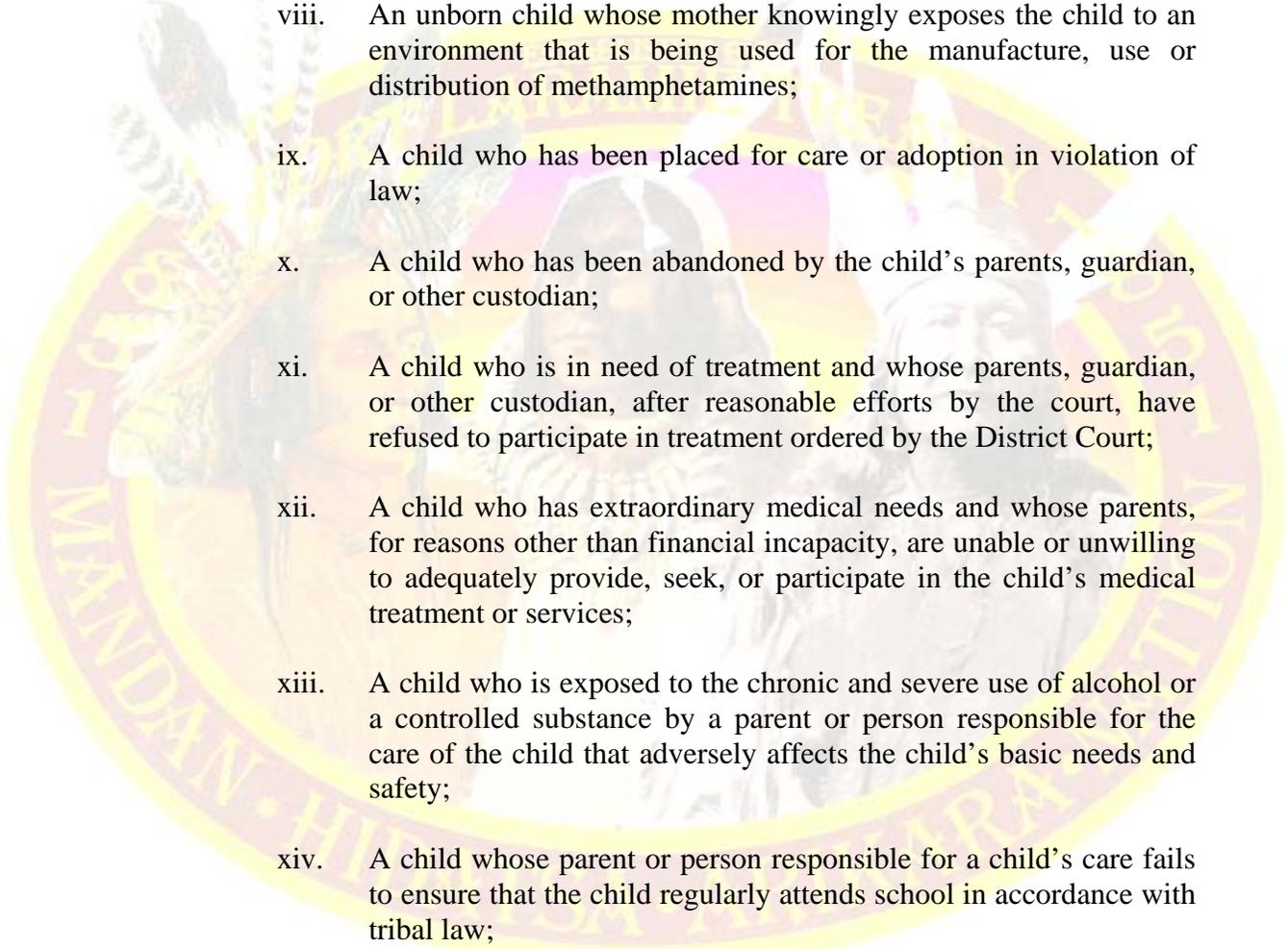
**“Youth in Need of Care:”** A child who has been found by the District Court to be in one or more of the following circumstances:

- A. Physically Abused Child- this term includes a child who is found to be in one or more of the following situations:
  - i. Subjected to punishments of a nature that could be considered cruel and unusual;
  - ii. A child who is dead, or exhibits a physical or mental injury, evidence of skin bruising, bleeding, malnutrition, burns, fracture of any bone, subdural hematoma, soft tissue swelling, or is knocked unconscious and such condition is not justifiably explained or may not be the product of accidental occurrence.
- B. Sexually Abused child- sexual abuse of a child means any act upon a child, however slight, of sexual intercourse, anal intercourse, masturbation,

bestiality, sadism, masochism, fellatio, cunnilingus, or anilingus; any intrusion, however slight, of any part of the body or any object into the genital or anal openings of a child's body or subjecting a child to make sexual penetration upon himself or another; any touching of the breasts or the genitalia or anus of any child with the intent to arouse or gratify the sexual desire of either party or subjecting a child to the touching of the breasts or genitalia or anus of himself or another; any act of sexual exploitation which may include forcing, allowing, or encouraging a child to solicit or engage in prostitution, to view pornographic film, images, or literature; to engage any filming, photographing, or video recording which involves child nudity, the exhibition of a child's genitals, or the sexual conduct of a child if the depiction of the child is in a manner which appeals to the prurient interest in sex.

C. Neglected Child- This term includes failure to provide proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, emotional health, or morals, and the neglect is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian. Neglect may include the following instances:

- i. A child who is not receiving the necessary food, clothing, shelter, medical care, education, or supervision needed for his or her well-being or development;
- ii. A child who is experiencing a growth delay, which may be described as a failure to thrive; such failure may be in a physical, psychological or emotion capacity that has been diagnosed by a physician or other licensed mental health professional and is due to parental neglect;
- iii. A child left with a babysitter who is intoxicated, too young or not suitable for the care and monitoring of children;
- iv. A child who is expected to provide prolonged and unsupervised babysitting services;
- v. A child who is exposed to a dangerous situation as a result of parental negligence;

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- vi. Unborn or nursing child whose mother is using alcohol or other drugs to the extent that the fetus or child may be endangered;
  - vii. An unborn child whose mother refuses to receive and provide adequate prenatal care;
  - viii. An unborn child whose mother knowingly exposes the child to an environment that is being used for the manufacture, use or distribution of methamphetamines;
  - ix. A child who has been placed for care or adoption in violation of law;
  - x. A child who has been abandoned by the child's parents, guardian, or other custodian;
  - xi. A child who is in need of treatment and whose parents, guardian, or other custodian, after reasonable efforts by the court, have refused to participate in treatment ordered by the District Court;
  - xii. A child who has extraordinary medical needs and whose parents, for reasons other than financial incapacity, are unable or unwilling to adequately provide, seek, or participate in the child's medical treatment or services;
  - xiii. A child who is exposed to the chronic and severe use of alcohol or a controlled substance by a parent or person responsible for the care of the child that adversely affects the child's basic needs and safety;
  - xiv. A child whose parent or person responsible for a child's care fails to ensure that the child regularly attends school in accordance with tribal law;
  - xv. A child that is subjected to the repeated witnessing of domestic violence in the home;
  - xvi. A child that is subjected to psychological maltreatment by a parent, guardian, or other custodian;
  - xvii. A child whose parent, guardian or custodian knowingly exposes the child to an environment that is being used for the manufacture, use or distribution of methamphetamines or any other unlawfully manufactured controlled substance.

- D. Dependent Child: this term includes a child who has no parent, guardian, or custodian available, willing or able to care for the child.

**8-1-3. District Court Jurisdiction**

1. The Fort Berthold District Court shall have jurisdiction over any proceeding arising under this Title and actions arising under the customs and traditions of the Mandan, Hidatsa, and Arikara Nation affecting family or child welfare which involve:

- a. Any Indian child who resides or is domiciled on the Fort Berthold Indian Reservation;
- b. Any child who is a member of, or is eligible for membership in the Mandan, Hidatsa, and Arikara Nation regardless of the child's residence or domicile;
- c. Any child who has been adjudicated a ward of the tribal court; and
- d. Any Indian youth who has been placed in temporary care on the Fort Berthold Indian Reservation or in any care facility licensed by the M.H.A Children and Family Services for placement of an Indian child.

2. The Fort Berthold District Court shall have jurisdiction over adults in furtherance of its powers under this Title and shall exercise such jurisdiction over adults to the extent necessary or reasonably believed necessary to make proper disposition of the case, including the authority to punish for contempt, committed in or out of the Court's presence. The Court may issue orders as are necessary for the welfare of youths and families.

3. Whenever state, federal and other tribal courts have jurisdiction over any of the matters provided for in this Title, the Court shall have concurrent jurisdiction over the same matters, to the extent consistent with federal law.

4. The limitations on jurisdiction contained in this Chapter are not intended to reflect the Mandan, Hidatsa, and Arikara Nation's view as to the legally permissible limits of jurisdiction.

**8-1-4. Concurrent Jurisdiction in Case of Conflicts**

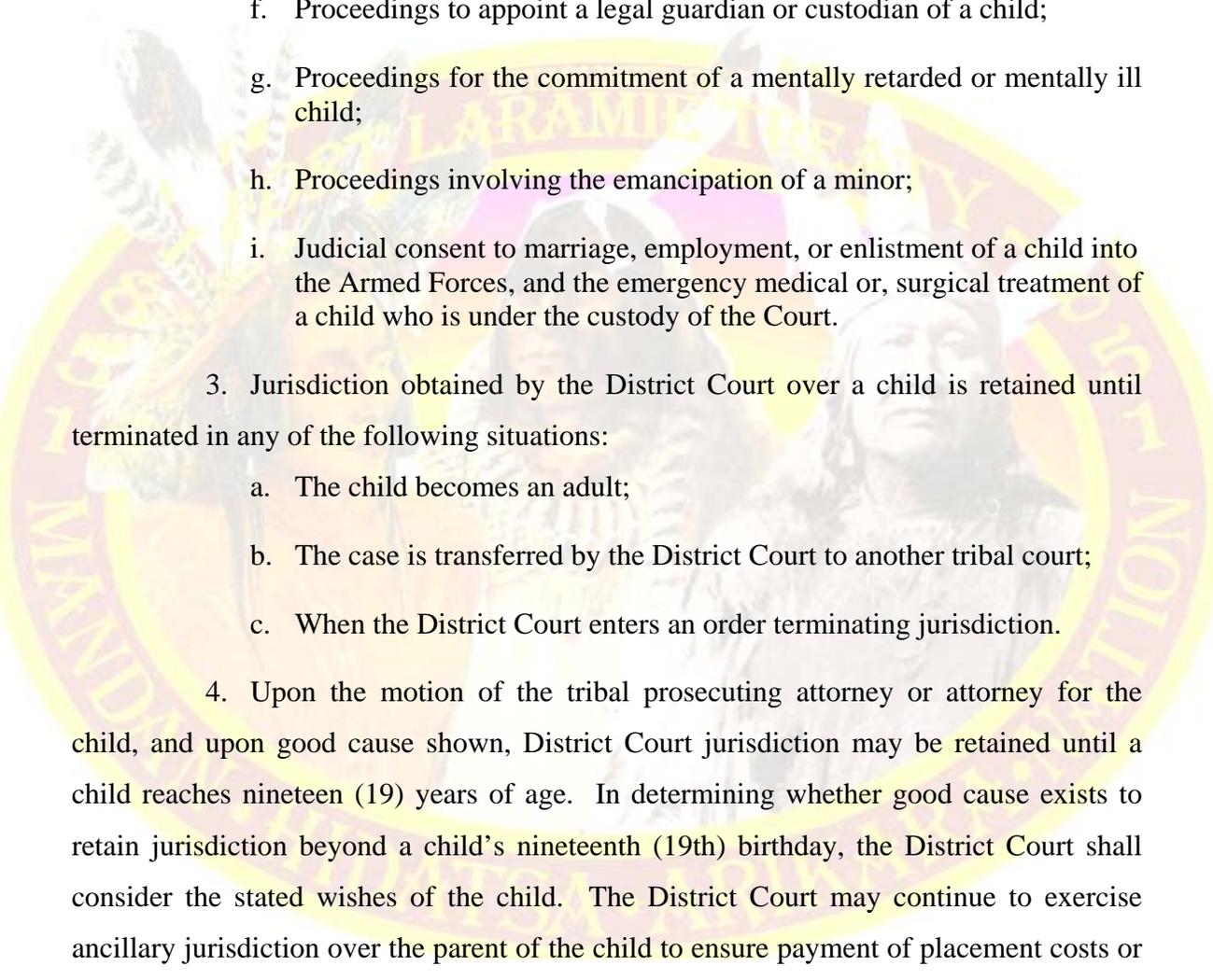
1. In all child welfare proceedings arising within the concurrent jurisdiction of the District Court, the District Court shall determine by allegations in the petition and by testimony, whether a prior action has been commenced in a state court involving the same child. In the event such a proceeding has been commenced in a state court, the District Court shall decline a petition to assert original jurisdiction, but may refer the legal representative of the Nation to seek transfer of the case to the District Court pursuant to the transfer provisions of the Indian Child Welfare Act, 25 U.S.C. §1911. If no state court proceeding has been commenced, the Fort Berthold District Court shall proceed as in cases within its exclusive and original jurisdiction, provided that personal jurisdiction exists as set forth in Section 8-1-3.1.

**8-1-5. Recognition of Foreign Court Orders**

1. Orders of other courts involving children over whom the District Court could take jurisdiction shall be recognized by the District Court after the District Court has determined:
  - a. That the other 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 court's proceeding.

**8-1-6. Subject Matter Jurisdiction**

1. The District Court shall have and exercise the jurisdiction asserted in the foregoing sections of this Chapter and over all proceedings under this Title in which it is alleged that an Indian child is alleged to be a Youth-in-Need-of Care.
2. The District Court shall also have jurisdiction of all proceedings, otherwise within the jurisdiction of the District Court, in which the following relief is sought:
  - a. Proceedings to terminate the legal parent child relationship, including residual parental rights and duties;
  - b. Pre-adoptive placement of an Indian child;
  - c. Adoption of an Indian child;

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- d. Foster care placement, including any temporary placement of an Indian child;
  - e. A determination of custody, other than in divorce, or appointment of a custodian or guardian for a child;
  - f. Proceedings to appoint a legal guardian or custodian of a child;
  - g. Proceedings for the commitment of a mentally retarded or mentally ill child;
  - h. Proceedings involving the emancipation of a minor;
  - i. Judicial consent to marriage, employment, or enlistment of a child into the Armed Forces, and the emergency medical or, surgical treatment of a child who is under the custody of the Court.
3. Jurisdiction obtained by the District Court over a child is retained until terminated in any of the following situations:
    - a. The child becomes an adult;
    - b. The case is transferred by the District Court to another tribal court;
    - c. When the District Court enters an order terminating jurisdiction.
  4. Upon the motion of the tribal prosecuting attorney or attorney for the child, and upon good cause shown, District Court jurisdiction may be retained until a child reaches nineteen (19) years of age. In determining whether good cause exists to retain jurisdiction beyond a child's nineteenth (19th) birthday, the District Court shall consider the stated wishes of the child. The District Court may continue to exercise ancillary jurisdiction over the parent of the child to ensure payment of placement costs or other costs associated with juvenile proceedings, regardless of whether the child continues under the District Court's jurisdiction.

**8-1-7. Criminal Jurisdiction for Contributing to the Need for Protection or Services**

1. Any person who by act, word, or omission encourages, causes or contributes to the need for protection or services is guilty of a Class I Misdemeanor.

2. This section does not apply to licensed social services agencies and outreach workers who, while acting within the scope of their professional duties, provide services to runaway children.

3. A complaint under this section may be filed by the M.H.A. Tribal Criminal Prosecutor. A prior or pending petition alleging that the child is delinquent, a juvenile offender, or in need of protection or services is not a prerequisite to a complaint or a conviction under this section.

4. If the child's conduct is the basis for the child's need for protection or services, it is an affirmative defense to a prosecution under this section, if the defendant proves by a preponderance of the evidence, that the defendant took reasonable steps to control the child's conduct.

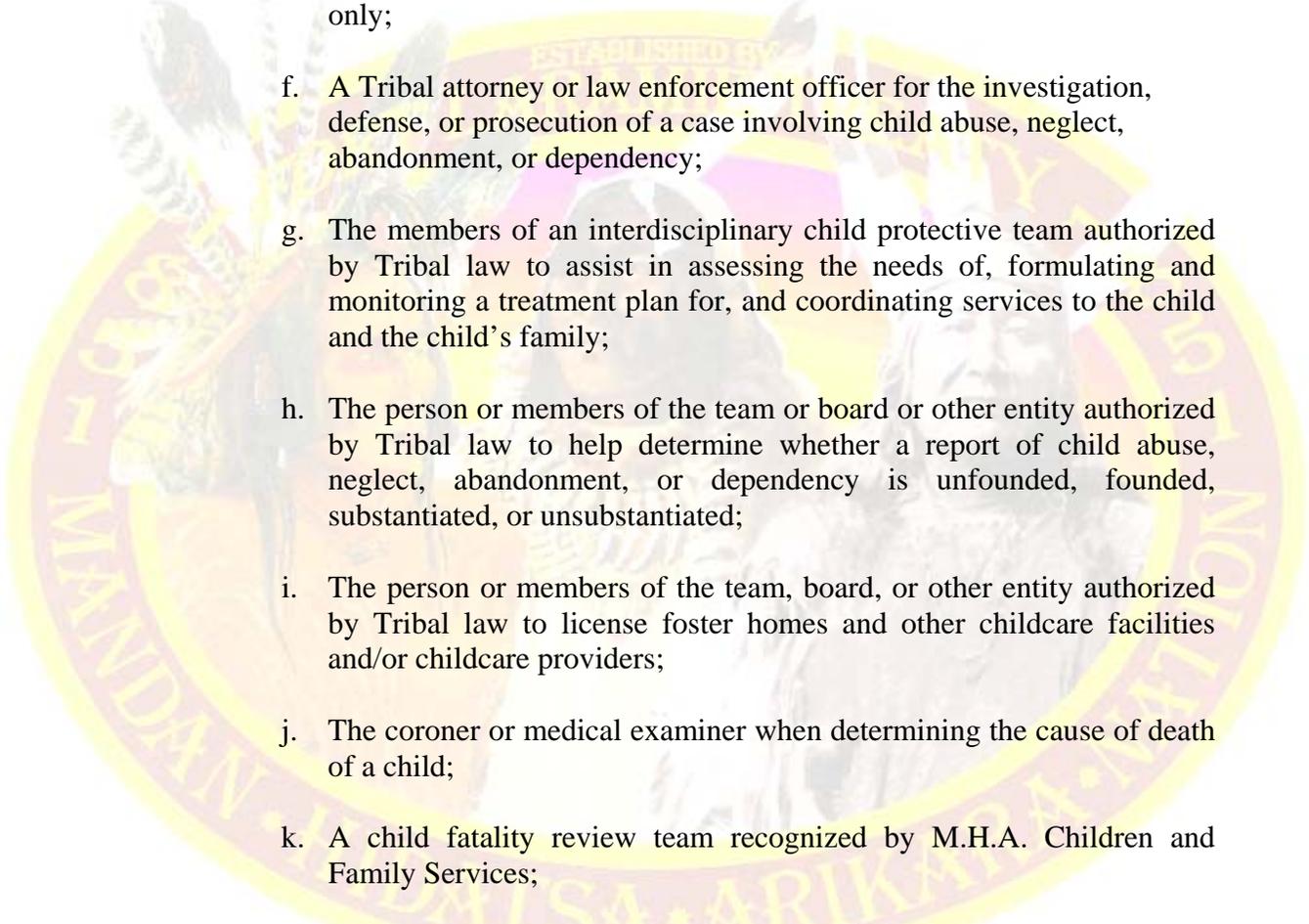
**8-1-8. Confidentiality of Case Records**

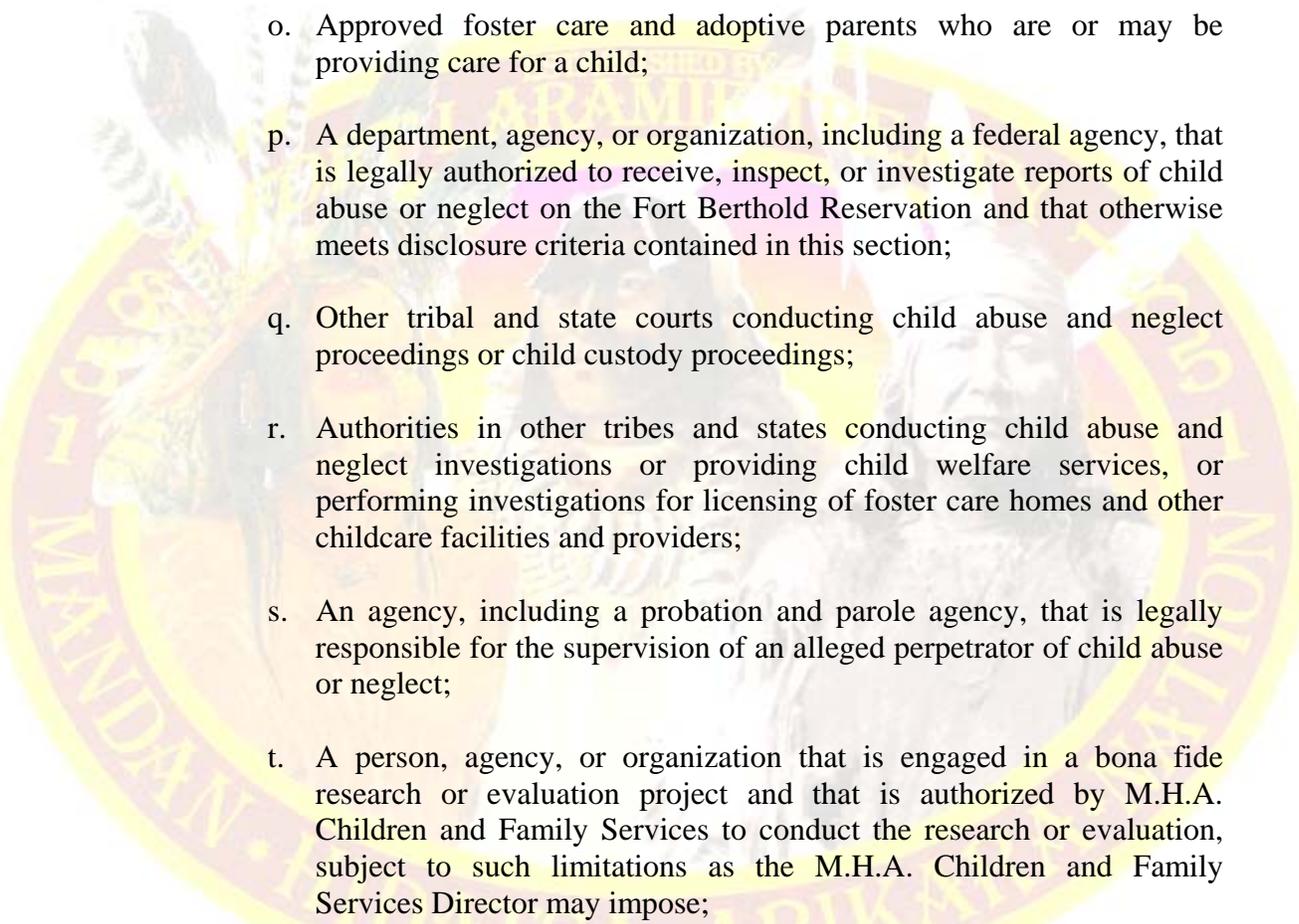
1. The case records of the District Court, M.H.A. Children and Family Services, law enforcement, and the tribal legal department concerning the actions taken under this Title and all records concerning reports of child abuse, neglect, abandonment, and dependency must be kept confidential except as provided in this Chapter.

**8-1-9. Authorized Release of Case Records and Reports of Abuse, Neglect, Abandonment and Dependency**

1. Records, including case notes, correspondence, evaluations, videotapes, investigative evidence (such as photos and x-rays), investigative reports, interviews, and all reports of abuse, neglect, abandonment, and dependency made to M.H.A. Children and Family Services unless otherwise protected by this section, may be disclosed to the following persons, agencies, or entities identified below.

- a. Appropriate staff of M.H.A. Children and Family Services;
- b. The District Court conducting proceedings pursuant to this Title, if relevant to an issue before it;
- c. A parent, guardian, or person designated by a parent or guardian of the child who is the subject of the report in the records or other person responsible for the child's welfare;

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- The image contains a large, semi-transparent watermark of the Mandan County Seal in the background. The seal is circular with a yellow border and features a central figure holding a bow and arrow. Text around the seal includes "ESTABLISHED BY ACT OF THE LEGISLATURE OF NORTH DAKOTA", "MAY 11 1873", and "MANDAN COUNTY NORTH DAKOTA".
- d. A child named in the records who was allegedly abused or neglected or the child's legal representative, including the child's guardian ad litem, attorney, or special advocate appointed by the court to represent a child in a pending case;
  - e. A person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only;
  - f. A Tribal attorney or law enforcement officer for the investigation, defense, or prosecution of a case involving child abuse, neglect, abandonment, or dependency;
  - g. The members of an interdisciplinary child protective team authorized by Tribal law to assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to the child and the child's family;
  - h. The person or members of the team or board or other entity authorized by Tribal law to help determine whether a report of child abuse, neglect, abandonment, or dependency is unfounded, founded, substantiated, or unsubstantiated;
  - i. The person or members of the team, board, or other entity authorized by Tribal law to license foster homes and other childcare facilities and/or childcare providers;
  - j. The coroner or medical examiner when determining the cause of death of a child;
  - k. A child fatality review team recognized by M.H.A. Children and Family Services;
  - l. A person or entity who is carrying out background, employment related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection must be made in writing. Disclosure under this subsection is limited to information that indicates a risk to children, person with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by M.H.A. Children and Family Services;
  - m. To health or mental health professionals who are treating the family or child who is the subject of a report in the records;

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- n. A licensed youth care facility or licensed child-placing agency that is providing services to the family or child who is the subject of the report in the records or to a person authorized by M.H.A. Children and Family Services to receive relevant information for the purposes of determining the best interests of a child with respect to an adoptive placement;
  - o. Approved foster care and adoptive parents who are or may be providing care for a child;
  - p. A department, agency, or organization, including a federal agency, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect on the Fort Berthold Reservation and that otherwise meets disclosure criteria contained in this section;
  - q. Other tribal and state courts conducting child abuse and neglect proceedings or child custody proceedings;
  - r. Authorities in other tribes and states conducting child abuse and neglect investigations or providing child welfare services, or performing investigations for licensing of foster care homes and other childcare facilities and providers;
  - s. An agency, including a probation and parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;
  - t. A person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by M.H.A. Children and Family Services to conduct the research or evaluation, subject to such limitations as the M.H.A. Children and Family Services Director may impose;
  - u. An employee of M.H.A. Children and Family Services or other state or federal agency if disclosure of the records is necessary for administration of programs designed to benefit the child;
  - v. An agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure is necessary to meet requirements of the federal Indian Child Welfare Act;
  - w. A youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;
  - x. A school employee participating in an interview of a child by a Tribal social worker, Tribal attorney, or Tribal law enforcement officer; or,

- y. A school principal of a school or other employee of the school district authorized by the local school board to receive the information with respect to a student of the district who is a client of M.H.A. Children and Family Services; or
  - z. Publicly elected tribal officials who require information in connection with the discharge of their official duties.
2. M.H.A. Children and Family Services may limit the information disclosed to persons, agencies, and entities named in Subsections 8-1-9.1 (g)-(y) to that information necessary to accomplish the purposes for which it is requested or for which it is being disclosed. Nothing in this subsection gives these entities or persons the right to review or copy the complete case record.
3. M.H.A. Children and Family Services shall limit the information disclosed to persons named in Subsection 8-1-9.1 (z) to information that has been solely generated by the agency and shall require the signed release of information by the parent, guardian or custodian. The release shall be limited to information solely generated by the Agency and shall not include a release for the agency to discuss confidential information or records with any individual indicated in Subsection 8-1-9.1 (z).
4. M.H.A. Children and Family Services is authorized to summarize the outcome of an investigation to the person who reported the suspected child abuse or neglect if the person requests the information at the time the report is made. The department has the discretion to limit the information disclosed to the reporter based on whether the reporter has an on-going professional or other relationship with the child or the family.
5. M.H.A. Children and Family Services is not required by this section to disclose information or records if such disclosure would compromise the integrity of a child protective services or criminal investigation.
6. If M.H.A. Children and Family Services receive records or information that is confidential by applicable law, the department shall maintain the confidentiality of the records or information as prescribed in the applicable law.

7. M.H.A. Children and Family Services shall adopt rules to facilitate the accessibility of records and may charge a fee for copying costs required to prepare such records for release pursuant to this section.

8. A school district may disclose, without consent, personally identifiable information from the educational records of a pupil to M.H.A. Children and Family Services, the District Court, and the child's assigned attorney, guardian ad litem, or special advocate.

**8-1-10. Publication of Proceedings**

1. When providing service by publication, the names of children involved in the matter shall not be disclosed. Only the child's initials shall be published.

**8-1-11. Sealing of Court Records**

1. When a child who has been the subject of any proceeding before the District Court under Title 8, who attains the age of twenty-one (21) and is no longer subject to the jurisdiction of the District Court, the Court shall order the Clerk of the Court to seal both the court records and law enforcement records.

**8-1-12. Penalty for Unauthorized Disclosure**

1. Any person, including but not limited to law enforcement personnel, tribal employees, elected officials and court employees, who willfully discloses otherwise confidential information related to a child welfare proceeding, other than expressly authorized and provided in this Chapter, commits a Class III Misdemeanor.

**8-1-13. Contempt of Court**

1. Willful and unjustifiable misbehavior by any person which disrupts, obstructs or otherwise interferes with the conduct of any proceeding under this Title conducted by the Fort Berthold District Court, or which obstructs or interferes with the administration of justice by the District Court, or which constitutes disobedience or resistance to or interference with any lawful summons, subpoena, process, order, rule, decree or command of the District Court shall constitute contempt of court.

2. When contempt of court is committed in the presence of such court it may be punished summarily by that court. In such case, an order shall then be made reciting the facts constituting the contempt, adjudging the person guilty of contempt and prescribing the punishment.

3. When it appears to the District Court that a contempt of court may have been committed out of the presence of the Court, the District Court may issue a summons to the person so charged directing him to appear at a time and place designated for a hearing on the matter. The Court shall conduct a hearing, and if it finds him guilty of contempt, an order shall then be made reciting the facts constituting the contempt, adjudging the person guilty of contempt, and prescribing the punishment.

4. Any person found in contempt of court as specified in this section may be subject to a civil fine not to exceed five hundred (\$500.00) dollars.

#### **8-1-14. Rights of the Parties**

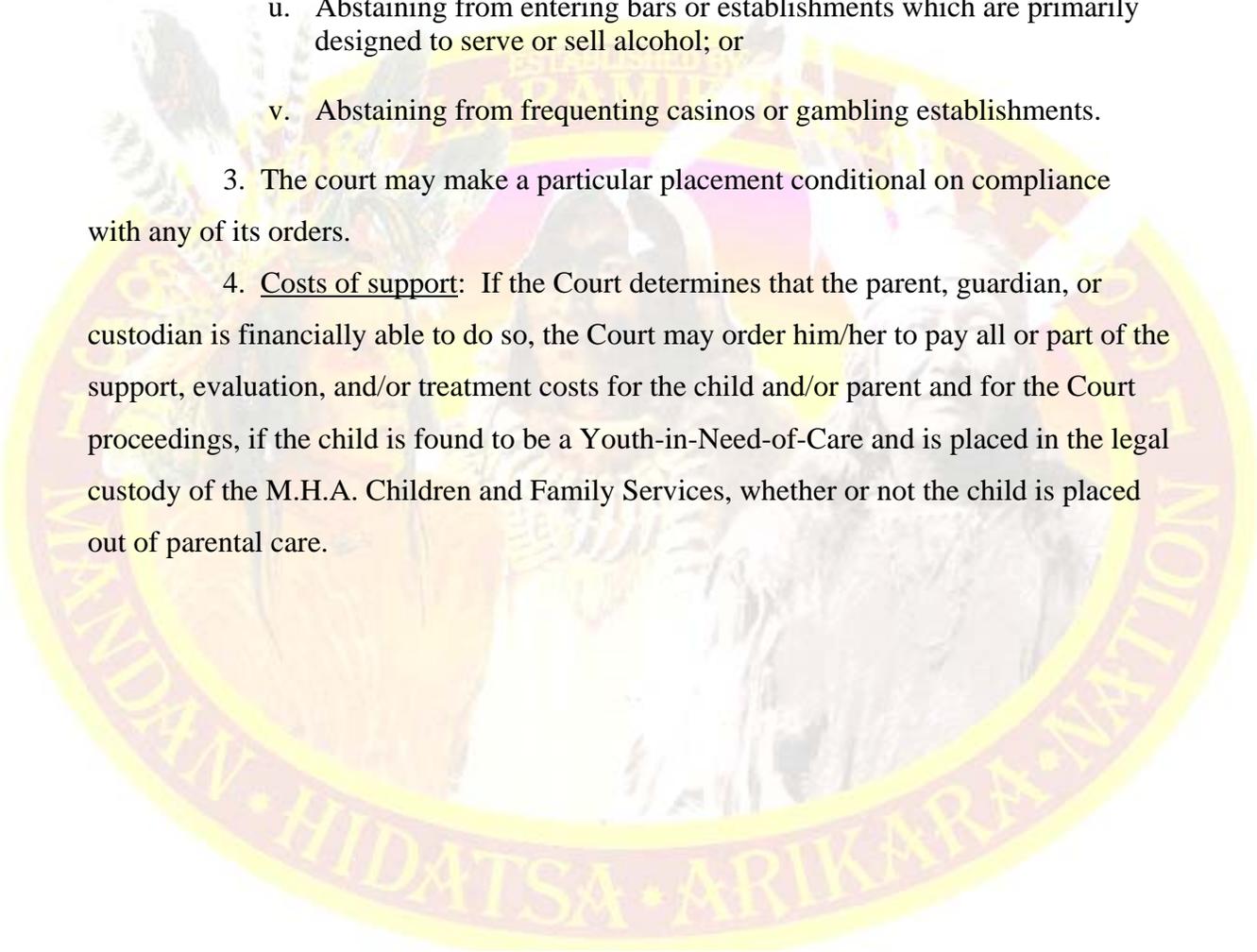
1. Except as otherwise expressly provided in this Title, all parties, and their counsel, or other persons they have selected to represent them, shall be entitled to the following rights in every proceeding under this Title:

- a. A statement by the Court to the youth and his or her parent, guardian, or other custodian that they have the right under this ordinance to have a lawyer or other persons they have selected to represent them at the proceeding, but that they may have to pay for such representation;
- b. If it appears that the party cannot pay for counsel, the Court shall inform him or her of any available services which provide representation;
- c. The opportunity to introduce, examine and cross-examine witnesses;
- d. The opportunity to discover, offer or inspect evidence; and
- e. The opportunity to present arguments and statements.

#### **8-1-15. Parental Responsibility**

1. Parent as a party. The parent of a child alleged, or found to be a Youth-in-Need-of-Care is a party to the case.

2. Dispositions. The Court may order the parent, guardian, or custodian to submit to services and other requirements, including but not limited to:
- a. Medical Evaluations;
  - b. Assessment and treatment of mental health, which includes but is not limited to: psychological, psychiatric, or parental capacity evaluations and treatment programs;
  - c. Assessment and treatment of alcohol or substance, abuse, including voluntary residential treatment;
  - d. Sex offender treatment and evaluation;
  - e. Home electronic monitoring;
  - f. Drug and alcohol testing;
  - g. Anger management classes;
  - h. Domestic violence education classes;
  - i. Parenting classes;
  - j. Individual and family counseling;
  - k. Job training or life skills classes;
  - l. Mandatory school attendance;
  - m. Visitation with or without restrictions;
  - n. Restrictions on contact, association, or travel, including ordering the parent, custodian, or guardian to vacate the residence of the child for a period of time the Court deems necessary and appropriate;
  - o. Cooperation with M.H.A. Children and Family Services;
  - p. Compliance with case plan or service agreement;
  - q. Compliance and cooperation in any and all services in which the child is engaged;
  - r. Abstaining from the possession or consumption of alcohol or controlled substances, or both during visitations and for twenty-four (24) hours preceding contact;

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- s. Abstaining completely from the use of alcohol or the abuse of drugs, whether they be prescription drugs or any controlled dangerous substances;
  - t. Random drug analysis;
  - u. Abstaining from entering bars or establishments which are primarily designed to serve or sell alcohol; or
  - v. Abstaining from frequenting casinos or gambling establishments.
3. The court may make a particular placement conditional on compliance with any of its orders.
4. Costs of support: If the Court determines that the parent, guardian, or custodian is financially able to do so, the Court may order him/her to pay all or part of the support, evaluation, and/or treatment costs for the child and/or parent and for the Court proceedings, if the child is found to be a Youth-in-Need-of-Care and is placed in the legal custody of the M.H.A. Children and Family Services, whether or not the child is placed out of parental care.

**TITLE 8  
CHILD WELFARE CODE**

**Chapter 2  
Conduct of Hearings**

**8-2-0. Hearings**

1. Except for hearings arising under Section 8-1-7 all hearings on all petitions filed pursuant to Title 8 shall be conducted by the District Court separate and closed from other proceedings and may be conducted in an informal manner.

**8-2-1. Right to a Jury**

1. All Court hearings shall be held without a jury and may be continued from time to time.

**8-2-2. Record of Hearings**

1. All hearings shall be recorded. Recorded transcripts of hearings shall be made available to the parties by leave of the Court. Parties requesting recorded transcripts will be responsible for applicable fees and may bear the cost of producing a type written transcript.

2. M.H.A. Children and Family Services will be exempt from payment of fees associated with obtaining a recorded transcript from the Court.

**8-2-3. Hearings to be Private**

1. Hearings and proceedings under this Title shall be private and closed. Only those persons the Court determines to have a legitimate interest in the proceedings may be present. Other persons may act as witnesses but shall not remain in the hearing otherwise.

**8-2-4. Subpoenas**

1. Witnesses or other persons necessary for the conduct of a hearing may be subpoenaed.

**8-2-5. Evidence**

1. In all adjudicatory proceedings involving a child alleged to be in need of protection or services, the Court shall admit only evidence that would be admissible in a civil trial.

**8-2-6. Use of Reports in Proceedings**

1. For the purpose of establishing that a child is a Youth-in-Need-of-Care, determining proper disposition of a child, and/or periodically reviewing the child's and family's progress, written reports and other materials relating to the child's mental, physical, educational, and social history and condition may be required by the Court, may be received in evidence, and may be considered by the Court along with other evidence, but the Court may require that the person who wrote the report or prepared the material complete a sworn affidavit or appear as a witness if that person is reasonably available.

**8-2-7. Standards of Proof**

1. In all hearings related to matters arising under this Title and actions arising under the customs and traditions of the Mandan, Hidatsa, and Arikara Nation affecting the family or child welfare the standard of proof shall be clear and convincing evidence, with the exception of:

- a. A hearing on a petition for protective custody, which shall be based on probable cause; and
- b. A hearing on a petition for temporary custody, which shall be based on probable cause.

**8-2-8. Consolidation**

1. Proceedings involving two (2) or more children may be consolidated when the factual basis for jurisdiction is the same or similar, or for the convenience of all parties. Separate dispositional and review hearings may be held, if it is reasonable to do so.

**8-2-9. Grounds for a Supplemental Petition**

1. Once a child has been found to be a Youth-in-Need-of-Care, and placed in the legal custody of M.H.A. Children and Family Services, the agency may subsequently file a supplemental petition alleging new charges based on current circumstances that, if true, will substantially change the nature of case planning. If the alleged charges are serious, the parent shall have a due process right to an evidentiary hearing. In such cases, all requirements shall be followed as though an original petition is being filed.

**8-2-10. Modification, Revocation, or Extension of Order**

1. The Court may modify, revoke or extend an order at any time upon the motion and showing by any party that there has been a substantial change of circumstances.

**8-2-11. Attorneys, Advocate, Guardian ad litem for Child**

1. Any child may appear with a retained attorney. The Court, at any stage of Youth-in-Need-of-Care proceeding, may appoint an attorney or guardian ad litem, or approve an advocate for a child who has no parent, guardian, or custodian appearing on behalf of the child, or whose interests conflict with the interests of parents, guardians, or custodians, or when it appears to the Court that the child's best interests warrant such an appointment, and funding is available for such appointments. The Court, upon request, may allow a spokesperson for the child or other party to make a statement before the Court.

**8-2-12. Attorney, Advocate, Guardian ad litem for Parent or Other Party**

1. A parent or other party may appear with a retained attorney. The Court, at any stage of a Youth-in-Need-of-Care proceeding, may appoint an attorney, advocate, or guardian ad litem for an indigent parent upon request, so long as such court appointed attorneys are available and are funded in the court's annual budget. The Court, upon request, may allow a spokesperson for a parent or other party to make statement before the Court.

**8-2-13. Testimony of a Child in Chambers or by Videotape**

1. The Court, upon its motion, or upon the motion of any party, may take testimony from any child appearing as a witness and may exclude the child's parent(s) and other persons if the Court finds such action would be likely to be in the best interests of the child. The testimony may be videotaped for the record.

**8-2-14. Telephonic or Videoconference Testimony of Witnesses**

1. The court, upon its motion, or upon the motion of any party, may by order allow a witness to testify by telephonic or video conference call. The arrangements for the call must let each party listen to and speak to the witness and each other within the proceeding. The court will ensure full identification of each speaker so the reporter can create a proper record. The Court may issue a subpoena directing a witness to testify by telephonic or videoconference call.

**8-2-15. Notice**

1. All parties to a proceeding under this Title shall receive written notice of the time and place of a proceeding and shall receive written notice of their right to be heard at such a proceeding

**TITLE 8  
CHILD WELFARE CODE**

**Chapter 3  
Children and Family Service**

**8-3-0. Responsibility For Providing Protective Services**

1. The Mandan, Hidatsa, and Arikara Nation believe our children of the M.H.A. Nation to be holy. Following tradition, it is our mission to promote the emotional, physical, mental and spiritual well being of all our children. M.H.A. Children and Family Services shall strive to support the social, cultural, educational and developmental needs of the children by building an appropriate system of care among all agencies and programs providing services to our children and families. Our vision therefore is to promote healthy, productive, well-balanced children and families.

2. It shall be the responsibility of Children and Family Services to provide or arrange for services to achieve safe, permanent families for children who have been abused, neglected, abandoned, or are dependent or who are at risk of abuse, neglect, abandonment, or dependency. M.H.A. Children and Family Services shall provide quality and accountable services to individuals and families of the M.H.A. Nation, such services shall be provided either directly or through other agencies or entities, which are child-centered, family-focused, and culturally responsive to achieve safety, well-being, and permanency for children.

3. The M.H.A. Children and Family Services shall work in collaboration with those law enforcement agencies tasked with the enforcement of all laws relating to the welfare of children, including laws related to abuse and neglect and all other laws designed to protect and assist children. Children and Family Services shall have the authority to assist sworn law enforcement officers when the officers remove children from a parental or custodial home.

4. M.H.A. Children and Family Services shall strive to provide services to the persons and families served with dignity, respect, and fairness.

5. In order to provide services and effectively carry out its duties, M.H.A.

Children and Family Services may cooperate with such state and community agencies as necessary to achieve the purposes of this Child Welfare Code. The Agency may negotiate working agreements with other jurisdictions. Such agreements shall be subject to ratification by the tribal council or its designee.

**8-3-1. Program Participation and Funding**

1. The District Court is authorized to participate in any approved, federal, state, tribal and public or private agency programs to carry out the purposes of this Child Welfare Code. This authority is subject to the approval of the Tribal Council.

2. The Tribal Council shall work jointly with M.H.A. Children and Family Services to address the health, safety and welfare needs of the Nation's children and to provide supplemental agency funding subject to the discretion of the tribal council.

3. The District Court shall utilize such social services as may be furnished by any tribal, federal or state agency provided that it is economically administered without unnecessary duplication of services and expense.

**8-3-2. Interagency Cooperation**

1. To carry out the purposes of this Title, Children and Family Services shall cooperate with and seek the cooperation and involvement of all appropriate public and private agencies including health, education, social service, law enforcement and any other agency or organization providing or concerned with human services related to the identification, prevention or treatment of child abuse or neglect. Such cooperation may include joint policy planning, public education, information services, staff development and other training.

**8-3-3. Child Protection Team**

1. The primary purpose of the Child Protection Team is technical and advisory in nature and is not intended to replace the authority and responsibility of M.H.A Children and Family Services or the Fort Berthold District Court. It is designed to promote cooperation, communication and consistency among agencies. The Child

Protection Team shall facilitate the decision making process. Confidentiality shall be maintained by all Child Protection Team members.

2. The Child Protection Team should be comprised of the appropriate number of individuals to facilitate the decision making process. M.H.A. Children and Family Services shall designate the composition of the Child Protection Team and the number of individuals to serve on the team and qualifications of team members. The Team may include the following individuals:

- a. Tribal Criminal Prosecutor;
- b. Protective Services Workers;
- c. Police Investigators;
- d. Medical Professionals;
- e. Mental Health Professionals;
- f. School Personnel;
- g. Victim Advocates; and,
- h. Tribal Court Probation Staff.

3. The Child Protection Team may be assigned the following duties:

- a. Maintain the confidentiality of information;
- b. Send local Child Protection Team data to area child protection teams as needed;
- c. Providing recommendations to various pertinent agencies concerning services needed by family or individuals; and
- d. Assist M.H.A. Children and Family Services by providing a non-binding determination whether an investigative report of abuse and neglect involving a caretaker can be substantiated.

4. The Child Protection Team may also provide assistance by facilitating the provision of services to families by:

- a. Identifying available community resources, programs and services; and,
  - b. Providing a forum for debating what actions would best promote the well being of Indian children.
5. The Child Protection Team may also provide technical recommendations to M.H.A. Children and Family Services in the following areas:
- a. Effective and efficient preventative, protective and corrective child abuse and neglect services;
  - b. Information and technical recommendations to decision making agencies;
  - c. Educate communities about child abuse and neglect problems and possible solutions;
  - d. Identify danger signs which prompt intervention and/or preventative actions;
  - e. Assist in the development and implementation of plans to promote the long term well being of children and their families; and,
  - f. Assist in the development and implementation of strategies by communities to promote the dignity, self-worth, self-respect and self-sufficiency of community members.

**TITLE 8  
CHILDREN WELFARE**

**Chapter 4  
Reports, Investigations, and Removal**

**8-4-0. Civic Duty to Report a Youth-in-Need-of-Care**

1. Any person who knows or has reasonable suspicion that a child has been abused, neglected, abandoned or is dependent; or that actions are being taken or are going to be taken that would reasonably be expected to result in abuse, neglect, abandonment or dependency of a child, shall immediately report the abuse, neglect, abandonment or dependency, or actions to local law enforcement services and/or M.H.A. Children and Family Services.

**8-4-1. Mandatory Duty to Report Abuse and Neglect**

1. Those persons who are mandated to report suspected abuse or neglect include any of the following:

- a. Physician, nurse, dentist, dental hygienist, optometrist, chiropractor, medical examiner, medical technician, paramedic or any other health care provider.
- b. Psychiatrist, psychologist, licensed and unlicensed marriage, family and child counselor, and persons employed in the mental health profession.
- c. Teacher, school administrator, school counselors, instructional aides, teaching assistants, school resource or truancy officer or bus drivers employed by any tribal, federal, public, or private school or home school program.
- d. Social worker, all staff members of M.H.A. Children and Family Services, child day care center worker, Head Start teacher and staff, or other child care staff including foster parents, residential care or institutional personnel.
- e. Law enforcement officer, probation officer, staff member of a juvenile rehabilitation or juvenile detention facility, detention officers of an adult detention facility.
- f. Attorney, court services officer, clerk of courts, court counselors.

**8-4-2. Reporting: Anonymity and Privilege**

1. Any person may make a report that a child is a Youth-in-Need-of-Care.

Those persons reporting, except those classified as mandatory reporters and specified in Section 8-4-1.1 may remain anonymous.

2. No person may claim a privilege and refuse to make a report as required by Section 8-4-1.1 except an attorney claiming the attorney-client privilege.

**8-4-3. Penalty for Failure to Report and False Reports**

1. Any person required to report a case of known or suspected abuse, neglect who fails to report or neglects or prevents someone else from reporting suspected child abuse or neglect is guilty of a Class A Misdemeanor and is fully liable in the District Court to the child for damages that result from such failure or prevention.

2. Any person who files a report to M.H.A. Children and Family Services or tribal law enforcement of suspected sexual abuse, physical abuse, neglect, or abandonment child; and knows the allegation is false or is without reason to believe that the alleged abuser committed the abuse, neglect, or abandonment; and has the intent that the information will influence a child custody hearing shall be guilty of a Class III Misdemeanor and shall be liable to the Mandan, Hidatsa, and Arikara Nation for a civil penalty of five-hundred (\$500.00) dollars. The M.H.A. Nation may bring an action to recover the civil penalty authorized by this subsection.

**8-4-4. Procedures in Case of a Child's Death**

1. Any person who has reasonable cause to suspect that a child's death resulted from child abuse or neglect shall report his suspicion to the police.

2. The police shall cause the coroner to investigate and report his findings to the proper authorities.

**8-4-5. Content of Report**

1. Reports of suspected child abuse, neglect, abandonment, or dependency may be made orally or in writing. An oral report shall be transcribed by the agency

receiving the report within seventy-two (72) hours of the receipt of the oral report. Information to be included in all reports of suspected abuse, neglect, abandonment or dependency:

- a. The names and addresses of the child, any other children in the home, and his parents(s) guardian or custodian;
- b. The child's age;
- c. The nature and extent of the child's injuries due to alleged abuse, neglect, abandonment or dependency;
- d. Previous abuse, neglect, abandonment, or dependency of the child or his siblings, if known;
- e. The name, age and address of the person alleged to be responsible for the child's abuse, neglect, abandonment or dependency, if known;
- f. The name and address of the person or agency making the report;
- g. The facts which led the person reporting to believe that the child has suffered injuries or willful neglect;
- h. Any other information the reporter believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of the person responsible; and,
- i. The name and address of the reporter, if the reporter is required to report under Section 8-4-1.1 of this Chapter.

#### **8-4-6. Immunity From Liability**

1. All persons or agencies reporting, in good faith, known or suspected instances of child abuse, neglect, abandonment or dependency shall be immune from civil liability and criminal prosecution. The following people are immune from any liability, civil or criminal, for their role in any case of suspected or confirmed child abuse, neglect, abandonment or dependency unless found to have acted in bad faith or with malicious purpose:

- a. Anyone investigating or reporting any incident of child abuse neglect, abandonment, or dependency;

- b. Anyone participating in any judicial proceeding concerning alleged child abuse, neglect, abandonment, or dependency;
- c. Anyone furnishing hospital or medical records to M.H.A. Children and Family Services;
- d. Anyone taking or causing to be taken color photographs or x-rays as permitted under this Title;
- e. Anyone making or causing to be made a medical examination without parental permission as authorized by Section 8-4-12.1 through 8-4-12.4.; and,
- f. Anyone reporting suspected child abuse, neglect, abandonment or dependency as a result of information derived from what might otherwise be considered privileged communication which was obtained while providing services to the alleged child victim or person responsible for that child.

2. For purposes of any civil or criminal proceeding, the person reporting suspected child abuse, neglect, abandonment, or neglect shall be presumed to have acted in good faith until proven otherwise.

**8-4-7. Responsibilities of Agencies Receiving Reports**

1. The police and child protection services shall cooperate to insure that reports of suspected child abuse, neglect, abandonment, or dependency can be received twenty-four (24) hours a day; and if the report is made to the police, the police shall give a copy of the report to child protection services as soon as possible, but no later than seventy-two (72) hours after the report is received by the police.

2. The name of the person making the report shall be kept confidential by the person receiving the report and the agencies on whose records the reporter's name appears; and the reporter may, however, be compelled to testify when issued a subpoena by the District Court judge following a show cause hearing at which it appears that the knowledge of the reporter is essential to proceedings in the case.

#### **8-4-8. Responsibility to Investigate**

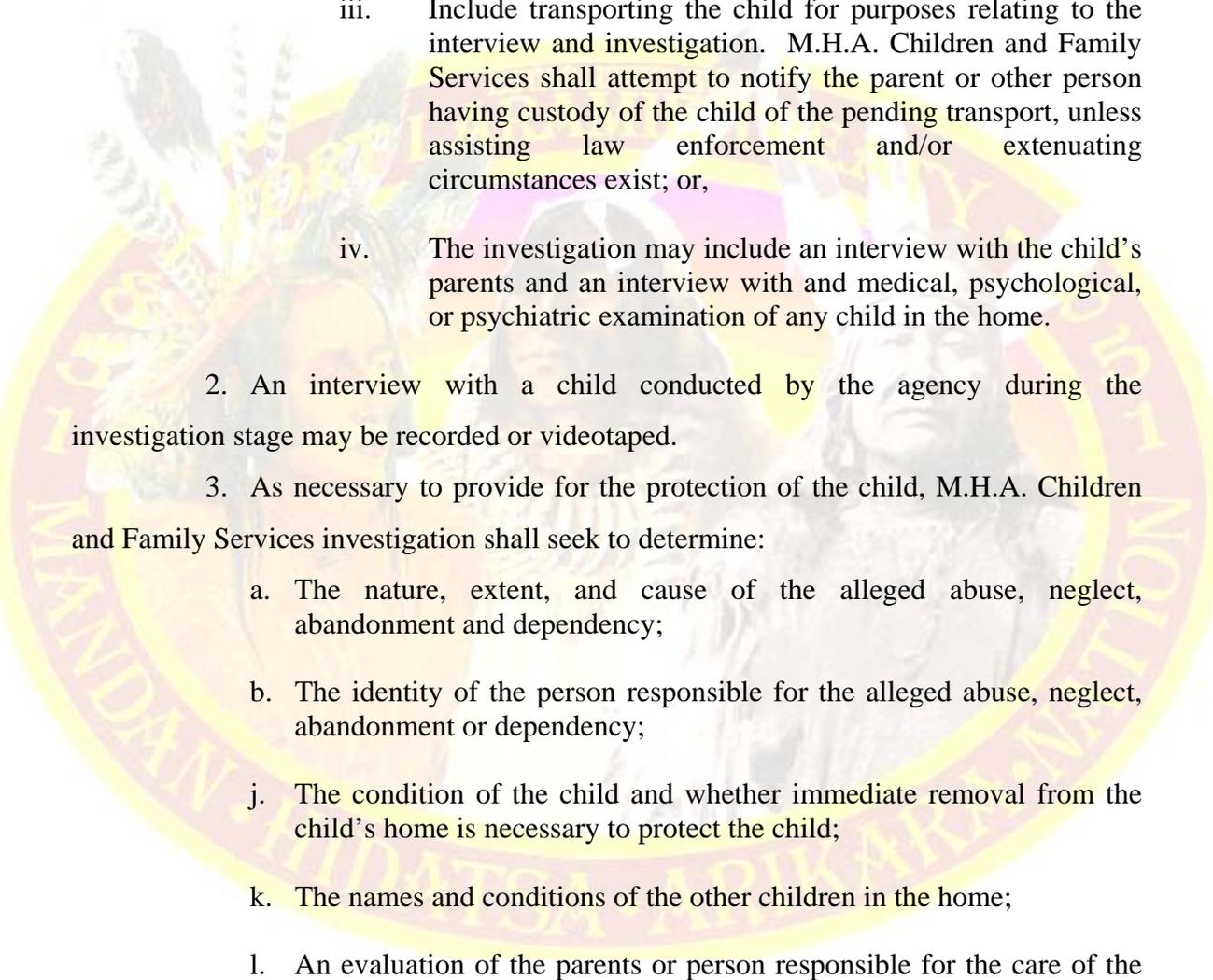
1. With assistance from the appropriate law enforcement agency as provided, in this Title, M.H.A. Children and Family Services shall make a prompt and thorough investigation of a report of child abuse, neglect, abandonment or dependency allegedly committed by a person responsible for a child's care, custody, or welfare. M.H.A. Children and Family Services is not required to investigate reports that allege child abuse or neglect by a person other than a person responsible for a child's care, custody, or welfare, instead the agency shall promptly notify law enforcement of such reports.

2. M.H.A. Children and Family Services shall, by policy assign priorities, risk factors and prescribe investigative procedures for investigations based on the severity and immediacy of the alleged harm to the child. The primary purpose of the investigation shall be the protection of the child. The policy must require the department, subject to the availability of funds, to:

- a. Respond within twenty-four (24) hours to a report of the death of a child or to a report of abuse, neglect, abandonment, or dependency, which appears to identify children at immediate risk of irreparable harm, these reports shall be assigned Priority One;
- b. Respond within forty-eight (48) hours to a report of abuse, neglect, abandonment, or dependency which appears to indicate children are at moderate risk of harm, these reports shall be assigned Priority Two; and,
- c. Respond within five (5) working days to a report of abuse, neglect, abandonment or dependency which appears to express concern for the child but present no special judgment of harm, these reports shall be assigned Priority Three.

#### **8-4-9. Conduct of Investigation**

1. An investigation by M.H.A. Children and Family Services may include:
  - a. A visit to the child's home, unless the alleged abuse, neglect, abandonment, or dependency can be confirmed or clearly ruled out without a home visit; and,
  - b. An interview with and examination of the subject child, which may include a medical, psychological, or psychiatric examination. The interview with and examination of the child may:

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- i. Be conducted at any reasonable time and place, including the child's home or the child's school;
  - ii. Include the presence of persons the department or designated agency determines are necessary;
  - iii. Include transporting the child for purposes relating to the interview and investigation. M.H.A. Children and Family Services shall attempt to notify the parent or other person having custody of the child of the pending transport, unless assisting law enforcement and/or extenuating circumstances exist; or,
  - iv. The investigation may include an interview with the child's parents and an interview with and medical, psychological, or psychiatric examination of any child in the home.
2. An interview with a child conducted by the agency during the investigation stage may be recorded or videotaped.
  3. As necessary to provide for the protection of the child, M.H.A. Children and Family Services investigation shall seek to determine:
    - a. The nature, extent, and cause of the alleged abuse, neglect, abandonment and dependency;
    - b. The identity of the person responsible for the alleged abuse, neglect, abandonment or dependency;
    - j. The condition of the child and whether immediate removal from the child's home is necessary to protect the child;
    - k. The names and conditions of the other children in the home;
    - l. An evaluation of the parents or person responsible for the care of the child;
    - f. The adequacy of the home environment;
    - g. The relationship of the child to the persons responsible for the care, custody, or welfare of the child; and,
    - h. Any other pertinent data.
  4. A written report of investigation shall be made within three (3) days after the investigation is concluded.

#### **8-4-10. Joint Investigations**

1. An investigation of a report to M.H.A. Children and Family Services that alleges that a child has been or may be the victim of conduct that constitutes a criminal offense that poses an immediate risk of physical or sexual abuse of a child that could result in the death or serious harm to the child shall be conducted jointly with law enforcement.

2. The inability or unwillingness of a law enforcement agency to conduct a joint investigation under this section does not constitute grounds to prevent or prohibit the department from performing its duties under this Title. The department shall document any instances in which a law enforcement agency is unable or unwilling to conduct a joint investigation under this section.

#### **8-4-11. Joint Investigation Training & Guidelines**

1. M.H.A. Children and Family Services may, in consultation with the appropriate law enforcement agencies, develop guidelines and protocols for joint investigations by the department and the law enforcement agency. It is recommended that the guidelines and protocols:

- a. Clarify the respective roles of M.H.A. Children and Family Services and law enforcement agency in conducting the investigation;
- b. Require mutual child protective services and law enforcement training and agreements be implemented by both entities to ensure the integrity and best outcomes of joint investigations; and,
- c. Incorporate the use of forensic methods in determining the occurrence of child abuse and neglect.

2. M.H.A. Children and Family Services should collaborate with law enforcement agencies to provide to agency investigators and law enforcement officers responsible for investigating reports of abuse, neglect, abandonment and dependency joint training relating to methods to effectively conduct joint investigations. The training should include information on interviewing techniques, evidence gathering, and testifying in court for criminal investigations, as well as instruction on rights provided by the Fourth Amendment to the United States Constitution and the Indian Civil Rights Act.

#### **8-4-12. Photographs, X-rays and Medical Examination of Injury or Trauma**

1. If areas of injury or trauma are visible on a child who is the subject of a report of suspected child abuse, neglect, abandonment or dependency, a medical professional shall examine the child and the person or authority noticing the injury or trauma may transport or arrange for the child's transportation to a medical facility without the permission of the child's parent, custodian or guardian. The medical examination may include the taking of x-rays where appropriate.

2. A medical professional, police officer, or staff member of M.H.A. Children and Family Services shall take color photographs of the visible injury or trauma.

3. The photographs, x-rays and records of the examination are admissible as evidence and may become part of the record of a Youth-in-Need-of Care proceeding under this Title.

4. The person responsible for taking the photographs or x-rays, and the person responsible for making the medical examination are custodians of these records and must personally deliver the photographs, x-rays or record of the examination to the person(s) designated by M.H.A. Children and Family Services to receive, maintain and preserve them.

#### **8-4-13. Protective Services and Removal**

1. If it appears from the investigation that the child suffered abuse, abandonment, neglect, or is dependent child protection services shall provide protective services to the child and may provide protective services to any other child under the same care.

2. If the person investigating a report of child abuse, neglect, abandonment, or dependency finds that the criteria for removal listed in 8-4-13.3(a)-(c) have been met, such person may remove the child from the home in which the child is residing and place the child in a temporary receiving home or other appropriate placement.

3. An authorized law enforcement officer or a representative of M.H.A. Children and Family Services shall not remove a child from the home of a child's parent, guardian or custodian without the consent of the parent, guardian, or custodian absent a specific order of the District Court unless reasonable grounds exist to believe:

- a. That the child is within the jurisdiction of the District Court,
- b. The child is in need of care; and,
- c. That the child's health, safety, and welfare will be seriously endangered if the child is not taken into custody.

**8-4-14. Power to Remove**

1. Designated persons employed by M.H.A. Children and Family Services and law enforcement shall have the power to remove a child from the home provided that:

- a. Reasonable grounds listed in Section 8-4-13.3(a)-(c) existed at the time of the removal to believe the emergency removal was necessary; and,
- b. The person removing the child provides for the safety and well-being of the child, until such time as the District Court assumes control of the matter.

2. Any physician examining an alleged abused, neglected, abandonment or dependent child who believes that the child is in immediate need of protection may refuse to release the child and keep the child in the custody of the medical facility for a period of up to seventy-two (72) hours. The physician shall immediately notify the police who shall then notify M.H.A. Children and Family Services.

3. M.H.A. Children and Family Services shall obtain an order authorizing protective custody of the child from the District Court within seventy-two (72) hours of the emergency removal unless the parents have made arrangements for the care of the child which are acceptable to the agency. The District Court shall have the authority in emergency situations to issue *ex parte* orders taking protective custody of Indian children for a period not to exceed ten (10) days. In order to issue such an order there must be a petition filed alleging that an emergency situation exists, pursuant to Section 8-4-13.3(a)-(c), including sworn affidavits supporting said allegations.

#### **8-4-15. Temporary Placement of Removed Children**

1. A child solely alleged to be a Youth-in-Need-of-Care shall not be detained in a jail, juvenile detention center nor other facility intended or used for the detention of adult offenders.

2. The following community based shelter care facilities may be used for temporary placement of removed children:

- a. Licensed foster home or a home otherwise authorized under law to provide foster care, group care, or protective residence;
- b. A facility operated by a licensed child welfare services agency; or
- c. Any other suitable place that meets the standards for emergency shelter care established by the agency.

3. A child who has been removed may be placed with a relative caregiver of the child who is willing to guarantee to the District Court that the child will not be returned to the alleged abusive or neglectful parent, guardian, or custodian without the prior approval of the Court.

**TITLE 8  
CHILD WELFARE CODE**

**Chapter 5  
Intervention & Transfer of Cases under the  
Indian Child Welfare Act**

**8-5-0. Policy**

1. It is the policy of the Mandan, Hidatsa and Arikara Nation to ensure compliance with and implement procedures to govern intervention and transfers in child custody proceedings, and to facilitate the requirements and spirit of the Federal Indian Child Welfare Act.

**8-5-1. Purpose**

1. The Purpose of this Chapter is to provide speedy and effective procedures for the processing of referrals under the Indian Child Welfare Act of 1978 (I.C.W.A.) from state courts in order to best protect the interests of the children of the Mandan, Hidatsa, and Arikara Nation and the interests of the Tribe. It is intended that the M.H.A. Children and Family Services will investigate cases referred to them, and will consider the appropriate course of action, based upon the best interests of the child, regarding the involvement of the Tribe. The procedures found in this Chapter are aimed at producing a thoughtful and wise decision in the matter of case monitoring, intervention and transfers of cases referred to the Agency.

**8-5-2. Agent for Receipt of Notice**

1. The tribal agent for receipt of notice from state courts of custody proceedings commenced in a state court shall be the ICWA Specialist of the M.H.A. Children and Family Services. In order to assist in assuring referrals from state courts are sent to the correct individual, it is recommended that M.H.A. Children and Family Services annually notify the North Dakota Department of Social Services and Fort Berthold Agency Superintendent of the name and proper mailing address of the tribal agent for the Mandan, Hidatsa, and Arikara Nation.

### **8-5-3. Duties of ICWA Specialist**

1. Upon receipt of notice of an initial referral from a state court, the ICWA Specialist shall:

- a. Document and record all essential information relevant to the referral, including:
  - i. The source of the referral;
  - ii. The names and addresses of the child, parent, guardian or custodian;
  - iii. The date of the referral;
  - iv. The type of the scheduled proceedings in the state court; and,
  - v. The tribal affiliation and blood quantum of the child, if known.
- b. Notify and provide a copy of the initial referral to a staff attorney with the Mandan, Hidatsa, and Arikara Nation.

2. The ICWA Specialist shall immediately determine if it is necessary to request the twenty (20) day extension to prepare for the case afforded to the Tribe under 25 U.S.C. § 1912(a). If such an extension is determined to be necessary the proper request shall be filed with the state court.

### **8-5-4. Intervention in State court Proceedings**

1. The M.H.A. Children and Family Services may intervene in a state court child custody proceeding, as defined in the Indian Child Welfare Act, at any point in the proceedings; and

2. Whenever a child who is member of or eligible for membership with the Nation is the subject of a child custody proceeding in a state court or other forum, it shall be the recommended policy that the M.H.A. Children and Family Services file a motion to intervene in the case, unless the good cause exists to not intervene. Motions for intervention should be made by M.H.A. Children and Family Services prior to the first adjudication by a state court.

3. The purpose of the intervention includes, but is not limited to, ensuring that the placement preferences of the Indian Child Welfare Act are followed, that the appropriate qualifications of witnesses are adhered to, that the proper attempts at reunification have been made, that the appropriate standards of proof are used by the state court and to ensure that any disposition of the child is culturally and socially appropriate for the child's needs and the Tribe's interests.

**8-5-5. I.C.W.A. Staffing Team**

1. M.H.A. Children and Family Services recognizes the need for an organized team of individuals to combine their efforts, skills and resources to work together with the Agency and the ICWA Specialist to consider the proper role for the Tribe in each Indian Child Welfare Case the Agency receives notice of and to collaborate in the formulation assessments regarding each case referred to the team.

2. The Director of M.H.A. Children and Family Services has the authority to appoint ICWA Staffing Team members, establish criteria for selection of members, the composition of the team, length of terms for team members and to promulgate policy regarding procedures and rules associated with staffing meetings.

**8-5-6. Assessment Procedure for Transfer of Jurisdiction**

1. The ICWA Staffing Team will meet and confer on cases which may be appropriate for transfer to the Fort Berthold District Court. M.H.A. Children and Family Services shall prepare a written assessment of the case, including a determination as to whether the case should be transferred from state court to the Fort Berthold District Court. The written assessment may include the following:

- a. Contact with the appropriate sources to determine the child's membership status and tribal affiliation and blood quantum of the child, if known;
- b. The source of the referral and whether the referral is one properly referred to the Nation under the Indian Child Welfare Act;
- c. Contact with the parent or custodian of the child, notification to them that the Nation received a referral and is considering transfer of the case to the Nation's jurisdiction;

- d. Contact with social, medical, legal or other sources to obtain necessary information regarding the circumstances of the case; and,
- e. The date the referral was received and the type of the scheduled proceedings in the State court.

2. Factors to be Considered in Determination: The ICWA Staffing Team shall consider the following factors:

- a. Whether the child is of sufficient age or maturity to express an opinion;
- b. Circumstances of the family;
- c. Any special needs of the child;
- d. The past and present residences of the child and the child's family and the child and family's ties with the tribal community;
- e. Whether the state is attempting to reunite the family;
- f. Availability of state and/or tribal services to meet the family's particular needs;
- g. Availability of suitable tribal homes for placement of the child;
- h. Whether state and federal assistance for the care of the child will continue if jurisdiction is transferred;
- i. The location of witnesses, documents, and other evidence and the existence of subpoena and other process limitations of tribal jurisdiction; and,
- j. Any other relevant factors.

3. The assessment shall be completed within a reasonable time.

4. The ICWA Staffing Team shall make the determination whether M.H.A. Children and Family Services shall petition for the transfer of jurisdiction and a copy of the assessment should be shared with the legal department's staff attorney.

### **8-5-7. Petition for Transfer of Jurisdiction**

1. Petition for the Transfer of Jurisdiction. M.H.A. Children and Family Services may present a petition to a state court having jurisdiction for child custody

proceeding involving an enrolled child or child eligible for membership in the Nation. The petition shall state that M.H.A. Children and Family Services has concurrently petitioned the Fort Berthold District Court for acceptance of jurisdiction and that Tribal jurisdiction will be accepted unless affirmatively declined for good cause by order of the tribal court. All petitions filed by M.H.A. Children and Family Services shall be approved by the ICWA Staffing Team and should be made within a reasonable time after receiving the initial notice of a referral and considering the factors associated with the case.

2. Any parent or Indian custodian may file a petition for the transfer of State court jurisdiction and may present such petition to the State court having jurisdiction over such proceeding. Any parent or Indian Custodian may also concurrently petition the District Court for the acceptance of jurisdiction.

**8-5-8. Petition for the Acceptance of Tribal Court Jurisdiction**

1. Petition for the Acceptance of Tribal Court Jurisdiction. Currently upon petitioning the State court for transfer of jurisdiction the M.H.A. Children and Family Services and any party other than M.H.A. Children and Family Services shall petition the Fort Berthold District Court for acceptance of jurisdiction. The Petition shall state:

- a. The M.H.A. Children and Family Services has concurrently petitioned the State court for transfer or jurisdiction;
- b. The full name, residence, date and place of birth, and sex of child;
- c. The names of the persons with whom the child has lived, the residences at which the child has lived, and the length of time the child has lived with each person and at each residence;
- d. The child's membership status in the Nation;
- e. The names and residences of the child's legal parents, guardians or custodians. The names and residences of putative fathers or step-parents, if any;
- f. The status of the case in State court;
- g. A statement setting forth the M.H.A. Children & Services' assessment and recommendations regarding transfer of jurisdiction; and,

h. Any other information relevant to the request for transfer.

2. Service and Notice of Hearing on Petition for Acceptance of Jurisdiction.

The parties to the petitions shall be served personally or by certified mail- return receipt requested at least ten (10) days before the hearing with a certified copy of the Petition and with a Notice of the Hearing on Acceptance of Jurisdiction that shall contain the following:

- a. Statement to the effect that the rights of the parent or parents may be affected, that the child custody proceeding may be transferred from state court to the Fort Berthold District Court, and that if the parent or parents fail to appear at the time and place specified in the notice, the state and/or Fort Berthold District Court may order transfer or acceptance of jurisdiction, and take any other action that is authorized by law; and,
- b. A statement advising the parent or parents of the right to hire an attorney at their own expense, and that if he/she cannot afford one, one may be appointed at the discretion of the Court, and upon the Court's determination of adequate funding and the party's indigency.

3. Petition to be Referred to the M.H.A. Children and Family Services;

Program will be Granted Automatic Standing. Upon receipt of a Petition for Acceptance of Jurisdiction from an Individual, the Fort Berthold District Court shall forward the petition to M.H.A. Children and Family Services and request an assessment from the Agency. The Court shall automatically grant standing to M.H.A. Children and Family Services as an interested party to express its opinion as to whether the Petition for Acceptance of Jurisdiction should be granted or denied. The M.H.A. Children and Family Services may submit a written assessment and recommendation on the individual's petition to the Fort Berthold District Court at least three (3) days prior to the hearing.

**8-5-9. Appeals of Adverse Rulings**

1. Decisions regarding appeal will be made on a case-by-case basis through consultation between M.H.A. Children and Family Services, the tribal legal department and the Tribal Council.

**8-5-10. Transfer Hearing**

1. Except by order of the Court for good cause shown or by waiver of the parties, the Court shall set a hearing on a Petition for Acceptance of Jurisdiction within thirty (30) days of the Petition; however, the hearing shall be held no later than fourteen (14) days following an order from the State court transferring jurisdiction.

**8-5-11. Order Accepting Jurisdiction**

1. Upon receipt of a State court order transferring jurisdiction to the Fort Berthold District Court and, ruling affirmatively on a Petition for Acceptance of Jurisdiction, the Tribal Court shall enter an Order Accepting Jurisdiction and an order directed to the State court to transfer certified files to the Fort Berthold District Court.

**8-5-12. Exercise of Jurisdiction**

1. The District Court will exercise its jurisdiction of cases transferred from a state court beginning at the stage in the state proceeding where the state court transferred jurisdiction. Transfers of child custody proceedings to the District Court shall not begin de novo.

**8-5-13. Order Denying Jurisdiction**

1. Upon denial of a Petition for the Acceptance of Jurisdiction, the Court shall enter an Order Denying Jurisdiction, and setting forth written findings of facts and conclusions of law supporting the denial, and shall forward a copy of the order to the State and the petitioning parties. In making its determination the court may consider, but is not limited to, the following factors:

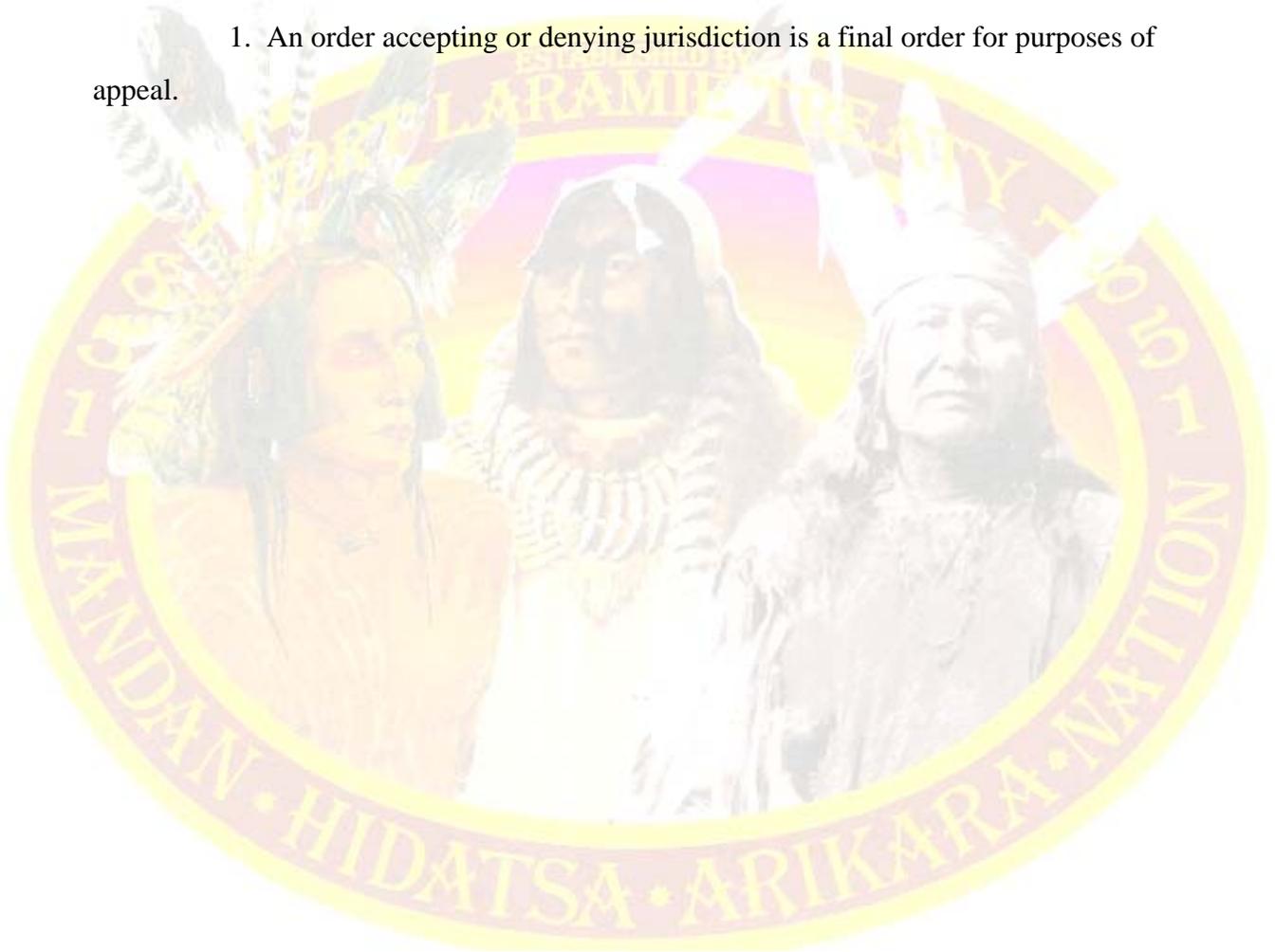
- a. Emotional, cultural, and family ties of child and family;
- b. The ability of necessary witnesses to appear in Court; and
- c. The ability of the Tribe to provide necessary services, including but not limited to counseling, medical treatment, and services to accommodate special needs children.

**8-5-14. Subsequent Hearings**

1. Upon acceptance of jurisdiction, the Fort Berthold District Court shall set further hearings as necessary.

**8-5-15. Final Order**

1. An order accepting or denying jurisdiction is a final order for purposes of appeal.



**TITLE 8  
CHILD WELFARE CODE**

**Part 6  
Youth-in-Need-of-Care Dependency Proceedings**

**8-6-0. Commencement of Proceedings**

1. A dependency case commences when:
  - a. A child is taken into protective custody as permitted under this Title; and/or,
  - b. A Petition is filed alleging that the child is a Youth-in-Need-of-Care, as set forth in this Title.

**8-6-1. Authorization to Take a Child into Protective Custody**

1. A child may be taken into protective custody by an authorized law enforcement officer or a representative of M.H.A. Children and Family Services.

**8-6-2. When Emergency Protective Custody is Authorized**

1. Emergency Protective custody of a child is authorized if:
  - a. An authorized law enforcement officer or a representative of M.H.A. Children and Family Services has reasonable grounds to believe that the child is within the jurisdiction of the Court, the child is in need of care, and that the child's health, safety, and welfare will be seriously endangered if the child is not taken into custody; and/or,
  - b. The District Court has issued an Emergency Pick Up and Protective Custody Order. If the judge cannot be present on the Reservation, an Emergency Pick Up and Protective Custody Order may be transmitted by the judge via telephone, computer, or fax.

**8-6-3. Dependency Jurisdiction Attaches at Time of Custody**

1. The District Court's dependency jurisdiction shall attach at the time the child is taken into protective custody, with or without a court order.

**8-6-4. Child Remains in Emergency Protective Custody**

1. Notwithstanding placement in the physical custody of a parent, guardian, or custodian, the child remains in the legal custody of the M.H.A. Nation pending the Temporary Custody Hearing.

**8-6-5. Termination of Emergency Protective Custody**

1. Emergency protective custody of the child under Section 8-6-2.1(a) shall terminate in seventy-two (72) hours unless a Petition has been filed and the Court has issued an order granting temporary protective custody of the child to the M.H.A. Nation.

**8-6-6. Duration of Order**

1. An *Ex-Parte* Emergency Pick Up and Protective Custody Order must be executed within twenty-four (24) hours from the time the judge issues it. A child taken into custody under such an order may be held for a period not to exceed 10 (ten) days, excluding Tribal holidays and weekends.

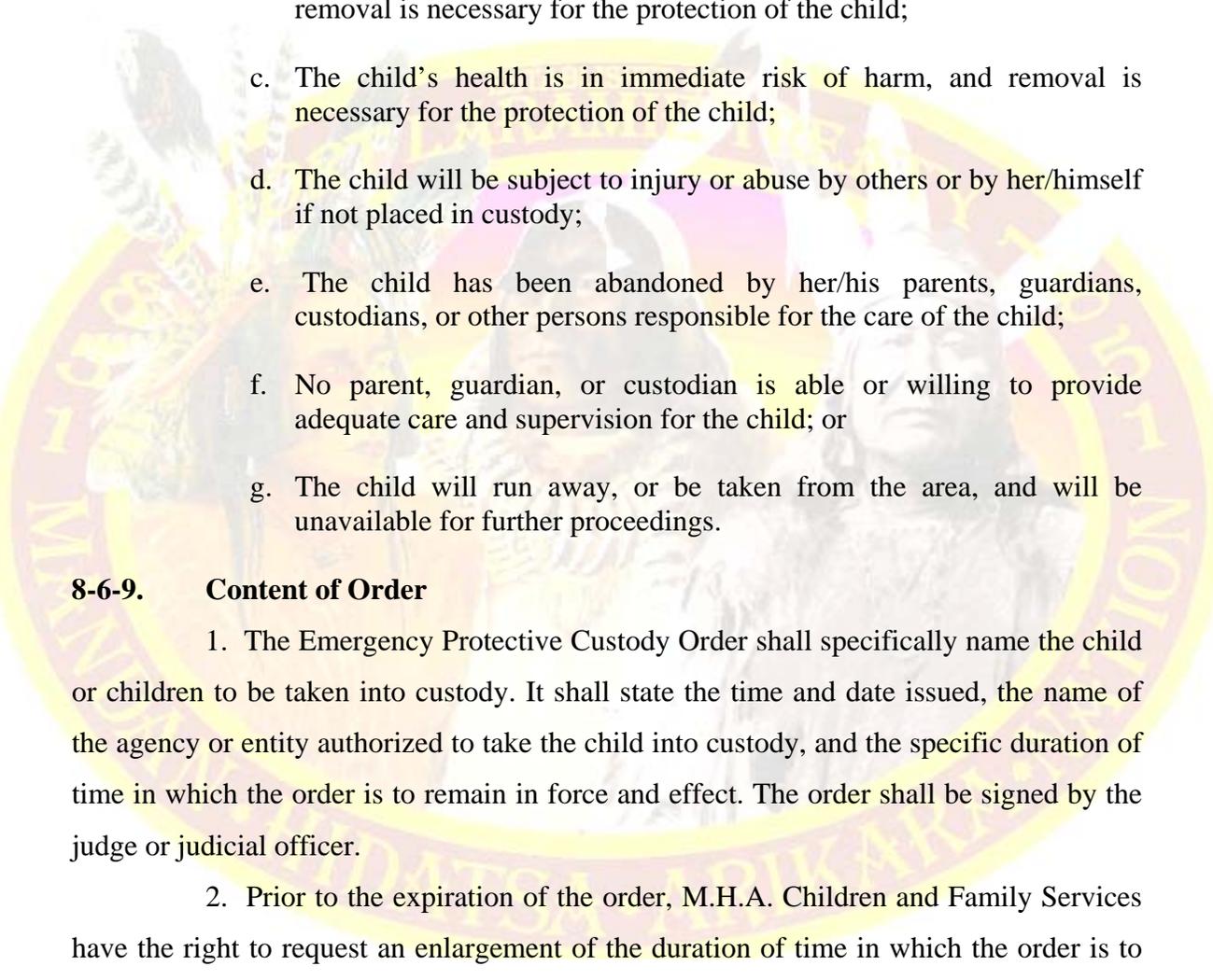
2. Absent a court order to the contrary, no child shall be held in the protective custody of the Tribe longer than seventy-two (72) hours, excluding Tribal holidays and weekends, without an order from the District Court, regardless of where the child is placed.

**8-6-7. Placement of the Child When Not Released**

1. A child who cannot be released to a parent, guardian, or custodian shall be placed, pending the Temporary Custody Hearing, according to the placement provisions set forth in this Chapter.

**8-6-8. Emergency Protective Custody Order**

1. The District Court shall issue an Emergency Protective Custody Order if the Court finds probable cause to believe that a child within the Court's jurisdiction is a Youth-in-Need-of-Care, and that the child's health, safety, and welfare will be seriously endangered if the child is not taken into protective custody. One or more of the following circumstances may provide probable cause to believe that the child's health, safety, and welfare will be seriously endangered if the child is not taken into protective custody:

- 
- a. The child is suffering from an illness or injury, and no parent, guardian, or custodian responsible for the child is able or willing to provide adequate treatment for the child;
  - b. The child is in immediate danger from her/his surroundings, and removal is necessary for the protection of the child;
  - c. The child's health is in immediate risk of harm, and removal is necessary for the protection of the child;
  - d. The child will be subject to injury or abuse by others or by her/himself if not placed in custody;
  - e. The child has been abandoned by her/his parents, guardians, custodians, or other persons responsible for the care of the child;
  - f. No parent, guardian, or custodian is able or willing to provide adequate care and supervision for the child; or
  - g. The child will run away, or be taken from the area, and will be unavailable for further proceedings.

**8-6-9. Content of Order**

1. The Emergency Protective Custody Order shall specifically name the child or children to be taken into custody. It shall state the time and date issued, the name of the agency or entity authorized to take the child into custody, and the specific duration of time in which the order is to remain in force and effect. The order shall be signed by the judge or judicial officer.

2. Prior to the expiration of the order, M.H.A. Children and Family Services have the right to request an enlargement of the duration of time in which the order is to remain in force and effect.

**8-6-10. Petitions Alleging that a Child is a Youth-in-Need-of-Care**

1. M.H.A. Children and Family Services may file a Petition alleging that a child named in the Petition is a Youth-in-Need-of-Care and is within the dependency jurisdiction of the District Court as provided in this Title.

**8-6-11. Timelines**

1. If M.H.A. Children and Family Services has probable cause to believe that the District Court has jurisdiction over the child, the agency may file a Petition with the Court.

2. Whenever reasonable, the agency shall file an *Ex-Parte* Petition for Emergency Pick Up and Protective Custody prior to the emergency removal of a child from parental custody.

3. When a child is removed from parental custody prior to the filing of a Petition and M.H.A. Children and Family Services continues to retain legal custody of the child, a Petition alleging that the child is a Youth-in-Need-of-Care and Requesting Emergency Protective Custody shall be filed within seventy-two (72) hours of the emergency removal of the child.

**8-6-12. Caption of the Youth-in-Need-of-Care Petition**

1. The Petition and all subsequent court documents in the proceeding shall be entitled: “In the Interest of \_\_\_\_\_(Child’s Name), a Child”,

**8-6-13. Contents of the Youth-in-Need-of-Care Petition**

1. The Petition shall set forth, in ordinary and concise language, the following facts as are known:

- a. The full name, residence, date of birth, sex of child, and tribal status;
- b. The names of the persons with whom the child lives; the residences at which the child has lived, for the previous year, if known; and the length of time the child has lived with each person and at each residence, if known;
- c. The names and residences of the child’s legal parents, guardians, or custodians. In addition, the names and residences of putative fathers or step-parents, if any;
- d. The facts upon which the allegations are based, and which, if true, would bring the child within the jurisdiction of the District Court as set forth in this Title. Such recitation shall include, but not be limited to, the date, time, and location where the alleged facts occurred, and the names of any alleged witnesses, as well as all other information upon

which the Petitioner relies to form a belief that the child is within the jurisdiction of the District Court;

- e. Whether there is a custody proceeding involving the child pending in another court;
- f. Whether any person other than a parent has or claims to have physical custody of the child, and if so, the name and the residence of that person;
- g. A citation to the specific section of this Title upon which Petitioner relies in alleging District Court jurisdiction over the child; and
- h. If the child is in shelter care, or other placement out of parental care, the time and date the child was placed, the location of the child, if not confidential, the reasons the child has been placed out of parental care, and the reasonable efforts made by the M.H.A. Children and Family Services program to prevent or negate the need for removal of the child.

**8-6-14. Verification of the Petition**

1. The statements in the Petition may be made upon information and good faith belief. The Petition shall contain affidavits and shall be prepared, dated, and signed by M.H.A. Children and Family Services and/or its legal representative.

**8-6-15. Summons and Notice of the Temporary Custody Hearing**

1. The District Court Clerk shall issue a Summons and Notice of the Temporary Custody Hearing and the moving party shall serve the Summons and Notice along with a copy of the Petition at least forty-eight (48) hours before the hearing is scheduled to take place. The summons and notice shall include:

- a. The date, time, place of the hearing, and a copy of the Petition alleging that a child is a Youth-In-Need-of-Care; and
- b. A statement describing the purpose of the hearing; and
- c. A statement indicating that the rights of the legal custodian, guardian, parent or parents may be affected in the proceeding and that if the legal custodian, guardian, parent or parents fail to appear at the time and place specified in the summons, the Court may conduct the

hearing in the person's absence and the possible consequences of the hearing may result in:

- i. The child being removed from home pursuant to Youth-in-Need-of-Care Petition;
  - ii. The child being removed from the home and placed in foster care or relative care, and such removal may lead to other proceedings for permanent out of home placement of the child, permanent transfer of the child's legal and physical custody to a relative or termination of parental rights;
  - iii. A finding that the statutory grounds set forth in the Petition have been proved; and,
  - iv. An order granting the relief requested.
- d. A statement advising the parties of the right to retain an attorney at their own expense.
2. Notice shall be served either personally, or via first class mail and certified mail- return receipt requested on:
    - a. The child's parent, current guardian, or custodian; and,
    - b. Any person the parties or the Court deem necessary for proper adjudication;
  3. If any party who is required to be personally served is outside the Tribe's service area, service shall be by certified mail, return receipt requested, or by any other means reasonably designed to give notice.
  4. Service shall be made by any person over the age of eighteen (18) who is not a party to the proceedings.

**8-6-16. Determination by the District Court**

1. At the conclusion of the Temporary Custody Hearing, the Court shall make written findings as to:
  - a. The tribal status of the child;

- b. Whether or not probable cause exists to believe that the child is a Youth-in-Need-of-Care as alleged in the Petition, or as otherwise determined;
- c. Whether continued protective custody is necessary for the protection of the child pending the Adjudicatory Hearing and, if so, whether the child should remain in the physical custody of a parent, guardian, or custodian, or be placed in shelter, or other care pending the Adjudicatory Hearing;
- d. Whether interim orders for the protection of the child and/or the family should be made while further proceedings are being considered. The Court may issue any of the following orders: restraining orders, evaluation and treatment (including involuntary residential treatment) of substance abuse, mental illness, and emotional disturbance, parenting classes, mandatory school attendance, visitation; and any other services or activities for the benefit of the child and his/her family;
- e. Whether additional hearings are warranted;
- f. The addresses of the parties. The parties shall be ordered to keep the Court informed as to any changes in their whereabouts, mailing addresses and telephone numbers.

**8-6-17. Attendance of Parent, Guardian, or Custodian**

1. If the child's parent, guardian, or custodian is not present at the Temporary Custody Hearing, the Court shall determine what efforts have been made to notify them and obtain their presence. If reasonable efforts have been made, the Court may proceed with the hearing in their absence.

**8-6-18. Right to Present Evidence**

1. A parent, lawyer for a parent, a child over the age of twelve (12) or lawyer for a child of any age, shall be given the opportunity to present evidence to the Court at the Temporary Custody Hearing, which may include evidence that the child can be returned to parental care pending the Adjudicatory Hearing without further jeopardy to the child's health or safety, without endangering the health or safety of others, or without fear of removal of the child from the area.

**8-6-19. Disposition on Finding of Probable Cause**

1. If the Court determines there is probable cause to believe the child is a Youth-in-Need-of-Care, the Court may:

- a. Continue the Petition, grant legal custody of the child to the Tribe, whereby the Tribe may place the child in the physical custody of the parent, guardian, or custodian pending the Adjudicatory Hearing; or
- b. Continue the Petition, grant legal custody of the child to the Tribe, whereby the Tribe may place the child in the physical custody of another appropriate person, or in shelter or foster care as approved by M.H.A. Children and Family Services for a period of time not to exceed thirty (30) days; or
- c. Affirm any other reasonable plan supported by the evidence, including but not limited to the postponement of proceedings, a Family Reunification Agreement, mediation, or a plan stipulated to by the parties; and
- d. Order such restrictions on contact or visitation that the Court deems appropriate.

**8-6-20. Setting of Admit/ Deny Hearing**

1. The Court shall set the date for the Admit/Deny Hearing upon the request of M.H.A Children and Family Services. Date of hearing shall be within forty-five (45) calendar days from the date and time the Petition alleging that the child is a Youth-in-Need-of-Care was filed.

**8-6-21. Notice of Admit/Deny Hearing**

1. M.H.A Children and Family Services shall issue notice of the Admit/Deny Hearing at least ten (10) calendar days before the hearing is scheduled to take place. Notice shall include:

- a. The date, time, place of the hearing, and a copy of the Petition alleging that a Child is a Youth-In-Need-of-Care; and
- b. A statement describing the purpose of the hearing; and,
- c. A statement indicating that the rights of the legal custodian, guardian, parent or parents may be affected in the proceeding and that if the

legal custodian, guardian, parent or parents fail to appear at the time and place specified in the notice, the court may conduct the hearing in the person's absence and the possible consequences of the hearing may result in:

- i. The child being removed from home pursuant to Youth-in-Need-of-Care Petition;
  - ii. The child being removed from the home and placed in foster care or relative care, and such removal may lead to other proceedings for permanent out of home placement of the child, permanent transfer of the child's legal and physical custody to a relative; or termination of parental rights;
  - iii. A finding that the statutory grounds set forth in the Petition have been proved; and,
  - iv. An order granting the relief requested.
- d. A statement advising the parties of the right to retain an attorney at their own expense.
2. Notice shall be served either personally or via first class mail and certified mail-return receipt requested on:
    - a. The child's parent, current guardian, or custodian, and
    - b. Any person the parties or the Court deem necessary for proper adjudication.
  3. If any party who is required to be personally served is outside the Tribe's service area, service shall be by certified mail-return receipt requested, or by any other means reasonably designed to give notice.
  4. Service shall be made by any person over the age of eighteen (18) who is not a party to the proceedings.

#### **8-6-22. Admit/Deny Hearing**

1. When hearing must be held. Except as provided by order of the Court and for good cause shown, the Court shall hold an Admit Deny Hearing on the Petition no

later than forty-five (45) calendar days after the Petition has been filed unless exceptional reasons for a continuance are found.

2. Dismissal of the Petition. The Court may, at any time, on the Court's own motion, or the motion of any party, dismiss the Petition. If the Court dismisses the Petition, the Court will set forth in a written order relevant findings in support of the dismissal.

3. General Rights Advisory. Parents, guardians or custodians present at an Admit/Deny Hearing shall be advised of the following principles associated with child protection proceedings:

- a. Possible consequences for failure to appear;
- b. Possible consequences of child protection proceedings as they relate to the future custody of respondent's children, including the possibility that in order to ensure the continued health and safety of the child/children the Court may order the respondent's child/children remain in the custody of M.H.A. Children and Family Services pending the an adjudicatory hearing;
- c. Right to obtain legal counsel at respondent's own expense;
- d. Basic procedural rights (notice, presence in court, discovery, motions, participation in settlement or agreed orders, witnesses, cross examination, the right to make arguments in support of or against the Petition, and presentation of evidence);
- e. Explanation that admittance and/or denial is not required and that the respondent has the right to an Adjudicatory Hearing where the Petition must be proven by clear and convincing evidence; and,
- f. Admission and/or denial to allegations in Youth-in-Need-of-Care Petition shall be made under oath.

### **8-6-23. Setting of the Adjudicatory Hearing**

1. The Court shall set the date for the Adjudicatory Hearing at the conclusion of the Admit-Deny Hearing or by the request of M.H.A. Children and Family Services. The date of hearing shall be within seventy-five (75) calendar days from the date the Petition alleging that the child is a Youth-In-Need-of-Care was filed. If the parent(s), guardian(s), or custodian(s) were not present at the Admit/Deny Hearing a Notice of

Adjudicatory Hearing shall be served upon the parent(s), guardian(s), or custodian(s) as required by Section 8-6-24.

**8-6-24. Notice of Adjudicatory Hearing**

1. The moving party shall issue notice of the Adjudicatory Hearing at least ten (10) *calendar* days before the hearing is scheduled to take place. Notice shall include:

- a. The date, time, place of the hearing, and a copy of the Petition alleging that a child is a Youth-In-Need-of-Care; and
- b. A statement describing the purpose of the hearing; and
- c. A statement indicating that the rights of the legal custodian, guardian, parent or parents may be affected in the proceeding and that if the legal custodian, guardian, parent or parents fail to appear at the time and place specified in the notice, the Court may conduct the hearing in the person's absence and the possible consequences of the hearing may result in:
  - i. The child being removed from home pursuant to Youth-in-Need-of-Care Petition;
  - ii. The child being removed from the home and placed in foster care or relative care, and such removal may lead to other proceedings for permanent out of home placement of the child, permanent transfer of the child's legal and physical custody to a relative, or termination of parental rights;
  - iii. A finding that the statutory grounds set forth in the Petition have been proved; and
  - iv. An order granting the relief requested.
- d. A statement advising the parties of their right to retain an attorney at their own expense
- e. A statement indicating that a Dispositional Hearing may be held at the conclusion of the Adjudicatory Hearing.

2. Notice shall be served either personally or via first class mail and certified mail-return receipt requested on:

- a. The child's parent, guardian, or custodian; and
  - b. Any person the parties or the Court deem necessary for proper adjudication.
3. If any party who is required to be personally served is outside the Tribe's service area, service shall be by certified mail-return receipt requested or by any other means reasonably designed to give notice.
4. If any party's current address is unknown the Notice of the Adjudicatory Hearing shall be published for one week in a regularly published newspaper where the Court sits.
5. Service shall be made by any person over the age of eighteen (18) who is not a party to the proceedings.

**8-6-25. Dismissal of the Petition**

1. If the Court determines there is no probable cause to believe the child is a Youth-in-Need-of-Care, the Petition shall be dismissed without prejudice, and the child released from protective custody.

**8-6-26. Case Plan Pending Admit-Deny and Adjudicatory Hearing**

1. Prior to the Adjudicatory Hearing, the parent, guardian, or custodian may request that M.H.A. Children and Family Services hold a conference with the parents, guardians, or custodians, all attorneys or advocates, the child, if appropriate, and any other persons who may provide helpful participation, as approved by M.H.A. Children and Family Services. For parent, guardian, or custodian willing to work cooperatively with M.H.A. Children and Family Services pending the Adjudicatory Hearing, M.H.A. Children and Family Services shall, with the participation of the family in a meeting using the Strength Based or Wrap Around Model, develop an appropriate case plan, designed to protect the child's health and safety and to reunify the family. The plan will be detailed and specific as to:

- a. The areas in which the family needs assistance;

- b. The services required to address those needs;
- c. Who will provide the services;
- d. The time lines to which the family and M.H.A. Children and Family Services will be held for completion of services; and
- e. How the family's progress, or lack of progress, will be measured.

**8-6-27. Agreed Order**

1. At a conference, or at another appropriate time and place, an alternative to the Adjudicatory Hearing, an Agreed Order, may be discussed. If such an agreement is satisfactory to the party and M.H.A. Children and Family Services, it will be presented to the Court.

2. The Agreed Order shall be reduced to writing and signed by the parties and shall state the conclusions reached as a result of the conference, specifying in detail what is expected of M.H.A. Children and Family Services and the parties entering into the agreement. Each party will receive a copy of the signed agreement which should include a statement that the agreement has been read to the parties and that they understand the requirements and consequence of the agreement.

3. The parties entering into the agreement shall admit, under oath, the allegations in the Petition, which allegations may be amended as agreed upon by the parties so long as the parties admit to facts which support a finding by the Court that the child is a Youth-in-Need-of-Care. By these admissions, the parties give up their right to an Adjudicatory Hearing.

4. The Court shall enter an order continuing the Petition and adopting the Agreed Order.

**8-6-28. Court Postponement and Findings**

1. Upon acceptance of the admissions of the parties and the written Agreed Order, the Court will continue protective custody of the child, but will postpone entering adjudicatory findings, and will postpone making the child a ward of the Court.

**8-6-29. Time Limit**

1. The Agreed Order will be in effect no longer than six (6) months, except upon order of the Court.

**8-6-30. Review, Continuation, Dismissal, Adjudication, or Extension of Agreed Order**

1. M.H.A. Children and Family Services shall, with the family if possible, review the family's progress at least every sixty (60) calendar days. If, at any time after the initial sixty (60) calendar day period, but before the expiration of six (6) months, M.H.A. Children and Family Services concludes that the party entering into the agreement is fully compliant, and it is in the best interests of the child, M.H.A. Children and Family Services may move the Court for dismissal of the case. If, at any time after the initial sixty (60) *calendar* day period, but before the expiration of six months, M.H.A. Children and Family Services concludes that the party entering into the agreement is non-compliant, and that continuing the agreement is not in the best interests of the child, M.H.A. Children and Family Services may move the Court for termination of the Agreed Order and an Adjudicatory Order. If good cause is shown, the agreement can be extended, but no longer than an additional six (6) months.

2. If the party entering into the Agreed Order successfully completes the agreement, M.H.A. Children and Family Services will notify the Court, and the Court may dismiss the Petition, without prejudice, as to that party. The Court may do so without a hearing.

3. If there is a dispute as to whether or not the agreement has been successfully completed, a hearing may be set prior to the expiration of the agreement and the Court will determine the matter.

**8-6-31. Right of a Party to Request an Adjudicatory Hearing**

1. A party who chooses not to enter into an Agreed Order has a right to an Adjudicatory Hearing as to her/himself, regardless of whether another party has entered into an Agreed Order on her/his own behalf.

### **8-6-32. Adjudicatory Hearing**

1. When hearing must be held. Except as provided by order of the Court and for good cause shown, the Court shall hold a hearing on a Petition alleging the child is within the jurisdiction of the Court no later than seventy-five (75) calendar days after the Petition has been filed unless exceptional reasons for a continuance are found. The Court may also schedule and hear the matter on an expedited basis by a preponderance of the evidence that exceptional circumstances exist.

2. Dismissal of the Petition. The Court may, at any time, on the Court's own motion, or the motion of any party, dismiss the Petition. If the Court dismisses the Petition, the Court will set forth in a written order relevant findings in support of the dismissal.

### **8-6-33. Information That Need Not Be Disclosed**

1. The following material and information need not be disclosed: attorney work product, legal research, records, correspondence, reports or memoranda to the extent that they contain the opinions, theories, or conclusions of the attorneys or their agents or any other privileged attorney-client communications.

2. When some parts of certain material are subject to disclosure and other parts are not, a party may redact from the material those parts which are not subject to disclosure.

3. Privileged or confidential medical information, including the results of physical or mental exams, may be disclosed only by court order. The Court may restrict disclosure to the party's attorney and/or advocate, who shall be prohibited from copying said material, but shall be allowed to read or summarize it to the client. If the parent or child is pro se, the Court may restrict disclosure to M.H.A. Children and Family Services, or other appropriate person, who may be required to read or summarize the document to the parent or child.

4. Upon a showing of good cause, the Court may at any time order that specified disclosure be denied, restricted, or deferred, or make such other orders as is appropriate; a good cause showing may be made in camera, recorded, and/or sealed, if appropriate.

5. Notwithstanding the subsections above, attorney-client privileged communications shall not be subject to disclosure.

**8-6-34. Determination by the Court**

1. At the conclusion of the Adjudicatory Hearing, the Court shall make written findings as to whether there is clear and convincing evidence that the child is a Youth-in-Need-of-Care.

**8-6-35. Final Order**

1. An Adjudicatory Order is a final order for purposes of appeal.

**8-6-36. Youth-in-Need-of-Care Dispositional Hearing**

1. At the termination of the Adjudicatory Hearing the Court shall enter an appropriate order directing the disposition to be made in the case. The Dispositional Hearing may be held immediately after, or within twenty (20) calendar days of the Adjudicatory Hearing, except upon order of the Court.

**8-6-37. Notice of Dispositional Hearing**

1. In the event the Dispositional Hearing is not held immediately after the Adjudicatory Hearing, all parties, shall be served with a Notice of Dispositional Hearing and their right to appear and be heard at the hearing, no later than five (5) calendar days before the Dispositional Hearing.

**8-6-38. Case Plan at Disposition**

1. In every case in which a child is found to be within the jurisdiction of the Court, M.H.A. Children and Family Services shall prepare and submit a case plan to the Court at the Dispositional Hearing. The case plan shall be consistent with the best interests and special needs of the child, and shall:

- a. Be developed by M.H.A. Children and Family Services with the assistance and involvement of the family, relatives, extended family, and other relevant participants, whenever possible, under a Wrap Around and/or Strength Based Model approach. The report shall name the participants and their relationship to the case;

- b. Provide a detailed and specific plan for care of, and assistance to, the child and family, which plan is calculated to prevent or eliminate the need for removal of the child from parental care, and to resolve the problems adjudicated in the Petition. The plan shall include, but not be limited to:
  - i. Description of the family's needs;
  - ii. Description of services which will be required to address those needs;
  - iii. Designation of who will provide those services, when, and how;
  - iv. Timelines to which the family and M.H.A. Children and Family Services will be held for completion of services; and,
  - v. Description of how the family's progress, or lack of progress, will be measured.

2. If the child is placed out of parental care, the plan will set out in detail the visitation which M.H.A. Children and Family Services will provide between the child and parent, guardian, or custodian, and relatives, if appropriate.

#### **8-6-39. Ward of the Court-Duration of Wardship**

1. If the Court finds that the child is a Youth-in-Need of-Care, the Court may make the child a Ward of the Court. The Court's wardship over the child continues, and the child is subject to the Court's jurisdiction, until one of the following occurs:

- a. The Court dismisses the case concerning the child, or enters an order terminating wardship and temporary custody;
- b. The Order containing a specific period of time for wardship expires;
- c. The child becomes eighteen (18) years old, and has not been thereafter continued in the jurisdiction of the Court;
- d. Permanent Guardianship is granted by the Court;
- e. The child is emancipated by marriage or Court order; or

- f. A Decree of Adoption of the child is entered by a Court.

**8-6-40. Dispositions of Youth-in-Need-of-Care**

1. If the child is found to be a deprived child the Court may make any of the following orders of disposition best suited to the protection and physical, mental and moral welfare of the child.

- a. Permit the child to remain with his parents, guardian or other custodian, subject to the conditions and limitations as the Court prescribes, including supervision as directed by the Court for the protection of the child.
- b. Subject to conditions and limitations as the Court prescribes, transfer temporary legal custody to any of the following:
  - i. Any individual who, after study by M.H.A. Children and Family Services or other agency designated by the Court, is found by the Court to be qualified to receive and care for the child. First preference shall be given the extended family members followed by tribal members, and then to other Indians.
  - ii. An agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child.
  - iii. M.H.A. Children and Family Services or other tribal or public agency authorized by law to receive and provide care for the child.
- b. Require the parents, guardian or other custodian to participate in the treatment ordered for the child.

2. Unless a child found to be a Youth-in-Need-of-Care is also found to be delinquent he shall not be committed to or confined in an institution or other facility designed or operated for the benefit of delinquent children.

**8-6-41. Required Findings / Reasonable Efforts / Concurrent Planning**

1. When the Court enters an order removing a child from the legal custody of a parent, guardian, or custodian, and placing the child in the temporary legal custody of M.H.A. Children and Family Services or placing the child in the temporary physical custody of the parent, or other custodian, or when the Court enters an order continuing temporary legal custody with M.H.A. Children and Family Services; the Court shall set forth written findings, including:

- a. Whether removal of the child from the legal custody of the parent, guardian, or custodian was, and continues to be, in the best interests of the child; whether placement of the child out of parental care was and continues to be in the best interests of the child. The Court will consider the child's health, safety, and welfare;
- b. Whether reasonable efforts, considering the circumstances of the child and parents, have or have not been made by M.H.A. Children and Family Services to prevent or eliminate the need for removal of the child from parental care and to make it possible to reunify the family;
- c. Whether the Court finds that the case plan is acceptable and designed to make reunification likely.

2. In support of its determination of whether or not reasonable efforts have been made by M.H.A. Children and Family Services, the Court shall enter a description of what preventive and reunification efforts were made.

3. Where the initial contacts with the family have occurred during an emergency in which the child could not safely remain in parental care, even with reasonable services being provided, M.H.A. Children and Family Services shall be considered to have made reasonable efforts to prevent or eliminate the need for removal of the child.

4. Where the Court finds that reasonable preventive or reunification efforts have not been made, but that such efforts, even if made, could not have prevented the removal of the child for the child's health, safety, and welfare, M.H.A. Children and Family Services shall be considered to have made reasonable efforts to prevent or eliminate the need for removal of the child.

5. Reasonable efforts are not required, but may be offered at the discretion of M.H.A. Children and Family Services, and with approval of the Court, where:

- a. The parent has been convicted of involvement in the murder or voluntary manslaughter of any child;
- b. The parent has been convicted of felony assault that resulted in serious bodily injury to the child or another child, or step-child of the parent, or to any child of a partner with whom the parent is cohabiting or is in a cohabiting-type relationship; or
- c. The Court, or a court of competent jurisdiction, has determined that the parent has subjected the child to aggravated circumstances including, but not limited to: torture, sexual abuse, and/or serious physical abuse and complete abandonment.

**8-6-42. Placement Preferences**

1. Placement Priorities. When a Youth-in-Need-of-Care has been placed in the temporary legal custody of M.H.A. Children and Family Services, and cannot be released back to a parent, guardian, or custodian, M.H.A. Children and Family Services shall, whenever possible, considering foremost the best interests of the child and the child's health, safety, and welfare, place the child in the temporary physical custody of one of the following, in order of preference and priority:

- a. Relatives or extended family members;
- b. Private Tribal home, licensed or approved by M.H.A. Children and Family Services, close to the parental home;
- c. Private Native home, licensed or approved by M.H.A. Children and Family Services, close to the parental home;
- d. Private non-native home, licensed or approved by M.H.A. Children and Family Services, close to the parental home; or
- e. In an emergency placement.

2. Notwithstanding the above, M.H.A. Children and Family Services, with good cause shown, shall have the discretion to place the child in a placement that serves the best interests of the child; this may include a confidential placement, the location of which will be disclosed only to the Court.

3. Siblings shall be placed together whenever possible, if it is in their best interests to do so.

4. A child shall be placed in the least restrictive placement available to meet the child's treatment needs.

5. A child shall be placed in as close proximity to the parent as possible, to facilitate and encourage visitation and reunification depending on whether such a placement is available and will comport with the any special needs of the child and/or the child's best interests.

6. Whenever a child is placed out of parental care in the care of a foster parent, a facility, or other custodian, or whenever a child receives services from a professional, such as a counselor, the Court shall require, as a prerequisite, that the custodian and/or service provider be notified in writing by M.H.A. Children and Family Services that their presence in Court may be required upon occasion for the giving of testimony, or that a written report to the Court may be required. Agreement thereafter to foster, treat, or serve the child will be deemed to be consent to participate in Court proceedings.

7. Placements outside the Mandan, Hidatsa, and Arikara Nation- Placement of a child with anyone who is not a member of the Mandan, Hidatsa and Arikara Nation or who does not reside on the Fort Berthold Reservation shall be contingent on the person's written agreement to accept the jurisdiction of the Fort Berthold District Court and to cooperate fully with M.H.A. Children and Family Services.

**8-6-43. Final Order**

1. A Dispositional Order is a final order for purposes of appeal.

**8-6-44. Youth-in-Need-of-Care - Permanent Plan Review Hearing**

1. Any party, including but not limited to the custodian, may request a review hearing at any time. Upon receiving a motion or request for review, the Court will examine the substance of the request, and may set a hearing at the Court's discretion if there appears to be a justiciable reason to do so.

**8-6-45. Notice of Permanent Plan Review Hearing**

1. Notice of Review Hearing: The moving party shall issue notice of the Review Hearing at least ten (10) calendar days before the hearing is scheduled to take place.

a. Notice shall include:

i. The date, time, and place of the hearing; and,

ii. A statement indicating that the rights of the legal custodian, guardian, parent or parents may be affected in the proceeding and that if the legal custodian, guardian, parent or parents fail to appear at the time and place specified in the Notice, the Court may take legal custody of the child from the parent, guardian, or custodian, make the child a ward of the Court, and take any other action that is authorized by law.

2. Notice shall be served via first class mail and certified mail-return receipt requested on:

a. M.H.A. Children and Family Services;

b. The child's parent, current guardian, or custodian; and,

c. Any person the parties or the Court deem necessary for proper adjudication.

3. Service shall be made by any person over the age of eighteen (18) who is not a party to the proceedings.

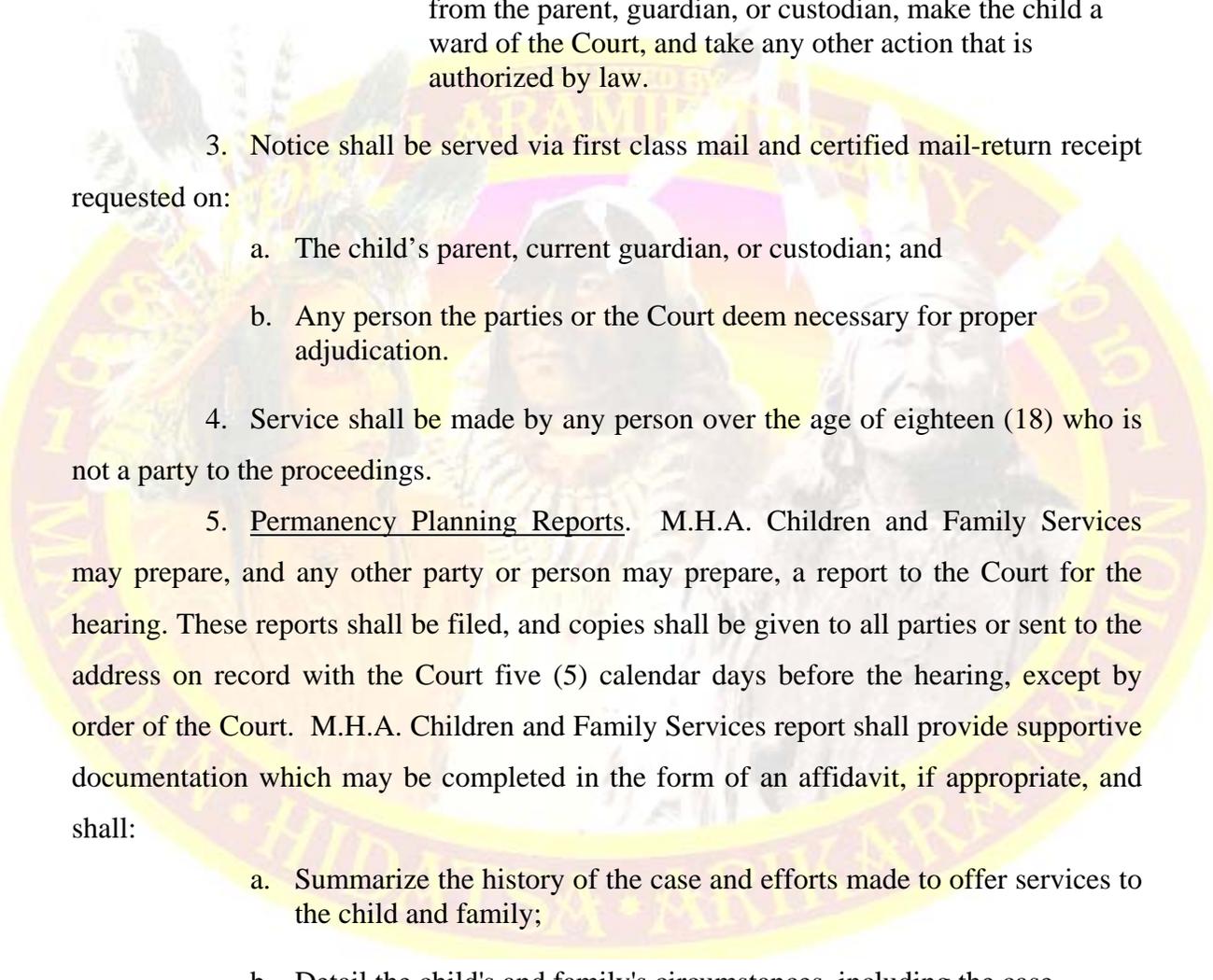
**8-6-46. Permanent Plan Hearing**

1. Permanent Plan Hearing Required. Within twelve (12) months of the date of the Adjudatory Order making the child a Ward of the Court, the Court shall hold a Permanent Plan Hearing to determine the permanent status of the child.

2. Notice of Permanent Plan Hearing. M.H.A. Children and Family Services shall issue notice of the Permanent Plan Hearing at least ten (10) calendar days before the hearing is scheduled to take place.

a. Notice shall include:

i. The date, time, and place of the hearing; and,

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- ii. A statement indicating that the rights of the legal custodian, guardian, parent or parents may be affected in the proceeding and that if the legal custodian, guardian, parent or parents fail to appear at the time and place specified in the Notice, the Court may take legal custody of the child from the parent, guardian, or custodian, make the child a ward of the Court, and take any other action that is authorized by law.
  3. Notice shall be served via first class mail and certified mail-return receipt requested on:
    - a. The child's parent, current guardian, or custodian; and
    - b. Any person the parties or the Court deem necessary for proper adjudication.
  4. Service shall be made by any person over the age of eighteen (18) who is not a party to the proceedings.
  5. Permanency Planning Reports. M.H.A. Children and Family Services may prepare, and any other party or person may prepare, a report to the Court for the hearing. These reports shall be filed, and copies shall be given to all parties or sent to the address on record with the Court five (5) calendar days before the hearing, except by order of the Court. M.H.A. Children and Family Services report shall provide supportive documentation which may be completed in the form of an affidavit, if appropriate, and shall:
    - a. Summarize the history of the case and efforts made to offer services to the child and family;
    - b. Detail the child's and family's circumstances, including the case management and casework by M.H.A. Children and Family Services, since the prior Court hearing;
    - c. Detail the compliance made or not made by the parent, guardian, or custodian and M.H.A. Children and Family Services;
    - d. Detail the efforts made to develop a concurrent plan, if necessary, to be implemented in the event the family cannot be reunified, and efforts made to implement that concurrent permanent plan;

- e. Give specific reasons why the particular recommended permanent plan has been chosen, specifying why that plan meets the child's particular needs and best interests, rather than other permanent plans which have not been chosen; and,
- f. If required by applicable federal law, detail the compelling reasons why termination of parental rights is not being recommended as the permanent plan.

6. Permanent Plans. The Court may approve by Court Order, but is not limited to any of the following permanent plans:

- a. Return of Custody: The child will be returned to a parent,
- b. Termination of Parental Rights and Adoption: That a Petition for the Termination of Parental Rights be filed and that the permanent plan of the child may be adoption.
- c. Permanent Guardianship: A Legal Guardian will be appointed for the child;
- d. Long Term Substitute Care: The child, because of his/her special needs, be placed in Long Term Substitute Care, until such time as the child can accommodate a less restrictive plan.
- e. Permanent Plan Long Term Living Arrangement: The child is to be placed in an alternative to a permanent plan home with a person other than their parent or guardian.

**8-6-47. Parental Rights**

1. In any of the permanent plans identified above, the parent, guardian, or custodian has the following rights, which are to be determined in light of, the child's best interests:

- a. Return of Custody. The right to seek return of full legal and physical custody of the child and termination of guardianship.
- b. Termination of Parental Rights and Adoption. If parental rights are terminated the parent has no parental rights, except as specified in any termination order or adoption order.
- c. Permanent Guardianship. The right to seek visitation by Court order. The right to Petition the Court no more than once a year for return of custody. At any hearing on the Petition for Return of Custody the

Petitioner must show by clear and convincing evidence that there has been a substantial change of circumstances and that it is in the best interests of the child to be returned to parental care. A hearing on the Petition will be set only if the Petition states a prima facie showing in the Petition to the Court.

- e. Long Term Substitute Care. Depending on the circumstances of the case, the right to seek visitation and/or return of custody.
- f. Permanent Plan Long Term Living Arrangement. The right to seek visitation and return of custody. The right to Petition the Court no more than once a year for return of custody. At any hearing on the Petition for Return of Custody the Petitioner must show by clear and convincing evidence that there has been a substantial change of circumstances and that it is the best interests of the child to be returned to parental care. A hearing on the Petition will be set only if the Petition states a prima facie showing to the Court.

#### **8-6-48. M.H.A. Children and Family Services Obligations**

1. In any of the permanent plans identified above, M.H.A. Children and Family Services has the following obligations to the parent, guardian, or custodian:
  - a. Return of Custody. M.H.A. Children and Family Services are obligated to continue to provide services designed to result in the return of the child to parental custody.
  - b. Termination of Parental Rights and Adoption. Once a Petition to Terminate Parental Rights is filed, M.H.A. Children and Family Services have no further obligation to offer services to the parent.
  - c. Permanent Guardianship. M.H.A. Children and Family Services has no obligation to the parent, guardian, or custodian once an order granting permanent guardianship has been entered by the Court.
  - e. Long Term Substitute Care. M.H.A. Children and Family Services are obligated to facilitate any Court-ordered visitation. Depending on the circumstances of the case, M.H.A. Children and Family Services may or may not have any obligation to offer other services to the parent.
  - f. Permanent Plan Long Term Living Arrangement. M.H.A. Children and Family Services are obligated to facilitate court-ordered visitation. Depending on the circumstances of the case, M.H.A. Children and Family Services may or may not have any obligation to offer other services to the parent.

2. M.H.A. Children and Family Services does not have an obligation to provide continued services once the Court enters a finding that a permanency plan should no longer include reunification with the parents, guardian or custodian.

**8-6-49. Further Findings Required**

1. In addition, the Court must enter written findings as follows:

- a. Whether M.H.A. Children and Family Services has made reasonable efforts to finalize the permanency plan; and
- b. If necessary, whether M.H.A. Children and Family Services has engaged in concurrent planning to develop an alternative permanent plan for the child in the event that the parent, guardian, or custodian is unable to improve his or her circumstances sufficiently to retrieve custody of the child. The Court shall state specifically what those concurrent planning efforts have been.

2. In all cases in which the Court does not seek the filing of a Petition to Terminate Parental Rights, the Court shall specify compelling reasons why termination of parental rights should not be sought, and would not be in the best interests of the child. Such findings must be supported by the M.H.A. Children and Family Services case plan and record.

3. Compelling Reasons Defined. In determining whether compelling reasons exist for not terminating parental rights, the Court shall consider, but not be limited to, the following:

- a. Tribal custom and tradition;
- b. Tribal policy, whether oral or written, whether by custom, resolution, ordinance, or code disfavoring or prohibiting termination of parental rights;
- c. The relationship between the parent and child;
- d. The relationship between the child and the Tribe;
- e. The best interests of the child, including, but not limited to, the health and safety of the child;
- f. The special needs of the child;

- g. The Tribe's interest in maintaining the parent-child status, and the child's contact with the Tribe; and
- h. Any other relevant considerations.

**8-6-50. Conditions Set by the Court**

1. In designating a permanent plan for the child, the Court may set upon a child, parent, guardian, custodian, or any other relevant party conditions or restrictions in furtherance of the completion of the permanent plan.

**8-6-51. Permanency Plan Review Hearings**

1. The Court shall review the permanent plan of a child at least annually as follows:

- a. No Permanent Plan Review Hearing need be held for any child who has been adopted.
- b. If the child is in the custody of a court-appointed Permanent Guardian, the Permanent Guardian shall be responsible for submitting a report to the Court on a yearly basis. If the Court deems a Permanent Plan Review Hearing to be necessary, the Permanent Guardian is responsible for appearing at and providing information for the hearing.
- c. In all other cases in which the child remains a Ward of the Court, M.H.A. Children and Family Services shall be responsible for submitting a report to the Court on a yearly basis and is responsible for appearing at, and providing information for a Permanent Plan Review Hearing of the child's plan.
- d. The legal custodian shall be responsible for immediately notifying the Court of any changes in the child's placement or any substantial changes in the permanent plan.

**8-6-52. Findings Required**

1. At the annual permanent plan review hearing conducted by the Court, after the establishment of the permanent plan, the Court shall determine:

- a. The continued appropriateness of the placement and the permanent plan; and
- b. The extent of compliance with the permanent plan.

**8-6-53. Final Order**

1. A Status Review Order or Permanent Plan Order is a final order for the purposes of appeal.



**TITLE 8**  
**CHILD WELFARE CODE**  
**Chapter 7**  
**Foster Care Licensing Standards**

**8-7-0. Responsibility**

1. It shall be the responsibility of the M.H.A. Children and Family Services to recruit, screen, and license foster homes for children in accordance with this Chapter.

**8-7-1. Licenses**

1. Any applicant wishing to serve as a tribal foster parent shall apply with the M.H.A. Children and Family Services.

2. Within one hundred and twenty (120) days of receiving an application, the M.H.A. Children and Family Services will issue a foster case license to each applicant who meets the standards set out in these provisions and who agrees to accept foster children referred by the Agency.

3. Each foster care license will specify the maximum number of children which the foster home can accommodate at any one time and will expire one (1) year after the date it is issued, unless canceled by the Agency.

4. Notwithstanding Subsection 8-7-1.2 of this section, M.H.A. Children and Family Services may issue a provisional certificate to any applicant who cannot satisfy the foster home requirements contained in Section 8-7-6, when the Agency finds that the deficiency or deficiencies will not affect the child's physical health and safety or emotional well-being and that the applicant will take corrective steps within a reasonable period of time. A provisional certificate will expire ninety (90) days after it is issued; unless canceled by the Agency.

5. Any foster care license issued by the Agency shall be canceled automatically if the foster parent changes residences.

6. Any foster care license issued by the Agency shall be canceled if a material change that would disqualify the parent from being certified occurs in the foster parent's family or home.

## **8-7-2. Foster Home Licensing Procedures**

1. Each applicant shall furnish the M.H.A. Children and Family Services with a written application, including the reasons the applicant wishes to become a foster parent and at least three (3) personal references. The applicant shall also agree to sign a release of information regarding the applicant's suitability, including but not limited to a criminal and Child Protective Services background check, which shall include screening for prior criminal and current pending criminal charges, in accordance with the requirements of this Chapter; a history of child abuse or neglect; inclusion in the tribal sex offender registry; physical, medical, and mental health assessments/ records; and substance abuse history.

2. M.H.A. Children and Family Services shall conduct an assessment regarding the applicant's suitability as a foster parent. M.H.A Children and Family Services shall use the qualifications and criteria contained in this Chapter to evaluate the suitability of applicants including the application and consent information provided by the applicant.

3. M.H.A. Children and Family Services shall assign one or more members of the Agency as a licensing agent to review the homes of tribal members and others who reside on or near the reservation and who desire to become foster parents.

4. After receipt of completed application and signed consent forms by the foster parent applicants, a foster home inspector shall make arrangements for an inspection of the proposed foster home and interview the proposed foster family. The inspector shall submit a written report to M.H.A. Children and Family Services case management team. The report shall describe:

- a. The number of persons who reside in the applicant's home, including the age, sex and relationship of each person to the applicant.
- b. The number of beds in the applicant's home, their location and their suitability for a foster child.
- c. The availability of space for the foster child to sleep, store clothing and personal effects, and to study as appropriate for the child's age and needs.

- d. The availability of adequate indoor and outdoor areas where a child can play safely.
- e. Whether potentially dangerous materials such as guns, medications or poisons are stored in the applicant's home and, if so, whether adequate safeguards exist to prevent the child from coming in contact with such materials.
- f. Whether the foster home has a working land line phone with access to emergency services, such as 911.
- g. Whether or not the home fully or substantially comports with the criteria in Section 8-7-6.

2. The Agency shall complete the assessment and home inspection report within one hundred twenty (120) days of receipt application and information and materials required to review the application, at this time the Agency shall approve or deny the request for a foster care license or request additional information from the applicant. If M.H.A. Children and Family Services requests additional information, then it shall approve or deny the license within thirty (30) days of receiving the requested information. Any denial shall be accompanied by a concise statement regarding the grounds for denial.

#### **8-7-3. Foster Care License Renewal Procedures**

1. Families undergoing yearly renewal of a foster care license shall be required to fill out a renewal application, an updated health statement, and comply with a local and state wide child protective services registry check.

2. Families seeking renewal of a foster care license shall also complete fire safety and CPR training prior to the renewal of a license.

#### **8-7-4. Suspension, Revocation and Termination of License**

1. Any license issued by M.H.A. Children and Family Services shall apply only to the residence where the family is living at the time application for a license is made. A permanent change of residence automatically terminates the license. Foster parents shall notify M.H.A. Children and Family Services whenever a change in residence is contemplated.

2. The foster parents shall also promptly notify the M.H.A. Children and Family Services whenever a change in the household occurs. For example, if any member of the home is accused of or convicted of a crime, or any member of the foster home moves out of the residence, or if any other person moves into the residence, the foster parent shall notify M.H.A. Children and Family Services within twenty-four (24) hours. Failure to report such change may result in the suspension or revocation of the foster home license.

3. M.H.A. Children and Family Services may suspend or revoke a foster home license or deny a foster care application because of violation of one or more provisions contained in this Chapter or upon a showing that the an application contained false or misleading information or the applicant intentionally withheld material information.

4. A notice of suspension or revocation must be in writing and must list the violations, along with the actions necessary for compliance, and any services available to assist the foster parents with compliance.

5. A license may be suspended for up to one hundred and eighty (180) days. Children in placement will be removed from homes with a suspended license. No additional placements will be made during the period of suspension.

6. Within thirty (30) days of the effective date of suspension, the foster parents shall submit a written corrective action plan to M.H.A. Children and Family Services. The plan will include a reasonable timeline to correct the violation, within the one-hundred and eighty (180) day period. This action plan must be approved by the Agency and signed by the foster parent(s). Failure to submit a plan will constitute a voluntary surrender of the license. The Agency will assist in the development of a plan if requested by the foster parent. At the end of the suspension period or when the foster parent complies with the plan to remedy the conditions that led to the suspension, M.H.A. Children and Family Services may reinstate the license for the term of the original certification, issue a new license, or revoke the license.

7. M.H.A. Children and Family Services will revoke a foster home license only after one or more of the above steps have been attempted or when child safety concerns warrant an immediate revocation. A notice of revocation shall be in writing and

shall state the reasons for revocation. M.H.A. Children and Family Services may take any necessary action to protect the health, safety and welfare of foster children, including emergency removal of foster children from a foster home or referral to any law enforcement or other child protective agency or organization to effect such removal.

8. A foster parent may terminate their foster care responsibilities to children in their homes only on thirty (30) days written notice to M.H.A. Children and Family Services and after consultation with the caseworker. The Agency may waive this notice requirement if such waiver would be in the child's best interests.

#### **8-7-5. Types of Foster Care**

1. Emergency Foster Care: Immediate placement due to a child's crisis within the child's family structure. Placements are within the same twenty-four (24) hours of intervention by M.H.A. Children and Family Services.

2. Foster Care: Temporary Care of a child who is in need of a safe and caring environment for a to-be determined period of time.

3. Long-Term Foster Care: Long-term care of a child due to circumstances that prevent a child from returning to their natural home setting.

4. Respite Care: Provides foster care for a child whenever a foster family temporarily cannot provide foster care to the child due to circumstances including, but not limited to emergencies or vacations.

#### **8-7-6. Foster Home Requirements**

1. The foster home shall be constructed, arranged and maintained so as to provide for the health and safety of all occupants. The physical facilities of the foster home shall present no hazard to the safety of the foster child. M.H.A. Children and Family Services reserve the right to make unannounced visits to the home from time to time. All tribally licensed foster homes shall be inspected at least once per year.

2. The physical standards for the foster home shall be set according to the individual living standards for the community in which the foster home is located; these standards shall be sufficient to assure a degree of comfort which will provide for the well-being of the family and its self-respect in the community which it resides.

3. Heating, ventilation, and light shall be sufficient to provide a comfortable, airy atmosphere. Furnishings and housekeeping shall be adequate to protect the health and comfort of the foster child. The water and plumbing facilities shall be adequate to protect the health and comfort of the foster child. The Agency may request water quality testing in ensure drinking water meets safe standards.

4. All foster homes shall be equipped with at least one smoke detector and one fire extinguisher per floor that is being utilized as a sleeping or play area for children. If necessary, M.H.A. Children and Family Services may provide a smoke detector, batteries, and fire extinguisher free of charge to a licensed family. All sleeping rooms must have a window of a type that may be readily opened and used for evacuation in case of fire.

5. Comfortable beds shall be provided for all children in the family. Sleeping rooms must provide adequate opportunities for rest and shall comport with the following standards governing comfort and privacy:

- a. It is preferable for no more than two children to share sleeping rooms.
- b. The sharing of a sleeping room by children of the opposite sex is undesirable, especially for foster children who may be experiencing difficulties in the development of their sexual identities, attitudes, and behavior.
- c. Children, other than infants and during emergencies (illness), shall not share sleeping quarters with adults in the household.
- d. Individual space shall be provided for the child's personal possessions.
- e. In all instances when exceptions are necessary, these shall be for children less than three years of age or when special cultural, ethnic, or socio-economic circumstances create a situation which such exceptions will not be to the detriment of the child.

6. Play space shall be available and free from hazards which might be dangerous to the life or health of the child.

7. All firearms or weapons owned or acquired by a foster family shall be stored unloaded in a locked area. All ammunition shall be stored separately and in a manner as to be inaccessible to children.

8. If the home is otherwise suitable, the foster family shall be provided with all available assistance in meeting the above requirements, standards, and/or codes.

9. Any pet or animal in a foster home shall be in good health, show no evidence of carrying any disease and be fully immunized. Documentation must be provided to M.H.A. Children and Family Services to assure that all pets are properly vaccinated against rabies. No vicious or aggressive animals (*e.g.* pit bulls, boxers, wolf hybrids *etc.*) shall be allowed on the premises when children are being cared for. Non-domesticated animals such as skunks, opossums, or raccoons are prohibited. Any type of pet which is known to have injured a child (unprovoked by the child's actions) shall not be allowed to remain on the premises. Children shall be instructed on safe procedures to follow when in close proximity to family pets (*e.g.* not to provoke or startle them or to remove their food).

**8-7-7. Foster Family Composition.**

1. M.H.A. Children and Family Services may license a foster home with a married couple, an unmarried couple or a single foster parent provided that the foster parent(s) displays the qualifications necessary to raise a foster child. When reviewing the application, the M.H.A. Children and Family services shall consider the length, history, and stability of the relationship for both married and unmarried couples and the potential effect of such relationship on the children placed in the home.

2. The presence of other children (either the foster parent(s) own children or other foster children), and other adults (*i.e.* grandparents, aunts, or unrelated persons) shall be taken into consideration in terms of how they may be affected by or have an effect upon another child.

3. Any time a pre-school foster child is placed in a foster home, it is preferred that at least one (1) foster parent at home full time, unless the foster parent has obligations outside the home that necessitate day care, in which case, the foster parent shall show the ability and availability to provide appropriate day care for the preschool foster child. For school age children, the foster parent must show the child care arrangements which will be made for those periods of time when both foster parents are employed.

4. The number and ages of children in the home (both the foster parent(s) own children and other foster children) shall be considered on an individual basis, taking into account the foster parent(s) ability to meet the needs of all children present in the home, physical accommodations of the home, and especially the effect which an additional child would have on the family as a unit, It is *preferable* that:

- a. Foster parent(s) shall not care for more than two (2) infants (under 24 months) including the foster parent(s) own children.
- b. The number of children allowed in each foster home shall be determined by M.H.A. Children and Family Services on a case-by-case basis. Special consideration will be given to arrangements which keep siblings together.
- c. The age range of the children in the foster home shall be similar in order to lessen competition and comparisons.
- d. All placement situations shall consider the effect of having some children in the foster home whose parent(s) visit them and other children whose parent(s) do not.
- e. All placements shall be considered on a case-by-case basis according to specific needs and situations of the foster families and foster children.

**8-7-8. Criminal Convictions and Background Checks of Foster Care Applicants**

1. Members of the foster family and any other persons residing in the home shall be of good character and standing in the community. A family foster care applicant, family foster care provider, and any individual residing in a foster home must not have been found guilty of, pled guilty to, or pled no contest to:

- a. An offense described in the M.H.A. Nation Criminal Code, the Major Crimes Act (18 U.S.C. § 1153), or North Dakota Century Code of homicide; kidnapping; maiming; robbery; assault with a dangerous weapon; assault with intent to commit murder; assault resulting in serious bodily injury; assault against an individual who has not attained the age of sixteen years; incest; gross sexual imposition; sexual imposition; corruption or solicitation of minors; sexual abuse of wards; sexual abuse; sexual assault; sexual battery; sexual performances by children; promoting prostitution; prostitution; facilitation prostitution; or child procurement; arson; robbery; or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of

the enumerated M.H.A. Nation or North Dakota statutes or the Major Crimes Act; or

- b. An offense, other than an offense identified in subdivision 8-7-8.1(a) if the Agency determines that the individual has not been sufficiently rehabilitated. The Agency will not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections, or imprisonment, without a subsequent charge or conviction has elapsed. An offender's completion of a period five years after the final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.

2. M.H.A. Children and Family Services has determined that the offenses enumerated in subdivision 8-7-8.1(a) have a direct bearing on the individual's ability to serve the public in a capacity involving the provision of foster care to children.

3. In the case of a misdemeanor simple assault as described in the North Dakota Century Code, or equivalent conduct in another state jurisdiction which requires proof of substantially similar elements as required for conviction, M.H.A. Children and Family Services may determine that the individual has been sufficiently rehabilitated if fifteen (15) years have elapsed from final discharge or release from any term of probation, or other form of community corrections or imprisonment, without subsequent conviction.

4. In the case of misdemeanor assault and battery described in the M.H.A. Nation Criminal Code, or equivalent conduct in another tribal jurisdiction which require proof of substantially similar elements as required for conviction, M.H.A. Children and Family Services may determine that the individual has been sufficiently rehabilitated if 10 (ten) years have elapsed from final discharge or release from any term of probation, or other form of community corrections or imprisonment, without subsequent conviction.

5. In individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:

- a. Acknowledged by the individual; or
- b. Reported to the Agency as a result of a background check.

6. As part of a background check, the records and reports of child physical abuse and neglect maintained by M.H.A. Children and Family Services shall be accessed

to determine whether a foster family applicant, family foster care provider, or an individual residing in the foster care home has been found to be responsible for a confirmed/substantiated report of child abuse and neglect. M.H.A. Children and Family Services may also access the records and reports of child abuse and neglect maintained by another jurisdiction. A foster care license shall not be granted to any foster family applicant or family foster care provider who has been personally found to have been responsible for or who has an individual residing in the home who has been found to have been responsible for a confirmed report of child sexual abuse or severe physical child abuse. A foster care license may be granted to a foster family applicant or family foster care provider who has been found to have been personally responsible for or who has an individual residing in the home who has been found to have been responsible for a confirmed report of non-severe physical child abuse or neglect, if

- a. M.H.A. Children and Family Services determines that the applicant has undergone the requisite rehabilitation and/or treatment to address the underlying issues associated with the report, and
- b. Five (5) years has elapsed from the date of the confirmed/substantiated report, and
- c. The applicant has not been the subject of any additional reports of child physical abuse or neglect.

7. As part of a background check, M.H.A. Children and Family Services shall also access the tribal sex offender registry to determine whether a foster family applicant, family foster care provider or any individual residing in the foster care home has been listed in the registry. M.H.A. Children and Family Services may also access sex offender registries maintained by another jurisdiction. A foster care license shall not be granted to any foster family applicant or family foster care provider who has been found to be listed in a sex offender registry, or who has an individual residing in the home that has been found to be listed in a sex offender registry.

### **8-7-9. Personal Requirements of Foster Families**

1. Foster parents shall be of suitable temperament to care for the foster child, and shall understand the special needs of the child as an Indian person and a member of the Tribal community.

2. Foster parents shall be at least twenty-one (21) years of age, but there shall be no upper age level, provided that the foster parent has the physical and emotional stamina to deal with the care and guardianship of a foster child. Foster parents shall be willing, when necessary, to cooperate with the biological parents and shall be willing to help the family establish the necessary family ties.

3. Prospective foster parent(s) shall possess personal qualities of maturity, stability, flexibility, ability to cope with stress, capacity to give and receive love, and good moral character. Such characteristics are reflected in the following:

- a. Psycho-social history, including significant childhood relationships and experiences (parent-child, sibling or other);
- b. Role identification and acceptance;
- c. Reactions to experiences of separation and loss (i.e. through death, desertion);
- d. Education, employment, and patterns of interpersonal relationships;
- e. General social, intellectual and cultural level of the family;
- f. Level of everyday functioning: home and money management, daily routine and habits, and reactions to stress;
- g. Moral, ethical, and spiritual qualities of the family; and
- h. Hobbies, special interests, skills and talents.

### **8-7-10. Health Qualifications of Foster Families**

1. Foster parents and any person in the household responsible for caring for children shall mentally and physically be able to provide care and supervision and to perform the duties of foster parents as prescribed in this Chapter.

2. All foster parents, prior to licensing and annually thereafter, must submit declaration of good health (a self-certifying report), including all residents of the home, except any foster child, in a manner and form determined by the M.H.A. Children and

Family Services. The Agency may require information from physical examinations such as medical, psychological, psychiatric, sex offender, chemical dependency, and any other reports or evaluations. The licensing Agency may request the applicant sign a Release of Information so that the information can be received from the appropriate medical/ services provider.

3. After licensing, a new self-certifying health report must be provided to the Agency on a bi-annual basis.

4. Physical handicaps of foster parent(s) shall be a consideration only as it affects their ability to provide adequate care to foster children or may affect an individual child's adjustment to the foster family. Cases shall be evaluated on an individual basis with the assistance of a medical consultant when necessary.

#### **8-7-11. Employment and Income of Foster Families**

1. Foster parents shall have an income sufficient to care for all members of the foster family. The Foster Care Inspector may take into account any tribal or state benefits when determining the financial ability of the foster parents.

2. When both parents in a two parent home and when single parents are employed, it is preferable that the home be used for school age children, and only when there are suitable plans (approved by M.H.A. Children and Family Services) for the care and supervision of the child after school and during the summer while foster parent(s) are at work.

#### **8-7-12. Foster Parenting Abilities**

1. An assessment of a prospective foster parent(s) parenting ability regarding a specific child shall take into account the following:

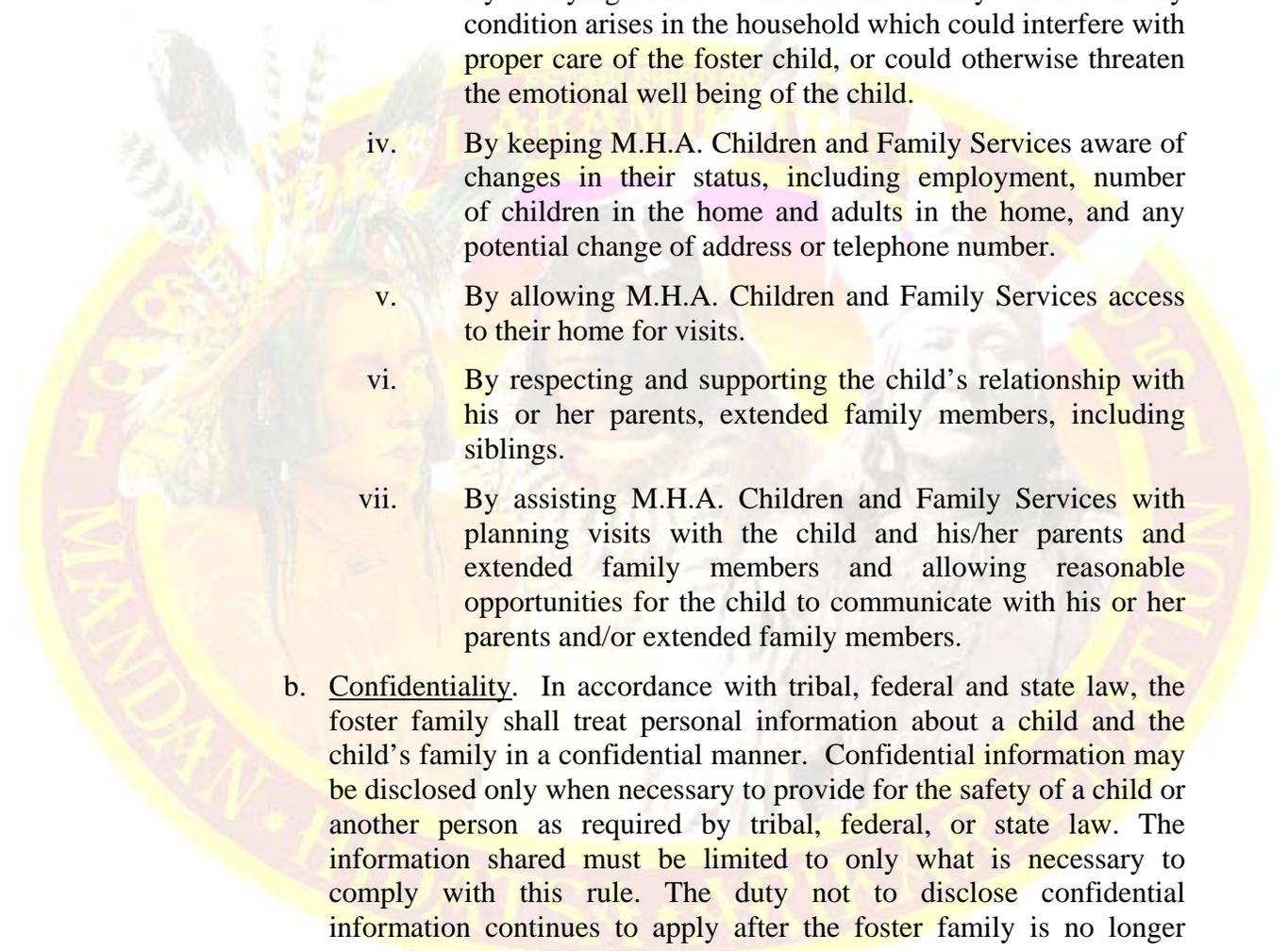
- a. Motivation for application at the particular time;
- b. Characteristics and the number of children best suited to the prospective family;
- c. Attitudes of significant members of the extended family regarding child placement;
- d. Ability to love and accept a child as he or she is;

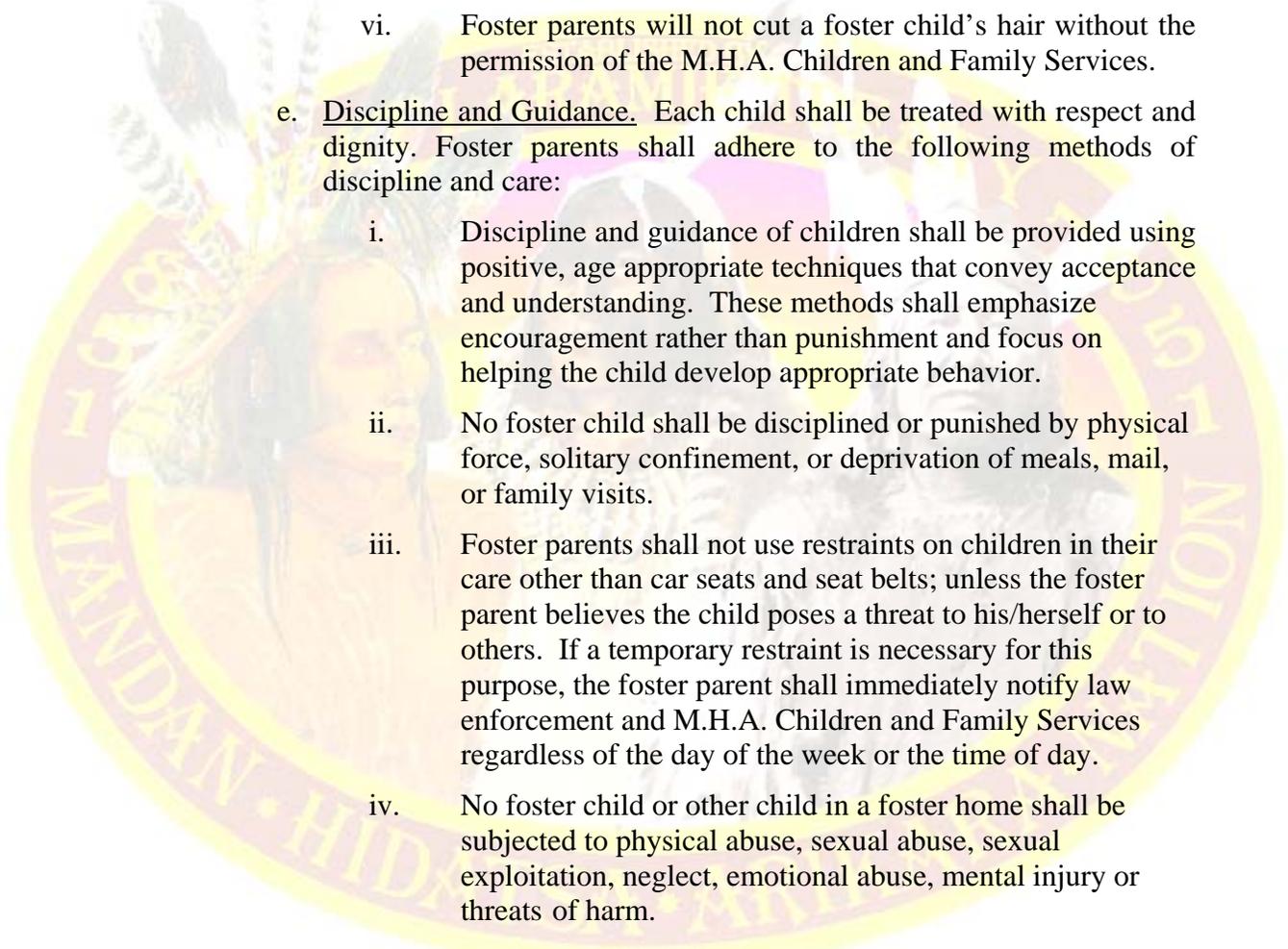
- e. Existing family relationships, attitudes, and expectations regarding own children and parent-child relationships, especially where such existing attitudes and relationships might affect the foster child;
- f. Capacity to absorb the child into family life functioning without undue disruption;
- g. Capacity of parent(s) to provide for foster child's needs while giving proper consideration to own children;
- h. Own children's attitudes toward accepting a foster child;
- i. Personal characteristics necessary to provide continuity of care throughout child's need for placement;
- j. Flexibility to meet changing needs over the course of placement;
- k. Ability to care for children with special needs (physical handicaps or emotional disturbances);
- l. Ability to accept child's relationship with own parent(s);
- m. Ability to help a child return home or be placed for adoption.

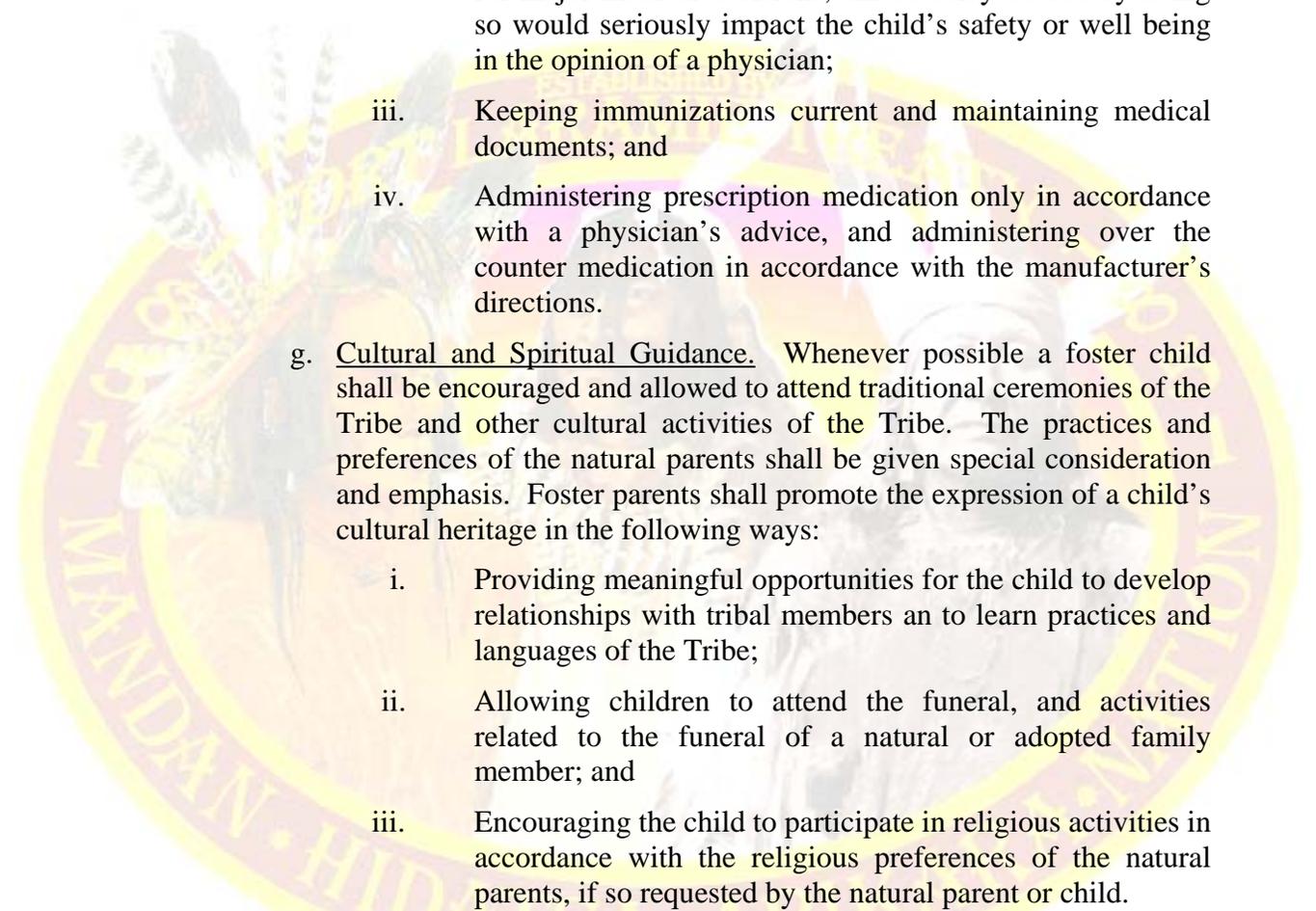
**8-7-13. Duties of the Foster Parent**

1. Foster parents are responsible for the care and development of a foster child and shall provide structure and activities designed to promote self-esteem and independence skills, and the physical, social, intellectual, spiritual, cultural and emotional development of a child. Foster parents shall adhere to following rules concerning the care and development of foster children:

- a. Cooperation with Agency- Applicants and licensees shall comply with all reasonable requests by the licensing Agency in the licensing process, and any ongoing monitoring of their homes after licensing. Foster parents shall cooperate with the Agency in the following manner:
  - i. By acting as part of a professional team to develop and implement of a child's service plan and to execute all court orders regarding the child, including orders for reunification with the child's parents or an alternate permanency plan.

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- ii. By notifying M.H.A. Children and Family Services immediately if the child should suffer an injury, serious illness, accident, or any unusual circumstances that may threaten the health, safety, physical or emotional well being of a foster child
  - iii. By notifying M.H.A. Children and Family Services if any condition arises in the household which could interfere with proper care of the foster child, or could otherwise threaten the emotional well being of the child.
  - iv. By keeping M.H.A. Children and Family Services aware of changes in their status, including employment, number of children in the home and adults in the home, and any potential change of address or telephone number.
  - v. By allowing M.H.A. Children and Family Services access to their home for visits.
  - vi. By respecting and supporting the child's relationship with his or her parents, extended family members, including siblings.
  - vii. By assisting M.H.A. Children and Family Services with planning visits with the child and his/her parents and extended family members and allowing reasonable opportunities for the child to communicate with his or her parents and/or extended family members.
- b. Confidentiality. In accordance with tribal, federal and state law, the foster family shall treat personal information about a child and the child's family in a confidential manner. Confidential information may be disclosed only when necessary to provide for the safety of a child or another person as required by tribal, federal, or state law. The information shared must be limited to only what is necessary to comply with this rule. The duty not to disclose confidential information continues to apply after the foster family is no longer providing care to the child.
- c. Daily living. A foster child shall not be required to perform unreasonable or unsafe work duties not commensurate with his/her age, physical or mental abilities. A foster child should be encouraged to perform reasonable work duties such as maintenance of his/her sleeping area, common areas and personal property.
- d. Health, Nutrition and Hygiene. Foster parents shall provide the following health and nutrition needs for foster children:
- i. Adequate and daily meals for foster children;
  - ii. Accommodate any special nutritional needs, including the need for cultural foods;

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- iii. Provide the opportunity to engage in physical exercise;
  - iv. Provide each child with clean clothing appropriate to the season, the child's age, sex, and individual needs, and which is comparable to the local community standards;
  - v. Ensure each child is provided with the necessary items to maintain a clean and hygienic appearance;
  - vi. Foster parents will not cut a foster child's hair without the permission of the M.H.A. Children and Family Services.
- e. Discipline and Guidance. Each child shall be treated with respect and dignity. Foster parents shall adhere to the following methods of discipline and care:
- i. Discipline and guidance of children shall be provided using positive, age appropriate techniques that convey acceptance and understanding. These methods shall emphasize encouragement rather than punishment and focus on helping the child develop appropriate behavior.
  - ii. No foster child shall be disciplined or punished by physical force, solitary confinement, or deprivation of meals, mail, or family visits.
  - iii. Foster parents shall not use restraints on children in their care other than car seats and seat belts; unless the foster parent believes the child poses a threat to his/herself or to others. If a temporary restraint is necessary for this purpose, the foster parent shall immediately notify law enforcement and M.H.A. Children and Family Services regardless of the day of the week or the time of day.
  - iv. No foster child or other child in a foster home shall be subjected to physical abuse, sexual abuse, sexual exploitation, neglect, emotional abuse, mental injury or threats of harm.
  - v. No foster child shall be subject to verbal abuse, including derogatory remarks about the child, the child's natural parents or relatives, or threats to expel the child from the foster home.
  - vi. In the event, a foster child is the victim of a crime or has been accused of committing a crime or status offense, a foster parent shall immediately notify M.H.A. Children and Family Services.
- f. Health Care. Foster parents shall ensure that health care needs of children placed in their care are met, including the following:

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- i. Scheduling and arranging transportation to medical, dental, and counseling appointments as needed;
  - ii. Obtaining necessary emergency medical treatment for children placed in the home. Foster parents shall obtain permission through M.H.A. Children and Family Services for major medical decisions, unless delay caused by doing so would seriously impact the child's safety or well being in the opinion of a physician;
  - iii. Keeping immunizations current and maintaining medical documents; and
  - iv. Administering prescription medication only in accordance with a physician's advice, and administering over the counter medication in accordance with the manufacturer's directions.
- g. Cultural and Spiritual Guidance. Whenever possible a foster child shall be encouraged and allowed to attend traditional ceremonies of the Tribe and other cultural activities of the Tribe. The practices and preferences of the natural parents shall be given special consideration and emphasis. Foster parents shall promote the expression of a child's cultural heritage in the following ways:
- i. Providing meaningful opportunities for the child to develop relationships with tribal members and to learn practices and languages of the Tribe;
  - ii. Allowing children to attend the funeral, and activities related to the funeral of a natural or adopted family member; and
  - iii. Encouraging the child to participate in religious activities in accordance with the religious preferences of the natural parents, if so requested by the natural parent or child.
- h. Education. Foster parents shall enroll each child of school age in a school within three school days of placement or in accordance with the case plan. Foster parents shall participate appropriately in the child's educational programs and shall work to assist the child to resolve any difficulties in school. The foster parents shall report any significant educational problems to the licensing Agency as soon as possible.
- i. Transportation Safety. Foster Parents shall provide or arrange for the safe transport of children in placement. Foster parents shall ensure:
- i. Personal vehicles used to transport children are in a safe operating condition, in accordance with the standards of the local community;
  - ii. That children use appropriate safety restraints during transport; and

- iii. That any person transporting foster children possess insurance and a current license to operate a vehicle in accordance with Tribal or State law, and if requested shall provide such proof to the M.H.A. Children and Family Services.
- j. Training. Foster Parents shall be required to attend training as directed by M.H.A Children and Family Services, such training may include but is not limited to: fire safety, CPR, first aid, and basic foster parent training.

#### **8-7-14. Foster Care Agreement**

1. Upon placement of a child in foster care, M.H.A. Children and Family Services and the foster parent(s) shall enter into an agreement specifying the roles and responsibilities of each party.

#### **8-7-15. Foster Parent Grievance Procedure and Appeal**

1. Who can file a grievance. Only foster parents who are providing, or who recently provided care to a foster child may file a grievance. No grievance may be filed with respect to a decision concerning a foster child who has not been living in the grievant's home within sixty (60) days prior to filing. A grievance must be filed within ten (10) days of receiving notice of an Agency decision.

2. Who can file an appeal. Only foster parent applicants who were not approved for a license or licensed foster parents who have had their license suspended or revoked may file an appeal. An appeal must be filed within ten (10) days of receiving written notice of the Agency decision. The appeal must be in writing and contain a concise statement of the grounds for the appeal and a proposed substitute decision.

3. Informal meeting. M.H.A Children and Family Services shall schedule an informal meeting with the foster parent(s) or applicant(s) within ten (10) days of receipt of the written grievance or appeal, unless the foster parent/applicant agree that resolution of the issue can be resolved without one. The informal meeting may include any participants the Agency or foster parent/applicant deems to have relevant information concerning the decision which is the subject of the grievance or the appeal. Within three (3) business days after the informal meeting the Agency will issue a summary of the meeting and any resolution of the grievance and the appeal. The summary will be

sent to the grievant/appellant for signing. If the grievant/appellant do not feel a satisfactory resolution to the problem has been presented, then the grievant/appellant can request review of the decision to the M.H.A. Children and Family Services Grievance/Appeals Committee.

4. Grievance/Appeals Committee. The Committee shall be at least a three (3) member panel appointed by the Director of M.H.A. Children and Family Services. The Director of M.H.A. Children and Family Services shall develop policy regarding the selection criteria for committee members, length of committee member terms, and procedures for committee vacancies and removal.

5. Hearing. The Agency shall schedule a hearing within ten (10) days of receipt of a written request a conference of the Grievance/ Appeals Committee to review a decision. The Agency shall provide the Committee with pertinent files and records necessary for review of the decision. The Committee shall hear statements from both the Agency and the grievant/applicant. Statements must be limited to those probative of the grievance/appeal under review. The committee shall prepare a written decision upon the files, records, and statements received at the conference. The decision by the Grievance/ Appeals Committee constitutes a final determination of the grievance or appeal. The findings and conclusions of the committee shall be sent to the Agency and the grievant/appellant within five (5) business days of the hearing.

6. Confidentiality. The information furnished at any stage of the grievance or appeals process is confidential. All participants, including the Committee members, are required to uphold Agency confidentiality requirements.

**TITLE 8  
CHILD WELFARE CODE**

**Part 8  
PERMANENT LEGAL GUARDIANSHIP**

**8-8-0. Permanent Guardianship**

1. Policy: It shall be the policy of the Tribe to prefer guardianship over adoption as a placement option for a Youth-in-Need-of-Care, where the permanent plan of guardianship is not inconsistent with other provisions of this Title.

2. It shall further be the policy of the Tribe to prefer guardianships that maintain and preserve the child's connection to the Tribe and child's family.

**8-8-1. Preference for Appointment of Guardian:**

1. The order of preference for appointing a guardian, in the absence of good cause to the contrary, shall be:

- a. A person who was indicated by the wishes of a deceased parent as indicated in a will or similar instrument;
- b. Family members;
- c. Extended family members;
- d. A member of the Mandan, Hidatsa and Arikara Nation living on or near the Fort Berthold Reservation;
- e. A member of the Mandan, Hidatsa, and Arikara Nation residing off the Fort Berthold Reservation;
- f. A member of another Indian tribe residing on or near the Fort Berthold Reservation;
- g. A member of another Indian tribe residing off the Fort Berthold Reservation;

2. If the order of preference cannot be met, placement shall be with any person who has a knowledge of and desire to foster the youth's tribal affiliation and cultural needs.

3. In the Court's discretion, the placement preference of the youth, his or her parents, guardian, or other custodian may be considered, but may not be the controlling factor in determining placement.

4. Only in exceptional circumstances and for good cause shown, may a non-Indian guardian or non-Indian facility be appointed guardian.

5. The appointment of a guardian shall be governed by the best interests of the youth who is the subject of the guardianship.

6. If more than one sibling is having a guardian appointed, preference shall be given to a qualified person or facility that can serve as guardian for all siblings.

#### **8-8-2. Youth's Preference for Guardian**

1. When the youth who is the subject of the petition for guardianship is fourteen (14) years of age or older, the Court shall consider his or her preference in appointing a guardian.

#### **8-8-3. Procedures for Filing Petition for Permanent Guardianship and Filing of Petition**

1. Any adult may petition for the legal guardianship of minor tribal child. M.H.A. Children and Family Services may file a petition on behalf of an adult seeking the permanent guardianship of a child who is under the custody of M.H.A. Children and Family Services.

2. A Petition for Permanent Guardianship shall be verified under oath by Petitioner(s) and shall contain the following information:

- a. The full name, residence, date and place of birth, sex of the child, with attached documentary proof of the date and place of the birth of the child;
- b. The names of the persons with whom the child has lived, the residences at which the child has lived, for the previous year, and the length of time the child has lived with each person and at each residence;

- c. The names and residences of the child's legal parents, guardians, or custodians. In addition, the names and residences of putative fathers or stepparents, if any;
- d. Documentary proof of the child's tribal membership status;
- e. The full name, residence, date and place of birth, occupation of the Petitioner(s), statement of relationship to the child, proof of tribal membership, if applicable;
- f. A statement by Petitioner(s) of the desire that a relationship of permanent guardian and child be established between Petitioner(s) and the child;
- g. An agreement to maintain ties with the Tribe and where appropriate with extended family members;
- h. A citation to the specific section of this Title giving the Court jurisdiction of the proceedings; and
- i. Application and consent form to conduct a criminal history and background check on adult petitioning for permanent guardianship.

**8-8-4. Waiver of Filing Fee**

1. When M.H.A. Children & Family Services files a petition on behalf of an adult seeking permanent guardianship any filing fee shall be waived by the District Court.

**8-8-5. Service of Petition for Guardianship**

1. Service of the Petition for Guardianship and Summons shall be served either personally or by first class mail-return receipt requested on:

- a. The child's parent, current guardian, or custodian;
- b. The child who is the subject of the petition for permanent guardianship if he or she is fourteen (14) years of age or older;

2. If any party who is required to be personally served is outside the Tribes' service area, service shall be by certified mail-return receipt requested, or by any other means reasonably designed to give notice.

3. If any party's current address is unknown, the summons shall be published for one week in a regularly published newspaper where the District Court sits.

4. Service shall be made by any person over the age of eighteen (18) who is not a party to the proceedings.

**8-8-6. Notice of Hearing for Permanent Guardianship**

1. The Petitioning Party shall issue Notice of the Hearing for Permanent Guardianship at least twenty (20) *calendar* days before the hearing is scheduled to take place. Notice shall include:

- a. The date, time, and place of the hearing and a copy of the Petition for Permanent Guardianship; and
- b. A statement to the effect that the rights of the parent or parents may be affected, that certain persons are proposed to be appointed as legal guardians in the proceedings, and that if the parent or parents fail to appear at the time and place specified in the summons, the Court may appoint those persons as legal guardians and take any other action that is authorized by law.

2. Notice shall be served via first class mail and certified mail-return receipt requested on:

- a. The Petitioner;
- c. The child's parent, current guardian, or custodian;
- d. M.H.A. Children & Family Services; and
- e. Any person the parties or the Court deem necessary for proper adjudication.

3. If any party who is required to be personally served is outside the Tribe's service area, service shall be by certified mail, return receipt requested, or by any other means reasonably designed to give notice.

4. If any party's current address is unknown, the notice shall be published for one week in a regularly published newspaper in the county where the Court sits.

5. Service shall be made by any person over the age of eighteen (18) who is not a party to the proceedings.

**8-8-7. M.H.A Children and Family Services Guardianship Report**

1. Upon receipt of a Petition for Permanent Guardianship, M.H.A. Children & Family Services may investigate any party to be appointed as a permanent guardian, conduct a complete home study, and may prepare and submit a written report to the Court and serve it by certified mail on all parties no later than ten (10) *calendar* days before the Guardianship Hearing.

2. The report shall address the suitability and character of the permanent guardian, including, but not limited to, the financial, physical, criminal history and general background of the permanent guardian and his/her home.

3. The report shall reflect contact with all appropriate agencies and individuals who have relevant knowledge and information.

4. The report shall contain M.H.A. Children & Family Services recommendation regarding the permanent guardianship, and whether M.H.A. Children & Family Services believes that such permanent guardianship will be in the best interests of the child.

5. A copy of the report shall be served on Petitioner at the same time it is presented to the Court.

**8-8-8. Other Agencies or Individuals**

1. The Court may order other agencies or individuals to prepare and file written reports with the Court to aid in the Court's determination on the suitability of the proposed permanent guardianship. A copy of all reports shall be served on Petitioner at the same time they are presented to the Court.

**8-8-9. Hearing**

1. Purpose/Time Limit: A hearing shall be commenced within one hundred and twenty (120) days of filing of a Petition for Permanent Guardianship, except when extended by Court order, to determine if it is in the child's best interests to be appointed a permanent guardian.

- a. Procedure at Hearing: Petitioner(s) and M.H.A. Children & Family Services shall appear personally at the hearing.

- b. Judicial Inquiry: The Court shall inquire of all persons appearing as to whether the best interests of the child will be promoted by the permanent guardianship.

**8-8-10. Rights and Duties of Permanent Guardian**

1. A permanent guardian appointed by the Court shall have the custody of; and be responsible for all care of, the child and the care and management of his/her property until the child reaches the age of eighteen (18), marries, is emancipated by the Court, or until the legal guardian is legally discharged, or guardianship over the child is terminated, or custody is transferred back to M.H.A. Children & Family Services; provided, however, that the permanent guardian shall not have the authority, without express written consent of the Court, to dispose of any real property or Tribal member benefits of the child in any manner.

2. The legal guardian shall also have the authority to consent to the medical care and treatment of the child, and to otherwise have those rights of a parent of the child. The permanent guardian shall be responsible for reporting to the Court on a yearly basis, or more often, as required by the Court.

**8-8-11. Determination by the Court**

1. At the conclusion of the Guardianship Hearing, the Court shall make written findings as to whether there is clear and convincing evidence that the guardianship is in the best interests of the child.

**8-8-12. Parental Rights**

1. If a Petition for permanent guardianship is granted, the parents have the right to seek visitation by court order and the right to petition the Court more than once a year for return of custody. At any hearing on a Petition for Return of Custody the Petitioner must show by clear and convincing evidence that there has been a substantial change of circumstances and that it is in the best interests of the child to be returned to parental care. A hearing on the Petition will be set only if the Petitioner states a prima facie showing in the Petition to the Court.

**8-8-13. Order**

1. An Order Establishing Permanent Guardianship shall be considered a final order for the purposes of appeal.



**TITLE 8  
CHILD WELFARE CODE**

**Chapter 9  
Termination of Parental Rights**

**8-9-0. Termination of Parental Rights-Purpose.**

1. The purpose of this Chapter is to set forth procedures that when followed, allows the Fort Berthold District Court to issue a decree to terminate the legal relationship between a parent and a child.

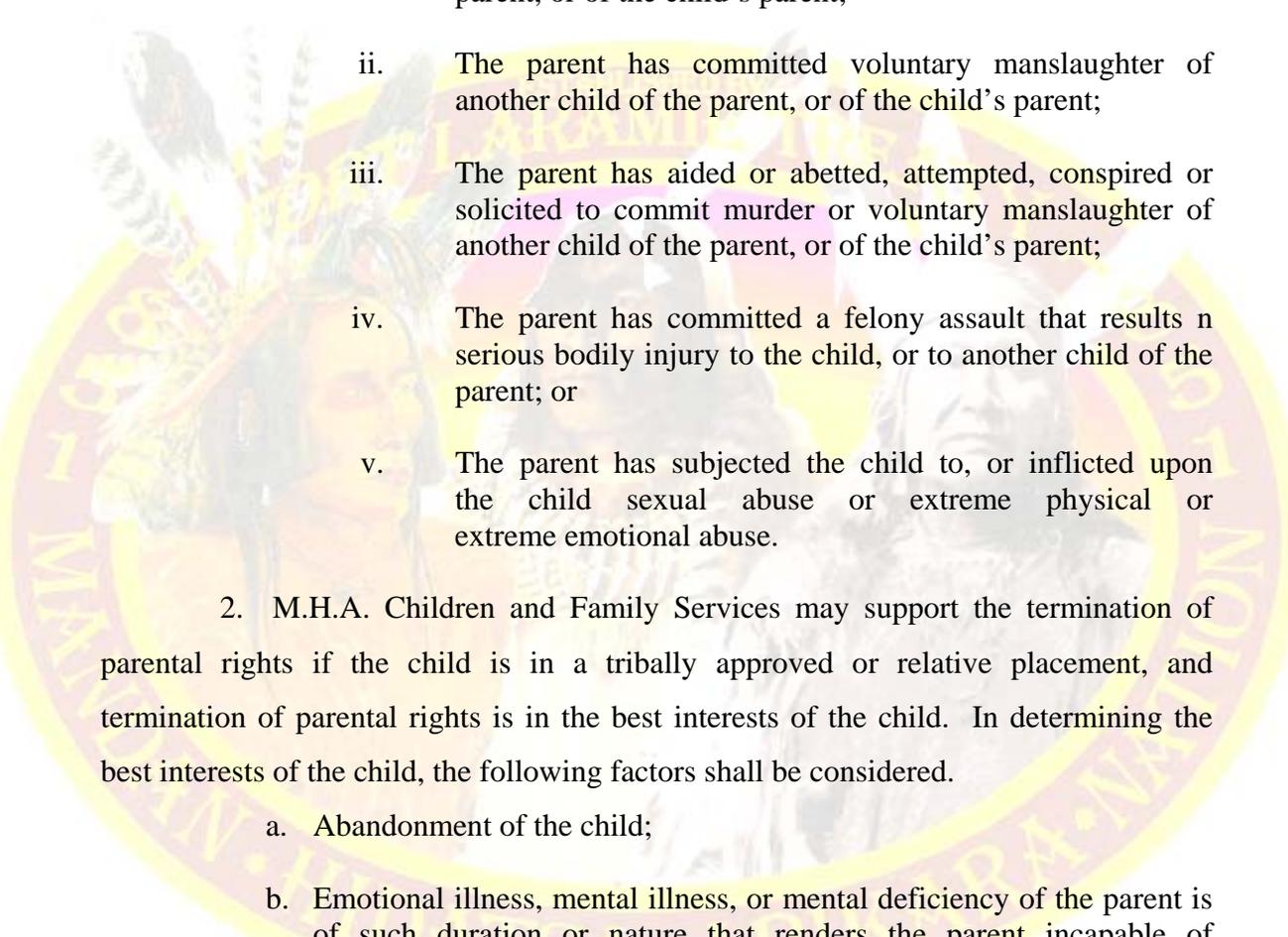
**8-9-1. Effect.**

1. An Order Terminating Parental Rights or an Order Accepting Relinquishment of Parental Rights permanently terminates all rights of the parent or parents, except as provided below, and the parent or parents have no standing to appear in any legal proceedings concerning the child, with the exception of an appeal.

- a. Effect on Tribal Enrollment Status. No termination or relinquishment of parental rights shall affect a child's enrollment status as a member of the Tribe, or a child's degree of blood quantum.
- b. Effect on Inheritance. No termination or relinquishment of parental rights shall affect a child's rights of inheritance under tribal law from biological parents who die intestate.
- c. Child's Relationship with Extended Family. A child's relationship with extended family members may be allowed as ordered by the Court if such relationship is determined to be in the best interests of the child and all interested parties are given notice and opportunity to be heard.

**8-9-2. Policy.**

1. The Mandan, Hidatsa and Arikara Nation Children and Family Services (M.H.A. Children & Family Services) shall evaluate every child in tribal custody, to determine whether termination of parental rights is in the child's best interests. In making the determination, the Agency shall consider the following tribal policy:

- 
- a. M.H.A. Children and Family Services will support termination of parental rights if the child is in a tribally-approved or relative placement and one of the following conditions exist:
    - i. The parent has committed murder of another child of the parent, or of the child's parent;
    - ii. The parent has committed voluntary manslaughter of another child of the parent, or of the child's parent;
    - iii. The parent has aided or abetted, attempted, conspired or solicited to commit murder or voluntary manslaughter of another child of the parent, or of the child's parent;
    - iv. The parent has committed a felony assault that results in serious bodily injury to the child, or to another child of the parent; or
    - v. The parent has subjected the child to, or inflicted upon the child sexual abuse or extreme physical or extreme emotional abuse.

2. M.H.A. Children and Family Services may support the termination of parental rights if the child is in a tribally approved or relative placement, and termination of parental rights is in the best interests of the child. In determining the best interests of the child, the following factors shall be considered.

- a. Abandonment of the child;
- b. Emotional illness, mental illness, or mental deficiency of the parent is of such duration or nature that renders the parent incapable of providing for the proper care and supervision of the child or that places the child's physical or mental health at risk;
- c. Substantial history of drug and/or alcohol abuse by the parent;
- d. Imprisonment of the parent for a period of four (4) or more years, while the child is in custody;
- e. An appropriate and significant parent-child relationship does not exist; and
- f. The child has been in foster care or relative placement for a substantial period of time.

- g. Any other factors the M.H.A. Children and Family Services deems relevant to make a determination regarding the best interests of the child.

3. For purposes of this section the term “relative” is defined as any person eighteen (18) years of age or older who is the child’s grandparent, aunt or uncle, brother or sister, brother in-law or sister in-law, niece or nephew, first or second cousin, step-parent; or is recognized by tribal clan or society or other tribal custom as an extended family member; or is deemed by M.H.A. Children and Family Services to have a significant familial type of relationship with the child.

**8-9-3. Court Authority and Scope**

1. The Court may terminate a parent’s rights if the Court finds by clear and convincing evidence that termination is in the child’s best interests.

**8-9-4. Parties Who May File a Petition**

1. One parent may file a petition for the involuntary termination of parent-child relationship between the other parent and the child. The rights of one parent may be terminated without affecting the rights of the other parent.
2. A guardian, custodian, or prospective adoptive parents having knowledge of the circumstances and an interest in the child may file a petition for the termination of the parent-child relationship with respect to either or both parents.
3. The M.H.A. Children and Family Services may file a petition for the termination of the parent-child relationship with respect to either or both parents.
4. A guardian ad litem appointed by the court to act in the best interests of a child may file a petition for the termination of the parent-child relationship with respect to either or both parents.

**8-9-5. Representation**

1. In any proceeding for termination of the parent-child relationship, the Court shall appoint an advocate, from those individuals who are registered with the District Court to perform such services, to represent the child as his guardian ad litem.

2. If the parent(s) of the child desire to be represented by counsel but are indigent, the Court, at its discretion and subject to the availability of funding, may appoint either legal counsel or an advocate for such parents.

3. If the parents of the child are mentally ill or suffer from a mental deficiency a guardian ad litem shall be appointed, from individuals who are registered with the District Court to perform such services, to represent the interests of the parent.

**8-9-6. M.H.A. Children and Family Services Procedures for filing Petition to Terminate Parental Rights.**

1. When filing a petition is required. Except as provided in Subsection 8-9-6.2(a)-2(b) below, the M.H.A. Children and Family Services shall file a petition for permanent guardianship or to terminate parental rights of a Youth-in-Need-of-Care if one of the following exists:

- a. A Youth-in-Need-of-Care has been in custody of the M.H.A. Children and Family Services for at least fifteen consecutive months or at least fifteen months out of the last twenty-two months, immediately preceding the filing of such petition;
- b. A court of competent jurisdiction has determined that the child is an abandoned child; or
- c. A court of competent jurisdiction has determined that the parent:
  - i. Committed the murder of another child of the parent or the child's parent;
  - ii. Committed voluntary manslaughter of another child of the parent or the child's parent;
  - iii. Aided or abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of another child of the parent;
  - iv. Committed felony assault that has resulted in serious bodily injury to the child or to another child of the parent; or
  - v. The parent has subjected the child to, or inflicted upon the child sexual abuse or extreme physical or emotional abuse.

2. Notwithstanding the provisions of Subsection 1(a) of this section, M.H.A. Family and Children Services is not required to file a petition to Terminate Parental Rights in such cases if Children and Family Services has determined that:

- a. The child has been adequately cared for by a relative; or
- b. The M.H.A. Children and Family Services has documented in the case plan compelling reasons that termination of parental rights would not be in the best interests of the child. Such compelling reasons include, but are not limited to:
  - i. The parent is successfully working to complete a service agreement;
  - ii. Another permanent plan is better suited to meet the health and safety needs of the child;
  - iii. There are insufficient factors present under Tribal policy to conclude that termination of parental rights is in the best interests of the child; or
  - iv. The M.H.A. Children and Family Services has not provided to the family of the child, consistent with the time period in the case plan, such services as the Agency deems necessary for the safe return of the child to parental care.

3. Nothing in this section precludes the M.H.A. Children and Family Services, in its sole discretion from filing a petition to Terminate Parental Rights in these cases.

**8-9-7. Contents of Petition for Termination of Parental Rights.**

1. A termination of parental rights hearing under this Chapter shall be initiated by a Petition for Termination of Parental Rights being filed with the Court. The Petition shall be verified under oath by the petitioner and shall contain the following information:

- a. The full name, residence, date and place of birth, sex of the child, with attached documentary proof of the date and place of the birth of child;
- b. The names of the persons with whom the child has lived, the residences at which the child has lived, for the previous year, and

the length of time the child has lived with each person and at each residence;

- c. The names, dates of birth, residences, and tribal status, if known, of the child's parents(s), guardian or custodian. In addition, the names and residences of putative fathers, and step-parents, if any;
- d. A jurisdictional statement;
- e. A brief and concise statement of the facts and reasons supporting the request for termination of the parent-child relationship.

### **8-9-8. Notice and Service**

1. The District Court shall issue a summons and notice of Termination of Parental Rights Hearing and the moving party shall serve the summons and notice, along with a copy of the Petition at least twenty (20) days before the hearing is scheduled to take place. A termination of parental rights under this Chapter shall, unless provided otherwise in this section, be ordered only after notice has been served on the parents, putative father, guardian, or other custodian, a guardian ad litem, and any other persons as appear to the Court to be necessary parties to the proceeding, except a biological parent who has been convicted of having sexually abused the other biological parent while not cohabitating with that parent as husband and wife, thereby producing the birth of the child who is the subject of the termination proceedings.

2. The notice under this section may be served personally, by certified mail-return receipt requested or constructively, as specified under Subsection 4 of this section.

The notice shall state:

- a. The time and place of the hearing on the termination of parental rights;
- b. A clear statement of the purpose of the action and hearing; and
- c. A statement that advising the party their right to obtain legal counsel at their own expense.

3. Service may be made by any person over the age of eighteen (18) who is not a party to the proceeding.

4. A party whose identity is known but whose location or address is unknown, or all unknown putative fathers, or if one certified mailing to a party has gone

unanswered or is returned, or if a party can not be personally served on the reservation, or have departed to avoid service, or conceal themselves, shall be served by published notice in the form provided in this subsection. If the name of the party is known, notice by publication shall also include the name of the party. The child's actual or expected date of birth and place of birth shall also be stated in the notice. Notice by publication shall be published once a week for three (3) consecutive weeks in a medium which is reasonably expected to provide notice to the necessary party. The final publication shall not be less than ten (10) days before the hearing. The notice shall substantially follow this form:

TO : \_\_\_\_\_ ( MOTHER'S NAME, FATHER'S NAME, KNOWN PUTATIVE FATHER'S NAME OR "ALL PUTATIVE FATHERS") OF A CHILD (EXPECTED TO BE OR BORN) ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, IN \_\_\_\_\_ (CITY), \_\_\_\_\_ (STATE).

You are notified that there is now on file in the office of the Clerk of the Court for the Fort Berthold District Court, a petition in case number \_\_\_\_\_, which prays for a termination of your parent-child relationship to a child (expected to be born) born on the \_\_\_\_\_ day of \_\_\_\_\_. For further details contact the clerk's office. The petitioner's attorney is \_\_\_\_\_ (NAME), \_\_\_\_\_ (ADDRESS).

You are notified that there will be a hearing on the petition to terminate parental rights before the Fort Berthold District Court, at the Courthouse in New Town, N.D. at \_\_\_\_\_ (A.M./ P.M.) on the \_\_\_\_\_ day of \_\_\_\_\_.

CLERK OF THE FORT BERTHOLD DISTRICT COURT

5. Proof of service of notice in the manner prescribed shall be filed with the Court prior to the hearing on the termination of parental rights.

**8-9-9. Waiver of Notice**

1. A putative father or a legal father who is not the biological father may waive his right to notice in a document acknowledged before a notary public. The notary public may not be an attorney who represents either the mother or any person who is likely to become the legal guardian, custodian, or parent of the child.

2. The waiver must indicate that the putative father or legal father understands that the waiver of notice operates as a consent to the termination of parental rights for purposes of permanent guardianship or adoption of the child, and that by signing the waiver of notice the putative father or legal father voluntarily gives up any rights to the named child.

3. The waiver of notice may state the putative father or legal father admits paternity, denies paternity, or neither admits nor denies paternity.

4. The legal father shall attach to the waiver of notice an affidavit stating that, although he is the legal father he is not the biological father.

#### **8-9-10. Parental Rights of Putative Father**

1. If, after notice, the putative father of the child wishes to establish parental rights to the child, he must, within twenty (20) days after notice of the termination hearing has been given or within a longer period of time as ordered by the Court, petition the Court to grant him parental rights. The petition must include an allegation that the putative father is in fact the biological father of the child. Upon receipt of the petition for parental rights the judge shall fix a date for the hearing to determine the putative father's parental rights to the child.

2. If, after a hearing, the Court finds that the putative father is the biological father, that he is willing and able to protect the child from jeopardy and has not abandoned the child, that it is in the best interests of the child, then the judge shall declare the putative father the child's parent with all attendant rights and responsibilities.

3. If the Court finds that the putative father of the child has not petitioned the Court or failed to appear at the termination hearing or has not meet the requirements of Subsection 2 of this section, he need not be made a party to or given further notice of any proceeding brought for the termination of parental rights, permanent guardianship or adoption of the child. An order or judgment may be entered in such proceeding terminating all of his rights with respect to said child without further notice to him.

**8-9-11. Pre-termination of Parental Rights Report**

1. M.H.A. Children and Family Services shall prepare and present a report to the court and to all parties of the case at least five (5) days before the termination of the parental rights hearing. The report shall contain the findings and opinions of the primary caseworker(s), as well as any professionals consulted, and their recommendations to the Court.

**8-9-12. Preliminary Hearing**

1. A preliminary hearing shall be no later than sixty (60) days from the date on which the Petition to Terminate Parental Rights was filed. The Court shall hold the hearing, except for good cause shown. In the event a parent has failed to appear at the preliminary hearing, the Court shall continue the hearing for up to an additional thirty (30) days, unless a Waiver of Notice has been filed with the Court.

**8-9-13. Hearing to Terminate Parental Rights**

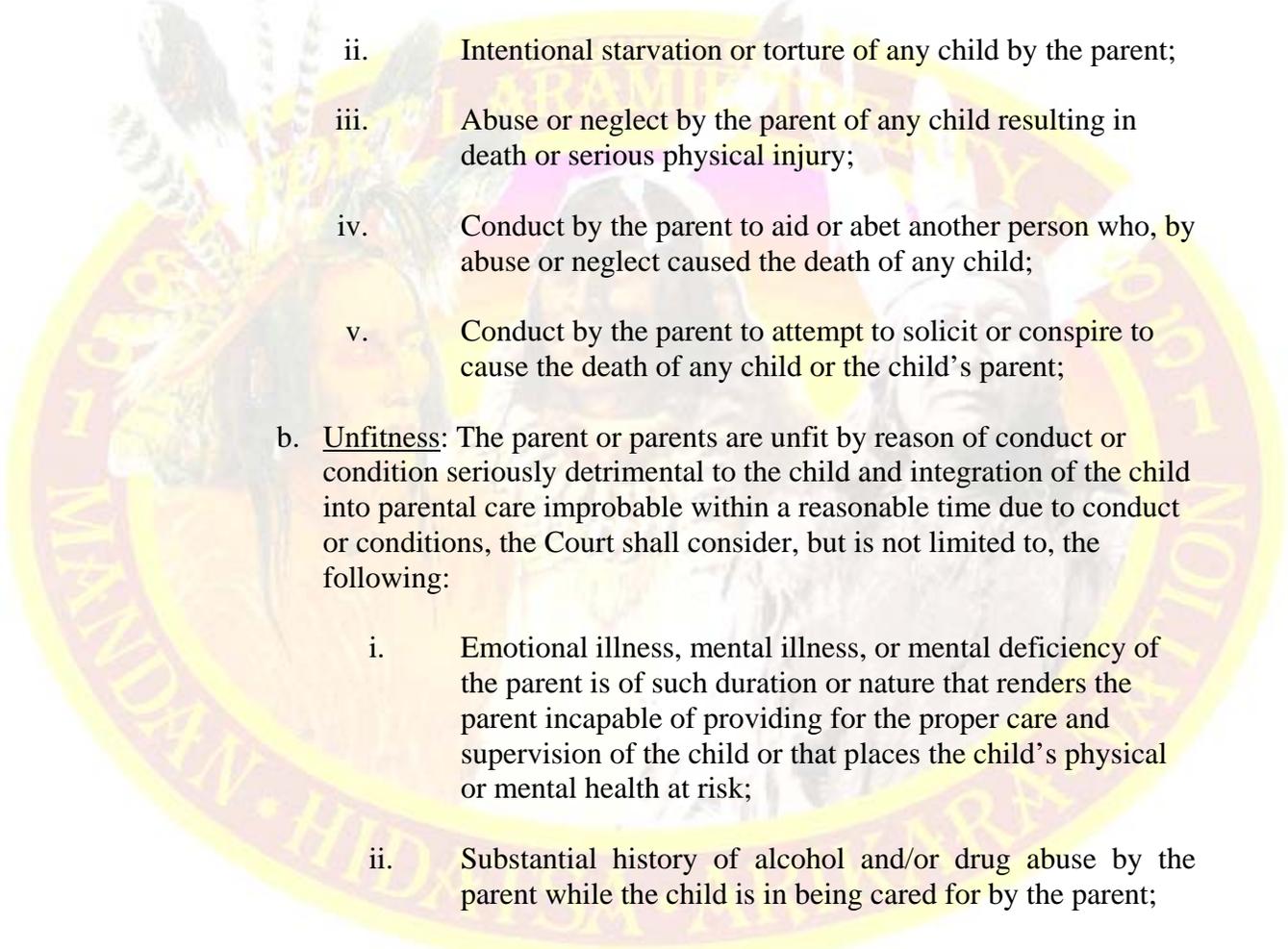
1. The Court shall hold the hearing on the termination of parental rights no later than one hundred and twenty (120) days from the date the Petition to Terminate Parental Rights was filed. The Court shall hold the hearing, except for good cause shown.

**8-9-14. Default Judgment- Termination of Parental Rights**

1. If any parent, guardian, or other person having custody of a child shall, after due notice, fail to appear at the continued preliminary hearing, the court may enter a default judgment and proceed then or at a subsequent date to receive proof and enter judgment.

**8-9-15. Bases of Termination of Parental Rights.**

1. The rights of the parent or parents may be terminated if the Court finds by clear and convincing evidence that termination of parental rights is consistent with the Tribe's policy as set forth in Section 8-9-2 of this Chapter, it is in the child's best interests that reasonable efforts to reunify the family have been made and that one or more of the following exist:

- 
- a. Extreme Conduct: The parent or parents are unfit by reason of a single or recurrent incident of extreme conduct toward the child or another child. In determining extreme conduct, the Court shall consider, but is not limited to, the following:
- i. Murder, manslaughter, sexual assault, or sex abuse of any child or child's parent by the parent;
  - ii. Intentional starvation or torture of any child by the parent;
  - iii. Abuse or neglect by the parent of any child resulting in death or serious physical injury;
  - iv. Conduct by the parent to aid or abet another person who, by abuse or neglect caused the death of any child;
  - v. Conduct by the parent to attempt to solicit or conspire to cause the death of any child or the child's parent;
- b. Unfitness: The parent or parents are unfit by reason of conduct or condition seriously detrimental to the child and integration of the child into parental care improbable within a reasonable time due to conduct or conditions, the Court shall consider, but is not limited to, the following:
- i. Emotional illness, mental illness, or mental deficiency of the parent is of such duration or nature that renders the parent incapable of providing for the proper care and supervision of the child or that places the child's physical or mental health at risk;
  - ii. Substantial history of alcohol and/or drug abuse by the parent while the child is in being cared for by the parent;
  - iii. Addictive or habitual use of alcohol and/or drugs to the extent that parental ability has been substantially impaired;
  - iv. Criminal conduct that impairs the parent's ability to provide adequate care for the child; and
  - v. Long-term confinement of the parent of such a duration that the parent is not eligible for parole for at least four years after the date the child was adjudicated dependent or neglected and the Court has found by clear and convincing evidence that no appropriate treatment plan can be devised to address the unfitness of the parent or parents.

- c. Neglect: The parent or parents have failed or neglected, without reasonable and lawful cause, to provide for the basic physical and/or psychological needs of the child for a substantial period of time.
- d. Abandonment: The parent or parents have failed to provide reasonable care and support, to arrange placement of the child by mutual consent with the child's family or extended family, and/ or to maintain regular contact and/or communication with the child. Failure to maintain a parental relationship with the child for one (1) year shall constitute presumptive evidence of abandonment.
- e. Abandonment of an Infant: The parents or parents who have left an infant child under circumstances such that the identity of the parent or parents of the infant are unknown and can not be ascertained, despite diligent searching, and the parent or parents have not come forward to claim the child within six (6) months after the infant has been taken into custody.
- f. Failure to Substantially Complete a Case Plan. The parent or parents have failed to substantially complete a case plan or substantially participate in efforts to reunify the family. Failure to comply with a case plan may not be used as a ground for termination of parents if the failure is solely due to the parent's lack of financial resources or the failure of M.H.A. Children and Family Services to make reasonable efforts to reunify the parent and child.
- g. Any other factor relevant to make a determination regarding the best interests of the child.

2. The bases for termination of parental rights are intended to identify grounds for termination and not additional reasons to compel a Petition for Termination of Parental Rights.

#### **8-9-16. Disposition**

- 1. If parental rights to a child are terminated, the Court shall:
  - a. Follow the permanent guardianship or adoption procedures as defined in this Title or other Title of the M.H.A. Law and Order Code; or
  - b. If the court determines that permanent guardianship or adoption is not immediately feasible or appropriate, the Court may order that the child be placed in the custody of M.H.A. Children and Family Services or a licensed child placing agency.

**8-9-17. Relinquishment of Parental Rights.**

1. The Court may accept a relinquishment of parental rights when the parent desires to voluntarily give such relinquishment. The Court shall set a hearing on a Petition for the Relinquishment of Parental Rights within sixty (60) days after the petition is filed.

2. A child's parent(s) may voluntarily consent to the relinquishment of parental rights. Consent of a parent to release and surrender his or her rights to a child is not valid unless:

- a. Executed in writing, and recorded in a hearing and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent; and
- b. The Court certifies that either the parent fully understood the explanation in English or that it was interpreted into a language that the parent understood; and
- c. The consent was given at least thirty (30) days after the birth of the child. The child may be placed with the prospective adoptive parents or other care giver during the first thirty (30) days after birth.

**8-9-18. Revocation of Relinquishment**

1. The parent's release and surrender may be withdrawn for any reason at any time prior to the order granting the relinquishment of the parental rights or the entry of a Decree of Adoption. After the entry of a Decree of Adoption, the parent may revoke the release and surrender upon a showing that it was obtained through fraud, duress, or coercion, and may petition the Court within ninety (90) days to vacate the Decree of Adoption. No adoption which has been effective for at least one (1) year may be invalidated under the provisions of this section.

**8-9-19. Final Orders**

1. An Order Granting the Relinquishment of Parental Rights or an Order Terminating Parental Rights shall be a final order for purposes of appeal. The parent shall appeal the final order within thirty (30) days of entry of the order.

**TITLE 8  
CHILD WELFARE CODE**

**Chapter 10  
[RESERVED]**



**TITLE 8  
CHILD WELFARE CODE**

**Chapter 11  
Emancipation**

**8-11-0. Purpose**

1. An Indian child over the age of sixteen (16) years may petition the Fort Berthold District Court for emancipation. The District Court shall grant such status when the child proves to the District Court that the child is capable of functioning as an independent and responsible member of the community.

**8-11-1. Petition for Emancipation**

1. A child seeking emancipation shall file a petition for emancipation in District Court. The petition shall be signed by the Tribal Prosecuting Attorney for civil juvenile matters and verified by the child, and shall include all of the following information:

- a. The Child's full name and birth date, and the county and state where the child was born;
- b. A certified copy of the child's birth certificate;
- c. The name and last known address of the child's parents, guardian, or custodian;
- d. The child's present address and length of residency at that address;
- e. A declaration by the child indicating that he or she has demonstrated the ability to manage his or her financial affairs, the child may include information he or she considers necessary to support the declaration;
- f. A declaration by the child indicating that he or she has the ability to manage his or her personal and social affairs, the child may include in this section any information he or she considers necessary to support the declaration; and
- g. Information concerning tribal enrollment.

2. The petition shall include an affidavit by any of the following individuals declaring that the individual has personal knowledge of the child's circumstances and believes that under those circumstances emancipation is in the best interests of the child:

- a. Physician;
- b. Nurse;
- c. Member of the clergy;
- d. Tribal elder;
- e. Family therapist;
- f. Social worker;
- g. School administrator, teacher, or school counselor; or
- h. Law enforcement officer or probation officer.

3. A copy of the petition and a summons to appear at the hearing shall be served on the child's parents and guardian. A notice of hearing shall be sent to the individual who provided the affidavit.

**8-11-2. Powers of the District Court**

1. After the petition is filed, the District court may do one or more of the following:
  - a. Assign an employee of the District Court to investigate the allegations of the petition and to file a report containing the results of the investigation with the District Court.
  - b. Appoint legal counsel for the child, subject to the availability of funding
  - c. Appoint legal counsel, subject to the availability of funding, for the child's parents or guardian if they are indigent and if they oppose the petition.

**8-11-3. Emancipation Hearing**

1. The hearing shall be before a judge sitting without a jury.

2. The District court may issue an emancipation order if it determines that emancipation is in the best interests of the child and that child establishes all of the following:

- a. That the child's parent or guardian does not object to the petition; or if a parent or guardian objects to the petition that the objecting parent or guardian is not providing the child with support.
- b. That the child is at least sixteen (16) years of age;
- c. That the child is a member of a federally recognized tribe;
- d. That the child has demonstrated the ability to manage his or her financial affairs, including proof of employment or other means of support;
- e. That the child has the ability to manage his or her personal and social affairs, including, but not limited to, proof of housing; and
- f. That the child understands his or her rights and responsibilities under this act as an emancipated child.

3. A child who petitions the court for emancipation shall have the burden of showing by clear and convincing evidence that emancipation should be ordered.

4. Any emancipation order granted by the District Court shall order the child to comply with all tribal education and attendance laws, unless the child has officially obtained a high school diploma or a General Education Diploma (G.E.D.).

5. If the District Court issues an Emancipation Order, the District Court shall retain a copy of the order until the emancipated child becomes twenty-one (21) years of age.

6. An emancipation obtained by fraud is void. Voiding such an order does not affect an obligation, responsibility, rights, or interests that arose during the period of time the order was in effect.

7. The child or a parent or guardian of the child may file an appeal from the District Court's grant or denial of emancipation petition. An appeal must be filed within thirty (30) days of entry of the order.

